

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:
Mr. Justice Yahya Afridi
Mr. Justice Jamal Khan Mandokhail
Mrs. Justice Athar Minallah

CIVIL APPEALS NO. 1980/2023 to 2012/2023 AND CMAs No. 12660, 12662, 12664, 12666, 12668, 12670, 12672, 12674, 12676, 12678, 12680, 12682, 12684, 12686, 12688, 12690, 12692, 12694, 12696, 12698, 12700, 12702, 12704, 12706, 12708, 12710, 12712, 12714, 12716, 12718, 12720, 12722, 12724 of 2023
(Against the judgment dated 25.09.2023 passed by the Peshawar High Court, Abbottabad Bench in Regular First Appeal No. 161-A/2023 with CM No. 353-A/2023, CM No. 228-A/2023 and C.M. No. 372-A/2023)

Government of Pakistan through Secretary, Ministry of
Defence Rawalpindi Military Estates Officer, Hazara
Circle, Abbottabad & another *(in all cases)*

.Appellants

Versus

Mst. Ayesha Bibi Widow and others.	(in CA 1980/2023)
Ahmed Raza	(in CA 1981/2023)
Arab Khan and others	(in CA 1982/2023)
Muhammad Imran and others	(in CA 1983/2023)
Doctor Basharat Hussain and others	(in CA 1984/2023)
Mst. Shehnaz Asghar and others	(in CA 1985/2023)
Khalid Mehmood and others	(in CA 1986/2023)
Danish Shehryar	(in CA 1987/2023)
Nadeem Khan	(in CA 1988/2023)
Mohammad Pervaiz Abbasi	(in CA 1989/2023)
Mehmood and others	(in CA 1990/2023)
Zakir ur Rehman and others	(in CA 1991/2023)
Khalid Khan Jadoon and others	(in CA 1992/2023)
Mufti Nisar Ahmed	(in CA 1993/2023)

Shahzaman Khan (decd.) thr. L.Rs and others	(in CA 1994/2023)
Shakeel Ahmed Mufti	(in CA 1995/2023)
Mohammad Riaz Khan	(in CA 1996/2023)
Mohammad Anwar Khan and others	(in CA 1997/2023)
Mst. Mukhtiyar Begum	(in CA 1998/2023)
Mohammad Younas and others	(in CA 19 99/2023)
Sohail Khalid and others	(in CA 2000/2023)
Masood ur Rehman and others	(in CA 2001/2023)
Mohammed Anwar Khan and others	(in CA 2002/2023)
Mst. Fatima Jan and others	(in CA 2003/2023)
Mst. Noor Un Nisa and others	(in CA 2004/2023)
Mohammad Jehangir	(in CA 2005/2023)
Lal Khan and others	(in CA 2006/2023)
Ali Gohar Khan and others	(in CA 2007/2023)
Mst. Tazheen Batol	(in CA 2008/2023)
Mst. Razia Yasmeen	(in CA 2009/2023)
Zardad Khan and others	(in CA 2010/2023)
Malik Mohammad Younas Khan	(in CA 2011/2023)
Azhar Hussain and others	(in CA 2012/2023)

...Respondents

For the Applicant(s)/ Appellant(s)	: Malik Javid Iqbal Wains Addl. Attorney General Brig (R) Falak Naz Legal Advisor, Ministry of Defense & Sharafat Hussain, Law Officer Assisted by Mr. Muhammad Ilyas Sheikh, ASC
For the Respondent(s) In CMA 12660/23 in CA 1980/2023	: Mr. Muhammad Ayub, ASC

In CMA 12664/23 in CA
1982/2023 and CMA
12688/23 in CA 1994/23

Mr. Tariq Aziz AOR, ASC

For Respondents No. 1-8,
25-40 in CMA 12672/23 in
CA 1986/23

Mr. Nasrullah Khan, ASC
(in all cases)

