

Stereo. H C J D A-38.
JUDGMENT SHEET
IN THE LAHORE HIGH COURT, LAHORE
JUDICIAL DEPARTMENT

RFA No.54593 of 2023

National Highway Authority through its Chairman
Versus
Safdar Ali & others

J U D G M E N T

Date of hearing: 26.11.2025.
Appellant by: M/s. Muhammad Saim Chaudhry, Saima Safdar Ch., Munir Ahmad Malik, Dewan Zakir Hussain and Nazir Ali Qadri, Advocates
M/s. Muhammad Zain Qazi, Assistant Attorney General and Awais Ahmad Qazi, Additional Advocate General along with Muhammad Ali, Deputy Director (Legal), NHA, LSMP.
Respondents by: Mr. Najaf Muzammal Khan, Advocate.

MUHAMMAD SAJID MEHMOOD SETHI, J.-This consolidated judgment shall dispose of instant appeal along with connected appeal i.e. **RFA No.57639 of 2023**, as common questions of law and facts are involved in these cases.

2. Through these appeals, appellants i.e. National Highway Authority (“NHA”) in titled appeal and Provincial Government through Land Acquisition Collector in connected appeal, have challenged the legality and validity of order and decree dated 02.05.2023, passed by learned Senior Civil Judge, Gujranwala, whereby Reference Application under Section 18 of the Land Acquisition Act, 1894 (“**the Act of 1894**”), filed by respondents No.1 & 2, was allowed in the following terms:-

“40. In view of my findings on above issues, this reference U/S 18 of the Land Acquisition Act, 1894 is **accepted** and petitioners are held entitled to get market value as claimed by them coupled with amount of damages sustained due to acquisition proceedings, compensation for future potential of property, additional compensation for

reverence, injurious affection, disturbance, loss of profits, change of place of business and delay in conclusion of acquisition proceedings which is calculated as under:-

- Rs.20-lac per acre (off road)
- Rs.20-lac per acre (link road)
- Rs.20-lac per acre (severed land)

thus petitioners are held entitled to get enhanced compensation as above alongwith 15% compulsory acquisition charges and 8% compound interest from the date of possession till the execution of this order or payment of remaining compensation by National Highway Authority / respondent No.2. These issues are decided in favour of petitioners.

.....

Compound interest would continue to accrue till such time that the entire compensation is paid in its entirety. Once the original amount has been deposited (in court), the matter goes out of the penal consequences of section 34 of the Land Acquisition Act, 1894.

.....

36.

37. Non mentioning of criteria to determine compensation and drag petitioners into litigation clearly depicts that respondents did not honour right of petitioners and due to their demeanor, petitioners had to bear expenses in the assertion of their rights before Court and section 35 CPC provides that costs are to be awarded to reimburse successful party for expenses incurred by him. So, petitioners will be entitled to costs which will follow the event. Costs of suit includes fee of Advocates, court fee, process fee, postal service expenses, publication in newspaper, summoning of witnesses, summoning of record, expenses borne for securing documents from public / Government Offices, petitioner's travelling expenses, adjournments in reference etc. Costs of the suit / reference mentioned in decree sheet / memo sheet shall be paid by Collector who wrongly determined compensation whereas amount of enhanced compensation will be paid by National Highway Authority / respondent No.2 / Acquiring Agency. Memo of costs be prepared accordingly."

3. Brief facts of the case are that respondents No.1 & 2 filed a Reference Application challenging the award No.09/2017 dated 10.08.2017, announced by the Land Acquisition Collector, Kamoke for acquisition of land in question, situated in Mauza Dholan for the purpose of construction of Lahore-Sialkot Motorway Project in Tehsil Kamoke, District

Gujranwala, whereby the respondents No.1 & 2 were awarded compensation of Rs.11,50,000/- per acre for land at Link Road and Rs.11,00,000/- per acre for off road land alongwith 15% compulsory acquisition charges. The appellant-NHA filed written reply. Out of divergent pleadings of the parties, the Referee Court framed following issues:-

ISSUES:

