

**IN THE HIGH COURT OF SINDH, CIRCUIT COURT
HYDERABAD**

Present:

Mr. Justice Mahmood A. Khan,
Mr. Justice Khadim Hussain Tunio

1st Appeal No.D-04 of 2010

[Federation of Pakistan and another Vs. Khalid Hussain &
others]

1st Appeal No.D-05 of 2010

[Federation of Pakistan and another Vs. Farooq Ali & others]

1st Appeal No.D-06 of 2010

[Federation of Pakistan and another Vs. Mst. Zainab &
others]

1st Appeal No.D-07 of 2010

[Federation of Pakistan and another Vs. Alam Khatoon &
others]

1st Appeal No.D-08 of 2010

[Federation of Pakistan and another Vs. Nizamuddin &
others]

Appellants : Through Mr. Muhammad Humayoon Khan,
Deputy Attorney General, Pakistan.

Respondents : Through Mr. Abdul Aziz Shaikh, Advocate
for private respondents.

Assistant Commissioner and another through
Mr. Allah Bachayo Soomro, Additional Advocate
General, Sindh.

Date of hearing : 05.10.2021

Date of decision : 15.10.2021

ORDER

KHADIM HUSSAIN TUNIO, J.-Through instant appeals, the
appellants have challenged various judgments passed by the learned

IInd Additional District Judge, Shaheed Benazir Abad in Land Acquisition Reference No. 1, 2, 3, 4 and 8 of 1996 filed against various awards dated 08.02.1996 passed by the Land Acquisition Officer Nawabshah. These appeals are being decided together as they involve the same moot point with regard to enhancements in compensation rates done by the learned IInd Additional District Judge, Shaheed Benazir Abad.

2. Precisely, the facts of the present matter are that the respondents filed cases before the Land Acquisition Officer Nawabshah to claim compensation for various plots allegedly acquired by the appellants for the construction of a Federal Lodge at Nawabshah while showing their plots to be surrounded by commercial areas. Each of these separate claims for compensation were allowed by the Land Acquisition Officer Nawabshah. Being aggrieved with the award, each of the respondents/petitioners challenged the same by praying that their property is valuable and the rate fixed by the Land Acquisition Officer is not adequate. Learned IInd Additional District Judge, Shaheed Benazir Abad framed the issues and after considering the evidence of the parties, vide impugned judgments, enhanced the compensation rates in terms of Land Acquisition Act from the date of taking over the possession.

3. Learned Deputy Attorney General primarily contended that the impugned judgment is illegal and the learned IInd Additional District Judge was not competent to pass such a judgment with regard to the compensation amount without considering the provisions of S. 23 of the Land Acquisition Act; that the compensation amount awarded was in excess to what should have been granted and was incorrectly enhanced by the learned trial Court; that the petitioners did not bring a single piece of documentary evidence so as to establish the value of the lands in question.

4. On the other hand, the learned counsel for the private respondents has argued that the learned trial Court correctly observed the rates of compensation to the tune given in the impugned judgments while considering all the aspects involving the market value of the properties. However, learned AAG argued that documentary

evidence had not been adduced by either party in respect of the value of similar types of property situated in the same vicinity while determining the rate of compensation for the acquired lands, therefore he prayed that the impugned judgments may be set aside and the matter be remanded back to the trial Court while placing his reliance on the unreported common judgment passed in **First Appeal No. 51 of 2010 (Re- Province of Sindh and another v. Land Acquisition Officer and others)**, **First Appeal No. 54 of 2011 (Re- Province of Sindh and others v. DO Revenue/Land Acquisition Officer)** and **First Appeal No. 55 of 2011 (Re- Dr. Jahanzeb Jatoi and another v. Province of Sindh and others)**.

5. We have given due consideration to the arguments advanced by the learned counsel for the parties and perused the record minutely.

