

# IN THE HIGH COURT OF SINDH AT KARACHI

Civil Reference No. 01 of 1986

[Sujawal & others .....v..... Deputy Commissioner Karachi East]

Dates of Hearing : 13.11.2023 & 04.12.2023

Applicants : Mr. Mehmood Anwar Baloch, Advocate for claimants.  
Mr. Muhammad Hassan Chandio, Advocate for claimants.  
Mr. Zulfiqar Ali, Advocates for Claimants. Mr. Syed Raza Mamnoon, Advocate.

Respondents : Mr. Faheem Shah, Advocate for Port Qasim Authority.  
  
Mr. Kafeel Ahmed Abbasi, Addl. A.G.

## JUDGMENT

**Zulfiqar Ahmad Khan, J:-**The respondent No.1 moved a reference to the learned Registrar of this Court vide letter dated 20.04.1986 forwarding applications made under Section 18 of the Land Acquisition Act, of 1894 ("Act, 1894") for judicial adjudication.

2. It is considered expedient to illustrate here that originally 70 claimants were referred by the respondent No.1 through his letter dated 20.04.1986 forwarding their applications under Section 18 of the Act, 1894 and as the time went by several claimants left this mortal world and their legal heirs were also arrayed and finally in deference of the Order dated 08.09.2016 amended title was filed according to which 112 claimants are in arena and they will be collectively referred as claimants instead of mentioning their names in this edict.

3. Brief facts of the case are that the claimants owned land earmarked in Survey numbers of Dehs Pipri, Bakran, Gangiaro and

Rehri total measuring 1010-14 Acres, their grievances are that an area of 1010-14 Acres was acquired under the Land Acquisition Act, 1894 ("Act of 1894") for public purpose for establishment of Port Muhammad Bin Qasim. Proceedings for the determination of compensation were initiated which were attended by the applicant upon receiving notices under Section 9 of the Act, 1894 (available at pages 617 to 691 of the Court file). The claimants filed their claim demanding value of land upto Rs.16 to Rs. 200 per square yard (page 693 of the Court file). Having heard the claimants and upon alleged completion of procedural formalities, an Award was passed under Section 11 of the Act of 1894 on 18.02.1980 (available at page 55 of the Court file) whereby a fixed compensation of Rs.18000/- per acre was granted for Deh Bakran and Deh Pipri, whereas, a fixed compensation of Rs.20,000/- per acres was granted for Deh Rehri and Deh Gangiaro and said compensation amount was received by the claimants by recording their protest, thereafter, claimants moved applications under Section 18 of the Act, 1894 to respondent No.1 for forwarding the same before this court for proper adjudication (page 65 to 599).

4. Record also shows that on 31.01.2000, issues proposed by the learned counsel for the claimant were adopted and on 26.04.2000 Mr. Feroz Ali Allana, Advocate was appointed as Commissioner for recording of evidence. The issues adopted by this court are as under:-

"1. Whether the claimants have been paid compensation according to law?

5. Mr. Mehmood Anwar Baloch, learned Senior Counsel presented the case of claimants before the Court. Main thrust of his arguments

was that the claimants have not been paid the compensation in lieu of their lands acquired for the public purpose. He added that the claimants were only paid meager amount of Rs.18000/- per Acre which is not sustainable as the subject land was cultivating land where the claimants were cultivating different crops but the amount paid was not in accordance with law. He vociferously argued that the Acquiring Body acquired the land for public purpose and the subject land had been handed out to the Port Qasim but the Port which only used a portion of land is commercially granting lease to private industries at a very exorbitant rate but the subject land was acquired only for public purposes, therefore, the act of selling out the subject land on the part of Port Qasim Authorities is illegal. He further reiterated that the Port is selling out the subject land, which was acquired for public purpose, is illegal, therefore, the land acquired from the landowners/claimants be returned to them rather commercially selling the same at an exorbitant rates. He vociferously argued that the Acquiring Body could well acquire any property of the citizens under the Act of 1894 but at the same time it is also bound by the said Act to compensate the owners according to law, while taking into consideration the factors and potentiality of the land as settled by law and elaborated by the Higher Courts. While summing up his submissions, he submitted that neither accurate compensation was awarded to the claimant nor any statutory allowance was awarded to them by the Acquiring Body but the Port is selling out the subject land to the Industrialist, therefore, the un-used land be returned to the claimant as the public purpose of establishing Port has been accomplished. He lastly contended that the claimants had

also claimed compensation for their trees, wells, ponds and cattle areas even the same was also not provided to them hitherto, however, the Acquiring Body at the time of passing Award dated 18.02.1980 held that compensation in this regard will be granted, but no action on the part of the Acquiring body had been initiated so far, therefore, while concluding his submissions, he prayed that un-used lands reassigned to the claimants.

