

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

Mr. Justice Sardar Tariq Masood
Mr. Justice Mazhar Alam Khan Miankheel

Civil Appeal No.1612 of 2018

[Against the judgment dated 22.11.2018, passed by the Peshawar High Court, D.I.Khan Bench, D.I.Khan in RFA No.79-D with CM No.64-D of 2018]

Chairman Water and Power Development
Authority, Pakistan Lahore and others. ...Appellant(s)
Versus
Haji Abdul Rehman and others. ...Respondent(s)

For the Appellant(s) : Syed Abid Hussain Shah, ASC
Syed Rifaqa Hussain Shah, AOR

For the Respondent(s) : Syed Mastan Ali Zaidi, ASC

Date of Hearing : 20.02.2025

ORDER

Mazhar Alam Khan Miankheel, J:- By way of this appeal, the appellants being officers of the acquiring department have impugned the judgment and decree dated 22.11.2018 of the Peshawar High Court, D.I.Khan Bench, D.I.Khan (**the High Court**), whereby their RFA No.79-D of 2018, was dismissed maintaining the order of the Executing Court dated 25.05.2018.

2. We have heard the learned counsel for the parties and have gone through the available record.

3. The record of the case would reveal that Respondents No.1 to 4, the land owners of village Fateh, being affected land owners of the Land Acquisition Award No.155 dated 04.10.1995 did not challenge the compensation of Rs.4393.80 so fixed by the Land Acquisition Collector (**LAC**) and thereby did not file any reference under Section 18 of the Land Acquisition Act, 1894 (**the**

Act of 1894) and received the compensation amount. Resultantly the matter attained finality. It is also on the record that none of the affected land owners of the said award filed any reference against the same and all of them received the compensation amount so fixed by the LAC.

There was yet another Award No.290 dated 23.12.2011 of the same village Fateh, wherein compensation so fixed by the LAC was enhanced by the Referee Court to the tune of Rs.21,110/- per kanal and the same was upheld by the High Court in RFA No.25-D of 2012. The affected land owners of Award No.290 *ibid* through execution application received the compensation at the above noted enhanced rate. Respondents No.1 to 4 by placing reliance on the judgment of this Court reported as Saddaqaat Ali Khan through L.Rs and others vs. Collector Land Acquisition and others (PLD 2010 SC 878) and many other unreported judgments, setting the principle once for all that all the affected land owners having their lands in the same vicinity and of the same nature would be entitled to the similar compensation. Respondents No.1-4 by moving an application before the Executing Court have asked for the enhanced rate/compensation so fixed in RFA No.25-D of 2012 in Award No.290 *ibid*. The learned Judge of the Executing Court has very aptly held that the fate of their application would be decided on the basis of issuance of commission for local investigation and the revenue record to ascertain the nature of both the lands and thereby refused to dismiss the execution petition in *limine*.

4. As far as the claim of the respondents for enhanced rate of compensation is concerned, yes! they can claim

compensation as per enhanced rate in the light of judgment of this Court noted above, if at the end they are able to establish that the nature and vicinity of both the lands i.e. their lands and the lands acquired *vide* Award No.290 *ibid* was the same. Since the lands of Respondents No.1 to 4 were acquired way back in the year 1995 and they received the compensation there and then without any objection and the lands under Award No.290 *ibid* were acquired after lapse of couple of years, so the criteria laid down in the judgment of this Court noted above would not be applicable simplicitor but would require some probe. There would be some important questions requiring consideration before placing the respondents at par with the affectees of Award No.290 *ibid*, like whether the notifications under Section 4 of the Act of 1894 were published in the same period, just to determine the market value/price of both the properties as under Section 23 of the Act of 1894, ^{the} the market value of the land to be acquired prevailing at the date of publication of the notification under Section 4(I) is to be considered and it is the basic criteria for determination of the market value. If there is a considerable gape in between the two notifications *ibid*, whether prices of both the properties remained the same in this span of time? Besides the above, whether the question of estoppel would be attracted *qua* the claim of respondents as they received the amount of compensation and did not file any reference? The foremost question which requires consideration is whether any fresh execution application can be filed and entertained when earlier execution application has been decided by satisfying the decree and consigned to record room?

The other most important question is of limitation whether the respondents can lay claim on the basis of the judgment of this Court after a lapse of 16/17 years.

5. Since the above noted questions are the distinguishing features of this case which need proper probe and evaluation. Hence this appeal is disposed of in the above terms. Needless to say that the matter would be decided expeditiously by the Executing Court.

Islamabad
20.02.2025
APPROVED FOR REPORTING
Rabbani*/