IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD

R.A. No.83 of 2011

Mr.Abdul GhaffarKalwar, Advocate for applicants alongwith attorney Zubair Ahmed.

Mr. Muhammad Ismail Bhutto, Additional A.G.

Date of hearing 19.05.2022
Date of judgment 30.05.2022

JUDGMENT

SALAHUDDIN PANHWAR, J,- By way of captioned revision application, applicants Ghulam Rasool (Late) through his legal heirs and others have called in question the judgment dated 31-03-2010 followed by decree dated 26.04.2010, passed by the Court of learned VII-Additional District Judge, Hyderabad, dismissing the Civil Appeal No.130 of 2007, preferred against the judgment dated 28.02.2007 followed by decree dated 14-03-2007, passed by the Court of learned II-Senior Civil Judge, Hyderabad in F.C. Suit No.356 of 1999 (*Re: Ghulam Rasool & Others v. Province of Sindh & others*) whereby suit of the applicants for "declaration, payment of compensation, alternatively restoration of possession and permanent injunction", was dismissed. The Plaintiffs of that Suit are Applicants here in this Civil Revision Application and the Defendants in the above suit are Respondents herein.

2. It was the case of the Applicants that one Bhai Khan son of Lashkari Khan, the great grandfather of the Applicants, was owner and in possession of the suit land bearing Survey Nos.128 (4-13) acres and 129 (4-34) acres total area admeasuring 9-07 acres (3,99,663 square feet) situated in Deh Nareja, Tapo Gidu, Taluka Shah Latifabad, Hyderabad, now reconstituted as City Survey Numbers 2200 and 2202 Ward "G" Hyderabad. The basic entry in record of rights was affected in the year 1870-71. The Applicants stated to have inherited the suit land. It is further stated that suit land alongwith other lands was acquired under urgency clause of Land Acquisition Act: 1894 vide

publication of Notification dated: 16-7-1953 by defendant No.7, where-after physical possession of the suit land was taken over by defendant Nos.1 and 2 for the construction of Grain godown for storage of Food Grain at Hyderabad and link road to such godown, but no Award could be passed by the defendant No.7. It is further averred that in or about the year 1981 on acquiring the knowledge of acquisition of the suit land, as stated above, Applicant No.1 made an application to the Commissioner, Hyderabad Division, Hyderabad, requesting therein for the payment of compensation of suit land. Such application was forwarded by Commissioner, Hyderabad Division, Hyderabad vide an endorsement dated: 16-9-1981 to defendant No.6 for report, who had forwarded the same to defendant No.7 on 5-10-1981. It is further stated that finding no fruitful result of his application dated 12-9-1981, Applicant No.1 made another application dated 28-3-1987 to defendant No. 2 for the redressal of his grievances and defendant No.2 forwarded the same to defendant No.7 vide letter dated: 02-4-1987. It is further averred that vide a reference No: HVC/1/1261 dated 27-8-1988, the defendant No.6 had referred the matter to defendant No.7 to proceed in the case by initiating *de novo* proceedings under the provisions of the Land Acquisition Act, 1894 to meet the request of Applicant No.1, where-upon, the defendant No.7 vide order dated 16-5-1989 had determined the ownership of the suit land and concluded that suit land was owned by Imam Bux son of Bhai Khan and had directed defendant No.8 to mutate the Suit land in record of rights in the name of said Imam Bux and others and accordingly *Khatta* was mutated. Thereafter, the matter regarding preparation of Award payment of compensation of the suit land was pending with defendants Nos.2 and 7, but to no effect, hence, Shabbir Ahmed Khan the then attorney of the Applicants had made an application to the Chief Minister of Sindh, for the redressal of grievances of the Applicants. Such application was forwarded on 07.10.1990 to the Senior Member, Board of Revenue, Sindh at Hyderabad. The matter was then taken up with the defendant No.1 at the request of defendant No.1, by defendant No.5, and defendant No.5 had referred the matter to defendant No.4 vide letter No: HVA/35 dated 09-01-1992, in consequence of letter No. PP-Compensation/91/75 dated 16-1-1991 of defendant No.2. The defendant No.4 took up the matter in exercise of his *Suo Moto* powers under Section 164 of the Land Revenue Act, 1967 and after hearing the parties and perusal of record passed an order dated 14-6-1993 thereby setting-aside the order of

