Judgment Sheet

IN THE HIGH COURT OF SINDH, KARACHI

Present:
Mr. Justice Muhammad Iqbal Kalhoro
Mr. Justice Muhammad Osman Ali Hadi

1st Appeal No.138 of 2017
*(Pir Manzoor Ahmed Jan Sarhandi **vs**. Assistant Commissioner & Land Acquisition Officer (UTPI) Badin & othersP*

29.05.2025

Mr. Qaim Ali Memon, advocate for appellant
Mr. Muhammad Rashid Mahar, advocate for respondent a/w Bilal Farooq ali (Manager Legal)
Mr. Pervaiz Ahmed Mastoi, AAG

JUDGMENT

Muhammad Iqbal Kalhoro, J:- This appeal filed under Section 54 of Land Acquisition Act, 1894 ('**The Act, 1894'**) impugns a judgment 10.08.1998 and decree dated 17.08.1998 passed by learned I-Additional District Judge Badin, decreeing Land Acquisition Suit No.4/1989 filed by appellant in certain terms of which the appellant is aggrieved .

2. As per brief facts, appellant (Pir Manzoor Ahmed Jan) moved an application under Section 18 of the Act, 1894 before the Land Acquisition Officer stating that he was owner of land admeasuring 17.8 acres out of B. No.77/1 to 4, 78/1 to 4 and 89/1 to 4 situated in Deh Khud, Taulka Golarchi, District Badin. It was acquired for the purpose of construction of Air strip at Khashkeli Oil Field for M/s. Union Texas Pakistan Inc. The acquisition proceedings were completed and award was passed at the rate of Rs.45,000/- for cultivated land and Rs.30,000/- for uncultivated land. Appellant, the owner, accepted the above award under protest and prayed in the application for the award to be passed at the rate of Rs.200,000/- per acre plus 15% as additional compensation u/s 28(a) of the Act, 1894 (since omitted by Act No.XVI of 2010) on all the amounts from the date of notification (25.04.1987) u/s 4 of *ibid* law till the final payment is made. He further claimed 6% interest from the date of possession of his land. This application was sent to the Court as a reference by the Land Acquisition Officer along with particulars and statements required to be furnished in terms of section 19 of the Act, 1894. These particulars are enlisted as under:-

> "1. That the total land measuring 17-08 acres is situated in Deh KHUD Taluka Golarchi, District, Badin.

2. That the compensation has been awarded at the rate of Rs.45,000/- for cultivated and Rs.30,000/-for uncultivated land with 25% as compulsory charges on the total amount of the compensation and Rs.2, 29,500/- towards Additional Compensation.

3. That Plaintiff had demanded compensation at the rate of Rs.2,00,000/- per acre with statutory interest as mentioned above and Rs.10,000/-per acre as damages for three years as the Land Acquisition Officer has allowed damages at the rate of Rs.5,000/- per acre per years"

3. In response to notice, the defendants (Land Acquisition Authority) appeared and filed objections. The Court framed the following issues:-

"1. Whether the amount of compensation, determined in subject Award, has been in-adequately fixed, if, so what should be the quantum of compensation for the suit lands?

2. Whether due to acquisition of suit land for the construction of Air Strip, the Plaintiff's remaining lands have been if bifurcated into parts thereby acquiring Agency is liable to compensate the plaintiff for expenses incurred on development of land, water course, drainage system, sewerage and loss of earning due to damage to land and crop?

3. Whether the suit is barred by Limitation under section 18 of the Land Acquisition Act?

4. What should the decree be?"

4. After discussing all the issues, learned trial Court while replying issue No.4 has held as under:

"For the afore-said reasons, I hold that suit of the plaintiff is not time barred and the compensation awarded to him by the land Acquisition Officer is inadequate. I therefore set aside the Award passed by the Land Acquisition Officer and assess the compensation at the rate of Rs. 50,000/- per acre for the land in question. The land Acquisition officer has awarded Rs.1,61,250/- towards 25% compulsory acquisition charges plus 6% interest with effect from the date of payment of amount already paid at the rate of Rs.50,000/- per acre, till final payment is made. The amount if already received by the plaintiff as compensation, 25% compulsory charges and 15% as compulsory acquisition charges shall be excluded from the total amount of compensation awarded as per this order."

5. Record shows that in the trial Court plaintiff/appellant examined himself and one Rizwan, a representative of the Company, who produced lease documents, cheques and receipts (Exh-30 to Exh.40-A). Lease documents pertained to the lease agreement between the Company and the plaintiff for acquisition of the suit land before proceedings under the Act, 1894 against the lease money of Rs.10,000/- per annum to be multiplied by 20 years. The entire claim of the plaintiff for seeking enhanced rate was based on the said agreement. Whereas, on the other hand, defendants/respondents examined Tapedar of Kotri Barrage,

Hyderabad, who produced relevant record of the suit land, which was granted to various persons on harap conditions up-to 1982-83 at the rate of Rs.200/- per acre. Defendants also examined Muhammad Umer, Tapedar of the concerned Tapo, who produced record of cultivation in the suit land from 1985-86 to 1994 -95. In the record, the land has been shown as uncultivated. The Tapedar has also filed the record consisting of details of sale transactions of the lands of three years prior to the date of publication of notification u/s 4(1) of the Act, 1894 showing average value of the land surrounding the suit land at Rs.3,384/ - per acre.

