

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

RFA No.20881 of 2023
**National Highway Authority, Islamabad through its
Project Director Zafar Mehmood**
Versus
Muhammad Afzal Bhatti & another

J U D G M E N T

Date of hearing: 03.06.2024.
Appellant by: M/s Muhammad Saim Chaudhary, Dewan Zakir Hussain and Saima Safdar Chaudhry, Advocates.
Mr. Muhammad Zain Qazi, Assistant Attorney General on Court's call.
Respondents Mr. Najaf Muzammal Khan, Advocate.
Mr. Muhammad Saad Bin Ghazi, Assistant Advocate General on Court's call.

MUHAMMAD SAJID MEHMOOD SETHI, J.-

Through instant appeal, appellant has challenged judgment dated 07.01.2023, passed by learned Senior Civil Judge (Civil Division), Gujranwala, whereby Reference Application under Section 18 of the Land Acquisition Act, 1894 ("the Act of 1894"), filed by respondent No.1, was accepted and he was held entitled to get compensation of acquired land @ Rs.20,00,000/- per Acre along with 15% compulsory acquisition charges, compound interest @ 8% from the date of possession i.e. date of issuance of Notification u/s 4 of the Act of 1894 till payment of compensation with interest and costs of the suit.

2. Brief facts of the case are that land of respondent No.1 measuring 22 Kanal & 7 Marla situated in village Hayati Tehsil Kamoki District Gujranwala was acquired for construction of Lahore-Sialkot Motorway and compensation was granted @ Rs.1,43,750/- per Kanal or Rs.11,50,000/- per Acre through Award dated 16.06.2017. Respondent No.1 filed Reference Application for enhancement of compensation of the acquired

land, which was contested by the Land Acquisition Collector and appellant / National Highway Authority by filing written replies. Out of divergent pleadings of the parties, the Referee Court framed following issues: -

ISSUES:

1. Whether petitioner's property was not evaluated and assessed by respondents according to market value and petitioner is being compensated for lesser amount and is entitled to enhanced compensation? OPA
2. Whether petitioner is entitled to receive compensation of his acquired land and damages he sustained @ Rs.20,00,000/-/25,00,000/- per Acre along with interest instead of Rs.11,50,000/- per Acre? OPA
3. Whether possession of petitioner's property was taken immediately after issuance of Notification u/s 4 whereas Award was announced on 16.06.2017? OPA
4. Whether petitioner has not come to Court with clean hands? OPR
5. Whether petitioner has no cause of action and *locus standi* to file this Reference? OPR
6. Whether Reference of petitioner is not proceedable in its present form due to mis-joinder and non-joinder of necessary parties and same is liable to be dismissed? OPR
7. Relief.

After recording evidence and hearing arguments from all sides, the Referee Court, vide judgment dated 07.01.2023, accepted the Reference Application in above terms. Hence, this appeal.

3. Learned counsel for appellant submits that all the documentary evidence, adduced by respondent No.1, was exhibited in the statement of learned counsel, therefore, the same has no evidentiary value in view of dictum laid down by the superior Court. He adds that even all these documents were executed after issuance of Notification u/s 4 of the Act of 1894, thus, the same are irrelevant as per Rule 10(1)(iii)(C) of the Punjab Land Acquisition Rules, 1983. He argues that certain documents were produced and only 'marked', therefore, such documents had no legal value and sanctity in the eye of law. He further submits that respondent No.1 failed to prove exact price of the acquired land through tangible evidence and

received the award amount without any objection, hence the Referee Court was not justified to amplify the compensation to such a huge magnitude. He contends that the reference application remained pending for five years for no fault on the part of acquiring agency, hence, there was no lawful justification to award the compound interest, which even otherwise is not mandatory rather is discretionary as per section 28 of the Act of 1894. In support of his contentions, he has relied upon Government of N.-W.F.P. and others v. Akbar Shah and others (2010 SCMR 1408), Manzoor Hussain (deceased) through L.Rs. v. Misri Khan (PLD 2020 Supreme Court 749), Mst. Akhtar Sultana v. Major Retd. Muzaffar Khan Malik through his legal heirs and others (PLD 2021 Supreme Court 715), Mst. Fatima and 2 others v. Najeeb Ullah and another (2020 CLC 780), Lahore Ring Road Authority and others v. Mian Mumtaz Ahmad and others (2021 CLC 178) and Muhammad Hussain and another v. Province of Punjab through District Officer Revenue, Multan and others (2021 YLR 2310).