defendant No.7 dated: 16-5-1989. The order dated: 14-6-1993 of defendant No.4 was assailed in appeal before defendant No.3 who vide order dated 23-11-1994, was pleased to remand the case to defendant No.7 with the direction to hear the necessary parties, particularly defendant Nos.1 and 2 and decide the matter on merits after proper investigation of the case and scrutiny of record of rights. After the remand of case, as submitted above and before any decision of defendant No.7, Applicant No.1 had made another application to defendant No.7 on 20-9-1995 supported with *Foti Khatta* and extracts of Property Register Cards of City Survey Numbers 2200 and 2202 Ward "G', Hyderabad regarding the suit land. The defendant No.7 vide order dated 19.3.1998 disposed of the matter and application of Applicant No.1 dated 20.9.1995 thereby concluding that the Applicants are surviving legal heirs of Imam Bux son of Bhai Khan, and as such are owners of the suit land and entitled for the compensation. The defendant Nos.1 and 2 challenged the order of defendant No.7 dated: 19-3-1998 in appeal before the defendant No.6 bearing appeal No.56 of 1998 which has been upheld vide order dated: 12.5.1999 of defendant No.6 thereby setting aside the order of defendant No.7 dated 19.3.1998 with the observation that the Respondents/Applicants can seek redressal in civil Court, if they so desire. It is further stated that since the Applicants are successors-in-interest of original owner of the suit land namely Bhai Khan and they have not yet been paid the compensation of the suit land despite their repeated approaches before the concerned authorities though they are legally entitled. It is further submitted that vide order dated: 12-5-1999 passed by the defendant No.6 the Applicants were directed to seek remedy from the Civil Court; hence, such state of affairs necessitated the Applicants to bring this suit. Lastly, the Applicants prayed for the following reliefs:-

a) *Declaration to the effect that suit land was originally owned by Bhai Khan son of Lashkari Khan the great grandfather of the Plaintiffs and as such being successors in interest /title of Bhai Khan the Applicants are true, lawful and bonafide owner of the suit land by way of Inheritance;*

b) *Declaration to the effect that being true and lawful owners of the suit land, Plaintiffs are legally entitled to recover and defendants are legally bound to pay the compensation of the suit land at the rate of Rs.200/- square feet jointly and severally Plus 15% compulsory acquisition charges Plus 6% interest jointly and severally;*

c) The defendants may be directed to make payment of the compensation amounts as detailed in the above paras;

OR IN ALTERNATIVE

Defendants Nos.1 and 2 be directed to vacate the premises of Food Grain Godown, dismantle the building, take away the debris and deliver vacant, actual, physical possession of the suit land to the Plaintiffs alongwith mesne profit for use and occupation of the suit land at the rate of Rs.25/- per square feet as per law till the possession of suit land is delivered to the Plaintiffs;

d) To grant permanent injunction thereby restraining the defendants neither to deliver the possession of the suit land to anybody else excepting the Applicants, nor to alienate, encumber the suit land, nor create any sort of charge or liability over it directly either themselves or indirectly through their agents, employees, sub-ordinates, attorneys, successors in office etc.;

e) Costs of the suit be awarded to the Plaintiffs;

f) Any other, better and proper relief (s) may be granted as deemed fit and proper under the circumstances of the case.

3. Respondents Nos.2 and 7 were served, who filed their respective written statements before the trial Court wherein stated that Survey Nos.128 and 129 of *Deh Nareja Taluka Latifabad* after acquisition for construction of Food Grain Godowns alongwith other land were re-measured by the routine work of Survey Department under the orders of the then Deputy Collector Hala Sub-Division and 0.25 ghuntas from the head "wahkaria" alongwith survey numbers 326, 139, 135, 129, 128, 127 and 125 total area 27-0 acres after measurement were assigned new S.No.436 area 27-0 acres as Government Grain Godown under entry No.91 of *Ghat Wadh* form dated 26.2.55, thus new entry was also incorporated in the record of rights in village form VII-B of *Deh Nareja* on 16.5.1955 under entry No.41 as such S.Nos.128 and 129 are no more in existence since 16.5.1955 and there exists only S.No.436 area 27-0 acres as Government Grain Godowns. It is further stated that the Applicants admitted the ownership claim on the basis of entries No.432 dated 23.5.89, 487 to 493 dated 10.09.1989, the same are cancelled by Additional Deputy Commissioner-I, Hyderabad vide order dated 12.5.1999. It is further stated that the Applicants admitted the land to one Bhai Khan s/o Lashkari Khan, which is not an attested copy of for what too is not in the name of Bhai Khan but in the name of Imam Bux s/o Bhai Khan vide column No.4 of the copy the land is mentioned as Government land. These documents exposed the fact that the Applicants are in fact land grabbers in order to defraud government's huge compensation amount. It is admitted that the Applicants made application to the answering Defendant but since the land acquired for grain godown was evacuee property the application was sent to the Assistant

