

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

Before:

Mr. Justice Muhammad Iqbal Kalhoro
Mr. Justice Adnan-ul-Karim Memon,

1st Appeal No. 81 of 2011

Province of Sindh and others

Versus

Khairuddin and others

1st Appeal No. 56 of 2018

Government of Sindh & others

Versus

Land Acquisition Officer & others

Mr. Allah Bachayo Soomro, Addl. A.G. along with
Muhammad Ali Zardari, S.E. RBOD-II Project,
Jamshoro

Mr. Irfan Ahmed Qureshi, Advocate for respondents

Date of hearing : **8.09.2022**

Date of Judgment : **29.09.2022**

J U D G M E N T

ADNAN-UL-KARIM MEMON, J. - By this common Judgment we intend to dispose of the above Appeals as the question of law involves in the subject matter is the same.

2. Through Appeal 81 of 2011 the appellants being aggrieved by and dissatisfied with the impugned Judgment dated 19.11.2011 passed by learned District Judge, Jamshoro in Land Acquisition Reference No. 01 of 2009, whereby the learned Judge allowed the Land Acquisition Reference No. 01 of 2009 filed by Land Acquisition Officer, after the award passed by him in the year 2009, was not accepted by the respondents 1 & 2 on the ground of determination of fair market value and other damages sustained by them for the acquisition of their respective lands i.e. bearing Survey. Nos. 261 & 262, admeasuring 6-11 acres situated in Deh Railo Taluka Kotri District Jamshoro, acquired for Right Bank Outfall Drain fall Project (RBOD).

3. Mr. Allah Bachayo Soomro, Addl. A.G representing the appellants in both appeals has contended that the legal and factual as well legal aspects of the controversy have not been appreciated in its true perspective by the Land Acquisition Officer as well as learned District Judge Jamshoro, resulting in a serious miscarriage of justice. He further submitted that the documentary evidence produced by the appellants has not been considered with diligent application of mind and the quantum of compensation determined by the Land Acquisition Officer in the Award dated 20.5.2009 violates the provisions as enumerated in the Land Acquisition Act, 1894. He further submitted that no convincing documentary evidence could be led by the private respondents in support of their claim to get compensation on enhanced rate based on Agricultural land; and, the Award given by the Land Acquisition Officer is based on extraneous considerations under the influence of private respondents, as no documentary proof was produced in evidence about the conversion of agricultural land to sikini land at the time of acquisition of subject land, which was erroneously awarded in square feet rather than based on Acres, which aspect of the matter also went unnoticed by the learned District Judge Jamshoro, while passing the impugned Judgments and he failed to consider that as per Section 9, 10 & 11 of the Land Acquisition Act, 1894 all the interested persons / parties were / are required to be heard mandatorily by the Land Acquisition Officer, while proceedings for passing the award; It is submitted that the respondents had received compensation of their agricultural land, at the hands of Land Acquisition Officer, based on square feet, without any cogent protest and, the conclusion thereof by the forum is based on conjectural presumptions; therefore, first Reference No. 1 of 2009 filed by Land Acquisition Officer in this regard was not maintainable; that learned trial court failed to apply its judicial mind in allowing entire amount which was / is at the exorbitant rate i.e more than the entire project; and not consistent with the documentary evidence of the claimants of the land; that learned trial court miserably failed to consider the value of property at the relevant point in time and surrounding value of the land, in its true perspective as no proof of surrounding purported sikni land was produced by the private respondents; that the amount awarded by Land Acquisition Officer, was / is huge and the appellants shall suffer collateral damage to public exchequer, including loss of crores of rupees; that learned District Judge Jamshoro while passing the impugned Judgments failed to consider para-wise comments / objections and failed to give any finding on the important points raised by the appellants in reference / objections and passed impugned judgments in arbitrary manner and without assigning any cogent reasons / findings and applying judicial mind so much so that no reference of parawise comments / objections has been made in the

