

IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD

Ist Appeal Nos.20, 21, 22, 23, 24, 25, 29 and 30 of 2001

PRESENT:

Mr. Justice Muhammad Shafi Siddiqui

Mr. Justice Arshad Hussain Khan.

Appellants. Through M/s. Imran Qureshi, Ghulam Mohiuddin and Atif Qazi, Advocates and for private respondents No.1, 2, 3 and 4 in Ist Appeal No.25 of 2001.

Government of Pakistan: Through Mr. Fazal Hussain Jamali, Assistant Attorney General.

Government of Sindh: Through Mr. Allah Bachayo Soomro, Additional Advocate General.

Date of Hearing: 19.09.2017.

Date of Judgment: 19.09.2017.

J U D G M E N T

ARSHAD HUSSAIN KHAN, J:- These appeals are being disposed of through this consolidated judgment as common question of facts and law are involved therein.

2. The appellants in these appeals have challenged the judgments dated 30.01.2001 and 20.02.2001 passed by learned IIIrd Additional District Judge, Dadu, whereby the compensation awarded by the Land Acquisition Officer was modified/enhanced from Rs.15000/- per acre to Rs.25,000/- per acre against the claim of Rs.60,000/- per acre.

3. The facts leading to the filing of the present appeals are that the lands of the appellants were acquired for public purposes of Military Installation and in this regard notification under Section 4 of the Land Acquisition Act, 1894 was published in the Sindh Government Gazette dated 30.05.1981. Thereafter, another notice under Section 6 and 17 of the Land Acquisition Act, 1894 was published on 30.07.1981 and corrigendum thereof was published in the same Gazette on 30.09.1982. However, the possession of the land in question was taken over by the acquiring agency on 30.04.1983. Subsequently, the claimants/ interested persons filed objections under Section 9 of the

Land Acquisition Act, 1894 and the Land Acquisition Officer (SDM Kotri), after hearing the parties concerned and their Advocates, passed the award on 07.03.1985 and awarded compensation @ Rs.15,000/- per acre and refused to consider its value for compensation with reference to its future use and its potential value. The lands possessed by the appellants were situated in Dehs Dabhoo and Sonwalhar, Taluka Kotri, District Dadu, bearing Survey Nos. 1 to 10, 11, 23, 31, 36, 37, 25, 28, 29, 32, 35/1, and 35/2. The appellants being dissatisfied by the aforesaid award of Rs.15000/- per acre filed reference under Section 18 of the Land Acquisition Act, 1894, and claimed compensation of Rs.60,000/- per acre alongwith other allied compensations. The said objection of the appellants was referred to the Referee Court, i.e. IIIrd Additional District Judge, Dadu, who after recording the evidence and hearing the Counsel for the parties, enhanced the compensation from Rs.15,000/- to Rs.25,000/- per acre. The said order of the Referee Court has been challenged in the present appeals.

4. Learned Assistant Attorney General on behalf of respondents No.3 and 4, whereas, learned Additional Advocate General for respondents No.1 and 2 have filed their memo of appearance and contested the matter on behalf of the said respondents. It is pertinent to mention here that though these civil appeals were filed before the Single Bench of this Court, however, pursuant to the direction of the Honourable Chief Justice, vide circular No. Endt. No.No.Gaz/XII.Z.14 (HC) (iii) dated 18thMay, 2017, these matters were ordered to be referred to the Division Bench of this Court. Since the common question of facts and law are involved in the present appeals, therefore, they were directed to be heard together.

5. We have heard the learned Counsel for the appellants, learned Additional Advocate General and learned Assistant Attorney General for the respondents and with their assistance perused the material available on record and have also gone through the law as well as judgments of this Court as well as Honourable Supreme Court cited at Bar.

