

ORDER SHEET
IN THE HIGH COURT OF SINDH,
 CIRCUIT COURT, HYDERABAD.
 Ist. Appeal No. 61 of 2010.

DATE	ORDER WITH SIGNATURE OF JUDGE
	1. For orders on CMA- 1099/2014. 2. For orders on CMA- 1100/2014. 3. For orders on statement 4. For Katcha Peshi.
17.09.2014.	

Mr.Hamayoon Khan, Standing Counsel for appellants.
 Mr. Ashfaque Nabi Qazi, Asstt. A.G. respondent No.2.
 Mr. Imran Qureshi Advocate for the respondents No.1.

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1. To be heard along with main appeal.
2. This order will dispose of an application under Order XXVI Rule 9 CPC read with Section 151, CPC filed by the appellants for appointment of Commissioners to:-

överify the record from the Board of Revenue and its sub-ordinate offices and then to prepare their report showing the exact survey number and physical status of the acquired land with the assistance of Director, Settlement Survey and Records, Government of Sindh, Hyderabad and the concerned Mukhtiarkar (Revenue) and any other officer whose assistance is required.ö

The appellants through this application want to dig out the things as the same were before 1981 and particularly before issuance of Notification under Section 4 of Land Acquisition Act, 1894 (hereinafter called as L.A Act) published in Sindh Government Gazette dated 30.5.1981 by the Land Acquisition Officer.

I have heard learned Standing Counsel appearing for the appellant and examined the grounds mentioned in this application for making such a wild enquiry into the facts as they were 33 years ago to deny compensation to the respondents in whose favour an award had been passed in 1985 under **Section 11** of L.A Act. According to learned counsel local investigation through the commissioner is necessary as it would go to the root of the matter in dispute. The claimants who were not title holders of acquired land cannot be entitled to the compensation and the land shall be treated as Government land and the verification would save huge amount of public money involved.

The appellants in para-3 of application have referred to sections 23 and 24 of the Land Acquisition Act, 1894 which deals with the matters to be considered in determining compensation (**Section 23**) and matters which may be neglected in

determining compensation (**Section 24**). I am afraid that none of these sections provide any justification for the enquiry sought to be opened in the name of verification of physical status of acquired land by the appellants through their own officers from the record which has always been in their own hands for the last 33 years. These two sections provide guide line to the Collector for determining the amount of compensation (**Section 15** of L.A. Act) and have nothing to do with the physical status in the Revenue Record to ascertain claimant / owner of acquired land. The physical status of the land acquired in the year 1981 stand verified and accepted by the Provincial Government (appellant No.1) and even the acquiring agency viz the appellant No.2 and 3 once the owner were dispossessed and compensation was awarded to them. After 33 years of such verification and re-investigation would in any case not adversely reflect on the gazette notification dated 30.5.1981 issued by Land Acquisition Officer under Section 4 of the L.A. Act and the proceeding pursuant to the said notification culminating in Reference under **Section 18** of L.A Act to Court. The physical status of acquired land as on 30.05.1981 stands established beyond any doubts by virtue of **Sub-section 2 of Section 4** read with the enquiry under **Section 11** of the L.A. Act. There is no denial of the fact that on **20.4.1993** the Ministry of Defence through Estate Officer has already taken over physical possession of the acquired land and I am sure in terms of the proviso to **Section 17** read with **Section 31** of the Act, the Collector must have deposited the amount of compensation in Civil Court, in the name of owner before taking over possession of land and delivery of its possession on 20.04.1983 to Army Authorities, the Acquiring Agency.

