

IN THE HIGH COURT OF SINDH AT KARACHI

PRESENT:

Mr. Justice Arshad Hussain Khan
Mr. Justice Amjad Ali Sahito

High Court Appeal No.360 of 2019

Appellants : Noor-ud-Din S/o Abdullah & others
through Mr. Narain Das C. Motiani,
Advocate

Respondent : PTCL & others.
through M/s. Aijaz Ahmed Zahid &
Hashmatullah, Advocates for Respondent
No.1 a/w, Mr. Hubdar Ali, Executive
(Legal) PTCL

The State
through Syed Hussain Shah, AAG

Date of Hearing : 01.04.2026

Date of Judgment: 01.04.2026

J U D G M E N T

Amjad Ali Sahito, J. This High Court Appeal is directed against the Order dated 16.09.2008 passed by the learned Referee Judge in Civil Reference No.01 of 2009 with the following directions:

“The conclusion of the above discussion is that Defendant-PTCL is liable to pay an amount of Rs.11,23,81,831/- (Rupees Eleven Crores Twenty Three Lacs Eighty One Thousand Eight Hundred Thirty One only) within two weeks from today, which will be deposited with the Nazir of this Court and will be invested in some profit bearing scheme. It is further clarified that the above order and observation made therein are tentative in nature and shall not influence the final outcome of this case. Even the amount deposited under this order will not prejudice the stance / pleadings of any of the parties and will be subject to adjustment or refund in view of the final decision in this case.”

2. Succinctly stated, facts of the case are that the appellants (Nooruddin and his three brothers), claiming ownership of land measuring 14 acres situated at Deh Khanto, Karachi, instituted Suit No.356 of 1978 on 25.04.1978 against the respondents, seeking declaration of title, possession, mandatory injunction, and mesne profits in respect of land measuring 14 acres and 19 ghuntas bearing

Survey No.39, Deh Khantoo, Tapo Landhi, District Karachi East. It was alleged that respondent No.1 (then Post and Telegraph Department) had illegally taken possession of 14 acres of the appellants' land since 01.11.1971 without lawful acquisition or compensation.

3. The suit was decreed vide judgment dated 20.06.1997 to the extent of 14 acres, along with mesne profits at the rate of Rs.2,000/- per acre per year. The said decree was challenged through HCA No.151 of 1997, which was disposed of by this court with modification only to the extent of mesne profits (reduced to Rs.600/- per acre), while maintaining the decree regarding title and possession. It was further observed that acquisition proceedings were necessary if the respondents intended to retain the land, and directions were issued to initiate and conclude such proceedings within stipulated time. The said judgment attained finality as no appeal against the said judgment was filed. Subsequently, the appellants initiated execution proceedings for possession and recovery of mesne profits. During the pendency thereof, respondent No.1 approached the authorities, whereupon notifications under Sections 4 and 6 of the Land Acquisition Act, 1894 were issued in April, 2007 for acquisition of the subject land. The Land Acquisition Officer required respondent No.1 to deposit the tentative compensation along with statutory benefits. It is also averred that respondent No.1 deposited a sum of Rs.15 crores, whereafter execution proceedings were concluded vide order dated 20.02.2008, which also attained finality.

4. Dissatisfied with the quantum of compensation, the appellants sought reference under Section 18 of the Land Acquisition Act, which was registered as Reference No.1 of 2009. The Respondent (PTCL) has also filed a cross objection to the Award. The matter thereafter travelled to this Court through constitutional petitions by both the parties, which were disposed of by a consolidated judgment dated 13.09.2017. The said judgment was assailed before the Honourable Supreme Court of Pakistan, which vide consent order dated 19.12.2018 directed the Referee Court to decide the issue of deposit of compensation in terms of Sections 31 and 34 of the Land Acquisition Act prior to deciding the reference, and to conclude the proceedings expeditiously. Pursuant thereto, the appellants filed CMA No.442 of 2019 in Reference No.1 of 2009 seeking deposit of the balance compensation along with interest. However, the learned Single Judge, vide order dated 01.11.2019, passed the impugned order, which,

according to the appellants, is contrary to the directions of the Honourable Supreme Court and the provisions of law, particularly with regard to deposit of compensation and interest. Hence, the present appeal.

5. Learned counsel for the appellants mainly contends that the impugned order is contrary to law and the directions of the Honourable Supreme Court, whereby the appellants have been deprived of the balance compensation amount along with interest under Section 34 of the Land Acquisition Act. It is contended that the claimed amount was neither specifically disputed nor rebutted by respondents No.1 and 2, and once liability was determined, the learned Referee Judge ought to have directed deposit of the entire outstanding amount with statutory interest in terms of Sections 31 and 34 of the Land Acquisition Act. Learned counsel further argues that the learned Judge travelled beyond the scope of the Supreme Court's order by reopening settled issues, including the extent of land, which had already attained finality. It is also contended that the delay in deposit continues to accrue interest, thereby causing further prejudice to the appellants. Lastly, he prays that Respondent/PTCL be directed to pay the outstanding amount along with interest accrued thereon in accordance with the provision of Land Acquisition Act.