6. Learned Counsel for the appellants during the course of arguments have contended that the judgment impugned in the present appeals is contrary to the law and facts. It is also contended that the learned District & Sessions Judge, while passing the impugned

judgment, has misdirected himself by relying upon the alleged site inspection prepared by the interested parties and in absence of the plaintiffs/appellants' Advocates. It is also contended that the learned Judge, while passing the impugned judgment, has wrongly concluded that the land of the appellants was at certain distance from Gulshan-e-Shahbaz and that the land could neither be used for residential purposes nor for industrial purpose and future potential value of the land is very low. Learned Counsel further contended that numerous residential colonies and industrial zones are being floated and setup in the area like Kotri Site, Shahbaz Town, Cement Factory, Wapda Colony etc. and many other residential and industrial zones are likely to appear around the land in question and the existence of the aforementioned industrial zones and colonies has not been denied by the respondents and have gone unchallenged according to the principles of Qanun-e-Shahadat. It is further contended that the potential value of the land in question will rise manifold in future and it is incorrect to hold that use of land for residential or industrial purpose is not very bright or there are remote chances for increasing of the value of the land. It is next contended that the findings of the trial Court with regard to value of land are contrary to the judgment of this Court passed in 1st Appeal No.95 of 1997 and 13 of 1998 in which the lands of the same Deh were involved, the compensation whereof @ Rs.50,000/- per acre was awarded by Division Bench of this Court and that looking to the value of the subject land as duly accepted by this Court in the above referred decisions, the compensation of Rs.25,000/- per acre is absolutely contrary to the facts and law declared by the superior Court which is liable to be enhanced to at least Rs.50,000/- per acre in consonance with the decisions of this Court in 1st Appeal No.95 of 1997 and 13 of 1998. The learned Counsel for the appellants in support of his arguments has relied upon the judgments reported as **2000 CLC 99** (*GOVERNMENT OF SINDH through Deputy Commissioner, District Dadu and another v. RAMZAN and others*) and **PLD 2004 Supreme Court 512** (*PROVINCE OF SINDH Through Collector of District Dadu and others v. RAMZAN and others*).

7. On the other hand, learned Assistant Attorney General and Additional Advocate General for respondent No. 1 and 2 during the course of arguments have contended that the order impugned in the present proceedings is well within the four corners of law and equity,

hence does not warrant any interference by this Court in the present appeals.

8. Before going into further discussion, it would be appropriate, for the sake of ready reference, to reproduce the relevant portion of the award dated 07.03.1985, passed by Land Acquisition Officer, as under:

“The land in question is situated in between kotri Railway Station on its East and Bolari Railway station on its west. The Super Highway is passing adjacent to its Northern Border and National Highway is adjacent to its Southern Border. The main Railway Line from Karachi to Peshawar is virtually passing through the middle of the Land. The land in ... hilly high surface and has very little water for irrigation. The land is irrigated by the rain water and the owners have constructed Katcha Bunds for the storage of rain water to irrigate their lands. A very small portion of land is irrigated by wells and tube wells. The owners have built up katcha pucca Houses on the lands for themselves and for their cattles and Diary Farms Etc. There are Kandah Beri and Bubble trees on the lands. The agricultural produce of the land being very small and depending upon the annual rain fall, the people of the area earn their livelihood by selling the woods and produce of Bari trees and selling of cattles. The value of the land as Agricultural land is low but it is an ideally located land for the purposes of installation of Industries, Commercial Centres and residential colonies without any efforts and on minimum expenses. It is high surface land free from Sanitary and water lodging and is essentially a building site. Between 1975 to 1981 a number of Housing Colonies on its East have been sponsored by private parties which are fully developed having all the facilities such as water, electricity, roads sewerage and drinking water. The H.D.A has developed first phase of one of the highest housing colony on ultra-modern style on its Eastern Border, which is known as Gulshan-e-Shahbaz. The H.D.A itself sold its plots at Rs.100 to Rs.125 per Sq.Yards at the relevant time.