1. Whether market value of the suit property / acquired land of petitioners was Rs.17,00,000/- per acre and the same was wrongly fixed @ Rs.11,00,000/- per acre in the absence and without notice to the petitioners vide award dated 10.08.2017 by the Land Acquisition Collector? OPA
2. Whether the petitioner is entitled to receive the price of the land @ Rs.17,00,000/- per acre alongwith interest? OPA
3. Whether the petitioner has not come to the Court with clean hands? OPR
4. Whether reference of the petitioner is barred by time and the same is liable to be dismissed? OPR
5. Whether the reference of the petitioner is liable to be dismissed under Order VII Rule 11 CPC? OPR
6. Whether the petitioner has no cause of action and locus standi to file this reference? OPR
7. Whether the reference of the petitioner is not proceedable in its present form due to mis-joinder and non-joinder of necessary parties and the same is liable to be dismissed? OPR
8. Relief

After recording evidence and hearing arguments from all sides, the Referee Court, vide order and decree dated 02.05.2023, allowed the Reference Application in the above manner. Hence, instant appeal.

4. Learned Legal Advisor for appellant-NHA, duly assisted by learned Law Officer, submits that the compensation was enhanced without determining the average market price of the land while ignoring Rule 10(1)(iii)(c) of the Punjab Land Acquisition Rules, 1983. He adds that respondents No.1 & 2

failed to prove the exact price as well as location of acquired land, thus, were not entitled to exorbitant compensation. He maintains that the market value was to be assessed on the basis of price existing in preceding year of the date of issuance of notification under Section 4 of the Land Acquisition Act, 1894. He adds that as the maximum compensation was awarded, therefore, respondents No.1 & 2 were not entitled to 08% compound interest. He further states that the documentary evidence, adduced by respondents No.1 & 2, was exhibited / marked in the statement of learned counsel, therefore, the same has no evidentiary value in view of dictum laid down by the superior Courts. Lastly, he submits that since the available record, evidence and applicable law have not been properly appreciated by learned Referee Court, therefore, impugned decree is liable to be set aside. In support of his contentions, he has relied upon Ghulam Muhammad v. Government of West Pakistan (PLD 1967 Supreme Court 191), 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), Muhammad Ashraf and 5 others v. Alam Din and 7 others (1989 CLC 211), Jamshaid Ali and 2 others v. Ghulam Hassan (1995 CLC 957), Syed Nafs-e-Nabi and others v. Province of Punjab through District Collector, Multan and 10 others (2006 MLD 308), 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), Muhammad Hussain and another v. Province of Punjab through District Officer Revenue, Multan and others (2021 YLR 2310), National Highway Authority, Islamabad through Project Director Zafar Mehmood v. Muhammad Afzal Bhatti and

another (2024 CLC 1246), National Highway Authority through Director v. Bashiran Bibi and others (2024 MLD 1590), National Highway Authority through Chairman v. Mubashar Hussain Awan and others (2025 CLC 1090) and Hitkarini Sabha, Jabalpur v. Corporation of the City of Jabalpur and another [A.I.R. 1961 M.P. 324].

5. Conversely, learned counsel for respondents No.1 & 2 defends the impugned order and decree by contending that learned Legal Advisor for appellant-NHA as well as learned Law Officer have failed to pinpoint any illegality or legal infirmity therein, thus, same is liable to be upheld. He maintains that respondents had filed objections under Section 9 of the Land Acquisition Act, 1894, but the LAC *mala fide* failed to decide them; the award dated 10.08.2017 was passed at their back, rendering the entire process non-transparent. He contends that appellant's own written reply amounts to an admission of respondents' claimed market rate. He adds that even if respondents' documentary evidence is ignored, appellant's own witness (RW-3) admitted market values of Rs. 143,750/- per Marla (link road) and Rs. 137,500/- per Marla (off road), which admission alone justifies enhancement far beyond what the Referee Court eventually awarded i.e. Rs. 20,00,000/-, as such the learned Referee Court rightly applied Section 23 Act *ibid*, considering future potential, location, severance, and comparative advantages of the land in line with the judgments of the Hon'ble superior Courts. In support, he has referred to Fazalur Rahman and others v. General Manager, S.I.D.B. and another (1973 SCMR 225), Government of West Pakistan (Now Government of N.-W.F.P.) through Collector, Peshawar v. Arbab Haji Ahmed Ali Jan and others (PLD 1981 Supreme Court 516), Khurshid Ahmad Naz Faridi v. Bashir Ahmad and 3 others (1993 SCMR 639), Ghulam Rasool through L.Rs. and others v. Muhammad Hussain and others (PLD 2011 Supreme

