

**JUDGMENT SHEET
IN THE LAHORE HIGH COURT, LAHORE
JUDICIAL DEPARTMENT**

RFA No.31423 of 2021

**Government of Pakistan through Secretary Ministry of
Defence, Islamabad & another
Versus
Muhammad Sharif & others**

J U D G M E N T

Date of hearing: 29.05.2024.
Appellants by: M/s Tahir Mehmood Khokhar, Deputy
Attorney General and Muhammad Zain
Qazi, Assistant Attorney General.
Respondents /
Landowners by: M/s Mian Abdul Quddus and Muhammad
Qamar-uz-Zaman, Advocates.

MUHAMMAD SAJID MEHMOOD SETHI, J.- This consolidated judgment shall also decide connected appeals i.e. RFA Nos.18628, 18636, 18643, 18651, 18655, 18659, 18665, 31408, 31411, 31417, 31426, 31431, 31434 & 31436 of 2021, as common questions of law and facts are involved in these cases.

2. Through these appeals, consolidated judgment dated 12.02.2021, passed by learned Senior Civil Judge-1 (Civil Division), Kasur, has been challenged whereby Reference Applications under Section 18 of the Land Acquisition Act, 1894 (**“the Act of 1894”**), filed by respondents, were partly accepted and Reference Application of the appellants was dismissed in the following terms:-

“52. In peroration of my findings on the issues recorded above, the instant references are accepted and award No.01/2014 Ex.A.06 is hereby set aside. The petitioners of references titled as (i) "Muhammad Sharif etc Vs. Govt. of Pakistan etc, (ii) "Manzoor Ahmad etc Vs. Govt. of Pakistan etc", (iii) Dil Muhammad etc Vs. Govt. of Pakistan etc" (iv) "Ghulam Nabi etc Vs. Govt. of Pakistan etc", are entitled to receive compensation @ Rs.15,00,000/-(fifteen lac) for on road land per acre and for off road land Rs. 11,00,000/-

(Eleven lac) per acre and the petitioners of reference titled as "Mushtaq Ahmed etc Vs. Govt of Pakistan through the Secretary Ministry of Defence Islamabad etc, are entitled to receive compensation Rs. 15,00,000/-(fifteen lac) for on road land per acre and for off road land @ Rs. 11,00,000/-(Eleven lac) per acre whereas the petitioners of reference titled as (i) "Muhammad Ramzan etc Vs. Govt of Pakistan through the Secretary Ministry of Defence, Islamabad etc (ii) Balqees Bibi etc Vs. Govt of Pakistan through the Secretary Ministry of Defence, Islamabad etc' are entitled to receive compensation @ Rs.11,00,000/- (Eleven lac) per acre. All the petitioners in the above said references are also entitled for compulsory acquisition charges @ 15 percent and compound interest @ 08 percent per annum from the date of possession till payment of amount. An-other reference filed by the respondent titled as "Military Estates Office, Lahore Circle, Lahore Cantt. Vs. Province of Punjab through LAC Chunian etc is hereby dismissed...."

Respondents herein / landowners are also appellants in cross-appeals i.e. RFA Nos.18628, 18636, 18643, 18651, 18655, 18659 & 18665 of 2021, which are seeking enhancement in the quantum of price / value of the acquired land.

3. Brief facts of the case are that respondents / landowners filed seven (07) Reference Applications and appellants besides contesting the same also filed a Reference Application challenging the award dated 20.01.2014, announced by the Land Acquisition Collector for acquisition of total land measuring 4201 Kanal 14 Marla situated at Mouza Wan Khara Tehsil Chunian, District Kasur, for shifting of Ammunition Depot Thokar Niaz Baig to Wan Khara, whereby the respondents were awarded compensation amount @ Rs. 10,50,000/- per Acre for "On Road" land and Rs.8,50,000/- per Acre for "Off Road" land. The parties filed their respective written replies. Out of divergent pleadings of the parties, the Referee Court framed following issues: -

CONSOLIDATED ISSUES:

1. Whether the land acquisition collector / LAC determined inadequate price of the land vide Award No.01/2014 dated 20.04.2014 and the same is liable to be enhanced? OPA.