6. Conversely, learned counsel for respondent No.1 (PTCL), while supporting the impugned order, contends that the directions of the Honourable Supreme Court have been duly complied with by depositing the outstanding amount with the Nazir pursuant to the order of the learned Referee Judge. It is further submitted that the question of entitlement to interest, including its rate and period, is intrinsically linked to the final determination of compensation, which is presently sub judice in the reference proceedings wherein PTCL has also filed cross-objections. Learned counsel maintains that any observation at this stage regarding interest may prejudice the rights of the parties; therefore, the claim of interest at the rate of 6% may appropriately be left open for determination by the Referee Court at the time of final adjudication. Lastly, contended that the appeal is liable to be dismissed with cost.

7. Learned AAG, while adopting the arguments advanced by learned counsel for respondent No.1, submits that since the outstanding amount of Rs.11,23,81,831/- has already been deposited with the Nazir, no case for interference with the impugned order is

made out. He contends that the order passed by the learned Referee Judge is just, proper, and in accordance with law in the circumstances of the case.

8. We have heard the learned counsel for the parties and have minutely perused the material available on record with their able assistance.

9. From the record, it transpires that the Land Acquisition Officer, vide Award dated 29.11.2008, determined compensation at Rs.26,23,81,831/-, out of which Rs.15,00,00,000/- was deposited by respondent No.1 (PTCL). Both parties have challenged the award, through a reference by the appellants and cross-objections by PTCL, which remain pending before the learned Referee Court. The Honourable Supreme Court, in Civil Petition No.611-K/2017, directed that in terms of Sections 31 and 34 of the Land Acquisition Act, the awarded amount be deposited, and that the Referee Court first decide the issue of deposit of compensation prior to adjudication of the reference. The record further reflects that, in pursuance of the said directions, the appellants filed an application along with their own calculation of the outstanding amount alongwith interest. The learned Referee Judge, after hearing the parties, directed deposit of the remaining amount.

10. A perusal of the impugned order shows that the learned Referee Judge has adequately safeguarded the interests of both sides by directing deposit of the outstanding amount while expressly making the order tentative and subject to final adjudication. The said direction neither determines the rights of the parties finally nor causes any prejudice, as the deposited amount remains subject to adjustment in accordance with the ultimate decision in the reference proceedings.

11. Insofar as the contention advanced by learned counsel for the appellants that the impugned order dated 01.11.2019 is contrary to the spirit of the order passed by the Honourable Supreme Court of Pakistan and not in consonance with the provisions of Sections 31 and 34 of the Land Acquisition Act, 1894 is concerned, the same is without merit. A careful reading of the order of the Honourable Supreme Court reflects that the primary direction was to ensure deposit of the awarded amount in accordance with law and to proceed with expeditious adjudication of the reference. The record demonstrates

that the outstanding amount has since been deposited with the Nazir in compliance with the said directions.

12. Insofar as the contention of learned counsel for the appellants that they have been prejudiced in respect of the amount due, including statutory interest, is concerned, the same is premature. The question of entitlement to interest, its rate, and the period for which it is payable is intrinsically linked with the final determination of compensation, which is presently sub judice before the learned Referee Court. The learned Referee Judge has, therefore, rightly observed that the calculation furnished by the appellants/plaintiffs in the listed application cannot, at this stage, be taken into account, as the component of interest is to be determined at the time of final adjudication.

13. As regards the apprehension expressed by the learned counsel that, in the event of enhancement of compensation, the appellants may be left remediless, is misconceived. The law provides adequate remedies for enforcement of any enhanced award, and such speculative concerns cannot be made a ground to interfere with an interlocutory order passed in the course of reference proceedings.

14. Insofar as the contention of the appellants that the learned Referee Judge travelled beyond the scope of the directions issued by the Honourable Supreme Court is concerned, the same is not borne out from the record. It has not been demonstrated that the learned Referee Judge acted in excess of the said directions or in violation of any settled principle of law. On the contrary, the impugned order reflects a balanced approach, safeguarding deposit of the compensation while leaving the substantive rights of the parties to be determined in accordance with law. Besides, the learned Referee Judge has expressly observed that the order is tentative in nature and shall not influence the ultimate outcome of the case, and that the amount so deposited shall remain subject to adjustment or refund in accordance with the final decision of the trial Court.

15. Insofar as the contention of the appellants regarding reopening of the issue of measurement of the land by the learned Referee Judge is concerned, a perusal of the impugned order reflects that the learned Referee Judge, being mindful of the pendency of reference and cross objection filed by parties, consciously refrained from making any

conclusive observation in this regard. Rather, it was observed that the said issue would be effectively determined after recording of evidence.

16. In view of the foregoing discussion, no illegality or material irregularity is found in the impugned order passed by the learned Referee Judge. The impugned order, being tentative in nature, adequately safeguards the rights of the parties by directing deposit of the outstanding amount, while leaving the question of interest and other claims open for determination at the time of final adjudication. No prejudice, therefore, can be said to have been caused to the appellants.

17. Consequently, the instant appeal is dismissed, with the observation that the learned Referee Court shall decide the Reference strictly in accordance with law, uninfluenced by any observations made hereinabove.

JUDGE

JUDGE

KAMRAN/PS