JUDGMENT SHEET

ISLAMABAD HIGH COURT, ISLAMABAD

JUDICIAL DEPARTMENT

R.F.A No.63 of 2011

Mst. Nighat Parveen and others

Vs.

N.H.A and others

R.F.A No.10 of 2014

N.H.A

Vs.

Nighat Parveen and others

Appellant/(s) by:	M/s Zulfiqar Ali Abbasi and Shahid Munir, Advocates in R.F.A No.63/2011. Ms. Shahina Akbar, Advocate in R.F.A No.10/2014.
Respondents by:	Ms. Shahina Akbar, Advocate in R.F.A No.63/2011. M/s Zulfiqar Ali Abbasi and Shahid Munir, Advocates in R.F.A No.10/2014.
Research Assistance by:	Muhammad Fahad Khattak, Advocate.
Date of Hearing:	**12.05.2025.**

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INAAM AMEEN MINHAS, J:- Through this single judgment, I intend to decide the above titled two appeals as the same have arisen out of the same order.

2. For the sake of convenience, the landowners/Nighat Parveen and others shall be referred to as **"appellants"**, whereas the acquiring department/N.H.A shall be referred to as **"respondents"**.

3. In both the appeals the appellants and the respondents have assailed the order dated 13.09.2011 **("Impugned Order")**, passed by the learned Senior Civil Judge, Islamabad **("Referee Court")**, whereby

application u/s 18 of the Land Acquisition Act, 1894 **("the Act, 1894")** filed by the appellants was accepted and they were granted compensation at the rate of Rs.4,80,000/- per Kanal along with 15% compulsory acquisition charges from the respondents.

4. Briefly the essential facts leading to the filing of present appeals are that the respondent No.1/NHA proposed to acquire land measuring 119-Kanal 11-Marlas for the construction of the Islamabad-Murree dual carriage way in the Village Phulgran, Tehsil, and District Islamabad. Notification under section 4 of the Act, 1894 was issued by respondent No.2/ Assistant Commissioner/ District Collector, Islamabad on 11.10.1999 and accordingly published in the Gazette of Pakistan on the same date.

5. The acquisition proceedings culminated in the passing of the Award dated 16.05.2002 **('the Award')**, wherein the compensation to the appellants was determined at the rate of Rs.1,60,241/- per Kanal. Aggrieved thereby, the appellants filed an application under section 18 of the Act, 1894 before the learned Referee Court with the following prayer:-

> *"the matter may be referred to civil court under section 18 of the Land Acquisition Act for proper decision on the points herein before. It is further prayed that compensation may kindly be enhanced from Rs.1,60,241/- to Rs.1,200,000/- per Kanal allowing maximum interest permissible under the law with effect from 1.9.1999 the date of decreetal amount is actually paid to the petitioners. As the price of the real estate is undergoing rapid escalation in the area therefore, the money received years later will suffer from immense depreciation of its value. The same may also be fully compensated. Petitioners No.5 and 7 may be compensated as mentioned in para 15 & 16 above.*
>
> *Since NHA is a company like WAPDA therefore it is prayed that compulsory acquisition may kindly be paid @ 25% i.e. allowable for the companies instead of 15 % allowed to the petitioners."*

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The respondents contested the appellants' claim by filing a reply. Out of the pleading of the parties, the following issues were framed:-

> *"1. What was the market value of the land at the time of Notification u/s 4 of the Land Acquisition Act? OPA*
>
> *2. Whether the petitioners are entitled to get compensation enhanced. If so, what extent? OPA.*
>
> *3. Relief."*

After considering the claims and supporting evidence of the parties, the learned Referee Court enhanced the compensation from Rs.1,60,241/- to Rs.4,80,000/- per Kanal, along with 15% compulsory acquisition charges vide the Impugned Order. Both the appellants and respondents being dissatisfied with the Impugned Order of the learned Referee Court filed separate appeals against the same. The appellants filed R.F.A No.63/2011, whereas the respondents filed R.F.A No. 10/2014. The appellants have prayed for further enhancement of the compensation as prayed for. In contrast, the respondents have sought a reduction in the compensation to the Rs.1,60,241/- already assessed by the Land Acquisition Collector based on one-year average.