For Respondents in CMA
12678/23 in 1989/23

For Respondents in CMA
12680/23 in CA 1990/23

For Respondents in CMA
12682/23 in CA 1991/23

For Respondents in CMA
12692/23 in CA 1996/23

For Respondents in CMA
12694/23 in CA 1997/23

For Respondents in CMA
12706/23 in CA 2003/23

For Respondents in CMA
12708/23 in CA 2004/23

For Respondents in CMA
12712/23 in CA 2006/23

For Respondents in CMA
12720/23 in CA 2010/23

For Respondents in CMA
12702/23 in CA 2001/23

Mr. Qazi Ghulam Rauf, ASC
Mr. Junaid Ammar, ASC

Date of Hearing : 08.04.2024

JUDGMENT

YAHYA AFRIDI, J.- The Government of Pakistan, through the Secretary of the Ministry of Defence ("**appellant**"), has filed these appeals to challenge the judgment dated 25.09.2023 passed by the Peshawar High Court, Peshawar, whereby the appeals of the appellant against the determination of compensation for the acquisition of land of the private landowners ("**respondents**") by the Referee Court were dismissed.

2. The necessary facts of the case are that a notification under Section 4 of the Land Acquisition Act, 1894 ("**Act**") for acquisition of

land measuring 193 kanals and 7 marlas in *Mauza Nawanshehr Shumali*, Kakul Road, Abbottabad (**"acquired property"**) by the Government of Pakistan, Defence Department for "public purposes/defence purposes" namely training area of the Pakistan Military Academy, Kakul (**"PMA"**) was issued on 29.04.2003 (Exhibit PW4/1). In pursuance thereof, notices dated 18.12.2004 under Sections 9 and 10 of the Act were issued inviting objections by the landowners (Exhibit PW4/4). Finally, on 28.11.2005, an award was passed under Section 11 of the Act, determining compensation at the rate of Rs. 306,369.4/- per kanal, along with 15% compulsory acquisition charges, to be awarded to the landowners (Exhibit PW4/6). Needless to mention that compensation for fruit bearing trees, built up area and other such considerations were taken into account. Aggrieved thereof, the landowners of the acquired property filed applications under Section 18 of the Act (**"reference applications"**), moving the Collector that the matter be referred to the Referee Court for the determination of compensation. Among the landowners, the respondents in Civil Appeal No. 1980 of 2023 claimed that the value of their land was Rs. 3,500,000/- per kanal, while the respondent in Civil Appeal No. 1981 of 2023 demanded compensation at the rate of Rs. 3,000,000/- per kanal in the reference applications before the Referee Court. The reference applications were decided *vide* judgment dated 21.12.2012, wherein the compensation so adjudged was enhanced to Rs. 2,081,120.48/- per kanal. Thereafter, appeals were filed against the decision of the Referee Court which were partially accepted *vide* judgment dated 29.05.2014, and the matter was remanded to the Referee Court for appointing a local commission to ascertain the value of the acquired property. The Referee Court, after remand, appointed a local commission, which submitted its report. The

appellant filed objections to the report of local commission. The Referee Court, *vide* judgment dated 09.05.2015, enhanced the amount of compensation to Rs. 1,581,740/- per kanal but the objections of the appellant were not attended to therein. This judgment was challenged by both the appellant and the respondents before the Peshawar High Court. The Peshawar High Court set aside the judgment dated 09.05.2015, and once again remanded the case for decision afresh, after deciding the objections made to the report of local commission. The Referee Court, *vide* judgment dated 07.04.2022, confirmed the report of local commission and enhanced the amount of compensation to Rs. 7,000,000 per kanal along with 15% compulsory acquisition charges and 6% simple interest per annum on enhanced amount of compensation from the date of taking possession of the land. This was challenged by the Government of Pakistan in an appeal before the Peshawar High Court, which was decided through impugned judgment dated 29.05.2023 and the order passed by the Referee Court was maintained. Hence, the instant appeals.

