

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT:

MR. JUSTICE MUNIB AKHTAR

MR. JUSTICE SAYYED MAZAHAR ALI AKBAR NAQVI

CIVIL APPEAL NO. 2619 OF 2016

(On appeal against the judgment dated 08.09.2016 passed by the Peshawar High Court, D.I. Khan Bench in RFA No. 103-D/2013)

WAPDA through Chairman and others

... Appellants

Versus

Alam Sher and others

...Respondent(s)

For the Appellants:

Syed Abid Hussain Shah, ASC
Syed Rifaqat Hussain Shah, AOR

For the Respondents:

Mr. Anwar Awan, ASC

Date of Hearing:

28.03.2023

JUDGMENT

SAYYED MAZAHAR ALI AKBAR NAQVI, J.- Through this appeal under Section 54 of the Land Acquisition Act, 1894, the appellants have assailed the judgment dated 08.09.2016 passed by the learned Single Judge of the Peshawar High Court, D.I. Khan Bench whereby the Regular First Appeal filed by the appellants was dismissed and the order of the learned Judge Land Acquisition, D.I. Khan dated 29.06.2013 was upheld.

2. Briefly stated the facts of the case are that the appellants acquired the land of the respondents for construction of F.C. Sherana Drain CRBIP Stage-III, Wapda, D.I. Khan. The District Collector/Deputy Commissioner, D.I. Khan issued notification on 18.11.1996 under Section 4 of the Land Acquisition Act, 1894, which was published in the official gazettee on 18.02.1997. Subsequently, the Award No. 80 was issued on 11.08.2003 and the compensation was announced as Rs.3328.20/- per kanal. The respondents filed Objection Petition under Section 18 of the

Land Acquisition Act, 1894 seeking enhancement of the compensation amount. The matter was ultimately taken up by the Senior Civil Judge, D.I. Khan as Referee Judge and vide judgment and decree dated 08.04.2010, the learned Referee Court enhanced the compensation amount from Rs.3328.20/- per kanal to Rs.10,282.40/- per kanal along with 15% compulsory acquisition charges and 6% simple interest. The respondents challenged the said judgment and decree before the learned Peshawar High Court, D.I. Khan. The learned High Court vide its order dated 13.05.2013 accepted the appeal filed by the respondents and remanded the matter back to the learned Referee Court with a direction to appoint local commission to ascertain the fair and actual market value of the land and thereafter decide the case afresh. In post-remand proceedings, the learned Judge Land Acquisition/Referee Court enhanced the compensation amount from Rs.10,282.40/- per kanal to Rs.25000/- per kanal along with 15% compulsory acquisition charges and 6% simple interest on the difference from date of possession till final recovery of the amount, minus the amount, if any, already paid to the respondents. Being aggrieved, the appellants filed RFA No. 103-D/2013 before the learned Peshawar High Court but the same has been dismissed vide impugned judgment. Hence, this appeal under the provisions of Land Acquisition Act, 1894.

3. At the very outset, learned counsel for the appellants contended that the compensation of the acquired land was rightly fixed in the Award dated 11.08.2003 keeping in view the nature of the land, which is adequate and needs no interference. Contends that the Local Commission did not place on record any documentary evidence and solely based its findings on the oral evidence, which is not warranted under the law. Contends that pursuant to an amendment in Section 23 of the Land Acquisition Act, 1894, which was made in the year 2001, the compensation has to be determined according to the market value of the land on the date of taking possession of the land. Contends that the possession of the land was taken on 28.02.2002, therefore, the compensation ought to have been awarded according to that date. Lastly

contends that the impugned judgment is against the law, facts and record of the case, therefore, the same may be set at naught.

4. On the other hand, learned counsel for the respondents defended the impugned judgment by stating that the learned High Court has passed a well reasoned judgment, which is based on correct appreciation of the evidence available on the record, therefore, the same needs no interference.

5. We have heard learned counsel for the parties at some length and have perused the available record with their able assistance.

6. There is no denial to this fact that the order of the learned Peshawar High Court dated 13.05.2013 by which the matter was remanded back to the learned Referee Court with a direction to appoint local commission to ascertain the fair and actual market value of the land was neither challenged by the appellants nor by the respondents before this Court. Therefore, the same had attained finality. We have perused the report of the Local Commission dated 24.06.2013. The report shows that during the spot inspection, the concerned Patwari Halqa, Patwari CRBC and Moharrir of the Court were also accompanying the Local Commissioner. The report depicts that different mutations of the same *mouza* pertaining to years 2001 to 2003 were produced before the Local Commission. Those mutations were of the same time when the acquisition process was finalized and the land of the respondents was taken into possession i.e. 28.02.2002. The same were also made part of the record. During spot inspection, the statements of different landlords and property dealers of the same vicinity were also recorded, which were also made part of the record. It was also noticed that the land of the respondents was bifurcated in two blocks and in one block the land was irrigated through outlet privately built by the respondents over drain, without which, even after acquisition, irrigation of the acquired land was almost impossible. Two years average for the period 01.01.2002 to 01.01.2003 were also taken on record while determining the fair market value of the land of the respondents. After taking into consideration the documentary