Court 119), Malik Tariq Mehmood 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), Nawabzada Abdul Qadir Khan and others v. Land Acquisition Collector Mardan and others (2023 SCMR 950), Province of Punjab through Collector, Muzaffargarh and 2 others v. Muhammad Ramzan and 47 others (2001 MLD 459), Fazal Khaliq and another v. National Highway Authority and 2 others (2014 CLC 465), 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), Qazi Badr-ul-Wahab and 20 others v. Land Acquisition Collector, Provincial Housing Authority, Peshawar and 3 others (2019 YLR 851), Dr. M. Salah-ud-Din Mengal and another v. Government of Balochistan through Board of Revenue and 2 others (2020 CLC 1916), Mst. Nelofer Iqbal and 2 others v. Chief Court Gilgit-Baltistan through Registrar Chief Court and 3 others (2021 YLR 1339) and Mehr Ashraf and another v. Station House Officer and others (PLD 2022 Lahore 328).

6. I have heard learned counsel for the parties and perused the record with their able assistance.

7. Record reveals that respondents' Reference Application was decreed *ex parte* vide order and decree dated 03.04.2019, whereby compensation value was fixed @ Rs.17,00,000/- per acre alongwith interest @ 6% per annum starting from acquisition of land till amount of award. However, the aforesaid decree was set aside while accepting application under Section 12(2) CPC, filed on behalf of appellant-NHA and respondents were directed to implead the NHA as respondent to the Reference Application, which was later on decreed and the

amount of compensation already awarded by learned Referee Court was enhanced along with award of costs of suit, as detailed in commencing paragraph of this judgment. Appellants are not satisfied with the decision of the Referee Court and are urging to restore the award announced by the Land Acquisition Collector.

8. **The pivotal issues No.1 & 2 are inter-linked and inter-connected, hence** are decided jointly. **The remaining issues No.3 to 7 have not been pressed before this Court.** However, learned counsel for respondents submits that as the petitioner received the compensation without any protest, therefore, the Reference was not maintainable. This contention is not legally tenable. Although reliance has been placed on Mark-C to assert that the respondents accepted the awarded compensation without protest, the appellant-NHA failed to discharge the essential evidentiary burden of producing the relevant payment register or any other primary record to substantiate this assertion. No effort was made to summon the said register through a formal application either. In the absence of the primary documentary evidence, the mere reliance on a marked document, unsupported by the original record, cannot be treated as conclusive proof of unconditional receipt. Moreover, during cross-examination, AW-2 categorically stated that the respondents had received the compensation under protest. This statement remained unshaken and was never rebutted by the appellant-NHA through any admissible evidence. In land acquisition proceedings, where the right to seek a reference is sought to be defeated on the ground of “acceptance without protest,” the acquiring agency must establish this fact through clear and unimpeachable evidence. The failure of the appellant-NHA to do so creates a presumption in favour of the respondents, and the statutory bar under Section 31(2) cannot be invoked in such uncertain circumstances. Given this

evidentiary position, the objection raised by the appellant-NHA has no factual foundation, and the reference cannot be declared incompetent on the basis of an unproven allegation of unconditional receipt.

9. It is pertinent to note that under the settled legal principles, a claimant who files an application for reference under Section 18 of the Land Acquisition Act, 1894, challenging the adequacy of the compensation, shall be deemed to have received the awarded amount under protest. The Act does not prescribe any specific mode or form of protest; it may be made either orally at the time of receiving the compensation or impliedly by filing a reference within the prescribed period. In the present case, although respondents Safdar Ali and Arshad Ali did not expressly mention “under protest” on Mark C, the receipt of compensation / *Qabzul Wasool* dated 11.08.2017, the filing of their Reference Application on 10.08.2017 sufficiently demonstrates an implied protest against the award. The absence of a written mention in the *Qabzul Wasool (Mark-C)* is a mere technicality and does not disentitle the respondents from claiming enhanced compensation under Section 18 of the Act. Therefore, the objection of the appellants’ side regarding acceptance of compensation without protest is without merit and is accordingly overruled. Reliance is placed upon *Wali Ahmad v. Collector, Land Acquisition and others* (1985 SCMR 224), *Zardad Khan and others v. Government of N.-W.F.P. and others* (1987 SCMR 1387), *Qazi Badr-ul-Wahab and 20 others v. Land Acquisition Collector, Provincial Housing Authority, Peshawar and 3 others* (2019 YLR 851), *Muhammad Yaqoob through Legal heirs v. Land Acquisition Collector (M-4) National Highway Authority and 4 others* (PLD 2021 Lahore 364) and *Federation of Pakistan v. Nasir Munir Ahmed and others* (2022 CLC 2072).