. The learned Standing Counsel has not been able to answer the question that how in 2014 the appellants can question the names of the persons/claimant/owners of various survey numbers of the acquired land and why the Government since 1981 has not raised this objection when claims were verified by Government Officers pursuant to the notice of award in terms of **Section 12(2)** of the L.A Act, and whose names were mentioned by the Collector in his reference to Court to meet the requirement of **sub-section (b) of Section 19(1)** of the L.A. Act after verification from the Revenue Record. This subsection reads;

19 Collector's statement to the Court (1)

(a)

(b) the names of the persons whom he has reason to think interested in such land;

The exercise which started by the Land Acquisition Officers on 30.5.1981 with the Notification under section 4 of the L.A Act, stand logically completed on

20.4.1983 when physical possession was handed over to the Army Authorities to accomplish the purpose of acquisition, and the compensation was determined by Collector on 7.5.1985 for the land owner / occupiers. In this regard admission of the appellants No.2 and 3 before the referee Court in their written statement is very material and I reproduce the relevant paragraphs from their written statement below:-

Written statement, the defendant No.2 submits:-

1. That it is admitted that under-mentioned agricultural lands (hereinafter referred as `the lands`) belonging to above named plaintiffs were acquired in public interest for the purposes of Army Installations etc.
2. í í .
3. í í .
4. That as per terms of award dated 7.5.1985 passed by learned defendant No.1 the learned L.A.O, Assistant Commissioner, Kotri, the total sum of Rs.10,71,9226/-; being the amount of compensation for the aforesaid acquired lands, details given below was paid to the above named plaintiff.

DETAIL OF PAYMENTS.

Sr#	Amount of compensation.	15% Comp.Ag	Interest	Total amount
1	Rs.4,30,525/-	Rs.64,579/-	Rs.41,986/-	Rs.5,37,090/-
2	Rs.2,21,325/-	Rs.33,199/-	Rs.26,725/-	Rs.2,81,249/-
3	Rs.72,825/-	Rs.10,924/-	Rs.8,793/-	Rs.92,541/-
4	Rs.65,931-25	Rs.9,889/-	Rs.7,961/-	Rs.83,782/-
With Elect: Installations etc			Total.	Rs.9,94,662/-

5. That the L.A.O./defendant No.3 while passing the impugned award dated 7.5.1985 has very carefully considered other relevant aspects and factors of acquired lands.

6. That all legal formalities and provisions of Land Acquisition Act have been carefully observed in the acquisition-proceedings by the L.A.O/defendant No.3.

The written statement was signed and filed by appellant No.3 namely Military Estate Officer on **07.08.1990**. The Collector has even paid compensation to the several owners who did not dispute the amount so determined by the Collector and referred the case under **section 18** of the L.A. Act of those who objected to the amount of compensation with a statement of information he was required to furnish to the Court under **Section 19**.

It is pertinent to note here that in para-4 of the application, the appellants have relied upon Military Estate Officer`s letter dated **10.10.2013** in which he has declared that all the cases pending in the High Court of Sindh in terms of **section 18**

(and **section 54**) of the L.A Act, in respect of the land acquired by the Ministry of Defence in 1981 are cases of "Land grabbers/ illegal khatedars" and all Officers of the Provincial Government involved in the process of land acquisition, except the officers of acquiring agency, were corrupt persons of "dubious character" and they have forced the "innocent, naïve and helpless" Ministry of Defence to make the payment of compensation to the private persons through Land Acquisition Officer, Kotri/different Court. The appellant No.3 without realizing that being Acquiring Agency, their own Ministry of Defence was involved in the process of acquisition at every stage including the verification of claimants and determination of compensation and yet the appellant No.3 has raised the question of legality of the ownership of the land acquired by them in 1980 at their own pointation. Therefore, in view of their own involvement in the process of acquisition and the written statement reproduced above, the appellants are estopped from raising any question as to the physical status of land of claimants. Even otherwise, one of the appellant through the letter blaming the co-appellant for corruption and on such pretext all the appellants are trying to achieve their ulterior motive of denying compensation to the private land owners after 33 years of taking over physical possession of acquired land.

