

**JUDGMENT SHEET
IN THE PESHAWAR HIGH COURT,
MINGORA BENCH (DAR-UL-QAZA), SWAT
(Judicial Department)**

R.F.A No.37-M/2022

**Nawabzada Muhammad Khisro Khan and another Vs.
Mst. Aneesa Bibi and others.**

Present: Mr. Ahmad Ali, Advocate for Appellants.
Mr. Kamal Khan, A.A.G for official Respondents.
Syed Maroof Shah, Advocate for Respondent
No.1.
Syed Aimal Shah, Advocate for Respondent No.3.

Date of hearing: **19.06.2025**

JUDGMENT

SABIT ULLAH KHAN, J:- This single judgment in the instant appeal shall also decide the connected appeals as a common question of law and facts is involved besides all these matters are the outcome of one and same award bearing endorsement No.1987-89/DC/Rev (DC Residence) dated 31.07.2013. The particulars of connected appeals are as under:

- 1) **R.F.A No.38-M/2022**
Nawabzada Muhammad Karim Khan Vs. Mst. Aneesa Bibi and others.
- 2) **R.F.A No.40-M/2022**
Aurang Zeb Alamgir Khan Vs. Mst. Anisa Bibi and others.
- 3) **R.F.A No45.-M/2022**
Nawabzada Muhammad Karim Khan Vs. Mst. Anesa Bibi and others.
- 4) **R.F.A No.46-M/2022**
Nawabzada Muhammad Khisro Khan and another Vs. Mst. Anesa Bibi and others.
- 5) **R.F.A No.62-M/2022**

*The Secretary to Government of Khyber Pakhtunkhwa Board
of Revenue and others Vs. Mst. Aneesa Bibi and others.*

6) *R.F.A No.15-M/2022
Inam Ullah Khan Vs. Mst. Aneesa Bibi and others.*

2. The facts of all these appeals are that acquisition proceedings were initiating for the purpose of acquiring land for "construction of District Coordination Officer now Deputy Commissioner resident at Panakot, Dir Upper". In this regard, notification u/s 4 of the Land Acquisition Act, 1894 (the Act of 1894) was issued on 16.05.2012, which was followed by notifications under sections 6, 7, 17, 9, 10. The meeting of the Price Evaluation and Determination of Ownership Committee was held on 27.07.2013 and since the area was an unsettled, thus, the cost of the land could not be assessed on the basis of *Awsat Yaksala* and being so, considering the irrigated nature of the land and various other relevant factors, the said Committee fixed Rs.7,00,000/- per kanal rate of the acquired land, with 15% compulsory acquisition charges and the award was issued u/s 11 of the Act of 1894 on 31.07.2013. Payments were made to the present appellant and others vide acquaintance rolls dated 30.10.2013 & 06.10.2016. Respondent No.1 Mst. Anesa Bibi, being aggrieved

gl.

of ignoring her titled in respect of the acquired land, has filed an Objection/ Reference No.7/4 of 2013 u/s 30 of the Act of 1894. She contended that the acquired land was her ownership in possession, which was given to her by her husband namely Muhammad Shah Tahir Khan in lieu of dower vide *nikahnama* dated 09.08.2002, as such, the payment was required to be made to her instead of the respondents of the reference/ objection (the appellants). She has also filed another Reference/ Objection No.8/14 of 2013 u/s 18 of the Act of 1894 that a very low rate i.e., Rs.700,000/- per *kanal* was fixed, which is not only against the potential aspect of the acquired land but also against the fact that similar property was sold against Rs.30,00,000/- per kanal. It was also alleged by her that two kanal excess land has been taken from her but the same was neither shown on record nor any compensation thereof was paid to her. Both these references were contested by the respondents (appellants and respondents of the reference) through their respective written replies on certain legal and factual objections. The learned Referee Court reduced the divergent pleadings of the parties into issues. Both the parties led their respective evidence and on

gl.