impugned Judgments; that learned trial court has miserably failed to consider that as per provision of Section 18(1)(2) of Land Acquisition Act, the objections filed by government / appellants which was required due consideration has not been considered by the Land Acquisition Officer, Jamshoro while proceedings for passing the award under Section 11 of the Land Acquisition Act; that learned trial court has miserably failed to consider that the land compensation toward 6-11 acres effected under RBOD Project at Rs. 65,34,000/- per acre allowed by the Land Acquisition Officer and made compensation payable amount to Rs. 4,71,50,976/- based on sq.feet, which was/is on highly exaggerated rate provided in the revised PC-I at an average rate of Rs. 1,60,000/- per acre which rates were sanctioned by the Government of Sindh through revised PC-I and are mandatory for compliance to the acquiring agency. The amount of Rs. 61, 50,126/- on account of Additional Compensation at Rs. 15% under Section 28-A of the Land Acquisition Officer as per Award statement, which is contradictory to the provision of Land Acquisition Act, as the said Section 28-A stood omitted by virtue of Sindh Amendment Act, 2009. The trial court has erred in awarding the amount on sq. ft basis, though the land acquired by the appellant for the RBOD project, was agricultural barren land at the relevant time; particularly of no use as such the award passed by respondent No.3 was in excess and exorbitant just to accommodate the private respondents. He further submitted that reference No.1 of 2009 filed by the Land Acquisition Officer, was time-barred, i.e. after six months, which factum was not considered by the learned District Judge. Per learned AAG the issue of title documents of the private party over the acquired land, was not taken into consideration and erroneously held that same could only be decided by the Court of plenary jurisdiction and confined itself to the extent of reference made under Section 18 of Land Acquisition Act, and erroneously gave findings based on the purported value of acquired land through the estate agent, who was no expert to say for and against. He added that under the law agricultural area means land outside the peri-urban area which is predominantly used for the cultivation of crops and includes cropland, pastureland, orchards, nurseries and dairy farms; he also emphasized that a person shall not use agricultural land for non-agricultural purposes without paying the stipulated conversion fees and obtaining the permission of the competent authority. He prayed for allowing the appeals. However, he agreed that compensation ought to have been made as per the market value of the land at the relevant time of its acquisition based on Acres, not in sq. ft.

4. Mr. Irfan Ahmed Qureshi learned counsel for the respondents in both appeals has refuted the stance of appellants and fully supported the decision

passed by the trial court in both references, by assigning reasons that the compensation has been determined by the trial court, strictly in terms of the provisions as enumerated under Land Acquisition Act and the question of any extraneous consideration does not arise. It is also pointed out that documentary evidence has been elaboratively appreciated in its true perspective and the potentiality of land has been determined after taking into consideration all the relevant factors as required under the law. It is also contended that no illegality or irregularity could be pointed out by learned AAG in the Acquisition proceedings up to the level of trial court, warranting interference. On merits, he submitted that the question of compensation was also agitated in reference No.01/2009 under Section 18(1) of Land Acquisition Act in respect of the same Award, which was decreed by the trial Court and they were ordered to be compensated at the rate of Rs.500/- per sq. feet of acquired land vide judgment dated 19-11-2011. On the issue of Agricultural and sikni land, he submitted that it has been mentioned in para-7 of the Award that the land is sikni, it is entered in Taluka Form-II as a residential area in square feet, approved from Union Council Jamshoro in the name of Kainat Blessing Housing Society & Shopping Centre as the land was / is situated within the limits of Jamshoro City. Learned counsel referred to para-9 of the Award, and submitted that Land Acquisition Officer visited the site and found a portion of wall existed on the site and the same was damaged during construction of RBOD. Besides three shops on site were also destroyed during the excavation works. He also submitted that the Land Acquisition Officer passed Award of the acquired land of private respondents at the rate of Rs.150/- per sq. feet and Rs.65,34,000/- per acre, which was less than the prevailing market position in the locality; therefore, they being dissatisfied with the compensation amount in the Award filed reference No.01/2009 against the same Award, which was decreed by the trial Court at the rate of Rs.500/- per sq. feet. In support of his contentions, he relied upon the decisions of Honorable Supreme Court in the cases of Hafeez Ahmed v. Civil Judge, Lahore (2008 SCMR 107), Government of West Pakistan v. Mst. Asmatun Nisa and 6 others (1983 PLD SC 109), Nemat Ali v. Malik Habibullah (2004 SCMR 604), Waris Khan Versus Col. Humayun Shah and 41 others (PLD 1994 SC 336), Land Acquisition Collector & others v. Mst. Iqbal Begum and others (PLD 2010 SC 719), Fazal Haq college through vice Chairman Versus Said Rasan and others (PLD 2003 SC 480), Province of Sindh through the Collector of District Dadu & others v. Ramzan & others (PLD 2004 SC 512) and Province of Punjab through Collector Bahawalpur and others v. Col. Abdul Majeed & others (1997 SCMR 1962). He lastly prayed for dismissal of the instant appeals with costs.

