
Land Acquisition: an appraisal perspective of parliamentary inroads and judicial paradigms in Pakistan

_____ Iftikhar Ahmad Tarar

This article presents an overview of the law pertaining to acquisition of land in Pakistan and examines the parameters for the determination and award of compensation, primarily, in the light of judicial paradigms. It has evoked a continuous stream of controversy on both sides of the equation. Ever soaring graph of litigation on the subject reveals that neither the owner of the acquired land seems to be satisfied with the amount of compensation determined by the authorities nor the acquiring authorities are willing to award the compensation determined by the referee court. The author concludes that there is scope for streamlining the existing statutory arrangements for the prompt safety of the property rights of the public.

Introduction

Compulsory acquisition of land has been stated to be the prerogative of the government and such practice of the government to take property not owned by it for public use is prevalent in those countries that allow private land ownership¹.

The action of acquisition has been termed as ‘condemnation’ under the prerogative of “eminent domain” in the United States and ‘expropriation’ ‘compulsory purchase’ and compulsory acquisition or resumption in Canada, the United Kingdom and Australia respectively².

Historical Background

For better comprehension of the issue, it is imperative to cast a glance at almost two hundred years back from where the path ought to be traced. Legislative history of land acquisition in the subcontinent dates back to the Bengal Regulation I of 1824, the primary object of which was to enable the officers of the East India Company to obtain, at a fair valuation, land or other immoveable property required

for raising infrastructure of various descriptions³. The said law couldn't hold ground any longer and was followed by a new law in 1850 which again was repealed in 1863 by the Act XXII of 1863. The same was replaced by the Act X of 1870 and finally by the Act I of 1894⁴, which ultimately had to be adapted by Pakistan after emerging as an independent state in 1947.

In Pakistan, Certain rights have been guaranteed to the citizens some of which are recognized as fundamental rights. Right of acquiring, holding and disposing of property any where in Pakistan has, subject to the restrictions imposed by the constitution and any other reasonable restrictions prescribed by the statute in larger interest of the public, been stated to be one of the fundamental rights⁵. However, at the same time, adequate guarantee for the protection of such rights has been provided under article 24(1) thereof. The process to be employed for depriving some one of his property has to be in line with criteria/yardsticks adumbrated in article 24(2) & (3) of the constitution⁶. As, under the umbrella of 'eminent domain', the state has been enabled, by mobilizing the provisions of the law to take the property of a citizen for using it for public purpose, therefore, notwithstanding his unwillingness to depart from his property, no one can refuse from such acquisition, and owner of such property can, maximumly, ask for compensation⁷. If, however, the property to be acquired is to be applied for serving any public purpose/ interest, the potential compensation, in such case, should be due, just, adequate and fair as the asset in question may be the sole source of livelihood or the deprivation may make the owner shelterless⁸. In this context, being the savior of rights of the public, the court has to be vigilant as to all such aspects while disposing of cases of such nature and ensure prompt award of fair and due compensation to the land owner⁹.

Land, under the provisions of extant law, is to be acquired subject to a couple of restrictions: firstly, the acquisition should be for public purpose and secondly, by paying compensation to be determined by the competent forum provided under Land Acquisition Act, 1894. Likewise, the process of acquisition can be executed through two ways: either through mutual negotiations or under the state powers conferred upon the state functionaries¹⁰.

Privately owned lands are acquired, under the mandate of the Land Acquisition Act, 1894, firstly, for public purpose and secondly, without the consent of the owners. Paramount urge, however, behind the move emerges to be the uplift of the public at large¹¹. Thus, the motive behind the legislative initiative is not to deprive the owners of their constitutional right of acquiring, holding and disposing of property. The constitution reiterates that no owner of the property will be deprived of his property except by the mandate of law and the acquisition will, followed by compensation, be resorted only and only for public purpose¹². Albeit the existing law is a confiscatory statute promulgated to dispossess the public of its valuable rights in property through forcible measure by the state exercising authority under a statute¹³, yet it has been held to be a complete code which apart from mode of acquisition of land, provides a scheme containing machinery for taking measurement of land, assessment of value, payment of compensation to interested

persons, and in case of any dispute provides a remedy through a reference by collector to civil court¹⁴. It also, in itself, prescribes provisions for fair and adequate compensation to land owners whose lands have been acquired compulsorily¹⁵. It is owing to this flavor of the statute that the same is not to be interpreted liberally to jealously ensure protection, conservation and alimony of rights and interests of citizens¹⁶.