3. Learned Additional Attorney General representing the appellant vehemently contended that the Courts below have exceeded their jurisdiction in violation of the clear letter of the law, as provided under Section 25 of the Act, by considering and adjudging compensation to the respondents/landowners beyond the amount so prayed for by them in their reference applications before the Referee Court filed under Section 18 of the Act. The learned counsel explained that the Court could not award compensation exceeding the amount claimed by the respondents as provided under Section 25(1) of the Act. It was further contended that the objections of the appellant to the commission report were not considered by the Referee Court, while

deciding the remanded matter. It was finally contended that the Referee Court has blindly accepted the amount of compensation, so stated in the commission report, which was devoid of any supporting material worthy of any reliance or credence.

4. In rebuttal, the learned counsel for the respondents contested the submissions so rendered by the learned counsel for the appellant and stated that the respondents/landowners have suffered enough for the blatant inaction on the part of the appellant, whereby due compensation for the acquired property has been denied to them for the last two decades. As regards the compensation sought in the reference applications and adjudged by the Referee Court, the learned counsel contended that in the peculiar circumstances of the present case, when the conditions mandated under Section 9 read with Section 25 of the Act were not complied with, the same could not be legally objected to. Finally, the learned counsel contended that the commission report had taken into account the mutations of the relevant period, and thereafter, recommended the potential value of the acquired land, which was correctly accepted by the Referee Court and the High Court despite the objections, so raised by the appellant-Government.

5. After hearing the learned counsel for the parties and reviewing the material available on the record, we find that following issues require consideration and determination of this Court:

- i. **Whether the Court could enhance the rate of compensation beyond the amount claimed by the respondents in the reference applications?**
- ii. **Whether the compensation awarded by the Courts below requires any interference by this Court?**

6. Our views on each of the above stated issues are as follows in *seriatim*.

Issue No. I: Whether the Court could enhance the rate of compensation beyond the amount claimed by the respondents in the reference applications?

7. To consider and better appreciate the objection raised by the learned Additional Attorney General that the Referee Court could not adjudge compensation exceeding the amount claimed in the reference applications, let us have a read of Section 25 of the Act, which provides that: -

25. Rules as to amount of compensation.

(1) When the applicant has made a claim to compensation, pursuant to any notice given under section 9, the amount awarded to him by the Court shall not exceed the amount so claimed.

(2) When the applicant has refused to make such claim or has omitted without sufficient reason (to be allowed by the Judge) to make such claim, the amount awarded by the Court shall in no case exceed the amount awarded by the Collector.

(3) When the applicant has omitted for a sufficient reason (to be allowed by the Judge) to make such claim, the amount awarded to him by the Court may exceed the amount awarded by the Collector.

A careful perusal of Section 25 of the Act reflects that it sets a condition precedent to the limit of the compensation that could be awarded, where claim is made or not made pursuant to a notice given under Section 9 of the Act. The said Section provides:

9. Notice to persons interested.

(1) The Collector shall then cause public notice to be given at convenient places on or near the land to be taken, stating that the Government intends to take possession of the land, and that claims to compensation for all interests in such land may be made to him.

(2) Such notice shall state the particulars of the land so needed, and shall require all persons interested in the land to appear personally or by agent before the Collector at a time and place therein mentioned (such time not being earlier than fifteen days after the date of publication of the notice), and to state the nature of their respective interests in the land and the amount and particulars of their claims to compensation for such interests and their objections (if any) to the measurements made under section 8. The Collector may

in any case require such statement to be made in writing and signed by the party or his agent.

(3) The Collector shall also serve notice to the same effect on the occupier (if any) of such land and on all such persons known or believed to be interested therein, or to be entitled to act for persons so interested, as reside or have agents authorised to receive service on their behalf, within the revenue district in which the land is situate.

(4) In case any person so interested resides elsewhere, and has no such agent, the notice shall be sent to him by post in a letter addressed to him at his last known residence, address or place of business and registered under Part III of the Indian Post Office Act, 1866.

(5) The Collector shall also serve notice of the enquiry to be held under section 11 (such notice not being less than fifteen days prior to the date fixed under subsection (2) for determination of claims and objections) on the Provincial Government, the federal Government, a local authority or Company, as the case may be, for which land is being acquired, and require it to depute a duly authorised representative to attend the enquiry on its behalf for the purpose of making objections (if any) to the measurement of the land, claims to any interest in the land or the amount of any compensation. Such authorised representative shall be a party to the proceedings.