The other impediment in the way of appellants to seek investigation of physical status of acquired land is lack of jurisdiction to entertain such prayer by this court under Land Acquisition Act, 1894. This Court has no jurisdiction to entertain this application as it would amount to going behind the References filed by the Collector in terms of **section 18** of L.A Act. This Ist. Civil appeal under **section 54** of the Land Acquisition Act, 1894 are arising from the order passed by a Referee Court in terms of **section 18** of the L.A. Act. It has rightly been pointed out by Mr. Imran Qureshi, learned counsel for the respondent No.1 that the jurisdiction of this Court is limited only to the questions referred to the Court under **section 18** of the L.A Act and this Court cannot exercise the power of appellate Court which may be available to the appellate Court of a general jurisdiction while hearing the case under section 9 of Civil Procedure Code. Mr. Imran Qureshi, learned counsel for the respondent No.1 has contended that kind of enquiry sought to be held by the appellants after 33 years of the land acquisition is beyond the scope of the jurisdiction conferred upon this Court in terms of L.A Act. He has placed reliance on **PLD 1981 SC 516** (Government of West Pakistan v. Ahmed Ali Jan & others) and **PLJ 1983 SC 41** (Government of West Pakistan (now N.W.F.P) and 2 others V. Mst. Asmatun Nisa and 6 others). The Honøble full bench of the Supreme Court in **PLD 1981 SC 516** while examining the jurisdiction of Court under Land

Acquisition Act, 1894 has relied on the earlier case reported in **PLD 1973 SC 49** State v. Zia-ur-Rehman after quoting **section 18** of L.A. Act has categorically held as follows:-

“This is not all. There are other sections which follow **section 18**, that is, **sections 19, 20 and 21** which determine the scope and extent of jurisdiction exercised by such Court. Section 19 relates to the information to be furnished to the Court which also includes, amongst it the objection of the persons interested. Section 20 regulates the procedure for the determination of the objection and section 21 confines the scopes and inquiry of proceedings only to the consideration of the interest of the persons affected by the objection. Similarly, section 30 restricts the scope of jurisdiction to the determination of the apportionment of the amount of compensation. **These sections are a part of a Special Act, which provides for the acquisition of land for a public purpose and the determination of the compensation payable to the persons affected by such acquisition. Therefore, the extent and scope provided therein must constitute the jurisdiction of the designated Court which hears the reference.** Such is the connotation of the word ‘jurisdiction’. As held by this Court in State v. Zia-ur-Rahman.”(page-518).

In the same judgment the Honourable Supreme Court has held that the designated Court are executing Court in the following terms:-

“We agree with the formulation of this opinion as in the absence of any specific provision in the Act itself, the jurisdiction conferred by the relevant sections debarred the designated Court from examining the validity of the reference which is a condition precedent for the designated Court to act accordingly. **As the executing Court cannot go behind the decree and so also the designated Court cannot go behind the reference.**”

In PLJ 1983 SC-41(Government of West Pakistan & 2 others v. Mst. Asmatun Nisa & others), the Honourable Supreme Court held as follows:-

“It is now well settled that **the referee Court** which receives the reference under section 18 cannot go behind the reference and **would have jurisdiction only to determine the questions specifically referred to it.** In Government of West Pakistan v. Ahmed Ali Jan and others (PLJ 1981 SC 923) while interpreting section 18 and section 30 of the Land Acquisition Act, it was observed :-

“Clearly, therefore, the extent of **this jurisdiction is not the same as one conferred on a Court of general jurisdiction while hearing a suit under section 9, C.P.C.** It is only when a reference is made under section 18 that the designated court is empowered to act and not otherwise; and while exercising its jurisdiction, it cannot go behind the reference and hold that it was illegally made for the reason that the Collector had no power to do so as the application for making the reference was made beyond time.”

The **section 54** of the Land Acquisition Act, 1894 confers jurisdiction on appellate Court for hearing appeal against order/judgment passed by Referee Court on the reference under **Section 18** of L.A. Act and, therefore, notwithstanding anything contained in any other law as specifically mentioned in section 54 of L.A. Act which I believe in the light of the above citations include Civil Procedure Code, this Court has no jurisdiction to entertain an application, which on the face of it is beyond the jurisdiction of this Court under Land Acquisition Act, 1894 as discussed in the above cited judgments. Since the Referee Court while exercising power under **section 18** of the L. A. Act is equated with an executing Court and it is not authorized to go behind the reference, the Court hearing an appeal against the order of an executing Court (Referee Court) cannot go behind the decree (Reference) and enter into a dispute which should have been raised and decided before the final determination of compensation by the Collector.

The upshot of the above discussion is that this application is dismissed.

By consent, adjourned to 29.9.2014 at 8.30 a.m.

JUDGE.