

Form No: HCJD/C.

**JUDGEMENT SHEET.**

**IN THE ISLAMABAD HIGH COURT, ISLAMABAD**  
**JUDICIAL DEPARTMENT.**

**RFA No.52 of 2011.**

*National Highway Authority*  
*Vs.*  
*Sher Zaman*

*Appellant's by:* *Mr. Naseem Ahmed Shah, Advocate*  
*Respondent's by:* *Mr.M. Ilyas Sheikh, Hafeez Ur Rehman,*  
*Advocates*  
*Date of Decision:* *03.03.2015.*

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**Aamer Farooq, J.-** This appeal is directed against order dated 21.06.2011 passed by Civil Court, Islamabad whereby reference under section 30 of the Land Acquisition Act, 1894 (hereinafter called the Act) was decided.

2. The facts, in brief, are that at the request of the appellant the Land Acquisition Collector, Islamabad Capital Territory (ICT), Islamabad acquired land measuring 266 kanals, 9 marlas situated in village Jhangi Syedan, Islamabad for construction of road between Lahore-Islamabad Motorway. Notification under section 4 of the Act was issued and published in the gazette of Pakistan on 14.04.1997. Subsequent thereto notification under section 17(4) of the Act ibid was also issued by the Deputy Commissioner, Islamabad which was also published in the gazette of Pakistan on 22.04.1997. Notices under section 9 of the Act were issued to respondent as well as other owners/effectees and objections with regard to the assessment/measurement of the land etc. were invited by the Land Acquisition Collector, (LAC) Islamabad. The built-up

property of the respondent was also acquired for completion of the project and the respondent submitted objections alongwith sale deed No.121, *Bahi* No.1177 dated 09.01.1997 wherein one ‘*Khola*’ constructed on land measuring 10 *marlas* was mentioned. The compensation to the tune of Rs:8,27,785/- (Rupees eight lac, twenty-seven thousand, seven hundred & eighty-five only) was assessed as payable to the respondent, however, since his name was not in the revenue record, therefore, he was held not to be eligible to receive any compensation. The respondent being aggrieved of award dated 31.07.1997 objected the same by way of an application in the form of reference under section 30 of the Act before the Civil/Referee Court for decision of compensation. The appellant contested the reference, out of the submissions of the parties the following issues were framed:

1. *Whether the compensation assessed for the premises was grossly inadequate? OPA*
2. *Whether the petitioners are entitled to receive compensation? If so, to what extent? OPA*
  - 2.A. *Whether the reference u/s 18 of Land Acquisition Act is required instead of u/s 30 of Land Acquisition Act as sent by Land Acquisition Collector wrongly? OPA*
  - 2.B. *Whether compensation for said land/plot is payable as per notification No.396/Land Appellate Court/AC(S) dated 20.10.1997 as per location of the plot and boundaries mentioned in registered sale deed No.121 dated 09.01.1974? OPA*
  - 2.C. *Whether the compensation of plot as well as construction was not properly assessed/valued by the Land Acquisition Collector, if so, what is the market value of the land? OPA*
3. *Relief.*

3. After framing of the issues the parties led their evidence and vide order dated 21.06.2011 leaned Civil Court, Islamabad

while deciding issues No.1 & 2 held that respondent is the owner of property whereupon house was constructed hence he was entitled to compensation for land as well and was wrongly given compensation for built-up property only. The Court further concluded that the petitioner is entitled for recovery of Rs:25,00,000/- (Rupees twenty-five lac only) as compensation.

4. Learned counsel for the appellant, inter alia, submitted that the learned Referee Court while deciding the issue of compensation has not taken into consideration the provisions of section 23 of the Act as well as the judgement titled “Murad Khan Vs. Land Acquisition Collector, Peshawar” reported as *(1999 SCMR 1646)*.

5. Learned counsel for respondent defended the impugned order and submitted that the compensation awarded by the Referee Court was fair in the circumstances.

6. The sole issue which was argued before this Court was whether the compensation awarded to the respondent, by the Referee Court, was in accordance with law. In this regard section 23 of Act is relevant which is reproduced below for the sake of brevity and is as follows:

***“23. Matters to be considered in determining compensation:***

***(1) In determining the amount of compensation to be awarded for land acquired under this Act, the Court shall take into consideration ---***

***firstly, the market-value of the land at the date of the publication of the notification u/s 4 (1);***

***Explanation. For the purposes of determining the market-value, the Court shall take into account transfer of land similarly situated and the similar use. The potential value of the land to be acquired if put to a different shall only be taken into consideration if it is proved that land similarly situated and previously in similarly use has, before the date of the notification under sub. Section (1) of section 4, being transferred with a view to be put to the***

*use relied upon as affecting, the potential value of the land to be acquired:*

*Provided that:--*

- i) If the market-value has been increased in consequence of the land being put to a use which is unlawful or contrary policy, that use shall be disregarded and the market value shall be deemed to be the market value of the land if it were put to ordinary use; and*
- ii) If the market value of any building has been increased in consequence of the building being so over crowded as to be dangerous to the health of the inmates, such overcrowding shall be disregarded and the market value shall be deemed to be the market value of the building of occupied by such number of persons only as can be accommodated in it without risk of danger to health from overcrowding;*