5. We have heard learned counsel for the parties on the subject issues and perused the record with their assistance along with the case law cited at bar.

6. Before going ahead, it is necessary to have glance at the factual aspect of the case, it appears from the record that the land of private respondent bearing S.Nos. 261 & 262 admeasuring 6-11 acres situated in Deh Railo Taluka Kotri District Jamshoro, was acquired for RBOD Project vide land Acquisition Notification dated 7.6.2008 issued under Section 4 of the Land Acquisition Act, followed by another Notification under Section 6 of the Act, published in Official Gazette on 24.6.2008. The possession of the subject land was acquired with effect from 24.6.2008. The Land Acquisition Officer RBOD after considering the objections and demand of the land owners / interested persons fixed the price of land acquired at the rate of Rs.150/- per sq. ft under Section 23(1) of the Land Acquisition Act. He further allowed compulsory acquisition charges under Section 23(2) of the Land Acquisition Act. The land owners / interested persons being aggrieved by and dissatisfied with the aforesaid decision moved an application to the Land Acquisition Officer, under Section 18 of the Act, for determination of fair market value and other damages sustained by them for acquisition of their respective land; therefore, the Land Acquisition Officer referred the matter to learned District Judge, Jamshoro for appropriate order under the law. On notice the land owners filed written statement and based on their pleas, learned District Judge framed the following issues:-

1. Whether the reference to the Court under section 18 /19 of the Land Acquisition Act made by the plaintiff is maintainable under the law?
2. Whether the compensation awarded for acquired land is not adequate?
3. Whether the plaintiff is not sustained the damages to the boundary wall, earth filling, shops, and construction material?
4. Whether the plaintiffs have entitled to any relief under section 28-A and Section 34 of the Land Acquisition Act?
5. What should the Decree be ?

7. To settle the above issues, learned District Judge recorded evidence of the parties and their respective witnesses, and after hearing the parties allowed the land acquisition Reference No. 01 of 2009 vide Judgment dated 19.11.2011 and enhanced the rate of land to Rs.500/- per sq. ft as provided under Section 23(1) of the Act. The appellant / Government of Sindh, being aggrieved by the said Judgment, preferred instant 1st Appeal No. 81 of 2011. However, during pendency

of 1st Appeal No. 81 of 2011, the Government of Sindh through Executive Engineer RBOD Division-II, Hyderabad @ Jamshoro filed another land acquisition Reference No.02 of 2009 before District Judge, Jamshoro challenging the Award passed by Land Acquisition Officer with the narration that land bearing survey Nos. 261 & 262 Deh Railo, Tapo Bada, Taluka Kotri, District Jamshoro was acquired for construction of RBOD Project from Sehwan to Sea and entire land acquisition proceedings had been notified through Section 4 & 6 of the Land Acquisition Act, 1894 published through Sindh Government Gazette (Extraordinary) Notification No.348 dated 07-06-2008 and dated 24-06-2008. The above survey numbers were measured by the Director Settlement Survey and Land Record Sindh, Hyderabad through Form-B and total area affected from the above survey numbers under RBOD Project, which was/is as under:-

S.No	Deh	Taluka	District	Survey No.	Total Area affected
01	Railo	Kotri	Jamshoro	261	4-12 acres
02	Railo	Kotri	Jamshoro	262	1-39 acres
Total Area					6-11 acres

8. It was further stated that compensation amount of land was paid to the land owners after completion of proceedings under Section 11 of Land Acquisition Act-1894 and the Land Acquisition Officer passed Award statement dated 20.05.2009 and made compensation payable amounting to Rs. 4,71,50,976 in respect of M/s. Khairuddin son of Ghulam Qadir Ansari and Hafiz-ur-Rehman son of Mohammad Amin Abbasi, the details of the compensation are as under:-

