

Judgment Sheet**IN THE HIGH COURT OF SINDH CIRCUIT COURT LARKANA****Civil Revision No.S-11 of 2000**

Applicants : Executive Engineer Roads Division
Dadu and others
through Mr.Liaquat Ali Shar,
Additional Advocate General

Respondents : Suresh (deceased) through L.Rs
Through Mr. Atta Hussain Chandio
Advocate

Date of hearing : **18.5.2023**

Date of Decision : **19.7.2023**

J U D G M E N T

ARBAB ALI HAKRO, J.- Through this Civil Revision Application under Section 115, the Civil Procedure Code 1908 ("**the Code**"), the applicants have impugned judgment 12.4.2000 and decree dated 19.4.2000 passed by Additional District Judge Mehar ("**the appellate Court**") in Civil Appeal No.38 of 1998, whereby, the judgment dated 21.10.1998 and decree dated 28.10.1998, passed by Senior Civil Judge, Mehar ("**the trial Court**") in F.C Suit No.34 of 1990, through which the Suit of the respondent was decreed been maintained by dismissing the Appeal.

2. It is essential to note that the plaintiff's Suit for damages and compensation of Rs. 495,656/- was previously decreed. The applicants/defendants have submitted an appeal against the decree mentioned above to this Court. In response to the respondent's application, this Court issued an order to amend the plaint under the applicant's request. Furthermore, this Court had directed that the defendants be granted an opportunity to file an amended written statement. After that, amended issues be framed, and the Suit will be decided. As a

result, the respondent filed an amended plaint, wherein a prayer of possession of the suit land in question was included.

3. Facts, in brief, are that the respondent/plaintiff has filed a Suit seeking monetary restitution amounting to Rs. 498,38762/- from the applicants/defendants, asserting ownership of Survey No. 353/2 located in Deh Radhan Taluka Mehar ("**the suit land**"). In April 1987, applicant No. 1 and applicant No. 5 undertook the construction of a bridge/approach road over Radhan Minor along with Mehar Radhan Road on a suit land equivalent to 17,424 Square Feet, as indicated by the survey number mentioned above. It should be noted that the applicants took possession of the land without legal authorization or consent from the respondent. The Suit land contained a standing crop, and the applicants did not initiate proceedings under the Land Acquisition Act to acquire the Suit land. Hence, it can be deduced that Applicant No. 5, together with their subordinate staff, engaged in the unlawful and unauthorized act of encroaching upon and occupying the Suit's land and constructing a Bridge thereon without obtaining prior consent from the respondent. Furthermore, it is asserted in the plaint that on 16.10.1988, the respondent issued a Legal Notice to the applicants through counsel, demanding compensation amounting to Rs. 2,43,93600, calculated at a rate of Rs. 14/- per square foot. Applicant No.1 promptly responded to the legal notice through a letter dated 10.11.1998, wherein he requested the respondent's presence at his office to engage in a private resolution of the matter at hand. In response, the respondent made two visits to his workplace, yielding no successful

outcomes. The respondent subsequently issued another notice on 02.02.1989, notifying applicant No. 1 of the circumstances surrounding utilizing the Suit land. In response, the applicant No. 1 replied on 08.02.1989, devoid of any professional inclination, citing that the matter had been submitted to Superintendent Engineer for a decision, with intentions to inform the respondent accordingly. However, because of the inaction that transpired, the respondent subsequently initiated legal proceedings, wherein it was requested that the applicant No. 1 & 5, recognized as trespassers, be compelled to return possession of the Suit land to the respondent. Additionally, it was requested that damages and mesne profit from March 1987 be awarded to the respondent.

4. Upon being served with the summons, applicant No. 1 proceeded to submit his Written Statement, wherein he asserted that in the year 1987, in addition to the parcel of the suit land under litigation measuring 00-16 Ghuntas, they also utilized other tracts of land identified as Survey No. 347/1, 2 & 5 and Survey No. 348/4, all of which were situated within the same Deh. The suit land in question had no cultivated crop at that time. According to the provided information, it can be asserted that the Khatedars of the land gave their oral consent. As a result, no formal procedures were undertaken to obtain the necessary legal authorization for acquiring the suit land through alternative provisional laws. The construction of the Bridge over the road was deemed urgent due to the potential traffic closure along the main road connecting Mehar to Radhan Railway Station. According to the provided information, it is asserted

that the respondent's request for compensation is deemed unwarranted. Conversely, the Government is prepared to offer compensation for the suit land utilized for the Scheme at the prevailing market value per acre in the said Deh. It should be noted that the respondent's demand of Rs. 14/- per square foot is not deemed justified as the Suit land is too away out of the limits of Radhan Town.

5. From the divergent pleadings of the parties, the trial Court formulated the following issues:-

- i. Whether the defendants had acquired the land according to law?
- ii. Whether the plaintiff had given oral consent for constructing the road and the Bridge on the Suit land, and if so, what is its effect?
- iii. Whether the defendants had any time-offered compensation, and it was refused by the plaintiff? If so, what is the effect?
- iv. Whether the defendants are trespassers and the plaintiff is entitled to possession, damages and mesne profits for the Suit land?
- v. What is the market value of the Suit land?
- vi. To what amount plaintiff is entitled from the defendants?
- vii. Whether the Suit is not maintainable?
- viii. What should the decree be?

6. Both parties examined themselves and produced relevant documents supporting their claims. After examining the evidence produced by the parties and hearing their

respective submissions, the respondent's Suit was decreed as prayed with no order as to costs.

