

**IN THE HIGH COURT OF SINDH, CIRCUIT  
COURT, HYDERABAD**

1<sup>st</sup> Appeal No. 51 of 2010

[Province of Sindh and another v. Land Acquisition Officer and others]

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1<sup>st</sup> Appeal No. 54 of 2011

[Province of Sindh and others v. District Officer Revenue/Land Acquisition Officer  
& others]

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1<sup>st</sup> Appeal No. 55 of 2011

[Dr. Jhazib Jatoi and another v. Province of Sindh and others]

**Present:**

**Mr. Justice Muhammad Shafi Siddiqui and  
Mr. Justice Muhammad Faisal Kamal Alam**

Date of hearing : 11.02.2020.

Appellants in Ist Appeal  
Nos.51/2010 and 54/2011 and  
Respondents in Ist Appeal  
No.55/2011

**[Province of Sindh and others]** : Through Mr. Allah Bachayo  
Soomro, Additional Advocate  
General Sindh.

Appellants in Ist Appeal  
No.55/2011 and Respondents in  
Ist Appeal Nos.51/2010 and  
54/2011 **[Dr. Jhazib Jatoi  
and another]**

: Through Mr. Muhammad Imran  
Qureshi, Advocate.

**JUDGMENT**

**Muhammad Faisal Kamal Alam, J:** - Due to commonality, all these  
three Appeals are decided by this common judgment. Subject matter of

these three Appeals is quantum of compensation awarded for a piece of land measuring 7.09 Acres, falling in Survey numbers 30, 31 and 44, Deh Kotri, Taluka Kotri, District Jamshoro ("**Subject Land**"), which was acquired by Irrigation and Power Department, Government of Sindh, which is Respondent No. 2 in First Appeal No. 55 of 2011, preferred originally by the claimants, namely, Mrs. Habiba Jatoi (since deceased), Dr. Jahanzeb Jatoi and Dr. Zaman Jatoi, both sons of late Mrs. Habiba Jatoi. Award No. 01 of 2010 {**the said Award**} in respect of the Subject Land was passed on 28.01.2010, which was challenged by the claimants / above named private persons through a Reference, as envisaged in Section 18 of the Land Acquisition Act, 1894 (*'the Governing Law'*), in the shape of Land Acquisition Matter (Suit) No. 03 of 2010. The said Award was also assailed by the Acquiring Agency (Irrigation and Power Department, Government of Sindh) and Executive Engineer Right Bank Outfall Drainage, Division-II, Hyderabad, through 'Land Acquisition Reference No. 02 of 2010'. Both claimants and Acquiring Agency were primarily aggrieved of the compensation awarded by the Land Acquisition Officer ("**LAO**")-the Respondent No.1 in all the title Appeals.

2. During course of the proceeding, Reference No. 02 of 2010, preferred by the Acquiring Agency, was rejected by the learned Referee Court by its order dated 13.05.2010, against which First Civil Appeal No. 51 of 2011 has been filed by the Province of Sindh / Irrigation Department (**RBOD**), *whereas*, the Reference No. 03 of 2010, preferred by the above named private Respondents, was decided by the Judgment dated 26.08.2011, in which, *inter alia*, the compensation amount was enhanced from Rs.250 Square Foot (as determined by the Respondent No. 1 / LAO) to Rs.300 per Square Foot, while the claim of damages of claimants/private Respondents were rejected; hence, the latter (claimants / private

Respondents) challenged the Judgment by way of First Civil Appeal No. 55 of 2011 and Province of Sindh challenged the same Judgment by way of First Civil Appeal No. 54 of 2011.

3. The Subject Land was acquired for the purpose of extension of Right Bank Outfall Drain (**RBOD**) Project, with the object to relieve Right Bank of River Indus from menace of water logging and salinity.