6. The question before this Court is whether the decision of the learned Judge to the tune of enhancement in the amount of compensation as already awarded by the Land Acquisition Officer Nawabshah was legally correct or not. Precisely, the learned Additional District Judge, when approached with the matter whether the compensation awarded was sufficient or not relied on the testimonies of the respondents/petitioners. The crux of the testimonials of the petitioners is that the lands that were acquired by the Government were surrounded by several warehouses, multitudes of shops and residence complexes; making the area a modern day mixed-use commercial land. After its deliberations, the learned trial Court decided on the following rates for compensations:-

L.A Reference No. 01 of 1996 for plot No. 13 in Channa Colony, Nawabshah

Rs. 100/- per sq-ft, so also Rs. 400/- for the material of R.C.C. construction and Rs. 300/- as compensation for R.B construction with all statutory usual benefits as provided by Land Acquisition Act from the date of taking over the possession.

L.A Reference No. 02 of 1996 for an area of 5069 sq-ft out of R.S No. 144 in Deh 50 Dad Taluka Nawabshah

Rs. 100/- per sq-ft along with all statutory usual benefits as provided by Land Acquisition Act from the date of taking over the possession.

L.A Reference No. 03 of 1996 for plot No. 11 in Channa Colony, Nawabshah

Rs. 100/- per sq-ft, so also Rs. 400/- for the material of R.C.C. construction and Rs. 300/- as compensation for R.B construction with all statutory usual benefits as provided by Land Acquisition Act from the date of taking over the possession.

L.A Reference No. 04 of 1996 for plot No. 12 in Channa Colony, Nawabshah

Rs. 100/- per sq-ft, so also Rs. 400/- for the material of R.C.C. construction and Rs. 300/- as compensation for R.B construction with all statutory usual benefits as provided by Land Acquisition Act from the date of taking over the possession.

L.A Reference No. 08 of 1996 for plot No. 18 of Deh 50 Dad Taluka Nawabshah

Rs. 100/- per sq-ft along with all statutory usual benefits as provided by Land Acquisition Act from the date of taking over the possession.

7. A perusal of the impugned judgments reveals the course of action that the learned trial Court took in coming to the conclusion that the acquired lands were valued at the rate it decided, what the considering factors were and whether there were any documents that would otherwise provide support to the claimants; the answer to that however is none. At the time of hearing, neither documentary evidence was adduced nor considered by the learned trial Court in coming to its conclusion and a further perusal of the impugned judgments shows that the sole basis for enhancement of compensation rate by the Court was the testimonials of the petitioners and their witnesses, who themselves were invested in the properties and would have left no chances to present their land as valuable property so as to claim as high a compensation they could. The other deciding factor for the trial Court was the evaluation of a property a year prior to the decision by a "qualified" Engineer. Section 23 of the Land Acquisition Act specifies the matters required to be considered in determining the compensation; the principal among which is the determination of the **market value** of the subject lands or a land of similar nature in close proximity to the subject lands **on the date of the publication of the notification** Under Sub-section (1) of Section 4. As is evident from the above provision, the learned trial Court was bound to first examine the price of lands on the date of acquisition and not go off on the statement of a Engineer who otherwise provided no proof in support of

