

SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

Mr. Justice Sayyed Mazahar Ali Akbar Naqvi
Mr. Justice Muhammad Ali Mazhar
Mr. Justice Shahid Waheed

Civil Appeal No.914-L of 2013

[On appeal against the Judgment dated 08.10.2013 passed by the Lahore High Court, Lahore, in RFA No.89 of 2009]

Malik Tariq Mahmood, etc
Versus
Province of Punjab, etc

...Appellant(s)

...Respondent(s)

For Appellant(s) : Malik Muhammad Jamil Awan, ASC,
via Video Link from Lahore

For Respondent(s) : Malik Asif Taufeeq,
Additional Advocate General
Mr. Muhammad Ramzan, LAC, Lahore
Mr. Asjid Javed, SDO

Date of Hearing : 29.11.2022

JUDGMENT

SHAHID WAHEED, J.— The landowners, challenging the decree drawn up in pursuance of the judgment dated 8th of October, 2013 made by the Lahore High Court in its appellate jurisdiction under the Land Acquisition Act, 1894 and, in quest of getting adequate compensation for their land acquired, have presented this direct appeal to us on the short ground that even though the judgment and decree dated 6th of January, 2009 of the Reference Court was thereby annulled, the compensation awarded to them was still meagre and disproportionate to its market value.

2. The fabric of facts, on which the grievance of the appellants rests, may be appreciated first. On 21st of July, 1993 the District Collector, Sheikhupura issued a notification (Ex.A.2) under section 4 of the Land Acquisition Act, 1894 (**“the Act”**) to the effect that

an extent of 205 kanals 18 marlas of land in village Baddo and Khaki within the limits of Tehsil Ferozewala, District Sheikhupura was intended to be acquired for the public purpose, namely, construction of Link Road Second New Ravi Bridge, Sagian, Lahore. No action was taken on this notification for more than a year and thus it became ineffective, and consequently, the District Collector had to issue a fresh notification under section 4 of the Act in respect of the same land and it was gazetted on 12th of October, 1994 (Ex.A.3). This area included 19 kanals 14 marlas of land, situate in village Baddo, of the appellants. After the publication of the above notification, the Land Acquisition Collector (**“the LAC”**) initiated proceedings for the determination of compensation payable to the various owners of the land acquired. Notices as required under sections 9 and 10 of the Act were served upon the affected persons requiring them to deliver their statements regarding nature of their respective interests in the land and particulars of their claims to compensation. In response to the notices, the appellants appeared before the LAC and got recorded their statements that their land was of commercial/industrial kind and demanded compensation at the rate of Rs.70,000/- per marla. After the usual formalities under the Act had been gone through by the LAC, he on the basis of evidence delivered his Award on 23rd of April, 1996 (Ex.A.7), in which 12 kanals 10 marlas of the appellants’ land was declared to be *Ghair Mumkin Chapper* and 7 kanals 4 marlas was *Nul Chahi* (agricultural property), and the amount of compensation was fixed at Rs.1200/- per marla.

3. The appellants were dissatisfied with the Award (Ex.A.7) and in order to seek a judicious determination of their rights they made

an application before the LAC under section 18 of the Act asking him to refer their case to the Court for adjudication. On receipt of this application, the LAC made the required reference to the Court of Senior Civil Judge, Sheikhpura. Be it noted that the appellants in their application had clearly stated that their land had been wrongly declared *Ghair Mumkin Chapper* and *Nul Chahi* whereas it was a commercial/industrial area as indicated by its location. They said it was bounded by Lahore – Sheikhpura Road to the north, a housing scheme to the west, a 30-feet wide metalled road to the south, behind which was the National Town Housing Scheme and Sheikh Ampex Factory to the east. The appellants thus claimed compensation at the rate of Rs.70,000/- per marla.

