

IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD

1st Appeal No.D-42 of 2017

PRESENT:

Mr. Justice Mehmood A. Khan

Mr. Justice Abdul Hamid Bhurgri

Appellants : 1 . Ghulam Abbas son of Ali Muhammad,
2), Muhammad Khan son of Ali
Muhammad, 3) Muhammad Ashraf
son of Ali Muhammad.
Through Mr. Muhammad Hashim
Bajeer, Advocate.

Respondents : 2nd Additional District Judge, Badin
and others.
Through Mr. Allah Bachayo Soomro,
Addl.A.G, Assisted by Mr. Muhammad
Ismail Bhutto, Additional Advocate
General.

Date of hearing : 12.02.2025
Date of decision : 18.03.2025

J U D G M E N T

ABDUL HAMID BHURGRI, J.- The appellants, through the present appeal, have impugned the judgment dated 23.11.2017, rendered by the learned II-Additional District Judge, Badin, in Land Acquisition Reference No. 01 of 2011, titled Ghulam Abbas & Others vs. Land Acquisition Officer & Others, whereby the learned Trial Court dismissed the suit of the appellants. Consequently, this appeal has been preferred.

2. The crux of the matter pertains to the acquisition of land measuring 3-12 acres, identified as Survey No. 84, situated in Deh Kak, Taluka Tando Bago, which was appropriated by the Irrigation Department for the excavation of saline water Drain 5-R. The plaintiffs/ appellants contend that defendant No. 2/respondent

unlawfully took possession of the subject land on 18th August 1988 without issuing any prior notice or intimation. The project encroached upon the agricultural land of the plaintiffs/appellants, resulting in significant damage to their standing crops. Additionally, adjacent land under sugarcane cultivation was adversely affected, thereby exacerbating their financial losses. Furthermore, approximately four acres of their land became uncultivable, as it was buried under layers of mud due to the excavation process. For over two decades, the plaintiffs/appellants were deprived of the opportunity to cultivate their land, particularly five acres situated adjacent to the Sim Nala on the northern side. The construction of Sim Nala obstructed the natural flow of water, preventing its passage to the plaintiffs' fields and rendering cultivation practically impossible. Despite the fact that the Sim Nala was constructed without lawful acquisition under the Land Acquisition Act, repeated applications submitted by the plaintiffs/ appellants to the Deputy Commissioner (DC) Badin (dated 4.4.1991) and subsequent appeals to the Provincial Ombudsman remained unaddressed. Although multiple notices were issued by the Ombudsman, the relevant authorities failed to address the appellants' grievances.

3. Subsequently, the plaintiffs/appellants filed Constitutional Petition No. D-441 of 2010 before the Honourable High Court, which, via order dated 19.10.2010, directed the defendants/respondents to issue an Award. In compliance, the defendants/respondents passed the impugned Award on 02.2.2011 and issued a cheque of Rs.438,500 as partial payment to the plaintiffs/appellants. However, the appellants accepted the amount under protest and proceeded to institute the instant suit, seeking compensation at the rate of Rs. 4,00,000 per acre for five acres, along with additional benefits under

Sections 28-A and 23 of the Land Acquisition Act, including interest at the rate of 6% per annum.

4. The defendant No. 2/respondent No.1, in response, filed written objections, categorically denying the appellants' claims. He contended that at the time of land acquisition, the prevailing market price ranged between Rs.3,000 and Rs.5,000 per acre, and a 15% compensation increment had already been provided. Therefore, he prayed for the outright dismissal of the plaintiffs' application.

5. Upon examining the pleadings, the following issues were framed for determination by the trial court:

ISSUES

1. Whether the application under Section 18 of the Land Acquisition Act, 1894, seeking additional compensation, is maintainable, given that the land price was assessed at the time of the Section 4 notification issued in August 1989?
 2. Whether the plaintiff is entitled to compensation as per the land rate applicable in 1988, when possession was taken, or as per the rate prevailing in 2011, when payment was made by the defendants?
 3. Whether the plaintiff suffered substantial financial losses due to the destruction of standing sugarcane crops as a result of the Sim Nala's construction?
 4. Whether the plaintiffs' land was rendered unfit for cultivation due to the absence of any alternative water supply for irrigation?
 5. Whether the plaintiff is entitled to the relief claimed?
 6. What should be the appropriate decree?
6. To substantiate their claim, the plaintiffs/appellants produced the following evidence:

- Ghulam Abbas (PW-1), whose deposition was recorded at Exhibit 71, he provided documentary evidence, including

Exh. 71/A (Reference of Proceedings & Orders) and Exh. 71-B (Khata of Land with Video Entry No. 13).