Compensation of land for an area of 6-11 acres @ Rs.65,34,000/- per acre.	Rs. 4,10,00,850/-
Interest 15% of the market value as compulsory Acquisition Charges	Rs. 61,50,126/-
The total amount of compensation payable	Rs. 4,74,50,976/-

9. Per learned AAG the objections of the appellant were not considered by the Land Acquisition Officer during proceedings for passing Award; that the market value assessed by the Land Acquisition Officer through local Estate Agent at Rs.150.00 per sq. yard, which means Rs.13.95 per sq. ft and Rs.6,07,622/- per acre whereas Land Acquisition Officer allowed Rs. 150/- per sq.ft as highest prevailing market value, which resulted Rs. 65,34,000/- per acre; that Rs. 65,34,000/- per acre allowed by the Land Acquisition Officer RBOD-II, Jamshoro in Award is much higher rate than the provided / sanctioned in the revised PC-I at an average rate of Rs.1,60,000/- per acre; that the Land Acquisition Officer considered the plea of

owner of the land that the acquired land was/is situated within the limits of Jamshoro City, when the said land was / is within the limit of Union Council as Jamshoro; that the amount allowed by the Land Acquisition Officer on the basis of verbal statements of locals of the area as well as Estate Agents is not admissible under Section 28-A of Land Acquisition Act, 1894 and it requires to be considered on the basis of valuation of the land in the locality i.e. Rs.13.95 per sq. feet or Rs.6076622/- per acre; that by virtue of passing Award and payment of compensation thereof, the Government/ project shall sustain irreparable loss which shall require to be defended, hence the plaintiff Government of Sindh finding no other adequate & speedy remedy filed reference No.2 with the following prayers:-

- 1) It is therefore prayed that this Honorable Court may kindly be pleased to direct the respondent to revise the award statement already passed on 20-05-2009 and the same be issued as per Government Notification for land valuation of the area and its true assessment to save the Government from huge loss.
- 2) Till the decision by this Honorable Court during the pendency of instant petition further action for payment of compensation to the Respondent's No.2 & 3 may kindly be kept in abeyance.
- 3) Any other remedy which this Honourable Court may deem fit just, and proper in favor of petitioner.

10. The notices of this reference were also issued and respondents/defendants were served; defendants 2 & 3 filed written statements, as well as the application under Order VII Rule 11 CPC, while defendant No.1 (LAO RBOD) was declared ex-parte. The trial court after hearing the parties rejected reference No. 02 of 2009 under Order VII Rule 11 CPC vide order dated 13.05.2010, which is assailed by the Government of Sindh in 1st Appeal No. 54 of 2010 before this Court and this Court vide order dated 28.09.2015 in the said 1st Appeal remanded the reference to the trial court for deciding under the law within three months.

11. After post remand, the trial court from the pleadings of the parties, framed the following issues:-

- 1) Whether the reference under Section 18(3) of the Land Acquisition Act, 1894 is not maintainable under the law?
- 2) Whether the defendants No. 2 & 3 have legal title upon Survey Numbers 261 & 262 Deh Railo, Taluka Kotri, District Jamshoro? If not, whether the entries made in the record of rights are legal and valid?
- 3) Whether the market value ascertained by the Land Acquisition Officer is proper, reasonable, and justified? If not, what is the proper market value of the acquired land?

4) What should the decree be?