4. Conversely, learned counsel for respondent No.1 submits that the acquired land was of prime quality for cultivation of vegetables / farming and being near to village *abadi* was suitable for residential purpose as well, therefore, the value / price of compensation should have been assessed at Rs.25,00,000/- per Acre. He adds that appellant has evasively denied the stance of respondent No.1 instead of rebutting the same through any direct evidence, which amounts to admission on the part of appellant. He adds that the price assessed by the Land Acquisition Collector was 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

respondent No.1 have not been taken into consideration at the time of announcement of award. In the end, he prays that compensation fixed by the Referee Court be maintained. He has placed reliance on Wasab Khan and another v. Mst. Bagh Bhari and 5 others (2017 MLD 1552), Muhammad Munawar v. Abdul Razaq and 6 others (2018 CLC 1227), Usman Khan v. Mst. Shehla Gul and 2 others (2020 CLC 910), Muhammad Akhtar v. Mst. Manna and 3 others (2001 SCMR 1700), Malik Tariq Mahmood and others v. Province of Punjab and others (2023 SCMR 102), Federal Government of Pakistan through Ministry of Defence Rawalpindi and others v. Mst. Zakia Begum and others (PLD 2023 Supreme Court 277), National Highway Authority v. Rai Ahmad Nawaz Khan and others (2023 SCMR 700) and Nawabzada Abdul Qadir han and others v. Land Acquisition Collector Mardan and others (2023 SCMR 950).

5. Arguments heard. Available record perused.

6. Undeniably, land of respondent No.1 was acquired and he was held entitled to get compensation of the same by the Land Acquisition Collector, therefore, issues No.4, 5, 6 & 7 were rightly decided against appellant. Even, these issues have not been seriously pressed before this Court.

The major controversy revolves around issues No.1 to 3, gist whereof is whether value determined by the Referee Court was accurate or that fixed by the Land Acquisition Collector was fair and just?

7. Respondent No.1 himself appeared as AW-1 and produced Safdar Ali as AW-2. Documentary evidence contains documents Ex.A-1 to Ex.A-17 and Mark-A to Mark-H. Whereas, Syed Mohsin Raza Naqvi, Assistant Director Land appeared in the witness box as RW-1 & Safwan ul Haq, Tehsildar Kamoke as RW-2 and mutations of Mouza Hayati

bearing Nos.613, 615, 617 & 618 were tendered as Ex.R-1 to Ex.R-4, respectively.

8. Learned counsel for appellant has raised serious objection qua admissibility of documentary evidence tendered by respondent No.1, being exhibited in the statement of learned counsel, however he frankly admitted the genuineness and veracity of Ex.A-4, which is minutes of meeting of District Price Assessment Committee (DPAC), held on 03.08.2016. This document shows that schedule rate of off-road land of Mouza Hayati was assessed as Rs.10,50,000/- and market value as Rs.15,00,000/- per Acre, by the Assistant Commissioner Kamoke, however column *average sale price per Acre* is blank.

When confronted with the legal position that the documentary evidence was exhibited in the statement of counsel and the same has no evidentiary value, learned counsel for respondent No.1 submits that he would be satisfied if compensation is fixed as per market value of acquired land given in Ex.A-4 i.e. Rs.15,00,000/- per Acre.