8. A careful and conjunctive read of the two sections makes it clear that: in the first instance, Section 9 commands the Collector to give public notice, stating the intention of the Government to take possession of the land to be acquired, and inviting claims to compensation for all interests in such land, at convenient places on or near the land to be taken, seeking all interested parties to personally appear or send an agent before the Collector within a specified timeframe, stating their interests, compensation claims, and objections to the land measurements, with the option for the Collector to ask statements in writing signed by the party or their agent; notably, the Collector shall also serve notice to the occupier (if any) of the land and all individuals known or believed to have an interest in the land, or who are entitled to act on behalf of such interested parties, within the

revenue district where the land is located; and additionally, if a person with an interest in the land resides elsewhere and has no agent, the notice must be sent to their last known address *via* registered post. And it is only when the requirements of Section 9 of the Act are validly complied with that the penal, stringent, and restrictive provisions of Section 25 of the Act, limiting the amount of compensation to be awarded to the landowners become applicable. Therefore, it is imperative to fulfill the preceding requirements; otherwise, invoking or enforcing Section 25 to constrain the Referee Court, within the amount of compensation claimed before the Collector, as provided under Section 25(1) or within the amount of compensation awarded by the Collector as provided under Section 25(2) of the Act would be inappropriate.¹

9. In the case in hand, the respondents asserted in the reference applications that no notices under Section 9 of the Act were ever issued to them or served on them. In turn, the appellant was required to prove that the notices were duly served and the requirements of Section 9 of the Act were strictly complied with. However, the evidence produced on behalf of the appellant, apart from the production of the notices (Exhibit PW4/4) suggesting the issuance of the notices under Section 9 of the Act, is not sufficient to controvert the assertion of the respondents, regarding the non-delivery of notices. Relevant documents, including the order sheets of the Collector and receipts relating to dispatch or delivery of notices, should have been produced to show that the requirements of Section 9 of the Act were strictly complied with. However, the appellant failed to establish the same. Accordingly, the objection raised by the learned Additional

¹ Hyderabad Development Authority v Karam Khan Shoro 1985 SCMR 45, Land Acquisition Collector, National Highway Authority, Lahore v Javed Malik 2009 SCMR 634.

Attorney General representing the appellant based on Section 25(1) and Section 25(2) of the Act are without merit.

10. We now turn to the other aspect of the challenge made by the Additional Attorney General representing the appellant, which in essence was that the Court could not award compensation beyond the amount claimed by the respondents in the reference applications. Some of the leading decisions that warrant our attention for determination of the matter in hand are as follows:

Malik Nasim Ahmad Aheer v WAPDA (PLD 2004 SC 897)

In this case, the Land Acquisition Collector awarded compensation at the rate of Rs. 86,400/- per acre, while the Referee Court enhanced it to Rs. 20,000/- per Marla, equivalent to Rs. 3.2 million per acre. The High Court set aside the order of enhancement of compensation passed by the Referee Court. This Court dismissed the appeal of the landowners and observed that it was strange that the landowners had demanded Rs. 15,000 per Marla, while the Referee Court by showing undue indulgence and extraordinary generosity had awarded compensation exceeding the claim, at the rate of Rs. 20,000/- per Marla. The file of the case reflects that the landowners, pursuant to notice given under Section 9 of the Act, had claimed compensation at the rate of Rs. 15,000 per Marla before the Collector.

Land Acquisition Officer, Hyderabad v Gul Muhammad (PLD 2005 SC 311).