*secondly, the damage sustained by the person interested, by reason of the taking of any standing crops or trees which may be on the land at the time of the Collector's taking possession thereof;*

*thirdly, the damage (if any) sustained by the person interested, at the time of the Collector's taking possession of the land, by reason of severing such land from his other land;*

*fourthly, the damage (if any) sustained by the person interested, at the time of the Collector's taking possession of the land, by reason of the acquisition injuriously affecting his other property, movable or immovable, in any other manner, or his earnings;*

*fifthly, if, in consequence of the acquisition of the land by the Collector, the person interested is compelled to change his residence or place of business, the reasonable expenses (if any) incidental to such change; and*

*sixthly, the damage (if any) bona fide resulting from diminution of the profits of the land between the time of the publication of the declaration under Section 6 and the time of the Collector's taking possession of the land.*

*(2) In addition to the market-value of the land as above provided, the Court shall in every case award a sum of fifteen per centum on such market-value, in consideration of the compulsory nature of the acquisition, if the*

***acquisition has been made for a public purpose and a sum of twenty-five per centum on such market-value if the acquisition has been made for Company.”***

Plain reading of section 23 *ibid* shows that the Court while awarding compensation has to take into regard market value of the land on the date of publication of the notification under section 4; the damage sustained by the person by the reason of any standing crop or trees; damage if any sustained by the person by way of severance of land; damage if any sustained by the person at the time of taking possession by the Collector by the reason that acquisition affects his other property movable or immovable or his earnings; if in consequence of the acquisition of land the person is compelled to change his residence or place of business, the reasonable expense incidental to such change and damage resulting from diminution of the profits. In addition to the market value of the land the Court under section 23 *ibid*, also has to award @ 25 % of such market value compensation in case the acquisition has been made for public purpose. The criteria laid down in section 23 *ibid* was interpreted in detail by the Hon’ble Supreme Court of Pakistan in *(1999 SCMR 1646)* *supra* and it was observed as follows:

***“13. Section 23 of the Act lays down, by way of criterion, that 'market value'. of land on the date of publication of notification under section 4 (ibid) would be the amount of compensation. The expression 'market value' has not been defined in the Act. But there is considerable case-law on the point encompassing the period of about nine decades in which the expression in question has come to assume almost definite meaning. In this judgment we would, however, refer to a number of Very important cases in which the expression 'market value' occurring in section 23 (ibid) has been judicially construed by various High Courts and even the Supreme Court of Pakistan. According to these judgments the following matters are to be taken into consideration in determining the amount of compensation:--- -***

***(i) The data from which the market value of the land can be estimated is given in Rule 13 of the North-West Frontier Province Circular No.54' issued presumably under section 55 of the Act. (Premier Sugar Mills Limited v. Hayatullah Khan (PLD 1956 (W.P.) Pesh. 67).***

(ii) *The best method to work out the market value is the practical method of a prudent man laid down in section 3 of the Evidence Act to examine and analyse all the material and evidence available on the point and to determine the price which a willing purchaser would pay to willing seller of the acquired land. " The Land Acquisition Collector, Rawalpindi v. Lieut. General Wajid Ali Khan Burki (PLD 1960 (W.P.) Lah. 469).,*

(iii) *Subsection (1) of section 23 of the Act provides that in determining the amount of compensation the Court shall take into consideration the market value, loss by reason of severing such land from his other land, acquisition injuriously affecting his other property or his earning in consequence of change of residence or place of business and damage, if any, resulting from diminution of the profits of the land between the time of the publication of the declaration under section 6 and the time of the Collector's taking possession of the land, This, however, is not exhaustive of other injuries or loss which maybe suffered by an owner on account of compulsory acquisition. (Province of West Pakistan and another v. M, Salim Ullah and others (PLD 1966 SC 547).*

(iv) *The best method of determination of the market price of the plots of land under the acquisition is to rely on instances of sale of it near about the date of notification under section 4 (i) of the Act. The next best method is to take into consideration the instances of sale of the adjacent lands made shortly before and after the notification. When the market value is to be determined on the basis of the instances of sale of land in the neighbouring locality, the potential value of the land need not be separately awarded because such sales cover the potential value. (Jogendra Nath Chatterjee and others v. State of West Bengal (AIR 1971 Calcutta 458).*

(v) *It is obvious that the law provides determination of compensation not with reference to classification or nature of land but its market value at the relevant time. No doubt, for determining the market value, classification or the nature of land may be taken as relevant consideration but that is not the whole truth. An-area may be Banjar Qadeem or Barani as in the present case but its market value may be tremendously high because of its location, neighbourhood, potentiality or other benefits. (Pakistan and another v Rehm Dad and another (1980 CLC 574.).*

(vi) *According to the well-settled principle, while determining the value of the compensation the market*

