

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

1st Civil Appeal No. D – 06 of 2005

(Asad Ali Khan v.
The Conservator of Forest & others)

1st Civil Appeal No. D – 07 of 2005

(Khuda Bux (deceased) through LRs. v.
Land Acquisition Officer & others)

1st Civil Appeal No. D – 11 of 2005

(Land Acquisition Officer v.
Zakryo and others)

Before:-

Mr. Justice Muhammad Junaid Ghaffar
Mr. Justice Zulfiqar Ali Sangi

Date of hearing: 09.02.2022, 08.03.2022, & 12-04-2022

Date of Judgment: 11.05.2022

Mr. Rafique Ahmed Baloch, Advocate for the Appellants
in 1st. Appeal No.D-07 of 2005

Mr. Ahmed Ali Shahani, Assistant Advocate General
Nemo for the Appellants as well as for Respondents in
1st. Appeal Nos.D- 07 and 11 of 2005

JUDGMENT

Muhammad Junaid Ghaffar, J:- Through these 1st Civil Appeals, the Appellants have impugned Judgment dated 28.02.2005 passed by the Additional District Judge (Hudood), Sukkur in Land Acquisition Suit No.02 of 2002, whereby, the Reference filed under Section 30 of the Land Acquisition Act, 1894, (“Act”), has been accepted and it has been ordered that the available compensation amount be released to The Divisional Forest Officer, as against all other private claimants. Being aggrieved, two private persons along with the Land Acquisition Officer have filed these Appeals. Despite repeated notices and service upon the Appellants in Appeals Nos. 6 and 11 of 2005, nobody has turned up to assist the Court. Therefore, the Appeals bearing Nos.6 and 11 of 2005 are hereby dismissed for Non-prosecution, and the present opinion is only confined to the extent of Appeal No.07 of 2005.

2. Learned Counsel for the Appellant in Appeal No.07 of 2005 has contended that the Referee Court has erred in law and facts while declining the claim of the Appellant; that the Appellant was the lawful owner of land in question which has been acquired by WAPDA; hence, is entitled for compensation; that the documents and evidence of the Appellant has not been appreciated properly; that the land and its allotment in favor of the predecessor in interest was never cancelled at any point of time as erroneously held by the Referee Court; that it never belonged to the Agricultural Department; and therefore, the Appeal merits consideration and be allowed accordingly.

3. Learned AAG has opposed this Appeal and has contended that the land was never owned by the Appellant; that no title documents were presented before the Court below; that the land belongs to Agricultural Department, whereas, the allotments, if any, were nonetheless cancelled as No objection certificates were never issued by the department; that no evidence was ever led by the Appellant so as to prove its ownership of the land; hence, no case is made out and the Appeal is liable to be dismissed.

4. We heard the learned Counsel for the Appellant and learned AAG, whereas, none has appeared either for the Appellants or Respondents in any of the Appeals. From perusal of the record it appears that somewhere in 1974 WAPDA had occupied a piece of land admeasuring approximately 12 acres for construction of a Grid Station from the Agricultural Department. To the extent of the present Appeal this portion of the land has no relevance. A second portion of some 20-05 acres was further acquired by WAPDA for the same purposes, and it is the claim of the present Appellant before us that an area of approximately 2-60 acres falling in Survey Nos. 158(2-13), 160(00-30) & 199/1 (00-17) acres owned by his father was also acquired for which no compensation was paid. It further appears that son of the Appellant approached the then Wafaqi Mohtasib (“**Ombudsman**”) somewhere in the year 2000, praying for grant of compensation of the land so acquired who according to him was owned by him as an ancestral property and he being the legal heir was the owner of the said piece of land; hence, entitled for compensation under the Act. By an order dated 13.8.2000, certain directions were issued by the Ombudsman for determination and payment of compensation as may be payable under the Act. Thereafter, certain efforts were made by the Land Acquisition Officer (“**LAO**”) and other concerned to resolve the matter

through negotiations which failed and ultimately, proceedings were initiated for acquisition of land under the Act; and Award No.01 of 2002 was passed by the LAO on 30.07.2002; however, while passing the award, the LAO at Para 34 of the Reference finally concluded as under;

In view of position discussed above held **the ownership of said land and apportionment of its compensation amount is disputed**. I feel it appropriate to refer the matter to the District Judge, Sukkur, u/s 30 & 31 of the L.A.Act-I of 1897 for the determination of ownership of land. The compensation amount of Rs. 5,529,974/31 awarded for the said land will also be deposited with the Court for its disbursement to the rightful owners.

