

SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Present:

Justice Muhammad Ali Mazhar
Justice Musarrat Hilali

**CIVIL APPEALS No.203-P TO 206-P OF 2023 AND
196-P TO 200-P/2024, 77-P, 151-P TO 156-P/2025**

Against the judgments dated 15.05.2023, 18.11.2024, 13.02.2025, 08.08.2025, 24.06.2025, passed by the Peshawar High Court, Peshawar in RFA.No.286-P, 287-P, 288-P, 289-P, 378-P, 384-P, 385-P, 386-P, 580-P/2022 & RFA.No.276-P/2023, RFA No.290-P, 399-P, 291-P, 306-P, 311-P & 351-P/2022.

CMA.No.735-P to 738-P/2023 in CAs.203-P to 206-P/23
CMA.No.1371-P to 1375-P/24 in CAs.196-P to 200-P/24
CMA.No.582-P/2025 in CA.No.77-P/2025 (Stay applications)
and CMA.No.12662/2025 in CA.200-P/2024 for deletion
of respondent.

District Collector Land Acquisition, District Swabi, (Now Deputy Commissioner, Swabi) and others (In CA.203-P to 206-P/23)

Deputy Commissioner, Swabi (Previously District Collector Land Acquisition, District Swabi), and others. (In CA.196-P/24, 198-P/24, 199-P, 200-P/24, 151-P to 156-P/25)

The Government of Khyber Pakhtunkhwa through Secretary Irrigation Department, Peshawar and others. (In CA.197-P/24)

Collector Land Acquisition/Deputy Commissioner, Swabi and others (In CA.77-P/25)
...Appellant(s)

Versus

Qaisar Ali Khan and others (In CA.203-P/23)
Fida Muhammad and others CA.204-P, 199-P/24)
Nazeer Muhammad thr.L.Rs & others (In CA.205-P/23)
Mst. Naeema Begum (In CA.206-P/23)
Fazal Dad (decd.) thr. L.Rs and others (In CA.196-P/24)
Dilshad Khan and others (In CA.197-P/24)
Muhammad Yameen and others (In CA.198-P/24)
Aziz ur Rehman and others (In CA.200-P/24)
Taj Wali Khan and others (In C.A.77-P/25)
Zia-ul-Haq and others (In CA.151-P&156-P/25)
Muhammad Akram and others (In CA.152-P/25)
Abdus Samad and another (In CA.153-P/25)
Muhammad Bahadur and others (In CA.154-P-155-P/25)
...Respondent(s)

For the Appellant (s) : Shah Faisal Ilyas, Additional Advocate General, KP. (In all cases)

For the Respondent(s) : Mr. Muhammad Hamayun Khan, ASC
(In CA.No.203-P/23 & CA.No.199-P/24)

Chaudhary Hafeez Ullah Yaqoob, ASC
(in CA.206-P/23)

Mr. Khalid Mahmood, ASC
(In CA.151-P to 153-P/25, CA.156-P/24)

Mr. Abid Ali, ASC
(In CAs.196-P to 198-P/24)

Mr. Taif Khan, ASC
(In CA.200-P/24)

Mr. Muhammad Javed Yousafzai, ASC
Mr. Fazal-e-Wahid, ASC
(Via video link from Peshawar)
(In CA.1547-P/25 & 155-P/25)

Date of Hearing : 24.02.2026

Judgment

Muhammad Ali Mazhar, J. – These direct Civil Appeals have been brought under Section 54 of the Land Acquisition Act, 1894 (**Act of 1894**) to challenge the judgments dated 15.05.2023, 18.11.2024, 13.02.2025, 08.08.2025, 24.06.2025, rendered by the Peshawar High Court in Regular First Appeal (**RFA**) Nos.286-P, 287-P, 288-P, 289-P, 378-P, 384-P, 385-P, 386-P, 580-P/2022 & 276-P/2023 and RFA No.290-P, 399-P, 291-P, 306-P, 311-P & 351-P/2022.

