

**2016 S C M R 1141**

**[Supreme Court of Pakistan]**

**Present: Gulzar Ahmed, Dost Muhammad Khan and Tariq Parvez, JJ**

**GOVERNMENT OF PAKISTAN through Military Estate Officer, Abbottabad and another---Appellants**

**Versus**

**GHULAM MURTAZA and others---Respondents**

Civil Appeal No. 897 of 2013, decided on 17th March, 2016.

(On appeal from the judgment dated 27-5-2013 passed by the Peshawar High Court, Abbottabad Bench in RFA No. 12 of 2007)

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

---S. 23---Compulsory acquisition of land for public purpose---Compensation---Present and future potential of the land---Suit land was acquired for the establishment of Army School of Water Sports---Collector fixed the compensation amount on the basis of one year average rate (of the land in the area) --- Referee Court enhanced the compensation to Rs. 100,000 per kanal with 15% compulsory acquisition charges---Propriety---Suit land was situated on the road side and close to a dam, prime tourists' resort, restaurants and commercial buildings, which were growing at a fast pace---Collector without constituting a Committee to re-assess the land again, and without any just cause and reason had relied on the one year average rate (of the land in the area)---Findings of Referee Court were correct in view of the present and future potential of the suit land---Appeal was dismissed accordingly.

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

---S. 23---Compulsory acquisition of land for a public purpose---Compensation---Practice adopted by Collector (Land Acquisition) in fixing the compensation amount on the basis of one year average rate (of the land in the area)---Propriety---Such practice was not the correct approach---In cases of compulsory acquisition of land for public purposes, the owners of the land were deprived of its utility, therefore, the Collector should not remain stuck to the one year average without taking into consideration the present and future potential of the land acquired.

Abdul Rashid Awan, DAG for Appellants.

Khalid Rehman Qureshi, Advocate Supreme Court for Respondents.

Date of hearing: 17th March, 2016.

## JUDGMENT

**DOST MUHAMMAD KHAN, J.**---This Civil Appeal has been filed against the judgment dated 27.5.2013 passed by learned single Judge of the Peshawar High Court, Abbottabad Bench.

We have heard Mr. Abdul Rashid Awan, Deputy Attorney General as well as Mr. Khalid Rehman Qureshi, learned ASC for the respondents and have perused the record carefully.

2. Brief facts of the case are that Government of Pakistan through Ministry of Defence (Military Estate Officer, Abbottabad and others) requested the District Collector, Haripur for acquisition of the suit land for the establishment of Army School of Water Sports in village, Khanpur District, Haripur.

3. Notification under section 4 of the Land Acquisition Act, 1894 was immediately issued and the Military Estate Officer vide letter No.ATD-6/Acq/6/JCB dated 7.2.2000 Abbottabad, requested the Collector, Acquisition to apply the emergency provision for acquisition of the land, measuring 17 kanals and 8 marlas near Khanpur Dam as it was urgently required by the acquiring department. In view of the request, the entire process was completed by pressing into service the emergency provision of the Land Acquisition Act and Award No.63 was rendered on 29.11.2001, fixing the compensation amount on the basis of one year average rate of preceding year of the notification under section 4 of the Land Acquisition Act.

4. Aggrieved by less compensation amount, the affectees filed an objection petition which was referred by the District Collector, Haripur to the Referee Court and the same was accepted by enhancing the compensation to Rs.100,000/- (one lac) per kanal with 15% compulsory acquisition charges.

5. The District Collector and the acquiring department challenged the judgment and decree of the Referee Court in the Peshawar High Court, Abbottabad Bench, Abbottabad through RFA No.12/2007 which was dismissed and the judgment and decree of the Referee Court was upheld.

6. In the instant case, on the representation/petition of the affectees at one time, Revenue Officer was deputed to inspect the site/land and to report about its prevailing market value. The report of the Revenue Officer Ex-OW-1/7, dated 11.3.2000 would show that acquired land is situated close to Khanpur Dam and its market value is Rs.200,000/- (two lac) per kanal.

7. Subsequently, a Committee headed the Assistant Commissioner including Extra Assistant Commissioner, Excise and Taxation Officer and SDO (C&W), Haripur was constituted to assess the proper compensation/value of the acquired land. Three members Committee i.e. Extra Assistant Commissioner, Excise and Taxation Officer and the SDO (C&W) after carrying out the spot inspection submitted their report (Exhibit-OW-1/5) unanimously holding that acquired land was more valuable than the land of khasra No.1224 which was 1200 feet away from the same and which was decreed @ of Rs.80,000/- per kanal, however, the Assistant Commissioner and the then Deputy Commissioner did not agree with the majority opinion without any reason much

less plausible. It is also noted therein that the land is situated on the road side and close to the Khanpur Dam. The prime tourists' resort, where restaurants and commercial buildings were there and were growing at mushroom growth. In this way without constituting a second Committee to re-assess the land again, the Land Acquisition Collector without any just cause and reason relied on the one year average rate.

8. The respondents/affectees have led overwhelming evidence in support of their plea while on the other hand the only witness produced by the appellants-Mushtaq Ahmad Khan (RW-1), has shown ignorance about the location of the land on which basis its market value was assessed.

9. Numerous judgments and dictas given and laid down by this court with binding and laying guiding principles on the subject issue have unfortunately been conveniently ignored by the Collector as he remained stuck to the one year average without taking care of present and future potentiality of the land acquired. It has been repeatedly laid down that being a compulsory acquisition of land for public purposes, the owners of the land are deprived of its utility while at the same time the Collectors Acquisition simply impose their own opinion ordinarily based on one year average which is not a correct approach to the matter, as has been laid down by this court.

10. In view of the present and future potentiality of the land, the concurrent findings recorded by the learned Referee Judge and the learned Judge of the Peshawar High Court based on the same are not open to any exception and that to attract an extraordinary jurisdiction of this court nor there is any solid evidence on the basis of which we can substitute our own opinion therefor.

11. For the afore-mentioned reasons, this appeal is found bereft of all legal merits and the same is dismissed with no order as to cost.

C.M.A. No. 1838/2016 is also disposed of accordingly.

MWA/G-5/SC

Appeal dismissed.