Commissioner for checking the correctness of the ownership of S.Nos.128 and 129 of *Deh Nareja*. The Defendant No.2 admitted the contents of Para No.7 of the plaint to the extent that defendant No.7 had passed the order dated 16.05.1989 which was void, illegal without jurisdiction as the ownership of suit land was already determined to be evacuee and defendant No.7 was not competent to pass order dated 16.05.1989. The mutation entries made in favour of the Applicants were suspended by the Member Judicial Board of Revenue Sindh under order dated 23.11.1994, the entries claimed by the Applicants are finally written off from the record by the order of Additional Deputy Commissioner-I dated 12th May 1999. The then Assistant Commissioner probably supported the claim of the Applicants as the order is passed in favour of dead person against the records and for a land which is acquired by the Government about 35 years ago. It is further stated that the Land Acquisition proceedings were already finalized and Food Department had to pay price of evacuee acquired land to the Rehabilitation Department but after repeal of the evacuee laws that too was not necessary as the control of entire evacuee properties stood transferred to the Government of Sindh who had already acquired the suit property under the provisions of Land Acquisition Act and there is no question for preparing the award, as ownership of the land was already finalized and the Applicants got no concern with the Suit Land. It is further stated that the Applicants are not entitled for the reliefs claimed. Lastly, the defendant No.2 prayed for dismissal of the Suit. The defendants Nos.1, 3, 4, 5 and 6 adopted the same written statement vide statement as Exh.32.

4. From the divergent pleadings of the parties, the following issues were framed by the trial Court:-

1. *Whether the suit is not maintainable under the law?*
2. *Whether the suit is barred by any law?*
3. *Whether this court has no jurisdiction to entertain this suit?*
4. *Whether this suit is time barred?*
5. *Whether the Plaintiff[s] have no cause of action to file this suit?*
6. *Whether the suit land was originally owned and possessed by one Bhai Khan S/o. Lashkari Khan, the great grandfather of the Plaintiffs?*
7. *Whether Plaintiffs have any right title or interest in the suit land?*
8. *Whether the Plaintiffs are entitled to recover and the defendants are legally bound to pay the compensation of suit land as prayed?*
9. *Whether the defendants Nos.1 and 2 are liable to vacate and dismantle the premises of Food Grain Godown and deliver the vacant physical possession of the same to the Plaintiffs?*

10. Whether the Plaintiffs are entitled to get the mesne profits from the defendants for use and occupation of suit land?

11. Whether the Plaintiffs are entitled to relief as prayed for?

12. What should the decree be?

5. The Applicants in support of their case examined PW-*Feroz Ali Shah* as Exh.117, who produced documents as Exh.118 to 120, PW-*Shoukat Ali* was examined as Exh.126, who produced documents as Exh.127 and Exh.128, PW *Ghulam Shabbir Sanjrani* was examined as Exh.141, who produced documents as Exh.142, 143, 144. The Applicants also examined PW-*Abdul Raheem Tapedar* as Exh.169, who produced Deh Form VII-B as Exh.170 & 171, PW-*Ghulam Nabi* (Junior Clerk) of D.C.O. Office *Hyderabad*) as Exh.192, who produced documents as Exh.193 and 194. PW-*Muhammad Usman* (Reader of Member Board of Revenue, Hyderabad) was examined as Exh.206, who produced documents as Exh.207. The Applicants examined Applicant No.6(b) *Aijaz Ali* as Exh.211, who produced documents as Exh.212 to 236. The Applicants have also examined PW-*Ali Muhammad Sahto* as Exh.242, who produced documents as Exh.243, 244 & 245. On the other hand, the Defendants examined *Muhammad Rahim Shah (Tapedar Deh Nareja)* as Exh.255, who produced documents as Exh.256. DW-*Javed Soomro* (Junior clerk of DCO office) was examined as Exh.257. DW-*Shoukat Hussain Shah* (Assistant to DDO (Revenue) Hyderabad) was examined as Exh.270, who produced documents as Exh.271. DW-*Imran Siddiqui* was examined who produced Gazette Notification dated 16-07-1953 as Exh.283. The Defendants have also examined *Abdul Malik* (District Food Controller, Hyderabad) as Exh.285, who produced documents as Exh.286 to 289 respectively.

