

Judgment Sheet
IN THE HIGH COURT OF SINDH BENCH AT SUKKUR
1st Civil Appeal No.D-13 of 2011

Mr. Justice Muhammad Iqbal Kalhoro
Mr. Justice Arbab Ali Hakro

Appellants : Land Acquisition Officer and another
Through Mr. Ali Raza Balouch, AAG

Respondents : Syed Abdullah Shah and others **through**
Mr. Nisar Ahmed Bhanbharo, Advocate

Date of hearing : **29.08.2023 & 19.09.2023**

Date of Decision : **12.10.2023**

J U D G M E N T

ARBAB ALI HAKRO J, Through this First Appeal under Section 54 of Sindh the Land Acquisition Act, 1894 (“**the Act of 1894**”) read with Section 96 C.P.C, the appellants have impugned judgment dated 07.3.2011 and decree dated 09.3.2011, passed by I-Additional District Judge, Khairpur (**‘Referee Judge’**), in Land Acquisition Application No.01 of 1997, whereby the said Suit of the respondents has been decreed.

2. Brief facts of the case are that the land bearing Survey Nos.28(00-25), 30(00-13) and 31(01-32) and an area admeasuring 02-31 Acres from *Sikni* village Brohi situated in Deh Nizamani Taluka and District Khairpur (**‘subject land’**), so also Survey No.14 admeasuring 02-15 Acres, which according to the appellants is only *Sikni* and remaining subject land were agricultural land, was acquired for public purpose, i.e. for Filtration Plant (Rapid Gravity Filter) for construction of Urban Water Supply Scheme for Khairpur Town.

3. The subject land is stated to belong to the respondents (**“land owners”**). Appellant No.1, after fulfilment of the requirement as envisaged under the Act of 1894, passed the Award on 10.12.1996. The land owners disagreed with the Award and moved an application/ reference under Section 18 of

the Act of 1894 before the Land Acquisition Officer/ Collector, Khairpur, with the averments that the subject land is situated within the Municipal limits of Khairpur Town, and it is surrounded by residential colonies/area, hence the same is very costly meant for *Sikni* purpose; residential purpose and commercial and that there were *Trees of Dates* standing. However, the subject land has been determined at the rate of Rs.300,000/- per acre, and no compensation for *Date Trees* and the Poultry Farm has been determined. The land bearing Survey No.14 just adjacent to the subject land has been assessed by the appellants at the rate of Rs.915,000/- per acre, and the rate of land of adjoining colonies, i.e., Shahbaz Colony and Gulshan Nazeer, is between Rs.60 to 100 per sq. Feet.

4. They further averred that when the proceeding was initiated for acquiring the subject land by the Executive Engineer, Public Health Engineering Department, Khairpur, appellant No.1, through a Letter dated 15.8.1994, had informed the Executive Engineer that the rate of the subject land was Rs.500,000/- per acre, despite that fact the subject land of the respondents was acquired at the lesser rate of Rs.300,000/- per acre. No notice, as required under Section 12(2) of the Act of 1894, was received by the landowners. It is also stated that on 13.02.1997, the land owners were compelled to sign a document/voucher for compensation and signed the document under protest. They further averred that land measuring 2-31 Acres of village Brohi belongs to respondents No.2 and 3 being their ancestral property. However, no compensation was determined and assessed, though they are entitled to the same.

5. Appellant No.1 forwarded the reference to the District Judge, Khairpur, who subsequently transferred the same to the I-Additional District Judge, Khairpur, for trial. The appellants, on receipt of notice, filed a written reply.