4. Mr. Imran Qureshi, Advocate, while representing the claimants {'Persons interested', *inter alia*, in terms of Sections 3(b) and 18 of the Governing Law} has argued that the impugned judgment by the learned Court suffers from illegality as it has neither considered the potential value of the Subject Land acquired nor was justified in rejecting the additional claim of claimants in respect of damages and charges/compensation. While opposing First Civil Appeal No. 51 of 2011, he has argued that the impugned order passed by the learned Court below is within parameters of law and on the contrary, the Appeal preferred by the Province of Sindh is hopelessly time barred as it was filed on 25-10-2010, whereas, the Impugned Order is of 13.05.2011. He has relied on number of reported decisions to augment his arguments, which is reproduced below and is also filed with his written synopsis:

1. P L D 2014 Supreme Court page-585  
*[Gen. (R.) Parvez Musharraf v. Nadeem Ahmed (Advocate) and another]-Musharraf case.*
2. P L D 1995 Supreme Court page-396  
*[Government of the Punjab through Secretary (Services), Services General Administration and Information Department, Lahore and another].*
3. P L D 2001 Supreme Court page-355  
*[Mst. Khadija Begum and 2 others v. Mst. Yasmeen and 4 others].*
4. P L D 1988 Supreme Court page-32  
*[Malik Aman and others v. Land Acquisition Collector and others].*

5. 2000 C L C page-99  
*[Government of Sindh through Deputy Commissioner, District Dadu and another].*
6. P L D 2004 Supreme Court-512  
*[Province of Sindh through Collector of District Dadu and others].*
7. P L D 1986 Supreme Court page-158  
*[Fazalur Rahman and others v. General Manager, S.I.D.B. and another].*
8. P L D 2002 Supreme Court page-25  
*[Nisar Ahmad Khan and others v. Collector, Land Acquisition, SWABI and others].*
9. 1992 C L C page-1775  
*[Muhammad Rafique Khan v. Province of Punjab through Collector Bahawalpur, and another].*
10. 1997 M L D page-717  
*[Collector, Land Acquisition, Nowshera and others v. Malik Shamas Khan and others].*
11. 2007 S C M R page-518  
*[Sheraz Tufail v. The State].*
12. 1<sup>st</sup> Civil Appeal No.20 of 1996  
*[Land Acquisition Officer and another v. Mst. Hashmat and others].*
13. PLJ 2011 SC page-265  
*[Bacha Zeb and another v. State].*
14. 2008 P L C (C.S.) page-317  
*[Ghulam Mustafa v. Senior Member, Board of Revenue, Sindh and another].*

5. On the other hand, Mr. Allah Bachayo Soomro, learned Additional A.G., has argued that the rejection of Reference No. 02 of 2010 by the learned Court was in clear violation of the authoritative pronouncement handed down by the Honourable Supreme Court and reported in P L D 2010 Supreme Court page 745 [*Land Acquisition Collector v. Muhammad Nawaz*]. He has also challenged the quantum of compensation awarded to claimants in the land acquisition proceedings by the Respondent No. 1 (LAO), which according to him, was a result of a collusive act between Respondent No.1 and claimants/private Respondents. Further submitted that an excessive amount of compensation has been awarded in favour of

above Claimants/Persons interested (private Respondents), which was enhanced by the learned Court, without any tangible evidence brought on record. The learned A.A.G. has also filed his synopsis along with the record of Constitution Petition No. D – 1049 of 2011, relating to the present dispute, which was disposed of vide Order of 17-3-2010, with the directions, *inter alia*, that amount of compensation deposited with the learned Additional Registrar of this Court, will not be paid to anyone, the relevant record of the Revised P.C-I [December 2005], relating to the above RBOD Project, mentioning the value of the Subject Land as Rs.160,000/- per acre, so also copies of the case law relied upon, mentioned herein under:

1. P L D 2016 Supreme Court page-514  
*[Dilawar Hussain and others v. Province of Sindh and others]-Dilawar case.*
2. P L D 2008 Lahore page-116  
*[Province of Punjab through Deputy Commissioner / Collector Sialkot and another].*
3. 1984 C L C page-3406  
*[Government of Sindh and 2 others v. Muhammad Usman and 2 others].*
4. 1992 S C M R page-1245  
*[Land Acquisition Collector, Abbottabad and others v. Muhammad Iqbal and others].*
5. 1991 S C M R page-2164  
*[Sardar Abdur Rauf Khan and others v. The Land Acquisition Collector / Deputy Commissioner Abbottabad and others].*
6. N L R 2002 Revenue page-1  
*[Hyderabad Development Authority through Its M.D. Civic Centre, Thandi Sarak Road, Hyderabad v. Abdul Majeed and other].*
7. 2016 C L C page-1047  
*[Province of Sindh through Secretary to Government of Sindh and another v. Land Acquisition Officer and 2 others];*
8. P L D 2001 Supreme Court page-514  
*[Land Acquisition Collector, Nowshera and others v. Sarfaraz Khan and others-Sarfaraz case;*

9. 2007 S C M R page-729

*[Rehmatullah and others v. Saleh Khan and others]-Rehmatullah case;*

10. 2002 S C M R page-122

*[Sardar Ahmed Yar Khan Jomezai and 2 others v. Province of Balochistan through Secretary, C&W Department].*

6. Arguments heard and record perused.

7. Relevant part of the Award is reproduced herein under\_

	AMOUNT CLAIMED	AMOUNT ALLOWED	REMARKS
Cost of land for 7-09 acres	18,88,32,600/-	7,86,80,250/-	at Rs.250/sq foot for 314721 sq foot
For structures	48,17,100/-	20,75,000/-	@ 25% of the claim
Addl claim for roads	+ 20,00,000/-		
Addl claim for drainage	+ 15,00,000/-		
TOTAL Rs.	= 83,17,100/-		
For damages to other land Rs.	16,64,000/-	-	Not Considered
For damage of land by severance	5,36,24,000/-	-	Not Considered
For damage of other land	17,96,85,000/-	-	Not Considered
For damage of shifting of business	20,00,000/-	-	Not Considered
Compulsory acquisition charges @ 15% u/s 23(2) of the Land Acquisition Act	2,83,24,890/-	1,18,02,038/-	
Additional compensation of the land @ 15% u/s 28(A) of the Land Acquisition Act	53,54,568/-	3,38,16,398/-	
6% interest u/s 34 of the Land Acquisition Act, 1894 from the date of possession i.e. Feb 2007	As admissible under the LA Act	1,36,22,162/-	
<b>TOTAL</b>	46,43,02,158	13,99,95,848/-	

8. Since First Appeal No. 51 of 2011 is on a point of law, therefore, it is taken up first. The learned counsel for private Respondents No. 2 to 4 (claimants) has relied upon the decision of Musharaf [*supra*], in support of his arguments, that since the present appeal is barred by limitation, hence, even for the arguments' sake, if the impugned order is a *void* order, still it cannot be set aside, but the above Appeal is to be dismissed. Conversely, learned AAG has cited the decisions in Rehmatullah and Sarfaraz cases (*ibid*) to augment his arguments that limitation does not run against a void order and fraud vitiates even solemn orders.

9. The impugned order dated 13.05.2010 is perused, which has rejected the Reference No. 02 of 2010 preferred by present Appellant (of Appeal No. 51 of 2011 – Province of Sindh) on the ground that in terms of Sections 18 and 50 of the Governing Law, the beneficiary of land acquired cannot challenge the award By filing a Reference. This issue was laid to rest by the Apex Court in the case of *Muhammad Nawaz (ibid, P L D 2010 SC 745)*, and reiterated by this Court in another land acquisition matter involving similar facts, viz. Province of Sindh v. Land Acquisition Officer- **2016 CLC 1047**. As per the dictum of above *Nawaz case*, the Decision of the Shariat Appellate Bench of Supreme Court in Shariat Appeal No.7/1989 shall have effect from the date of its pronouncement, that is, on 18-2-1991, whereby, different Sections of the Governing Law including Section 18(3) and proviso of Section 50, which earlier operated as a complete and partial bar against government(s) and beneficiary of land acquired to file a reference, was declared repugnant to the Injunctions of Islam. Subsequently, legislative amendment was made through Ordinance IV of 1992 {published in PLD 1993 Sind Statute 2} and the proviso of Section 50 of the Governing Law was deleted.

