

35/23

**SUPREME COURT OF PAKISTAN**  
(Appellate Jurisdiction)

**PRESENT:**

Mr. Justice Qazi Faez Isa  
Mr. Justice Yahya Afridi  
Mr. Justice Syed Hasan Azhar Rizvi

(AFR)

**Civil Appeal No.700 of 2014**

[Against the judgment dated 03.12.2013, passed by the Peshawar High Court, D.I.Khan Bench in RFA No.61 of 2010]

*Jind Wadda and others.*

...Appellant (s)

**Versus**

*General Manager NHA (LM & IS), Islamabad and others.* ...Respondent(s)

For Appellant No.1 : Syed Mastan Ali Zaidi, ASC

For Respondent No.4 : Mr. Sikandar Rashid, ASC

Date of Hearing : 07.03.2023.

**JUDGMENT**

**Syed Hasan Azhar Rizvi, J:-** Through the instant appeal filed under Section 54 of the Land Acquisition Act, 1894 read with Article 185 of the Constitution of the Islamic Republic of Pakistan, 1973, the appellants have assailed the judgment dated 03.12.2013 of the Peshawar High Court, D.I. Khan Bench (**the High Court**) whereby their RFA No.61 of 2010 was dismissed.

2. Brief facts of the case are that the appellants were aggrieved by Award No.4 dated 26.04.2008 passed by the Land Acquisition Collector, D.I. Khan relating to landed property measuring 08 kanals 10 marlas, situated in *mouza Aara*, Tehsil and District D.I. Khan required for the construction of D.I. Khan

Sarai Gambila Road Project (N-55) NHA. The Land Acquisition Collector (*Respondent No.10*) fixed the rate of the subject land at the rate of Rs.33,657/- per kanal. For enhancement in the compensation, the appellants assailed the award by filing reference petition in the Court of Referee Judge/ADJ-V, D.I. Khan. The respondents were summoned, who appeared and contested the same, issues were framed and the parties adduced their evidence. The Referee Judge *vide* judgment dated 13.11.2010 accepted the reference petition and the compensation of the subject land was enhanced to Rs.96,830/- per kanal along with 15% compulsory acquisition charges and 6% simple interest as admissible under the law from the date of taking over possession of the acquired property till the payment of the decreed compensation minus the amount already paid to the appellants with costs.

Being aggrieved with the judgment and decree passed by the Referee Judge, the appellants filed RFA No.61 of 2010 before the High Court which was dismissed by holding that as the verdict of the Referee Judge was challenged in different appeals before the High Court, which were dismissed through a common judgment dated 1.04.2011 passed in RFA No.18 of 2011, the matter had attained finality up to the High Court *vide* judgment dated 03.12.2013 impugned herein.

3. Learned counsel for the appellants has contended that the impugned judgment is not sustainable in the eyes of law; that the High Court has failed to consider the findings of the trial Court to the extent of fixation of less amount as compensation of the

acquired land of the appellants, thus the same is against law, facts, potential prospects and location of required land; that the impugned judgment is suffering from misreading and non-reading of record; that the courts below have failed to consider the price/value of the property to be fixed according to its own potentiality, future prospect and proximity; that the trial Court considered the average price which pertains to entire *mouza* including properties of different nature and that Rs.96,830/- per kanal has been incorrectly fixed as compensation amount of different lands in the vicinity and that at the time of taking of the possession and announcement of award, the value was not less than Rs.16,00,000/- per kanal. In support of his contentions, reliance is placed to an unreported judgment dated 30.01.2020 passed in Civil Appeal No. 1707 of 2013 titled as **Ehsan Ullah Khan & others v. Govt. of Khyber Pakhtunkhwa**. He has also referred to a sketch of the subject land enclosed with the report of the commission at page 63 of the paper-book.

4. Learned counsel for Respondent No.4 has faithfully defended the impugned judgment and contended that the verdict of the Referee Judge was challenged in different appeals before the High Court and all the appeals were decided through a common judgment dated 01.04.2011 as already referred to in the impugned judgment.

5. Heard the learned counsel for the parties and perused the material available on the record with their able assistance.

6. The appellants have failed to produce any independent, trustworthy and credible evidence for their claim *qua*



enhancement of the compensation. The burden of proof in such cases is 'incumbent' upon land-owners [see Land Acquisition Collector v. Muhammad Sultan (PLD 2014 SC 696)]. The appellants were legally bound to produce tangible evidence in support of their plea of enhancement but they failed to discharge their burden. Despite the fact that the learned Referee Judge accepted the reference petition of the appellants and enhanced the compensation from Rs.33,657/- to Rs.96,830/-, the appellants have failed to bring on record any document showing value of the land adjacent and surrounding to the land of the appellants to be more than Rs.96,830/- per kanal. In the case reported as Commandant Indus Rangers v. Zaheer Muhammad Khan (2007 SCMR 1817), it was held that for an enhancement appeal to be successful, the evidence pertaining to the land in question has to be properly ascertained: whether the land is barren or fertile; the surrounding of the land in question; and the state of development etc. The witnesses examined in evidence before the Referee Judge admitted the fact that the property surrounded by the acquired land is agricultural in nature and the compensation was granted in the award for agricultural type of land. The appellant (*Jind Wadda*) further admitted in his cross-examination that he has got no written proof about the sale/purchase of property at the rate of Rs.16,00,000/- per kanal. RW-1, who appeared for Respondent No.4 in his evidence stated that the department had acquired purely agriculture land with no civic facilities available in the vicinity and it is, therefore, an incorrect assertion to suggest that electricity and drinking water facilities were available.

7. On perusal of the report of the Commission, appointed by the Referee Judge *vide* order dated 08.06.2010, it transpires that the assessed value of the land was determined as Rs.8,00,000/- per kanal, which has been wrongly determined without having any material/proof available on the record.


8. No material illegality or irregularity or misreading and non-reading of the evidence in the judgments of the *fora* below have been noticed. The unreported judgment, cited at the bar by the learned counsel for the appellants, is distinguishable to the facts and circumstances of the instant case. The judgments passed by the High Court and that of the Referee Judge are well within the remit of law and based on sound and cogent reasoning. Learned counsel for the appellants has not been able to make out a case for interference.

9. For what has been discussed above, the appeal being devoid of merit is dismissed.

Sd/- J

Sd/- J

Sd/- J

 Not Approved for reporting  
Rabbani/\*

Announced in open Court on 15.3.2022 