6. The trial Court after hearing the learned counsels for both the parties, dismissed the Suit by observing that the Suit of the Applicants was not maintainable and barred under the provisions of Land Acquisition Act. The Applicants challenged the Judgment and Decree passed by the trial Court in Civil Appeal No.130 of 2007, which was heard and dismissed by the Court of VII-Additional District Judge, Hyderabad, through impugned judgment on the same grounds.

7. The learned counsel for the Applicants has argued that learned Courts below had not considered the evidence as well as documents produced by the Applicants. He further contended that the learned Courts below had not discussed the documents produced and relied upon by the Applicants. He further contended that the Orders passed by the revenue authorities, some of them were in favour of the Applicants. It is further contended that the learned Courts below passed the Judgments and Decrees

without appreciating the evidence available on record. Lastly, the learned counsel for the Applicants prayed that the Revision Application may be allowed as prayed.

8. The learned Additional A.G. has argued that the learned Courts below have passed the Judgments and Decrees after perusing the entire evidence. He further contended that the Suit of the Applicants was not maintainable under the law. He further argued that the Applicants are not entitled for the reliefs claimed. He further contended that the Plaintiffs are land-grabbers and intend to usurp the valuable land belonging to the Government. Lastly, the learned Additional A.G. has prayed for dismissal of Civil Revision Application.

9. I have considered the arguments advanced by the learned counsel for both the parties and perused the material available on record.

10. The Applicants in their Suit sought the reliefs of *"Declaration"*, *"Payment of Compensation"*, *"Recovery of Possession"* and *"Permanent Injunction"*. The limitation to sue for *"Declaration"* and *"Permanent Injunction"* has not been specifically provided in the Limitation Act, 1908; therefore, the said Suit is governed under Article 120, of the Limitation Act, 1908, which provides six years limitation to be reckoned from the date when right to sue accrues. The relief for recovery of *"Possession"* is governed by Article 120 of the Limitation Act, 1908, which provides twelve years limitation to be reckoned from the date of dispossession or discontinuance of possession. The main relief claimed by the Applicants *"Against Government for compensation for land acquired for public purposes"* is governed by Article 17 of the Limitation Act, 1908, which is reproduced as under:-

Article	Description of Suit	Period of Limitation	Time from which period begins to run
17	Against Government for compensation for land acquired for public purposes	One year	The date of determining the amount of the compensation.

Bare reading of the Article 17, of the Act, 1908 shows that the limitation to sue against the government for compensation of land acquired for public purpose is one year, which begins to run from the date of determining the amount of the compensation. In this matter, the compensation was not determined by the Collector before or after issuance of the impugned Notification dated: 16-07-1953. Though the Government of Sindh appointed Deputy Collector, Hala to perform function of a Collector for all proceedings to be taken in respect of the Suit Land under the Land Acquisition Act, 1894 but nothing was produced on record to show that the said proceedings were initiated by the said Deputy Collector. The notices were neither issued to the Applicants/their predecessors-in-interest through registered post, nor was the notice published in any newspaper. The Defendants had failed to comply with the mandatory provisions of Sections 5, 5A, 6, & 9, of the Land Acquisition

Act, 1894. In these circumstances, the Suit of the Applicants instituted on 01.09.1999 after passing of the last Order dated 12.05.1999 by the Additional Deputy Commissioner-I, Hyderabad, was within time.