Determination of Compensation

Before pondering upon the judicial dicta pertaining to determination of compensation for expropriated land, it is apt to make recourse to an Indian judgment¹⁷. In the said judgment, the apex court held that judicial approaches to the issue of determination of compensation for acquired land have been varying according to the nature of the land. The exigencies entailing variation in applicable principles, the court added, was mainly visible in case of sale of non marketable commodities and the court reiterated that lands, buildings, incorporeal rights, do come within the ambit of envisaged exigencies. The apex court inventoried, “principle of capitalization of not rent at current market rate on guilt-edged securities, principle of reinstatement, and principle of determination of original value less depreciation, determination of break up value in certain type of properties which have out-grown their utility and a chain of other principles”, were deployed to determine the compensation to be handed over to the deprived owner. The principle of determination of compensation is of two prongs: firstly, if the lands are acquired not through mutual negotiations but under the state power conferred upon the state functionaries, the landowners are entitled to maximum possible benefit¹⁸. In such case, the courts have to be liberal and generous in fixing the quantum of compensation based on different considerations so that neither a landowner is deprived of his due rights nor the acquiring agency is unduly burdened in the transaction¹⁹ and secondly, in all other cases the courts are expected to adhere to such principles. The acquiring authorities are under an obligation not to act in a cursory and casual manner while determining the market value of the land²⁰.

Plethora of case law on the subject reveals that in determining the market price of the acquired land, either the assessing authorities have been erring or the owners of the land have been demanding exorbitant prices. The nature and substance of the objections raised against the acquisition process have been same since the day of promulgation of the law on the subject and unfortunately, the successive governments have not been able to bring the law upto required level. As the meagerness of compensation is likely to add salt to the injuries of a lamenting land owner, therefore, instead of practicing invidious and oppressive approach viz a viz the owners, the authorities should deal with such owner in a generous and delicate manner. (*Allah Razi v Islamic republic of Pakistan*, 2011) Tenaciousness of the owner with the land, which has harboured the bones of his predecessors and cradled him for decades, and which he is likely to part with should be given due

weightage while assessing the compensation. (Allah Razi v Islamic Republic of Pakistan, 2011)

As the acquisition of land is a unilateral act to be initiated by the acquiring authorities and obviously, against the interest/temperament of the owner, therefore, has to be tolerated by the unwilling seller. (Allah Razi v Islamic Republic of Pakistan, 2011) It should not lose sight that such owner is to be compensated (Abdul Aziz v Azad Government of the State of Azad Jammu and Kashmir, 2010) and something more than the price of land is to be given to him. (Allah Razi v Islamic Republic of Pakistan, 2011) The dictate seems to be a beacon light for the acquiring authorities in making assessment of the compensation, therefore, in this context the word compensation becomes of vital import. The term compensation is wider in scope and connotes counter balancing, rendering of equivalent, requital, weighing one thing against other. (Abdul Aziz v Azad Government of Azad Jammu and Kashmir, 2010) Interestingly, the exclusionary aspect of the scope of term 'compensation' is of paramount consideration. The apex court reiterated that the term did not mean weighing copper with gold (Land Acquisition Collector v Mst. Iqbal begum, 2010) holding thereby that one cannot be deemed to have been compensated without receiving its equivalent. (Abdul Aziz v Azad Government of Azad Jammu and Kashmir, 2010)

Principle of One Year Average Sale

Albeit, statute enjoins upon the acquiring authority, while assessing the amount of compensation, to adhere to the principle of one year average sale but unfortunately, it could not find favour of the bench. For instance, Peshawar High Court reiterated that yardstick of one year average sale was not the sole criterion for assessing the market value of the expropriated land. (Government of NWFP through Collector District Mardan v Muhammad Ayaz, 2009) In determining the amount of compensation, the assessing authority should not restrict itself to the average sale of preceding one year or five years because it is one of the aspects to be kept in view for the determination of "market value" of the land. (Sultan Shah v L.A.C Swabi, 2011) Fair and proper calculation of market value cannot be made on the basis of one year of average sale (Land Acquisition Collector Mardan v Mst. Muqesha Begum, 2011) but the potential use to which the acquired land is to be put in future should also be given due consideration; in this context, future sales also become relevant in determining the quantum of compensation. (Sultan Shah v L.A.C Swabi, 2011) So, it is owing to this fact that the principle of "Yaksala" (one year) cannot be considered to be the only yardstick for the determination of compensation. Principle of "Yaksala" also loses its efficacy if the status of acquired land is different from that of the sold land. For instance, "Yaksala of Ghairmumkin Land" cannot be applied to acquired land which is entirely different form of land. (Sultan Shah v L.A.C Swabi, 2011)