2. According to the chronicles of the case, the appellants required the land for construction of Pehure High Level Canal Extension Project, Indus Anbar Pressure Pipe which they acquired through Awards. The value of land was assessed according to the rate in terms of award after issuing Notification under Section 4 of the Act of 1894. The respondents were not satisfied with the amount fixed in the Awards, hence they filed References before the Referee Court. The Referee Court framed the issues and the parties were directed to produce evidence and the learned Referee Court also appointed a Commission for spot inspection and the

determination of the market rate of the acquired land. The learned Referee Court in view of the Commission Report enhanced the compensation and also allowed compulsory acquisition charges as well as severance charges. The judgments were challenged before the Peshawar High Court through different RFA(s) but the appellants remained unsuccessful, hence they approached this Court by means of the aforesaid Civil Appeals.

3. The learned Additional Advocate General, KPK argued that the learned High Court failed to appreciate the crucial fact whether the amount assessed was in accordance with law or not. The learned High Court in one case also enhanced the compensation in violation of Section 23 of the Act of 1894. No lawful justification was recorded for fixing the exorbitant rate which was without any solid and authentic evidence. It was further contended that the impugned judgments are based on misreading and non-reading of evidence. He further averred that awarding compensation of the property of agricultural nature as residential was illegal which had no potential value being agricultural property but the learned High Court also awarded 20% severed charges without any yardstick. The report of the local commission was not based on any authentic, or reliable evidence rather it was based on surmises but all the courts below including the High Court failed to note the violation of Section 23 of the Act of 1894.

4. In response, all learned counsel appearing for the respondents in one voice argued that different pieces of land were acquired for construction of "Pehure High Level Canal Extension Project Indus Anbar Pressure Pipe" through Awards. The respondents filed their Reference Petitions under Sections 18 and 30 of the Act of 1894. The learned Court settled the issues and on completion of evidence, the Local Commission was also appointed which submitted the report in accordance with law. The High Court focused on the mode

and manner adopted by the learned trial court for determining the amount of compensation awarded to the land owners for compulsorily acquiring their property and properly considered the niceties of Section 23 of the Act of 1894 which encapsulate the yardstick for determining the compensation. Due consideration was made for potential value and various other factors were taken into consideration and for correct determination, the quantum of compensation cannot be confined to the time of the notification but its future value may be taken into account. It was further argued that the notification under section 4 of the Act of 1894 was published on 27.04.1981; two corrigendum's were issued on 6.10.1982; notification under section 5 was published on 20.7.1983; the declaration under section 6 was published on 01.02.1984 and the award was announced on 28.03.1985. The entire exercise took four years to complete the acquisition proceedings. Meanwhile, the prices escalated which should have been considered while assessing the potential value of the land. It was further avowed that the Local Commission recorded the statements of the parties, revenue officials, expert property dealers and other persons who have recently purchased property in the same vicinity and has also taken assistance of the local Patwari Halqa. He placed on record the mutations attested in the said vicinity after the publication of notice under section 4 of the Act of 1894.

5. Heard the arguments. The Act of 1894 provides all-encompassing provisions for the acquisition of land considered necessary for public purposes and for companies and for determining the amount of compensation which is found payable on account of such acquisition. According to clause (a) of Section 3 of the Act of 1894 (definition clause), the expression "land" includes benefits to arise out of land, and things attached to the earth or permanently fastened to anything attached to the earth; the "person interested" is

defined in clause (b) which includes all persons claiming an interest in compensation to be made on account of the acquisition of land under this Act; and a person shall be deemed to be interested in land if he is interested in an easement affecting the land. The expression "public purpose" includes the provision of village-sites in districts in which the Provincial Government shall have declared by notification in the Official Gazette that it is customary for the Government to make such Provision, but does not include a purpose which is against the tenets of Islam and a housing scheme as defined in clause ee. (The underlined words were inserted by Khyber Pakhtunkhwa Act. No. XIX of 1987 and Khyber Pakhtunkhwa Act. No. IX of 1952). The provision of appeal as accentuated under Section 54 of the Act of 1894 provides that subject to the provisions of the Code of Civil Procedure, 1908 (CPC), applicable to appeals from original decrees, and notwithstanding anything to the contrary in any enactment for the time being in force, an appeal shall only lie in any proceedings under this Act to the High Court from the award, or from any part of the award of the Court and from any decree of the High Court, an appeal shall lie to this Court subject to the provisions of Article 185 of the Constitution of Islamic Republic of Pakistan 1973.

