IN THE HIGH COURT OF SINDH, CIRUIT COURT HYDERABAD

Present:

Mr. Justice Muhammad Saleem Jessar
Mr. Justice Omar Sial

1ST Appeal No.D-11 of 2016

Province of Sindh through
Secretary to Government of Sindh,
Works & Services Department
and another…… Appellants

Vs.

Land Acquisition Officer (B&R)
Hyderabad and another…… Respondents

Date of hearing 22.02.2022

Date of decision 09.03.2022

Mr. Allah Bachayo Soomro, Additional Advocate General Sindh for the appellants.

Nemo for respondent No.1.

Barrister Jawad Ahmed Qureshi, advocate for respondent No.2.

J U D G M E N T

MUHAMMAD SALEEM JESSAR, J-The appellants, through instant First Appeal, have assailed the Judgment dated 03.03.2016, passed by 2nd Additional District Judge, Shaheed Benazirabad, acting as Referee Court in Land Acquisition Reference No.30 of 2011 (Re: Province of Sindh Vs. Land Acquisition Officer and another), filed under section 18(3) of the Land Acquisition Act, 1894 (the Act), dismissing the same by holding that the Award passed by Land Acquisition Officer is according to law.

2. Facts of the case, relevant for the purpose of disposal of instant appeal, are that an area of 17.32 acres of agricultural land, consisting of S. No.3/1 and others, situated in Deh 21, Taluka and District Shaheed Benazirabad, was acquired for public purpose

for construction of Nawabshah-Padidan road – Ranipur road. Accordingly, a notification under section 4 of the Act was issued and published on 11.10.2010 and final notification under section 6 of the Act was also published on 25.10.2010. The Collector, after holding enquiry as required under section 9 of the Act, in presence of the Executive Engineer of the Department on 20.12.2010 and 31.12.2010, determined the compensation at the rate of Rs.450,000/- per acre by passing award dated 03.01.2011. The appellant, feeling aggrieved by the award and the rate of Rs.450,000/- per acre in respect of the acquired land, moved an application under section 18(3) of the Act for referring the award to Referee Court. Since, the Referee Court, i.e. 2nd Additional District Judge, Shaheed Benazirabad, after hearing the parties, dismissed the reference No.30/2011, vide impugned Judgment dated 30.03.2016, hence this appeal.

3. Mr. Allah Bachayo Soomro, Additional Advocate General Sindh, appearing on behalf of the appellants, vehemently argued that notice in terms of section 9 of the Act was not issued or served upon the appellants; therefore, the award was passed ex-parte. The learned AAG further argued that the rate determined by the Land Acquisition Collector under the Award is exorbitant and beyond value of the area of the land acquired. He also argued that the Land Acquisition Collector, who was material witness and had to recognize the Award passed by him, was not examined by the trial Court, therefore, proper evidence was not available before the trial Court to effectively and justly decide the issue before it. He further submitted that although the Mukhtiarkar, who allegedly issued the valuation certificate, was not competent to assess the land or issue valuation certificate; however, he was also not examined. It was also submitted that respondent No.2 / alleged landowner of the acquired land, did not produce title document in order to ascertain as to how much land, out of acquired land, was owned by him. He finally submitted that the above lacunas were ignored by the trial Court. He, therefore, prayed that since the impugned judgment and award are not sustainable in law, therefore, the same may be set aside. In support of his contentions, the learned AAG relied upon the following cases:

1. **Messrs Rabia Rana and Company v. Province of Sindh and others** (2016 YLR 2286),

2. **Land Acquisition Collector Sargodha and another v. Muhammad Sultan and another** (PLD 2014 SC 696),

3. **Land Acquisition Collector and others v. Muhammad Nawaz & others** (PLD 2010 SC 745), and

4. **Hyderabad Development Authority v. Abdul Majeed** (NLR 2002 Revenue 01).