conclusion thereof, Reference No.7/4 of 2013 was allowed by the learned Referee Court declaring the objector/ respondent No.1 entitled for receipt of the entire compensation of the land acquired through subject award vide judgment and decree dated 28.04.2022 whereas, Reference No.8/14 of 2013 was partially allowed, resultantly the compensation of the acquired land was enhanced to Rs.15,00,000/- per kand, with 15% compulsory acquisition charges and 06% simple interest on the enhanced amount from the date of acquisition till its final payment while regarding the contention of the respondent/ objector qua acquisition of excess property without disclosing in the subject award, the District Collector was directed to ensure the quantity of the land acquired by measuring the same through revenue staff in presence of the objector or her attorney and if the same is exceeded 10 kanal, the terms of compensation will be the same as discussed above for the exceeding land vide judgment and decree dated 11.05.2022. Against judgment dated 28.04.2022, the instant appeal and connected R.F.A No. 38-M/2022 and 40-M/2022 have been preferred while against the judgment dated

cl.

11.05.2022 the connected R.F.As No.45-M/2022, 46-M/2022 & 62-M/2022 have been filed.

3. Before the learned Referee Court in Reference No.7/4 of 2013, Inam Ullah Khan, the appellant of connected R.F.A No.15-M/2022 has filed an application for his impleadment in the panel of the respondents, which was duly contested by the objector and private respondents No.2, 8 & 9 of the said reference/ objections and after hearing the parties, the said application was dismissed by the learned Referee Court vide order dated 18.12.2021, hence, the connected R.F.A No.15-M/2022.

4. Arguments heard. Record perused.

5. The record would transpire that the respondent/ objector namely Mst. Anesa Bibi, claims ownership over the acquired land on the basis of a dower deed/nikah nama dated 09.08.2002, asserting that the property originally belonged to the ex-Nawab of Dir namely Muhammad Shah Khesro, who had gifted the same along with other properties through a deed dated 07.08.1976 to her husband Muhammad Shah Tahir Khan. Subsequently, her husband, at the time of their nikah/marriage, had given the said

sl.

property to her in lieu of dower. During her evidence, the respondent/objector has produced her attorney namely Shujat Said as PW-6, who produced the gift deed dated 07.08.1976 as Ex.PW6/3. In his cross-examination, it was brought on record by the appellants themselves that the property was in possession of Muhammad Shah Tahir Khan as a result of the said gift, and that he had given the same to his wife, the respondent/ objector in lieu of dower. More-so, his cross-examination further reveals that in village Panakot, half of the property had been gifted to Muhammad Shah Tahir Khan and the remaining half to his brother Muhammad Shah Tariq Khan. This admission supports the respondent/objector's stance. The partition of the property between the two donees also stands admitted on record. PW-1 deposed that at the time of preparing the map/sketch (Ex.PW1/1), both donees namely Muhammad Shah Tahir Khan and Muhammad Shah Tariq Khan were present on the spot. The said document (Ex.PW1/1) was prepared by this witness. In addition to that Muhammad Iqbal (retired Patwari of the Irrigation Department) appeared as PW-1 before the learned Referee Court and deposed that the property in Panakot village

Q.

belonged to Muhammad Shah Tahir Khan and his brother Muhammad Shah Tariq Khan, both sons of Muhammad Shah Nasir Khan (son of the ex-Nawab of Dir). He further confirmed that the property had been partitioned between the brothers through vide dated 24.04.2001 (Ex.PW1/1). From the evidence, it is evident that Muhammad Shah Tahir Khan, the husband of the respondent/ objector, was indeed the son of Muhammad Shah Nasir Khan who gifted the property in his favour.