6. On the pleadings of the parties, the Referee Judge framed the following issues: -

- i. Whether the Suit is not maintainable according to law?
- ii. Whether Suit is time barred?
- iii. Whether the Suit is barred by law?
- iv. Whether the compensation of the acquired land have been allowed to the plaintiffs according to market rate of surrounding lands of the locality and vicinity? And whether the compensation should be at the rate of Rs.900,000/- (Nine lacs) per acre?
- v. Whether the compensation for fruit bearing trees have been paid according to the prevailing rate of Rs.3,000/- per tree?
- vi. Whether there was any poultry farm over two Ghuntas land belonging to plaintiff No.4 and such compensation has been determined and paid?
- vii. Whether any compensation has been determined for village Brohi situated over 2-31 Acres of land belonging to plaintiff No.2 & 3?
- viii. What should the decree be?

7. The trial Court examined Wazir Hussain (respondent No.2) as Exh.10, PW-2 Ghulam Asghar as Exh.11 and PW-3 Allahdino as Exh.12 and closed the side as Exh.13.

8. On the other hand, appellant No.1 examined as Exh.14. He produced relevant documents as Exh.14/A to C; DW-2 Hidayatllah Memon (D.D.O (Rev.) as Exh.15, who produced relevant documents at Exh.15/A to F and closed the side as Exh.16.

9. After hearing both parties, the Referee Judge passed the impugned Judgment and Decree, whereby decreeing the Suit of land owners. Hence, this appeal.

10. At the very outset, learned Additional Advocate General representing the appellants contended that the application

dated 17.03.1997 preferred by the respondents against the award passed by Land Acquisition Officer was time-barred (filed after 113 days from the date of announcement of the award). However, the learned trial Court did not consider such a legal point, and the award was passed after considering the subject land's market value, which was accepted by the respondents and they received compensation without protest; thus, the reference is not maintainable. As such, their objections with regard to treating the whole subject land as *Sikni* is unjust and unreasonable. It is next contended that the learned trial Court grossly erred while deciding the issue relating to declaring the category of land as *sikni*, which is agricultural land. It is further contended that the law of limitation applies which requires a plausible explanation of delay of each day, but in this matter, neither application for condonation of delay was moved, nor were reasons explained in respect of such delay; hence, application/ reference could only be dismissed on that sole ground and mere having subject land situated within municipal limits will not confer right to the respondents to claim compensation of *sikni* plot. In the end, learned AAG contended that the impugned judgment and decree passed by the trial Court is illegal and unlawful without mentioning proper reasons, hence liable to be dismissed. In support of his contentions, learned AAG has placed reliance upon the case law reported as **2023 SCMR 1005 & 2022 SCMR 933**.

11. Conversely, learned counsel representing the respondents contended that neither the appellants legally acquired the land nor they observed requirements under the Land Acquisition Act; besides they did so without issuing notices or obtaining consent to occupy and utilize the land for the implementation of their proposal, which caused tremendous loss to the respondents compelling them to approach the Court against such victimization; that there was sufficient area lying uncultivated belonging to influential persons but the appellants acquired the land of respondents as targeted

one and utilized their garden land and *sikni* area for accomplishing the above purpose. It is argued that the learned trial Court has rightly passed the impugned judgment and decree by declaring the Respondents' lands as *Sikni* and awarded compensation as per market value; hence, it requires no interference by this Court. Furthermore, the reference was not time-barred; lastly, it is urged that the instant 1st Civil Appeal does not merit consideration and is liable to be dismissed. At the end of his arguments, he has placed reliance upon the case law reported as ***PLD 2004 SC 512, 2023 SCMR 700, 2023 SCMR 102 & 2023 SCMR 950.***

12. We have heard the arguments advanced by learned counsel representing the parties and, with their assistance, minutely perused the material available on record, including the case law relied upon by them at the bar.

13. We shall first deal with the preliminary point raised by the learned Additional Advocate General that the land owners filed an application/reference before appellant No.1 on 17.3.1997, after a delay of about 113 days from the date of Award viz: 10.12.1996, therefore the same was time-barred, and such point of delay has not been considered by the Referee Judge. The limitation period for filing of reference has been provided in Section 18 of the Act of 1894. It would be conducive to reproduce the same herein as under:-

"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 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:

- 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, subsection (2) or within six months from the date of the Collector's Award. Whichever period shall first expire."*

The underlining is supplied.