6. The dispute with regard to determination or assessment of fair market value or potential value is time immemorial. The acquiring agency and the beneficiary of acquisition of land for public purpose as opposed to all of whom (person or persons) the land is acquired can be more aptly classified as traditional and conventional rivals or one can label them as arch-rivals with longstanding competitive history according to the jurisprudence laid down by this Court and foreign jurisdiction under the provisions of land acquisition laws. In the battle over determination and payment of fair compensation, the acquiring agency normally applies the District Collector's rate while the land owners claim actual market value including

the potentiality of their piece of land. Though the authority delivering the Award performs its role as neutral arbiter to determine fair amount of compensation with other mandatory components as envisaged under the law but somehow or the other, the dispute is cropped up which is inherently adversarial, whether or not the intended use of land is for public purpose/public good including severance damage etc. Even on level pegging of international norms, wherein also the state has been conferred with powers to acquire land for the public good but with certain riders and not unbridled powers. The acquisition of land must be for legitimate social or public interest/public purpose not only with rational equilibrium between the public need and the individual rights but also in terms of just and fair compensation.

7. The right to property is acknowledged and is perceptible as a fundamental human right universally settling all-embracing benchmarks with baseline for the protection of individuals from being arbitrarily deprived of their properties. According to the mandate of Article 23 of the Constitution of Islamic Republic of Pakistan 1973, (**Constitution**) every citizen has the right to acquire, hold and dispose of property in any part of Pakistan, subject to the Constitution and any reasonable restrictions imposed by law in the public interest whereas Article 24 accentuates that no person shall be deprived of his property save in accordance with law and no property shall be compulsorily acquired or taken possession of save for a public purpose, and save by the authority of law which provides for compensation therefore and either fixes the amount of compensation or specifies the principles on and the manner in which compensation is to be determined and given. However, as stated in sub-article (3), this Article shall not affect the validity of (a) any law permitting the compulsory acquisition or taking possession of any property for preventing danger to life, property or public health; or (b) any law permitting the taking over of any property which has been

acquired by, or come into the possession of, any person by any unfair means, or in any manner, contrary to law; or (c) any law relating to the acquisition, administration or disposal of any property which is or is deemed to be enemy property or evacuee property under any law (not being property which has ceased to be evacuee property under any law); or (d) any law providing for the taking over of the management of any property by the State for a limited period, either in the public interest or in order to secure the proper management of the property, or for the benefit of its owner; or (e) any law providing for the acquisition of any class of property for the purpose of (i) providing education and medical aid to all or any specified class of citizens; or (ii) providing housing and public facilities and services such as roads, water supply, sewerage, gas and electric power to all or any specified class of citizens; or (iii) providing maintenance to those who, on account of unemployment, sickness, infirmity or old age, are unable to maintain themselves; or (f) any existing law or any law made in pursuance of Article 253. According to sub-article (4), the adequacy of any compensation provided for by any such law as is referred to in this Article, or determined in pursuance thereof, shall not be called in question in any court, while in Article 173, it is stated that the executive authority of the Federation and of a Province shall extend, subject to any Act of the appropriate Legislature, to the grant, sale, disposition or mortgage of any property vested in, and to the purchase or acquisition of property on behalf of the Federal Government or, as the case may be, the Provincial Government, and to the making of contracts.