11. It has come on record that as soon as the Applicants came to know about issuance of the impugned Notification, they approached the Defendants for grant of compensation. The Defendant No.2 has admitted in Paragraph No.6 of the written statement as under:-

> ***"6. That the contents of Para No.6 are admitted to the extent that Applicant[s] had made application to the answering Defendants but since the land [was] acquired for grain godowns was evacuee property the application was sent to the Assistant Commissioner for checking the correctness of the ownership of S.No.128 and 129 of Deh Nareja"***

The authorized person of the Defendant No.2 namely *Abdul Malik* during his cross-examination has admitted as under:-

> ***"I do not know if Food Department had got the notice published in newspaper before acquiring the Suit Land. It is correct that no notice was issued to Imam Bux S/o. Bhai Khan or his L.Rs. for acquiring the Suit Land. Voluntarily says that it was an Evacuee Property; therefore, no need to issue notice to Applicants. I do not know whether the L.Rs. of Imam Bux S/o. Bhai Khan have filed objections before Food Department claiming themselves to be owner of the Suit Land".***

The authorized person of the Defendant No.2 further admitted as under:-

> ***"I do not know if the land of the private party is to be acquired under Land Acquisition Act and not Government property. I do not know if the award had been passed for the Suit Land or not....."***

12. The Defendants Nos.2 & 7 had taken plea in their respective written statements filed on 25-01-2000 and 02-03-2000 respectively that "the Suit Land was evacuee property" but the Defendants have failed to produce the entries in the record of the Settlement Commissioner/Rehabilitation Authority. The authorized person of the Defendant No.2 has produced a letter dated: 09-04-2001 as Exh.288 issued by the Additional Deputy Commissioner Hyderabad to the Deputy Director Food Hyderabad during pendency of the Suit much after filing of the written statements, which was relied upon by the Appellate Court while maintaining the dismissal Judgment of the trial Court. The said letter dated: 09-04-2001 was beyond the pleadings of the parties and reliance of the learned Appellate Court on such document was inapt. The Respondents have not produced a single title document/entry to establish that the Suit Land was an evacuee property. The learned Courts below had not considered the Order dated 16-05-1989 which was passed by the Assistant Commissioner Latifabad on Reference No.HVC-1/1261 dated 17.08.1988 whereby determined the ownership of the predecessor-in-interest Imam Bux over the Suit Land. The Assistant Commissioner directed the Mukhtiarkar

Latifabad to mutate the Suit Land in the record of rights in the name of Imam Bux S/o Bhai Khan as per provisions of Land Revenue Act. The learned Courts below had also not considered the detailed and well-reasoned Order dated 19-03-1998 passed by the Assistant Commissioner & Land Acquisition Officer Latifabad, Hyderabad, whereby it was observed that the Suit Land was owned by Imam Bux S/o Bhai Khan and his legal heirs (Applicants) were found to be entitled for compensation of the land as per cost of the land plus 15 % compulsory acquisition charges with 6% interest thereon.

13. It was also observed by the trial Court that the dispute with regard to the compensation was to be determined by the Referee Court under the Provisions of Land Acquisition Act as such it had no jurisdiction to adjudicate upon the matter. The trial Court was of the view that the Suit Land was acquired by the Government by virtue of notification under Sections 4, 6 and 17, of the Land Acquisition Act; therefore, the matter was to be decided by the Referee Court. The observation made by the trial Court was based upon the misinterpretation of Sections 18 and 30 of the Land Acquisition Act, 1894, which are reproduced as follows:-

> ***"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.***
>
> ***(2) The application shall state the grounds on which objection to the award is taken: Provided that every such application shall be made,-***
>
> ***(a) if the person making it was present or represented before the Collector at the time when he made his award, within six weeks from the date of the Collector's award;***
>
> ***(b) in other cases, within six weeks of the receipt of the notice from the Collector under section 12, sub-section (2) or within six months from the date of the Collector's award, whichever period shall first expire".***
>
> ***"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".***
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> *(The underlining is supplied for emphasis)*

14. Bare reading of the aforesaid provision of law clearly shows that "the person 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". In this matter no such award was passed by the Collector whether declaring the "Suit Land" as evacuee land or in favour of the Applicants; therefore, the Applicants were not under obligation to approach the referee Court, which is defined under Section