14. Plain reading of the above-reproduced provisions reveals that if a person aggrieved from the Award was present or represented before the Collector at the time of passing the Award, he can file a reference petition before the Collector within 06 weeks from the date of Collector's award. In other cases, within 06 weeks of receipt of notice from the Collector under Section 12(2) of the Land Acquisition Act or within 06 months from the date of the Collector's Award. The language used by the legislature in Section 18(1), of the Act: "*Any person interested who has not accepted the Award*" is of much significance. Therefore, the present case is to be considered in the true perspective of the aforesaid provision of law.

15. The perusal of the record reveals that appellant No.1 had forwarded the reference to the Court for adjudication without any objection of limitation. The question as to whether the reference was within time or not was to be determined by the Collector before sending the reference to the Court. Above referred Section 18 of the Act of 1894 provides a limitation period for filing the reference before the Collector but not to the Court/Referee Judge. It is now well settled that once the Collector has made reference to the Referee Judge, the Referee Judge would not be competent to go beyond the reference to see whether the reference under Section 18 of the Act had been filed within time as prescribed in the proviso to Section 18 of the Act of 1894. In this regard, reference may be made to the case of the **Government of West Pakistan (Now Government of N.W.F.P.) through Collector, Peshawar v. Arbab Haji Ahmed Ali Jan and**

others (PLD 1981 Supreme Court 516), wherein Apex Court has held as under: -

"The appellant took objection that the reference was incompetent as it was barred, but the designated Civil Court held against the appellant by order dated 1st of November 1967. The rate of compensation was also enhanced from Rs.625 to is 2,200 per Kanal. The appellant went in appeal to the Peshawar High Court and a learned Single Judge of that Court referred the following question to a larger Bench by order dated 7th of February, 1972

"Whether a reference can be thrown out by the Court on the ground that the application was not made to the Collector within six months particularly when an objection in this regard was already raised and decided in favour of the objector under section 18-B."

The Full Bench answered the question holding:-

"that once the Collector has made reference to the Court, the Court would be incompetent to go behind the reference to see if the objection application before him (the Collector) had been filed within time, as prescribed in proviso to section 18 of the Act."

16. Even otherwise, admittedly, no notice under Section 12(2) of the Land Acquisition Act has been issued/served upon the landowners, as the appellants have failed to produce such notice before the Referee Judge or this Court. Accordingly, the limitation for filing of reference is to be counted as 06 months from the date of Award as provided under Section 18 subsection (2)(b) of the Act of 1894. It is a matter of record that land owners filed an application/reference before the Land Acquisition Officer on 13.3.1997, within 03 months and 04 days after passing the Award dated 10.12.1996; hence, the application/reference

was well within time, and the contention of learned Additional Advocate General is misconceived and of no avail.

17. Now adverting to another legal aspect of the case, which requires our attention that "*Whether the appellant, after having received awarded compensation without protest, had any lawful right to claim enhancement in compensation?*". It may be mentioned, to begin with, that for the good administration of justice, it is essential that it ought to be not only swift but also fair and for that, the Court must examine the preliminary objections to the claim at the outset because upon declaring them to be valid the Court is relieved of its duty to take further proceedings in the matter, and the parties also stand discharged from further hassle. Mindful of this principle, we considered it prudent to appraise issues No.1 and 3, whereby the Referee Judge had made the appellants under burden to prove that the Suit is not maintainable and barred by law and held that the learned D.D.A has not pointed out the maintainability of the Suit, and he has not produced any law regarding the maintainability of the Suit; therefore, he held that the Suit is very much maintainable. It is a settled principle of law that it is the duty and obligation of the Courts to apply correct law on the well-known maxim that a judge must wear all the laws of the country on the sleeve of his robe and failure of the counsel to advise properly is not a complete excuse in the matter. Therefore, it is the obligation of the Referee Judge to look into the point of maintainability of the suit/reference without there being a failure to argue or produce any law. To understand the consequences of receiving the compensation with or without protest, it is essential to thoroughly read the provisions of Section 31 of the Act of 1894, which is reproduced as under: -