8. According to Article 17 of the Universal Declaration of Human Rights, everyone has the right to own property alone as well as in association with others and no one shall be arbitrarily deprived of his property. Whereas in European Convention on Human Rights (ECHR): Protocol (1), Article (1) is also germane to protection of property wherein every

natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law. However, it is further provided that the preceding provisions shall not in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties. If we look into Article 21 of the American Convention on Human Rights, it also provides that everyone has the right to the use and enjoyment of his property. The law may subordinate such use and enjoyment to the interest of society. No one shall be deprived of his property except upon payment of just compensation, for reasons of public utility or social interest and in such cases and according to the forms established by law. The usury and any other form of exploitation of man by man shall be prohibited by law. At one fell swoop, ILO Convention No. C169, "Indigenous and Tribal Peoples Convention, 1989" also protects the land rights of indigenous and tribal peoples, recognizing their communal connection to traditional territories as a fundamental human right.

9. The role of the Court is to ensure fair compensation in acquisition of property as guardian of constitutional rights. Though the doctrine of eminent domain is the inherent power of the State to compulsorily acquire private property for a public purpose even against the owner's will but this power is not absolute and is strictly regulated by the Constitution to prevent the despotic exercise of state authority while cautiously maintaining balance with the fundamental rights of citizens provided under Articles 23 and 24 of the Constitution. In our view, the most judicious function of the Courts is to ensure a fair amount of compensation that truly reflects the actual value of the property. The most

recognizable work of fiction is structured on the metaphor "gold for gold" not copper for gold" which is predominantly put in as judicial principle for guaranteeing just and fair recompense so that the owner must not be left in a sorrier financial crunch but receive money that is no less than the loss imposed in the public interest or for public good.

10. If we take a look at the logical meaning of "market value" it commonly makes sense of a solatium which a willing buyer ought to have to pay to a willing seller. The dogma of potential value enlightens the land's future prospective use which also needs to be considered by the Courts for corrective measures. If the compensation is not fully rational, the Courts may upset or enhance the amount of compensation, including if the amount is found to be grounded on outmoded valuation rates or the award seems to be unreasonable or manipulated. The acquiring agency cannot sleep over the acquisition proceedings. It is quite commonly observed that the acquisition proceedings and payment of compensation are delayed for an unlimited period of time and the land owners remain deprived of fair compensation for their acquired land. Even the possession of property is delayed due to lackadaisical attitude of land acquisition officers which also creates complications. In point of fact, the period flanked by the initial notification and the final award is an essential ingredient and key factor for determining the price. If acquisition proceedings are delayed for years including taking over the possession of land, the market value depicting from the date of notification can no longer be construed just and fair, rather, the Court must apply inflationary trends and potential value doctrine to account for the sharp-witted rise in the land prices and inflation that ensued due to deep slumber of the acquiring department.

11. In order to determine the potential value, the Court may examine several salient features including proximity to

infrastructure such as distance from major intercity roads, bypasses, and industrial zones; availability of civic amenities and transport; if a large area is acquired for a single project, small pieces cannot be undervalued rather the entire area potential for that project becomes quite relevant; whether agricultural land is already situated in the midst of shops, factories, or petrol pumps. Under Section 23 of the Land Acquisition Act, 1894, the Courts are obligated to ruminare more than just the current price. For the ease of reference, Section 23 is reproduced as under:-

"23. (1) In determining the amount of compensation to be awarded for land acquired under this Act, the Court shall take into consideration:

firstly, the market-value of the land on the date of taking possession of the land. **(Substituted vide Khyber Pakhtunkhwa Ordinance No. XVII of 2001).**

[Explanation: For the purpose of determining the market value, the Court shall take into account transfer of land similarly situated and in similar use.

The potential-value of the land to be acquired if put to a different use shall only be taken into consideration if it is proved that land similarly situated and previously in similar use has, before the date of the notification under subsection (1) of section 4, been transferred with a view to being put to the use relied upon as affecting the potential value of the land to be acquired:

Provided that—

(i) if the market-value has been increased in consequence of the land being put to a use which is unlawful or contrary to public policy that use shall be disregarded and the market-value shall be deemed to be the market-value of the land if it were put to ordinary use; and

(ii) if the market-value of any building has been increased in consequence of the building being so over crowded as to be dangerous to the health of the inmates such overcrowding shall be disregarded and the market-value shall be deemed to be the market-value of the building if occupied by such number of persons only as can be accommodated in it without risk of danger to health from overcrowding.