6. A registered nikah nama dated 09.08.2002 was also produced before the learned Referee Court as Ex.PW4/1 to prove the marital status of the objector/respondent and Muhammad Shah Tahir Khan. This relationship remained uncontroverted by the appellants. To further substantiate the same, two marginal witnesses namely Gul Wahid (PW-4) and Mulvi Akhtar Jan (PW-5) were examined in support of the nikah ceremony, however despite their lengthy cross-examination, both these witnesses consistently affirmed their presence at the nikah. The document Ex.PW4/1 clearly suggests their names as witnesses, and their statements were consistent with the contents of the nikah nama, including the mention of the

acquired land as dower of the respondent/objector. Significantly, DW-2 (Said Hakim), a witness for the appellants, has categorically admitted during cross-examination that possession of the acquired land had been delivered to the respondent/ objector. He also conceded that in the royal family, it was customary to give property in dower to their wives and specifically admitted that the acquired land had been given in dower by Muhammad Shah Tahir Khan to Mst. Anesa Bibi, the objector. He further acknowledged that the respondent/objector had not signed any sale deed. Similarly, the appellants have failed to establish their ownership through DW-3 (Shakir Ullah) because he has admitted in his cross-examination that on the northern and eastern sides, the property of the respondent/objector had been correctly identified. Careful scrutiny of the testimonies of the appellants' witnesses reveals that even their own witnesses could not support their version, while the evidence led by the respondent/objector fully corroborated her claim particularly the relationship with Muhammad Shah Tahir Khan, the donor/owner of the land, as established through the gift deed (Ex.PW6/3) and the nikah nama (Ex.PW4/1). The said nikah nama, in

Q.

column No.16, specifically mentions the Panakot Bagh property as dower of the respondent/objector. Thus, it stands proved firstly, that the land was gifted to Muhammad Shah Tahir Khan from the property of the ex-Nawab, making him the rightful owner; and secondly, that he had transferred the same to the respondent/objector as dower. In such circumstances, the acquiring agency was legally obliged to associate the respondent/objector in the acquisition proceedings and to ensure the payment of the compensation of the acquired land to her while the appellants had no lawful entitlement to receive the compensation. It appears that being a *pardanasheen* lady, the respondent/objector was deprived of her legal rights when the compensation was awarded to the persons who had no concern with the acquired property. Therefore, the learned Referee Court has rightly accepted the objection u/s 30 of the Land Acquisition Act, 1894 considering the strong evidence of the respondent/ objector on the record.

7. Adverting to R.F.As No. 45-M/2022, 46-M/2022 and 62-M/2022, which have arisen out of the reference filed u/s 18 of the Land Acquisition Act, 1894. Two main objections were raised by the

respondent/objector: firstly, regarding the incorrect assessment of compensation for the acquired land in light of its potential and commercial value; and secondly, the grievance that an excess of two kanals of her property was taken into possession by the acquiring department without including the same in the acquisition process. This reference was duly contested by the appellants through their separate written replies. The acquiring agency denied the allegation of incorrect valuation, whereas the private respondents (appellants) asserted that the acquired property was in fact their ancestral. However, in view of the findings already recorded regarding the ownership of the respondent/objector in the aforementioned matters, the question of ownership raised by the appellants requires no further adjudication. As for as the contention of the appellant/acquiring agency that the learned Referee Court has erred in accepting the reference of the respondent/objector is concerned, it is an admitted fact that the area where the acquired property is situated was unsettled. Thus, in such circumstances, the determination of fair compensation in terms of section 23 of the Act of 1894 was to be made on the

sl.

basis of alternate reliable indicators including the market sale precedents. The respondent/objector contended that the acquired land was agricultural-cum commercial in nature and due to its high potential, its compensation could not have been less than Rs. 30,00,000/- per kanal. It was alleged that the acquiring agency has assessed the rate at Rs. 7,00,000/- per kanal arbitrarily, without due regard to the prevailing market prices. From the evidence produced by the parties, it has been established that the acquired land is situated adjacent to the main Chitral road, near the PTDC hotel, the official residence of the Superintendent of Police as well as various shops and residential houses. Siraj-ud-Din (PW-2) produced certain official notifications in support of the claim of the acquiring agency and admitted during his cross-examination that land in the same vicinity was acquired by NHA for its rest house in 2004. Moreover, PW-7 and PW-8, who appeared as marginal witnesses to a sale deed dated 20.08.2018 (Ex.PW7/1), deposed that a 10 marla plot in the vicinity had been sold for Rs.15,00,000/-. Both witnesses remained consistent and corroborative in their depositions during cross-examination. Although

sl.

