

**JUDGMENT SHEET**  
**PESHAWAR HIGH COURT ABBOTTABAD BENCH**  
**JUDICIAL DEPARTMENT**

R.F.A No.85-A/2017.

**JUDGMENT**

Date of hearing 02.11.2018.

Petitioner by: Mr. Tahir Faraz Abbasi, Advocate.

Respondent in person.

**SYED MUHAMMAD ATTIQUE SHAH, J.-** The appellants through the instant appeal have called into question the validity and legality of judgment and decree passed by the learned Referee Judge/Additional District Judge-II, Haripur dated 21.06.2017, whereby while partially accepting the objection petition of the respondent/objector, held him entitled to receive compensation as per Ex CW-1/1 i.e. the average price of the land in question in the year 2011/12, along with 15 % compulsory acquisition charges and 6% simple interest from the date of taking possession till payment.

2. Brief facts of the case are that the land of the petitioner comprised in Khasra Nos. 520, 521, 89, 106, 105, 312, 92 and 96 of Mauza Amgah, Tehsil & District Haripur was acquired by the appellant for Hassan Abdal-

Havelian-Mansehra Expressway (E-35) through award No. 31 dated 26.06.2012. In the said award the compensation of the acquired land was fixed in the light of one year average for the year 2009/2010. Feeling aggrieved, the land owner/respondent filed objection petition claiming therein that the price of land is much higher than the one assessed by the acquiring department keeping in view the location and future potentiality and prayed for fixation of price of acquired land as Rs.8,00,000/- per Kanal. The said objection petition was referred to the learned Referee Judge for adjudication. The learned Referee Judge, on receipt of objection petition, summoned the respondents who put appearance and contested the same on various legal as well as factual grounds. After framing issues and recording pro and contra evidence, the learned Referee Judge partially allowed the objection petition through impugned judgment and decree dated 21.06.2017, by enhancing the amount of compensation as per Ex CW-1/1 (one year average for the year 2011/2012) as under:-

S. No.	Kind of Land	Rate per Marla (Rs.)	Rate per Kanal (Rs.)
1.	Baari	13,348/52	266,970/40
2.	Maira	5933/12	118,662/40
3.	Rakkar Kalsi	2966/56	59,331/20
4.	Kund	8899/68	177,993/60
5.	Ghair Mazroha	1483/28	29,665/60

Feeling aggrieved, the appellants have filed instant appeal.

3. Arguments heard and record of the case was perused with valuable assistance of learned counsel for the parties.

4. Perusal of record reveals that Award under Section 11 of the Land Acquisition Act, 1894 was issued on 26.06.2012 whereby the landed property of the respondent was acquired from Mauza Aamgah, Tehsil & District Haripur. In the said Award, the worthy collector, while assessing the market value of the land, has relied upon one-year average price of the land from 26.03.2009 to 26.03.2010 (Ex RW-1/5) according to which the price of different kinds of land was assessed as tabulated below:-

S. No.	Kind of Land	Rate per Marla (Rs.)	Rate per Kanal (Rs.)
1.	Baari	8561.32	171226.4
2.	Maira	2853.77	57075.4
3.	Rakkar Kalsi	1426.88	28537.6
4.	Kund	4280.66	85613.2
5.	Bangar Qadeem	713.44	14268.8
6.	Ghair Mazroha	713.44	14268.8

Patwari Halqa (OW-1) produced revenue record in respect of the acquired property, according to which the property acquired from the respondent was of Bari, Kund, Maira & Banjar Qadeem types total measuring 2 Kanals

and 15 Marlas. The respondent objector though claimed that the acquired property was having the much higher rate than the one assessed by the Collector, however, the mutations produced by the Patwari Halqa (OW-1) show that the claim of the respondent for fixation of price of the acquired land at the rate of Rs. 800,000/- per Kanal is not justified. However, since the Award was announced in the year 2012, therefore, the worthy Collector was required to have assessed the price of land in the light of one-year average for that very year, in the light of amendment made in Section 23 of The Khyber Pakhtunkhwa Land Acquisition Act, 1894 through *Khyber Pakhtunkhwa Ordinance No. XVII of 2001*, which is reproduced below for ease reference:-

*“23. (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 taking possession of the land.]----”*

5. The aforementioned amendment in Section 23 of the Land Acquisition Act, 1894, clearly envisages that the price of the land would be assessed in the light of market value of the land prevailing at the time of taking its possession. Admittedly, the appellants have taken

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possession of the acquired land in the year 2012, therefore, the learned Referee Judge was justified to enhance the compensation of the land in the light of one-year average for the year 2011/2012.

6. Learned counsel for the appellant has failed to point out any misreading, nor-reading of evidence or any legal or jurisdictional error in the impugned judgment passed by the learned Referee Judge, therefore, appeal in hand being devoid of any merits, stands dismissed.

**ANNOUNCED**  
02.11.2018.

  
**JUDGE**