

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT:

MR. JUSTICE IJAZ UL AHSAN

MR. JUSTICE JAMAL KHAN MANDOKHAIL

MRS. JUSTICE AYESHA A. MALIK

CIVIL APPEALS NOS. 364-P,365-P/19, 368-P to 391-P, 393-P to 403-P, 405-P, 407-P/2019 & C.P.590-P/2019 AND CAs.409-P to 412-P/2019 AND CA.Nos. 04-P, 11-P,12-P,17-P,20-P,21-P/2020

(Against the judgments dated 17.06.2019, 26.7.2019, 18.11.2019, 10.2.2020 passed by the Peshawar High Court, Peshawar in R.F.A.267-P/2018, R.F.A.294-P/2017, R.F.A.167-P/2018, R.F.A.186-P/2017, R.F.A.18-P/2018, R.F.A.172-P/2018, R.F.A.173-P/2018, R.F.A.175-P/2018, R.F.A.176-P/2019, R.F.A.177-P/2018, R.F.A.178-P/2018, R.F.A.180-P/2018, R.F.A.20-P/2019, R.F.A.30-P/2019, R.F.A.31-P/2019, R.F.A.96-P/2019, R.F.A.168-P/2018, R.F.A.169-P/2018, R.F.A.170-P/2018, R.F.A.171-P/2018, R.F.A.179-P/2018, R.F.A.174-P/2018, R.F.A.93-P/2019, R.F.A.94-P/2019, R.F.A.95-P/2019, R.F.A.97-P/2019, R.F.A.180-P/2013, R.F.A.142-P/2017, R.F.A.249-P/2017, R.F.A.49-P/2019, R.F.A.59-P/2019, R.F.A.60-P/2019, R.F.A.61-P/2019, R.F.A.62-P/2019, R.F.A.72-P/2019, R.F.A.50-P/2019, R.F.A.131-P/2014, R.F.A.67-P/2014, R.F.A.72-P/2019, 12(2).P.24-P/2019 in R.F.A.36-P/2018, R.F.A.59-P/2019, R.F.A.71-P/2019, R.F.A.83-P/2019, R.F.A.63-P/2019, R.F.A.03-P/2018, R.F.A.98-P/2019, R.F.A.03-P/2018, RFA-92-P/2019, RFA-142-P/2013, RFA-143P/2013).

1.C.A.364-P/2019

Nawabzada Abdul Qadir Khan v. Land Acquisition Collector Mardan& others

2.C.A.365-P/2019

Mst. Parwar Sultana v. District Land Acquisition Collector/District Collector Mardan& others

3.C.A.368-P/2019

Vice Chancellor Abdul Wali Khan University Mardan v. Shams ul Qamar & others

4.C.A.369-P/2019

Vice Chancellor Abdul Wali Khan University Mardan v. Faqir Khan & others

5.C.A.370-P/2019

Vice Chancellor Abdul Wali Khan University Mardan v. Mst. Parwar Sultana & others

