

94/23

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

**PRESENT:**

Mr. Justice Umar Ata Bandial, C.J.  
Mr. Justice Sayyed Mazahar Ali Akbar Naqvi

(A.F.R.)

**Civil Petitions No.2594, 2816, 2817 and 2987 of 2020**  
(Against the judgment dated 14.09.2020 of the Peshawar High Court, Peshawar passed in FAO No.132-P, 131-P, 133-P & 134-P/2019)

Chairman, Sarhad Development Authority PIA, Peshawar and another

**...Petitioner(s)**  
(In all cases)

**Versus**

Tafoor-ur-Rehman  
Adala Khan etc.  
Qazi Manzoor Ali etc.  
Mst. Bashtari etc.

In C.P.2594/2020  
In C.P.2816/2020  
In C.P.2817/2020  
In C.P.2987/2020

**...Respondent(s)**

For the Petitioner(s): Mr. Dil Muhammad Khan Alizai, ASC  
Syed Rifaqat Hussain Shah, AOR  
(In all cases)

For the Respondent(s): Not represented  
(In all cases)

Date of Hearing: 06.07.2023

**ORDER**

**Umar Ata Bandial, C.J.-** The learned counsel for the petitioners has contended that the amount of compensation reflects the market value of the property acquired. The calculation of the additional amount under Section 28 of the KP Land Acquisition Act, 1894 ("**Act**") bears nexus to the market value and not to the compulsory acquisition charges, therefore, the calculation envisaged by the impugned judgment is erroneous.

2. The question in issue before us is whether the award of a sum of 15% of market value of the property compulsorily acquired by the State to the owners thereof falls within the



meaning of the expression compensation or not. The controversy arises from the entitlement claimed by the respondents to payment of interest/excess amount under Section 28 of the Act. The provisions of Section 28 of the Act as originally framed and as subsequently amended are reproduced below:-

**"Land Acquisition Act, 1894**

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 with the Collector did award as compensation; the award of the Court may direct that the Collector shall pay interest on such excess at the rate of six 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.

**West Pakistan Amendment of 1969**  
**(applicable to all the provinces including Punjab)**

By Land Acquisition (W.P. Amendment) Act, III of 1969.

In Section 28, for the words "interest on such excess at the rate of six per centum" the words "compound interest on such excess at the rate of eight per centum" shall be substituted; and the following proviso be added at the end:

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 or balance shall be eight per centum.

**N.W.F.P. Amendment of 1983 By the**  
**Land Acquisition (N.-W.F.P. Amd.)**  
**Ordinance, V of 1983.**

For Section 28, the following section shall be substituted:



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 simple interest on such excess at the rate of six 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.

**N.W.F.P. Amendment of 2001 By the NWFP Land Acquisition (Amendment) Ordinance, 2001**

In section 28, for the words "pay simple interest on such excess at the rate of six 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", the words "deposit with the Court such amount as determined by it" were substituted."

3. There is no dispute between the parties about the relevance and application of Section 28 of the Act to the facts of the present case because the market value of the property acquired was increased by the Referee Court from the amount fixed by the Collector in his award. The only question is whether the amount to be deposited with the court in terms of Section 28 which bears reference to merely the market value of the property as calculated under Section 23(1) of the Act or also be calculated with reference to additional amount of 15% of the said market value awarded by way of compulsory acquisition charges under Section 23(2) of the Act. In other words the issue before the court is whether amount granted under Section 23(2) of the Act qualifies as compensation paid to the land owners.

4. The meaning of the word "compensation" in the context of the Land Acquisition Act, 1894 includes many factors for assessing the market value of the property acquired. These



factors as already noted are contained in Section 23(1) of the Act which have been elaborated from time to time by judgments of this Court. It is appreciated that the right to acquire, hold and dispose of property subject to the Constitution and any reasonable restriction imposed by law in the public interest is a fundamental right of every citizen under Article 23 of the Constitution. Article 24(1) of the Constitution guarantees that no person shall be deprived of his property save in accordance with law. Sub-article (2) of Article 24 of the Constitution further provides as follows:-

“24(2) No property shall be compulsorily acquired or taken possession of save for a public purpose, and save by the authority of law which provides for compensation therefor and either fixes the amount of compensation or specifies the principles on and the manner in which compensation is to be determined and given.”

The Constitution envisages compensation for private property that is compulsorily acquired by the State for a public purpose. Clearly compulsory acquisition of property means that it is being involuntarily forfeited from the owner thereof in favour of the State for a public purpose. Such involuntary deprivation of property itself is a crucial factor in the calculation of compensation to be awarded in consideration of such taking. The language of Section 23(2) of the Act addresses this aspect of the case squarely and awards an amount of 15% of the market value of the land as compensation for the said property being acquired compulsorily. In this respect the factors for determination of market under Section 23(1) of the Act have no application. Their only relevance is the ascertainment of market value upon which a 15% amount thereof is added to compensate the owner of the property for the forcible loss of his private property.



5. Consequently, the view expressed by the learned High Court on the aforesaid point to our minds is valid and legally correct. As a result, we find no ground to interfere with the impugned judgment. These petitions are, therefore, dismissed. Leave to appeal is refused.

Islamabad  
06/July 2023  
Not approved for reporting  
Waqas Naseer/\*