

[Supreme Court of Pakistan]

Present: Qazi Faez Isa, Sajjad Ali Shah and Syed Mansoor Ali Shah, JJ
Mst. Bibi SHAH BAN (DECEASED) through L.Rs. and others---Appellants

Versus

LAND ACQUISITION COLLECTOR, A.C., MARDAN and others---Respondents

Civil Appeals Nos. 79-P and 143-P to 146-P of 2013, decided on 4th March, 2019.

(Against the judgment dated 01.04.2013 of the Peshawar High Court, Peshawar passed in R.F.As. Nos. 104-P, 114-P, 116-P and 117-P of 2004)

(a) Land Acquisition Act (I of 1894)---

----Ss. 6, 23 & 48-A---Constitution of Pakistan, Art. 24---Land acquired for expansion of a Government college---Delay of more than ten years between declaration and making of award--- Collector made his award and fixed the amount of compensation payable to the owners of the land at the rate of Rs. 1079.37 per marla and fixed an amount of Rs. 21,994 as compensation for the structures standing on the land--- Fifteen per cent compulsory acquisition charges and eight per cent simple interest was also awarded from date of notification by the Commissioner for taking over the land---Collector noted that those from whom the land was acquired were left without access to their remaining lands and therefore carved out six approach roads/pathways to access their lands, but excluded the land falling under these approach roads/pathways for payment of compensation---Reference filed before the Judge Land Acquisition against the award was partly accepted and the Judge increased the price of the acquired land to Rs. 4,500 per marla, reduced the interest per annum to six per cent and maintained the fifteen per cent compulsory acquisition charges---High Court maintained the compensation that had been determined by the Judge Land Acquisition, however, it awarded the cost of litigation to the land owners---Held, that there had been an unjustifiable delay in making the Award---Declaration under S. 6 of the Land Acquisition Act, 1894 ('the Act') was made on 14th January, 1986 and the Award was made ten and a half years later on 4th August, 1996---Said Act envisaged an award to be made within a year---Article 24(2) of the Constitution mandated the payment of compensation for land compulsorily acquired---Depriving a person of property was an exception to the Fundamental Right to hold and enjoy property---Owner must be promptly compensated for the compulsorily acquired property---Designated authority (the Collector) had to determine the compensation payable to the land owners (appellants) within a year but failed to do so and instead took ten and a half years to make the Award---Judge Land Acquisition had noted that the acquired land was situated on the main road and also had commercial value as it was situated in the vicinity of a hospital, a college and the Office of the Forest Officer---Judge had also referred to documents, including the fard jamabandi for the year 1994-95 produced by Patwari Halqa and the mutations of lands in the area showing the price of land to be ten thousand rupees per marla at the relevant time, and a judgment wherein the compensation in respect of land acquired in the same area a few years previously was fixed at Rs. 6,000 (six thousand rupees) per marla---Despite noting such facts, which had remained un-rebutted, the Judge increased the compensation to only Rs. 4,500 per marla---High Court had also disregarded the evidence on record, though it had noted the price had increased and had expressed sympathy with the land owners---Land owners were also entitled to receive compensation for the land used in approach roads/pathways, since the value of such land had diminished because it could only be used as approach roads/pathways---As regards the structures standing on the land the owners had valued the same at Rs. 2,000,000 (two million rupees), however, in the Award these were valued at Rs. 21,994 only---Since the owners of the acquired area had not established that they had suffered damages on account of the delay in making the Award beyond the period of one year,

therefore, they were not entitled to receive additional compensation under S. 48-A of the Act---Supreme Court directed that compensation for the acquired land was to be paid at the rate of Rs. 10,000 per marla; that compensation for the reduction in the value of land utilized for the approach roads/pathways, was to be paid at the rate of Rs. 5,000 per marla; that compensation for the value of the construction on the land was to be Rs. 200,000; and the cost of litigation was to be awarded to the land owners---Appeal was disposed of accordingly.

(b) Land Acquisition Act (I of 1894)---

---S. 6---Land acquired for expansion of a Government college---College re-named after the then serving Provincial Governor---Supreme Court raised the question whether the College which was built on Government land and constructed out of public funds and for which land compulsorily acquired had been paid out of public funds could be named after a living person and one who held public office in the country--Supreme Court observed that since decision in respect of the matter of naming the College may affect the naming of public buildings, public parks, public roads and other public places not only in the province in question but also in other parts of the country therefore notices were to be issued to the Advocate Generals of all the provinces, the Federal Capital Territory and the Attorney General, all of whom were to file their respective written submissions within six weeks---Supreme Court directed office to fix the question raised for consideration of the Supreme Court as per the orders of the Chief Justice---Appeal was disposed of in circumstances.

Abdul Sattar Khan, Advocate Supreme Court and M. Zahoor Qureshi, Advocate-on-Record for Appellants (in C.A. No. 79-P of 2013).