The essential facts of the case were that the owners of the acquired land, in pursuance of notices given under Section 9 of the Act, claimed compensation at the rate of Rs. 40,000/- per acre. However, the Collector awarded compensation at the rate of Rs. 13,000/- per

acre. The Referee Court enhanced it to Rs. 40,000/- per acre. The High Court dismissed the appeals of the Land Acquisition Officer and allowed the cross-objections filed by the landowners. One of the questions before this Court was whether the High Court was justified to enhance the rate of compensation to Rs. 70,000/- per acre when the landowners had themselves demanded compensation at the rate of Rs. 40,000/- per acre pursuant to notices given under Section 9. It was observed by this Court that since notices under Section 9 of the Act were admittedly duly served on the landowners and, pursuant to that, the landowners in their application had specifically claimed Rs. 40,000/- per acre, they would not be entitled to claim more than what they had claimed in pursuance of service of notices given under Section 9 of the Act i.e. Rs. 40,000/- per acre.

We see that in both of the above-mentioned cases, Section 25(1) of the Act was invoked as the landowners had made claims before the Collector pursuant to notices given under Section 9 of the Act. However, in the present case, it has not been established that notices under Section 9 of the Act were issued to the respondents. Hence, the cases of **Malik Nasim Ahmad Aheer** and **Gul Muhammad** (*supra*) are distinguishable from the case before us.

Hyderabad Development Authority v Karam Khan Shoro (1985 SCMR 45)

In this case, the Land Acquisition Authority awarded compensation at the rate of Rs. 20,000/- per acre which was enhanced to Rs. 2.50 per sq ft i.e. Rs.108,900/- per acre by the Referee Court. In appeal, the amount of compensation was reduced to Rs. 70,000/- per acre. Leave was granted by this Court to consider if the High Court could not, in view of the provision of Section 25(1) of the Act, allow

compensation at a rate higher than that claimed. It was urged before this Court that the respondent could not be awarded compensation exceeding a sum of Rs. 60,000/- per acre as he had himself claimed this sum in an application before the Land Acquisition Officer. This Court noted that as notices under Section 9 of the Act were neither served upon the claimant nor produced in Court, it was not possible to confirm the issuance of the requisite notices as per Section 9 of the Act. Consequently, it was held that the provision of Section 25(2) of the Act could not be invoked.

Land Acquisition Collector, N.H.A, Lahore v Javed Malik (2009 SCMR 634)

In the instant case, the landowners were dissatisfied with the award of the Land Acquisition Collector and filed reference applications under Section 18 of the Act which were partly accepted by the Referee Court. The appeal filed against this decision was also partly accepted by the High Court. In these circumstances, the Land Acquisition Collector raised an objection before this Court contending that the amount of compensation was wrongly enhanced by the High Court as according to Section 25 of the Act, it could not be increased beyond the amount awarded by the Collector for the reason that the landowners had failed to file a claim before the Land Acquisition Collector, under Section 9 of the Act. This contention of the Land Acquisition Collector was repelled by this Court. It was observed that: -

“7. According to section 9 of the Land Acquisition Act, the Collector is bound to cause public notice to be given at convenient places on or near the land to be taken and to serve notice on the occupier and on all such persons interested therein or to be entitled to act for persons so interested, as reside or have agents to accept service on their behalf within the revenue district concerned. He has also been directed by that section to serve notice through post, if the persons so interested

are not residents of the revenue district, in which the land is situated. This mandatory compliance of section 9, if has been made by the Land Acquisition Collector, then in that event the provision of section 25 of Land Acquisition Act can be invoked by the Collector as well as by the persons for whom the land has been acquired. The learned Referee Court is prohibited to grant compensation more than the amount claimed by the applicant/applicants or less than the amount awarded by the Collector, if the notices as enumerated above were given under section 9 of the Land Acquisition Act by the Collector, otherwise the learned Court was not prohibited to grant compensation, in accordance with the assessed price of the land acquired. It may be noted here that provisions of section 25 are penal, stringent and restrictive in nature in respect of the fixation of compensation, therefore, its preceding essentialities have to be complied with, otherwise provision of section 25 cannot be invoked or enforced to tie the hands of the learned Referee Court. It may also be stated that it was the duty of the respondent/Collector before the learned Referee Court to raise such a point of objection, get an issue framed from that learned Referee Court, and to produce the notices if transmitted to land owners, as required by section 9 of the Land Acquisition Act into the evidence, otherwise it would be late in the day to make hue and cry or to construct an edifice on this basis, at this stage. As no such effort or exercise was made by the Collector, therefore, it is mere an objection, having no relevance with the case and requires no consideration from this Court. Therefore, this objection is held to be of no legal force.