the impugned award was passed in 2013 and the ibid sale deed was executed in 2018, however, it would be reasonable to infer that the value of land, five years earlier, would be not be less than half, i.e., around Rs. 15,00,000/- per kanal. It is also significant that DW-4, during his cross-examination, has expressed that at the relevant time (when the award was passed), there was no recent sale transaction in the area. In such circumstances coupled with the potential of the acquired land, reliance on the sale deed of 2018 by the learned Referee Court was justified and could validly be used as a guiding benchmark in the present reference. Furthermore, the subject property is located at the prime location in the district being close to government buildings and it was acquired for the residence of the Deputy Commissioner, which further reaffirms its commercial significance and potential. It is also an undisputed fact that the respondent/objector, being the actual and lawful owner, was not associated with the acquisition process. The acquiring agency did not provide any reliable or convincing evidence to explain that how it has assessed the potential aspect of the land while determining its compensation. The evidence would transpires that the

g.

acquiring agency has relied solely on the deed dated 02.06.2004, reference whereof was given in the award but the same was rebutted by the objector. It is a settled principle of law that for determining proper compensation for acquired land, no doubt the factors enumerated under sections 23 and 24 of the Act of 1894 are relevant but the peculiar facts and circumstances of each case such as the location, future potential and surrounding developments, play a more decisive and guiding role in such determination. In the present case, the acquired land, though previously agricultural had undeniably gained significant commercial potential due to its location being situated around the important places having easy access and facilities of life. This potential aspect of the land was not denied by the acquiring agency but even then it was not adequately accounted for in the impugned award. Hence, the findings of the learned Referee Court while allowing the reference and enhancing the compensation are well-supported by the evidence on record and the settled legal principles governing the subject. In the case of “Government of Pakistan through Secretary, Ministry of Defence, Rawalpindi Military Estates

q.

Officer, Hazara Circle, Abbottabad and another Vs.

Mst. Ayesha Bibi (Widow) and others (2024 SCMR

1323), the apex court has held as under:

“Award determined by the Collector not only acknowledged the high value of the land, but also recorded that the land under acquisition could serve both residential and agricultural purposes. And yet, the sole reliance of the Collector on a one-year average price to determine the amount of compensation overlooked the distinctive attributes and future potential of the acquired property. While the one-year average price may be a factor in determining the market value of the land, it cannot be the sole determinant. In assessing compensation, the Collector must consider not only the current market value of the land but also its potential value. Market value is to be taken up as one existing on the date of taking possession of the land (in case of Province of Khyber Pakhtunkhwa), while the potential value is the value to which similar lands could be put to any use in future. Thus, in determining the quantum of compensation, the exercise may not be restricted to the time of taking possession of the land, but its future value shall also be taken into account.”

ℓ.

In the said case, the Hon’ble Apex Court has further held as follows:

“There is no single formula for the determination of the compensation due to the landowners for the compulsory acquisition of their land. Instead, different factors relevant to each situation are used together to determine the market value as defined in Section 23(1) of the Land Acquisition Act, 1894. Courts are increasingly recognizing the potential for future development when determining fair compensation for acquired land, reflecting a more holistic approach.”

8. It is evident from the record that the acquiring agency has failed to produce any cogent and reliable evidence to rebut the respondent/objector's claim that her agricultural land having future commercial potential due to its location, was acquired for the construction of residence of the Deputy Commissioner, therefore, the acquiring agency was expected to exercise greater care in determining fair compensation under the Act of 1894 but a very low price has been fixed as compensation. Reliance is placed on the case of "Nawabzada Abdul Qadir Khan and others Vs. Land Acquisition collector Mardan and others" (2023 SCMR 950), wherein view of the apex Court was as under:

sl. "Intention of the legislature behind section 23 of the Land Acquisition Act, 1894 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."