12. To settle the above issues, learned trial court examined witnesses of appellants i.e PW-1 Executive Engineer RBOD Division-II, Jamshoro Haji Muhammad Ayaz Memon at Ex.22, who produced authority letter at Ex.22/A, Photocopy of Award at Ex.22/B, Photocopy of PC-1 of revised rate of the year, 2005 at Ex.22/C & letter of Executive Engineer dated 20-05-2009 at Ex.22/D, he deposed that the *suit land i.e Survey No.261* admeasuring (4-12) acres and Survey No.262 admeasuring (1-39) acres of Deh Railo was acquired by the irrigation department for RBOD Project, which started from Sehwan to Gharo Creek Sea; that this project was started in the year, 2003-04 and he came to know about the Award when the Land Acquisition Officer submitted Award before this Court in C.P No.332/2007. And there was no notice issued to the department by the Land Acquisition Officer, as required by Section 11 of the Land Acquisition Act, under which he was bound to call the parties before issuing the Award. They obtained photostat copy of Award from this Court; however, they could not receive any original Award from the Land Acquisition Officer. The Award was passed by the Land Acquisition Officer on 20-05-2009. He further deposed that the revised PC-1 of the year, 2005 was at the rate of Rs.1,60,000/- per acre, which was the average rate. They produced original copy of PC-1 before this Court in the aforesaid proceedings and this court directed that payment should be made to the respondent / petitioners Khairuddin and others as per the Award filed by the Land Acquisition Officer. Thereafter they filed Reference under Section 18 of the Land Acquisition Act; however, the same was rejected by the trial court and they assailed the order in First Appeal No.54/2010 before this Court, and the matter was remanded to the trial court. He further deposed that they had deposited a lump-sum amount for different on-demand before the Land Acquisition Officer, from that amount the Land Acquisition Officer made payment of Rs.1,00,00,000/- to the respondent through trial court. That there were lots of ambiguities in the award as the Land Acquisition Officer calculated the compensation amount at the rate of Rs.150/- per sq. yard, but he made payment at the rate of Rs.150/- per sq. feet, hence there was much difference in the calculation. He further deposed that from the correct calculation of the amount, it would be up to Rs.6,00,000/- per acre, whereas the Award was passed by the Land Acquisition Officer at the rate of Rs.65,00,000/- per acre. He further deposed that according to revised PC-1 of survey of the land, the rate of land was fixed at rate of Rs.1,60,000/- per acre, but in the Award Rs. 65,00,000/- per acre was mentioned, which was huge amount, which would affect the entire cost of the project. He further deposed that the Land Acquisition Officer had passed illegal

Award at the high rate amount with incorrect calculation of the same and it was not the rate according to market value at that time, and the same was liable to be canceled and the rate was required to be fixed according to PC-1.

PW-2 Ghulam Siddique Soomro Assistant Commissioner, Kotri at Ex.23, who produced an attested copy of FIR at Ex.23/A, attested copy of Notification of Board of Revenue at Ex.23/B, recommendation letter of the committee at Ex.23/C, letter for rewriting of record at Ex.23/D, news clips of daily newspaper 'Kawish' at Ex.23/E, news clips of daily newspaper 'Jang' at Ex.23/F, letter of Supervisory Committee dated 02-06-2016 at Ex.23/G, the original record of survey Nos.261 & 262 Deh Railo at Ex.23/H & 23/I, attested copy of Notification at Ex.23/J.

PW-3 Ghulam Rasool Memon Section Officer Board of Revenue, Hyderabad at Ex.24, who produced authority letter at Ex.24/A, attested copy of Notifications at Ex.24/B & 24/C, letter of Honorable Supreme Court of Pakistan at Ex.24/D, attested copy of Notifications at Ex.24/E & 24/F, report of scrutiny committee at Ex.24/G.

13. Private respondents were also examined as **DW-1** at Ex.34, who produced attested copies of revenue record in respect of sikini of land at Ex.34/A & 34/B, notice at Ex.34/C, a true copy of his claim at Ex.34/D, a true copy of the application at Ex.34/E, Village Form II as Ex.34/F, copies of both deeds at Ex.34/G & 34/H, copy of conveyance deed along with certificates and original power of attorney at Ex.34/I to 34/S respectively. He deposed that he launched 'Kainat Housing Society and Shopping Centre' on the suit land, which was/is consisted upon Survey Nos.261 & 262 admeasuring 7-36 acres, situated in Tapo Bada, Deh Railo, Taluka Kotri, District Jamshoro, in the year, 2003. The RBOD Division-II acquired 6-11 acres of land from the above survey numbers. He deposed that there was boundary wall over an area of 360 feet in which three shops were constructed, which were demolished due to acquiring of the land by RBOD. They got prepared map of the suit land from UC Jamshoro in the year, 2003. After launching the scheme, they started selling the plots to the public from 2004-2007 through sale deeds. In the year, 2008 he received notice from Land Acquisition Officer RBOD Division-II, Jamshoro that the appellant acquired his land. He further deposed that he filed his claim on his behalf and on behalf of his business partner within the stipulated period and such an Award was passed by the Land Acquisition Officer and then he filed Constitutional Petition before this court, wherein Land Acquisition Officer submitted such Award wherein he fixed the rate of the land Rs.150/- per square feet. Thereafter they being dissatisfied applied to the Land Acquisition Officer