4. Conversely, Barrister Jawad Ahmed Qureshi, learned counsel for respondent No.2, opposed the appeal and submitted that the land acquired by the appellant is a valuable piece of land as it falls within the boundary of Nawabshah city hence being a commercial property it carries much weight then the claim of the respondent. He further submitted that there is an admission on part of the officials who were examined in support of appellants, therefore, once they have admitted the claim of respondent No.2 such admission cannot be denied in toto.

5. Learned counsel for respondent No.2, however, did not controvert the fact that the Land Acquisition Collector, who passed/issued the Award as well as the Mukhtiarkar, who issued valuation certificate, were not examined and that even respondent No.2 did not produce the title documents showing his ownership over the land acquired by appellants. He, however, prayed for dismissal of the appeal and for maintaining the Award. In support of his contention he placed reliance upon the case of **Zulqernain Khurram and another V Punjab Healthcare Commission and 4 others** (2022 CLC 61 [Lahore]).

6. We have heard the learned counsel for the parties who were present and have also perused the record and the case law relied upon by both the learned counsel.

7. The first objection raised by learned AAG Sindh, appearing for the appellants, was that no notice as envisaged under section 9 of the Act was issued to the appellants. Sub-section (5) of section 9 of the Act clearly stipulates that "*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…." Thus, it was mandatory for the Collector to have issued a Notice under section 9(5) of the Act to the Department of Government (i.e. the appellants) fifteen days before conducting enquiry. Since the Land Acquisition Officer did not appear in the witness box, therefore, this question remained unanswered. There is nothing on record to show that any such notice was ever issued by the Collector before proceeding in the matter for determining the award/compensation exparte against the appellants. This clearly deprived the appellants to rebut the case of the respondents. However, even in exparte proceedings the claimant is not absolved from proving his case as he is required to stand on his own legs. In the case of **LAND ACQUISITION COLLECTOR, SARGODHA and another Versus MUHAMMAD SULTAN and another** (P L D 2014 Supreme Court 696), the Hon'ble Apex Court held as under:

> "5. The reasons which have prevailed with the two Courts below are that the Province and the acquiring authority NHA had been proceeded against ex parte and had not led evidence in rebuttal to the testimony of the three AWs namely the respondent- Muhammad Sultan (AW.1), the respondent Ghullah (AW.2) and Ghulam Rasool (AW.3). <u>This cannot be a basis for awarding the sum actually claimed by the respondents. It was incumbent upon the respondents to prove their assertions.</u>"

8. The learned counsel for the appellant also raised objection as to competency of the Mukhtiarkar to issue valuation certificate. In the above cited case of **Land Acquisition Officer, Sarghodha**, the Hon'ble Supreme Court further held as under:

> "AW.3 Ghulam Rasool who, it is claimed is an independent witness, has testified in the case but we note that he has merely expressed an opinion as to the value of the property in question. The provisions of the Qanun-e-Shahadat Order, 1984 including Article 59 thereof make it clear that the opinion of a witness is only relevant and carries some probative value if he is an expert in the fields specified in the said Article. Furthermore, even for the purpose of giving an opinion, the witness has firstly to establish the expertise vested in him either on account of academic qualification or experience or otherwise. Without such foundation, an opinion cannot by itself, be taken as having evidentiary value for proving a fact in issue.
>
> 6. In the present case, the reasons which prevailed with the Courts below were based on an opinion expressed by a person who is neither an expert, nor has he established any basis for the opinion expressed by him."

9. Therefore, the Referee Court is also required to ascertain as to whether the Mukhtiarkar is a fit and proper person having the requisite expertise to issue valuation certificate.