Ex parte for Respondents Nos. 1 - 5 (in C.A. No. 79-P of 2013).

Mujahid Ali Khan, Additional Advocate-General, Khyber Pakhtunkhwa for Respondent No.6 (in C.A. No. 79-P of 2013).

Abdul Latif Yousafzai, Advocate-General, Khyber Pakhtunkhwa on Court's Notice (in C.A. No. 79-P of 2013).

Amjad Ali, Advocate Supreme Court and M. Ajmal Khan, Advocate-on-Record along with Faqir Jan, Admin Officer (in C.As. Nos.143-P to 146-P of 2013).

Ex parte for Respondents Nos. 1 - 7 (in C.As. Nos. 143-P to 146-P of 2013).

Nemo for Respondent No. 4 (in C.As. Nos. 143-P to 146-P of 2013).

Ex parte for Respondents Nos. 1 - 3, 5 - 10 (in C.As. Nos.143-P to 146-P of 2013).

Date of hearing: 13th December, 2018.

JUDGMENT

Qazi Faez Isa, J. The Government of N.W.F.P. (now Khyber Pakhtunkhwa) acting through the Secretary Education issued notification dated 1st August, 1983 by which the Government Comprehensive High School Mardan was renamed as the Public School Mardan and transferred to it all lands, buildings,

properties, assets and liabilities of the former. On 3rd November, 1985 the Secretary Education issued another notification changing the name of the school again and also upgrading it; the Public School Mardan was now named after the incumbent Governor of the Province and made into a college, the "Fazle Haq College Mardan" ("the College").

2. The Government then decided to expand the College. On 24th October, 1985 the Collector, Mardan, District Mardan ("the Collector") issued a notification under section 4 of the Land Acquisition Act, 1894 ("the Act") identifying fifty five kanals and seventeen marlas of private land lying adjacent to the College which could be used for the College and authorized a preliminary investigation of the land. On 14th January, 1986 the Commissioner Peshawar Division ("the Commissioner") issued a notification under section 17 of the Act taking over the possession of the land and stating that the provisions of sections 5 and 54 of the Act will not be applicable to the land. Nothing further happened for the next ten years. On 23rd January, 1996 the Commissioner issued a notification under section 6 of the Act declaring that the land was required for a public purpose and directed the Collector to make an order for its acquisition under section 7 of the Act.

3. On 4th August, 1996 the Collector made his award ("the Award") pursuant to section 11 of the Act and fixed the amount of compensation payable to the owners of the land at the rate of Rs.1079.37 paisas (one thousand and seventy nine rupees and thirty seven paisas) per marla and fixed an amount of Rs. 21,994 (twenty one thousand, nine hundred and ninety four rupees) as compensation for the structures standing on the land. Fifteen per cent compulsory acquisition charges and eight per cent simple interest was also awarded from 14th January, 1986. The Collector noted that those from whom the land was acquired were left without access to their remaining lands and therefore carved out six approach roads/pathways to access their lands, but excluded the land falling under these approach roads/pathways for payment of compensation. Compensation was ordered to be paid only in respect of the fifty-two kanals and fifteen marlas of land which had been acquired for the College ("the acquired land").

4. The owners (appellants in Civil Appeal No. 79-P/2013, "the private appellants") were dissatisfied with the amount of the compensation fixed by the Collector and filed a reference under section 18 of the Act against the Award. They alleged that the compensation fixed by the Collector was well below the market price of Rs. 25,000 (twenty five thousand rupees) per marla and the value of the construction on two kanals of the acquired land was Rs. 2,000,000 (two million rupees). They however conceded that the law envisaged six per cent interest per annum (instead of eight per cent interest as given in the Award). On 8th June, 2004 the reference was partly accepted by the learned Judge Land Acquisition who increased the price of the acquired land per marla to Rs. 4,500 (four thousand and five hundred rupees) per marla, reduced the interest per annum to six per cent and maintained the fifteen per cent compulsory acquisition charges; the compensation was payable from the date that the possession of the land was taken. Thereafter, both sides filed regular first appeals ("RFAs") in the Peshawar High Court, Peshawar against the judgment of the learned Judge Land Acquisition. In the RFAs the High Court maintained the compensation that had been determined by the learned Judge Land Acquisition, however, the learned Single Judge was pleased to award the cost of litigation to the private appellants. Both sides then appealed to this Court. The private appellants seek enhancement of compensation amount to Rs. 25,000 (twenty five thousand rupees) per marla and Rs.2,000,000 (two million rupees) for the said construction. The official appellants (who have filed Civil Appeals Nos. 143-P to 146-P/2013) state that compensation as determined by the Collector in the Award be reverted to.