- PW-1 Ali Ahmed (Exh. 75), PW-3 Muhammad Ramzan (Exh. 76), and PW-4 Mohsin Ali Chandio, Mukhtiarkar Tando Bago (Exh. 77). Thereafter the learned counsel for the plaintiffs/appellants closed their side of evidence vide statement at Exh.78.

7. The learned trial Court after hearing the parties and adducing evidence had dismissed the reference hence, this appeal.

8. The learned counsel for the appellants contended that the award rendered by the Land Acquisition Officer contravenes the law, as the appellants have not been granted the benefits enshrined under Sections 28-A and 34 of the Land Acquisition Act 1894. He further asserted that the Land Acquisition Officer (Respondent No. 3) and the learned trial judge have erroneously assessed the valuation of the land, calculating it from the date of notification issuance rather than from the date of the award. Furthermore, the counsel submitted that, despite the appellants having adduced cogent evidence demonstrating the damage sustained, both the trial judge and the Land Acquisition Officer failed to duly appreciate the evidence, thereby dismissing the appellants' claim. Consequently, he prayed for the award to be set aside, thereby enabling the present appeal.

9. Conversely, the learned Additional Advocate General (AAG) argued that the trial court's order is well-reasoned and does not warrant any interference. He contended that appellants are not entitled for benefit of Section 28 A of the Land Acquisition as the same has been omitted through Section 4 of the Land Acquisition (Sindh Amendment) Act 2009 (Act No. XVI of 2010). The learned AAG relied upon **PLD 2016 SC page 514**. In the end, he prayed for the dismissal of the appeal.

10. We have heard the learned counsel for the appellants as well as the learned AAG. In order to adjudicate upon the appeal at hand, the following key points have been identified for the determination:

1. Whether valuation of the land was assessed in award in accordance with the Land Acquisition Act?
2. Whether the appellants were entitled to claim the benefits conferred under section 34 of the Land Acquisition Act, 1894?
3. Whether the appellants were eligible for the benefits outlined under section 28-A of the Land Acquisition Act?
4. Whether the appellants are entitled to compensation for damages?
5. What should the order be?

POINT NO.1.

11. The primary contention of the counsel for the appellant is that the valuation of the acquired land must be determined based on the date when the award was passed. However, the Land Acquisition Officer calculated the price on the date when the notification was issued, which the appellants argued is incorrect.

12. Under Section 23 of the Land Acquisition Act, the market value of the acquired land is to be assessed as of the date of the publication of the notification under Section 4, Sub-section (1). The relevant portion of Section 23 of the Land Acquisition Act is as follows:-

“23. Matters to be considered in determining compensation.—(1) In determining the amount of compensation to be awarded for land acquired under this Act, the Court shall take into consideration---

***“firstly,** the market-value of the land on the date of the publication of the [notification under Section 4], subsection (1).*

***secondly,** the damage sustained by the person interested, by reason of the taking of any standing crops or trees which may be on the land at the time of the Collector's taking possession thereof;*

***thirdly,** the damage (if any) sustained by the person interested, at the time of the Collector's taking possession of the land, by reason of severing such land from his other land;*

***fourthly,** the damage (if any) sustained by the person interested at the time of the Collector's taking possession of the land, by reason of the acquisition injuriously affecting his other property, movable or immovable, in any other manner, or his earnings;*

***fifthly,** if, in consequence of the acquisition of the land by the Collector, the person interested is compelled to change his residence or place of business, the reasonable expenses (if any) incidental to such change; and*

***sixthly,** the damage (if any) bona fide resulting from diminution of the profits of the land between the time of the publication of the declaration under Section 6 and the time of the Collector's taking possession of the land”.*

13. Based on the foregoing, it is evident that the Land Acquisition Officer has correctly determined the valuation of the land in accordance with the provision of the land Acquisition Act. Accordingly, this point is answered in the affirmative.

POINT NO.2.

14. The Land Acquisition Officer failed to adhere to the mandatory requirement of the law by not awarding interest under Section 34 of the Land Acquisition Act, 1894. The relevant portion of the compensation of land in Award is reproduced hereunder:-

“Compensation of land”

Market value of the land in 1988 has been obtained through the local inquiry, which was about Rs.10,000/- in the concerned Dehs. Also, the amount of Rs.10,000/- has been referred to as compensation amount against 01-00 acres land. Thus the basic amount of compensation per Acre in the said Dehs has been decided at Rs.10,000/-. Applicants, however, did not show dissent over the decided basic amount of compensation to be awarded to them in 1989. Furthermore, as per sub-section (2) of Section 23, I am required to 'award a sum of 15% on such market value, in consideration of the compulsory nature of the acquisition, as it has been made for public purpose. In addition to this, Section 28-A, administering additional compensation, attracts in this case by which 'an additional amount of 15% per annum of the compensation so fixed shall be paid from the date of the notification u/s 4 to the date of payment of the compensation'.