2. If issue No.1 is proved in affirmative, then whether the petitioners of references titled as (i)"Muhammad Sharif etc Vs. Govt of Pakistan through the Secretary Ministry of Defence, Islamabad etc, (ii)"Manzoor Ahmed etc Vs. Govt of Pakistan through the Secretary Ministry of Defence, Islamabad etc, (ii) Dil Muhammad etc Vs. Govt of Pakistan through the Secretary Ministry of Defence, Islamabad etc and (iv) Ghulam Nabi etc Vs. Govt of Pakistan through the Secretary Ministry of Defence, Islamabad etc', are entitled to receive compensation amount at the rate of Rs.1,000,000/- per Acre for on road lands and Rs.80,00,000/- per Acre for off-road lands along with compound interest? OPA.
3. If issue No.1 is proved in affirmative, then whether the petitioners of reference titled as" Mushtaq Ahmed etc Vs. Govt of Pakistan through the Secretary Ministry of Defence, Islamabad etc. are entitled to receive compensation amount at the rate of Rs.50,00,000/- per Acre for on road lands and Rs.40,00,000/- per Acre for off-road lands along with compound interest? OPA.
4. If issue No.1 is proved in affirmative, then whether the petitioners of the references titled as (i) Muhammad Ramzan etc Vs. Govt of Pakistan through the Secretary Ministry of Defence, Islamabad etc. and (ii) Balqees Bibi etc Vs. Govt of Pakistan through the Secretary Ministry of Defence, Islamabad etc', are entitled to receive compensation amount at the rate of Rs.40,00,000/- per Acre along with compound interest? OPA.
5. Whether the petitioners of references titled as (i)"Mushtaq Ahmed etc Vs. Govt of Pakistan, through the Secretary Ministry of Defence, Islamabad etc", (ii)"Balqees Bibi etc Vs. Govt of Pakistan through the Secretary Ministry of Defence, Islamabad etc and (iii) "Muhammad Ramzan etc Vs. Govt of Pakistan through the Secretary Ministry of Defence, Islamabad etc are entitled to receive the price/compensation of damages crops, trees and building etc as prayed for? OPA.
6. Whether the LAC awarded excessive inadequate amount of compensation to the respondents No.2 to 196 of reference titled as "The Military Estates Office, Lahore Circle, Lahore Cantt. Vs. Province of Punjab through LAC Chunian etc. if so what should be proper amount of compensation? OPR.
7. Whether the reference is barred by time? OPR.
8. Whether the petitioners have come to the court with unclean hands? OPR.
9. Whether the instant references are not maintainable in its present form, hence, same are liable to be dismissed? OPR.
10. Relief?

After recording evidence and hearing arguments from all sides, the Referee Court, vide consolidated judgment dated 12.02.2021, partly accepted the Reference Applications of

respondents and dismissed the Reference Application of appellants in the above manner. Hence, these appeals.

4. Learned counsel for appellants submits that the respondents have received their due share of compensation without any protest and only a very few of them agitated the matter before the Referee Court. He adds that the Referee Court has wrongly held nature of land as “industrial” when no documentary evidence was available on record which could justify such character of the land. He further submits that the land in dispute was neither situated at edge of Multan Road (rather 6 to 7 km away) nor in close vicinity of Balloki Power Plant (rather 12 to 13 km away) and this aspect of the matter was also not considered while passing the impugned judgment. He argues that no cogent evidence was produced before the Court to establish that price of the land had escalated during the period between issuance of Notification u/s 4 of the Act of 1894 and announcement of the award, hence no question for grant of compound interest was there. He next submits that documentary evidence (Ex.R-4 & Ex.R-5), adduced by appellants, was not appreciated by the Referee Court. He maintains that most of the documentary evidence was exhibited in the statement of counsel and undue weightage was given by the Referee Court to such evidence, which was not permissible under the law, hence impugned judgment is unsustainable in the eye of law. In support, he has relied upon judgment dated 24.11.2022 passed by a learned Division Bench of this Court in **R.F.A. No.74504 of 2019** titled Federation of Pakistan, etc. v. Ghulam Mustafa, etc.

5. Conversely, learned counsel for respondents submits that the price assessed by the Land Acquisition Collector as well as the Referee Court is neither proper nor adequate as relevant factors, inter-alia, market value at the relevant time coupled with its potential value, time consumed in finalization of

acquisition proceedings / payment of compensation and trend of increasing prices of lands located adjacent to the lands of respondents have not been taken into consideration while deciding the matter. In the end, he prays for enhancement in the price of acquired lands.