6. The learned counsel for the appellants contended that while passing the Impugned Order, the learned Referee Court admitted the appellants' stance that respondent No.3 while announcing the Award did not properly assess the prevailing market value while determining the actual rate of the compensation for the acquired land the learned Referee Court did not appreciate the evidence in its true perspective; that the learned Referee Court while passing the Impugned Order relied upon the recommendation of the committee constituted by the Chief Commissioner, who in spite of assessing the commercial price of the land @ Rs.9,00,000/- recommended the average market price of the acquired land as Rs.4,80,000/-; that the respondents undervalued the appellants' land due to a personal grudge and ignored all the factors mentioned in sections 23 and 24 of the Act, 1894 while assessing the appellants' land at Rs.1,60,241/- per Kanal, whereas the market rate of

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the land was Rs.12,00,000/- per Kanal at the time of acquisition. The learned counsel further contended that the land had commercial value due to its location nearby institutions like Islamabad Medical & Dental College, Hamdard University and other commercial establishments and comparable land in the vicinity, such as that owned by Carra Green Housing Society, which was at the rate of Rs.13,30,000/- (residential) and Rs.40,00,000/- (commercial) per Kanal at that time, and this fact is supported by testimony of AW5 and the documentary evidence, which remained unshaken in cross-examination where one of the appellants Nazar Hussain Shah appeared as AW6, who produced registered sale deed No. 7987 as Exh.A.12, which reflects that he sold the remaining portion of the land post-acquisition at Rs.35,00,000/- per Kanal, which evidences that the market value of the acquired land was much more as assessed by the learned Referee Court, and in this regard multiple registered sale deeds (Exh.A17 to Exh.A20) and the valuation report by the Islamabad Estate Agents Association (Exh.P9) reflected significantly higher market rates at the time of acquiring the land. The learned counsel for the appellants also contended that the current prices of land acquired are skyrocketed due to its commercial nature and the appellant has not been even compensated for the value at the time of acquisition, and it is a settled principle that while determining market value of the acquired land, the Court has to see the amount a willing buyer pays to a willing seller and prayed that the Impugned Order may be modified by enhancing compensation rate from Rs.4,80,000 to Rs.12,00,000/- per Kanal.

7. Conversely, the learned counsel for the respondents resisted the claim of the appellants and contended that the Impugned Order is contrary to law and the factual matrix of the case, and is therefore liable to be set aside. He further contended that it is settled in *Province of Sindh vs. Ramzan*, (PLD 2004 SC 512), that compensation is to be awarded for acquired land, not the market price and the learned Referee Court erred by deviating from this principle. He further contended that the learned Referee Court failed to consider the most relevant

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documentary evidence i.e. the mutations Exh.A21 to Exh.A28 of Village Phulgran, which directly relate to the acquired land and the appropriate period; instead, the Court erroneously relied upon valuation evidence from Mauza Kot Hatial, a different locality, resulting in a distorted and unjust assessment of compensation, and the Impugned Order is based on assumptions and conjectures and the compensation determined by respondent No.2 (District Collector) at the rate of Rs. 1,60,241/- may be restored.

8. I have heard the learned counsel for the parties and perused the record.

9. From the perusal of documentary evidence brought on record by the appellants, it is apparent that the acquired land not only possessed commercial value at the time of acquisition but also significant future potential. The existence of nearby facilities such as a hospital, college and university reflect the prevailing market rate and the expected appreciation of the land's value. The sale deeds exhibited as Exh.P7, Exh.A12 and Exh.A17 to Exh.A20 substantiate that the market rate at the relevant time was substantially higher than the amount determined by the Land Assessment Committee and subsequently affirmed by the learned Referee Court. Furthermore, Ex.A.15, a report prepared by the Land Assessment Committee, states in paragraph 14 that the commercial value of the land was assessed at Rs.9,00,000/- per Kanal, with an average value of Rs.4,80,000/- per Kanal. Despite this, the learned Referee Court adopted only the average rate while disregarding the higher commercial valuation against the guiding principles enshrined in section 23 of the Act, 1894. Moreover, the testimony of AW5 and documentary evidence, including sale deeds Exh.A17 to Exh.A20 and the valuation report by the Islamabad Estate Agents Association Exh.P9, establish that comparable land in the vicinity, such as that of Carra Green Housing Society, was valued at Rs.13,30,000/- per Kanal (residential) and Rs.40,00,000/- per Kanal (commercial). Appellant Nazar Hussain Shah AW6 also produced registered sale deed Exh.A.12 showing sale at Rs.35,00,000/- per Kanal post-acquisition.