The Sind University, Liaquat Medical College, Hospital, T.B. Sanitarium, Railway work-shop and Railway Colony are also close to the land on its North-East. The Highly developed Sind Industrial Area of Kotri with number of Mills, Labour Colonies and Tharmal Power Station area on its south at a walking distance. The village Khadda having over 500 houses mostly pacca built with water and electricity facilities, near Bolari Railway station, is attached to this land on its west. The some of the residents of this land have light connection and get the drinking water from privately owned wells and tube-wells. The present Government has also dug a well for drinking water. The transportation to and from the land to all parts of the country is most convenient and the residents even presently have no transport problems. The value of the land since 1981 has immensely increased but it was not less than Rs.2/- per Sq.Ft: of small plots or Rs.50,000/- per acre, for big plots at the time of notification u/s 4 of the Act. The Government itself has sold its land in the vicinity at about Rs.50,000/- per acres.

[Emphasis supplied]

SALES OF LANDS DEH SONWALHAR AND DABHOON AS RECORD
OF MUKHTIARKAR OFFICE, KOTRI

ENTRY NO: DATE OF ENTRY AREA OF S.NO: AMOUNT OF SALE

YEAR 1980-81

1.	34	6.8.1980	22-30	Rs. 40,000/-
2.	42	28.1.1981	22-37	Rs. 1,55,000/-

YEAR 1979-80

1.	31	18.3.1980	43-03	Rs. 2,50,000/-
2.	32	10.4.1980	08-32	Rs. 44,000/-

YEAR 1978-79

1.	13	27.02.1979	05-13	Rs. 30,000/-
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As regards the compensation of this land to its owners/interested persons, I award compensation of the land on the basis of its market value with reference to its present actual use only @ Rs.15,000/- per acre and I am not inclined to consider its value for the compensation with reference to its future use and its potential value as ideal building site.

Besides the land there are trees pacca and katcha houses, katcha bunds, privately owned Tube-wells, wells dairy farms and pacca water course over the land. I therefore, award compensation @ Rs.10,000/- per each pacca house and Rs. 5000/- for each katcha house, Rs. 200/-per tree for all kinds of trees, Rs. 2000/- for each bund and Rs. 100,000/- for each tube-well, Rs.50,000/- for its electricity installation Rs. 2,00,000/- for the privately owned each pacca well. The owners/interested persons were not allowed time to take away the produce of their standing crops at the time of the possession of the land as such I award Rs.300/- per acre to the claimant for their crops but I do not award any compensation for dairy farms and pucca water course.

In addition to the above compensation 15% compulsory acquisition charge are also allowed to the owners/interested persons as their lands have been acquired under urgency clause of the land acquisition Act 1894. The claimants/owners are also award interest on their total compensation at 6% from the date of possession of the land till final payment of compensation to them."

9. Being dissatisfied by the above said award, the appellants filed their respective objections which were referred to learned IIIrd Additional District Judge, Dadu, who subsequently through consolidated judgments dated 30.01.2001 and 20.02.2001 enhanced the amount of compensation of award from Rs.15,000/- to Rs.25,000/-. Relevant portion of the Judgment, for the sake of ready reference is reproduced as under:-

“In the light of above discussion the amount of Rs.10,000/- per acre is hereby enhanced. The compensation for the remaining items which has been held to have been rightly valued shall remain the same including 15% compulsory acquisition charges and 6% interest on total amount of compensation of acquired land till the final payment of compensation to the plaintiffs. Resultantly, the compensation given to the plaintiffs in the impugned award is maintained with the modification that the same will be enhanced from Rs.15,000/- per acre to Rs. 25,000/- to the extends of the lands of the plaintiffs. References in hands are answered as above. The parties to bear their costs.”