3(d), of the Act, 1894 to be "Principal Civil Court of original jurisdiction". Similarly, Section 30, says that in case of dispute with regard to the apportionment of the compensation amount or any part thereof, or as to the persons to whom the same or any part thereof, the Collector may refer such dispute to the decision of the Court. However, the Additional Deputy Commissioner-I, Hyderabad vide order dated: 12-05-1999 directed the Applicants to seek remedy before the Civil Court. Thus, the Applicants were within their rights to approach the Civil Court of original jurisdiction. In the case of ***Abbasia Cooperative Bank (Now Punjab Provincial Cooperative Bank Ltd.) through Manager and another v. Hakeem Hafiz Muhammad Ghaus and 5 others (PLD 1997 Supreme Court 03)***, it has been held by the Honourable Supreme Court of Pakistan as under:-

> ***"It is also well-settled law that where the jurisdiction of the Civil Court to examine the validity of an action or an order of executive authority or a special tribunal is challenged on the ground of ouster of jurisdiction of the Civil Court, it must be shown (a) that the authority or the tribunal was validly constituted under the Act; (b) that the order passed or the action taken by the authority or tribunal was not mala fide; (c) that the order passed or action taken was such which could be passed or taken under the law which conferred exclusive jurisdiction on the authority or tribunal; and (d) that in passing the order or taking the action, the principles of natural justice were not violated. Unless all the conditions mentioned above are satisfied, the order or action of the authority or the tribunal would not be immune from being challenged before a Civil Court. As a necessary corollary, it follows that where the authority or the tribunal acts in violation of the provisions of the statutes which conferred jurisdiction on it or the action or order is in excess or lack of jurisdiction or mala fide or passed in violation of the principles of natural justice, such an order could be challenged before the Civil Court in spite of a provision in the statute barring the jurisdiction of Civil Court".***
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> *(The underlining is supplied for emphasis).*

15. In view of the dictum laid down by the Honourable Supreme Court of Pakistan, the action of the authority which is in violation of the provisions of the statute which conferred jurisdiction on it or the action or order is in excess or lack of jurisdiction or malafide or passed in violation of the principles of natural justice, such an order/action could be challenged before the Civil Court in spite of a provision in the statute barring the jurisdiction of Civil Court. In the Case of ***Pakistan through Secretary, Ministry of Communication and Works and others v. Syed Muhammad Ismail Shah and others 2014 SCMR 806***, it has been held by the Apex Court that *"It will be seen that after full-fledged proceedings in the suit before the Court of Senior Civil Judge Gambat, it was established from the record that the disputed land owned by respondents Nos.1 and 2 was utilized by the appellants for the construction of additional carriageway of national highway after issuing notifications under sections 4 and 6 of the Land Acquisition Act 1894, which contain*

clear reference of all the six survey numbers of the suit land with details of their respective area, but thereafter neither any land acquisition officer was appointed nor any lawful award for compensation was ever passed. Indeed, for this purpose, from time to time the matter proceeded before different forums in a causal manner, which did not materialize to the satisfaction of respondents Nos.1 and 2, thus resulted in this litigation. But one fails to understand that when a complete code of procedure for acquiring land under the provisions of Land Acquisition Act 1894 was available, why the concerned quarters at the instance of the appellants acted so causally and irresponsibly in the matter of determining and making payment of compensation to the respondents Nos.1 and 2, which served no other purpose but to complicate the issue and open a new venue for litigation. In the above circumstances, respondents Nos.1 and 2 seem to be justified in filing a suit for compensation and damages against the appellants for the loss suffered by them due to their unlawful act of utilization of an area of 3.05 acres of their land with existing trees, petrol pump etc., for construction of national highway.

16. On careful examination of the scheme of the Act 1894, of course, it cannot be doubted that a complete mechanism has been provided for settlement of the dispute, about the quantum of compensation, by resorting to the procedure prescribed by the Act as well as the dispute about the rights of the owners to compensation. But if notice of the filing of award in question is not served on an interested person, he cannot be held to be bound to avail the remedy available under the Act 1894 itself as he may not apply to the Collector to make a reference under Section 18 of the Act, much less he was bound to make such an application. The other provision for making a reference in Section 30 being optional to the Collector himself, such a person need not make any such application at all under Section 30 and straightway file a suit in the Civil Court in its ordinary civil jurisdiction. There is no cavil with the proposition of law that the Collector is not authorized to decide finally the conflicting rights of the persons interested in the amount of compensation: he is primarily concerned with the acquisition of the land. In determining the amount of compensation which may be offered, he has, it is true, to apportion the amount of compensation between the persons known or believed to be interested in the land, of whom, or of whose claims, he has information, whether or not they have appeared before him. But the scheme of apportionment by the Collector does not finally determine the rights of the persons interested in the amount of compensation: the award is only conclusive between the Collector and the persons interested and not amongst the persons interested. The Collector has no power to finally adjudicate upon the title to compensation, that dispute has to be decided either in a reference under Section 18 or under Section 30 of the Act 1894 or in a separate suit. Payment of compensation, therefore, under Section 31 of the Act, to the person declared by