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10. Perusal of the record reveals that the respondents appear to have based the compensation solely on two considerations: (i) the classification of the land in the revenue record and (ii) the Aust Yak Sala (annual average price). It is essential to examine the principles laid down with regard to determination of value of compensation for the acquired land by the Hon'ble Supreme Court of Pakistan in ***Province of Punjab vs. Begum Aziza***, **(2014 SCMR 75)** where it is settled that the value in the revenue record may not be conclusive for determination of compensation value and expanded the scope of determining compensation for acquired land by holding that:-

> *"The market value is normally taken up as one existing on the date of notification under section 4(1) of the Land Acquisition Act under the principle of willing buyer and willing seller while the potential value was the value to which similar lands could be put to any use in future. Thus 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. In Abdur Rauf Khan v. Land Acquisition Collector/D.C. (1991 SCMR 2164) this court while dilating upon the question of rate of compensation laid down following principles germane to section 23 of the Land Acquisition Act which may be kept in view. Those are as follows:--*
>
> *(i) That an entry in the Revenue Record as to the nature of the land may not be conclusive, for example, land may be shown in Girdawari as Maira, but because of the existence of a well near the land, makes it capable of becoming Chahi land;*
>
> *(ii) That while determining the potentials of the land, the use of which the land is capable of being put, ought to be considered;*
>
> *(iii) That the market value of the land is normally to be taken as existing on the date of publication of the notification under section 4(1) of the Act but for determining the same, the prices on which similar land situated in the vicinity was sold during the preceding 12 months and not 6-7 years may be considered including other factors like potential value etc."*

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11. The Hon'ble Supreme Court of Pakistan in its recent judgement titled as; ***Government of Pakistan vs. Mst. Ayesha Bibi (Widow)***, **(2024 SCMR 1323)**, held that:-

> *"19. Several factors are to be considered, while determining the amount of compensation to be paid to the landowners for the acquisition of their land: the value of similar land nearby is considered; additionally, any increases in land value during the acquisition process may be factored in; and most importantly, the future utility of the acquired land, keeping in view the availability of facilities for its said utilization, are considered to assess its potential value. It is important to note that there is no single formula for the determination of the compensation due to the landowners for the compulsory acquisition of their land. Instead, different factors relevant to each situation are used together to determine the market value as defined in Section 23(1) of the Act. Courts are increasingly recognizing the potential for future development when determining fair compensation for acquired land, reflecting a more holistic approach."*

12. In view of the law laid down by the Hon'ble Supreme Court in the judgments cited above, the Courts are required to consider the amount that a willing purchaser would pay to a willing seller in an open market transaction. This principle emphasizes that compensation must be based on actual market dynamics rather than arbitrary or obsolete criteria. In this context, Exh.A12, the registered sale deed, assumes significant evidentiary value. It is a document through which AW6 sold his land at the rate of Rs.35,00,000/- per Kanal, which was part of the same Khasra but was excluded from the acquisition. This transaction, having occurred in close proximity both in time and location to the acquired land, serves as a credible benchmark of the prevailing market value and warrants due consideration in the assessment of fair compensation.

13. Taking guidelines from the judgments of Hon'ble Supreme Court, it is observed that, in determining the amount of compensation

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to be awarded to the owners of land compulsorily acquired, the following considerations are relevant and may be duly taken into account: firstly, the value of comparable land situated in adjacent Khasras and Mouzas; secondly, the increase in land prices occurring during the period of acquisition, culminating in the issuance of the final award; thirdly, the potential future value of the acquired land; fourthly, the recent transactions of land in the same vicinity, which serve as reliable indicators of the prevailing market rate and must be accorded due consideration; and finally, it is recognized that no rigid or mechanical formula can be prescribed for the calculation of compensation in cases of compulsory acquisition. It is a settled proposition of law that compensation must be fair, and reflective of all relevant considerations including the market value and the potential use of the land; however, in the present matter the learned trial Court failed to appreciate the principles laid down by superior Courts. The omission to apply such principles amounts to a miscarriage of justice, which necessitates correction.

14. This Court will now address that whether this Court could enhance the rate of compensation beyond the amount claimed by the appellants in the reference application and to what extent?