It is this Reference under Section 30 of the Act, which was referred and has been decided by way of the impugned judgment by the Referee Court. We may clarify and emphasize that this was not a Reference under Section 18 of the Act on behalf of any of the land owners. The learned Court upon receiving the Reference and after notice to all concerned, framed the following issues for adjudication;-

1. Whether the land in question have acquired according to law and to what extent?
2. Whether the opponents are lawful owners of the land in question and to what extent?
3. Whether the compensation awarded by the Land Acquisition Officer and Collector is justified and in accordance with law?
4. What should the decree be?

5. As to Issue Nos. 1 & 3 are concerned, we may observe that both these issues were outside the purview of the provisions of Section 30 of the Act; under which the Reference had been sent to the Referee Court and it was only Issue No.2, which could have been dealt with and decided by the Referee Court. Again we may emphasize that the Reference in hand was not under Section 18 as perhaps been misunderstood by the Referee Court and so also by the Appellants Counsel while arguing the matter. Section 30 of the Act, reads as under;-

“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.”

From perusal of the above provision it is clear that when an award has been passed in terms of Section 11 *ibid*, and if any dispute has arisen as to who are the actual owners of the acquired land and to whom the

compensation has to be paid, the Collector may refer such dispute for an appropriate decision by the Court. It may be of relevance to take note of that under this provision the quantum of compensation is not a matter of dispute nor it can be raised before the Court under a Reference in terms of section 30 of the Act. For that if anyone who objects to the Collectors award has an absolute right under section 18 of the Act to have the matter referred to the Court. What section 30 *ibid* intends, is to merely enable the Collector himself in certain difficult cases to refer the question to the Court of his own motion. At the same time it also does not prohibit the Collector to decide, if he can, whilst it gives him an opportunity, of shifting the decision to the Court, and also leaves the parties themselves free to approach the Court if they are dissatisfied with the Collectors apportionment. Per settled law where there is a dispute as to who are the persons interested or as to the extent of their Interests or as to the nature of their respective interests that would not be for the Collector to decide under section 18, but should be left to the Courts to adjudicate upon under section 30¹. The dispute which relates to the title in the property would certainly come within the purview of section 30 of the Land Acquisition Act and is not covered by the provision of section 18 thereof². Therefore, it would be safe to hold that when there is a Reference under section 30 *ibid*, before a Court, then the question regarding enhancement of compensation or otherwise it being less or inadequate, neither can be raised by anyone; nor the Court has any jurisdiction to decide the same, as References under Section 18 and Section 30 are conceptually different from each other. In fact the Referee Court cannot even convert a Reference under Section 30 into one in Section 18 of the Act, or vice versa, even by its own motion or at the request of a party before it.

6. Thus, it is in this background that we now have to examine and look into the impugned judgment and its findings on the dispute. The findings of learned trial Court on issues No.1 and 2 are as under;-

“Issue No.1

In support of his issue one Abdul Sattar, DDO Forest department examined himself and according to him the land in question was acquired for the purpose of development the farms measuring about 94 acres, situated at Baiji Farm at National Highway Pano Akil and the land was belonging to the Agricultural development West Pakistan and the Wapda Department occupied the land of 5 acres and

¹ Ghulam Muhammad v. Government of West Pakistan (P L D 1967 S C 191)

² Khadi Khan v Mst. Resham Jan (1983 CLC 57)