4. On a reference being made at the instance of the appellants, the Reference Court invited the respondents' reply, on their contest, two issues were framed, and the main issue was whether the compensation for the acquired land owned by the appellants was not in accordance with the market value and whether the appellants were entitled to enhancement of compensation as prayed for. For this issue, the appellants produced Mushtaq Ahmad, Patwari of village Baddo (PW-1), Muhammad Masoom, former Reader to the LAC (PW-2), Muhammad Waqas, Supervisor Highway Department (PW-3), Muhammad Zaheer Minhas, Civil Engineer/Evaluator (PW-4), while one of the appellants, namely, Malik Tariq Mehmood appeared as his own witness before the Court as PW-5. Their documentary evidence consisted of 11 documents, and they were, copy of Mutation No.2740 (Ex.A.1), copy of notification dated 21st of July, 1993 (Ex.A.2), copy of notification dated 12th of October, 1994 (Ex.A.3), copy of notification dated 6th of September, 1995 (Ex.A.4), copy of notice

(Ex.A.5), copy of objections (Ex.A.6), copy of Award (Ex.A.7), copy of letter of Board of Revenue (Ex.A.8), copy of qabz-ul-wasool (Ex.A.9) and copy of evaluation certificates (Ex.A.10 and Ex.A.11). Whereas the respondents produced their Assistant Land Control Officer of the Highway Department, that is, Muhammad Khalid as RW-1, and through their counsel tendered copy of notification dated 6th of October, 1994 (Ex.R.1), copy of receipts regarding payments (Ex.R.2), copy of statements (Ex.R.3), copy of notices issued to the appellants (Ex.R.4) and copy of Award (Ex.R.5). It is important to note here that since the Reference Court deemed a local investigation to be proper for the purpose of ascertaining the location, nature and market value of the appellants' land, it issued a commission to Abdul Majeed Kausar, Advocate directing him to make such investigation and to report thereon. Accordingly, the Local Commissioner conducted the investigation and submitted his report (Ex.C-1) and the evidence taken by him (Ex.C-2), appearing before the Court as CW-1. After considering all these evidences, the Reference Court came to the conclusion that the appellants' demand was not justified and the assessment of their land in the Award (Ex.A.7) was correct and on that basis dismissed the reference by its judgment dated 6th of January, 2009.

5. The appellants then carried their first appeal to the Lahore High Court where its Division Bench observed, and rightly did so, that the fate of their appeal depended on the answer to the question whether their land was commercial, residential or agricultural. The learned Judges of the Division Bench then made a comparative study of the reasons recorded in the judgment of the Reference Court and the evidence available on record and their analysis was that the Reference Court erred in agreeing with the

assessment made by the LAC in his Award (Ex.A.7), and that it would be unreasonable to assess the land as an agricultural land at Rs.1200/- per marla; however, concluded that though the land was surrounded by commercial area, factory area, residential colonies, the appellants could not prove that their land itself was commercial, and thus held that the value of the land should have been Rs.20,000/- per marla, which was assessed by the LAC for the land adjoining the appellants. Accordingly, through judgment dated 8th of October, 2013, the decree was issued in favour of the appellants in the following terms:

- a. The appellants shall be paid compensation for the acquired land at the rate of Rs.20,000/- per Marla plus 15% compulsory acquisition charges on the said amount of compensation.
 - b. The appellants shall also be given compound interest at the rate of 8% per annum from the date of possession to the date of deposit/payment under section 28 of the Act, at the enhanced rate of land.
 - c. The appellants shall also be given compound interest at the rate of 8% per annum under section 34 of the Act on the compensation of land determined by the Collector in his award dated 23rd of April, 1996 from the date of taking possession of land to the date of deposit/payment of said amount.
6. The appellants are still unhappy and want further increase in compensation. Impeaching the judgment and decree passed by the High Court, it has been contended by them that the evidence on record conclusively suggests that the land was surrounded by a commercial area, and thus it was unnecessary to prove that land

itself was being used for commercial activities, and having regard to the extent and boundaries of the land, its market value should have been determined, and for that purpose only the report of the local commission (Ex.C.1 and Ex.C.2) was sufficient, but no Court has given proper consideration to it. On the other hand, the Addl. Advocate General, taking the stand against the above-stated arguments, submitted that the land of the appellants was a pond, and they have already been adequately compensated, the appeal is liable to be dismissed as it appears to have been filed for unjust enrichment of the appellants.