15. To consider and better appreciate same, it is relevant to read section 25 of the Act, 1894 which provides that: -

> ***"25. Rules as to amount of compensation***.__*(1) When the applicant has made a claim to compensation, pursuant to any notice given under section 9, the amount awarded to him by the Court shall not exceed the amount so claimed.*
>
> *(2) When the applicant has refused to make such claim or has omitted without sufficient reason (to be allowed by the Judge) to make such claim, the amount awarded by the Court shall in no case exceed the amount awarded by the Collector.*
>
> *(3) When the applicant has omitted for a sufficient reason (to be allowed by the Judge) to make such claim, the amount awarded to him by the Court shall*

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> *not be less than, and may exceed, the amount awarded by the Collector."*

A careful perusal of section 25 of the Act, 1894 reveals that it is contingent upon the issuance of notice under section 9 of the Act, 1894. It is relevant to reproduce section 9 of the Act, 1894 hereunder:-

> ***"9. Notice to persons interested**.___(1) The Collector shall then cause public notice to be given at convenient places on or near the land to be taken stating that the Government intends to take possession of the land, and that claims to compensation for all interests in such land may be made to him.*
>
> *(2) Such notice shall state the particulars of the land so needed, and shall require all persons interested in the land to appear personally or by agent before the Collector at a time and place therein mentioned (such time not being earlier than fifteen days after the date of publication of the notice), and to state the nature of their respective interests in the land and the amount and particulars of their claims to compensation for such interests, and their objections (if any) to the measurements made under section 8. The Collector may in any case require such statement to be made in writing and signed by the party or his agent.*
>
> *(3) The Collector shall also serve notice to the same effect on the occupier (if any) of such land and on all such persons known or believed to be interested therein, or to be entitled to act for persons so interested, as reside or have agents authorised to receive service on their behalf, within the revenue-district in which the land is situate.*
>
> *(4) In case any person so interested resides elsewhere, and has no such, agent, the notice shall be sent to him by post in a letter addressed to him at his last known residence, address or place of business and registered under 3[the Post Office Act, 1898 (VI of 1898)].*
>
> *1[(5) The Collector shall also serve notice of the enquiry to be held under section 11 (such notice not being less than fifteen days prior to the date fixed under sub-section (2) for determination of claims and Objections) on the Department of Government, local authority or Company, as the case may be, for which land is being acquired, and require it to depute a duly*

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> *authorised representative to attend the enquiry on its behalf for the purpose of making objections (if any) to the measurement of the land, claims to any interest in the land or the amount of any compensation. Such authorised representative shall be a party to the proceedings.]"*

16. Section 25 of the Act, 1894 reflects that it sets a condition precedent to the limit of the compensation that could be awarded, where claim is made or not made pursuant to a notice given under Section 9 of the Act, 1894. A careful reading of both provisions reveals that section 25 cannot be pressed into service unless the statutory obligations under section 9 are fully satisfied. Section 9 mandates the issuance of public notice and personal service of individual notices to all persons known or believed to be interested in the land being acquired. Such notices must provide a clear opportunity for the affected persons to file compensation claims, raise objections, and assert their interests within the stipulated timeframe. The same was answered in a similar question before the Hon'ble Supreme Court in *2024 SCMR 1323 (supra)*, wherein it was held that the applicability of section 25 of the Act, 1894, whereby compensation is limited the amount claimed before the Collector, it is imperative to fulfill the preceding requirements; otherwise, invoking or enforcing section 25 to constrain the Referee Court, within the amount of compensation claimed before the Collector, as provided under section 25(1) or within the amount of compensation awarded by the Collector as provided under section 25(2) would be inappropriate.

17. In the present case, the record reflects that no such legal procedure was adopted. In this regard this Court is of the view that the foundational precondition for invoking the restrictive provisions of section 25 of the Act, 1894 is not met in the present case. Accordingly, the objection seeking to limit the award of compensation by respondent to Rs.1,60,241/- per Kanal is found to be devoid of merit.

18. Before parting with the judgment, this Court finds it necessary to express its deep concern over the prolonged delay faced by the

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appellants, who have waited for long 25 years to receive the fair value of their land. This Court further observes that some of the appellants have not lived long enough to see the rightful value of their property acknowledged, let alone received. Such unconscionable delay reflects not just institutional indifference but a broader apathy within the system that failed to respond to the plight of citizens, whose only fault was trusting the process. This case, regrettably, reflects a failure not of one institution, but of the entire machinery responsible for ensuring timely and adequate compensation.

19. For the reasons recorded hereinabove, Appeal No.63/2011 filed by appellants (landowners) is **allowed**. The Impugned Order passed by learned Referee Court is **modified** by enhancing the compensation amount from Rs.4,80,000/- to Rs.40,00,000/- (4 Million) per Kanal with 15% compulsory acquisition charges and 6% interest from the date of acquiring possession till the final payment, whereas Appeal No.10/2014 filed by respondents (N.H.A) stands **dismissed** with no order as to costs.

(INAAM AMEEN MINHAS)
JUDGE

Announced in open Court on 23.06.2025

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APPROVED FOR REPORTING.

R.Anjam.

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