*value of the land at the time of requisition/acquisition and its potentiality have to be kept in consideration. (Pakistan v. Din Muhammad and others (1983 CLC 1281).*

*(vii) Consideration should be had to all the potential uses to which the land can be put, as well as all the advantages, present or future, which the land possesses in the hands of the owners. (Mst. Khatu and others v Barrage Mukhtiarkar, Thatta (PLD 1977 Kar. 203).*

*(viii) In determining the quantum of fair compensation the, main criterion is the price which a buyer would pay to a seller for the property if they voluntarily entered into the transaction. (Din Muhammad v. General Manager, Communication and others (PLD, 1978 Lah. 1135).*

*(ix) The measure of fair compensation is the value of the property in open market which a seller voluntarily entering into a transaction of sale can reasonably demand from a purchaser this means that we, have to determine the value of the land in the open market at the relevant time on the assumption that the notification of acquisition did not exist. (Province of Punjab v. Sher Muhammad and another (PLD 1983 Lah. 578).*

*(x) While determining the value of the land acquired by the Government and the price which a willing purchaser would give to the willing seller, only the '12ast sales' should not be taken into account but the value of the land with all its 12otentialities may also be determined by examining (if necessary as Court witness) local property dealers or other persons who are likely to know the price that the property in question is likely to fetch in the open market. In appropriate cases there should be no compunction even relying upon the oral testimony with respect to market value of the property intended to be acquired, because even while deciding cases involving question of life and death, the Courts rely on oral testimony alone and do not insist on the production of documentary evidence. The credibility of such witnesses would, however, have to be kept in mind and it would be for the Court in each case to determine the weight to be attached to their testimony. It would be useful and even necessary, to examine such witnesses while determining the market prices of the land in questions because of the prevalent tendency that in order to save money on the purchases of stamp papers and to avoid the imposition of heavy gain tax levied on sale of property, people declare or show a much smaller amount as the price of the land purchased by them than the price actually paid. The previous sales' of the land, cannot, therefore, be always*



*taken to be an accurate measure for the determining the price of land intended to be acquired. (Fazalur Rehman and others v. General Manager, S.I.D.B. and another (PLD 1986 SC 158)).*

*(xi) The sale-deed and mutation entries do serve as an aid to the prevailing market value. (Government of Pakistan v. Maulvi Ahmed Saeed (1983 CLC 414).*

*(xii) It is a well-settled law that in cases of compulsory acquisition effort has to be made to find out what the market value of the acquired land was or could be on the material date. While so venturing the most important factor to be kept in mind would be the complexion and - character of the acquired land on the material date. The potentialities it possessed on that date are also to be kept in view in determining a fair compensation to be awarded to the owner who is deprived-of his land as a result of compulsory acquisition under the Act. (Central Government of Pakistan v. Sardar Fakhar-e-Alam and another (1985 CLC 2228).*

*(xiii) The value of the land of the adjoining area which was simultaneously acquired and for which different formula of compensation has been adopted, should be taken into consideration. (Raza Muhammad Abdullah through his Legal Heirs v. Government of Pakistan and others A (1986 MLD 252).*

*(xiv) The phrase "market value of the land" as used in section 23(l), of the Act means "value to the owner" and, therefore, such value must be the basis for determination of compensation. The standard must be no, subjective standard but an objective one. Ordinarily, the objective standard would be the price that owner willing and not obliged to sell might reasonably expect to obtain from a willing purchaser. The property must be valued not only with reference to its condition at the time of the determination but its potential value must be taken into consideration. (Abdul Wahid and others v. The Deputy Commissioner (1986 MLD 381).*

*14. Undoubtedly in some cases of acquisition of land the Schedules of average prices of mutations and sale-deeds have been considered for the determination of the "market value." an expression occurring in section 23 of the Act. In one, case the Collector Acquisition has squarely relied upon the Schedules Exh.O.W.5/1 to award the compensation to the respondents at Rs.40,000 per Kanal. As has been held in the Government of Pakistan v. Maulvi Ahmad Saeed (1983 CLC 414), cited at Serial*



*No.(xi) ante the sale-deeds and mutation entries do serve as aids as to the prevailing market value. Nonetheless, this is not the sole criterion for the determination of the market value. Consequently, the learned Collector Acquisition, the learned civil Court and the learned Chief Justice of the Peshawar High Court had fallen into error to place reliance solely on the entries of mutations incorporated in the two Schedules Exh.O.W.-5/1.”*

7. In the instant case Referee Court has not taken into consideration the criteria provided under section 23 of the Act and has thus not passed the order in accordance with law.

8. In view of above, the instant appeal is allowed and impugned order dated 21.06.2011 is set aside, the case is remanded to the Referee Court for decision afresh on the question of compensation to be awarded to the respondent in light of provisions of section 23 of the Land Acquisition Act, 1894 and providing the parties opportunity for leading additional evidence, if necessary.

**(ATHAR MINALLAH)**  
**JUDGE**

**(AAMER FAROOQ)**  
**JUDGE**

\*Altaf Malik\*

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