6. Learned counsel for the PQA argued that the claimants have received their claims which fact was admitted by them in their testimony. He further contended that the claimants had also received statutory allowance of 15% at the actual amount which fact was also admitted by them in their testimony. To rebut the contention of reassignment of subject land to the claimants, he contended that land once acquired for public purpose cannot be reassigned at all. He further stated that the claimants who ventured into the witness box categorically admitted in their testimony that they failed to introduce on record any fact that the rate of subject land was Rs.20 per sq. yard, therefore, the an accumulated sum of Rs.20,000/- Per Acre was paid by the PQA and no claim of compensation arises, therefore, the subject reference be dismissed.

7. Learned AAG took the stance that the applicant has already received full and final compensation, therefore, the reference made by them be dismissed on this score alone, however, he further contended that legality of the land acquisition cannot be challenged under Reference application moved under Section 18 of the Act. He lastly contended that the no evidence was submitted by the

claimants as to the value of the subject land and while concluding his submissions, he adopted the submissions of the learned counsel for the PQA.

8. Heard the arguments, perused the record. While acquiring the land of any person, an Acquiring Body is required to consider the market value for providing compensation in respect of acquired land as prevalent on the date of publication of notification under Section 4 of the Act of 1894. Courts have settled certain guidelines and provided methodology with regard to determination of market value which are reproduced hereunder<sup>1</sup>:-

- a) The court has to treat the Reference as an original proceedings before it and determine the market value afresh on the basis of the material produced before it.
- b) The claimant is in the position of a plaintiff who has to show that the price offered for his land in the award is inadequate on the basis of the material produced in the Court. Of course the material placed and proved by the other side can also be taken into account for this purpose.
- c) The market value of the land under acquisition has to be determined as on the crucial date of publication of the Notification under Section 4 of the Land Acquisition Act (date of Notifications under Sections 6 and 9 are irrelevant).
- d) The determination has to be made standing on the date line of valuation (date of publication of notification under S. 4) as if the valuer is a

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<sup>1</sup> [Chimanlal Hargovinddas vs. Special Land Acquisition Officer, Poona and Another](#) (1988) 3 SCC 751.

hypothetical purchaser willing to purchase land from the open market and is prepared to pay a reasonable price as on that day. It has also to be assumed that the vendor is willing to sell the land at a reasonable price.

- e) In doing so by the instance method, the Court has to correlate the market value reflected in the most comparable instances which provides the index of the market value.
- f) Only genuine instances have to be taken into account (sometimes instances are rigged in anticipation of acquisition of land).
- g) Even post notification instances can be taken into account (1) if they are very proximate, (2) genuine and (3) the acquisition itself has not motivated the purchaser to pay higher price on account of the resultant improvement in development prospects.
- h) The most comparable instances out of genuine instances have to be identified on the following considerations:
  - Proximity from time angle
  - proximity from situation angle
- i) Having identified the instances which provides the index of market value, the price reflected therein may be taken as the norm and the market value of the land under acquisition may be deduced by making suitable adjustments for the plus and minus factors vis-a-vis land under acquisition by placing the two in juxtaposition.
- j) A balance sheet of plus and minus factors may be drawn for this purpose and the relevant factor may

be evaluated in terms of price variation, which a prudent purchaser would do.

- k) The market value of the land under acquisition has thereafter to be deduced by loading the price reflected in the instance taken as norm for plus factors and unloading it for minus factors.
- l) The exercise indicated in clause (i) to (k) has to be undertaken in a commonsense manner which a prudent man would do. Some of the illustrative (not exhaustive) factors may include:—

#### PLUS FACTORS

- Smallness of size
- Proximity to a road
- Frontage on a road
- Nearness to developed area
- Regular shape
- Level vis-a-vis land under acquisition
- Special value for an owner of an adjoining property to whom it may have some very special advantage.