10. The appellants having been aggrieved by the above referred judgments passed by the learned IIIrd Additional District Judge, Dadu, preferred the present appeals with the prayer that the compensation amount may be enhanced from Rs.25,000/- to Rs.60,000/-

11. From perusal of the record it appears that in the similar circumstances, some of the land owners in respect of same Dehs have challenged the same award, that is, dated 07.03.1985 passed by the Land Acquisition Officer, Kotri, before learned Additional District Judge Kotri, who while disposing of the reference, enhanced the amount of compensation for the land at the rate of Rs.50,000/- per acre together with simple interest at the rate of 6% for the unpaid amount. The judgment of the learned Additional District Judge, Kotri, was subsequently challenged by the Provincial Government in Civil Appeals bearing No.95 of 1997 and 13 of 1998 before this Court. This Court after hearing the learned Counsel for the parties and discussing the various aspects of the case in detail, while upholding the decision of the learned Additional District Judge, Kotri, dismissed the appeals preferred by the Provincial Government. The Judgment of this Court was subsequently reported as 2000 CLC 99 (*GOVERNMENT OF SINDH through Deputy Commissioner, District Dadu and another v. RAMZAN and others*). Relevant portion of the judgment, for the sake of ready reference, is reproduced as under:-

“20. It may be observed that the factual aspect of the case including the future potential value of the land acquired had been elaborately discussed in the award itself. These findings were not challenged before the Court. However, in determining the quantum of compensation the Land Acquisition Officer committed a serious error 'of law in not following the legal principle authoritatively laid down by the Honourable Supreme Court and proceeded to premise his award only on the basis of "the present use of the land". This error the Court was bound to correct and upon doing so it enhanced the quantum of compensation. In my view therefore, the findings are entirely unexceptionable and there is no merit in these appeals, which are liable to be dismissed.”

[Emphasis supplied]

12. The Provincial Government challenged the said judgment of this Court before the Honourable Supreme Court in Civil Appeals Nos. 139 and 140 of 1999. The said Civil Appeals were subsequently dismissed by the Honourable Supreme Court while upholding decisions of the learned Additional District Judge, Kotri as well as this Court. The judgment of the Honourable Supreme Court was reported as **PLD 2004 Supreme Court 512** (*PROVINCE OF SINDH Through Collector of District Dadu and others v. RAMZAN and others*). The Honourable Supreme while dealing with the issue of market values, potential market value of land and compensation of award of land in respect thereto has discussed in detail. The relevant portions of the judgment, for the sake of ready reference, are reproduced as under:-

“7. The most important aspect qua the lands compulsorily acquired is, that the mandatory returns proposed to be given to the landowner is the compensation and not the market value. Very section 23 provides for various matters to be brought under consideration while determining compensation. Market value is only one of such matters to be considered by the Collector or Courts. Compensation is a very wider term indicating that the landowners, for various reasons, is to be compensated and not merely paid the price of land which is just an interaction of supply and demand fixed between a willing buyer and willing seller.

8. Section 23 was subsequently amended through West Pakistan Ordinance 49 of 1969 whereby the ambit of matters to be considered was widened and it was in this background that the Courts in the country emphasized the phenomenon of potential value of the land. This term potential value is only a one word used for the future uses which the land can be put to. In Malik Aman's case (PLD 1988 SC 32) this Court had explained the feature of potential value and had differentiated the same from the term “market value”. It was held that market value was normally to be taken as one existing on the date of Notification under section 4(1) of the Land Acquisition Act under the principle of willing buyer and willing seller while the potential value was explained to be one to which the similar lands could be put to any use in future. Factors for determining compensation of land are not restricted only to the time of the aforesaid Notification but can also relate to period in future and that is why in a large number of cases the ‘potential value’ has been held to be a relevant factor.

9. This Court had also taken notice of the fact that the announcement of award is sometimes unreasonably delayed after the issuance of Notification under section 4 of the Act. In Malik Aman's case, the period that had elapsed was seven years. Obviously any escalation in the value of property during such period is a potential value of land which must be taken into consideration.