6. C.A.371-P/2019

Vice Chancellor Abdul Wali Khan University Mardan v.
Saifullah Khan & others

7. C.A.372-P/2019

Vice Chancellor Abdul Wali Khan University Mardan v.
Muhammad Yousaf & others

8. C.A.373-P/2019

Vice Chancellor Abdul Wali Khan University Mardan v.
Abdul Ghani & others

9. C.A.374-P/2019

Vice Chancellor Abdul Wali Khan University Mardan v.
Bakht Zamin Shah & others

10. C.A.375-P/2019

Vice Chancellor Abdul Wali Khan University Mardan v.
Muhammad Maqsood & others

11. C.A.376-P/2019

Vice Chancellor Abdul Wali Khan University Mardan v.
Ghulam Muhammad & others

12. C.A.377-P/2019

Vice Chancellor Abdul Wali Khan University Mardan v.
Waqar Ali & others

13. C.A.378-P/2019

Vice Chancellor Abdul Wali Khan University Mardan v.
Syed Afzal & others

14. C.A.379-P/2019

Vice Chancellor Abdul Wali Khan University Mardan v.
HazratWali& others

15. C.A.380-P/2019

Vice Chancellor Abdul Wali Khan University Mardan v.
Nasir Khan & others

16. C.A.381-P/2019

Vice Chancellor Abdul Wali Khan University Mardan v.
Hazrat Khan & others

17. C.A.382-P/2019
Vice Chancellor Abdul Wali Khan University Mardan v. Ihsanullah& others
18. C.A.383-P/2019
Vice Chancellor Abdul Wali Khan University Mardan v. Aminullah& others
19. C.A.384-P/2019
Vice Chancellor Abdul Wali Khan University Mardan v. Zahir Shah & others
20. C.A.385-P/2019
Vice Chancellor Abdul Wali Khan University Mardan v. Syed Amjid Ali & others
21. C.A.386-P/2019
Vice Chancellor Abdul Wali Khan University Mardan v. Shah Hussain Afridi & others
22. C.A.387-P/2019
Vice Chancellor Abdul Wali Khan University Mardan v. Ahmad Ali & others
23. C.A.388-P/2019
Vice Chancellor Abdul Wali Khan University Mardan v. Hizbullah& others
24. C.A.389-P/2019
Vice Chancellor Abdul Wali Khan University Mardan v. Mst. Nazuk Badan & others
25. C.A.390-P/2019
Vice Chancellor Abdul Wali Khan University Mardan v. Muhammad Naeem Khan & others
26. C.A.391-P/2019
Vice Chancellor Abdul Wali Khan University Mardan v. Sher Bakhta& others
27. C.A.393-P/2019
Vice Chancellor Abdul Wali Khan University Mardan v. Mst. Haleema& others

28. C.A.394-P/2019
Vice Chancellor Abdul Wali Khan University Mardan v. Faqir Khan & others
29. C.A.395-P/2019
Vice Chancellor Abdul Wali Khan University Mardan v. Mst. Parwar Sultana & others
30. C.A.396-P/2019
Vice Chancellor Abdul Wali Khan University Mardan v. Syed Masood ur Rehman & others
31. C.A.397-P/2019
Vice Chancellor Abdul Wali Khan University Mardan v. Ali Akbar & others
32. C.A.398-P/2019
Vice Chancellor Abdul Wali Khan University Mardan v. Naeem Shah & others
33. C.A.399-P/2019
Vice Chancellor Abdul Wali Khan University Mardan v. Sher Zada & others
34. C.A.400-P/2019
Vice Chancellor Abdul Wali Khan University Mardan v. Wali Khan & others
35. C.A.401-P/2019
Vice Chancellor Abdul Wali Khan University Mardan v. Hashim Khan & others
36. C.A.402-P/2019
Vice Chancellor Abdul Wali Khan University, Mardan v. Ayub Khan & others
37. C.A.403-P/2019
Vice Chancellor Abdul Wali Khan University, Mardan v. Ayub Khan & others
38. C.A.405-P/2019
Abdul Wali Khan University, Mardan through Chairman v. Mst. Qadarmana & others

39. C.A.407-P/2019
Land Acquisition Collector/District Collector, Mardan (now) Deputy Commissioner, Mardan & others v. Hashim Khan & others
40. C.P.590-P/2019
Vice Chancellor Abdul Wali Khan University Mardan & another v. Mst. Haleema & others
41. C.A.409-P/2019
Provincial Govt through DOR, mardan (Now) Deputy Commissioner Mardan & others v. Ali Akbar & others
42. C.A.410-P/2019
Secretary to Govt of KP, Higher Education Archives & Libraries Peshawar & others v. Abdul Sattar & another
43. C.A.411-P/2019
Govt. of K.P. through Coslector Mardan (Now) Deputy Commissioner Mardan & others v. Redi Gul & others
44. C.A.412-P/2019
Land Acquisition Collector, Mardan (now) Deputy Commissioner, Mardan & others v. Nawabzada Abdul Qadar Khan & others
45. C.A.4-P/2020
Mst. Parwar Sultana v. District Land Acquisition Collector/District Collector, Mardan and others
46. C.A.11-P/2020
Vice Chancellor Abdul Wali Khan University, Mardan v. Arshaf Khan and others
47. C.A.12-P/2020
Vice Chancellor Abdul Wali Khan University, Mardan v. Mst. Parwar Sultana and others
48. C.A.17-P/2020
Vice Chancellor Abdul Wali Khan University, Mardan v. Mst. Muhammadia and others
49. C.A.20-P/2020
Vice Chancellor Abdul Wali Khan University, Mardan v. Mst. Sher Bakhta, Widow and others