#### MINUS FACTORS

- Largeness of area
- situation in the interior at a distance from the road.
- Narrow strip of land with very small frontage compared to depth
- Lower level requiring the depressed portion to be filled up
- Remoteness from developed locality
- Some special disadvantageous factor which would deter a purchaser

- m) The evaluation of these factors of course depends on the facts of each case. There cannot be any hard and fast or rigid rule. Common sense is the best and most reliable guide. For instance, take the factor regarding the size. A building plot of land for viz is 500 to 1,000 sq. yds. cannot be compared with a large tract or block of land that is

10000 sq. yds. or more. Firstly while a smaller plot is within the reach of many, a large block of land will have to be developed by preparing a layout, carving out roads, leaving open space, plotting out smaller plots, waiting for purchasers (meanwhile the invested money will be blocked up) and the hazards of entrepreneur. The factor can be discounted by making a deduction by way of an allowance at an appropriate rate ranging approx between 20% to 50% to account for land required to be set apart for carving lands and plotting out small plots. The discounting will, to some extent, also depend on whether it is a rural area or urban area, whether building activities are picking up, and whether waiting period during which the capital of the entrepreneur would be locked up, will be longer or shorter and the attendant hazards

n) Every case must be dealt with on its own facts bearing in mind as these factors as a prudent purchaser of land in which position the Judge/Jurist must place himself.

o) These are general guide-lines to be applied with understanding informed with common sense.

9. Now, let's examine the evidence and the material produced by the claimants and respondents, taking into consideration the above touchstone criterion.

10. M/s. Raees Tota Khan, Khuda Dino Shah, Abdul Razzak, Sh. Nasim Ahmed appeared into witness box as claimants and they were subjected to cross-examination. Mr. Arbab Ali Shaikh, Deputy Manager, PQA ventured into witness box on behalf of PQA. The said witness was also subjected to the test of cross-examination. Learned



counsel for the claimants exercised his all professional abilities to shatter the confidence of the witness. It is considered expedient to reproduce the relevant excerpt of the cross-examination of PQA's witness to decide the controversy at hand and the same is delineated hereunder:-

**"It is correct to suggest that P.Q.A. is leasing land to public and private sectors for establishment of industry.**

**The allotment of land in public and private sectors are against the consideration and it is correct that by allotting the land to P.Q.A has generated income.**

**It is correct to suggest that the Deh Jorgi and Deh Chandio are situated in the vicinity of land acquired for P.Q.A.**

**It is correct that land acquired by P.Q.A. can be used for Industrial purpose.**

**It is correct that before leasing out of land to private and public sector we have not asked the residents of the area to acquire the surplus land."**

11. It is gleaned from appraisal of the foregoing that the subject land acquired for public purpose being sold out commercially by the acquiring body i.e. PQA to the Industrialists. The witness of the PQA admitted as apparent from foregoing that the PQA is leasing the land to public and private sectors for establishment of industries. He further admitted that the PQA is allotting the land against the consideration which was acquired from the claimants for public purposes only. He went on to admit further during the course of cross-examination that the PQA does not have any sanction for leasing out the acquired land to the private sectors and that the PQA

before leasing out the subject land to private sectors had not asked from the residents of the area to acquire the surplus land.

12. It has been unearthed that the land acquired for public purpose is being sold by the PQA against very high consideration and the said fact was also admitted by the representative of PQA during the course of his testimony. Learned counsel for the claimants during the course of arguments articulated that the subject land be reassigned to the claimants instead of selling it out commercially and he requested that an inspection be carried out to unearth the truth, thereafter, on 12.12.2022 following order was passed by this Court:-

“Reports have been filed by both sides, which are taken on record. With regards to the details of the land of the Khatidars of four different Dehs namely Gangiario, Rehri, Bakram and Pipri, where counsel for PQA was directed to bring documents alongwith the maps to show that the land acquired from these Khatidars has been fully utilized by the respondent PQA for the intended purposes, counsel seeks more time. While time is granted, however a proposal has surfaced that the subject exercise of the current land use of these Khatidars’ lands having various survey numbers falling in the abovementioned four Dehs can also be conducted through the Survey Superintendent, Karachi alongwith concerned Revenue Officer being Assistant Commissioners (Headquarter) as well as concerned Mukhtiarkars in the presence of the official(s) of the PQA as well as one representative of the Khatidars from each of the Dehs as well as the counsel for the claimants Mr. Mehmood Anwar Hussain Baloch, and the exercise to be supervised by Mr. Faisal Rashid, Additional Registrar (Protocol) of the High Court of Sindh. Order accordingly. Let the report be filed within four weeks alongwith maps and photographs of the land use and any construction raised thereon in respect of each of the survey numbers in question having been acquired by PQA from the private Khatidars.

With regard to the cost of conducting such survey, Court has been informed that on the Court’s directions this cost could be minimized.