his claims. In growing economies, the values of property don't always appreciate. There are times when the values depreciate to naught that no one would be willing to purchase it, forcing the owners to leech off as much benefit they could from a willing party, in this case the Government. This brings the Court to its next point. It is a well-established principle of law that Courts have to consider the value of the property with respect to what a **willing purchaser** would have paid for the land in question; established by the case of **Government of Pakistan Rawalpindi and another v. Malik Muhammad Aslam and 5 others (1978 SCMR 5)**. To consider what a willing purchaser would have paid for the lands, the learned trial Court was to consider the surroundings of the lands, the shape of the lands and how proximate they would be to a National or State Highway or a developed road allowing for ease of access, the existing use of the lands, the geographical situation of the lands and the market value of the lands situated nearby (already discussed). To consider all these aspects, the Court was bound to examine any sale deeds with respect to lands nearby the subject lands, the valuation table that is issued by the Provincial Government from time to time and a map or site plan of the whole area where the lands were located which would have established the presence of the so-acclaimed warehouses, shops and residential complexes. Needless to add here, however, that in all this process, the concerned arbitrator (in this case the learned IInd Additional District Judge) is supposed to be an independent arbitrator who is not to rely on the parties to bring forth all these documents, but instead can demand for them to be presented on its own motion. In the present case, the learned trial Court failed to do just that. In the case of **Khurshed Ali & 06 others v. Shah Nazar(PLD 1992 Supreme Court 822)**, it has been held by the Hon'ble Supreme Court that;

“It is incorrect to think now under Islamic dispensation that the Courts are only to sit and watch as to who commits a mistake and who does not commit a mistake, from amongst the contesting litigants, and one who commits a mistake, in procedural matter should be deprived of the right claimed; even if he is entitled to it. This court has not approved of such like practice. In the case of Muhammad Azam v. Muhammad Iqbal (PLD 1984 SC 95), even if the application had not been pressed “so called”, **if it was necessary for just decision of the case, as held by High Court (to summon the material**

relied upon by the appellants side), it should have been summoned and treated as evidence in the matter without any formalities. And mere failure to exhibit a document formally would not make any difference”.

(underlining is ours for reference)

8. In the case of **Special Land Acquisition Officer v. Maharani Biswal and others (2012 SCMR 1179)**, the Supreme Court of India observed that:-

“The Reference Court has very elaborately and minutely discussed the entire evidence on record including the deposition of the witnesses and on appreciation thereof has come to a definite finding and conclusion that the acquired land on the date of issuance of the notification under section 4 cannot be valued and assessed at more than Rs.10,000 per acre. Consequently, the said amount was determined by the Reference Court as just and fair compensation for the land acquired.

11. As against the aforesaid findings giving cogent reasons, the High Court, failed to indicate as to how the aforesaid findings are unreasonable and unjustified fixing the compensation of the land at Rs.10,000 per acre. The High Court enhanced the compensation to Rs.75,000 per acre without any appreciation of the evidence on record and also without considering the findings of the learned Reference Court and ultimately rejecting the same. It was necessary for the High Court to give reasons for its disagreement with the findings of the Reference Court but nothing of that nature was done by the High Court and the High Court arrived at an abrupt decision raising the compensation to Rs.75,000 per acre.”

(underlining is ours for reference)

9. The learned trial Court committed material irregularity and illegality by not summoning the above noted documents as well as adducing the evidence in respect of the land though, per law, the Court(s) is/are competent to exercise such discretion even without an application from parties. Thus, the judgments passed by the learned trial Court are not sustainable under the law and the same are liable to be set aside. In view of the above facts and circumstances, particularly the law laid down by the Honourable Supreme Court as referred hereinabove, the impugned judgments passed by the learned trial Court are set aside and the appeals are partly allowed. The respondents-land owners nevertheless are entitled to receive compensation for their land and superstructures in accordance with the provisions of the Land Acquisition Act, 1894, therefore the case is

remanded back to the learned IInd Additional District Judge Shaheed Benazir Abad who shall, after summoning all the evidence required including the record/material considered by the Land Acquisition Officer during inquiry while determining the rate of compensation and observing all the necessary provisions of S. 23 of the Land Acquisition Act, decide the matters after allowing the parties to adduce whatever evidence they may need to support their claims within six (06) months from the date of receipt of the R&Ps and the trial Court shall submit a compliance report in this regard. The parties are directed to appear before the trial Court on 23.10.2021 without claiming further notice. Office is directed to remit the R&Ps to the learned trial Court immediately for compliance along with a copy of this order.

10. Appeals stand disposed of in the above terms along with pending applications, if any.

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