under Section 18 of the Land Acquisition Act to refer the case to the Referee Court. Thereafter, the trial court passed decree in Land Acquisition Reference No.01 at rate of Rs.500/- per square feet. Thereafter the Executive Engineer RBOD Division-II on behalf of Government challenged said decree before this court in Land Acquisition Appeal. He further deposed that in the year, 2010 the Land Acquisition Officer paid them Rs.1,00,00,000/- as part payment of acquired land. He further deposed that in the year, 1981 the previous owner of survey Nos.261 & 262 namely Aftab Ahmed s/o Fazallullah Shaikh sold the said land to Sardar Abdul Razaque and Sardar Abdul Qayoom through registered deed. In the year, 2002 they purchased suit land from said Sardar Abdul Razaque and Sardar Abdul Qayoom through registered sale deeds No.451 & 452, they got transferred the suit land in their names in the revenue record in the year, 2002. He deposed that they were required to be compensated at the rate of Rs.2000/- per sq. feet as per market value. **DW-2** Private Businessman Hussain Ali Khoso was examined at Ex.35. **DW-3** Government Employee Rasheed Ali Qureshi was examined at Ex.36. **DW-4** Mukhtiarkar Taluka Kotri Aijaz Ali Chandio was examined at Ex.37, who produced a copy of deh Form-II at Ex.37/A. **DW-5** Sub-Registrar Jamshoro Safdar Ali Qureshi was examined at Ex.38, who produced attested PS copies of sale deeds at Ex.38/A & 38/B, attested PS copies of General Power of Attorney registered No.65 & sale deed registered No.30 at Ex.38/C & 38/D respectively.

14. The trial court after hearing the parties dismissed Reference No. 02 of 2009 vide Judgment dated 13.8.2018. The appellants, being aggrieved by and dissatisfied with the aforesaid Judgment and decree preferred instant 1st Appeal No. 56 of 2018 on the grounds discussed supra. An excerpt of the Judgment and decree dated 13.8.2018 is reproduced as under.

“The careful perusal of the record shows that the plaintiff Government being aggrieved with the compensation amount in Award filed reference under Section 18(3) of Land Acquisition Act, but he has not produced any concrete evidence to prove this issue, to show the market value and exact location of the land in question. The court should have to see the market value of the property with regard to the future potential of the property and it is not the sale price of the property for the time being but it is a sort of compensation to be awarded to the party and compensation could be determined through market value as the future potential of the property.

In view of the above guideline of Honourable Superior Courts, this Court has also to see the use of property, its future potential as well as market value as compensation.

The further careful perusal of the record shows that the plaintiff has not produced any concrete evidence on this issue for revising the Award. Moreover, two references one under Section 18(1) of Land Acquisition Act filed by defendants No.2 & 3 for the increase of compensation amount of acquired land and another reference in hands under Section 18(3) of Land Acquisition Act filed by plaintiff Government for the decrease of compensation amount of acquired land of the same Award have been filed. Reference No.01/2009 under Section 18(1) of Land Acquisition Act filed by defendants No.2&3 was allowed by this court vide judgment dated 19-11-2011 whereby the compensation amount to the defendants No. 2 & 3 was enhanced at the rate of Rs.500/- per sq. feet, that judgment has been assailed by the plaintiff Government before the Honourable High Court of Sindh, Circuit Court, Hyderabad in Land Acquisition Appeal No.81/2011 re: Government of Sindh & others vs. Khairuddin & others), which is still pending adjudication. Furthermore, this issue has already been decided by this Court in respect of the same award in Reference No.01/2009. This issue is therefore answered accordingly.

ISSUE NO.4

In view of the above discussion and findings on issues No. 1 to 3, I have come to the conclusion that the plaintiff has failed to produce any concrete evidence to revise the Award, and the issue in respect of the market value of acquired land has already been decided by this Court in Reference No.01/2009 under Section 18(1) of Land Acquisition Act filed by defendants No. 2 & 3 in respect of the same Award and Land Acquisition Appeal No.81/2011 re: Government of Sindh & others vs. Khairuddin & others) against the same judgment of this Court is pending adjudication before the Honorable High Court of Sindh, Circuit Court, Hyderabad. Therefore, reference No.02/2009 is hereby dismissed with no order as to costs. Let a such decree be drawn accordingly.”