Accordingly, the cost is fixed at Rs.500,000/- (Rupees Five Lac) payable by the POA is hereby affirmed. Concerned Assistant Commissioner also confirms that original files dating back 1970s have not been traced out to show as if the present applicants received the compensation under protest or not. Considering age old records and the facts that the Khatidars are still agitating their claims, tentatively no other view can be taken, however, the concerned official to continue to look for the original records.

With regard to the payment of compensation in respect of crops, trees, walls, bunds, warras and animals, Court has been informed that report dated 04.06.1985 was prepared by the Assistant Commissioner, East detailing amounts payable on these heads and the same was forwarded to the Deputy Commissioner(East) Karachi, however, there is no document to prove that the said report translated into a proper Award and any compensation was actually paid to the Khatidars on this account. Counsel for the POA however points out to page 21 of the compliance report of POA to show that a cheque bearing No.724614 dated 17.06.1985 was handed over to the Deputy Commissioner (East) Karachi in this regard. Learned counsel seeks time to find out details of the payments so transmitted to the office of the Deputy Commissioner. Granted till the next date of hearing, as the officials present deny that any such cheque was received by the Commissionarate."

13. The Notification under sections 4, 5 and 6 of the Act clearly specify the purpose of acquisition as "establishment of Port Muhammad Bin Qasim". Notwithstanding acquisition of land for the construction of "Port Muhammad Bin Qasim" acquisition was solely for public purposes defined in Section 3(f) which does not conclusively define or limit the scope of public purpose. The term "public purpose" thus has to be used in an elastic sense so that its true importance is appreciated. The inclusive definition of public purpose in section 3(f) not being conclusive or useful in ascertaining the ambit of that expression, which may vary from one particular set of facts

and circumstances to another such set. Broadly speaking the expression public purpose would however, include any purpose in which the general interest of the community as opposed to the particular interest of individuals is directly and vitally concerned. It has been reiterated time and again that public purpose is bound to vary with the times and the prevailing conditions in a given locality and therefore, it would not be a practical proposition even to attempt comprehensive definition of it. It is because of this that legislature has left it to the concerned Government to decide what is public purpose and also to declare the need of a given land for public purpose. Public purpose necessarily implies a purpose which is to benefit the public in general and not private persons' commercial interests. During course of arguments, learned counsel for the claimants pointed out that the land acquired from the claimants had not been utilized rather it is being sold commercially by PQA at an exorbitant price and a significant chunk of the acquired land had already been sold out by PQA. Many claimants were present in Court introduced on record that their land was agricultural in nature which was acquired for public purpose, however, the PQA is selling their land commercially to the Industries without any landuse change, therefore, they candidly entreated that their land be reassigned to them rather than selling it out.

14. For full understanding of the expression "public purpose", it is considered expedient to reproduce the same hereunder:-

"Section 3(f) the expression "Public Purpose" includes the provision of village-sites in districts in which the Provincial Government shall have declared by notification in the official Gazette that

it is customary for the Government to make such provisions.”

15. The expression “Public Purpose” has been discussed by the Hon’ble Supreme Court in the case of Fauji Foundation and another v. Shamimur Rehman (PLD 1983 SC 457) and it would worth to reproduce here the relevant excerpt of the edict hereunder:-

The expression “Public Purpose” has no precise and rigid meaning except that it should have the criterion of benefit or advantage to the public as distinguished from the private interest of an individual.

Conceptually the expression “public purpose” has also the same connotation and one fails to see why it should not be taken to be included within the concept of public welfare, which, is a broader expression and includes within it ambit both “public use” and “Public purpose”. This wider interpretation is given because of the changing times, state of society and its needs. However, the basic requirement nonetheless remains, that is, the general interest of the community as distinguished from the private interest of an individual.”

16. A bare scrutiny of the provisions of the Land Acquisition Act would show that the decision that land is required for public purpose is the subjective decision of the government.

17. Apart from above, vide this Court order dated 12.12.2022 an exercise was carried out to ascertain the correct position as well as the contention raised by the learned counsel for the claimants. A survey was carried out in Dehs Pipri, Bakran, Gangiaro and Rehri and the crux of the survey reported by the Survey Superintendent and Mukhtiarkars of the area is as under:-

Statement showing the details of Survey Numbers acquired by Port Qasim Authority in Deh Ghanjiaro, Taluka Ibrahim Hyderi

Survey Nos.	Company operating.
01	Pak Electron Private & National Kanto & Mehran Highway.
02	Indus Motor Company & Mehran Highway
03	Gamaluxx Factory & Road & Bin Qasim Association of Trade & Industry.
04	Agility Port Qasim Ware House
05	Indus Motor Company & Mehran Highway
06	Shakoor and Company
07	Pipco Pumping Station & Road & Boundary Wall
08	Universal Cable Ltd. & Modern Terminal & Pak Petro
09	Bulley Shah Packing Ltd. & Road & Open Plot.
61	Platinum Pharmacel & High Tension Line & Mehran Highway
69	Oad China Horbar & United Glipsim & boundary Wall
70	Open Plot & Road
74	A.R Industry