This constitutes a fundamental contravention of legal provisions, as the acquiring agency/respondents No. 2 and 4 admittedly did not deposit the requisite amount at the time of taking possession of the subject land. The trial court also failed to rectify this legal irregularity committed by Respondent No. 3. The relevant portion of Section 34 of the Land Acquisition Act is reproduced below:

"34. Payment of interest—When the amount of such compensation is not paid or deposited on or before taking possession of the land, the Collector shall pay the amount awarded with compound interest at the rate of eight per centum per annum from the time of so taking possession until it shall have been so paid or deposited."

Provided that any waiver of the above right by the land owner shall be void and he shall be entitled to the said interest notwithstanding agreement to the contrary".

15. The rights of a landowners are not only safeguarded under the Land Acquisition Act but are also enshrined in Articles 23 and 24 of the Constitution of the Islamic Republic of Pakistan. These constitutional provisions unequivocally guarantee the rights of citizens,

as they constitute fundamental rights inherent to every individual.

Articles 23 and 24 of the Constitution are reproduced as follows:

“23. Provision as to property. Every citizen shall have the right to acquire, hold and dispose of property in any part of Pakistan, subject to the Constitution and any reasonable restrictions imposed by law in the public interest.

24. Protection of property rights, (1) No person shall be deprived of his property save in accordance with law.

(2) No property shall be compulsorily acquired or taken possession of save for a public purpose, and save by the authority of law which provides for compensation therefor and either fixes the amount of compensation or specifies the principles on and the manner in which compensation is to be determined and given.

(3) Nothing in this Article shall affect the validity of—

(a) any law permitting the compulsory acquisition or taking possession of any property for preventing danger to life, property or public health; or

(b) any law permitting the taking over of any property which has been acquired by, or come into the possession of, any person by any unfair means, or in any manner, contrary to law; or

(c) any law relating to the acquisition, administration or disposal of any property which is or is deemed to be enemy property or evacuee property under any law (not being property which has ceased to be evacuee property under any law); or

(d) any law providing for the taking over of the management of any property by the State for a limited period, either in the public interest or in order to secure the property management of the property, or for the benefit of its owner; or

(e) any law providing for the acquisition of any class of property for the purpose of-

(i) providing education and medical aid to all or any specified class of citizens; or

(ii) providing housing and public facilities and services such as roads, water supply, sewerage, gas and electric power to all or any specified class of citizens; or

(iii) providing maintenance to those who, on account of unemployment, sickness, infirmity or old age, are unable to maintain themselves; or

(f) any existing law or any law made in pursuance of Article 253.

(4) The adequacy or otherwise of any compensation provided for by any such law as is referred to in this Article, or determined in pursuance thereof, shall not be called in question in any court”.

16. The acquiring agency was under an obligation to compensate the landowner by paying the requisite amount, including the accrued interest. However, the Land Acquisition Officer failed to fulfill this obligation, an oversight that was further compounded by the trial court, which also neglected to acknowledge this crucial aspect of the case. Since the respondents neglected to deposit the amount as required by law, they are consequently liable to bear the penal implications of Section 34 of the Land Acquisition Act.

17. The fundamental principle underpinning the provision of payment is that the party dispossessed of its property is deprived of any profit or usufruct from the date possession is taken. If the collector fails to effect payment prior to taking possession, the affected party is entitled to interest from that date. This principle is analogous to that in a contractual sale and purchase of land, wherein the purchaser is obligated to pay interest on the unpaid purchase amount from the date of possession. Reliance in this regard is placed on the judgment reported in **2023 page 493**, which for the sake of convenience is reproduced hereunder:

“10. Now moving to the next question, the relevant starting date for the payment of compound interest on

compensation amount, in terms of section 34 of Land Acquisition Act, is the date of taking possession of the acquired land till the date of payment by the Collector where normal stator procedure has been observed. In this regard, reference may be made to the case of “Sheikh Muhammad Ilyas Ahmed and others v. Pakistan through Sectary Ministry of Defence, Islamabad and others” (PLD 2016 SC 64). However, in “Syeda Nasreen Zohra v. Government of the Punjab” (2022 SCMR 890) it was held, “We find that the compound interest would continue to accrue till such time that the entire compensation is paid in its entirety. Once the original amount has been deposited, the matter goes out of the penal consequences of section 34 of the Act”.