"31. Payment of compensation or deposit of the same in Court.--(1) When the Collector has made an award under section 11-

(a) if the persons interested entitled to compensation and costs (if any) under the Award and the Provincial Government accept the Award and intimate their acceptance in writing to the Collector before the expiry of the period prescribed in sub-section (2) of section 18 for making an application to the Collector for referring the Award to the Court, or in sub-section (3) of the said section for referring the Award to the Court by the Provincial Government, whichever is later, or if the period specified in subsection (2) of the said section for making an application to the Collector or in subsection (3) for referring the Award to the Court has expired and no such application or reference has been made, the Collector shall, before taking possession of the land, tender payment of the full amount of compensation and costs (if any) awarded by him to the persons entitled thereto according to the Award, and shall pay it to them unless prevented by some one or more of the contingencies mentioned in subsection (2);

(b) if the persons interested entitled to compensation and costs (if any) under the Award or the Provincial Government object to the Award and an application has been made to the Collector under subsection (2) of section 18 for referring the Award to the Court or the Award has been referred to the Court by the Provincial Government under subsection (3) of that section, the Collector shall, before taking possession of the land, tender payment of the compensation and costs (if any) awarded by him or the estimated cost of acquisition of such land as determined by the Collector of the district under subsection (1) of section 17, whichever is less, to the persons entitled thereto under the Award and shall pay it to them unless prevented by some one or more of the contingencies mentioned in subsection (2):

Provided that no payment under clause (b) shall be made until the person entitled to compensation furnishes to the satisfaction of the Collector a security for refund of the amount, if any, which may subsequently be found to be in excess of the compensation awarded to him by the Court.

(2) If they shall not consent to receive it, or if there be no person competent to alienate the land, or if there be any dispute as to the title to receive the compensation or as to the apportionment of it, the Collector shall deposit the amount of the compensation and costs (if any) in the Court to which a reference under section 18 would be submitted:

Provided that any person admitted to be interested may receive such payment under protest as to the sufficiency of the amount:

Provided also that no person who has received the amount otherwise than under protest shall be entitled to make any application under section 18:

Provided also that nothing herein contained shall affect the liability of any person, who may receive the whole or any part of any compensation or cost awarded under this Act, to pay the same to the person lawfully entitled thereto.

(3) Notwithstanding anything in this section the Collector may, with the sanction of the Commissioner instead of awarding a money compensation in respect of any land, make any arrangement with a person having a limited interest in such land, either by the grant of other lands in exchange, the remission of land-revenue on other lands held under the same title, or in such other way as may be equitable having regard to the interests of the parties concerned.

(4) Nothing in the last foregoing subsection shall be construed to interfere with, or limit the power of the Collector to enter into any arrangement with any person interested in the land and competent to contact in respect thereof."

18. The respondents in Para No.14 of their application/reference filed under section 18 of the Act of 1894 stated that on 13.02.1997, they were compelled to sign a document/voucher for compensation addressed to the Khairpur Treasury Officer (Exh.15/E) and they signed the said document under protest. Further, Wazir Hussain, one of the land owner respondents and the attorney of the remaining land owners, appeared as Witness No.1 and categorically stated in his examination-in-chief that after passing the Award, they received the amount of compensation under protest. However, a perusal of voucher/receipt (Exh.15/E) shows that nowhere is it mentioned that they received the payment under protest.

19. Contrary to that, the appellants, in their written reply, have specifically stated that the applicants received the compensation as mentioned below on 13.02.1997 with their own free will and consent and without raising objection. To

prove that version DW-2, Hidayatullah was examined, he categorically stated in his examination-in-chief that he produced a copy of the receipt under which the landowners had received compensation and did not raise any objection at Exh.15/E. It is pertinent to mention here that the learned counsel for the land owners neither made any suggestion nor put any question that they had received the compensation under protest in cross examination.

