

**2018 C L C Note 63**

**[Lahore (Multan Bench)]**

**Before Amin-ud-Din Khan and Masud Abid Naqvi, JJ**

**NATIONAL HIGHWAY AUTHORITY through Chairman and 2 others---  
Appellants**

**versus**

**BASHIR AHMAD and 2 others---Respondents**

R.F.As. Nos. 38 and 66 of 2016, heard on 28th November, 2017.

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

---S. 18---Reference---Enhancement of compensation---Referee Court accepted reference by enhancing the rate of compensation at commercial rate along with compulsory acquisition charges---Validity---Nothing was on record with regard to change of status of land in question from agricultural to commercial---Findings recorded by the Referee Court were not sustainable under the law---Land owner had received compensation without any protest---Compensation of acquired land had been awarded as per prevailing market value, keeping in view location of the land and the loss suffered by the plaintiff---Impugned judgment was result of mis-reading and non-reading of material evidence placed on record which was set aside---Appeal was allowed in circumstances. [Paras. 4, 5, 6 & 7 of the judgment]

Government of N.-W.F.P. v. Akbar Shah 2010 SCMR 1408 rel.

Malik Muhammad Tariq Rajwana for Appellants.

Saghir Ahmad Bhatti, M.A. Hayat Hanjra and Tariq Mehmood Chaudhry, AAG for Respondents.

Date of hearing: 28th November, 2017.

## **JUDGMENT**

**MASUD ABID NAQVI, J.**---Through this judgment we intend to decide instant regular first appeal along with connected R.F.A. No.66-2016 involving common questions of law and facts.

2. Concise facts of instant appeal against the judgment dated 08.12.2015 passed by the learned Referee Court are that respondent No.1 filed Reference under Section 18 of the Land Acquisition Act, 1894 ("Act") with the averments that the appellants acquired land measuring 16-kanals and 14-Marlas for the construction of additional carriageway (N-5) Multan-Mianchannu Road. After the publication of Notification under section 4 of the Land Acquisition Act ("Act") on 03.8.1995 which was published in Government Gazette on 06.09.1995, the Land Acquisition Collector announced award on 19.06.2003 without issuing notice to the respondent No.1 wherein the respondent No.1 was paid Rs.147590/- as compensation. Aggrieved by alleged low price of acquired land being not in accordance with the market value, the respondent No.1 challenged the award by filing reference petition with the prayer to increase the compensation which was duly contested by the appellants by filing written statement. Contesting

parties produced evidence in support of their respective stance after the framing of issues and learned referee court vide judgment dated 08.12.2015 accepted the reference petition by enhancing the rate of compensation at commercial rate along with compulsory acquisition charges and due benefit for 15-marlas. Dissatisfied by the judgment dated 08.12.2015, the appellants have filed the instant appeal while the respondent No.1 has also filed RFA No.66-2016 for compound interest at the rate of 08% per annum from the date of possession on additional/excess compensation as provided under section 28 of Land Acquisition Act, 1894.

3. We have heard the arguments of learned counsel for the parties and minutely gone through the record as well as the impugned judgment and decree.

4. Although the respondent No.1/AW-1 deposed about the constructed shops and receipt of rent but was unable to (i) state the names of the tenants of their shops (ii) produce receipts of rent in documentary evidence and (iii) produce any tenant as witness in support of his stance. He even failed to produce any documentary proof in shape of permission from any Government Department for the change of status of his land from agricultural to commercial. During his examination in chief, he deposed about the numbers of shops as 15/16 while AW-2 made a contradicting statement in cross-examination about the numbers of shops as 15/20. There are contradictions between the deposition of AW-1 and AW-2 about the rate of rent of alleged shops. AW-2 is the cousin of respondent No.1 and no one else appeared to support the respondent No.1. Even revenue official was not produced to ascertain the truth of Musavee of Mauza and same Musavee is just a photo copy. Without any documentary proof, the learned trial court simply assumed the number of shops as 15 on 15 marlas. Hence, the findings of learned trial court are not sustainable under the law and the same are set aside.

5. It is admitted in examination in chief by the respondent No.1/AW-1 that he received the compensation under protest but failed to mention any document or even to produce the copy of application(s), which the respondent No.1 filed for the withdrawal of the money to show that the compensation was withdrawn under protest. In this regard, we are persuaded by a judgment of the Hon'ble Supreme Court of Pakistan reported as Government of N.W.F.P v. Akbar Shah (2010 SCMR 1408) which holds as under:

"It is established on the record that the respondents/plaintiffs had received compensation as determined by Land Acquisition Collector through the Award without any protest. Respondents/plaintiffs had no lawful right even to file reference under section 181 of the Land Acquisition Act read with sections 30 and 31(2) of the Land Acquisition Act....."

6. On the other hand, Land Acquisition Collector/Muhammad Zafar Iqbal/RW-1 deposed about the visit on the spot by his predecessor and also relied on Ex.R-1 to Ex.R-3 to prove the market value of adjacent land. He also deposed that the acquired land was agricultural in view of the declaration of Board of Revenue, Punjab. From the perusal of material evidence placed on record it is established that compensation of the land acquired has been awarded as per prevailing market value, location of the land acquired and keeping in view the loss suffered by the respondent No.1 due to the

disputed acquisition of land. Therefore, the respondent No.1 has not been able to prove that the compensation of the acquired land was not according to its potential value.

7. In view of the foregoing comprehensive discussion, appellants have successfully made out a case for interference. Accordingly, it is observed that the impugned judgment dated 08.12.2015 of learned trial is the result of misreading and non-reading of material evidence placed on record, which is not sustainable at law and the same is accordingly set aside. Resultantly, this appeal is accepted.

ZC/N-1/L Appeal allowed.