

8/23

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

**PRESENT:**

MR. JUSTICE IJAZ UL AHSAN

MR. JUSTICE MUNIB AKHTAR

MR. JUSTICE SAYYED MAZAHAR ALI AKBAR NAQVI

(AFR)

**CIVIL APPEALS NO.140-L, 141-L & 142-LOF 2015**

(Against the judgments of the Lahore High Court,  
Lahore all dated 20.01.2015 passed in Regular First  
Appeals No.70, 71 & 122 of 2002)

National Highway Authority

...Appellant(s)

**VERSUS**

Rai Ahmad Nawaz Khan etc.  
(in CA No.140-L/2015)

Fayyaz Muhammad Khan  
(in CA No.141-L/2015)

Ch. Ishan ul Haq Bhatti  
(in CA No.142-L/2015)

...Respondent(s)

For the Appellants: Malik Muhammad Tariq Rajwana, ASC  
(In all three CAs)

For the Respondents: *Nemo.*

Date of Hearing: 14.11.2022

**JUDGMENT**

IJAZ UL AHSAN, J.- Through this single judgement, Civil Appeals No.140-L to 142-L of 2015, bearing similar facts and similar questions of law, are being decided together.

2. The National Highway Authority (the "Appellant") has, by way of these instant Appeals, challenged three



different judgements passed by the Lahore High Court, Lahore (the "Impugned Judgements"). All three impugned judgements are dated 20.01.2015. Through the impugned judgements, the High Court has maintained the judgements and decrees passed by the Senior Civil Judge, Sahiwal (the "Referee Court") in respective reference petitions filed by the Respondents and has held that the Respondents were entitled to interest on excess compensation from the date possession of the land subject matter of the acquisition proceedings was taken from the Respondents till the date of payment of excess compensation. The High Court has also modified the rate of interest on the solatium from 6% *per annum* to 8% *per annum*.

3. Briefly stated, the facts giving rise to this *lis* are that on 16.06.1987, for the purposes of constructing the National Highway (Section Mian Channu to Sahiwal), the Land Acquisition Collector of the National Highway Authority initiated the process of acquisition of the land of the respondents by issuing notifications under Section 4 of the Land Acquisition Act of 1894 (the "LAA 1894") all of which were dated 16.06.1987. Awards notified under Section 11 of the Land Acquisition Act of 1894 were announced in 1994. The Respondents, by way of three independent reference petitions, challenged the quantum of compensation granted to them under the said awards. The three reference petitions were referred to the Referee Court by the Land Acquisition Collector and, subsequently, the Referee Court enhanced the



quantum of compensation in each reference petition. All three judgements and decrees of the Referee Court were assailed by the Appellant before the High Court. The High Court, through the impugned judgements, upheld the findings of the Referee Court but modified the judgments and decrees of the Referee Court in the terms noted above. The impugned judgements are now being assailed before this Court by way of these Appeals.

4. The learned counsel for the Appellant contends that the Referee Court had failed to appreciate the material available on record when it enhanced the quantum of compensation in the respective reference petitions before it. It is submitted that the High Court has misconstrued the criterion laid down in Section 23 & 24 read with the Punjab Acquisition Rules of 1983. He maintains that there has been mis-reading and non-reading of evidence and the Referee Court has erroneously concluded that the quantum of compensation, as determined by the Land Acquisition Collector, was below the market price. He maintains that, in fact, the Collector had specifically set the quantum of compensation at the one-year market-average price for the period between 1993-94. Moreover, he contends that the High Court had acted arbitrarily and without jurisdiction when it imposed compound interest at the rate of 8% *per annum* on the excess compensation instead of maintaining the 6% simple interest which had already been granted in terms of Section 28 of the LAA 1894. Lastly, he contends that the



imposition of interest under Section 34 goes against a judgement passed by the Shariat Appellate Bench of this Court in Muhammad Aslam Khakhi vs. Muhammad Hashim (2000 PLD SC 225) in which a judgement passed by the Federal Shariat Court declaring usury/riba forbidden and repugnant to the injunctions of Islam was upheld. He prays that the judgements and decrees of the lower fora be set aside.