15. The questions involved in the present proceedings for our determination, are as follows:-

- i) whether, at the time of Acquisition proceedings, the subject land was agricultural and
- ii) whether the award could be passed in terms of sq. feet, and
- iii) whether the private respondents received the compensation of the subject land in terms of the award passed by the land Acquisition Officer on 20-05-2009 under protest
- iv) whether subject award could be passed based on sq. feet and/or based on Acres and
- v) whether the learned District Judge, Jamshoro was justified to enhance the compensation amount from Rs. 150 per sq. feet to the rate of Rs.500/- per sq. feet.

16. The reason which prevailed with the trial Court is that the acquiring authority i.e. RBOD had been proceeded against ex-parte in Reference No.1 of

2009 and had not led evidence in rebuttal to the testimony of private respondents and the same version was maintained by the trial court on post remand. Primarily, this could not be a basis for awarding the sum claimed by private respondents from Rs.150 per sq. ft to Rs. 500/- per sq. ft. Surprisingly, Reference No.2 of 2009 filed by the Appellants on the aforesaid pleas was discarded by the trial court on post remand, on the ground of market value and future potential of the subject property; and, the compensation amount awarded to private respondents by the Land Acquisition Officer, and maintained in Reference No.1 of 2009 was not disturbed without assigning valid reasons as to how compensation was enhanced from Rs. 150 per sq. feet to Rs. 500/- per sq. feet, in agricultural land at the time of acquisition.

17. We have noticed that the learned trial Court based its findings on an opinion expressed by a private estate agent produced by private respondents, who is neither an expert nor has established any basis for the opinion expressed by him in evidence. Besides, the land acquisition officer considered the value of land, on the verbal statement of local estate agents Al-Madina and Sindhu Real Estate.

18. The evidence produced by the Assitant Commissioner, Kotri with the narration that the subject Survey Nos. 261 & 262 of Deh Railo of Agriculture nature and its conversation into Sikni is required to be made by the Board of Revenue, however, Union Council was/is not empowered to convert the agricultural land as Sikni. He further deposed that the supervisory committee constituted on the directions of the Honorable Supreme Court of Pakistan in Suo Moto case No. 16/2011 declared all the revenue entries made in the record of Deh Railo, Taluka Kotri based on false and fraudulent documents which were made after the year 1985 and recommended for their cancellation; consequently, the Board of Revenue canceled all the entries vide notification dated 14.10.2015.

19. At this stage, learned counsel for the respondents has referred to the evidence of the Assistant Commissioner; and submitted that the Assistant Commissioner admitted in the cross-examination that the subject land fell within the jurisdiction of the Town Committee and that there is no reference to the survey numbers of Deh Railo in the notification. Learned Counsel emphasized that the Board of Revenue vide order dated 12.02.1979 converted the subject land from agricultural to Sikni, however, he has not brought on record such order dated 12.02.1979 to substantiate his stance, merely referring to the old form is not sufficient to rely upon such document to claim sikni land for the simple reason the subject land was acquired for RBOD project, which was meant to drain out the saline water, which is far away from the urban area to avoid salination of the

landed properties. Prima-facie, revenue entry recorded by the Mukhtiarkar in Form VII is nothing to do with the status of the land. Mukhtiarkar or Deputy Commissioner in the capacity of Deputy Collector has no legal authority in this respect within the ambit of the Land Revenue Act. A separate process is to be followed under a separate provision of law for the conversion of any land into residential, industrial, or commercial. The status of the land cannot be determined based on Form VII and entry made in BF-11 of the Deh. Prima-facie Revenue record was/is silent in this respect, and no such order or sanction was/is available on record/and /or has been placed on record to claim the conversion of agricultural land into sikni.

