

**JUDGMENT SHEET**

**IN THE LAHORE HIGH COURT, RAWALPINDI BENCH,**  
**RAWALPINDI.**  
**JUDICIAL DEPARTMENT.**

**R.F.A. No.70/2006**

**WAPDA through its Chairman & others.**  
**Versus**  
**Bashir Hussain Shah and others.**

**R.F.A. No.71/2006**

**WAPDA through its Chairman and others**  
**Versus**  
**Riaz Ahmad Chaudhry and others.**

<b>Date of Hearing</b>	<b>24.10.2016.</b>
<b>Appellants by</b>	<b>Mr. Muhammad Sohaib on behalf of Sahibzada Uzair Hashmi, Advocate.</b>
<b>Respondents by</b>	<b>Malik Qamar Afzal and Mr. Maqsood Ahmed Malik, Advocates.</b>

**MUHAMMAD AMEER BHATTI, J:-** Through this single judgment, we intend to dispose of the following appeals, being inter-connected and arisen out of the consolidated Award announced on 27.11.1995 in respect of land within the precincts of revenue estate of Village Badana Khurd, Tehsil Taxila, District Islamabad, acquired for the construction of 132/220 KV Grid Station, Islamabad:-

- i) R.F.A. No.70/2006.  
(WAPDA through its Chairman etc. vs. Bashir Hussain etc.) and;
- ii) R.F.A. No.71/2006.  
(WAPDA through its Chairman etc. vs. Riaz Ahmad Chaudhry etc.)

Regular First Appeal bearing No.70/2006 is directed against the Judgments & decree dated 02.04.2006 whereas R.F.A. No.71/2006 calls-in-question the legality and validity of judgment and decree dated 01.02.2006, passed by the learned Senior Civil Judge, Rawalpindi, whereby Reference petition filed by the respondents under Section 18 of the Land Acquisition Act, 1894, stood accepted and the compensation awarded to the respondents was enhanced. Initially, the Land Acquisition Collector, for the purpose of compensation divided the land into three categories i.e. A, B & C and accordingly awarded compensation at the rate of Rs.75,000/-, Rs.50,000/- and Rs.26,000/-, respectively, alongwith 15% compulsory acquisition charges etc., which was enhanced by the learned Referee Court in Reference Petition No.14/1996 (challenged in R.F.A. No.70/2006) from Rs.60,000/- to Rs.70,000/- per kanal whereas in Reference Petition No.02/1996, subject matter of R.F.A. No.71/2006, same was enhanced to Rs. Rs.1,25,000/- in 'A' category, Rs.1,00,000/- in 'B' and Rs.75,000/- in 'C' category with compulsory acquisition charges @ 25% instead of 15% as awarded by the Land Acquisition Collector under Section 23(2) of the Land Acquisition Act, 1894. Earlier, both the above said appeals stood dismissed through consolidated order dated 27.10.2008, which became subject matter of Civil Appeal Nos.19 & 20 of 2009, and the august Supreme Court vide judgment dated

13.04.2015 set-aside the impugned order and remanded the case for hearing afresh after affording due opportunity of hearing to all the concerned parties.

2. Arguments heard. Record perused.

3. This matter has been argued by the learned counsel for the appellant with two contentions: one of the contentions is with regard to making assessment of enhancement; and the second contention is with regard to enhancement of compulsory acquisition charges from 15% to 25%, which is stated to be illegal and without any lawful justification.

In so far as the first contention is concerned, same is not borne-out from any evidence led by the respondents inasmuch as he was asked to refer any piece of evidence which was misread and misconstrued but he failed to substantiate his contention. He was also confronted with Aks Masavi Exh.A-3, examination of which shows that the property of the appellants is contiguous to the land comprising Khasra Nos.417 & 418, which have been categorized by the appellants in their Award as 'A' and accordingly the compensation was fixed.

As to the second contention urged by the learned counsel for the appellants, suffice it to say that since the land was acquired for the public interest although for a Company but

keeping in view the law laid down by the honourable Supreme Court in a case reported as Land Acquisition Collector, G.S.C., N.T.D.C., (WAPDA), Lahore and another vs. Mst. Surraya Mehmood Jan (2015 SCMR 28), the relevant portion whereof is reproduced hereunder, the compulsory acquisition charges are reduced from 25% to 15%.

“It is clear and obvious from a bare reading of section 23(2) of the Act of 1894, which reveals that the purpose for which the land is acquired, is the determining factor for ascertaining compulsory acquisition charges. If the purpose, as is admitted in the instant case, is a public in nature, then such compulsory acquisition charges will be payable at the rate of 15%, even if, such acquisition is for a Company. However, when the land is acquired simpliciter for a Company for its private use only then the compulsory acquisition charges will be payable at the rate of 25%. Such an interpretation of section 23(2) of the Act of 1894 is consistent with the precedent law, on the subject, as laid down by this Court in its judgments referred to above. Therefore, the two learned Courts below have erred in awarding the compulsory acquisition charges at the rate of 25% instead of 15%.”

4. We have noticed that the learned trial Court after referring to all the evidence and making comparison of several mutations of sale, placed on record by the respondents, in particular Exh.A-3 & Exh.A-4, reached on just and correct conclusion that rate of land fixed by the appellants was not correct; hence, he rightly enhanced the same according to

prevailing market rate of the land. We do not find any misreading, non-reading, illegality or irregularity in the judgment impugned.

5. No other point has been urged by the learned counsel for the appellants. We are not persuaded to interfere with the findings recorded by the learned Referee Court, as the same are in consonance with the law laid down by apex Court in a case reported as Land Acquisition Collector, BOR Punjab vs. Syed Haroon Iftikhar and others (2014 SCMR 659) and Land Acquisition Collector, G.S.C., N.T.D.C., (WAPDA), Lahore and another vs. Mst. Surraya Mehmood Jan (2015 SCMR 28). In the latter landmark judgment, it has also been held:-

“The principles that can be gleaned from the aforesaid judicial precedents are that the term “market-value” as employed in section 23 of the Act of 1894 implies the price that a willing purchaser would pay to a willing buyer in an open market arm’s length transaction entered into without any compulsion. Such determination must be objective rather than subjective. While undertaking this exercise, contemporaneous transactions of the same, adjoining or adjacent as well as the land in the same vicinity or locality; in dissenting precedents, may be taken into account. An award of compensation of a similar, adjacent, adjoining land or in respect of the land acquired in the same vicinity or locality cannot be ignored. The classification of the land in the Revenue Record cannot be the sole criteria for determining its value and its potential i.e. the use of which the said land can be put, must also be a factor. In this behalf, the use of the land in its vicinity needs to be examined.”

Resultantly, both these appeals being devoid of merit stands dismissed with modification in compulsory acquisition charges from 25% to 15%. No order as to costs.

**(ATIR MAHMOOD)  
JUDGE.**

**(MUHAMMAD AMEER BHATTI)  
JUDGE.**

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