

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

First Civil Appeal No.36 of 1986

*[Land Acquisition Officer (AC) Nawabshah and others v.
Haji Ghulam Nabi and others]*

Date of hearings : 30.11.2023 & 04.12.2023
Date of Judgment : 18.12.2023.

Appellants : Land Acquisition Officer (AC) Nawabshah
& others, through Mr. Allah Bachayo
Soomro, Additional A.G.

Respondents : Haji Ghulam Nabi & others
through Mr. Ali Gohar Baloch,
Advocate.

J U D G M E N T

Muhammad Faisal Kamal Alam, J.- The Appellant-Sindh Government has challenged the Judgment dated 31.05.1986 and Decree of 26.08.1986, handed down by the Court, in Reference No.14 of 1976, enhancing the compensation awarded to the Respondents, through an Award dated 14.11.1975, passed in a land acquisition proceeding in respect of the lands falling in Survey Nos.141, 142, 144, 145, 146, 148, 149, 150, 151, and 152 admeasuring 5–27 acres, situated in Deh 50-Dad, Taluka and District Nawabshah, owned by Haji Ghulam Nabi (Respondent No.1) and Ghulam Muhammad-(Respondent No.2), both since deceased, now represented through their respective Legal Heirs.

2. The above **Subject Land** was acquired by the Appellants after adopting the procedure given in the Land Acquisition Act (1894)-**the Law**, for construction of the Link Road, connecting Sakrand Road with Kazi Ahmed Road via Society Nawabshah. The construction has been completed.

3. The first objection of the learned Additional Advocate General is, that the Reference under Section 18, itself was time barred, as it was filed on 2nd January 1976, against the Award passed on 17.11.1975, which is beyond the period of 30 days as envisaged in Section 18 of the above Law. Contended that Subject Land acquired was not Sikni (residential) and the impugned Judgement has misread the evidence in this regard, because the Urban Property Taxes Challan produced in the evidence were of subsequent dates, when the acquisition was already completed; further elaborated this point, that since Respondents were paying the land revenue, which means the Subject Land had rural status, thus, the above evidence be discarded. Argued that the impugned Judgement is contradictory, because when it was already determined by the learned Court that the status of the Subject Land was not Sikni, then there was no justification to enhance the compensation by Rs.20,000/- (*rupees twenty thousand only*) from the compensation awarded of Rs.39,190/- (*rupees thirty nine thousand one hundred ninety only*).

4. Learned AAG has cited the following Case Law_

1. 2023 SCMR 1005

[Jind Wadda and others vs. General Manager NHA (LM & IS), Islamabad and others].

2. PLD 2016 Supreme Court 514

[Dilawar Hussain and others vs. Province of Sindh and others].

3. 2007 SCMR 1817

[Commandant Indus Rangers and others vs. Zaheer Muhammad Khan]

5. Mr. Ali Gohar Baloch, Advocate for the Respondents has opposed the arguments of learned AAG and partly supported the impugned Judgement. He has referred to his Cross Objections and stated that the compensation should be further enhanced in view of the evidence led; the

undisputed registered Sale Deeds of other lands in the vicinity were produced and never disproved by the Appellants in cross-examination. Contended that neither the Land Acquisition Officer while passing the award, nor the Court while passing the impugned Judgement, has granted any sum towards potential value of the land, proper market value, 6% interest and 15% as envisaged in Section 23 (2) of the above Law; apart from the damage sustained by the Respondents, because of taking over possession by the Appellants and a result they had to change their business and incurred enormous expenses. Requested that present Appeal be dismissed and the enhancement of Rs.20,000/- (*rupees twenty thousand only*) as mentioned in the impugned Judgement should be increased by adding the above components therein.

6. Arguments heard and Record perused.

7. Précis of the Case Law cited by the learned Additional Advocate General is, that burden is on the land owner to support the plea of enhancement of compensation, which can be determined by looking at the value of adjacent in surrounding land. Effect of repealment of Section 28-A of the above Law was that it never existed in the Statute, hence it cannot be granted to the Respondents in addition to the compensation already awarded to them.

8. Point of determination in this Appeal is_

1. *Whether the Reference under Section 18 filed in the Referee Court was time barred?*
2. *Whether evidence produced by the Respondents in support of their plea to enhance the compensation, was correctly appraised?*
3. *Whether the Judgment and Decree is passed within the parameters of the above Law?*

POINT NO.1.

9. Learned Counsel for the Respondents states that no notice under Section 12 of the above Law was issued to the Respondents and they were not informed about the Award. As soon as they acquired knowledge, they filed the Application / Objection to the Award, which was then referred by the Land Acquisition Officer to the Referee Court in terms of Section 18 of the above Law. To the present case, Section 18 (2) (b) applies, which provides a time of six months and hence the Reference is within time.

10. Record perused to evaluate the rival contention of learned AAG and learned Advocate for Respondents. Award was passed on 17.11.1975. Under Section 12 of the above Law, the Collector / Official has to give immediate Notice of his Award to the persons, whose lands have been acquired. Record is silent whether that notice was ever given to present Respondents by the Appellants or not. As per the Correspondence dated 08.01.1976, of the Land Acquisition Officer, Award was objected to by the Respondents vide their Application dated 02.01.1976, which was then referred to the Referee Court under Section 18 of the above Law. Since there is no record produced by the Appellants about notifying the Respondents, therefore, as correctly argued by the learned Counsel for the Respondents, that limitation provided under Section 18 2(b), will be applicable, which is six months. Therefore, Objections to the Award was within time and the Reference under Section 18 was / is not hit by Section 18 of the above Law. Consequently, Point No.1 above is replied accordingly, in favour of Respondents.

POINT NO.2.