On being faced with the above, learned counsel for appellant admits that the aforesaid market value of the acquired land was fixed by the Assistant Commissioner concerned but the DPAC reduced it to Rs.10,50,000/- per Acre. He was asked to show the reasons for reducing the compensation of the acquired land and further confronted with the facts; that the AWs claimed market value of the acquired land from Rs.20,00,000/- to Rs.25,00,000/- per Acre in their depositions and during cross-examination their stance remained the same; that the RWs, who are neither members of DPAC nor persons who assessed the value, could not substantiate that the LAC fixed the compensation by keeping in view the market value and potential value of the acquired land; and that the market value of off-road lands in adjacent villages i.e. Pul Shah Dola (a nearest village) has been assessed as Rs.17,00,000/- per Acre,

however the same was not considered while fixing the compensation of the acquired land. In response, learned counsel could not advance any satisfactory reply.

10. The Referee Court has taken into consideration the market value, potentiality and value of the adjacent lands on the basis of documentary evidence tendered by respondent No.1, which clearly shows value / price of adjacent lands on higher side. However, the Apex Court of the country has laid down in a number of judgments that documentary evidence cannot be exhibited in the statement of counsel including the cases reported as *Manzoor Hussain (deceased) through L.Rs. v. Misri Khan (PLD 2020 Supreme Court 749)*, *Mst. Akhtar Sultana v. Major Retd. Muzaffar Khan Malik through his legal heirs and others (PLD 2021 Supreme Court 715)* and *Mst. Rasoolan Bibi v. Province of Punjab and others (2023 CLC 1171)*. The verdict given by the Supreme Court is binding on all Courts of the country within the contemplation of Article 189 of the Constitution of the Islamic Republic of Pakistan, 1973.

11. In this view of the matter, compensation of the acquired land is being fixed by adopting the market value mentioned in Ex.A-4, which document although brought on record in the statement of learned counsel for respondent No.1 but learned counsel for appellant has admitted it to be correct and has neither raised serious objection for determination of compensation in line thereof nor could show that the said determination was not in conformity with the market price through any irrefutable documentary proof. In the given circumstances, this Court finds no exception to it especially when learned counsel for respondent No.1 has also agreed to it to end the litigation.

12. Needless to say that the concept that documents cannot be admitted into evidence solely through the statement of

counsel during evidence is rooted in the fundamental right to cross-examination, which is an essential aspect of the adversarial legal system. The right to cross-examination allows the opposing party to challenge the veracity, authenticity, and relevance of the evidence presented, including documents. If documents were to be admitted solely on the statements of counsel, it would indeed compromise the right of the other party to cross-examine, which is not warranted by law. Therefore, the trial Courts must ensure that all documentary evidence is subject to the scrutiny of cross-examination to uphold the principles of fairness and due process. Documents exhibited solely through the statements of counsel without the opportunity for cross-examination would not meet the legal standards for admissibility of evidence. This ensures the integrity of the judicial process and the rights of the parties involved. The superior Courts of the country have also enriched the law through their judgments, setting precedents for the proper admission of documents and evaluation. The Courts must ensure so far as it is possible that these legal standards are met to maintain the integrity of the judicial process and uphold the rights of the parties involved.

13. Before parting with this judgment, I am constrained to observe that in this case, respondent No.1 got exhibited as many as seventeen (17) documents during statement of his learned counsel, and the Referee Court as well as learned counsel for the parties in total oblivion of the legal position developed so far allowed the documents to be exhibited, however such exercise is not permissible under well-established principles of law enunciated by the superior Courts in a number of judgments, some of them have also been cited supra. In this way, the best evidence being helpful to resolve the controversy is lost which seriously affects the precious rights of the parties. Therefore, this Court directs that copy of this judgment be

circulated to all the Courts in District Judiciary Punjab as well as Presidents of Bar Associations at Tehsil and District levels throughout Punjab for strict adherence to ensure substantial justice and to save the parties from substantial loss.

14. In view of the above, instant appeal is **partly allowed** in the manner that compensation of acquired land of respondent No.1 is hereby fixed as Rs.15,00,000/- per Acre along with 15% compulsory acquisition charges and compound interest @ 8% from the date of possession of the acquired land to the date of payment of enhanced amount of compensation.

(Muhammad Sajid Mehmood Sethi)
Judge

APPROVED FOR REPORTING

Judge

Sultan