7. The above judgment and decree of the trial Court were then impugned by the applicants by an Appeal, and through the impugned judgment, the judgment of the trial Court has been maintained, and the Appeal has been dismissed.

8. At the very outset, the learned Additional Advocate General for the applicants submits that the Suit is barred under Section 79 of the Code, as the respondent did not sue the Province of Sindh through the concerned Secretary and the relief of possession was not claimed in the earlier plaint. Subsequently, it was added to post-remand proceedings. Otherwise, such relief is barred under Order II R 2 of the Code. He further submits that the status of the suit land is agricultural. The trial Court illegally computed the area of the Suit land in Square Feet and awarded compensation, and the appellate Court failed to consider that aspect of the case. He finally submits that the Judgments and Decrees of both the Courts below are suffering from misreading and non-reading of evidence, and the respondent failed to produce tangible evidence and decreed the Suit based on the weakness of the applicants. In support of his contention, he relied upon **2004 SCMR 1001**.

9. Conversely, learned counsel for the respondent submits that the applicants admitted ownership of the respondent in their written statement and have illegally and unlawfully occupied the Suit land without adopting legal and lawful procedures under the Land Acquisition Act. He urged

that procedure for acquiring any land in the public interest Government ought to adopt the procedure envisaged in the Land Acquisition Act, which is mandatory in nature and the respondent's right to be protected under Article 24 of the Constitution of the Islamic Republic of Pakistan, 1973. He finally submits that both the Courts have properly considered the evidence on record and passed the impugned judgment and decrees under the law. In support of his contention, he relied upon **2021 CLC 103, PLD 1994 S.C 291, 1997 SCMR 1139, 2006 CLC 1641 and 1975 SCMR 471.**

10. The arguments have been heard at length, and the available record has been carefully evaluated with the able assistance of the learned counsel for the parties. I have also scrutinized the exactness and meticulousness of the judgments and decrees of both the lower Courts with a fair opportunity of the audience to the learned counsel for the applicants to satisfy me as to what has acted by the Courts below in the exercise of their jurisdiction either illegally or with material irregularity.

11. Upon examining the impugned judgments and decrees reveals that all the aspects of the case have been considered in their actual perspective by both the Courts below by minutely evaluating the pleadings of the parties and the evidence led by them, and by giving cogent reasons in respect of the findings contained therein. So far as the contention of the learned AAG to the extent of non-maintainability of the Suit being barred under Section 79, of the Code is concerned, it is well-settled principle that the legislative intent and the purpose

of the operation of this provision is for the State, or the province to be adequately represented and defended through the impleadment of the proper department. This purpose cannot be achieved if the concerned and proper department is not made a party to the suit, nor can it be achieved if the State, or Province, are not named in the suit. However, where the Government was impleaded albeit with the wrong description, the provisions of Section 79 of the Code amount to mere nomenclature, which, if not followed, do not render the suit not maintainable. The rationale being that, as mentioned above, the object and purpose of Section 79 of the Code is for the Government to be properly represented and defended. The same purpose is still achieved where the Government itself proceeded with the Suit and remained alive to all the proceedings of the Suit, as in this case. While such misdescription is a contravention of section 79 of the Code, it would not be fatal to the case when it is indeed the Government who was properly represented and proceeded with the entire proceedings of the Suit. Reference may be made to the Case of **Province Of Punjab through Secretary Excise and Taxation Department, Lahore and others v. Murree Brewery Company Limited (MBCL) and another (2021 SCMR 305)**.

12. The next contention of the learned AAG to the extent that the relief of possession was not claimed in the earlier plaint. Subsequently, it was added to post-remand proceedings. Otherwise, such relief is barred under Order II R 2 of the Code, has also no force at all. Once the Court permitted the party to amend the plaint for addition of the relief of

“Possession”, then the Suit of the respondent cannot be said to be barred under Order II Rule 2 of the Code. Moreover, the applicants had not challenged the Order whereby amendment was allowed; therefore, the said Order attained finality.

13. The learned counsel representing the applicants has been unable to identify any flaws or violations of law in the consistent conclusions reached by the Courts below, nor any instances of misinterpretation or failure to consider evidence by said Courts. The suit land in question was obtained by the applicants/Government functionaries for public use, and it is evident that the applicable laws regarding the acquisition of said land were not followed and were violated. The land acquisition process should have adhered to the obligatory stipulations outlined in the Land Acquisition Act of 1894, and any failure to comply with these mandatory provisions constitutes a violation of the landowner's fundamental rights. It is imperative to note that the respondent has been unjustly deprived of appropriate remuneration and the privilege of utilizing the Suit land under the provisions outlined in Article 24 of the Constitution of the Islamic Republic of Pakistan, 1973. It appears that the applicants/Government have unlawfully taken possession of the suit land, and there is no disagreement regarding the ownership rights of the respondent. The settled legal doctrine stipulates that the concurrent factual determinations are not subject to disruption within the Revisional jurisdiction because the above concurrent findings of both the Courts below do not require any interference by this Court. The case law relied upon by the

learned AAG is distinguishable from the facts and circumstances of this matter.

14. For the foregoing reasons, the findings of the Courts below are not appearing to be suffering from jurisdictional defect, nor is it established that the same suffer from any misreading or non-reading of evidence, which may have caused a miscarriage of justice. Therefore, the instant Revision application is devoid of merits, which is accordingly dismissed.

J U D G E