20. We have scanned the deposition of the Assistant Commissioner who deposes that the whole land of Deh Railo was canceled under notification vide para-4 (B) of the notification. The respondent-Khairuddin Ansari failed to produce the approval letter from the Board of Revenue, for establishing the Kainat Housing Society in the RBOD area, he also failed to prove any proof to show that he had constructed a boundary wall around the society; and three shops at the suit property. He also failed not to produce a map of suit property duly signed by Hyderabad Development Authority or Sehwan Development Authority; and, even failed to produce any receipt of the amount to show that he paid development charges to the Government for the aforesaid purpose. He also failed to produce the sale certificate to claim the sale and purchase of subject land for society. The deposition of Respondent-Hafeez ur Rehman also shows that he did not execute a registered Sale Deed to the plot owners. However, he deposed that his agricultural land comes within the limit of the Union Council in Municipal Corporation; and, denied that the market value of land was Rs. 150,000/- per acre at the relevant time. The evidence of Hussain Ahmed Khoso explicitly shows that he failed to produce proof regarding the rate as mentioned in his examination chief. Witness Rashid Ali admitted that agricultural land into residential could only be made by the orders of the Deputy Commissioner. Aijaz Ali- Mukhtiarkar, Taluka Kotri admitted that the suit land was agricultural and fell within the jurisdiction of Union Council Jamshoro up to the year 2009. He also admitted the suit land was converted into sq. feet on 03.02.2017. He also admitted that the original record of the subject land was burnt on 27.12.2007 on the assassination of Muhtarma Benazir Bhutto and the same was re-constructed on directives of the Honorable Supreme Court in the year 2015. He also admitted that without a layout plan the conversation of any land could not be finalized, and is invalid. He also admitted that Deh form-II dated 03.02.2017 is the canceled record.

21. To cut short the controversy, in principle, the status of the land cannot be determined based on Form VII and entry made in BF-11 of the Deh. In this view of the matter, both the judgments of the Court below cannot be treated as based on admissible evidence; the same is, therefore, set aside. However, the respondents-land owners nevertheless are entitled to receive compensation for their land i.e., an area of 6.11 Acres under the provisions of the Land Acquisition Act, 1894.

22. From the above discussions, we find that the appellants have succeeded in establishing that the Award passed by the Land Acquisition Officer is not fair, proper, and adequate. The respondent/plaintiffs should have been paid the compensation per acre rather than in sq. feet, for the simple reason that the land of private respondents was entered in V.F-VII of Deh in Revenue Record and it was the agricultural land and it could be measured in ghuntas and acres and not in square feet or square yards. In principle, the Land Acquisition Officer has wrongly declared the acquired land as Sikini in the Award instead of agricultural land.

23. From the appraisal of all the above set-forth facts and law and also that the respondents/plaintiffs are barred from claiming the compensation of suit-land much more than they had claimed per acre, this Court cannot award the compensation more than the actual price of the land at the time of issuance of the notifications under Land Acquisition Act, 1894 for the reason that that when the land was acquired, the position of land was agricultural land and was not sikni land, thus the same could not be converted into sikni by the Land Acquisition Officer and/or learned District Judge on their own accord as the evidence recorded by the respondents in which they failed to produce the establishment of Kainat Housing Society, even they failed to prove that there was a boundary wall and three shops were constructed at the suit property, and they also failed to produce map of suit property duly signed by SDA or HDA for the society purposes; even the original record of land was not produced in evidence based on the purported plea that the same was burnt in the incident of 2007.

24. Accordingly, in our opinion, the land acquisition officer and the learned trial court failed to distinguish the terms Sikni and residential. Revenue authorities could convert agricultural land into Sikni but have no power to convert the Sikni land into residential, commercial, or industrial. Entries in the record of rights/ Form VII or Form II are simply recorded to maintain a record and would not be sufficient to declare or change the status, of the land as residential as purportedly claimed by the respondents through the subject proceedings; therefore, the compensation of suit land is liable to be fixed at the rate of original market value at the time of acquisition of subject land along with necessary Interest as compulsory Acquisition

Charges. However, that shall be in acres and not in sq. ft and /or sq. yards, being agricultural land. The calculation of amount shall be made by the trial court accordingly as per their respective shares by issuing notice to the parties within 15 days.

25. Resultantly, the captioned Appeals are disposed of in the above terms.

JUDGE

JUDGE

Karar_hussain/PS*