6. Learned trial Court after appraising the evidence and the documents and considering submissions of the parties enhanced the rate of land from Rs.45,000/- for cultivated land and Rs.30,000/- for uncultivated land to Rs.50,000/- per acre in the impugned judgment and decree, but the appellant is still not happy, hence, this appeal.

7. Learned counsel for the appellant has contended that Land Acquisition Officer and the Additional District Judge have failed to consider all objections of the appellant during proceedings resulting in inappropriate and inadequate compensation to him; that findings of learned Additional District Judge are erroneous and based on non-reading of evidence; that the learned Judge has not considered the documents of lease produced by the representative of acquiring agency; that the appellant was entitled to get market value of his acquired land, which was 20 times more than lease amount (Rs.10,000/-), which comes to Rs.200,000/- per acre; that the learned trial Court has not considered the facts that on acquiring the suit land appellant's remaining land stood divided into different pieces rendering it uncultivable, hence, amount of compensation given to the appellant was inadequate. Learned counsel has further submitted that the owners of adjoining land were granted more compensation and rate than was given to the appellant. He has submitted that in respect of adjoining land, the dispute over amount of rate and compensation went up-to the Supreme Court and decided in favour the said owners. He has referred in this regard a judgment of this Court passed in I-Appeal No.21/2004 filed by one Sher Ali Khawaja, a purported owner of adjacent land, and Civil Petition No.2679/2005 decided on 25.02.2008 by the Supreme Court. He has further submitted that learned Additional District Judge has failed to appreciate the fact that due to division of appellant's land, water courses, simnalis, level of land and paths of land and standing crops were totally

destroyed and damaged for which appellant was entitled to enhanced rate of compensation.

8. On the other hand, learned counsel for respondent has supported the impugned order.

9. We have considered arguments of the parties and perused material available on record. While discussing issue No.1 learned Additional District Judge has stated as under:-

> "The plaintiff has not produced a single sale deed or oral evidence in respect of adjoining lands in the same deh in support of his claim regarding the market value. The plaintiff has also failed to produce any document in evidence showing that his lands under acquisition were of higher value then that of determined under Award Ex.48. The plaintiff has also failed to bring on record that he could get or earn Rs. 10,000/- per acre per annum as net income from the suit land except the lease of Rs.10,000/- paid to him by the Company.
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> On the other hand, the defendant has examined Ahmed Khan, Tapedar of Kotri Barrage Hyderabad who produced the record in respect of the suit land, which was granted to various person on harap conditions up-to 1982-83 and the rate has been shown as Rs.200/- per acre. The defendant has also examined witness namely Muhammad Umer at Ex.91 the Tapedar of the concerned Tapo who has produced the record of cultivation in respect of the suit land which pertains to 1985-86 to 1994-95 and the suit land has been shown as uncultivated. In this connection, the evidence produced by the defendant consisting of details of sale transactions of three years prior to the date of publication of the Notification under section 4(1) of Act established that the average value of the land surrounding the suit land in deh Khud is Rs. 3,384/- per acre. But the Land Acquisition Officer has awarded compensation to the plaintiff at the rate of Rs.45,000/- for cultivated and Rs.30,000/- for uncultivated land.
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> Learned counsel for defendant has placed his reliance on the following authorities:
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> 1. 1996 MLD 1608
> 2. 1994 MLD 1934.
> 3. PLD 1984 Quetta 11.
> 4. FLD 1982 Karachi 147.
> 5. PLD 1980 Lahore 103.
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> In the cases reported in the above said authorities, it has been held that the claimant has to prove the market value at the relevant time, but in the present case the plaintiff has failed to produce any documentary proof or oral evidence to the effect that the market value of the suit land was much more than awarded by the land Acquisition Officer.
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> In view of the above circumstances and facts of the case and in the light of the case, law I am of the considered opinion that the plaintiff has failed to prove that market value of suit land at the relevant time was more than awarded by the Land Acquisition Officer. However, as the land in question has been acquired by the defendant and plaintiff has been acquired by the defendant (sic) and plaintiff has been deprived permanently forever, therefore, I am of the view that he should be compensated reasonable. The Land Acquisition Officer has determined the amount of compensation inadequately."