50. C.A.21-P/2020

Vice Chancellor Abdul Wali Khan University, Mardan v.
Hasham Khan and others

...Appellant(s)/Petitioner(s)/Respondent(s)

For the Appellant(s)/
Petitioner(s):

Syed Haziq Ali Shah, ASC
Mr. Tariq Aziz, AOR
(In C.A.364-P/19 AND Res: in CA.412-P/19)

Mr. Muhammad Ajmal Khan, AOR
(In C.A.365-P/19, CA.04-P/20
AND Res: in CA.12-P/20)
(Via V/L, Peshawar)

Mr. Khalid Khan, AOR/ASC
(In C.As.368-P to 391-P, 393-P to 403-P, 405-P/19,
CAs.11-P, 12-P/20 & CP.590-P/19)
(Via V/L, Peshawar)
Mr. Zahid Yousaf Qureshi, Addl. AG, KPK
Malik Akhtar Hussain, Addl. AG, KPK
Qazi Ayaz, Litigation Officer
(In C.As.407-P,409-P to 412-P/19)

Mr. Ghulam Mohyuddin Malik, ASC
(In C.As.17-P, 20-P,21-P/2020) - Via V/L, Peshawar

For the Respondent(s):

Mr. Abdul Ahad Khan, ASC
(In C.As.371-P, 372-P/19, 375-P, 386-P, 390-P,
398-P, 411-P/2019 & CA.17-P/2020) –
(Via V/L, Peshawar)

Other Respondent(s):

Nemo

Date of Hearing:

05.09.2022.

JUDGMENT

IJAZ UL AHSAN, J-. Through instant Appeals, the

Appellants have challenged a judgment of the Peshawar High Court, Peshawar dated 17.06.2019 (hereinafter referred to as the "**Impugned Judgment**") whereby Regular First Appeals No.180-P/2013, 67 & 131-P/2014 and 142 & 249-P/2017 were allowed and the judgements and decrees of the Additional District Judge-VIII/Judge Referee Court Mardan

(the "**Referee Court**") were modified to the extent that the quantum of compensation for all the land acquired under notification dated 16.09.2008 was set at Rs.125,000/- *per marla*.

2. The necessary facts giving rise to this *lis* are that the Government of Khyber Pukhtunkhwa (the "**Government of KP**") through the District Officer (Revenue), Mardan issued a notification under Section 4 of the Land Acquisition Act, 1894 (the "**LAA 1894**") on 16.09.2008. Through the said notification, the Government of KP preliminarily notified the acquisition of all land situated in Mauza Palatoo, Tehsil and District Mardan for the establishment of Abdul Wali Khan University, Mardan (the "**Contesting University**"). A corrigendum with regard to notification dated 16.09.2008 was issued on 25.10.2008 when the NWFP Agricultural University, Peshawar intimated their desire to establish a sub-campus in Mardan to the Government of KP. To that extent, the notification dated 16.09.2008 was modified to include both the establishment of Abdul Wali Khan University as well as the establishment of a sub-campus of the NWFP Agricultural University in Mardan. Afterwards, the District Officer (Revenue) Mardan, vide award under Section 11 of the LAA 1894 dated 20.07.2010, set the price for compensation at the rate of Rs.2800/- *per marla* along with 15% compulsory acquisition charges. Aggrieved of the said valuation of their land, several landowners filed references under Sections 18, 30 & 31 of the LAA 1894 before the Referee Court. The