11. In the proceeding below, *inter alia*, the Respondents themselves have stated in the pleadings, that rate of the Subject Land acquired, was earlier assessed by the Assistant Commissioner as Rs.25,000/- (*rupees twenty five thousand only*) per Acre, but it was wrongly reduced in the Report of Mukhtiarkar; because Subject Land falls within the urban area, therefore, compensation should be enhanced.

Objections were filed by the Appellants to the above Petition of Respondents in Reference No.14 of 1976.

Issues were framed (*at page-56*), where after evidence was led. On behalf of the Respondents, Hussain Bux (*present Respondent No.12-A*) has testified, whereas, on behalf of the Appellants, Ghulam Qadir, an official from the Office of the Deputy Commissioner deposed.

12. Respondents (*Applicants/Land Owners*) above witness has testified that compensation of Rs.6,960/- (*rupees six thousand nine hundred and sixty only*) per acre was inadequate and contrary to the Reports of officials, which were available in record, including the Sale Deeds of the vicinity, that proves that other lands in the vicinity had fetched a market price of Rs.25,000/- (*rupees twenty five thousand only*) per acre. He has produced in the evidence the Conveyance Deed dated 21.03.1975 as Exhibit 130 about land situated in the same Deh 50-Dad, Taluka and District Nawabshah, (where the Subject Land was / is situated); a Correspondence dated 14.09.1974-Exhibit 107, (this also precedes the date of Award) exchanged between the Assistant Commissioner Nawabshah to the Deputy Commissioner Nawabshah in respect of the Subject Land, wherein it is stated that according to Mukhtiarkar Report, the land is an Urban Land.

Produced a Correspondence from the Office of the Assistant Commissioner dated 06.01.1975 (that is, before passing of the Award) addressed to the Executive Engineer, Roads Maintenance Division, as Exhibit-105, gist of which is that Khatedar / Predecessor-in-interest of the present Respondents were reluctant to accept compensation of Rs.34,050/- (*rupees thirty four thousand fifty only*), for the reason that according to them, the Subject Land is an Urban Property and the compensation was inadequate; in the same Missive, it is stated that the Sale Deeds of the years 1971 and 1973, of other agricultural Lands in the vicinity were considered, showing that the Lands were sold at the rate of Rs.26,000/- per acre. Produced a Correspondence dated 23.05.1975 (Exhibit-133) from the Office of Assistant Commissioner to the Deputy Commissioner, that the former Land Acquisition Officer had demanded funds from the Executive Engineer for acquisition of the land in question at the rate of Rs.25,000/- (*rupees twenty five thousand only*) per acre, which at the relevant date was not transferred. The Assistant Commissioner in his above Correspondence recommended that rate of Rs.25,000/- (*rupees twenty five thousand*) per acre be fixed as compensation, which comes to Rs.1,41,875/- (*rupees one lac forty one thousand eight hundred seventy five*) for acquiring the entire Subject Land.

In his cross-examination, nothing contrary to what the Respondents' witness has deposed, could be elicited by the Appellants' Counsel. No specific questions were put to him about the registered Sale Deed in which value of the property in the same vicinity is mentioned as 0.75 paisa per square ft. and total sale consideration is mentioned as Rs.53,361/- (*rupees fifty three thousand three hundred sixty one only*) for 1-30 Acres. Interestingly, this Sale Deed is about a property, which is sold by one Raees Muhammad to Post Master General, Government of Pakistan, (Saddar Circle), that is, it is

a transaction not between the two individuals, but by a Land Owner and the Federal Government, in which the above amount is paid, *inter alia*, attracting the statutory assumption that the official acts were done in a regular manner. Similarly, the authenticity of the official Correspondence produced and exhibited above has not been questioned either in the cross-examination or in the deposition of the Official Witness, the above named-Ghulam Qadir.

The Official Witness has testified that the compensation was awarded to Respondents after obtaining Reports from the Revenue Officials and the land was an agricultural land and not Sikni, as claimed by the Respondents. In his cross-examination, he has admitted that Sub-Registrar was not contacted for evaluation of Property or Sale Deeds in respect of the other lands situated in vicinity. Did not dispute the suggestion that valuation of property was not called from the Excise and Taxation Department and there is no document on the basis of which Mukhtiarkar had given his Report about the valuation. No notice was served before considering the objections of the Respondents, nor they were present when the Award was considered.

13. The above Documents / Exhibits, mentioning the value of rupees twenty-five thousand (Rs.25,000/-) per acre of the other lands in close proximity of the Subject Land has been proved by the Respondents' Witness. **Secondly**, the official record, including the above sale deed, attracts the presumption of genuineness as envisaged in Article 90 and 92 of the Qanun-e-Shahadat Order, 1984. Consequently, Respondents have proved their case that compensation awarded was inadequate. Point number two is answered in the affirmative; that is, the learned Referee Court has properly appraised the evidence and has correctly enhanced the

compensation to Rs. 20,000/- (*rupees twenty thousand*) per acre with 15% compensatory acquisition charges.

POINT NO.3.

14. The cross objections of Respondents partly questioning the impugned Judgment to the extent of amount of compensation awarded has been considered. No additional compensation can be given as claimed under Section 28-A of the above Law, because the same was repealed by the Provincial Legislature by the Act No. XVI of 2010, so also in view of the Judgement cited by the learned AAG, handed down in the case of Dilawar Hussain (*supra*, PLD 2016 Supreme Court 514). In view of the above discussion, the Cross Objections are untenable and cannot be accepted.

15. No ground for the interference can be successfully made out by the Appellants' Advocate.

16. The upshot of the above discussion is that the present Appeal is dismissed alongwith the Cross Objections, and the impugned Judgment is maintained. Appellant should immediately pay the outstanding amount of compensation to the Respondents as directed in the impugned Judgment, within four weeks from today.

JUDGE

Shahid