10. The aforesaid discussion shows that appellant/plaintiff could not produce a piece of evidence, which shows that the adjoining lands were acquired on the rate more than the rate paid to him. The entire emphasis of appellant was on the lease agreement with the Company, the acquiring agency, prior to acquisition of land, whereby, the Company had agreed to pay Rs.10,000/- per acre per annum to the appellant. However, on this issue the learned Additional District Judge has dilated in detail that Rs.10,000/- was a handsome amount, which was not the rate at the relevant time but since the land of the appellant was bifurcated as such he was given more rate than the rate prevalent at the relevant time. According to the learned Additional District Judge, the reason for awarding handsome amount of lease to the plaintiff was to cover other losses and due to the fact that his land was sub-divided into three pieces. Appellant had agreed to receive that amount on the basis of his knowledge that his land would be subdivided resulting into damage and loss.

11. The aforesaid reasoning shows that higher amount of lease was given as a compensation to the plaintiff for the loss, he was due to incur, otherwise this was not the rate in which the land was usually leased out by others in the same area. That said, the lease amount cannot be considered as a benchmark to award more rate of the land than prevalent in the market. In this regard, the evidence of defendants' witnesses i.e. Tapedar is relevant and has been discussed thoroughly by the learned Additional District Judge. In the evidence of Tapedar, it has come on record that the land was granted to the appellant and others like him in the same area at Rs.200/ - per acre, and just 03 years prior to acquiring the land of the plaintiff, the value of the land surrounding the suit land was Rs.3,384/- per acre. While, as against it, the Land Acquisition Officer had granted Rs.45,000/- per acre in respect of cultivated land and Rs.30,000/- for uncultivated land, which appear to be much higher than the actual rate. Even that amount was enhanced by the learned Additional District Judge as he held the appellant entitled to Rs.50,000/- per acre (instead of Rs.45,000/- and Rs.30,000/-).

12. The finding of the learned trial Court that award of Rs.161,250/- towards 25% compulsory acquisition charges plus 6% interest with effect from the date of payment of amount, already paid at the rate of Rs.50,000/- per acre, till final payment is made is adequate and there is no evidence that appellant is entitled to further enhancement in respect of either, compensation or in respect of interest u/s 28 of the Act, 1894.

Although, learned counsel has referred to a judgment of High Court and Supreme Court (both are in the same matter) as a reference for seeking enhancement but he has admitted that these judgments were not produced by the appellant in evidence during the trial, nor any application was moved by him to bring on record the said judgments. Although, learned counsel for appellant has claimed that the land discussed in the said judgments is adjacent to the land of appellant but we have no source to determine the said fact in absence of any official report confirming the said fact, and secondly, when this evidence was not produced and not appreciated by the learned trial Court, in law the appellant cannot be allowed to rely upon the same evidence in the appeal.

13. Further, it may be said, it is erroneously asserted by learned counsel of the Appellant that the value and compensation of the acquired land should be considered on the basis of the net income or profits received by him immediately before notification under Section 4(1) of the Act -- the amount of lease money, i.e. Rs.10,000/- per acre per annum, multiplied by 20 years, making a total of Rs.200,000/= per acre. In our view, it is a misconceived method of calculation, untenable in law. The fact that the land in question was initially taken on lease is not a determinant factor to evaluate value of the land at the material time. The fact that the land was taken on lease is an accidental fact and did not detract from the reality that the land was being used for agricultural purpose. It did not, in any way, whatsoever, reflect the real value of the land, which had to be based on value prevalent in the market of the surrounding lands. There is no evidence that at the relevant time anyone had paid such an exorbitant lease amount of the lands in the said area.

14. The superior courts have held that in awarding compensation under the Act, 1896, if it is to be based on rent actually received, the question, whether the lease was for a considerable period and the rent received was the amount which was likely to be received for a lengthy period must be considered. If the rent was an accidental figure and could not be maintained for a lengthy period, it would not reflect a true index of the value figure which the land owner could obtain if he sold it. An accidental lease could not be the criterion for determining the value of the land is a settled proposition. In this case, plaintiff has failed to produce any evidence that Company had agreed to pay that amount of lease for a longer period. Out of exigency, the Company before initiating land acquisition proceedings had agreed to pay that amount only for a short

period in order to secure the land. That amount, therefore, cannot be a benchmark to determine the value of the land.

15. Apart from that, learned counsel has failed to point out any evidence, which shows that appellant was inadequately compensated or paid less rate of the lands than prevalent in the market at that time. Learned counsel has failed to specify either any illegality or error in the impugned judgment. The findings of the trial Court are supported by solid reasons. Learned Additional District Judge has not only referred to relevant evidence but relevant provisions of law under which appellant was claiming enhancement of rate and compensation, etc. We do not find the impugned findings to be a result of miss-appreciation or non-appreciation of evidence, not the least when learned counsel for the appellant has failed to cite any evidence before us, which he produced before the trial Court but was not considered and decided. We, therefore, find no merit in this appeal and accordingly dismissed.

16. These are the reasons of our short order dated 22.05.2025, whereby this appeal was dismissed.

This I-Appeal is disposed of in above terms along with pending application(s).

JUDGE

JUDGE

Rafiq/P.A.