A similar view has been adopted by the Honourable Supreme Court in the case of ***Sheikh Muhammad Ilyas Ahmed v. Government of Pakistan through Secretary, Ministry of Defence & Others, reported in PLD 2016 SC 264.***

18. Since the award dated 2.2.2011 passed by the Land Acquisition officer of the land revealed that possession was taken over by the acquiring agency after issuance of notification under section 4 dated 18.8.1988 and the final payment was made on 27.04.2011, as per the bank statement filed by the learned AAG. The respondent no. 3 (Land Acquisition officer) is hereby directed to modify the award and include interest from the date of possession as determined in the award till payment of the award (27.4.2011). This issue is answered accordingly.

POINT NO.3

19. As far as the contention of appellants’ counsel regarding grant of benefit of Section 28-A of land acquisition act is concerned, it is evident that the said provision has been omitted through Section 4 of the Land Acquisition (Sindh Amendment) Act 2009(Act No.XVI of 2010). The statute explicitly states:

“In the said Act, Section 28A shall be omitted and shall be deemed to have been so omitted as if it had never been enacted”.

20. The rationale behind this legislative amendment was further clarified in the case of *Dilawar Hussain v. Province of Sindh*, as reported in PLD 2016 SC 514, wherein the Honourable Supreme Court has held as under:-

“5... In the present circumstances, the Federal Shariat Court found the provisions of the Section 28-A to be repugnant to the Injunctions of Islam. The preamble of the repealing Act states that the Federal Shariat Court has directed that certain amendments be made to the Act in its application to the Province of Sindh. The plain words of section 4 of the repealing Act indicate the intention of the legislature that this Section 28-A is non est and therefore as per the ratio of the Dr.Mubashir Hassan case (supra) the appellants cannot be granted the benefit of Section 28-A as claimed in the instant appeal. It is settled law that appeal is a continuation of the original lis and therefore there is no past and closed transaction which may have afforded them protection in the event of the Section 28-A being declared to have “never been enacted”.

21. Reliance is also placed on ***Civil Appeals No. 1653 to 1655 of 2007 (decided in 2024) (B.P. Pakistan Exploration and Production Inc. v. Ashique Hussain & Others)***, wherein the Honourable Supreme Court reaffirmed its stance on the applicability of Section 28-A of the Land Acquisition Act.

22. In the light of the established legal position, it is unequivocally clear that the appellants cannot claim any entitlement under Section 28A of the Land Acquisition Act 1894. Despite their plea for such benefits in the present appeal, the perusal of the Award demonstrates that the Land Acquisition Officer erroneously granted them such relief. Consequently, if any sum has been awarded to the appellants under Section 28A, the respondent Land Acquisition officer is hereby directed to deduct the said amount from the total award.

Accordingly, this point is determined in the negative.

POINT NO.4

23. The burden of proof rests upon the appellants to establish the alleged damages in the reference. Reliance is placed on **2023 SCMR page 1005** in the case of ***Jinad Shah & Others v. General Manager NHA (LM & IS), Islamabad & Others and Land Acquisition Collector v. Muhammad Sultan (PLD 2014 SC 696)***. Upon meticulous examination of the evidence adduced by the appellants and their witnesses, it is evident that they have failed to furnish any cogent or substantive material to support their claim. There exists no legal infirmity or procedural irregularity in the findings of the trial court in denying the claim of damages. As no case of damages has been successfully demonstrated by the appellants, the findings of the trial court stand fully substantiated and are, therefore, maintained. This point therefore, is answered accordingly.

POINT NO.5.

24. In light of the foregoing, the appeal is hereby disposed of with a direction to respondent No.3/Land Acquisition Officer to amend the award by incorporating interest accrued on the principal amount from date of possession as determined in the award until 27.4.2011 (the date of when the amount was disbursed to the appellants), in accordance with the provisions of Section 34 of the Land Acquisition Act 1894. Furthermore, if any sum erroneously granted to the appellant under Section 28 A of the said Act shall be deducted accordingly.

25. The appeal stands disposed of in these terms. The office is instructed to prepare the decree accordingly.

SD/- ABDUL HAMID BHURGRI, J
SD/- MEHMOOD A. KHAN, J

ANNOUNCED BY US ON 18.03.2025
SD/- MEHMOOD A. KHAN, J
SD/- MUHAMMAD HASAN (AKBER), J