10. Similar view was taken by this Court in Land Acquisition Collector Abbotabad v. Muhammad Iqbal (1992 SCMR 1245 at 1255-K). In the case of Pakistan Burmah Shell (1993 SCMR 1700), it was once again reiterated that consideration of market value at the time of Notification under section 4 of the Land Acquisition Act was merely one of the modes for ascertaining the market value and was not

absolute yardstick for assessment of compensation. Numerous matters to be considered for determining compensation were elaborately laid down by this Court in Murad Khan's case (1999 SCMR 1647) which was again relied upon in Nisar Ahmed's case (PLD 2002 SC 25). The crux of the matter is that mere classification or nature of land may be taken as relevant consideration but not as absolute one. An area may be 'banjar' or 'Barani' but its market value may be tremendously high because of its location, neighborhood, potentiality or other benefits. All these factors, therefore, cannot be ignored.

11. Our attention is invited to a recent judgment of this Court given in the case of Hyderabad Development Authority PLD 2002 SC 84 where the Court has held that the crucial date for determination of market value is the Notification under section 4(1) of the Land Acquisition Act. We do not disagree with it because that verdict pertains to the determination of 'market value' and not to the determination of the compensation. The question of potential value was considered even in that ruling but was not granted because the landowner had not proved the same, being a question of fact.

The Honourable Supreme Court in the case further held that;

"14. It is a well-known principle of law that the Collector while considering the question of compensation is the sole authority to do so and should rather act as an Arbitrator rather than being influenced by any other authority or by his own whims. The Collector himself has elaborately given the potential value of the land in question fully aware of the fact that the Sindh Government had sold similar land for Rs.10 per square yard to Secretary Defence. This price also comes to more or less Rs.50,000 per acre. The learned Court enhancing compensation in hand and the learned High Court upholding such enhancement have rightly appreciated the market value as well as the potential value of the land under acquisition. We have no reason to disagree."

[Emphasis supplied]

13. Reverting to the case in hand, from the perusal of the judgments impugned in the present proceedings, it appears that the learned Additional District Judge, Dadu, has failed to consider the potential value of the land under acquisition, whereas factors for determining compensation of land are not restricted only at time of the aforesaid Notification but can also relate to the period in future. Furthermore, the learned Additional District Judge also failed to consider the material fact that the Land Acquisition Officer, while passing the award, *inter-alia*, admitted that the value of the land since 1981 has immensely increased but it was not less than Rs.2/- per Sq.Ft: for small plots or Rs.50,000/- per acre for big plots at the time of notification under Section 4 of the Land Acquisition Act, 1894 and further the Government itself has also sold its land in the vicinity at about Rs.50,000/- per acres.

14. Keeping in view the above and the dictum laid down by the Honourable Supreme Court in **PLD 2004 Supreme Court 512** (*PROVINCE OF SINDH Through Collector of District Dadu and others v. RAMZAN and others*), we are of the considered view that the appellants are entitled to the uniform compensation as has been done with other land owners of the same Dehs. Consequently, the judgments impugned are liable to be modified only to the extent of quantum of compensation of the subject acquired lands, accordingly the compensation is being enhanced from Rs.25,000/- to Rs.50,000/- per acre. Whereas, other compensation i.e. 15% compulsory acquisition charges and 6% interest on the total compensation from the date of possession of land till final payment, as assessed by the Land Acquisition Officer in the award, shall remain intact. Since these appeals are being disposed of to the above extent, therefore, the First Appeal No.32 of 2001 [re: the Government of Pakistan & Others v. Vikio & Others) stands dismissed.

15. Foregoing are the reasons for our short order dated 19.09.2017, in the following terms:-

“For the reasons to follow, the appeals are allowed to the extent of compensation and being modified from Rs.25,000/- to Rs.50,000/- per acre, whereas, the First Appeal No.32 of 2001 filed by the Government stands dismissed.”

JUDGE

JUDGE

Shahid