5. The learned counsel for the private appellants (in Civil Appeal No. 79-P/2013) submitted as under:

- (i) Evidence was produced to show the sale and purchase transactions at the rate of Rs. 10,000 (ten thousand rupees) per marla during the relevant period;
- (ii) The acquired land is situated on a main road and has the potential of considerable increase in value;
- (iii) The Award was made ten and a half years after the possession of the land was taken over and during this period the price of the land had gone up considerably;
- (iv) The owners remained deprived of the use of their land till the Award was made;
- (v) For similar land compensation was determined at six thousand rupees per marla by the Collector in the award dated 12th April, 1984 which was maintained by this Court on 17th December, 1992;
- (vi) The owners were entitled to additional compensation mentioned in section 48-A of the Act (inserted by the N.W.F.P. Land Acquisition (Amendment) Act, V of 1987) but they were not granted it; and
- (vi) The land falling under the approach roads/pathways should not have been excluded from the payment of compensation since it could only be used as approach roads/pathways.

The learned counsel relied upon the cases of *Murad Khan v. Land Acquisition Collector* (1999 SCMR 1647), *Province of Punjab v. Jamil Ahmad Malik* (2000 SCMR 870) and *Province of Punjab v. Begum Aziza* (2014 SCMR 75).

6. Mr. Mujahid Ali Khan, the learned Additional Advocate General ("AAG"), and Mr. Amjad Ali, the learned counsel for the College, opposed the appeal filed by the private appellants and supported the appeals filed by the College. They stated that compensation was determined by the Collector after he had personally visited the acquired land and the Award was made in accordance with the prevailing market price and the law. Therefore, the learned Judge Land Acquisition was not justified to increase the compensation amount. As regards the delay in making the Award, they stated that the additional six per cent interest per annum payable to the owners sufficiently compensates them, therefore, the delay in making the Award is inconsequential.

7. We have heard the learned counsel for the parties and with their able assistance examined the record. Section 23 of the Act stipulates the matters to be considered in determining compensation. In the Province of Khyber Pukhtunkhwa section 48-A of the Act has been added which states that the owner of land will also be entitled to damages suffered if the award is not made within a year of the declaration under section 6 of the Act. Section 48-A is reproduced hereunder:

"Compensation to be awarded when land not acquired within one year: (1) If within a period of one year from the date of publication of declaration under Section 6 in respect of any land, the Collector has not made an award under Section 11 in respect to such land, the owner of the land shall, unless he has been to a material extent responsible for the delay, be entitled to receive compensation for the damage suffered by him in consequence of the delay.

(2) The provisions of Part II of this Act shall apply, so far as may be possible, to the determination of the compensation payable under this section."

8. There has been an unjustifiable delay in making the Award. The declaration (under section 6 of the Act) was made on 14th January, 1986 and the Award was made ten and a half years later on 4th August, 1996. The Act envisages an award to be made within a year. Article 24 (1) of the Constitution of the Islamic Republic of Pakistan ("the Constitution") stipulates that, "No person shall be deprived of his property save in accordance with law." And, Article 24(2) of the Constitution mandates the payment of compensation for land compulsorily acquired. Depriving a person of property is an exception to the fundamental right to hold and enjoy property. The owner must be promptly compensated for the compulsorily acquired property. The designated authority (the Collector) had to determine the compensation payable to the private appellants within a year but failed to do so and instead took ten and a half years to make the Award. The learned High Court Judge had noted that the price of the land had increased on account of the depreciation - devaluation of the rupee and further that the owners could not utilize their land during the time it took to make the Award. However, he did not increase the compensation amount despite also having observed that, "the affectees are required to be compensated to some reasonable extent, deemed appropriate and justiciable in the circumstances of the case."

9. The learned Judge Land Acquisition, in deciding whether the owners were entitled to be compensated as sought by the owners (Issue No. 5), had noted that the acquired land was situated on the main road and also had commercial value as it was situated in the vicinity of Haroon Surgical Hospital, the Government Commerce College, Mardan and the Office of the Forest Officer, Mardan. He had also referred to evidence and the exhibited documents, including the fard jamabandi for the year 1994-95 produced by Patwari Halqa and the mutations of lands in the area showing the price of land to be ten thousand rupees per marla at the relevant time. He had also referred to the judgment wherein the compensation in respect of land acquired in the same area a few years previously was fixed at Rs. 6,000 (six thousand rupees) per marla. However, despite noting these facts, which had remained un-rebutted, he increased the compensation to only Rs. 4,500 per marla. The learned Judge of the High Court had also disregarded the evidence on record, though he had noted the price had increased and had expressed his sympathy with the private appellants.

10. To get a better understanding of the location of the acquired land and of the said approach roads/pathways we had directed the College, "to file photographs of the land that was acquired and the access to the remaining land of the persons from whom it was acquired." The photographs filed by the College confirm that the land falling under the approach roads/pathways cannot be used for any other purpose. When the use of such land is restricted in this manner then the value of such land stands diminished, but no compensation has been awarded for such land.

