

## **PLJ 2024 Quetta 14 (DB)**

*Present: ZAHEER-UD-DIN KAKAR AND SARDAR AHMED HALEEMI, JJ.*

**DEPUTY COMMISSIONER/COLLECTOR, QUETTA--Appellant**

versus

*Sheikh MUHAMMAD ISLAM and others--Respondents*

C.M.A. No. 156 of 2022, decided on 20.12.2022.

### **Land Acquisition Act, 1894 (I of 1894)--**

---Ss. 12(2), 18 & 54--Acquisition of land--Applicant was not present before land acquisition collector at time of announcement of award--Notice for appearance was not served to applicant--Filing of reference for enhancement in compensation award--Allowed--Enhancement of compensation amount--Challenge to--Respondent No. 1 produced oral as well as documentary evidence, which were rightly considered by Referee Court and enhanced market value of acquired land--Respondent No. 1 or his representative was not present before Land Acquisition Collector at time of announcement of Award and Collector has also not served him under provisions of Section 12(2) of Act--Such fact was also admitted by RW-1 in his statement recorded before Referee Court--Referee Court after careful scrutiny and analysis of evidence has recorded findings of facts and law, High Court find no reason to disagree with conclusion arrived at by Referee Court, besides there is no mis-reading or non-reading of evidence, nor any perversity of reasoning has been observed--Appeal dismissed. [Pp. 19, 20 & 21] A, C & D

### **Land Acquisition Act, 1894 (I of 1894)--**

---S. 18--Types of limitation--Three different types of limitation for filing a reference to Collector, i.e. Firstly that if person making a reference/application to Collector was present or represented before Collector at time of announcement of Award, he is obliged to approach Collector within six weeks from date of Award announced by Collector, Secondly, if land owner was served by Collector under Section 12(2) of Act and he received notice, then after receipt of notice, he shall file objections with Collector within six weeks and, Thirdly, if land owner was not present or not represented before Collector at time of announcement of Award and was also not served with a notice under Section 12(2) of Act, then limitation for filing a reference before Collector would be six months starting from date of passing of Award. [P. 20] B

*Mr. Tahir Iqbal Khatak, Addl:AG for Appellant and Proforma Respondents No. 3 to 8.*

*Sheikh Muhammad Inam (Attorney) for Respondent No. 1.*

Date of hearing: 19.12.2022.

### **JUDGMENT**

**Zaheer-ud-Din Kakar, J.--**This Civil Miscellaneous Appeal under Section 54 of the Land Acquisition Act, 1894 ("the Act") has been filed against the judgment and decree dated 05.08.2022 ("the impugned judgment") passed by the Additional District Judge-VI, Quetta ("the Referee Court"), whereby the Reference filed under Section 18 of the Act by the Respondent No. 1 through his attorney against Award No. 4876/RB/Acq:/Police Stations/2021 dated 27.08.2021, was accepted and compensation of land was enhanced from Rs. 690/-per sq:ft; to Rs. 18,000/-per sq:ft plus 15% compensation cost and 15% additional compensation from the date of accrual till the realization of amount.

2. Precisely Stated Facts of the case, are that the Deputy Commissioner/Collector (appellant) acquired the Respondent No. 1/ applicant's land measuring 47099 sqft bearing Khasra Nos. 9840/804/801/756/167, Mutation No. 6318, Mahal Karkhasa, Mouza Kirani, Tappa Shadnizai-1, Tehsil City, District Quetta for Establishment of Police Station/Police Post at the rate of Rs. 690/- per sq.ft. Whereas the Respondent No. 1/land owner claimed compensation at the rate of Rs. 20,000/ per sq:ft.

As per contents of Reference, due to law and order situation in the Province; the Respondent No. 1/applicant along with his family members shifted to Punjab in the year, 2007 and since then they are residing in Lahore, as such, at the time of announcement of Award; he was not present in Quetta, even no notice on behalf of

the Collector served upon him. It has been averred that when the Respondent No. 1 came into knowledge about the said Award, his attorney approached the concerned Collector and filed the Reference/objections under Section 18 of the Act on 22.02.2022, which was duly transmitted to the Referee Court whereby notices were issued to the appellant as well as proforma Respondents No. 3 to 8. The learned Referee Court after getting the rejoinders, framed the formal issues out of divergent pleading of the parties. Thereafter, both the parties adduced their respective evidence(s) and on conclusion of the trial heard the arguments of the learned counsel for the parties and consequently, accepted the Reference/objections *vide* impugned judgment and decree dated 05.08.2022. Hence, this Civil Miscellaneous Appeal.