(emphasis provided)

11. A careful read of the above precedents clearly demonstrates that the judicial consensus is that the compensation to be awarded by the Referee Court to the owners of the acquired property should not exceed the amount so sought by them, provided the conditions precedent provided under Sections 9 and 25 of the Act are complied with.

12. On a general plane, it is but fundamental that, in the matter of compensation for acquisition of land, it is the fair market value of the land which is due and payable to the landowner. The Referee Court, while hearing a reference application, exercises a special jurisdiction to ensure that landowners are compensated with the true

market value of their land on the basis of evidence produced on record. In reference application, the claim for fair compensation for acquisition of land is made by the landowners against the State. In this regard, one must not forget that the State wields unilateral power under the Act, to deprive landowners of their property rights guaranteed under Article 24 of the Constitution. Therefore, fairness demands that the interests of those affected by eminent domain remain central to the Referee Court, while determining compensation. The State is bound to pay fair compensation to the landowners on the basis of the market value of the land acquired, and to deny this benefit to the landowners would be tantamount to permitting the State to acquire the land of the landowners on payment of less than the fair market value. Hence, it will not be unjust to hold that the Referee Court, while determining the rate of compensation has to consider: firstly, that the provisions of the Act, and in particular, those that provide the landowners to assert their objections to the acquisition of their property and the fair value thereof have been strictly followed; and in cases, where there is a failure of strict compliance of the said provisions of the Act, and in particular Sections 9 and 25 (*supra*), then the Referee Court may proceed to adjudge the compensation for the acquired property beyond the amount claimed by the landowners in the reference applications, if the evidence produced by the parties justify such enhancement in accordance with Section 23 of the Act, as was the case in the present appeals.

13. Thus, we find that the objection to the awarded compensation raised by the learned Attorney General, exceeding the amount claimed by the respondents /landowners in the reference applications, does not hold legal merit.

Issue No. II: Whether the compensation awarded by the Courts below requires any interference by this Court?

14. The main thrust of the learned Additional Attorney General questioning the quantum of compensation awarded to the respondents for the acquisition was that the Courts failed to reflect the true market value of the acquired property, and that the Collector had correctly assessed the true market value of the acquired property in his award. When we review the award determined by the Collector, we note that the same not only acknowledged the high value of the land, but also recorded that the land under acquisition could serve both residential and agricultural purposes. And yet, the sole reliance of the Collector on a one-year average price to determine the amount of compensation overlooks the distinctive attributes and future potential of the acquired property. While the one-year average price may be a factor in determining the market value of the land, it cannot be the sole determinant. In assessing compensation, the Collector must consider not only the current market value of the land but also its potential value. The market value is to be taken up as one existing on the date of taking possession of the land², while the potential value is 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 taking possession of the land, but its future value shall also be taken into account. And this crucial aspect was strikingly lacking in the award determined by the Collector, so vehemently relied on by the learned Additional Attorney General.

15. On the other hand, the learned counsel for the respondents emphasized that findings of the local commission qua the value of the

² In case of the province of Khyber Pakhtunkhwa.

acquired property were correctly accepted by the Courts. The local commission report, when reviewed carefully, demonstrates that: the local commission visited the site, prepared a site plan, recorded the statements of the parties and witnesses, and then prepared their report stating that the land of the appellants was of very valuable nature. And for determining the compensation for the subject acquisition, the local commission relied on: (i) a sale agreement with respect to some land in the same *mauza* between Maj. (r) Mumtaz Khan etc. and PMA, (ii) schedule of rates of land for the recovery of transfer of immovable property tax and, (iii) the amount of consideration reflected in sale mutations of similar land in the same *mauza*.