Appointment of Local Commission

Broad message which emerges from judicial dictates is that utmost efforts should be made to determine a fair and equitable compensation. The court has ample powers to entrust the task of cadastral assessment to the Local Commission not only on the application of either of the parties but on its own motion as well²¹. The recourse, however, to this alternative can be made if the sole evidence is deemed to be insufficient to reach at a just and equitable conclusion²², location, kind and nature of acquired land is to be ascertained²³. Similarly, in case, before the commencement of acquisition process, if no mutation had ever been sanctioned for last one year, in such eventuality, the appointment of Local Commission would be an appropriate course²⁴.

Undoubtedly, the commission should comprise of the individuals having expertise in the relevant field. Admittedly, the court has ample powers to differ with the report prepared by the commission but in case the report of the commission is reinforced by documentary evidence, (which ought to be), the court has no option but to rely on such report²⁵. However, the same would be liable to be discarded in case it would be deficient of any one of the characteristics²⁶.

Principle of Differential in Prices

If, as a result of such acquisition, utility of the remaining chunk of land is diminished or access is denied thereto, the owner becomes entitled to enhanced compensation. (Liaqat Ali v Province of Punjab, 2011). Moreover, in such eventuality, adherence to the principles of differential in the price of land in case of compulsory acquisition and voluntary sale becomes imperative. (Liaqat Ali v Province of Punjab, 2011)

Principle of Market Value

The courts have been interpreting the law relating to compensation liberally. Even prior to the amendment to section 23 of the present law, the court seemed to be pro owner. Originally, section 23 did not include the concept of market value. It was owing to an amendment in 1969 that the idea of market value could find place on to the statute and from there to the present, the principle of market value has been followed as one of the major consideration for the determination of compensation. The phrase 'market value' has been held to be in a good number of cases the price which can be expected by a willing vendor from a willing vendee²⁷. The penumbral message which emanates from this explanation is that the acquiring authorities as well as the judicial fora have been riddled with the responsibility of ascertaining the equitable and fair value of the land. For the prompt execution of this task the authorities have to take into account the factors like potentialities of the land and the prospective use of the acquired piece of land²⁸.

Principle of other land in the Locality

One of the principles for the enhancement of the amount of compensation is sale price of the other lands in the locality. In this respect, it has been held that the nature and potential of such lands should not be materially different than the land in question and the sale-deeds produced to substantiate the claim should not pertain to the sales subsequent to the sale in issue²⁹. As the process of acquisition is deemed to have set in after the dissemination of notification under section 4(1) of the Act, therefore, the date of issuance, in this context, becomes crucial for determining the market value and from that date sale average of the preceding years is to be taken into account for the purpose of grant of compensation³⁰ and for this purpose, the parties are obliged to adduce evidence to establish the potentiality and future prospective of the land for the purpose of substantiating their claim for the enhancement of compensation³¹. In order to enhance the amount of compensation, the judgment of the court should be based on valid and cogent reasons.

Principle of Potential Value

Supposedly a remedial legislation, the Land Acquisition Act seems to have been drafted with invidious approach for it focuses myopically the right to compensation of the lamenting owners. But, it is owing to the consciously reasoned judicial expositions that the expropriated owners have been able to get emancipation from the confines of mere price of the land. Most important and mandatory aspect of the process of compulsory acquisition is that the lamenting owner has to get the compensation, some thing beyond the price of the land. For this purpose, section 23 of the Land Acquisition Act, 1984 sets out certain matters for the deliberation of the acquiring agency. As a result of some compressing needs, the said section was got amended³² widening thereby the scope thereof. So, the insertion of word “potential value” in the inventory of matters to be considered for the assessment of compensation of the land has brought about revolutionary changes in the landscape of compensation.