3. Learned AAG on behalf of the appellant and proforma respondents has contended that the reference/objections of Respondent No. 1 was time burred; that the legal and factual aspects of the controversy have not been appreciated in its true perspective by the Referee Court resulting in serious miscarriage of justice; that the compensation has been determined on the basis of potentiality of the land without examining its potential and the conclusion is based upon conjectural presumptions, therefore, the impugned judgment and decree dated 05.08.2022 is liable to be set aside.

On the other hand, attorney for Respondent No. 1 supported the impugned judgment/decree and stated that the acquired land is situated at road side of Brewery Road Quetta, opposite to Bolan Medical Complex Hospital Quetta, falls within the limits of Quetta Metropolitan Corporation; that the compensation has been determined by the Referee Court strictly in view of the relevant provisions of law by taking into consideration the prevailing market rate in the light of oral as well as documentary evidence produced by the Respondent No. 1. Finally, he prayed for dismissal of the Appeal.

#### 4. Arguments heard. Record perused.

5. The factors requiring consideration for determination of compensation were given in Section 23 of the Act, which are to be taken into consideration for the assessment of future prospect of the acquired land and while determining the potential of land as well as its usage in future ought to be considered. The market value of the land is normally to be taken as exists on publication of notification under Section 4 of the Act for determining the exact value and the price of similar land situated in the vicinity during preceding one year, therefore, the vicinity where the acquired land is situated and location speaks for potentiality of the same which should be taken into account for determination of the correct market value. In this context reliance is placed on the cases of *Land Acquisition Collector and others v. Mst. Iqbal Begum*,<sup>[1]</sup> *Province of Punjab through Land Acquisition Collector and another v. Begum Aziza*,<sup>[2]</sup> *Land Acquisition Collector, Lahore and another v. Mst. Surayya Mehmood Jan*<sup>[3]</sup> and *Sarhad Development Authority NWFP (now KPK) through COO/CEO (Officio) and others v. Nawab Ali Khan and others*.<sup>[4]</sup>

In the case titled *Land Acquisition Collector and others v. Mst. Iqbal Begum (1)* and others the Hon'ble Supreme Court has observed as under:

*"The principles laid down for determination of compensation reflect anxiety of law-giver to compensate those deprived of property adequately enough so as to be given gold for gold and not copper for gold." (Nazarul Hussain v. Collector PLD 1990 Lahore 472, Land Acquisition Officer v. Kambar Ali Beg (1981 CLC 556). Various factors have to be taken into consideration i.e. the size and shape of the land, the locality and its situation, the tenure of property, the user, its potential value, and the rise or depression in the value of the land in the locality and even in its near vicinity. In our view real, proper and potential value, keeping in view all the relevant factors have been determined and it is unexceptionable."*

Similarly, in another case titled *Province of Punjab through Land Acquisition Collector and another versus Begum Aziza (2)*, the Hon'ble Supreme Court of Pakistan While expanding the scope observed as under:

*"The market value is normally taken up as one existing on the date of notification under Section 4(1) of the Land Acquisition Act under the principle of willing buyer and willing seller while the potential value was the value to which similar lands could be put to any use in future. Thus in determining the quantum of compensation the exercise may not be restricted to the time of the aforesaid notification but its future value may be taken into account."*

Whereas, in case titled *Land Acquisition Collector, Lahore and another v. Mst. Surraya Mehmood Jan (3)*, the Hon'ble Supreme Court of Pakistan observed as under:

*"The principles that can be gleaned from the aforesaid judicial precedents are that the term "market-value" as employed in Section 23 of the Act of 1894 implies the price that a willing purchaser*

*would pay to a willing buyer in an open market arms length transaction entered into without any compulsion. Such determination must be objective rather than subjective. While undertaking this exercise, contemporaneous transaction of the same, adjoining or adjacent as well as the land in the same vicinity or locality; in dissenting precedents, may be taken into account. An award of compensation of a similar, adjacent, adjoining land or in respect of the land acquired in the same vicinity or locality cannot be ignored. The classification of the land in the Revenue Record cannot be the sole criteria for determining its value and its potential i.e. the use of which the said land can be put, must also be a factor. In this behalf, the use of the land in its vicinity needs to be examined.”*

In case titled Sarhad Development Authority (4), the Hon’ble Supreme Court highlighted the determination of market value within the purview of Section 23 of the Act and other factors and observed as under:

*“Thus in view of the above, it would be safe to state that not only in Khyber Pakhtunkhwa, but even in other three provinces, where Section 23(1) of the Act has not been amended, it is noted that; firstly, the value of similar land in the adjoining khasras and mouzas to the acquired land was taken into consideration for determining the amount of compensation to be awarded to owners of the acquired property; and secondly, the escalation of price of land during the acquisition period till its culmination in issuance of the award could be taken into consideration; and thirdly, for assessing the “potential value” of the acquired land, the most critical factor, which is to be kept in mind is the future utility of the proposed acquired land, keeping in view the availability of facilities for its said utilization; and finally, there can be no mathematical formula set for the determination of the compensation due to the landowners for the compulsory acquisition of their property. And thus, various factors depending on the circumstances of each case would cumulatively form the basis for determining the “market value” of the acquired land within the contemplation of Section 23(1) of the Act.”*

6. In addition thereto; plethora of judgments and dictates given and laid down by the Hon’ble Supreme Court with binding and laying guiding principles on the subject issue have unfortunately been conveniently ignored by the Collector as he remained stuck to the one year average without taking care of present and future potentiality of the land acquired. It has been repeatedly laid down by the Hon’ble Supreme Court that being a compulsory acquisition of land for public purposes, the owners of land are deprived of its utility while at the same time the Collectors Acquisition simply imposed their own opinion ordinarily based on one year average, which is not a correct approach in respect of the matter at hand, as has been laid down by the Hon’ble Supreme Court.

7. In the instant case, the acquired land is situated in an urban area i.e. at road side of Brewery Road and opposite to the Bolan Medical Complex Hospital, Quetta and also within the limits of Quetta Metropolitan Corporation. Hence, in support of his claim; the Respondent No. 1 produced oral as well as documentary evidence, which were rightly considered by the Referee Court and enhanced the market value of the acquired land from Rs. 690/-per sq.ft to

Rs. 18,000/-per sq:ft. Thus, an amount of Rs. 18,000/-per sq:ft with 15% compulsory charges as admissible under the law cannot be declared to be on the high side when examined in the light of prevalent market price in the adjoining area as is indicative from the sale and purchase agreements in the shape of Ex-P/4-A and Ex-P/4-B dated 18.06.2022, which were produced by the AW-4 Rasheed Ahmed Property Dealer. In this behalf, the statement of AW-4 was fully corroborated by the statement of AW-2 Muhammad Imran Malik and AW-3 Habib Khan, who being the Property Dealers have stated that presently, the market value of the land in question is Rs. 25,000/-to Rs. 30,000/- per Sq.ft The above documentary evidence (Ex. P/4-A and Ex.P/4-B) have not been refuted by the appellant and consequently, the Referee Court fixed the rate after taking into consideration potentiality and location of the acquired land.

8. So far as the question of limitation is concerned, Section 18 of the Act provides three different types of limitation for filing a reference to the Collector, i.e. Firstly that if the person making a reference/application to the Collector was present or represented before the Collector at the time of announcement of Award, he is obliged to approach the Collector within six weeks from the date of Award announced by the Collector, Secondly, if the land owner was served by the Collector under Section 12(2) of the Act and he received the notice, then after receipt of the notice, he shall file the objections/ reference with the Collector within six weeks and, Thirdly, if the land owner was not present or not represented before the Collector at the time of announcement of the Award and was also not served with a notice under Section 12(2) of the Act, then the limitation for filing a reference before the Collector would be six months starting from the date of passing of the Award.

9. Suffice it to observe here that the Respondent No. 1/ applicant or his representative was not present before the Land Acquisition Collector at the time of announcement of Award and the Collector has also not served him under the provisions of Section 12(2) of the Act. Such fact was also admitted by the RW-1 Ahmed Ali, Superintendent/representative of the appellant/collector in his statement recorded before the Referee Court on 01.08.2022. Thus, the period of limitation for filing a reference before the Collector would be six months starting from the date of announcement of Award, as reflected from the record that the land in question was acquired through Award dated 27.08.2021 (Ex-P/5-A), while the Respondent No. 1 through his attorney had filed the reference within a period of six months i.e. on 22.02.2022, which was duly referred to the District Judge by the Deputy Commissioner/Collector, Quetta. Therefore, the objection of learned AAG stands over ruled.

10. Since, the Referee Court after careful scrutiny and analysis of the evidence has recorded the findings of facts and law, therefore, we find no reason to disagree with the conclusion arrived at by the

Referee Court, besides there is no mis-reading or non-reading of the evidence, nor any perversity of reasoning has been observed. The learned AAG has not been able to point out any error of fact or law calling for interference in the impugned judgment.

Thus, for the reasons recorded above, we do not find any merit in this Civil Miscellaneous Appeal, which is dismissed, accordingly. The parties are left to bear their own cost. Decree sheet be drawn.

(Y.A.) Appeal dismissed