5. We have heard the learned counsel for the parties at length and gone through the case record with their assistance.

6. Before we touch the merits of the arguments submitted in the instant Appeals, it is prudent to first go over all the relevant provisions of the LAA 1894 that are necessary for the purposes of deciding these Appeals. Section 23 of the LAA 1894 lays down a criteria for how a Referee Court is to determine compensation. The same is reproduced below for ease of reference:-

*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).*

*Explanation - For the purpose of determining the market-value, the Court shall take into account transfer of land similarly situated and in similar use. The potential-value of the land to be acquired if put to*



*a different use shall only be taken into consideration if it is proved that land similarly situated and previously in similar use has, before the date of the notification under sub-section (1) of section 4, been transferred with a view to being put to the use relied upon as affecting the potential value of the land to be acquired:*

*Provided that-*

*(i) if the market-value has been increased in consequence of the land being put to a use which is unlawful or contrary to public policy that use shall be disregarded and the market-value shall be deemed to be the market-value of the land if it were put to ordinary use; and*

*(ii) if the market-value of any building has been increased in consequence of the building being so overcrowded as to be dangerous to the health of the inmates, such overcrowding shall be disregarded and the market-value shall be deemed to be the market-value of the building if occupied by such number of persons only as can be accommodated in it without risk of danger to health from overcrowding.*

*Secondly, the damage sustained by the person interested, by reason of the taking of any standing crops or trees which may be on the land at the time of the Collector's taking possession thereof;*

*Thirdly, the damage (if any) sustained by the person interested, at the time of the Collector's taking possession of the land, by reason of severing such land from his other land;*

*Fourthly, the damage (if any) sustained by the person interested, at the time of the Collector's taking possession of the land, by reason of the acquisition injuriously affecting his other property, movable or immovable, in any other manner, or his earnings;*

*Fifthly, if, in consequence of the acquisition of the land by the Collector, the person interested is compelled to change his residence or place of business, the reasonable expenses (if any) incidental to such change; and*

*Sixthly, the damage (if any) bona fide resulting from diminution of the profits of the land between the time of the publication of the declaration under section 6 and the time of the Collector's taking possession of the land.*

*(2) In addition to the market-value of the land as above provided, the Court shall award a sum of fifteen per centum on such market-value, in*



*consideration of the compulsory nature of the acquisition, if the acquisition has been made for a public purpose and a sum of twenty-five per centum on such market-value if the acquisition has been made for a Company.*

A bare perusal of Section 23 shows that according to the LAA 1894, there are six factors that need to be taken into consideration by a Referee Court in determining compensation for land acquired under the LAA 1894. While the market value of the land acquired at the time of possession may be one of the matters that a Court must take into consideration in determining the quantum of compensation. Instead, the other five considerations, from their very text, imply that whenever a Court is to consider the quantum of compensation, it must duly consider the loss being caused to property owned by the Federal or Provincial Government's exercise of eminent domain under the LAA 1894. In essence, whenever a government, be it Federal or Provincial or any other entity acting on behalf of the state exercises the power of eminent domain under the LAA 1894, property owners are deprived of their constitutionally-guaranteed proprietary rights under Article 24 of the Constitution of Pakistan, 1973. It is only fair and just that the persons, who are affected by the exercise of eminent domain, are at the centre of consideration when it comes to determining the quantum of compensation. Similarly, section 28 of the LAA 1894 deals with interest on excess compensation. The same is reproduced for ease of reference:-



28. Collector may be directed to pay interest on excess compensation.

*If the sum which, in the opinion of the Court, the Collector ought to have awarded as compensation is in excess of the sum which the Collector did award as compensation, the award of the Court may direct that the Collector shall pay compound interest on such excess at the rates of eight per centum per annum from the date on which he took possession of the land to the date of payment of such excess into Court.*

*Provided that in all cases where the Court has directed that Collector shall pay interest on such excess at the rate of six per centum from the date on which possession was taken and the payment of compensation or a part thereof has not been made up to the commencement of the Land Acquisition (West Pakistan Amendment) Act, 1969, the rate of compound interest on such excess on balance shall be eight per centum.*

(Underlining is ours)

A bare reading of Section 28 shows that whenever a Court is satisfied that the quantum of compensation announced under an award is not adequate after consideration of the factors mentioned in Section 23 *ibid*, the Court may direct the Collector to pay interest on the difference (of the amount awarded by the Land Acquisition Collector and the Referee Court) if it is of the opinion that the quantum of compensation determined by the Land Acquisition Collector is insufficient. In that eventuality, the Court is required to direct payment of compound interest at the rate of 8 per cent per annum on the difference, as noted above.

Section 34 of the LAA 1894 deals with payment of interest.