This view is further reiterated in a recent decision of learned Division Bench of this Court in First Appeals No. 113, 114 and 115 of 2017 (appended with the synopsis of learned Additional A.G.). The above Decision was delivered on 03.09.2019; wherein, it is held, that eligibility of a beneficiary to assail an award is recognized in the above reported judgment of the *Nawaz case* {Hon‘ble Supreme Court}. Relevant paragraph of the above Judgement of learned Division Bench is reproduced herein under\_

**“7. It is pertinent to mention here that out of the aforesaid sections, sections 18(3) and (4), 22-A, 54 of the Land Acquisition**

Act as well as depriving a company or a local authority of the right of appeal in Proviso the Section 50(2) of the Act are repugnant to the injunctions of Islam as held by the Shariat Appellate Bench of this Court vide judgment dated 18-2-1991 in Shariat Appeal No.7/89. A cut-off date was fixed by the Shariat Appellate Bench for the competent bodies for necessary amendment in the aforesaid sections till 30-9-1991. The Shariat Appellate Bench further held as under:

*“The proposed amendments would advance remedy to an aggrieved party. It would be fair and just to give a right to make a reference, file a cross-objection, lead evidence and file an appeal to those parties who have been denied such a right under sections 18, 22-A, 50 and 54 of the Land Acquisition Act.”*

As stated by the learned counsel for the parties that province of the Punjab had not yet amended the said provision in accordance with the directions of the Shariat Appellate Bench judgment dated 18-2-1991 in Shariat Appeal No.7/1989. According to Article 203-D, (3)(b) if any law or provision of law is held by the Court to be repugnant to the injunctions of Islam, such law or provision shall to the extent to which it is held to be so repugnant ceases to have effect on the day on which the decision of the Court takes effect. The aforesaid provisions mentioned herein above which were declared against the injunctions of Islam after 30<sup>th</sup> September, 1991. The aforesaid provision of Land Acquisition Act including provision of section 50(2) of the Act barring right of appeal to Federal Government / beneficiaries shall cease to have effect, therefore, now after the cut-off date the Federal Government / beneficiaries have a right to file an appeal, as per judgment of the Shariat Appellate Bench.”

10. It means that when the Impugned Order (subject matter of present First Appeal No. 51 of 2010) was passed by the Referee Court, the above provision was not on the Statute Book. Impugned Order of 13.05.2011 is in clear violation of the principle laid down by the Honourable Supreme Court in the above *Nawaz* case. This *ex facie* glaring illegality cannot be allowed to remain intact. The decisions cited by the learned Advocate for the



Claimants/Persons interested (private Respondent) are distinguishable, in particular the **Musharraf case**, *inter alia*, because the review petition was barred by 1576 days (as mentioned in the reported judgment itself) and involved a discussion on the unconstitutional actions. Rule expounded in the reported decisions on this issue of limitation, relied upon by the learned AAG (as referred above), is applicable here. Consequently, in view of the above discussion, First Appeal No. 51 of 2011 is accepted and the Impugned Order dated 13.05.2011 is set aside and the case is remanded to learned Court for decision afresh.