7. The quintessence of the above arguments reminds us that the main issue to be resolved in this case had two components. The first was about the nature and classification of the land, while the second related to its value. Before we enter upon considering the evidence adduced on the said issue, we deem it appropriate to state some of the principles on which compensation is required to be determined. Under section 23(1) of the Act, compensation is to be determined on the basis of the market value of the land at the date of publication of the notification under section 4 of the Act. The Court assessing compensation is required to take into consideration not only the present purpose or the present use to which the land is applied but also any other more beneficial purpose to which it might reasonably be put by the owner.¹ Indubitably, it is true that regard can be had only to the existing conditions and what is likely to happen in reasonably near future and compensation cannot be fixed on the basis of what might

¹ Vyricherla Narayana Gajapatiraju v. Revenue Divisional Officer, Vizagapatam [AIR 1939 PC 98]
Malik Aman and others v. Land Acquisition Collector and others [PLD 1988 SC 32]

happen in the dim and distant future. Where there is a reasonable possibility of the land being put to a more profitable use within a reasonable period the same cannot be ignored in assessing its value.² Compensation has always to be determined by reference to the price which a willing vendor may reasonably expect to obtain from a willing purchaser.³ When the land possesses some unusual, special or unique features as to its location or potentialities, due weight must be attached to all these elements.⁴ After considering all the circumstances, the Court has to arrive at a fair estimate with reference to the surrounding circumstances and evidence in the case and to award a fair compensation on that basis. The Court further ought to be liberal in the sense that it should not be too meticulous or pedantic in dealing with the evidence. It is also true that an entry in the revenue record as to the nature of the land may not be conclusive. If the land acquired is found to be useful both for agricultural or non-agricultural purposes, merely on the ground that it was used as agricultural land by the owner till the time of its acquisition, its potentiality as non-agricultural land cannot be ignored.⁵

² Bailey v. Isle of Thanet Light Railways Company [(1900) 1 QB 722]
re An Arbitration between Lucas and the Chesterfield Gas and Water Board [(1909) 1 KB 16]
Cedars Rapids Manufacturing and Power Company and Lacoste and others [(1914) AC 569]
Fraser and others and City of Fraserville [(1917) AC 187]

³ Fazalur Rahman and others v. General Manager, SIDB and another [PLD 1986 SC 158]

Land Acquisition Collector, GSC, NTDC, (WAPDA), Lahore and another v. Mst. Surraya Mehmood Jan [2015 SCMR 28]

Air Weapon Complex through DG v. Muhammad Aslam and others [2018 SCMR 779]

⁴ Askari Cement Limited through Chief Executive v. Land Acquisition Collector (Industries) Punjab, etc [PLJ 2013 SC 784]

⁵ Sardar Abdur Rauf Khan and others v. The Land Acquisition Collector/Deputy Commissioner, Abbottabad and others [1991 SCMR 2164]

Province of Punjab through Collector, Attock v. Engr. Jamil Ahmad Malik and others [2000 SCMR 870]

Province of Sindh through Collector of District Dadu and others v. Ramzan and others [PLD 2004 SC 512]

8. We may now examine the evidence adduced in this case in the light of the principles, enumerated above, and make a bid to find out the use, nature and kind of the appellants' land. As the burden of proof was placed on the appellants, they first produced the Patwari of the village Baddo as PW-1, who in his examination-in-chief clearly stated that to the east of the land of appellant was Ghulam Rasool's commercial land, to the west was bypass road (which was Sagian Bridge Road), to the north was the Sheikhpura – Lahore Road, and to the south was the commercial area. This statement was not cross-examined, and thus, it will be deemed to have been admitted by the respondents.⁶ Another important witness produced by the appellants to determine the kind of land was a Civil Engineer who was also a professional property evaluator, named Muhammad Zaheer Minhas who appeared as PW-4. He stated in his examination-in-chief that the area was commercial and industrial and during cross-examination he told the same boundaries of the appellants' land as told by the Patwari (PW-1). It appears that at the trial, the Reference Court thought fit to ascertain the nature and use of the land through local investigation and in furtherance of this object issued a commission to Abdul Majeed Kausar, Advocate (CW-1) directing him to make an investigation and to report thereon. This approach was very pertinent, and we would like to emphasize here that in such like cases the Court should bear in mind that under Article 24 of our Constitution, the landowner has a fundamental right to get fair and just compensation for the land acquired, and must, therefore,

Province of Punjab through Land Acquisition Collector and another v. Begum Aziza [2014 SCMR 75]