secondly, the damage sustained by the person interested by reason of the taking of any standing crops or trees which may be on the land at the time of the Collector's taking possession thereof;

thirdly, the damage (if any) sustained by the person interested, at the time of the Collector's taking possession

of the land, by reason of severing such land from his other land:

fourthly, the damage (if any) sustained by the person interested at the time of the Collector's taking possession of the land, by reason of the acquisition injuriously affecting his other property, movable or immovable in any other manner, or his earnings;

fifthly, if, in consequence of the acquisition of the land by the Collector, the person interested is compelled to change his residence or place of business, the reasonable expenses (if any) incidental to such change; and

sixthly, the damage (if any) bona fide resulting from diminution of the profits of the land between the time of the publication of the declaration under section 6 and the time of the Collector's taking possession of the land".

(2) In addition to the market-value of the land as above provided, the Court shall award a sum of fifteen per centum on such market-value, in consideration of the compulsory nature of the acquisition, if the acquisition has been made for a public purpose and a sum of twenty-five per centum on such market-value if the acquisition has been made for a Company.

12. No doubt the foundational code of belief or set of guidelines provide distinguishing features to the set phrase "public interest" and "private interest", mindful to the provisions of law, moral values, and good governance as well as sanguine to the differentiation in the midst of collective welfare and individual welfare. At this juncture the turn of phrase "*Salus populi suprema lex esto*" (the welfare of the people shall be the supreme law) is most suitable. The public interest by and large attains precedence which is always meant for the well-being of the populace, society, or the nation as a whole to protect collective welfare as public good. Whereas the private interest alludes to the rights, wants and wishes of an individual concentrated on personal gain or specific claims. While stumbling upon any such situation, the Courts every so often, sentient to the doctrine of collective justice, strike a balance between public and private interests. On the face of it, the key takeaway in this case was the determination of fair compensation of acquired land rather than acquiring it at an improbable or throwaway price. No doubt the acquisition of land in the public interest is so

sacrosanct but at the same time, the payment of fair compensation is also inevitable and unescapable to safeguard the fundamental right of owning and enjoying the property rights.

13. The philosophy of appellate jurisdiction is fastened to ensure checks and balances through the "re-evaluation and re-examination" of orders passed by lower forums. The primary functions and powers of an appellate court include correction of legal and factual errors. A right of appeal is a substantive right of an aggrieved person or party to embark upon the jurisdiction of the superior court to invoke its aid for redressing errors and testing the soundness of a decision. It is a solemn duty of the court to undo injustice caused by patent errors. The appellate court acts as a curative forum to ensure that justice is not compromised by errors in the lower tiers of the judiciary because a right of appeal is not merely a procedural step but a substantive right of a litigant which is considered in continuation of the original proceedings.

14. If we look into the compendium of various components provided under Section 23 of the Land Acquisition Act, 1894, the key features which *inter alia* are required to be mulled over by the Court for proper determination of compensation is the market-value of the land on the date of taking possession of the land according to the substitution made vide Khyber Pakhtunkhwa Ordinance No. XVII of 2001 and for market value, the Court shall take into account transfer of land similarly situated and in similar use; the potential-value; damage sustained by the person interested by reason of the taking of any standing crops or trees which may be on the land at the time of the Collector's taking possession thereof; the damage sustained by the person interested at the time of the Collector's taking possession of the land, by reason of severing such land from his other land; the damage (if any) sustained by the person interested at the time of the Collector's taking possession of the land, by reason of the

acquisition injuriously affecting his other property, movable or immovable in any other manner, or his earnings; if in consequence of the acquisition of the land by the Collector, the person interested is compelled to change his residence or place of business, the reasonable expenses (if any) incidental to such change and the damage (if any) bona fide resulting from diminution of the profits of the land between the time of the publication of the declaration under section 6 and the time of the Collector's taking possession of the land. It is further accentuated that in addition to the market-value, the Court shall award a sum of fifteen per centum on such market-value, in consideration of the compulsory nature of the acquisition, if the acquisition has been made for a public purpose and a sum of twenty-five per centum on such market-value if the acquisition has been made for a company.