9. In light of the above discussion, the rate of compensation enhanced by the learned Referee Court based on own admissions of the acquiring department/agency that the acquired land is located near to the PTDC Hotel, government residences and

the main road reflects a proper appreciation of the evidence and requires no interference. Likewise, the directions issued by the learned Referee Court regarding the measurement of the acquired land to assess the alleged excess portion, as claimed by the respondent/objector, are also found to be appropriate. The award of 15% compulsory acquisition charges u/s 23(2) of the Land Acquisition Act, 1894 is in accordance with law. Similarly, the grant of 6% interest or rental income on the enhanced compensation is a statutory entitlement under Section 28 of the Act, which could not be refused in the given facts and circumstance of the case. Reliance is placed on the cases of "Government of Khyber Pakhtunkhwa through Chief Secretary Peshawar and others Vs. Yousaf Khan and others" (2022 SCMR 1836) wherein it was held that:

ℓ.

"Distinction between the terms sum and amount to be determined is that while the "sum" is simply the enhanced compensation, the "amount" is the rent over and above the enhanced compensation to provide for the loss caused to the landowner due to the delay in making payment of the adequate compensation since the taking over of the possession of the land. Under section 28 of the Land Acquisition Act, 1894, a Referee Court can, and should, add the sum of actual fair market rental value of the land found acquired unpaid (or deficiently paid) if it is proved by evidence on record or, in absence of such evidence, a sum equal to 6% per annum of the enhanced

sum of compensation as the minimum rental value of that land, from the date of taking possession of the acquired land to the date of actual payment of the enhanced price/compensation to the landowner.”

Further reliance may also be placed on the case of “Government of the Khyber Pakhtunkhwa through District Collector Vs. Misal Khan and others” (2022 SCMR 277).

10. In his application, the appellant in connected R.F.A No. 15-M/2022 has contended that he was a necessary party to the reference proceedings because his name appeared in the documents of the acquisition process. He alleged that due to mala fide intentions, respondent No.1/ objector did not array him as a party in the reference. His claim was based on a sale deed dated 14.05.2012, through which he purportedly purchased the property from the respondent/objector. However, in rebuttal, the respondent/objector annexed with her reply copy of a judgment of the civil court in Civil Suit No. 50/1 of 2009, filed by her for the cancellation of the very sale deed dated 14.05.2012, relied upon by appellant Inam Ullah. The record shows that the said suit was decreed ex parte against the appellant on 28.06.2019 and the decree has attained finality and so factum of the cancellation of the said document renders the

d.

appellant's claim of ownership in the acquired land unsustainable in the eyes of the law. Mere issuance of notices to him during the acquisition process is insufficient to establish any legal right or ownership over the acquired land. Neither there is any evidence on record or annexed with his impleadment application to show that he had received any compensation for the acquired land nor he has ever objected to or questioned the acquisition proceedings when his name was dropped even after initial participation in the process. In similar circumstances, the application for impleadment was dismissed in the case of “Muhammad Ahmad Khan Vs. Punjab Board of Revenue Employees Cooperative Housing Society Ltd. and others” (2023 YLR 1175, Lahore), wherein it was observed that:

g.

“Nothing was available on record or alleged that any objection was raised to the acquisition proceedings, at the relevant time. Claim of alleged ownership was purportedly raised to interfere in the proceedings, which culminated through award. Merely because some dispute, if any, was pending regarding acquisition it was no reason for the petitioner to become party to the appeal.”

So, his application for impleadment was rightly dismissed by the learned Referee Court. learned counsel for the parties have not been able to

point out any illegality, irregularity, misreading or non-reading of the record or evidence in the impugned judgments, decrees and order.

11. In view of the above, all these appeals, being devoid of merit, are hereby dismissed. No order as to costs.

Announced
19.06.2025



JUDGE

office
24/6/2025

Sabz Ali* (S.B)

HON'BLE MR. JUSTICE SABIT ULLAH KHAN