The said section reads as follows:-



34. *Payment of interest.*

*When the amount of such compensation is not paid or deposited on or before taking possession of the land, the Collector shall pay the amount awarded with compound interest at the rate of eight per centum per annum from the time of so taking possession until it shall have been so paid or deposited:*

*Provided that any waiver of the above right by the land owner shall be void and he shall be entitled to the said interest notwithstanding any agreement to the contrary.*

7. Coming to the merits of the case at hand, we have examined the impugned judgements and found ourselves in agreement with the reasoning adopted by the High Court in upholding the findings of the Referee Court. Both the Referee Court as well as the High Court have elaborately examined and appreciated the record as well as the relevant provisions of the LAA 1894 and recorded cogent and valid reasons for enhancing and upholding the quantum of compensation awarded to the Respondents respectively.

8. It is important to state that the intention of the legislature behind Section 23 was that whenever a Court is determining the quantum of compensation to be awarded to those who had been subjected to exercise of the power of eminent domain under the LAA 1894, it needs to be considerate and sympathetic towards the claims made by those whose property was compulsorily taken by the state against their will for a public purpose. Section 23 allows a Court to compensate such landowners for giving up their properties for the greater good, on the doctrine of individual



rights must give way to the greater public interest (*salus populi suprema lex esto*).

9. To answer the argument made by the Learned Counsel for the Appellant that the quantum of compensation awarded to the Respondents by the Land Acquisition Collector, NHA was fair on the ground that the awards had been passed keeping in view the one-year market average of the subject land, it is important to note that basing compensation on a one-year average of the acquired land would defeat the intent of the legislature behind enacting Section 23 of the LAA 1894. In the case of Pakistan Brumah Shell Ltd. vs. Province of NWFP & 3 others (1993 SCMR 1700), this Court elaborately dealt with this question and held that:-

*6. We are not persuaded to strike off the award on the rectitude of these submissions. Section 23 makes mention of various matters to be considered in determining the compensation. One of such factors enumerated therein is that the date relevant for determination of market value is the date of the notification under section 4. Not unoften the market value has been described as what a willing purchaser would pay to the willing seller. It may be observed that in assessing the market value of the land, its location, potentiality and the price evidenced by the transaction of similar land at the time of notification are the factors to be kept in view. One year's average of the sales taking place before the publication of the notification under section 4 of similar land is merely one of the modes for ascertaining the market value and is not an absolute yardstick for assessment. From the perusal of the record we find that there are two*



"Makhloot Ausat Punjsala" on the land acquisition file; one for village Bhabhi for the period from 21-7-1985 to 21-7-1986 comprising 5 transactions yielding an average sale price of Rs. 9,000 per Kanal only; and the other is for village Taru covering the period from 9-7-1984 to 9-7-1985, but only one transaction is mentioned in it; of which the sale price comes to Rs. 24,280 per Kanal. It is significant to point out that there is nothing on the land acquisition file to give any indication regarding the location, potentiality and other characteristics of the different pieces of land included in these "Aust Yaksala". Neither their distance from the land in question is ascertainable nor it is known as to whether or not these are possessed of similar advantages and capable of prospective use as the land acquired by the appellant. The "Aks Shajra" of the land of the appellant amply demonstrates that it is a well shaped, one rectangular compact block having a fairly wide frontage and on one side, it abuts on the railway line. The Land Acquisition Collector's observation in the award that this land is of highest value and situate near the National Highway, for the purposes of assessment of its market value is of paramount importance. We have glanced through the MEO's letter dated 1-11-1986 referred to in the award under which an area measuring 6.065 acres situate in village Taru-Bhabhi was sold to Pakistan State Oil Company for a consideration of Rs. 48,00,000. It is pertinent to point out that all the Oil Companies were directed by the Provincial Government to shift their storage depots from Peshawar City and it was in this connection that the Pakistan State Oil Company purchased a piece land in village Taru-Bhabhi. It seems to us that the locality being lucrative the appellant also chose to acquire land therein. In these circumstances, the reliance of the Land Acquisition Collector on the said



*sale transaction for determination of the market value of the land is not open to exception.*

(Underlining is ours)

10. As far the contentions of the Appellant that the High Court has raised the interest rate under Section 28 of the LAA 1894 from six percent to eight percent is concerned, we note that prior to the amendment in the LAA 1894 by virtue of the Land Acquisition (West Pakistan) Amendment Act of 1969, indeed the maximum interest rate that a Court could impose under Section 28 was six percent. However, post-amendment, the said section now provides that once the Court is satisfied that legal and factual grounds exist to enhance the rate of compensation, it is obligated to award interest on the differential at the rate of eight percent. The contention raised by the Learned Counsel for the Appellant therefore lacks substance. The said section does not provide any discretion to the Referee Court to vary the rate of interest. The High Court has therefore correctly modified the decree of the Referee Court to the extent that it has enhanced the rate of interest on excess compensation from six percent to eight percent in line with the provision of Section 34 of the LAA 1894. The Learned Counsel for the Appellant has failed to point out any illegality or jurisdictional defect in the said modification by the High Court.