Statement showing the details of Survey Numbers acquired by Port Qasim Authority in Deh Bakran, Taluka Bin Qasim

Survey Nos.	Company operating.
11	Railway Line & Road & bushes in open plot
12	Maersk & Company & Railway Line & Open Plot
13	Maersk Container warehouse
14	Railway Line & road & Open Plot
18	Railway line & Road

19	Road & Railway Line & Indus Godam & boundary Wall
20	Asif Rice Mill & Barkat floor Mill & W-44 Godam
21	W-44 Godam & Road & Boundary Wall
22	North Western Industry Zone Port Qasim Trade
23	Orient Energy Warehouse & Road & Interial Unit & Parko Well & Boundary Wall
24	Sunridge Floor Mill & Ware House & Open Plot
25	Boundary Wall & Shake & Steel Mill
26	Boundary Wall & Steel Mill
27	Boundary Wall & Steel Mill
51	Ware House
52	Maersk Container Godam
55	Thal Bashuko Pakistan & Maersk warehouse
56	Warehouse
57	Hamza Floor Mill & Road
58	Floor Mill under construction

Statement showing the details of Survey Numbers acquired by Port Qasim Authority in Deh Pipri, Taluka Bin Qasim

Survey Nos.	Company operating.
01	Textile City
02	Textile City
03	Road and Textile City
04	Road and Textile City & Ware house
05	Road and Textile City & Ware house
06	Road and Textile City & Warehouse

07	Road of Textile City
08	Boundary Wall & Road & bushes
09	Road & Open plot
10	Spring Adisible Company & Road & open plot
11	Kosar Oil Mill & Road & Open Plot
12	Open Plot
13	M.A Oil Mill
14	Boundary & Open Plot
15	Boundary & Open Plot
16	F.F.B.L
17	F.F.B.L
18	F.F.B.L
19	F.F.B.L
20	F.F.B.L & Ride Mill
21	M.M. Kanto
22	Rice Mill
23	Boundary wall & Road
24	F.F.B.L & road
25	F.F.B.L & Sumra Food & Road
26	Rice Mill godam & road
27	Road & F.F.B.L
28	Road F.F.B.L
29	Road & Vacant Land
30	Road & Vacant Land
31	Road & Vacant Land
32	Road & Vacant Land



33	Road & Vacant Land
34	Road & Vacant Land
35	Paki Tex Mill & Vacant Area
36	Road & Open plot
37	Vacant Area
38	SGUA Industries & Road
39	Vacant Area
40	Vacant Land
41	Vacant Land
42	Vacant Land
43	Vacant Land
44	Vacant Land
45	Vacant Land
46	Vacant Land
47	Vacant Land
48	Vacant Land
49	Vacant Land
50	Vacant Land
51	Vacant Land
59	Ghani Chemical Ltd. Unit 02
60	Stell Mill & Port Qasim
61	Lare area in Steel Mill & Some area is in port Qasim
74	Vacant Land
101	Vacant Land
104	Textile City
110	Spring Company & Road

111	Boundary Wall & Road & Open Plot
112	Textile City
113	Road & Vacant Area
114	Road & Vacant Area
115	Textile City
116	Road
118	Textile University Institute
119	Textile University Institute
121	Textile City
122	Some area in Textile city & Some area is out of Port Qasim.

18. It is gleaned from appraisal of the foregoing that in Dehs Pipri, Bakran, Gangiario and Rehri from where the land was acquired from the claimants have either been sold out commercially (as admitted by the witness of the PQA) or lying vacant as per report of the Survey Superintendent. The concerned Mukhtiarkars i.e. Ibrahim Hyderey and Bin Qasim also went on to report the said fact which strengthen the stance of the claimants that the PQA is selling out the land commercially acquired by them for public purpose.

19. It does not quench thirst of a judicial mind that how land acquired for public purpose could be leased out and sold, the same as admitted by the witness of the PQA namely Mr. Arbab Ali Shaikh, Deputy Manager, PQA, who went on to admit that the PQA never asked the claimants or residents of the area to re-purchase the surplus land before leasing out the same to industrialists, and it would be considered expedient to illustrate the relevant excerpt of

the cross-examination of said witness hereunder:-(available at page 343 & 345 of evidence file)

"It is correct to suggest that P.Q.A. is leasing land to public and private sectors for establishment of industry.