Contesting University and other acquiring departments objected to the references and after pro and contra evidence was led, the Referee Court set the quantum of compensation at Rs.20,000/- *per marla*. The said valuation was challenged by both the land owners as well the Contesting University before the High Court which, vide judgement dated 01.12.2016, remanded all the reference petitions to the Referee Court for decision afresh. After the matter was remanded to the Referee Court, the Referee Court appointed local commissioners in each reference petition to conduct spot examinations and accordingly submit their reports. After the local commissioners submitted their respective reports, the Referee Court set the quantum of compensation at the rate of 45,000/-, 75,000/- & Rs.125,000/- *per marla* as compensation in the respective reference petitions along with 15-percent compulsory acquisition charges and 6-percent interest from the date of acquiring of possession till final payment. The judgements and decrees of the Referee Court in the various reference petitions were assailed before the High Court. The High Court, vide the impugned judgement, allowed the appeals of the landowners and dismissed the appeals filed by the Contesting University as well as the Government of KP. In allowing the appeals of the landowners, the High Court set the quantum of compensation at the rate of Rs.125,000/- across the board for all land acquired under notification dated 16.09.2008. The impugned judgment is now being assailed by the landowners, the Contesting University and the Government of KP before this Court.

3. At the very outset, the Learned ASCs for the land owners as well as the Agricultural University, Mardan and Bacha Khan Medical University, Mardan in their various Appeals before this Court have, on instructions, submitted that the amount of compensation set by the High Court is reasonable and that they no longer have any grievances insofar as their relevant appeals are concerned.

4. The Learned counsel for the Contesting University on the other hand has argued that the impugned judgement is liable to be set aside on the ground that the acquired land at the time when it was acquired by the Government of KP for the Contesting University was barren and had no potentiality whatsoever. It was only after the land had been acquired for the University that the value of the land increased. He prays that the judgements of both the High Court as well as the Referee Court may be set aside, the reference petitions of the Respondents be dismissed and that the original award compensation of Rs.2,800/- *per marla* be restored.

5. The Additional Advocate Generals for KP have contended that the only grievance of the Government of KP insofar as the present appeals are concerned is the imposition of six-percent interest from the date of acquisition till the date of final payment. Further contend that in light of a judgement passed by the Federal Shariat Court declaring usury/riba forbidden and repugnant to the injunctions of Islam, interest was not payable. He therefore submits that the Referee Court

had no power to impose six-percent interest on the amount of compensation payable to the landowners when the same had been declared against the injunctions of Islam. They pray that the impugned judgement may be modified to the extent of removal of six-percent interest.

6. We have heard the learned counsels for the parties at length and gone through the case record.

7. 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 these instant Appeals. Section 23 of the LAA 1894(as amended in the KP in 2018) lays down a criteria for how a Referee Court is to determine compensation. It 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 consider consideration:

firstly, *the market-value of the land at the date of taking possession of the land.*

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 subsection (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 matters 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 the first matter a Court must take into consideration, it is not the only matter. The Court is bound to consider when a determination has to be made under Section 23 of the LAA 1894. Instead, the other five considerations, from their very text, imply that whenever a Court is to

consider the quantum of compensation, it must be duly aware and cognisant of the loss being caused to the landowners due to the Federal or Provincial Government's exercise of eminent domain under the LAA 1894. In essence, landowners are deprived of their constitutionally-guaranteed proprietary rights under Article 24 of the Constitution of Pakistan, 1973 whenever a government, be it Federal or Provincial, exercises eminent domain under the LAA 1894. It is therefore 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.

