

**2007 C L C 857**

**[Peshawar]**

**Before Talaat Qayum Qureshi, J**

**Raja SULTAN ERAJ ZAMAN----Appellant**

**Versus**

**MILITARY ESTATE OFFICER, HAZARA CIRCLE ABBOTTABAD and 2 others----  
Respondents**

Regular First Appeal No.26 of 2003, decided on 9th March, 2007.

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

---Ss. 18 & 23---Civil Procedure Code (V of 1908), O.XXVI, R.9---Acquisition of land---  
Compensation, determination of---Appointment of Commission to determine market value of  
acquired land---Land on main road side had lot of potential in terms of commercial as well as  
residential value---Two one year averages of sale of identical land lying on record and amount of  
compensation given in award were different from each other---Ascertainment of real market value  
of acquired land had become necessary in such case---Appointment of Local Commission was  
necessary to collect right opinion with regard to market value of acquired land after recording  
statements of independent persons including property dealers---After ascertainment of real  
market value, compensation of acquired land should have been fixed more than market price---  
High Court, remanded case to Referee Court with direction to ascertain market value of acquired  
land by using prescribed modes and then fix proper compensation.

Khalid Rehman Qureshi for Appellant.

Sardar Ghulam Mustafa for Respondent No.1.

Syed Amjad Ali Shah for Respondent No.2.

Date of hearing: 9th March, 2007.

## **JUDGMENT**

**TALAAAT QAYUM QURESHI, J.---** The land measuring 366 Kanals situated at Mauza Julian, Tarnawa and Khan Pur, Tehsil and District Haripur was acquired for defence purposes on the request of the Military Estate Officer, Abbottabad. Notification under section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as the Act) was issued on 8-3-1995 and corrigendum was issued on 29-8-1995, the kind of land was Banjar, Kassi and Dhama Chiragah.

The Land Acquisition Collector fixed Rs.13,113 per Kanal as compensation of the acquired land. The landowners were also entitled to get 15% compulsory acquisition charges and 4% mutation fee. The said compensation had been fixed on the basis of Award No.34 dated 1-2-1996 for Mauza Mamrial.

2. Being not satisfied with the amount of compensation, the appellants/landowners who were the owners of land measuring 97 Kanals, 10 Marlas in Mauza Jellian filed objection petition. It is worth mentioning that the acquiring department also filed objection petition. Both the objection petitions were referred to the learned referee Judge for determination of compensation. The learned referee Judge after framing issues, recording pro and contra evidence of the parties dismissed both the objection petitions vide judgment and decree dated 29-10-2002.

The appellants have filed the appeal in hand whereas the acquiring department did not file any appeal against the said judgment and decree.

3. Mr. Khalid Rehman Qureshi, Advocate argued that the land of the appellants had lot of potential value and was very expensive. In order to prove the market value of the land of Ghair Mazrooha kind the appellants examined Malik Sajjad, Patwari, Halqa Jollian who produced one year average for the period from 8-3-19094 to 8-3-1995 Exh.Ow2/2, according to which the per Kanal price in the area comes to Rs.72,194.80. They also examined Rashid Mahmood as OW-1 who was Record Keeper of the acquiring department. He also placed on record one year average for the period, from 8-3-1994 to 8-3-1995 Exh.Ow1/4. According to the said average Rs.94,659.80 was the average per Kanal price in the said Mauza. The Courts below failed to appreciate both the documents hence the impugned judgment and decree are based on misreading and non-reading of evidence.

4. On the other hand Sardar Ghulam Mustafa, Advocate learned counsel for respondent No.1 and Syed Amjad Ali Shah, Advocate learned counsel for respondent No.2 argued that before the award was passed, the Land Acquisition Collector collected Ausat Yaksala on the basis of combined transaction in the area which comes to Rs.2,144.60 per Kanal. Since the said average was very low, therefore, keeping the amount of compensation fixed in Award No.34, dated 1-2-1996 for Mauza Mamrial, a sum of Rs.13,113 per Kanal was fixed as compensation. The acquiring department, it was argued, did not agree with the such high compensation hence it had filed the objection petition that the amount of compensation be reduced.

5. It was also argued that in fact in the year 1990 a huge chunk of land was acquired for defence purposes and the area acquired through Award No.37 had been ear-marked, roads were constructed and the area was developed by the acquiring department. The land fixed by the learned Court below in the said background was on higher side.

6. We have heard the learned counsel for the parties and perused the available record.

7. The perusal of the record shows that the Court below has failed to appreciate the evidence on record in its true perspective. There were two one year averages placed on record; one by Malik Sajjad Patwari Halqa Julian, who exhibited one year average for the period from 8-3-1994 to 8-3-1995 Exh.Ow2/2 whereby the price of land per Kanal comes to Rs.72,194.80 and the second

one year average was produced by Rashid Mehmood OW-1, the Record Keeper of the acquiring A department, who also placed on record copy of the one year average for the period 8-3-1994 to 8-3-1995 Exh.OW 1/4 showing the average price to be Rs.94,659.80 per Kanal. The Patwari Halqa had clarified the position that for the one year average produced by him he had not mentioned Mutation No.1436 attested on 24-11-1994 because the said mutation was with regard to the irrigated kind of land, hence the one year average given by him was Rs.72,194.80 per Kanal.

8. Both the one year averages, as mentioned above, were not properly analyzed and appreciated. Moreover, the Court below also failed to appreciate that the land acquired by the respondents was situated on the road side. There was a road between Mauza Julian and Haripur. The said land had lot of potential, in terms of commercial as well as residential, value. This factor was not kept into consideration. The Court below also did not bother to appoint a Local Commission to collect the right opinion with regard to the market value of the acquired land. Had the Local Commission been appointed, the same would have recorded the statements of the independent persons including the property dealers and could have submitted his report as to on what price a person was willing to sell and the other was willing to buy.

9. Since there is a gulf of difference between the amount of compensation given in the award and the one year averages mentioned above. Therefore, it is necessary that the real market value of the land be ascertained and then compensation, which admittedly is always more than the market price, should have been fixed. We, therefore, allow the appeal in hand, set aside the impugned judgment and decree passed by the learned Court below and remand the case back to the learned referee Judge with the direction to ascertain the market value of the acquired property by using the modes prescribed in the law and then fix proper compensation. In the award, the landowners have been deprived of 6% per annum interest also. That factor too was ignored by the Court below which should be taken care of parties are directed to appear before the learned referee Court on 29-3-2007. The learned referee Court is directed to dispose of the objection petition within a period of six months. The office is directed to send back the record much before the date fixed.

S.A.K./54/P

Case remanded.