6. Arguments heard. Available record perused.

7. This is second round of litigation before this Court. In previous round, against judgment and decree dated 14.12.2018, passed by the Referee Court, a learned Division Bench of this Court vide order dated 22.05.2019, passed in **RFA No.20349 of 2019** titled Govt. of Pakistan through Secretary Ministry of Defence etc. v. Mushtaq Ahmad etc. after setting aside the decision remanded the matter to the Referee Court for decision afresh. Now, through judgment under challenge in these appeals, the Referee Court has enhanced the value / price of acquired land, as detailed in paragraph 2 of this judgment. Appellants are not satisfied by the decision of the Referee Court and are urging to restore the award announced by the Land Acquisition Collector. The respondents are also not still content with the price determined by the Referee Court and are claiming further enhancement by this Court.

8. **The pivotal issues No.1 to 6 are inter-linked and inter-connected, hence** collective determination thereof would cause no prejudice. **The remaining issues No.7 to 9 have not been pressed before us.** The precise controversy is whether the value of the acquired land fixed by the Land Acquisition Collector constitutes fair and just compensation or that of the Referee Court within contemplation of provisions of sections 23 and 24 of the Land Acquisition Act 1894?

9. Respondents / landowners adduced 13 witnesses and documentary evidence as Ex.A-1 to Ex.A-24, out of which Ex.A-2 to Ex.A-4 & Ex.A-9 to Ex.A-11 are mutations regarding different lands in Mouza Wan Khara whereas Ex.A-5

is showing detail of various mutations sanctioned w.e.f. 01.07.2012 to 30.06.2013 and the average sale price. Conversely, appellants presented 3 witnesses and documentary evidence as Ex.R-1 to Ex.R-21, which included attested copy of acceptance of average sale price fixed by District Price Assessment Committee (Ex.R-4) and detail of different sale deeds executed in the year 2011 qua lands in Mouza Wan Khara and average sale price (Ex.R-5), and another detail of 17 mutations of various lands in Mouza Wan Khara (Ex.R-21).

10. Admittedly, Notification u/s 4 of the Act of 1894 for acquiring land measuring 4201 Kanal 14 Marla situated at Mouza Wan Khara, Tehsil Chunian was issued on 09.12.2011, though initial steps for effecting acquisition had commenced since early 2011, and the Award was announced on 20.01.2014. Ex.A-2 is mutation No.4750 dated 30.04.2011, pertaining to land measuring 4 Kanal 4 Marla against consideration of Rs.12,00,000/-, Ex.A-3 is mutation No.4801 dated 21.06.2011 regarding land measuring 7 Kanal 17 Marla against consideration of Rs.15,00,000/- and Ex.A-4 is mutation No.4740 dated 28.02.2011, qua land measuring 4 Kanal 17 Marla against consideration of Rs.15,00,000/-. All these mutations are pertaining to Mauza Wan Khara and average sale price of lands in Ex.A-2 to Ex.A-4 is approximately Rs.18,77,094/- per Acre. Ex.A-5 is showing as many as 34 mutations pertaining to Mouza in question sanctioned w.e.f. 01.07.2012 to 30.06.2013, reflecting average sale price as Rs.17,27,152/- per acre. Ex.A-8 was sanctioned on 29.01.2013 and Ex.A-9 to Ex.A-11 are dated 29.09.2012. These mutations are showing sale price(s) on much higher side, however learned counsel for appellants has raised serious objection that the same being exhibited in the statement of learned counsel for respondents cannot be taken into consideration. Reference has also been made to the case of Ghulam Mustafa supra.

Undoubtedly, this legal position is correct, therefore, we are confining ourselves to Ex.A-2 to Ex.A-5, admissibility and authenticity whereof was not disputed by the appellants, which were endorsed by Mukhtar Hussain, *Halqa Patwari* of Mouza Wan Khara (AW-10) – most crucial and proximate witness of this case – who deposed that mutations contained in Ex.A-2 to Ex.A-5 were correct as per his record and average sale price as per Ex.A-5 was Rs.17,27,152/-. On the converse, no plausible evidence was produced by the appellants to show any defect in the determination by the Referee Court. The witnesses produced by the appellants had no proximity or personal knowledge qua the matters, touching determination of the compensation. The absence of knowledge qua material facts cannot be construed or inferred as affirmation of the actual facts.

