

HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

R.A No.228 of 2017

[Civil Aviation Authority & another versus Afzal-ur-Rehman & Ors]

Mr. Baber Kamal, advocate for applicants

Mr. Ghulam Abbas Sangi, Asstt: Attorney General

Mr. Allah Bachayo Soomro, Additional A.G Sindha/w Deputy
Commissioner SBA Shehryar Gul, and Assistant Commissioner
Moro Hassan Zafar

Mr. Khadim Hussain Soomro, advocate for respondents No.3 (a)
3(b) to 3(d) and 5, 8 to 12.

Date of hearing: 17.10.2022

Date of Judgment: 31.10.2022

JUDGMENT

ADNAN-UL-KARIM MEMON, J- This revision application has been directed against the concurrent findings of the two Courts below. The private respondents filed F.C Suit No.89 of 1999 for declaration, possession, and injunction in respect of land bearing Survey No.146/1 & 2, 147 and 267 situated in Deh Lakhmir Taluka and District Nawabshah against the applicants and official respondents before learned 1st Senior Civil Judge Nawabshah. The said suit was decreed in favor of private respondents vide Judgment & Decree dated 07.09.2016, against which applicant-Civil Aviation Authority preferred Civil Appeal No.113 of 2016 before learned 1st Additional District Judge Shaheed Benazirabad; however, the same was dismissed vide Judgment dated 04.07.2017 & Decree dated 05.07.2017.

2. Brief facts of the case, in nutshell, are that private respondents filed F.C No.89 of 1999 for declaration, possession, and injunction before learned 1st Senior Civil Judge Nawabshah, claiming that respondents 1 & 2 were/are the owners of Survey Nos. 139, 142, 143, 146(1,2) and 148, while respondent No.3 along with respondents 1 & 2 were/are the joint owners of Survey No.267 and 147, the total area of which had been shown as 5-00 acres, whereas the total area of Survey No.146 (1,2) had been shown as 5-30 acres, in which they had 66 paisa shares; that previously the total area of Survey No.146/1 & 2 was 6-00 acres and the applicants had tried to occupy 20

ghuntas from Survey No.146(1, 2) as well as total area of 5-00 acres from S.No.267 and 147, situated in Deh Lakhmir Taluka and District Nawabshah (**Suit Land**) compelling them to file the suit, as mentioned above; respondents averred in the suit proceedings that during the pendency of suit, the applicants occupied the suit land forcibly without land acquisition proceedings as such amendment was made in the pleadings accordingly. It is further alleged that the Notification dated 30.03.1947 for acquiring adjoining land for CAA to construct NawabShah Airport and its requisite facilities, which did not contain the suit land. Finally out of diverging pleadings of the parties issues were framed by the trial court and after recording evidence of the parties and decreed the suit as prayed, inter-alia on the following issues:

Issue No.12

In view of my findings on the preceding issues, I am of the considered view that plaintiffs are entitled to possession of an area of 20 ghuntas from S. No.146/1,2 including the area occupied by defendants No.2 and 3 during the pendency of the suit from S. No.147 and 267, thus the plaintiffs are entitled to restoration of the possession of the area illegally and unlawfully occupied by the defendants No.2 &3. Hence, the issue is answered in the affirmative.

Issue No.13

For what has been discussed above, it has been brought on record that defendants No.2 and 3 have no right, title, or interest over S.No.146/1,2, 147, and 267 and they are in illegal and unlawful possession of the same, as such they have no right to retain the possession of the suit S. Nos in accordance with the law, Hence the issue is answered in affirmative.

Issue No.14

Since it has been proved that the plaintiffs are owners of the suit land by way of inheritance. They have neither sold the suit land to defendants No.2 and 3 nor have the defendants acquired the same in accordance with law. Thus the plaintiffs are declared as owners of the suit land, entitled to restoration of its possession which has been illegally and unlawfully occupied by the defendants. Hence the issue is answered in the affirmative.

Issue No.15

The crux of my discussion on the aforesaid issues is that the plaintiffs are entitled to the reliefs claimed. Therefore, the suit filed by the plaintiffs is hereby decreed as prayed with no order as to costs.”

3. The applicants being aggrieved by and dissatisfied with the aforesaid judgment and decree preferred Civil Appeal which was dismissed, vide impugned Judgment and Decree, an excerpt whereof is as under:

“In the present case, the Land Acquisition Officer has failed to comply with the mandatory requirements of law and the award passed is a manifestation of abuse of the process of law, hence, the award appears to be null and void. In such like situation, where the proceedings initiated from the inception are illegal and void, then the point of limitation or barred by law does not arise.

Similarly, entries in the record, if any made by the Revenue Authorities in respect of the suit land in favor of appellants on the basis of the award has no sanctity under the law.

As discussed above, I am of the considered view that the impugned judgment and decree do not suffer from any infirmity or do not provide any room for interference of this Court and are found to be exhausted covering all the issues in the case, resultantly, the impugned judgment & decree dated 07.09.2016 is hereby maintained and the appeal in hand stands dismissed with no order as to costs. Let the decree be prepared.”