they also demanded further 12 acres land and Wapda taken over the possession of the lands illegally however, agricultural department issued a letter for settlement terms and conditionals with the Wapda which were occupied by them and same conditions were approved in the year 1974. The Wapda department occupied more than 12 acres land and they occupied the land for their Grid Station about 20 acres and according to this witness the agricultural department came to know that some land have been allotted to private party due to political influence however these allotments were cancelled by the then Chief Executive Government of Pakistan and this witness also produced cancellation letter issued by the Chief Executive Government of Pakistan which is on record as Ex.3. According to the Land Acquisition Officer as mentioned in the award that the land was acquired for the purpose of Grid Station on the requisition of Wapda department and the notification U/s 4 of the Act was got published in the Extra Ordinary Sindh Government Gazette Part-I dated 24.4.2001 and the notification 6, 7 & 17 of the Act also issued Under No.0-2-652/DA/86 dated 8.8.2001 of Commissioner Sukkur Division was also published in Gazette on 11.8.2001. The award of the Land Acquisition Officer further shows that Provisions of Section 5 & 5-A of the Act are not applicable to this case. As the land was already occupied by the Wapda department for the construction of Grid Station therefore to secure possession of require land it was advised to the Chief Engineer Wapda Hyderabad to settle the matter with the concerned land owners and in the meantime Wafaqi Mohtasib Ala also issued the directions to get the matter settled through the Land Acquisition Officer, therefore, in order to regularize the matter, the land was surveyed and according to the Land Acquisition Officer total 20-05 acres land was given to the Wapda for Grid Station. In view of the above oral as well as documentary evidence I am also of the view that proper notifications were issued and total land 20 acres 05 ghuntas were acquired for Grid Station, hence this issue is decided in affirmative.

Issue No.2

The Land Acquisition Officer passed the award for the suit land that private persons namely Khalid Ayaz claimed his ownership of S.No.160/1-3, 158 and 199/1 and 220 and so also one Asad Ali for self and on behalf of Masood Ali and Mst. Mehmooda also claimed the ownership of above said Survey numbers. It is also mentioned in the award that Azizullah son of Khan Muhammad Mari and according to the Azizullah Khan, Khalid Ayaz executed registered Special Power of Attorney in his favour and claims to be the owner of S.No.160/1-3, 158 and 199/1 of Deh Kot Sadiq Shah and said Azizullah Mari also filed compensation claim on behalf of Khalid Ayaz under his own signature though he was not competent and he has also claimed compensation as attorney on behalf of one Abdullah for S.No.220. It has come on record that area of 94 acres of Baiji Farm in Deh Baiji and Deh Kot Sadiq is the lease property of agricultural department Government of Sindh and Mukhtiarkar Pano Akil issued the Form VII in favour of Khuda Bux son of Abdul Khaliq Mari, Mst. Roshan and Asadullah daughter and son of Azizullah were without obtaining NOC from Agricultural Extension Department, Government of Sindh and Chief Executive, Government of Pakistan issued directions for cancellation for all the lands pertaining to this area vide letter dated 1st. September, 2000 which has come on record as Ex.3-C. Therefore, the allotment of private persons i.e. defendants No.1 to 7 become illegal, therefore, no claim of compensation can be awarded to them as the land acquired by the Land Acquisition Officer for the purpose of Grid Station which already occupied by the Wapda. Only agricultural department established it's right upon the land in question through their evidence and documents produced by their DDO Agricultural department and documents

produced by them which are Ex.3-A, 3-B and 3-C, therefore, nutshell is that respondent No.9 i.e. District Officer Agriculture Extension Sukkur is entitled for the compensation awarded by the Land Acquisition Officer vide Award No.1/2002 passed on 30 July 2002. Hence this issue is, therefore, decided as discussed above.”

The Appellant now before us led its evidence through [**Khalid Ayaz Baloch (Ex.4)**] which is as follows;

“Examination-in-Chief to Mr. Abdul Rehman Bullo,
Advocate for the Applicant.