The allotment of land in public and private sectors are against the consideration and it is correct that by allotting the land to P.Q.A has generated income.

It is correct that land acquired by P.Q.A. can be used for Industrial purpose.

It is correct that before leasing out of land to private and public sector we have not asked the residents of the area to acquire the surplus land."

20. In the territory of Azad Jammu and Kashmir the similar situation arose in the case of Shahid Sharif & others v. Azad Jammu & Kashmir Government & others (2017 YLR 746) when the land was acquired by the acquiring body for public purpose but it was later on sold commercially. The claimant therein litigated the matter and the same was contested upto the AJK Supreme Court. The AJK Supreme Court having examined the record and proceedings as well as submissions of the learned counsel appearing for the parties held that if the acquired land wholly or portion of it thereof remains unutilized, the same cannot be sold out commercially and be reverted back/reassigned to its original owner. It would be pertinent to reproduce the relevant constituent of the said edict hereunder:-

6. It may be observed here that the property acquired for the public purpose vests in the President of Azad Jammu and Kashmir and the same cannot be transferred without following the prescribed legal manner and mode, whereas, in the instant case the process adapted for transfer of the land which was duly acquired for Sericulture

Department, is not in accordance with law and the same cannot be given the legal cover. This Court has time and again held in numerous pronouncements that if the land acquired for the public purpose is utilized accordingly and some land remains unutilized the same can be used for any other public purpose, however such public purpose should be reflected from an approved scheme of the Government. If the acquired land wholly or portion of it thereof remains unutilized, the same shall be reverted back to its original owner in due course of law. However, the proposition in the case in hand is slightly different as this is not a case of the Government that some portion of the land is left unutilized and they intend to utilize the same for another public purpose. This is a case of transfer of a portion of the land which was acquired for Sericulture Department. If such situation arises, then section 52-A comes into operation. Same proposition was involved in a case reported as Rehmat Ullah Khan and 3 others v. Azad Government and 13 others 2014 SCR 1385] wherein, this Court observed as under:--

After securitizing the record and survey of case law, irrespective of the fact whether the Army Public School falls within the definition of public purpose or not, it is proved that the whole process for transfer of the land has been conducted while bypassing the relevant provision of law. Admittedly, the land has been transferred for a noble cause, i.e., for establishment of an educational institution, but it is yet to be determined whether the said institution comes within the ambit of public purpose or not. As we have observed hereinabove, that the mode adapted while transferring the land is against the relevant provisions of the Constitution, thus, being custodian of the Constitution it is a fundamental duty of the Court to look into such like illegalities.

21. India also faced the similar circumstances when the land was acquired for public purpose remain unutilized by the authorities owing to which rather it was encroached or being sold out and having observed that facts the High Court of Andrah Pardesh in the case of Government of Andrah Pardeh & others v. Syed Akbar decided on August 11, 1999 (1999(5) ALD 391) held that "when a land acquired

is an agricultural land or a pasturage acquired for the public benefit, when once such a land acquired for the public benefit is no longer required, the patta thereof shall be made in the name of the person from whom such land was acquired. All the rights of the acquiring authority is thus subject to the implications of Section 54-A of the Act. The lawmakers have visualised that if an agricultural land or pasturage is acquired for public benefit and that purpose of the acquisition is frustrated or not fulfilled there is no gain-saying by the authority acquiring the land that it should be kept idle without allowing its utility for such purpose and thus mandates that it should be back to the person from whom it was acquired so that the utility cannot be lost. However, such a contingency will occur only if the ingredients of Section 54-A of the Act are fulfilled. In the present case if the plaintiff establishes that the defendants did no longer require the suit land for the public benefit for which it was acquired, it is open to him to get back the patta of the suit land transferred to his name ..... (Para 21) The expression 'no longer required in Section 54-A of the Act has a simple meaning. It must be a requirement for a reasonable period for which the purpose of acquisition exists. Otherwise, the use of the expression 'no longer required' was not necessary in the provision. When the lawmakers drafted and brought into force the provision they were mindful of the legal implications that when a land agricultural and pasturage is acquired for a particular public benefit it was to be fulfilled within a reasonable period depending upon the facts and circumstances of a particular case or else to mandatorily transfer the patta to the owner or the person from whom the land was acquired. In that