11. This Court in the case of *Murad Khan v Land Acquisition Collector* (1999 SCMR 1647) with regard to determining the compensation of land had considered the matters mentioned in section 23 of the Act and the scope of the expression market-value mentioned therein. Muhammad Bashir Jehangiri, J writing for a three-member Bench of this Court reviewed the case law comprehensively and derived the principles therefrom (paragraph 13, pages 1654-1657). This seminal judgment has been continuously followed by this Court, including in the cited cases of *Province of Punjab v. Jamil Ahmad Malik* (2000 SCMR 870) and *Province of Punjab v Begum Aziza* (2014 SCMR 75). Applying section 23 of the Act and the principles expounded in the case of *Murad Khan* the compensation payable to the private appellants needs to be revised.

12. The market-value of the acquired land at the relevant time as per the evidence on record was Rs. 10,000 (ten thousand rupees) per marla. The owners of the acquired land therefore had to be compensated at the rate of Rs. 10,000 (ten thousand rupees) per marla together with fifteen per cent compulsory acquisition

charges and six per cent interest per annum from the date of taking possession of the acquired land, that is from 14th January, 1986.

The private appellants will also be entitled to receive compensation for the land used in approach roads/pathways, measuring 2 kanals, 9 marlas and 7 sersais (as mentioned in the Award) since the value of such land had diminished because it could only be used as approach roads/pathways. However, evidence with regard to the reduction in the value of such land is not available. It has been decades since the land was acquired and the approach roads/pathways were created, therefore, it would not now be appropriate to remand the matter for the determination in the reduction in the value of such land. This land also constitutes a very small portion of the acquired land. Accordingly, we fix the compensation for the reduction in the value of the land used in the approach roads/pathways at Rs. 5,000 (five thousand rupees), which is half the compensation payable for the acquired land.

As regards the "abad houses on an area of 2 kanals of land" the owners had valued the same at Rs. 2,000,000 (two million rupees), however, in the Award these are valued at Rs. 21,994 (twenty one thousand, nine hundred and ninety four rupees). The Award doesn't mention the nature of such construction nor how its price was determined, instead the Collector relied on the value as determined by the Patwari. Taking into account the value of the land, the area on which the construction was raised and when it must have been raised (that is before the possession of the land was taken over) we think that it would be valued at Rs. 200,000 (two hundred thousand rupees) at the relevant time.

13. Since the owners of the acquired area had not established that they had suffered damages on account of the delay in making the Award beyond the period of one year, therefore, they are not entitled to receive additional compensation under section 48-A of the Act.

14. The compensation therefore payable by the College/Collector/ Government of Khyber Pakhtunkhwa to the owners of the land (the private appellants herein) is as under:

- (a) Compensation for the acquired land at the rate of Rs.10,000 (ten thousand rupees) per marla;
- (b) The reduction in the value of 2 kanal, 9 marlas and 7 sersais of land utilized for the approach roads/pathways, being at the rate of Rs. 5,000 (five thousand rupees) per marla;
- (c) Compensation for the value of the construction to be Rs.200,000 (two hundred thousand rupees); and
- (d) The cost of litigation granted by the High Court.

15. For the reasons mentioned above Civil Appeal No. 79-P of 2013 is partly allowed in the aforesaid terms and Civil Appeal Nos.143-P to 146-P of 2013 are dismissed. The order whereby judgment in these appeals was reserved had concluded as under:

" After the announcement of the judgment in these appeals the office is directed to send the files to the principal seat of this Court at Islamabad for determination of the question noted in the following paragraph.

2. The learned counsel for the College informed us that previously the College was known as the Government Comprehensive School and the land on which it stood was owned by the Government, however, subsequently the said School was converted into the College and was named after General Fazal Haq, the then Governor of the Province, when he was in office. The question arises whether the College

which was built on Government land and constructed out of public funds and for which land compulsorily acquired had been paid out of public funds can be named after a living person and one who held public office in Pakistan. The learned counsel for the College is directed to submit concise statement in this regard and attach therein all documents pertaining to the naming of the College. The learned Advocate General, Khyber Pakhtunkhwa seeks time to take instructions and to formulate his views on the noted question. Since our decision in respect of the matter of naming the College may affect the naming of public buildings, public parks, public roads and other public places not only in the province of the Khyber Pakhtunkhwa but also in other parts of Pakistan notices be issued to the Advocate Generals of all the four provinces, the Islamabad Capital Territory and the Attorney General for Pakistan, all of whom are directed to file their respective written submissions within six weeks, whereafter the matter be fixed in Court for hearing."

16. After the announcement of this judgment the office is directed to fix the aforementioned question for consideration of this Court as per the orders of the Hon'ble Chief Justice.

MWA/S-8/SC Order accordingly.