16. As for the sale agreement with respect to some land in the same *mauza* between Maj. (r) Mumtaz Khan etc. and PMA, we note that a writ petition No. 1196-A of 2018 was filed in the Peshawar High Court by Maj. (r) Mumtaz Khan that the land acquired *vide* the 2014 agreement was part of a larger parcel of 100 kanals initially compulsorily acquired pursuant to a notification dated 07.10.2004, with compensation awarded under Award No. 178 on 26.09.2005. However, the Peshawar High Court, in a judgment dated 10.02.2010, set aside Award No. 178 for the reason that the notification under Section 4 of the Act was not published in the official gazette. This decision was subsequently upheld by this Court. Following this development, PMA approached said Maj. (r) Mumtaz Khan etc. in 2013, expressing their intention to acquire only 35 kanals and 10 marlas of land, opting for a purchase through private negotiation rather than compulsory acquisition. During negotiations, PMA authorities reduced the area to be acquired to 30 kanals and 10 marlas, citing financial constraints. Consequently, a sale agreement to acquire 30 kanals and

10 marlas through private negotiation was executed in January 2014. It is further mentioned in said writ petition filed by Maj. (r) Mumtaz Khan that possession of the land acquired through the 2014 agreement was taken by PMA in November 2016. In contrast, the award, payment, and possession transfer all occurred in 2005 in the present case. While later transactions can definitely be informative of the potential value, relying on a transaction executed nine years after acquisition in 2014 would be stretching the matter a bit too far. Such a significant nine-year gap may not fully capture the market value of the acquired property in 2005.

17. Similarly, the schedule of rates of land for the recovery of transfer of immovable property tax effective from 2012, and sale mutations from 2013 onwards may provide some context but they may not be the most accurate indicators of the acquired property's worth in 2005 due to a significant time gap.

18. This would bring us to the reliance of the local commission on mutations of the year 2006 numbered 15196, 15632, 15655, 15241, and 15224, recording sales of land parcels ranging from 4 marlas to 14.5 marlas in *Mauza Nawanshehr Shumali*, where the acquired property was situated. While these mutations may have been picked up randomly and the nature of the land they represent may also vary, they all represent the general market value of the land in the area at that specific time period. Notably, the average sale price derived from these mutations is Rs. 7,035,483.6 per kanal which closely aligns with the amount of compensation at the rate of Rs. 7,000,000/- per kanal proposed by the local commission. Thus, the consideration by the local commission of mutations of 2006, specifically within a year of the acquisition, is consistent with the principle of fair market value. Furthermore, this convergence demonstrates that the determination of

the value of the acquired property by the local commission was not arbitrary but was supported by reliable material, making it a credible basis for assessment of compensation.

19. Several factors are to be considered, while determining the amount of compensation to be paid to the landowners for the acquisition of their land: the value of similar land nearby is considered; additionally, any increases in land value during the acquisition process may be factored in; and most importantly, the future utility of the acquired land, keeping in view the availability of facilities for its said utilization, are considered to assess its potential value. It is important to note that there is no single formula for the determination of the compensation due to the landowners for the compulsory acquisition of their land. Instead, different factors relevant to each situation are used together to determine the market value as defined in Section 23(1) of the Act.³ Courts are increasingly recognizing the potential for future development when determining fair compensation for acquired land, reflecting a more holistic approach.

20. Given the above, we note that in the present case, the local commission meticulously examined the site, considering factors like location, accessibility, and potential land use. The burden lied with the appellant to demonstrate the deficiencies in the findings recorded in the commission report with concrete evidence, which they failed to carry through in the present case. We, therefore, find that the contention of the learned Additional Attorney General that the Referee Court uncritically accepted the finding of the commission report lacks merit. The Referee Court exercised its discretion prudently in arriving at a fair

³ Sarhad Development Authority v Nawab Ali Khan 2020 SCMR 265.

compensation award. And thus, the High Court has rightly declined to interfere in it and there does not arise any occasion for this Court to interfere in it either.

21. For the above reasons, the impugned judgement passed by the Peshawar High Court is upheld, and these appeals are accordingly dismissed.

JUDGE

JUDGE

JUDGE

Islamabad
08.04.2024.

Approved for reporting.