10. We have also examined the Award passed/given by the Land Acquisition Officer as well as the impugned Judgment dated 30.03.2016 passed by the Referee Court and feel that both suffer from infirmities. First, we would like to take up the Award itself. The Land Acquisition Officer has used very fanciful wording in the Award wherein he says that "*one has to offer gold for gold and not copper for gold to landowners…"* However, he completely fails to appreciate that he cannot evaluate the land on the basis of future or expected improvements in the land. The first and foremost consideration before the Land Acquisition Officer has to be the market value of the land as envisaged under sub-section (1) of section 23 of the Act. The Award, we are constrained to note, proceeds on the presumption and assumption that "*the land is very close of Nawabshah Town and in its vicinity the Medical University and other Commercial as well as residential units <u>are being constructed.</u>"* While the witness who appeared on behalf of the appellants clearly stated [page 23 of the file] that the land is situated eight to 10 Kilometers away from the city of Nawabshah. He also stated that the land is barren and not fertile and was also water logged area. It was further stated that the land was not surrounded by any commercial or sikni area.

11. On the other hand, the respondent No.2 (as quoted in the impugned Judgment at page 27) has stated that his land is located within the limits of Nawabshah city. He further stated that Medical University is going to be constructed whereas so many private colonies are going to be constructed. It seems that the Land Acquisition Officer was influenced by the statement of the respondent No.2 while he completely ignored the evidence of the witness who appeared on behalf of the appellants. Even otherwise, the Referee Court, in the second para of the impugned Judgment dated 30.03.2016 has clearly termed the land as "agricultural land", therefore, it cannot be valued as sikni land or commercial land. This issue also requires reconsideration.

12. After quoting the above evidence, the Referee Court observed, "*In the light of above evidence produced on record there is dispute between applicant and respondent No.2 only on the rate as Government awarded Rs.450,000/- per acre after report of concerned Mukhtiarkar Revenue Department who suggested the rate as Rs.500,000/-*

per acre but without any documentary proof applicant has challenged that rate as it should be Rs.250,000/- or Rs.300,000/-." However, the Referee Court completely ignored that there is dispute with regard to the location of the land as well as the nature of the land, which, in turn, will play an important role in determination of the value of the land. There was also miscarriage of justice when the Referee Court as well as the Mukhtiarkar took into consideration the future development work as claimed by respondent No.2 with regard to establishing of medical university as well as private colonies in the area. Section 23 of the Act narrates as to what factors are to be taken into consideration while determining the value of an acquired land and there is no mention of any future development work to be carried out in the area to be taken into consideration while evaluating market value of a land.

13. The other important aspect of the case is that the Land Acquisition Officer, who issued the Award impugned before the Referee Court as well as the Mukhtiarkar, who issued the valuation certificate, both were not examined by the Court. It is an undeniable fact that the Land Acquisition Officer was a material witness and was to recognize the award issued by him before the Referee Court and he was also to be confronted with regard to the material on the basis of which he passed the award by fixing the rate of the land at Rs.450,000/- per acre. Similarly, the Mukhtiarkar was also required to step into the witness box to satisfy the Court about the correctness of the valuation certificate and his competence to issue the valuation certificate.

14. The observation of the Referee Court [at page 27] that the Mukhtiarkar Revenue Officer is a government official as well as the Land Acquisition Officer is also a government official and their service is still continued with the government then how it is possible that their reports in respect of rate are fictitious or bogus.

15. Suffice it to observe, that section 18 of the Act provides an opportunity to a person interested, who has not accepted the award, to require the Collector by a written application, to refer the matter for determination of the Court. From perusal of recital of the Act, it transpires that the purpose of its promulgation is to amend the law for acquisition of land for public purposes and for companies. The Act provides a

comprehensive mechanism for regulating issues relating to acquisition of land for public purpose, including the manner and mode of the classification and fixing the area of land to be acquired, the determination of compensation for the said land, the apportionment and payment of the compensation so determined, the objections of 'persons interested' on the said determinations in the Award, and finally the mode and manner of resolution of all the disputes thereof that arise between the parties or deemed appropriate or necessary by the Collector.

16. The Act provides for two different circumstances in which references can be referred by a Collector to referee Court. The said two provisions are sections 18 and 30, which read as follows:-

> "Section 18. Reference to Court: (1) Any person interested who has not accepted the award may, by written application to the Collector, require that the matter be referred by the Collector for the determination of the Court "Whether his objection be to the measurement of the land, the amount of the compensation, the persons to whom it is payable, or the apportionment of the compensation among the persons interested.