15. The *ratio decidendi* of the dictums laid down by this Court are or is deducible as follows:-

1. Legislature in its wisdom had provided in the Land Acquisition Act, 1894, an inbuilt mechanism for redressal of grievances of persons interested in the land being compulsorily acquired.

2. Khyber Pakhtunkhwa (Amendment of Laws) Ordinance, 2001 introduced amendments in the Land Acquisition Act, 1894. It was only in Khyber Pakhtunkhwa that the determining criteria for deciding the "market value" of the property proposed to be acquired within the contemplation of S. 23(1) had been the prevalent value of land on the date of taking possession of the said property, and not the date when the notification under S. 4(1) was published in the official gazette.

3. Precedents reflected a consistent trend to also consider for the purposes of determining the "market value" of property to be acquired, its "potential value" or essentially, the future use to which the said property could be put to.

4. There was judicial consensus in considering sale transactions of similar nature of immovable property in the adjoining khasras or even mauzas taking place even after the date of publication of the notification under S. 4(1) of the Land Acquisition Act, 1894, for adjudging the "market value", and in doing so to finally fix the amount of compensation to be awarded to the landowners for the property acquired.

5. There could be no mathematical formula set for the determination of the compensation due to the landowners for the compulsory acquisition of their property. Various factors depending on the circumstances of each case would cumulatively form the basis for determining the "market value" of the acquired land within the contemplation of S. 23(1) of the Act.

6. Conditions mentioned under sections 18 to 21 of the Land Acquisition Act, 1894 ('the Act') have to be fulfilled before the Collector is empowered to make the reference, and then alone the Court has any jurisdiction to entertain the reference.

7. There are certain conditions which have to be fulfilled before the Collector is empowered to make the reference, and then alone the Court has any jurisdiction to entertain the reference. These conditions are: (a) A written application should be made before the Collector; (b) The person applying should be one interested in the subject matter of the reference, but who does not accept the award; (c) The grounds of objection as to the measurement, or the amount of compensation, the persons to whom it is payable or the apportionment of the compensation among the persons interested should be stated in the application; and (d) The application should be within the period prescribed under the provisos (a) and (b) to section 18 of the Act.

8. The principles laid down for determination of compensation reflect anxiety of law-givers to compensate those deprived of property adequately enough so as to be given gold for gold and not copper for gold.

9. Various factors have to be taken into consideration i.e. the size and shape of the land, the locality and its situation, the tenure of property, the user, its potential value, and the rise or depression in the value of the land in the locality and even in its near vicinity.

10. In determining the quantum of compensation the exercise may not be restricted to the time of the aforesaid notification but its future value may be taken into account.

11. While determining the value of the land acquired by the Government and the price which a willing purchaser would give to the willing seller, only the past sales' should not be taken into account but the value of the land with all its potentialities may also be determined by examining (if necessary as Court witness) local property dealers or other persons who are likely to know the price that the property in question is likely to fetch in the open market.

12. The value of the land of the adjoining area which was simultaneously acquired and for which different formulas of compensation have been adopted, should be taken into consideration.

13. It took four years to complete the acquisition proceedings. The prices may have escalated during this period and this escalation has to be kept in view while assessing the potential value of the land.

14. The 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.

15. 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.

16. In assessing compensation of acquired land, the following factors are to be taken into consideration: (a) its market value at the prevalent time and its potential; (b) one year average of sale taken place before publication of notification under section 4 of the Act of the similar land; (c) its likelihood of development and improvement; (d) a willing purchaser would pay to a willing buyer in an open market arm's length transaction entered into without any compulsion; (e) loss or injury occurred by severing of acquired land from other property of the land owner; (f) loss or injury by change of residence or place of business and loss of profit; (g) delay in the consummation of acquisition proceedings and; (h) peculiar facts and circumstances of each case.

17. The Court is bound to consider when a determination has to be made under section 23 of the LAA 1894. Instead, the other five considerations, from their very text, imply that whenever a Court is to consider the quantum of compensation, it must be duly aware and cognizant of the loss being caused to the landowners due to the Federal or Provincial Government's exercise of eminent domain under the LAA 1894.