10. The core controversy is whether the compensation assessed by the Land Acquisition Collector represents fair and just compensation, or whether the valuation determined by the Referee Court, within the contemplation of Sections 23 and 24 of the Land Acquisition Act, 1894, constitutes the correct measure.

11. Admittedly, Notification u/s 4 of the Act of 1894 for acquiring land in question situated in village Dholan, Tehsil Kamoke, District Gujranwala was issued on 09.06.2016 and the Award (*Exh.A9*) was announced on 10.08.2017, according to the valuation approved by the District Price Assessment Committee, whereby compensation @ Rs.11,50,000/- per acre for link road and Rs.11,00,000/- per acre for off road was fixed. Whereas learned Referee Court fixed the amount of compensation for the land in question as Rs.20,00,000/- per acre for off road, Rs.20,00,000/- per acre for link road and Rs.20,00,000/- per acre for severed land. along with additional monetary benefits i.e. 15% compulsory acquisition charges, 8% compound interest from date of possession until full payment, continuation of interest until entire compensation is paid, damages & ancillary compensation and costs of litigation particularly advocate fee.

12. The learned Referee Court enhanced the compensation on the basis of respondents' documentary evidence as *Exh.A-1 to Exh.A-12*, and Mark-A to Mark-D. These documents were tendered in the statement of learned counsel, which was not permissible under the well-established principle enunciated by the superior Courts including 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), *Mst. Rasoolan Bibi v. Province of*

Punjab and others (2023 CLC 1171) and National Highway Authority, Islamabad through Project Director Zafar Mehmood v. Muhammad Afzal Bhatti and another (2024 CLC 1246).

13. However, it is a matter of record that both the parties have relied upon and tendered the minutes of the meeting of the District Price Assessment Committee in their respective evidence. As the respondents having produced the same document as *Exh.A-4*, and the appellants as Mark RW-A, the authenticity thereof cannot now be disputed, and the Court is justified in taking it into consideration in the interest of fairness and due process. The respondents are satisfied by the valuation made by the Assistant Collector, Kamoke, who determined it @ Rs.17,50,000/- per acre for Link Road and Rs.17,00,000/- per acre for Off Road. Furthermore, the respondents themselves admitted in para 3 of their reference the market rate of Rs.17,00,000/- per acre and did not claim Rs.20,00,000/- per acre for any classification of land. The learned Referee Court though referred to aforesaid valuation of the Assistant Commissioner, Kamoke, but awarded Rs.20,00,000/- per acre, which is not only excessive but also wholly beyond the respondents' own pleaded stance. Thus, the impugned compensation awarded by learned Referee Court appears to be unsupported by the pleadings, contrary to the respondents' admissions, and lacking any credible market evidence.

14. Even otherwise, none of the members of the Committee was produced in evidence to explain the criteria adopted by it while fixing the price. Earlier, in similar circumstances, this Court in the case of Mubashar Hussain Awan, supra, while relying upon the report of the field staff, duly mentioned in the Award (*Exh.A2*), decreased the amount of compensation. The aforesaid judgment has been upheld by the Hon'ble Supreme Court.

15. In view of the above, instant appeal and connected appeal are **partly allowed** in the manner that impugned order and decree dated 02.05.2023 is modified to the extent that respondents No.1 & 2 are held entitled to get the following amount of compensation:-

- Rs. 17,00,000/- per acre (off-road)
- Rs. 17,50,000/- per acre (link road)
- Rs. 17,00,000/- per acre (severed land)

Respondents No.1 & 2 are also held entitled to recover 15% compulsory acquisition charges and 8% compound interest from the date of possession until payment of the adjusted compensation. All other claims for damages, injurious affection, loss of profits, change of business location, and ancillary expenses including litigation costs, are rejected.

(Muhammad Sajid Mehmood Sethi)
Judge

APPROVED FOR REPORTING

Judge

Sultan / A.H.S.