4. Mr. Baber Kamal learned counsel for the applicants argued that the impugned judgments and decrees passed by the courts below are against the facts and law hence are liable to be set-aside; that both the courts below have failed to appreciate and evaluate the oral and documentary evidence brought on record; that both the courts below have passed the impugned Judgments and Decrees in slipshod manner without applying judicious mind, hence requires interference by this Court; that applicants had acquired the entire land including suit land through Land Acquisition Officer (LAO) and are in possession of land which stood mutated in favour of applicants; however, it was not considered by both the courts below; that both the courts below have failed to appreciate the fact that the suit was bad for joinder of cause of action in the suit, which suit ex-facie was not maintainable ; that both the courts below did not appreciate the fact that the award was passed by the Land Acquisition Officer, pursuant to the Notification passed under the Land Acquisition Act; moreover the date of notification is duly mentioned as 31.5.1965 in the Award itself, which prove that such notification was duly issued and the Assistant Commissioner/ Land Acquisition Officer proceeded on the basis of such notification; that non-production of the requisite notifications issued under Land Acquisition Act, will not vitiate the award; that learned Courts below have also failed to consider the findings given by this Court in its order dated 20.2.2012 passed in Civil Revision Application No.201 of 2011 [Re: Civil Aviation Authority versus Afzal-ur-Rehman & Ors]; and matter finally landed in the Honorable Supreme Court which was remanded to the trial court vide order dated 1.9.2015 passed in C.A. No. 91-K of 2012 for decision afresh on the subject issue; that the impugned judgments and decrees are not based on cogent reason. Learned counsel emphasized that if the land is acquired for public purposes and the object is achieved, the rest of the land could be used for any other public purpose. He added that in case there is no other public purpose for which the land is needed, then instead of disposal by way of sale to the erstwhile owner, the land should be put to public auction and the amount fetched in the public auction can be better

utilized for the public purpose envisaged in the directive principles contained in the Constitution. He prayed for setting aside the impugned judgments and decrees passed by the two courts below.

5. Despite service no one appeared on behalf of private respondents 1, 2 & 4. However, Mr. Khadim HussainSoomro, advocate for respondents No.3 (a) 3(b) to 3(d) and 5, 8 to 12 appeared and argued that the concurrent findings are present in the matter, which do not require interference by this Court; that adjoining land was acquired by the Government of Sindh for CAA and the suit land as described above was never acquired and it was forcibly occupied by the applicants/CAA under the garb of land Acquisition proceedings; that Notification 30.03.1947 issued in respect of acquiring the adjoining land, do not contain the description of subject suit land; that both the courts below have given well-reasoned findings and the same are not suffering from any irregularity or illegality. He prayed for the dismissal of the present revision application.

6. I have heard the learned counsel for the parties and perused the record with their assistance.

7. To decide the controversy between the parties; and to reach the correct conclusion, I have also summoned the original land acquisition record. Deputy Commissioner Nawabshah along with Assitant Commissioner/Land Acquisition officer appeared in court with original record. Pursuant to the orders of this court dated 26.9.2022 and 10.10.2022 Deputy/ Assitant Commissioner submitted his comments /report which reveals that the land was acquired for Nawabshah Airport way back in 1965 and the Award was passed in 1971, which mentions all these three survey numbers as discussed supra, thereafter in the revenue record three survey numbers were mutated in the name of the Aviation department. However, the only dispute in the matter is that the Award is not supported by the requisite notifications under Sections 4 & 6 of the Land Acquisition Act. The compensation of acquired land as per Award was paid by Assistant Commissioner/LAO, Moro as indicated in his letter dated 21.2.1972 along with a statement of compensation. The related survey numbers are mentioned in the statement issued by LAO, Moro which is being reproduced as under:-

| S# in payment | Name of awardees | Survey No | Area Acquired | Dated | Amount paid |
|---------------|--|----------------------------------|---------------|------------|-------------|
| 32 | Ahmed Khan S/o Abdul Latif | 151-532 | 10-36 | 17.04.1971 | 1702-50 |
| 33 | Muhammad Khan S/o –do— | 267 | | | |
| 34 | Mst. Mariam D/o Abdul Latif | | | | |
| 36 | Haji Muhammad Hussain S/o Khan Muhammad Lakhmir(0-5-0 paisa share) | 147 | 3-5 | 17.04.1971 | 1898-50 |
| 37 | Abdul Rehman S/o Kalai Bux Chandio and sharere Adam (0-50 paisa) | 147 150 | 3-5 | 17.04.1971 | 4789.30 |
| 43 | Ghulam Muhammad S/o Saifal Chandio (Co-sharer) | 267 | 5-0 | 17.04.1971 | 2126.33 |
| 67 | Mst. Jamila Begum W/o Khalil Rehman (Co-sharer) | 148-139 146-142 143 | 2-30 | 18.06.1971 | 3330.86 |

8. In view of the above, the case is summarized to the effect that the respondents had not filed objections under Section 5-A, of the Land Acquisition Act; even did not challenge the acquisition proceedings before the competent forum in terms of section 18 of the Land Acquisition Act, and simply sought the declaration in suit proceedings, without looking into the fact that suit was/is implied barred under the law, whereas, the possession of suit land had already been taken over by the Civil Aviation Authority, and as such land stood vested in Civil Aviation Authority, free from all encumbrances as provided under Sections 16 and 17(2) of the Act, even, before filing of F.C Suit No.89 of 1999.