18. In essence, landowners are deprived of their constitutionally guaranteed proprietary rights under Article 24 of the Constitution of Pakistan, 1973 whenever a government, be it Federal or Provincial, exercises eminent domain under the LAA 1894. It is therefore only fair and just that the persons who are affected by the exercise of eminent domain are at the centre of consideration when it comes to determining the quantum of compensation.

19. The schedule of average price for four years or for that matter even of one year are not the only criterion for determining the amount of compensation but the "other material" brought on the file is quite relevant to determine the correct amount of compensation for the acquired land.

20. Section 23 of the Land Acquisition Act, 1894 lays down, by way of criterion, that "market value" of land on the date of publication of notification under section 4 of the said Act would be the amount of compensation. The expression "market value" has not been defined in the Act.

21. It would be safe to state that not only in Khyber Pakhtunkhwa, but even in other three provinces, where section 23(1) of the Act has not been amended, it is noted that the value of similar land in the adjoining khasras and mauzas to the acquired land was taken into consideration

for determining the amount of compensation to be awarded to owners of the acquired property; and secondly, the escalation of price of land during the acquisition period till its culmination in issuance of the award could be taken into consideration; and thirdly, for assessing the "potential value" of the acquired land, the most critical factor, which is to be kept in mind is the future utility of the proposed acquired land, keeping in view the availability of facilities for its said utilization; and finally, there can be no mathematical formula set for the determination of the compensation due to the landowners for the compulsory acquisition of their property. And thus, various factors depending on the circumstances of each case would cumulatively form the basis for determining the "market value" of the acquired land within the contemplation of section 23(1) of the Act.

22. Market value at the prevalent time and its potential; one year average of sale taken place before publication of notification under section 4 of the Act of the similar land; likelihood of development and improvement.

23. A willing purchaser would pay to a willing buyer in an open market arm's length transaction entered into without any compulsion.

24. Loss or injury occurred by severing of acquired land from other property of the land owner.

25. Loss or injury by change of residence or place of business and loss of profit.

26. Delay in the consummation of acquisition proceedings and peculiar facts and circumstances of each case.

References: Sarhad Development Authority N.W.F.P. and others Vs. Nawab Ali Khan and others (2020 SCMR 265); Gul Zaman Vs. Deputy Commissioner/Collector Gwadar and others (2024 SCMR 481); Land Acquisition Collector and others Vs. Mst. Iqbal Begum and others (PLD 2010 SC 719); Province of Punjab through Land Acquisition Collector and another Vs. Begum Aziz (2014 SCMR 75); Land Acquisition Collector (WAPDA) Vs. Mst. Surraya Mehmood Jan (2015 SCMR 28); Air Weapon Complex through DG Vs. Muhammad Aslam and others (2018 SCMR 779); Nawabzada Abdul Qadir Khan and others Vs. Land Acquisition Collector Mardan and others (2023 SCMR 950); Murad Khan Vs. Province of Punjab (1999 SCMR 1647) and WAPDA through Chairman Vs. Alam Sher and others (2023 SCMR 981)

16. It appears from the record that the learned Trial Court for proper assistance also appointed a Local Commission and provided an exhaustive proforma for proper evaluation of the market rate as well as the potential value of the property

together with the status as per revenue record and accessibility to school/college; hospital; park; bazar/malls; public transport/bus stand; public offices; access to road; whether property is adjacent to main road, side road, inside road; nature of locality/vicinity, residential, commercial, semi commercial/residential; prevailing trends in the vicinity about business, sale after award; prevailing trends in vicinity (before and at the time of acquisition of property; sale potentiality of property; award in same mouza; potentiality of property. The local commission also appeared as Court Witness No.1 and was duly cross examined where the learned Trial Court also put some questions to said witness with reference to the severance of property into two portions; how the severance was effected; the utility and value of property severed through acquisition all such questions were answered in affirmative by the said witness. The Local Commission also recorded statements of the parties, revenue officials, expert property dealers and other persons who have recently purchased property in the same vicinity and has also taken assistance of the local Patwari Halqa. He also placed on file mutations attested in the said vicinity after the publication of notice under section 4 of the Land Acquisition Act. Furthermore, he produced a pictorial view and submitted the report with regard to the potential value.