⁶ Hafiz Tassaduq Hussain v. Lal Khatoon and others [PLD 2011 SC 296]
Farzand Ali and another v. Khuda Bakhsh and others [PLD 2015 SC 187]

take all possible steps to protect the landowner from denial of that right, and to do so the law does not restrict it to merely rely on the evidence of the parties, but obliges it to exercise its suo motu powers under Order XXVI, Rule 9 CPC and, to obtain the Commission's report on the matters relating to the location, type and use of the land acquired and its market value. We see that in the present case to fulfil the above dictates of a fair trial, and for the compliance of the order of the Court, the Commission visited the site, prepared a site plan, recorded the statement of the parties and witnesses, and prepared his report stating that the land of the appellants was of very valuable and commercial nature and situated in the factory area. The Local Commissioner returned his report (Ex.C-1) and the evidence (Ex.C-2) taken by him to the Court appearing as CW-1. Needless to state here that per Order XXVI Rule 10 CPC the report of the Commissioner together with the evidence recorded by him was evidence in the suit and formed part of the record. There is also no denying that Commissioner's integrity and carefulness was unquestioned, his careful and laborious execution of task was proved by his report, and he had not blindly adopted the assertion of either party, and thus, it was not safe for the Court to disregard it or interfere with the result of a careful local investigation as to the use and location of the land acquired.⁷ That being so and considering that the said evidence having gone unrebutted from the respondent's side, the same is sufficient on the strength of which we can justifiably return our findings that the observation of the Division Bench of the High Court that the appellants could not prove that their land was itself

⁷ Chadan Mull Indra Kumar and others v. Chiman Lal Girdhar Das Parekh and another [AIR 1940 PC 3]

commercial, was not correct, for, it escaped its consideration that the land could not be assessed by reference to its use at the time of acquisition but by reference to the possible use in future. This means that the landowner cannot be punished for not using the land in a certain way. We would, therefore, hold that notwithstanding the absence of evidence regarding the use of land at the time of acquisition, it had become commercial by virtue of being situated in a commercial area.

9. We may now consider what should be the proper compensation for the appellants' land. We find that notices (Ex.A.5) under section 9 of the Act were issued to the appellants, and pursuant thereto, they appeared before the LAC and stated that their land was of commercial/industrial kind and demanded compensation at the rate of Rs.70,000/- per marla, but on the contrary, the LAC considered their land as agricultural and fixed the compensation at Rs.1200/- per marla. It would be apposite to state here that in the circumstances we cannot rely on the report (Ex.C-1) of the Commission which states that the value of the appellants' land at the time of acquisition was Rs.125,000/- per marla because section 25(1) of the Act provides that the amount awarded to the landowner by the Court shall not exceed the amount so claimed, meaning thereby, the amount to be awarded to the appellant cannot exceed Rs.70,000/- per marla.⁸ Since, in the present case, we have come to the conclusion that the appellants' land was of a commercial nature, the compensation has to be determined accordingly, and about this, our attention has been

⁸ Hyderabad Development Authority and another v. Karam Khan Shoro [1985 SCMR 45]

Land Acquisition Officer and Assistant Commissioner, Hyderabad v. Gul Muhammad through legal heirs [PLD 2005 SC 311]

drawn to the letter No.1039-95/40-S-IV dated 8th of January, 1996 of the Board of Revenue, Punjab (Ex.A.8), in which the rate of commercial land of village Baddo has been fixed at Rs.40,000/- per marla. There is nothing on record nor was it submitted during the arguments that anyone was paid more than Rs.40,000/- per marla for the commercial land of Baddo village, so balancing the interest of the appellants with the public interest, we are satisfied that the same rate should be for the land of the appellants, and we accordingly fix it as doing so would also give equal treatment to the landowners of commercial land acquired.

10. Accordingly, we allow this appeal in part and enhance the compensation awarded from Rs.1200/- per marla to Rs.40,000/- per marla. The appellants will be entitled to all statutory benefits as already awarded by the Lahore High Court. The judgment and decree dated 8th of October, 2013 issued by the Division Bench of the Lahore High Court are hereby modified in the above terms. There shall be no order as to costs.

11. Above are the reasons of our short order of even date.

JUDGE

JUDGE

ISLAMABAD
29.11.2022
APPROVED FOR REPORTING
Hashmi

JUDGE