11. Now adverting to the First Appeals No. 54 and 55 of 2011.

12. The précis of precedents relied upon by learned counsel for the claimants/Persons interested (private Respondents) is, (i) that for determining the market price of a land acquired, sale transactions done in respect of adjacent lands or in the nearby vicinity at the relevant time of issuance of the notification under Section 4 of the Governing Law and when finally the award is to be passed, be considered; (ii) valuation table issued from time to time by the Provincial Government can also be a reliable aid in fixing the quantum of compensation; (iii) that if a long period has elapsed between the issuance of notification under Section 4 and the announcement of the Award, the fact about sharp increase of prices of lands, should also be considered while determining compensation; (iv) after incorporation of section 23 in the Governing Law, the criteria for fixing the market value of the land has been widened and while determining the compensation, the 'Potential Value' of a land should also be considered, that is, the future use to which the land under acquisition can be put to; (v) that facts admitted, then by virtue of Article 113 of the Qanoon-e-Shahadat Order, 1984, the same are not required to be proved; (vi) if on a particular

assertion a claimant / person is not cross-examined, then that portion of the evidence stands proved/admitted.

13. The crux of the case law cited by the learned Additional A.G. is that even if no evidence is led by the Acquiring Agency, yet the LAO has to determine the value of land independently; merely on the basis of Report of Mukhtiarkar, value of land cannot be assessed; that after repealment of Section 28-A of the Governing Law, 15% additional compensation should not have been allowed in the present proceeding by the Respondent No.1 (LAO). The burden of proof is upon the owner of the land / claimant, to establish that compensation awarded of a land by the LAO is not adequate/correct and thus it should be enhanced by the Referee Court.

14. The entire evidence has been examined. The claimants (Appellants/Claimants in 1st Appeal No.55 of 2011) **did not produce** any registered Sale Deed of the nearby vicinity to prove the market value of the Subject Land, as claimed by them. The official Valuation Table was not produced in the evidence so that an estimated market price of the Subject Land could have been ascertained. Although, in view of the above case law, the above two documents are not the only definitive factors for determining the exact market value but the above official record is material for reaching an estimated market price for the land proposed to be acquired, together with its potential value (factor).

15. The testimony of the LAO (Suhail Adeeb) – Exhibit 13, available in the record, is self-contradictory with regard to fixing the market value, as the said LAO has deposed that at the relevant time the market value of the Subject Land was between Rs.700 to Rs.1200 per Square Feet, *whereas*, in the Award he has assessed the market value as Rs.250 sq. ft. The above reported decisions have also held that LAO is to act as an independent

arbitrator when he is conducting the proceeding under the Governing Law and being a government functionary himself, should not be influenced by any Government Department. The evidence of LAO has put a question mark over the quantum of compensation awarded to Claimants / Interested Persons (Appellants in 1st Appeal No. 55 of 2011).

16. The above Respondent No.1 (LAO) has stated in paragraph-11 of his Award (at page-35 of 1st Appeal No. 55 of 2011) that the Subject Land falls within 'A' category but did not mention that what is the value of 'A' category lands in that vicinity as mentioned in the Valuation Table issued and amended from time to time under the Stamps Act, 1899, which was not even produced in the evidence (as already stated above). These glaring irregularities are violative of the rule laid down in various judicial pronouncements, some of which have been relied upon by the Appellants and Respondents and are mentioned in the foregoing paragraphs.

17. At this juncture, in our considered view, reported decision handed down in *Province of Sindh v. Ramzan and others - P L D 2004 Supreme Court page-512*, relied upon by the learned counsel for claimants, may also be discussed here separately, for the reason that in this judgment also property acquired was situated in Taluka Kotri, that is, the same Taluka in which the Subject Land is situated. The compensation awarded was enhanced by the Court {in the cited Decision} from Rs.15,000 per acre to Rs.50,000 per acre. The enhancement was done by the judgment dated 20.02.1997; that is, exactly ten years back, from the date when the acquisition of present Subject Land had commenced, when Notification under Section 4 of the Governing Law was issued on 07.02.2007. It is completely understandable that different lands / properties located in one District has different market price / value so also potential value, according to their location, but in a decade a landed property in the same district regarding which a

compensation of Rs.50,000/- per acre was given, does not justify that another property, viz. the subject acquired land, which is also in the same District Kotri, has a value of almost Rupees One Crore per acre (compensation awarded was Rs.7,86,80,250/- for 7-09 acres), that is, **more than hundred times**; it appears to be excessive. **Secondly**, since no Sale Deed or any other tangible evidence, including any official record was produced in the proceeding before the Referee Court (in the above Reference/Land Acquisition Suit No. 3 of 2010), therefore, the Referee Court was not justified in enhancing the compensation awarded by Respondent No.1 (LAO).