> "Section.30. Dispute as to apportionment: When the amount of compensation has been settled under section 11, if any dispute arises as to the apportionment of the same or any part thereof or as to the persons to whom the same or any part thereof is payable, the Collector may refer such dispute to the decision of the Court."

17. The scope and object of the references provided in sections 18 and 30 of the Act have been very comprehensively dealt with by the apex Court in the case of Ghulam Muhammad and another v. Muhammad Aslam and others (PLD 1993 SC 336) as under:

> "Act has provided for two references, under section 18 and the other under section 30 of the Act, but the scope and the object of these two references are quite distinct and separate. Under section 18 the reference is of a dispute with regard to the area or the quantum of the compensation or as to the apportionment of the same amongst the person interested. This reference is strictly limited to the above matters, whereas under section 30 the reference may be made if a dispute arises as to the method of apportionment of the compensation or as to the persons to whom the same or any part thereof is payable. The subject-matter of these later references is limited to disputes purely of title in which the government is not directly interested ... but where there is a dispute as to who are the persons interested or as to the extent of their interest or as to the nature of their respective interest that would not be for the Collector to decide under section18 but should be left to the Courts to decide upon under section 30."

18. Thus, there was no justification in the observation of the Referee Court with regard to the Land Acquisition Officer and the Mukhtiarkar, being government officials, therefore, their reports can be treated as gospel truth. The above two persons, though are government servants, but they act independently and their reports/findings are open to scrutiny by way of a reference under section 18 of the Act, otherwise the provisions of section 18 and 30 of the Act would become redundant.

19. In the present case, it has also been argued, without any rebuttal, that respondent No.2 has not produced any title documents. Although the term used in the Act is "interested person" but even then a claimant has to show his 'interest' in a piece of land so acquired under the Act. This aspect of the case also needs to be dealt with properly at the trial stage as this exercise cannot be carried out by this Court.

20. The Referee Court also observed [at page 21 of the file] that "Land Acquisition Officer, (who passed the award), neither appeared in the witness box nor filed any written statement as per record, therefore, the burden lies upon the applicant [i.e. the appellants] as to whether rate given by respondent No.1/ Land Acquisition Officer in his award was not according to law." The initial burden was on the Land Acquisition Officer to show that the award was in accordance with law and the rate of land per acre in conformity with the prevailing market rate of the land. It is very strange that non-appearing of the Land Acquisition Officer as a witness is being made a ground to shift the burden to the appellants. The witness of the appellants claimed that the acquired land is situated about eight to 10 Kms away from Nawabshah city while the respondent No.2 claims that the acquired land falls within the city of Nawabshah. There is nothing on record as to how this dispute was resolved by the Land Acquisition Officer and in whose favour.

21. The Land Acquisition Officer [at page 45] has observed that "In order to avoid litigation, I have allowed rate of Rs.450,000/- per acre." Once again, avoidance of litigation is not a ground to be taken into consideration. The respondent No.2 has made a bald statement regarding the rate of land without any supporting evidence, which cannot be accepted.

22. It may also be worth mentioning that even the learned counsel for the respondent No.2 was not able to controvert, as noted in the short order dated 22.02.2022, that the Land Acquisition Collector, who issued the award, and the Mukhtiarkar, who issued the valuation certificate, were not examined and that the respondent No.2 did not produce his title documents in respect of the acquired land. Thus, we are of the considered view that the forums below have not acted in accordance with law while evaluating the acquired land.

23. Accordingly, for the reasons stated hereinabove, this Court accepts the present appeal and thereby setting aside the impugned judgment passed by the referee Court dated 30.03.2016, remand the case back to the referee Court for decision afresh after recording evidence as mentioned above. Since ample time has lapsed, therefore, we order that the proceedings are to be expedited and concluded within a period of six months, if not earlier, from the receipt of this judgment.

Hyderabad, the 9th March, 2022 JUDGE

JUDGE