*context the meaning of 'no longer' should be nothing more than no longer than the very purpose for which the land was acquired. The very purpose or the benefit for which the land was acquired should be nothing but the very notification issued under Section 3 of the Hyderabad Land Acquisition Act equivalent to Sections 4, 5 and 6 of the General Land Acquisition Act. Otherwise, the use of the expression 'no longer required' becomes otiose or redundant or absurd..... (Para 23) In the present case, the moment the defendants felt that the suit land was not required for constructing the maternity ward, it was at that stage they were to think whether the time bound programme for such acquisition was reasonable or not. The expression of the Land Acquisition Officer that it was no longer required was a real and true evidence of things to show that the land was not actually required to construct the maternity ward and, infact, such purpose was not fulfilled. In the context, 'no longer required' in the present set of facts and circumstances only means that when once the defendants decided that the suit land was not required for constructing the maternity ward that completed the purpose of Section 54-A of the Act that it was really no longer required for the real benefit for which it was acquired, namely, for construction of the maternity ward. At that moment only the defendants were bound to transfer the patta to the plaintiff. If the construction put by the learned Government Pleader upon Section 54-A of the Act is accepted this Court feels that it is better that Section 54-A is neither repealed or given up as a part of the Act in question. Therefore, the plaintiff has established in this case that he was entitled to get the patta transferred to his name on the*

*defendants no longer requiring the suit land for the public benefit, namely, the construction of the maternity ward. 15. From the above, it is clear that as on the date of initiation of acquisition proceedings the land in question was a wet land capable of raising two crops. Thus, it was an agricultural land. The other records maintained by the authorities also disclose the nature of the land in question as agricultural land. Even in the claim made by the petitioner before the Land Acquisition Officer he mentioned the land as an agricultural land and under cultivation. The petitioner had to claim compensation on square yard basis in view of the potentiality of the acquired land that too it was acquired in small extents. Since the acquired land was originally an agricultural land and though a part of it was utilised by the acquiring body, the remaining left over land shall be treated as an un-utilised land. Thus it attracts Section 54-A of the Andhra Pradesh (TA) Land Revenue Act, 1317-F. 16. The new idea introduced by the authorities to make use of the un-utilised land for construction of Mandal Revenue Office complex is only an after-thought and it is made with a view to circumvent the order passed by this Court in WP No.14062 of 1997. Even if there is a need to construct the MRO Office, the un-utilised land in question is not at all sufficient as it is a small strip that too abutting the main road with 20 feet width where even a small passage cannot be carved, let alone the main building. Section 54-A contemplates that when an agricultural land is acquired and it is no longer required, its patta shall be made in the name of the person from whom it was acquired, namely, its occupant. He need not even make an application seeking assignment of such land. On the other hand, a duty is cast upon the*

*authorities concerned to assign the land or grant patta in favour of the person from whom it was acquired. The District Collector should not have placed reliance on the reports of the Mandal Revenue Officer and the Special Deputy Collector, Land Acquisition prepared subsequently to deny the petitioner's legitimate rights. He should not have also placed reliance on the principles laid down by the Supreme Court in the case of State of Kerala and others v. M. Bhaskaran Phlai and another (supra) as the same on facts has no application to the case of the petitioner herein as the case of the petitioner is governed by the Board Standing Order 90(32) and also Section 54-A of Andhra Pradesh (T.A.) Land Revenue Act, 1317. The order of the District Collector is contrary to Board Standing Order No.90(32), Section 54-A of the Andhra Pradesh (TA) Land Revenue Act, 1317-F and its interpretation and effect by the learned single Judge of this Court in the case of [S.M. Yahya Quadri v. District Collector](#), (supra). The authorities should have taken note of the preparedness of the petitioner to return the compensation amount with interest at 12% p.a. thereon in respect of the un-utilised land, that too when the un-utilised land is a small bit and not useful for construction of any office complex. On the other hand, the same can be better made use of by the petitioner. Therefore, the petitioner is entitled for the relief of assignment sought by him which was rightly granted by the learned single Judge. In our view, the order of the learned single Judge is a just one and it does not warrant interference of this Court.*