Public Purpose

As the law mandates the state to amass property for public purpose, therefore, the expression public purpose has been stated to encompass the procurement of village-sites in any districts, in which the Provincial Government shall, by notification in the official Gazette, demonstrate that it is customary for the Government to make such arrangements³³. Albeit, the term “public purpose” has not been elaborated in an exhaustive fashion, but it demonstrates diversification and envisages purpose furthering collective interest of the community in contrast to individuals stakes and to be construed according to the spirit of times in which legislation enacted³⁴. It is not liable to be construed strictly as the same is liable to change from time to time, place to place and matter to matter; rather the definition

needs to be employed in malleable sense so that it may cater for the ever changing circumstance and requirements of the society and needs of the public³⁵. So, the public purpose has been held to be included any land required for any purpose which the Government considered same a public purpose except a purpose which was against the tenets of Islam. As the connotation conveys the sense which is advantageous to the public in the sense of bestowing some benefits to the public or conducive to some public advantage, therefore, non-fulfillment of the purpose for which it was acquired doesn't preclude the Government from putting it to any other use, for once the land vests in the Government it can make its use for any public purpose deemed appropriate and best for its utility³⁶.

The concept of public purpose is quite exhaustive and cannot be confined to a limited definition; conversely, the manifestation 'public purpose' will extend to goal in which the interest of the community at large, as opposed to the interest of an individual, is directly and vitally concerned³⁷. So much so if the main and overriding purpose remains in tact, a minor deviation from public purpose doesn't entail issuance of fresh notification to bring the acquisition within the ambit of 'public purpose'³⁸. Being latent in nature, the idea of public purpose varies from time to time and according to the circumstances of the thought prevailing in the country; therefore, it is impossible to define what exactly a public purpose is³⁹. As to the question of determination of public purpose is concerned, the same has been declared to be the domain of the Executive and the High Court has been declining to interfere in such decisions of the collector⁴⁰. But, the apex court of Alaska⁴¹ has held that the necessity of taking over is subject to judicial review only if the aggrieved party adduces clear and convincing evidence of fraud, bad faith, or some gross abuse of discretion on the part of the acquiring authority. The scope of review of any acquisition in eminent domain is extremely limited as the question of necessity and expediency are held to be beyond the reach of the court, which ought generally to limit its inquiry to the issue of the presence of a proper public purpose and the absence of any abuse of the power of condemnation⁴². In such cases, the fact of establishing the prima facie validity of its determination of necessity, the condemnor has to show only that taking is plausibly essential and proper for the accomplishment of the envisaged purpose⁴³. Further, the condemnor has to establish that it made an effort to investigate alternatives so as to minimise private injury without impairing the integrity and functions of the project and without adding unreasonable costs to the project⁴⁴ and once it is established, the onus shifts to the condemnee to demonstrate by clear and convincing evidence that the condemnor arbitrarily failed to investigate a promising alternative or that the condemnor's conclusion about a particular alternative were irrational⁴⁵.

The following factors, however, have held to be of paramount importance for the purposes of enhancement of compensation: location of acquired land; sale price of adjoining land; its potentiality and likelihood of development and improvement; report of Local Commissioner; the unrebutted evidence on record produced by the land owners; general tendency of the vendees to show smaller amount as to price of land purchased by them than actual price paid by them in order to avoid

imposition of heavy gain tax and stamp duty etc; inflationary trends and depreciation in currency in between the date of acquisition and date of award⁴⁶.

Conclusion

Undoubtedly, the courts in Pakistan have been very generous in according liberal interpretation to the provisions relating to assessment of compensation to be awarded to the deprived owners but, there are, still, certain areas which could not find the judicial favour. For instance, as a result of forced acquisition, the damaged occasioned to the owner for compulsive relinquishment of residences has not been under consideration by any of the forums. Dictates of social justice demands that, this aspect of the acquisition process should also be taken into account.

Although, the law on the subject doesn't provide for the appointment of local commissioner for the purpose of determination of amount of compensation but there seems enhanced recognition of such commission in great spate of decisions and the courts have been relying on the reports of local commissions but little attention has been paid to the expertise, soundness and professionalism at the time of soliciting the services of potential local commissioners. A prompt adherence to such factors would not only contribute to the determination of fair compensation but would equally be instrumental in eroding a sense of deprivation which an owner develops in the form of being landless. Moreover, the extant law also ignores the damage which may be caused to the retainer of residuary portion of acquired land. Such legislative omission amounts to miscarriage of justice.

Similarly, in case only a slice of land is acquired, the remaining portion of the land is likely to be of less value, the extant law does not address such cases.