17. Seeing as in the aforesaid appeals, different judgments of RFAs are under challenge therefore, the trivialities and reference of each case is necessary for picture-perfect understanding. With this spirit, if we look into all the cases in the distinct fragments, it divulges that the learned High Court in the judgment impugned in C.A Nos. 203-P to 206-P/2023, held that as per the report of the Local Commission, the property was situated adjacent to branch road Jamalabad i.e. half kilometer away from main Swabi Jehangira Road, where hospitals, shopping malls, hotels and public and private institutions exist. Although the property was being used for

agricultural purposes, the adjacent land owners constructed residential houses. As far as the market value is concerned, the Patwari Halqa calculated the average price per Kanal to be between Rs. 40 to 45 Lacs. The learned High Court, while upholding the judgment of the Trial Court held that at the time of fixing compensation, the value of the surrounding land was not taken into consideration. Though the nature of the land was described as 'Shah Nehri', the location and existence of all facilities of life in the neighborhood had increased its potential value. Whereas the impugned judgment in C.A No. 196-P to 200-P/2025, expounds that the land was classified as 'Shah Nehri' at the rate of Rs. 440,000/- per kanal. However, as per the local commission's report, the land was situated at a distance of 400 feet from main Jehangira Swabi Road, 110 Karmas from Jamalabad Kala side road and it was situated between extended abadi of two villages, namely Kala and Swabi. After considering all relevant facts, the learned Peshawar High Court upheld judgment of the Referee Court with the observation that whilst fixing compensation, the value of the surrounding land was not taken into account which was enhanced by the existence of basic amenities, schools, colleges and hospitals. Whereas in the judgment impugned in the C.A No. 151 and 153-P to 156-P/2025, the learned High Court held that the piece of land measuring 256 Kanal 12 Marla at Mouza Shah Mansoor, Tehsil and District Swabi, was acquired for the same purpose. The property was connected with Sher Shah Suri Road and Swabi Jehangira Road and the surrounding area includes an abadi, Gaju Khan's tomb, a primary school, a mosque, and a rest house. Based on this, the local commission valued the land at Rs. 300,000/- per marla with market value of Rs.5,800,000/- per kanal. Agreeing with the commission report, the learned Peshawar High Court modified the Referee Court's judgment and held that the Respondents/Appellants be entitled to the aforesaid rate per

kanal. Likewise the judgment impugned in C.A No. 152-P/2025, the learned High Court observed that at the eastern side of the acquired piece of land measuring 268 Kanal 16 Marla at Mouza Malakabad Pabani and Maini Gharbi, Tehsils Topi and Swabi, District Swabi, at about 300-350 feet, the main Malakabad Topi Road passes; on the southern side, Khattar Textile Mills is situated at about 50-60 meters; on the northern side, at about 200-250 feet, there is residential area known as Maini Lar Korona and on the western side, there are agricultural properties. As such, the land was valued at Rs.20 to 25 lakh per kanal. In light of the report, the learned Peshawar High Court made no interference in the compensation awarded by the Referee Court. Last but not least, in the judgment impugned in C.A No. 77-P/2025, the acquired land was situated in the closed vicinity of residential and commercial entities, towards east of main Swabi Jehangira road at a distance of about 300 feet with all basic facilities nearby including hospital, bazaar and schools, therefore on valid reasons, the learned Peshawar High Court made no interference in the quantum of compensation awarded by the Referee Court. The learned High Court after vetting the record in extensum and weighing up all sets of circumstances with proper application of mind decided all the appeals in accordance with law.

18. As a result of the above discussion, we do not find any illegality, irregularity or perversity in the impugned judgments passed by the learned High Court. Consequently all Civil Appeals are dismissed with no order as to costs along with pending Civil Miscellaneous Applications.

Judge

Islamabad, the
24.02.2026
Khalid
Approved for reporting

Judge