22. Declaration under Section 6 of the Act, 1894 was notified by the Acquiring Body (available at page 607 of the Court File) wherein



it is clearly mentioned that the land is being acquired only for public purposes, but nonetheless, the land so acquired a portion of which remain unutilized by the PQA and now being commercially sold out by them which is against the very purpose of Section 6 of the Land Acquisition Act, 1894. It is now well settled that land once acquired for public purpose cannot be leased out/sold commercially by the acquiring body. Broadly speaking the expression "public purpose" would, however, include a purpose in which the general interest of the community, as opposed to the particular interest of individuals, is directly and vitally concerned. The exercise of inspection and survey of land was conducted by the Court (as discussed above) unequivocally established the fact that the land owners/claimants were deprived of their valuable property rights guaranteed under Articles 23 & 24 of the Constitution, 1973, neither they were compensated according to the market value (against the acquired land which is admittedly an agriculture land and not a *Berani* and more precious one) and that the acquiring body failed to take into consideration the reasonable factors for awarding the compensation to the claimants which are described in the earlier part of this judgment nor they were paid of regarding their standing crops on the subject land and on the other hand the PQA having acquired the subject land is leasing out the same which is also admitted from the reports submitted by the Survey Superintendent, Karachi and other Mukhtiarkars.

23. So far as the issue of decree is concerned, it would be relevant to reproduce Section 26 of the Act of 1894 which reads as follows:-

"26. Form of awards. (1) Every award under this part shall be in writing signed by the Judge, and shall specify the amount awarded under clause first of sub-section (1) of section 23, and also amounts (if any) respectively awarded under each of the other clauses of the same sub-section, together with the grounds of awarding each of the said amounts.

(2) Every such award shall be deemed to be a decree and the statement of the grounds of every award such award a judgment within the meaning of section 2, clause (2), and section 2, clause (9), respectively, of the Code of Civil Procedure, 1908."

24. No doubt the term "Award" is not defined in the Act, but if the sections in which the word "Award" occurs are referred to, it is noticeable that in all cases the word "Award" is used with reference to compensation in the same form or other, whether it be the amount of compensation or disposal of compensation. The first formal order to which term "Award" is applied in the Act of 1894 is that of the Collector under section 11, while sections 26 and 27 of the Act of 1894 provide for the form of award to be made by a Judge. Hence the award passed by the Collector under section 11 of the Act and judgment passed by the Court on a reference by the Collector under section 18 on that award are both to be understood as "Award", in my humble view, therefore, these will also constitute a "decree" by virtue of deeming provisions in subsection (2) of section 26 of the Act of 1894. Similar view was taken by this court in the case of Government of Sindh v. Meho Khan (1988 CLC 715). It is expedient to reproduce the certain dictum laid down by this court which is as follows:-

"Every award by Land Acquisition Judge about compensation to be paid for land acquired, held, would be deemed to be a decree and statement of

grounds, thereof, a judgment within meaning of S.2(2) & S.2(9) of Civil Procedure Code, 1908”

“Word "award" though not defined in Land Acquisition Act, 1894, yet was used therein with reference to compensation for land acquired. Both award made by Collector and judgment passed by Acquisition Judge on reference by Collector on such award, were to be deemed as "award" and also a decree within meaning of provisions of Section 26(2) of Land Acquisition Act, 1894 and Section 2 of Civil Procedure Code, 1908.”

25. The hon'ble apex court of Azad Jammu & Kashmir also laid down the similar dictum in the case of Azad Government of the State of Jammu & Kashmir v. Muhammad Rafique Khan (2009 CLC 1378).

The relevant excerpt of the said judgment reads as under:-

“8. Our above view is fortified by the judgment of this Court delivered in a reported case titled as Military Estate Officer, Hazara Circle, Government of Pakistan, Abbottabad and others v. Muhammad Bashir and 6 other PLD 2000 SC (AJ&K) 34 wherein it was observed as under:--

“It is evident from the provisions contained in subsection (2) of section 26 of the Land Acquisition Act and the cases referred to above that an award would be deemed to be a decree; the copy of the same duly accompanied the appeals in the present case. Therefore, irrespective of the fact that a formal decree-sheet was drawn by the District Judge, the filing of the copy with the memorandums of appeals was not necessary. Thus, there was no violation of Order XLI, rule 1, C.P.C. and the order of the High Court in dismissing the appeals as being incompetent due to the non-filing of the decree-sheet is not sustainable.”

26. It is crystal clear from the above deliberations also that reasonings contained hereinabove will be deemed to be a decree and the statement of grounds of every such award a judgment within the meaning of Section 2, clause (2), and Section 2, clause (9) of the Code of Civil Procedure, 1908.

27. In sequel to the above deliberation and discussion, the Civil Reference is disposed of in a manner that the Acquiring Body having failed to take into consideration the reasonable factors for awarding the compensation to the claimants, therefore, the land acquired for PQA that still remains unutilized be returned to the claimants and that the claimants whose lands were sold by the PQA to the private party, the consideration of which be handed out to the said claimants by the PQA also.

Karachi  
Dated: 24.02.2025

JUDGE

Aadil Arab