The Award (Ex.A-6) though mentions that objections were filed by respondents / landowners, however no reasons are forthcoming therefrom which prevailed upon LAC to reject the objections. The award is based upon value assessed by the District Price Assessment Committee (which was approved by Board of Revenue), however none of the members was produced in evidence to explain the criteria adopted by the Committee while fixing the price. The award does not reflect independent assessment by the Land Acquisition Collector keeping in view the complexion and character of the acquired land, especially when respondents specifically asserted that their land was situated on main Multan Road.

11. So far as stance of respondents that value of land / compensation is still not adequate is concerned, we have gone through the available evidence and found that PW-1 alleged price of acquired land as Rs.50,00,000/- per Acre (at the time of issuance of Notification u/s 4) and Rs.10,00,000/- at the time of announcement of Award. The other PWs also took almost

similar stance, however they could not lead or tender any direct evidence to substantiate their stance inasmuch as their documentary evidence and statement of PW-10 are not supporting such value of the acquired land. Potentiality of the land was considered and accounted for while determining the compensation by the Referee Court. Mere production of handful of sale deeds, contemporaneous to the acquisition proceedings, is not enough to disbelieve the compensation already determined.

12. As regards the stance of appellants that the value assessed by the Land Acquisition Collector as well as the Referee Court is on higher side, the RWs alleged value of on-road land as Rs.300,000/- per Acre and that of off-road land as Rs.200,000/- and evasively denied the average sale price of Rs.17,27,152/- per Acre (reflected in Ex.A-5), however the stance is not supported by any direct evidence, let alone any believable evidence. RW-2, during cross-examination, could not state market value of the land in the years 2010 & 2011 and average sale value of land at the time of announcement of award. The reliance of appellants on Ex.R-5, showing average sale price of land as Rs.10,66,992/- per Acre is contradictory to the stance taken by the RWs. Even otherwise, this document shows that different lands were also sold @ Rs.20,00,000/- & Rs.24,74,226/- per Acre and authenticity of such sale deeds was not denied by appellants, which strengthens the case of respondents that the acquired land, being located near main road, had much potential value. Moreover, regarding land acquired in the year 2015 for Balloki Power Plant @ Rs.34,98,000/- per Acre (as per stance of PWs), appellants could not advance any explanation / reason for fixation of such compensation for land in same Mouza, especially when AW-10 (*Halqa Patwari*) stated that as per *Aks Shajra* (Ex.A-1), the distance between acquired land and Balloki Power Plant was

approximately 01 km. Predominantly, nature of the land, after assessing its potential value, is industrial and it would be sheer exaggeration to classify it as commercial for the purposes of determining compensation thereof.

13. The Referee Court has taken into consideration the market value of the land and the factum of delay in concluding acquisition proceedings and payment of compensation and price escalation during the intervening period. The Referee Court has also rightly appreciated the fact that the period for determination of compensation was the period between issuance of Notification u/s 4 and announcement of award besides average sale price of the sold land within a period of twelve (12) months before issuance of Notification u/s 4. Some of the mutations mentioned in Ex.A-2 to Ex.A-5 were sanctioned before the date of issuance of Notification under section 4 of the Act of 1894 and some were passed before the announcement of the award.

14. Under the law, determination of compensation for the land compulsorily acquired was the duty not only of the State/executive functionaries (particularly of the Land Acquisition Collector), but once the landowners were not compensated by them, the duty for such determination, under the Constitution and the law, was cast upon the judicial forums, including the Referee Court and the superior Courts. Evidence brought on record by the parties is to be seen in its entirety, stressing less qua the obligation of the onus to prove, and applying the principle of preponderance of evidence. Appellants as well as respondents are unable to convince this court to disbelieve the compensation determined by the Referee Court. Learned counsel for the parties have failed to establish that the conditions / parameters contained in Sections 23 & 24 of the Act of 1894 have not been considered by the Referee Court while determining compensation. The Referee Court has rightly

appreciated the material / evidence brought on record, facts of the case, applicable law and dictum laid down by the superior Courts while passing the impugned decision. Learned counsel for the parties could not make out a case for interference by us in the impugned decision in exercise of appellate jurisdiction.

15. In view of the above, instant as well as connected appeals, being devoid of merits, are **dismissed**. No order as to costs.

(Asim Hafeez)
Judge

(Muhammad Sajid Mehmood Sethi)
Judge

APPROVED FOR REPORTING

Judge

Judge

Sultan