My father Khuda Bux died in the year, 1996 leaving behind Mst. Janat Khatoon, widow, Mst. Rabia daughter, and Khalid Ayaz, Wahid Bux as legal heirs. After the death of my father, we obtained succession certificate from the Court of learned VI-Additional District Judge, Sukkur in which I was applicant. My father was the owner of near about 4 acres, lands situated in Deh Kot Sadiq Shah taluka Pano Akil. The grid station was installed in the year 1972, and the our land measuring about 3 acres 20 ghuntas was acquired for the purpose of Grid Station, but not notice was served upon us by the wapda department, and no compensation was paid to us by the wapda department. We served legal notices to the wapda department for the payment of compensation of our land, but the wapda department denied for payment of compensation on the ground that the land was belonging to the agricultural department. After received of the reply from wapda department, we approached the Wafaq-e-Muhtisabu-Ala and Hon'ble Wafaque-Muhtasib-e-Ala directed that the compensation be paid within three months, and wapda department deposited the amount of compensation by way of cheque to all the affectees through land acquisition Officer in the Court of District Judge, Sukkur. We were not agreed with the award of the Land Acquisition Officer about the rates of compensation, so we filed reference U/s 18 of the Land Acquisition before the land Acquisition Officer Hyderabad and copy was submitted to the learned District Judge, Sukkur but the Land Acquisition Officer Hyderabad did not reply of our reference. We also sent reminder to the L.A.O Hyderabad but even no reply was given. The L.A.O Hyderabad inquired the rate of compensation of the disputed land from the Deputy Commissioner, Sukkur and the Deputy Commissioner, Sukkur after due inquiry from the Mukhtiarkar wrote a letter to L.A.O Hyderabad that rate of the land situated in Deh Kot Sadiq Shah are approximately 1,60,000/- per acre. We are not agreed with the rate of compensation which has been recommended by the Deputy Commissioner, Sukkur and now the market value of the land are approximately for about 5 lacs per acre and we pray to this Court that the compensation may be awarded at the rate of Rs.5 lacs per acre. The documents viz. letter of Deputy Commissioner, Sukkur, Deh Form VII-B, entry No.95 dated 6.3.1990 are already attached with the reference U/s 18 of the Land Acquisition Act.

Cross is reserved on the Application of DDA and Counsel for Wapda.

Dated 3.12.2003

Recalled and Reaffirmed

Cross to Mr. Mushtaque Khan, DDA for the Government

It is a fact that I have executed general power of attorney in favour of Moulvi Azizullah to proceed this case. I have revoked the power of attorney executed in favour of Moulvi Azizullah. I have not produced the letter of revocation in Court. The disputed land was purchased by my father Khuda Bux which I have been inherited but it is not in my

knowledge that from whom the land was purchased by my father. It is not in my knowledge that when my father purchased the land. After the purchase of the land the possession of land was taken over by my father. It is incorrect to suggest that land was never came in possession of my father and it was under the possession of wapda. It is incorrect to suggest that land was given to wapda by agriculture department, and my father was no right over the land, therefore, I am not entitled for compensation. In examination-in-chief the S.Nos. of land is not mentioned. It is incorrect to suggest that after the orders of President we have lost the ownership of the acquired land. It is incorrect to suggest that before passing of award, any notice was served upon me. It is not in my knowledge that one Asad Ali has received compensation amounting to Rs.160,000/- per acre in lieu of his land. It is incorrect to suggest that Colonization Officer illegally allotted land to my father as it was government land. It is incorrect to suggest that we are not the owners of the land, therefore, not entitled for the compensation. It is incorrect to suggest that I am falsely deposing in the Court.

Cross to Mr. Gian Chand, Advocate for defendants Nos. 5, 6 & 7

Nil. Though opportunity given.

Cross to other defendants

Nil. They are called absent.”

7. Perusal of the above observations and findings of the learned Court as well as the evidence of the Appellant, it appears that the Appellant had failed to lead any confidence inspiring and credible evidence to establish his case. He has deposed in his examination in chief that his father expired in the year 1996, whereas, admittedly, the land was acquired in 1974, 1985 & 1989. The moot question would then be as to why his father, who was alive at the relevant time, never came forward to claim any compensation for the acquired land. It further appears that he also never lodged any claim nor came forward before any of the authorities including the LAO during the entire proceedings, and instead had chosen to avail the remedy of a complaint before the Ombudsman which otherwise, in these proceedings covered by a Special Law, was never available. A mere statement to the effect that no notice was ever served would not suffice. He has though deposed that he even objected to the amount of compensation and availed the remedy of a Reference under section 18 of the Act, before the LAO at Hyderabad. However, nothing has been placed on record to justify this factual assertion. How such a Reference was filed at Hyderabad; and what happened in those proceedings, the entire record is silent, whereas, learned Counsel for the Appellant has also failed to assist us in any manner on this aspect of the matter. In his examination in chief his entire case hinges