Notes and References

¹ Nelson Chan, Land Acquisition Compensation in China—Problems & Answers, *International Real Estate Review* 2003 Vol. 6 No.1 p.136

² Eaton J.D. *Real Estate Valuation in Litigation*, 2nd Edition, Appraisal Institute, 1995, Boyce B.N; *Real Estate Appraisal Terminology*, revised edition, Society of Real Estate Appraisers, Denyer- Green B, *Compulsory Purchase and Compensation*, 4th edition, Estate Gazette, 1994 and Brown D; *Land Acquisition: An Examination of the Principles o Law Governing the Compulsory Acquisition or Resumption of Land In Australia and New Zealand*, 4th edition, Butterworths, 1996 as quoted by Nelson Chan in *Land Acquisition Compensation in China—Problems & Answers*, *International Real Estate Review*, 2003 Vol. 6 No.1 p.136.

³ Malik Iftikhar Ali. *A Case Study of Land Acquisition by Government in West Pakistan*, A Publication of the National Institute of Public Administration 78, Upper Mall, Lahore

⁴ A. Ghosh. *The Laws of Compulsory Acquisition and Compensation in India, Pakistan and Burma*, 4th Edition, 1951, Eastern Law House Limited Calcutta

⁵ Article 23 of the Constitution of Pakistan, 1973

⁶ *Land Acquisition Collector v Abdul Wahid Chaudhary* 2004 YLR 608

⁷ *Ibid*

⁸ *Ibid*

⁹ *Ibid*

¹⁰ *Nisar Ahmad Khan v Collector Land Acquisition, Swabi* PLD 2002 SC 25

¹¹ *Ibid*

¹² *Ibid*

¹³ *Province of Punjab v Mufti Muhammad Ishaq*, PLD 1984 Lah 261

¹⁴ *Mir Fazal v Land Acquisition Collector/ Assistant Commissioner (Saddar) Islamabad Capital Territory (ICT) Islamabad*, 2005 PLD 168

¹⁵ *Nusrat Masood Chaudhary v President Lahore Development Authority*, 2002 CLC 945

¹⁶ *Divisional Engineer (Dev) N-II T&T, Gujranwala v Muhammad Sharif* 2002 CLC 985

¹⁷ *Ravindra Ramchandra Waghmare v Indore Municipal Corporation* [2016] INSC 836

¹⁸ *Nisar Ahmad Khan v Collector, Land Acquisition Swabi*, PLD 2002 Sc.25

¹⁹ *Nisar Ahmad Khan v Collector Land Acquisition, Swabi* PLD 2002 SC 25

²⁰ *Province of Punjab v Muhammad Mumtaz* PLD 2004 SC 134

²¹ *Province of Punjab v Sh Hassan Ali*, 2009

²² *Ibid*

²³ *Ibid*

²⁴ *Behram Khan v District Officer (Revenue) Nowshera*, 2017 CLC 764 Peshawar

²⁵ *Khalil Muhammad v Water and Power development Authority*, 2015 YLR 84 Peshawar

-
- ²⁶ Water and Power Development Authority Pakistan v Haji Muhammad Riyaz – UI- Hassan, 2014 MLD 1528 Peshawar
- ²⁷ 1997 CLC 848 Karachi Electric Supply Corporation v Mst Khalid Latif
- ²⁸ Ibid
- ²⁹ Tariq Saeed v Land Acquisition Collector (EHV), WAPDA, 2002 YLR 3180
- ³⁰ Hyderabad Development Authority v Abdul Majeed PLD, 2002 SC 84
- ³¹ Muhammad Saeed v Collector, Land Acquisition, 2002 SCMR 07
- ³² The West Pakistan Ordinance No XLIX, 1969
- ³³ Section 3(f) of the Land Acquisition Act, 1894
- ³⁴ PLD 1983 Lah 552
- ³⁵ PLD 1983 Kar 602
- ³⁶ Kishwar Sultana v Province of Punjab, 2004 MLD 1604
- ³⁷ Ibid
- ³⁸ Bostan v Land Acquisition Collector, Rawalpindi, PLD 2004 Lah.47
- ³⁹ AIR 1963 Madh 256
- ⁴⁰ 2001 YLR 3367
- ⁴¹ Arco Pipeline Company et al V 3.60 Acres, More or Less, etc and Jackie J. Stewart, et al 539 P.2d 64; 1975 Alas. Lexis 340, 1975
- ⁴² Ibid
- ⁴³ City of Fairbanks V. Metro Co; 540 P.2d 1056, 1058 (Alaska 1975)
- ⁴⁴ State V. 0.644 Acres, More Or Less, 613 P.2d 829, 832-33 (Alaska 1980)
- ⁴⁵ Ibid
- ⁴⁶ Muhammad Saeed v Collector of land Acquisition 2002 SCMR 407