18. Awarding Rs.3,38,16,398/- (Rupees Three Crore Thirty Eight Lacs Sixteen Thousand Three Hundred Ninety Eight only) as 15% additional compensation in terms of Section 28(A) of the Governing Law, by the Respondent No.1 (LAO) was also illegal and the same should have been set aside by the Referee Court, because at the relevant time the said provision [Section 28-A] stood repealed by virtue of the Land Acquisition (Sindh Amendment) Act, 2009 (Act XVI of 2010). In this regard, the judgment of Honourable Supreme Court handed down in the case of *Dilawar Hussain v. Province of Sindh - P L D 2016 Supreme Court page-514*, has been correctly cited by the learned Additional A.G. Relevant portion of the said judgment is reproduced herein under for convenience\_

*“In the present circumstance, the Federal Shariat Court found the provisions of the Section 28-A to be repugnant to the Injunction of Islam. The preamble of the repealing Act states that the Federal Shariat Court has directed that certain amendments be made to the Act in its application to the Province of Sindh. The plain words of section 4 of the repealing Act indicate the intention of the legislature that this Section 28-A is non est and therefore as per the ratio of the Dr. Mubashir Hassan case (supra) the appellants cannot be granted the benefit of Section 28-A as claimed in the instant appeal. It is settled law*

*that appeal is a continuation of the original lis and therefore there is no past and closed transaction which may have afforded them protection in the event of the Section 28-A being declared to have “never been enacted”. But as this point has not been taken into consideration by the forums below, and this too is not a point on which leave was granted, therefore, we do not intend to refuse this appeal on the above score alone.”*

19. The Issue No.2 relating to damages is correctly decided by the Referee Court, because no evidence was produced by Claimants/Persons interested, thus finding on Issue No.2 of the impugned Judgment is not interfered with.

20. Since the First Appeal number 51 of 2010 is being accepted and remanded for the above reasons, primarily for determining the amount of compensation, for which both Provincial Government, its Beneficiary Department (Appellant No.2 in First Appeal No. 51 of 2010) and private Respondents (Claimants) will be given opportunity to lead evidence, thus, in view of the above discussion on First Appeals No. 54 and 55 of 2010, in particular about the shaky evidence, it is appropriate that a de novo exercise be carried out by the Referee Court after providing opportunity to all the Parties hereto (Appellants of the three Subject Appeals), to lead the evidence. The learned Court will decide the matter on the basis of cumulative effect of evidence in both the above References No. 2 and 3 of 2010 by handing down a common judgment, without being influenced by any of the observations mentioned in this Decision. While deciding quantum of compensation for the Subject Land, the other relevant components, including, additional compensation and interest (in terms of Sections 23(2) and 34 of the Governing Law) shall also be decided but no solatium/additional compensation as earlier granted under Section 28 A of the Governing Law is permissible (as discussed above).

21. The upshot of the above discussion is that both impugned decisions, viz. of 13.05.2010 (rejecting the Reference No.02 of 2010) and 26.08.2011, enhancing the compensation awarded by the Respondent No.1, are set aside. *Consequently*, 1st Appeal Nos.51 of 2010 and 54 of 2011, both preferred by Province of Sindh and others, are accepted, *whereas*, 1st Appeal No.55 of 2011, preferred by the claimants / private Respondents, is disposed of (in the above terms).

22. Since, it is an old acquisition matter, the Referee Court will preferably proceed with the above References day-to-day and decide the same within two (02) months from the date of receipt of the present decision.

23. Parties to bear their costs.

**Judge**

**Judge**

**Hyderabad.**

**Dated: .06.2020.**

*Riaz / P.S.*