6. Coming to the merits of the arguments raised by the Contesting University, perusal of the record reveals that the Contesting University had been a party before both the Referee Court as well as the High Court. The Contesting University has been heard by all the Courts below. Both the courts below have held that the compensation award for Rs.2,800/- per marla was on the basis of a one-year average (*Aust Yaksala*) of the acquired land. The argument of the Contesting University that the initial rate of Rs.2,800/- was the correct valuation is unsustainable for the reason that basing compensation on a one-year average of the land acquired would go against the criteria laid down in Section 23 of the LAA 1894. The rate of Rs.2,800/- *per marla* in the present case was based solely on the one-year average of the acquired land. As noted above, the intention of the legislature

behind Section 23 is one where a Court, when determining compensation under the said Section, needs to be considerate and sympathetic to those who have been subjected to eminent domain by the government. Section 23 allows the Court to bring landowners, who have been subjected to eminent domain, back to their positions before the eminent domain was exercised. To base compensation on a one-year average of the acquired land would defeat the intent of the legislature behind Section 23. Even otherwise, in a judgement passed by this Court in Pakistan Brumah Shell Ltd. vs. Province of NWFP (1993 SCMR 1700), this Court 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 Bhabi 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 "AksShajra" 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-Bhabi 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-Bhabi. 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)

The Learned Counsel for the Contesting University could not point out any ground which could persuade us come to the conclusion that the High Court had committed an error in law or otherwise when it determined the rate of compensation at the rate of Rs.125,000/- *per marla*. No mis-reading or non-reading of evidence could also be pointed out by the Learned Counsel for the Contesting University.

7. Coming to the points raised by the Additional Advocate Generals for KP, we note that Section 34 of the LAA 1894 has never been repealed by the KP Provincial Assembly, and therefore have no qualms in arriving at the conclusion that the imposition of six-percent interest imposed by both the Courts had been done in accordance with law. To that extent, the Additional Advocate Generals, KP have not been able to point out any illegality in the imposition of the six-percent interest by both the Courts below. Section 34 of the LAA 1894 still holds the field and continues to do so. It is, however, important to clarify that unlike *riba*/interest that accrues out of a financial obligation between the parties, the word "*interest*" in Section 34 of the LAA 1894 is not interest *stricto sensu*. The interest awarded to landowners under Section 34 is compensatory in nature that allows the Court to compensate the landowners for the financial loss landowners would suffer from the date of acquisition till payment of compensation by the acquiring authority. Unlike a financial transaction, where parties are often assumed to be equal in

bargaining power and are deemed to be consenting to a transaction, an exercise of eminent domain cannot in any sense be construed as either a consenting transaction between the parties involved (i.e. the State and the landowners) nor can it be assumed by any stretch of imagination that the state and the landowners are equal in terms of bargaining power. Eminent domain is, after all, a unilateral power of the government and no consent from the affected landowners is required under the law before the state can exercise eminent domain under the LAA 1894. Even otherwise, as held by this Court in the case of Sheikh Muhammad Ilyas Ahmed vs. Pakistan thr. Secretary, Ministry of Defence (PLD 2016 SC 64), the benefit of Section 34 is statutory in nature and such benefit cannot be withheld from the landowners on the ground that interest has been declared against the injunctions of Islam. Whilst riba/usury may be predatory in nature, the interest under Section 34 of the LAA 1894 is beneficial in nature since it allows landowners to be compensated after the Federal or Provincial Government's unilateral exercise of eminent domain and to cover the financial loss that the landowners would invariably suffer on account of loss of use of their land/property till the time they recover compensation for the same.

8. In light of what has been discussed above, we find that the judgement of the High Court is well-reasoned, takes note of all material aspects of the case and has elaborately noted all the reasons why it enhanced the quantum of

compensation at the rate of Rs.125,000/- *per marla* for all the land acquired in Mauza Palatoo, Tehsil and District Mardan. No ground has been raised which could lead us to a conclusion different than the one taken by the High Court. No perversity or illegality could also be pointed out in the impugned judgment when the High Court set the rate of compensation at the rate of Rs.125000/- *per marla* for all the land acquired in Mauza Palatoo, Tehsil and District Mardan by virtue of notification dated 16.09.2008. The impugned judgement passed by the Peshawar High Court, Peshawar is accordingly upheld. All these matters are accordingly dismissed.

Judge

Judge

Judge

ISLAMABAD, THE
5th of September, 2022
Khalil Sahibzada 1926, LC*/-

NOT APPROVED FOR REPORTING*