evidence in the shape of mutations, two years average, bifurcation of the acquired land in two different blocks and oral statements of the landlords & property dealers, which were also reduced into writing, and disturbance of irrigation sources of the acquired land, the Local Commissioner came to the conclusion that the fair market value of the land was Rs.25000/- per kanal. Mr. Muhammad Ghazanfar Ali, Advocate, who was appointed Local Commissioner also appeared before the learned Trial Court and recorded his statement as CW-1. He was put to lengthy cross-examination by the appellants but no deficiency in his report could be brought on record. Mode of determining the compensation of acquired land is provided in Section 23 of the Land Acquisition Act, 1894, which depicts that the landowner is entitled to compensation and not just market value, as such, any loss or injury occasioned by its severing from other property of the landowner, by change of residence or place of business and loss of profits are also relevant factors. While conducting said exercise, oral evidence, if found credible and reliable can also be taken into consideration. The requirement of Article 71 of the Qanun-e-Shahadat Order, 1984, squarely requires that it should be produced directly if the same is in oral form. We have noticed that in the present case, the oral evidence came from a source, which no doubt can be termed as direct, because the other landowners and property dealers were of the same vicinity and were fully aware of the market/potential value of the land. Even otherwise, the oral statements of the other landowners and property dealers of the same vicinity had been corroborated with other evidence produced on record, such as, **(i)** certain mutations in respect of the same mouza, **(ii)** two years average for the period 01.01.2002 to 01.01.2003 (Ex.PW-3/25), **(iii)** aks shajra kishtwar, & **(iv)** khasra girdawri (Ex.PW-3/2), which revealed that there was cultivation in the suit property up to the year 2004. Learned counsel for the appellants had argued that pursuant to an amendment in Section 23 of the Land Acquisition Act, 1894 by the province of KPK, the compensation has to be determined according to the market value of the land on the date of taking possession of the land. Before proceeding

further, it would be in order to reproduce the relevant provision of Land Acquisition Act, 1894, which reads as under:-

“23. Matters to be considered in determining compensation.— (1) In determining the amount of compensation to be awarded for land acquired under this Act, the Court shall take into consideration—

first, the market-value of the land at the date of the publication of the notification under section 4, sub-section (1).

7. This provision stands amended by the NWFP Amendment Ordinance XVII of 2001 in the following terms:-

“first, the market value of the land on the date of taking possession of the land..”

8. Admittedly, this question was not raised before the lower forums. This is settled law that this Court in its appellate jurisdiction would generally not determine any ground or question of fact that had not been pleaded or raised by the parties at any stage before the Referee Court or the High Court and has been for the first time raised in appeal before this Court. Reliance is placed on Sarhad Development Authority NWFP Vs. Nawab Ali Khan (2020 SCMR 265), Ali Khan Vs. Soomar (1968 SCMR 565) & Malik Ghulam Hussain Vs. Haji Muhammad Hayat (PLD 1971 SC 573). In Sarhad Development Authority NWFP Vs. Nawab Ali Khan (2020 SCMR 265), this Court considered the effect of amendment in Section 23(1) of the Land Acquisition Act, 1894, made by the Province of Khyber Pakhtunkhwa and held as under:-

“11. What is interesting to note is that, unlike Khyber Pakhtunkhwa, in the other three provinces, section 23(1) of the Act has not been amended, and the "market value" of the land, as originally enacted, is determinable on basis of the value prevailing on the date of gazette publication of the notification under section 4(1) *ibid*. Thus, it is crucial to note that since 2001, when the Amendment was introduced in the Act, it is only in Khyber Pakhtunkhwa that, the determining criteria for deciding the "market value" of the property proposed to be acquired within the contemplation of section 23(1) has been the prevalent value of land on the date of taking possession of the said property, and not the date when the notification under section 4(i) *ibid* was published in the official gazette.

17. Thus, in view of the above, it would be safe to state that not only in Khyber Pakhtunkhwa, but even in other three provinces, where

section 23(1) of the Act has not been amended, it is noted that: firstly, the value of similar land in the adjoining khasras and mauzas to the acquired land was taken into consideration for determining the amount of compensation to be awarded to owners of the acquired property; and secondly, the escalation of price of land during the acquisition period till its culmination in issuance of the award could be taken into consideration; and thirdly, for assessing the "potential value" of the acquired land, the most critical factor, which is to be kept in mind is the future utility of the proposed acquired land, keeping in view the availability of facilities for its said utilization; and finally, there can be no mathematical formula set for the determination of the compensation due to the landowners for the compulsory acquisition of their property. And thus, various factors depending on the circumstances of each case would cumulatively form the basis for determining the "market value" of the acquired land within the contemplation of section 23(1) of the Act."

(Emphasis is supplied)

9. For what has been discussed above, we are of the view that the learned courts below while passing the judgments have taken into consideration all the relevant factors, as mentioned in Sarhad Development Authority supra case, which being well reasoned do not warrant interference. The compensation enhanced by the learned Referee Court, which was upheld by the learned High Court, was in consonance with the law laid down by this Court as well as with Section 23 of the Land Acquisition Act, 1894. Consequently, this appeal having no merit is dismissed.

JUDGE

JUDGE

Islamabad, the
28th of March, 2023
Approved For Reporting
Khurram