upon the purported lesser amount of compensation, which in fact was not the issue under Section 30 of the Act before the Referee Court. Rather, he ought to have made an effort to establish and prove his ownership of the land. The only evidence which he has led in his examination in chief is that ***“The documents viz. letter of Deputy Commissioner, Sukkur , Deh Form VII-B, entry No.95 dated 6.3.1990 are already attached with the reference U/s 18 of the Land Acquisition Act.”*** This reflects that he neither brought on record any such documents nor had them exhibited before the Referee Court and instead placed reliance on the same being filed with the LAO under his Reference under Section 18 of the Act. He even failed to establish that whether any Reference was placed before any Court in terms of section 18 of the Act, and if not, then what further remedy was sought by him. We fail to understand how such a casual statement regarding basic ownership documents could have helped him in a Reference under Section 30 of the Act before a Court at Sukkur. In cross examination he says that ***“The disputed land was purchased by my father Khuda Bux which I have been inherited but it is not in my knowledge that from whom the land was purchased by my father. It is not in my knowledge that when my father purchased the land”***. He has further admitted that ***“in examination in chief the survey Nos. of land is not mentioned.”*** This deposition reflects that he is not even aware that as to when and from whom the land in question was purchased by his father. Further, whether the seller was by himself a bonafide allottee or not is also unclear. It is a matter where the claim and dispute is not between two private parties as to the ownership of the land and apportionment of the compensation. It is a matter where admittedly, the entire piece of land (the one which has been acquired and even the remaining which has not been acquired) was owned by Agricultural Department. Though a claim has been made that it was allotted by the Colonization Officer; however, no allotment papers have been produced in the evidence. Even in the documents so referred in the examination in chief which were purportedly filed with the LAO in its reference under section 18 of the Act, there is no mention of any allotment of the land. In fact the Appellants case is that it was a purchased land, whereas, reliance has been placed on a mutation entry dated 6.3.1990. Per settled law the original ownership of the person from whom the title is being derived has to

be proved and only then the subsequent ownership or for that matter the mutation entries can be looked into. It is well settled that mutation entry is not a document of title, which by itself does not confer any right, title or interest, and the burden of proof lies upon the person, in whose favor it was mutated to establish the validity and genuineness of transfer in his/her favor; it is also well settled law that if the foundation is illegal and defective then entire structure built on such foundation, having no value in the eyes of law, would fall on the ground³. It is settled principle of law that mutation confers no title, whereas, once a mutation is challenged, the party that relies on such mutation(s) is bound to revert to the original transaction and to prove such original transaction which resulted in the entry or attestation of such mutation in dispute⁴. Moreover, the mutation entry in question is of the year 1990, whereas, as per the award, the land in Survey No.158 was acquired on 1.3.1974; in Survey No.160 on 12.10.1989 and in Survey No.199 on 28.10.1985; hence, the same is even otherwise of no help to the case of the Appellant. Per settled law when Government acquires immoveable property under the Land Acquisition Act, it is for the person claiming compensation to establish his title affirmatively. To support claims to lands acquired under Section 30 of the Act, the claimants must show title or in the absence of title deeds effective occupation. Nothing to that effect has been placed before us, whereas, evidence of possession, if any, must also be of the rightful owners and this rule should be applied with caution and reservation in favor of a wrong doer. Per settled law When Governments are acquiring immovable property for a public purpose under the Act, it is for the person, claiming compensation to establish his title to it affirmatively⁵. It has come on record that the entire land was in the name of Agriculture Department, and even if it was allotted to someone, that was without any No Objection Certificate from them, whereas, since the first acquisition in 1974 till the year 2000, the present Appellant was in deep sleep and never contested the matter at any forum until he approached the office of the Ombudsman. In that case the claim, if any, was too late in the day, even if no limitation applies; whereas, the father, the actual

³ Nasir Rahim v Province of Sindh (2021 CLC 579)

⁴ Muhammad Akram v Altaf Ahmed (PLD 2003 SC 688) & Ahmed v Nazir Ahmed (2019 CLC 1841)

⁵ Secretary, Cantonment Committee, Barrackoore v. Satish Chandra Sen (A I R 1931 P C 1)

purchaser of the land as claimed, never came forward to seek any compensation, though at that point of time he was alive.

8. In view of hereinabove facts and circumstances of the case, and on perusal of the record and the evidence so led by the Appellant, we are of the considered view that the Appellant has miserably failed to establish and prove his claim regarding ownership of land in question; hence, no exception can be drawn to the impugned judgment. Accordingly, Appeal No.07 of 2005, does not merit any consideration; hence, the same stands ***dismissed***, whereas, Appeal Nos.06 and 11 of 2005 are ***dismissed*** for Non-prosecution.

Dated: 11.05.2022

Judge

Judge

ARBROHI