9. From the record, it appears that a comprehensive award was passed by the land Acquisition officer Moro, showing the subject land as part of acquisition proceedings, neither the proceedings nor the award was ever challenged by the respondents under the land acquisition law. The record reflects that respondents were not in possession of the land in question which was already acquired in land acquisition proceedings, and accordingly the land was mutated in the record of rights way long back in favor of CAA. The pleadings in the suit filed by the owners have failed to substantiate this aspect, how were they in possession of land already acquired in 1965, and that owners were compensated by way of award and mutations were effected with possession.

10. I have examined the Award passed/given by the Land Acquisition Officer in the year 1971. Surprisingly aggrieved party failed to assail the findings of the Land Acquisition Officer under Sections 18 & 30 of the Land Acquisition, Act, before the referee Court, having been in the knowledge of the proceedings; rather a civil suit for declaration, possession, and injunction in respect of land bearing Survey Nos.146/1 & 2, 147 & 267 situated in Deh Lakhmir Taluka and District Nawabshah against the applicants and official respondents was filed before learned 1st Senior Civil Judge Nawabshah, inter-alia on the ground that extra land had been taken and possession acquired; and challenging possession of the suit land forcibly by the Applicants. In principle the scope and object of references provided in Sections 18 & 30 of the Act have been very comprehensively dealt with by the Honorable Supreme 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 section 18 but should be left to the Courts to decide upon under section 30."

11. Coming to the main point raised by the respondents was that no notifications under sections 4 and 6 of Land Acquisition were issued. On the aforesaid proposition, I am of the considered view that the main purpose of notification under section 4 is to carry on a preliminary investigation to find the status of land after necessary measures i.e. survey of the land, taking of levels, and, if necessary, digging or boring into the sub-soil whether the land was adapted for the purpose for which it was acquired. It is only under Section 6 that a firm declaration has to be made by Government that land with proper description and area to be identifiable is needed for the public purpose for a company. No doubt, all proceedings in land acquisition begin with the Government notification under Section 4 to the effect that the land in any locality is needed or is likely to be needed for any public purpose, however, that is only a tentative declaration necessary to be made to justify further acts

of Government or its officers in going upon the lands of a citizen and making the investigation or testing the land or taking samples of the land. Thus from the above, it is obvious that although no doubt Sections 4,5A, and 6 have to be read together, the effect of these sections is that action preliminary to acquisition is taken under Section 4 read with section 5A, this preliminary action is taken to enable the Government to make up its mind whether it should acquire or not when the acquisition is for a public purpose and if so, what definite portion of land notified under Section 4 should be acquired. Therefore, at this stage, it is not correct to say that mere non-issuance of notification under Section 4, if any, is fatal to the validity of acquisition proceedings, particularly when the acquisition culminated in Award in favor of CAA in 1971, coupled with compensation awarded to the original land owners as disclosed in the Award Proceedings. Merely non-production of original notification would neither vitiate the acquisition proceedings nor could be set aside by the civil court because of the bar contained in the Land Acquisition Act and rules. Additionally, it is observed that in the circumstances of the case, given the failure of the respondents/Plaintiffs to invoke the special jurisdiction of the designated court under section 18 of the Land Acquisition Act, 1894, there was an implied bar, as contemplated under section 9 CPC, to the general/ plenary jurisdiction of the civil court to decide the respondents/Plaintiffs' suit as discussed in the preceding paragraph, such implied bar could only be circumvented if the respondents/Plaintiffs demonstrated that the case attracted one of the established exceptions to the ouster of the plenary jurisdiction of a civil court, which, was /is not the case set-up by the respondents/Plaintiffs. Merely saying that suit land was never acquired and it was forcibly occupied by the applicants/CAA under the garb of land Acquisition proceedings was/is not sufficient to call in question the land acquisition proceedings in a separate suit. On the aforesaid proposition, I am guided by the decision of the Honourable Supreme Court in the case of Searle IV Solution (Pvt.) Ltd. v. Federation of Pakistan (2018 SCMR 1444).

12. In the instant case, the tenure holders/person interested neither filed objections under Section 5-A of the Act nor have they challenged the land acquisition proceedings or the award passed by the LAO Moro, instead they opted to receive the compensation awarded in 1971; after the expiry of about the considerable time, they or their successor cannot be permitted to challenge the acquisition proceedings, through the separate suit.

13. In view of the above, I am satisfied that both the courts below have committed error in law in passing the impugned judgment and decree which are set aside and revision is allowed with no order as to costs.

JUDGE

Sajjad Ali Jessar