the award to be entitled thereto discharges the State/Province of its liability to pay compensation (subject to any modification by the Court), leaving it open to the claimant to compensation to agitate his right in a reference under Section 30, of the Act 1894 or by a separate suit. Reference may be made to the Case of ***Dr. G.H Grant v. The State of Bihar, (AIR 1966 SC 237).***

17. In such circumstances, the Suit of the Applicants was maintainable under Section 9, of the Code of Civil Procedure, 1908 and the Civil (trial) Court had ultimate jurisdiction to entertain the same. Nothing was brought on record to show that the Suit of the Applicants was either expressly or impliedly barred under the provisions of Land Acquisition Act, 1894 or any other law for the time being in force. Thus, the Judgments and Decrees passed by the learned Courts below are not sustainable under the law, suffering from material irregularities and illegalities enumerated here-in-above.

18. Though the Defendants acquired the Suit Land for public purpose and took over the possession of the Suit Land but nothing has been brought to prove that the construction was raised and the Suit Land was utilized for public purpose for which it was acquired.

19. With regard to the jurisdiction vested under Section 115 C.P.C, the Court has to satisfy and reassure that the order is within its jurisdiction; the case is not one in which the Court ought to exercise jurisdiction and, in abstaining from exercising jurisdiction, the Court has not acted illegally or in breach of some provision of law or with material irregularity or by committing some error of procedure in the course of the trial which affected the ultimate decision. The scope of revisional jurisdiction is restricted to the extent of misreading or non-reading of evidence, jurisdictional error or an illegality of the nature in the judgment which may have material effect on the result of the case or if the conclusion drawn therein is perverse or conflicting to the law. Furthermore, this Court has very limited jurisdiction to interfere in the concurrent conclusions arrived at by the courts below while exercising power under Section 115, C.P.C. In the case of "*Noor Muhammad and others v. Mst. Azmat-e-Bibi*" (2012 SCMR 1373), the Hon'ble Supreme Court of Pakistan has observed as under:

> "6. There is no cavil to the proposition that the jurisdiction of High Court under section 115, C.P.C. is narrower and that the concurrent findings of facts cannot be disturbed in revisional jurisdiction unless courts below while recording findings of facts had either misread the evidence or have ignored any material piece of evidence or those are perverse and reflect some jurisdictional error."

20. Keeping in view the above criterion, the Civil Revision Application under Section 115, of the Code of Civil Procedure, 1908 filed by the Applicants is hereby allowed in the following manner:-

(i) *The judgment dated 31-03-2010 followed by decree dated 26.04.2010 passed by Court of learned VII-Additional District Judge, Hyderabad, in Civil Appeal No.130 of 2007 and the Judgment dated 28.02.2007 followed by decree dated 14-03-2007 passed by the Court of learned II-Senior Civil Judge, Hyderabad in F.C. Suit No.356 of 1999 (Re: Ghulam Rasool & Others v. Province of Sindh & others) are hereby set-aside;*

(ii) *The Suit of Applicants bearing F.C. Suit No.356 of 1999 (Re: Ghulam Rasool & Others v. Province of Sindh & others) is hereby decreed to the extent of compensation for acquisition of the Suit Land prayed in prayer clause (B), of the plaint with 10% markup per annum with effect from the date of institution of the Suit i.e. 01.09.1999 to be paid to the Applicants;*

(iii) *Alternatively if the Suit Land is not in use of the Food Department or it is abandoned, the possession of the Suit Land shall be restored to the Applicants/legal heirs of late Bhai Khan son of Lashkari Khan, the great grandfather of the Applicants;*

(iv) *The parties are left to bear their own costs.*

Sd/- SALAHUDDIN PANHWAR,
JUDGE. 27.5.2022.

CERTIFIED TO BE TRUE COPY

02/6/22