20. It is an established principle of law that a statement of a witness made in his examination-in-chief which is material to the controversy of the case, if not challenged by the other side directly or indirectly in cross examination, then such unchallenged statement should be given full credit and it will be accepted to be true. In this context, the reference may be made to the case law of **Mst. Nur Jehan Begum through Legal Representatives v. Syed Mujtaba Ali Naqvi (1991 SCMR 2300)**.

21. The record further reflects that admittedly, the Award was passed on 10.12.1996, and as per landowners, they received the payment on 13.02.1997, while the application/reference was made by them on 14.3.1997, meaning thereby that the land owners, after receiving the amount of compensation, then filed applicant/reference. Therefore, the underlying wisdom of the provisions of Section 18, read with Section 31 of the Act of 1894, is that the concept of consent and protest cannot go together. Thus, it is essential that whenever a person feels dissatisfied with the amount of compensation determined in the Award, he ought first to raise his protest either by making an application before the Collector asking him to send the reference to the Court for determination of his objections or in the alternative receive the amount of compensation under protest otherwise, it shall be precluded to make any complaint and take out any proceedings.

22. As the land owners had received compensation without protest, so also before filing of the application/reference, therefore, the second proviso to subsection (2) of section 31 of the Act of 1894, reproduced herein above, is fully applicable and constitutes a bar to the land owners' right to claim the reference under Section 18 of the Act of 1894, as they can no longer be treated persons interested. It is well-settled position of law that an award under Section 11 of the said Act, 1894, is in the nature of an offer. That is the reason why sub-section 1 to Section 18 provides that any person interested who has not accepted the award may, by a written application to the Collector, require a reference to be made to the Court. Thus, the condition precedent for filing an application for reference is that the Award should not have been accepted by the person who seeks reference. Sub section (1) of Section 18 of the said Act does not specifically provide that recording a protest while accepting the compensation payable under an Award under Section 11 is a condition precedent for filing an application for reference. The subsection (1) of Section 18 provides that the person having interest who has not accepted the award may apply for reference under Section 18. Therefore, the question whether the claimant who seeks reference under Section 18 has accepted the Award or not depends on the facts and circumstances of each case. It is a matter of record that the landowners accepted the compensation in terms of the award without any protest; therefore, the landowners did not have lawful right to file reference in terms of Section 18 of the Act, 1894. This is a matter which was solely within the jurisdiction of the Collector to determine the question whether a reference should or should not be made. But there is a positive bar to a reference if the amount has been accepted without protest, under Section 31(2), Second Proviso; and in any event, even if a reference is made in ignorance of that provision, Section 20(b), clearly gives jurisdiction to the Court to non-suit the claimant if he has accepted the award without protest, that is, he has accepted the

amount awarded without protest. We see no escape from this conclusion. In this context, the reference may be made to the case of **Govt. of N.W.F.P. and others v. Akbar Shah and others (2010 SCMR 1408)**, wherein it has been held as under:-

"It is established on the record that the respondents/plaintiffs had received compensation as determined by the Land Acquisition Collector through the Award without any protest. The respondents/plaintiffs had no lawful right to file reference under section 18 of the Land Acquisition Act read with sections 30 and 31(2) of the Land Acquisition Act."

23. As already observed above, the reference was not maintainable. Therefore, there is no need to discuss the merits of the case.

24. For the foregoing reasons and exposition of the law, this appeal is accepted, and the impugned judgment dated 07.3.2011 and decree dated 09.03.2011, passed by the Referee Judge, is hereby set aside. Consequently, the reference/suit filed by the land owners is hereby dismissed as not maintainable. Parties to bear their costs.

JUDGE

Faisal Mumtaz/PS

JUDGE