11. Insofar as the contention of the Learned Counsel for Appellant that the imposition of interest under Section 34 of the LAA 1894 goes against the *dicta* of this Court's Shariat



Appellate Bench is concerned, the imposition of interest in terms of Section 34 is not linked to whether or not the quantum of compensation has been enhanced in terms of Section 28 but is instead a standalone provision. The legislature has, in its wisdom, ensured by way of Section 34 that if the state fails to compensate citizens whose land has been acquired by means of an exercise of eminent domain, the state shall be liable to suffer penal consequences in the form of imposition of compound interest until such time that the entire amount of compensation has been deposited and ready to be disbursed to the citizens affected by the acquisition. The interest imposed in terms of Section 34 is beneficial and not detrimental to the public at large and is not by any stretch of the language exploitative (*as Riba is*) since it ensures that if the state wishes to exercise eminent domain, it must adequately compensate citizens expeditiously and failure would entail penal consequences.

12. It is important to clarify that unlike *riba*/interest that arises/accrues in a financial transaction between parties, the word "interest" in Section 34 of the LAA 1894 is not interest *stricto sensu*. The interest which is imposed on the State or land-acquiring entity is awarded to the affectees of compulsory acquisition by way of compensation and where compensation originally awarded is found to be inadequate and is later enhanced by a competent forum, to cover the property owner by way of compensation for the time lag between when the property was taken and the time that he



receives compensation for the same. Section 34 is therefore compensatory in nature and allows the Courts to cover that property owner (as far as possible) for the loss that he may have suffered by reason of compulsory acquisitions of his property and delayed payment of compensation. Unlike a financial transaction where the parties enter into transactions of their freewill, an exercise of compulsory acquisition cannot in any sense be construed as either a consenting transaction between the parties involved (i.e. the State and the affected citizens) nor can it be assumed that the State and the affected citizens are equal in terms of bargaining power. The power of compulsory acquisition is, after all, unilaterally exercised by the government and no consent from the affected property owners is required under the law. Even otherwise, this Court in the case of Sheikh Muhammad Ilyas Ahmed and others vs. Pakistan thr. Secretary, Ministry of Defence & others (PLD 2016 SC 64) has held that:-

2. At the outset, learned ASC for the appellants has made a statement at the bar that in view of announcement of judgment by this Court today in connected Civil Appeals Nos.1120 to 1124 of 2014, the appellants are not pressing these appeals for seeking further enhancement in the amount of compensation, but only to the extent of non awarding of interest on the amount of compensation, as mandated under section 34 of the Land Acquisition Act, 1894 (in short "the Act of 1894"), which has been withheld for no valid reasons.

3. A bare reading of above referred provision of the Act of 1894 reveals that awarding of such interest is



*statutory in nature, which cannot be withheld. Thus, the appellants are fully entitled for grant of compound interest at the rate of eight percent per annum from the date of taking possession of acquired land till the date of payment of its compensation, but for no valid reasons, such relief has escaped the sight of the two Courts below.*

The benefit of Section 34 is statutory in nature and its benefit cannot be withheld from property owners on the ground that the benefit of Section 34 of the LAA 1894 constitutes riba and goes against the injunctions of Islam. The said Section in our opinion is meant to ensure that the State compensates citizens whose lands have been acquired through compulsory acquisition as soon as possible and any delay in compensating affected citizens would entail penal consequences. Whilst riba/usury may be predatory in nature, the interest under Section 34 of the LAA 1894 is beneficial since it ensures that property owners are compensated in a timely manner.

13. The learned ASC for the Appellant has failed to point out any illegality, jurisdictional defect or misreading and non-reading of evidence in the concurrent findings recorded by both the Courts below. The Learned Counsel has also been unable to point out any illegality in the modifications made by the High Court to the judgments and decrees of the Referee Court. The impugned judgements are even otherwise well-reasoned and have considered all the relevant laws on the subject. The Courts below have correctly



applied the law on to the subject in the peculiar facts and circumstances of the case before it. In view of the above, the impugned judgements of the Lahore High Court, Lahore dated 20.01.2015 are upheld. All these appeals are accordingly dismissed. No order as to costs.

ISLAMABAD, THE  
14<sup>th</sup> of November, 2022  
Khalil Sahibzada, LC\*/-

~~NOT APPROVED FOR REPORTING\*~~