



pressed and the question of omission of **Section 28-A** of Land Acquisition Act, 1894 through Sindh Amendment Act No.XVI of 2010 has been raised before this executing Court. Learned counsel for the J.D has also contended that the effect of omission of **Section 28-A** of the Land Acquisition Act, 1894 can be examined by the Court in execution proceedings by going behind the decree and modify the same. He has relied on **PLD 1961 SC 192** (Islamic Republic of Pakistan ..Vs.. Muhammad Saeed).

2. Learned counsel for the D.H in reply has mainly contended that no retrospectively effect can be given to any amendment to deprive anyone of lawful right accrued to him not only by operation of law but it has also been endorsed as a decree of Court. He has referred to **Article 12** of the Constitution of Pakistan 1973 and **Section 6** of General Clauses Act, 1987.

3. I have carefully examined the sole point raised by the learned counsel for the J.D.

4. It is an admitted position that the decretal amount deposited in Court in present execution application whereby the Decree Holder seeks to execute the following judgment and decree in High Court Appeal No.114/1993 dated **29.10.2002**:- (Already reported in **PLD 2003 Karachi 174**).

10. Nevertheless, in view of the reasons stated above and the pronouncement of the Hon'ble Supreme Court in SAADI JAFRI ZAINABI'S case, we are of the view that upon a proper construction of Section 28-A additional compensation is to be calculated only on the basis of the unpaid amount respectfully following the law as declared by the apex Court we would also agree with the learned Single Judge that Section 28-A is a self executing provision and the mere fact that it was not considered in the judgment of the Hon'ble Supreme Court does not disentitle the executing Court from allowing the decree holder to avail of its benefits.

11. For the foregoing reasons, we dismiss the Appeal directing the parties that the Appellants were entitled to receive the additional compensation under Section 28-A for the unpaid amount of the compensation from the date of notification under Section 4 of the Act till the final payment of the compensation is made to the Appellants. There will be no orders as to costs.

5. The amount deposited by Decree Holder after 13 years of the appellate Decree was an admitted amount duly calculated by by the Nazir in his report dated 27.5.2010 in terms of order dated **04.6.2010**. The J.D who wants to interpret Sindh

amendment regarding omission of Section 28-A from the Land Acquisition Act, 1894 to his benefit was admittedly notified on **09.7.2010**. The maximum benefit of this amendment could be that the benefit available to the D.H in terms of the Judgment & Decree in High Court Appeal No.114/1993 would cease to be accounted for from the date notifying the amendment or from the date mentioned in the amending act itself. The payment of compensation under **Section 4** of the Land Acquisition Act, 1894 read with **section 28-A** as long as it was in force, was time bound and it kept multiplicity by “**fifteen percent per annum**” with the passage of time and we can appreciate it from the language of the judgment reproduced above that the same was payable from the date of notification under **Section 4** of the Act till the final payment. The provisions of **Section 28-A** were applicable in the case of D.H whose land was admittedly acquired by notification dated **02.02.1960** and fully applied by the learned Single Judge and endorsed by Division Bench in High Court Appeal No.144/1993 which was disposed on **29.10.2002** and therefore, as long as Section 28-A was in the statute books it had rightly been implemented by the Court of law. It cannot be deemed to have been non-existent from the retrospective effect. The legislations have not intended to take away the effect of judgments and decrees already in the field otherwise it should have been specifically mentioned by use of non-obstante clause in the enactment. The benefit of Section 28-A of the Land Acquisition Act, 1894 has been extended and endorsed by the appellate judgment and decree, in favour of the D.H and any enactment subsequent to judgment and decree even otherwise cannot be read to nullifying the judgment and decree unless such judgment is specifically mentioned in the enactment itself. Therefore, even for the sake of argument, if we accept by any stretch of imagination the argument of learned counsel for J.D that it has retrospectively effect, that effect could not be read to set aside a judgment and decree in the field since the amendment does not say that such omission shall be “notwithstanding any judgment and decree of any Court of law” or specifically identifying the judgment and decree in hand. In any case in addition to what is said hereinabove, the provisions of **Section 6** of General Clauses

Act, provide full protection to the judgment and decree against any amendment, it reads as follows:-

6. **Effect of repeal.** Where this Act, or any [Central Act] or Regulation made after the commencement of this Act, repeals any enactment hitherto made or hereafter to be made, then, unless a different intention appears, the repeal shall not:

(a).....

(b).....

(c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed; or

(d).....

(e).....

and any such investigation, legal proceeding or remedy may be instituted, continued or enforced and any such penalty, forfeiture or punishment may be imposed as if the repealing Act or Regulation had not been passed.

6. The finality of Court orders is protected in the above mentioned provision of General Clauses Act, 1897. The reliance placed by the learned counsel for the D.H on **PLD 1988 SC 824** (Nazeer Ahmed and others ..Vs... Ghulam Mehdi and others) is directly on the point as emerged from the facts narrated above. The rights available to the D.H in terms of Section 28-A of the Land Acquisition Act, 1894 had accrued to him way back on **29.10.2002** through the judgment passed in HCA No.114/1993. The J.D has not preferred any appeal against the said appellate judgment and decree and therefore, after 14 years down the line, an amendment in **Section 28-A**, irrespective of its language is of no avail to the learned counsel for the J.D. The reliance placed by the counsel for J.D on **PLD 1961 SC 192** (Islamic Republic of Pakistan ..Vs.. Muhammad Saeed) on the question relating to the execute-ability of an order or decree is not relevant in the facts of this case. Here we are not confronted with the question of jurisdiction of the Appellate Court in passing the judgment sought to be executed in the present proceeding. The amendment has not rendered the judgment and decree null and void nor the decree can be rendered null and void merely by an amendment unless it is so mentioned, as discussed above, in the amendment itself.

7. In view of the above, CMA No.407/2014 is allowed. Nazir is directed to disburse the decretal amount to the Decree Holder within one week.

Karachi  
Dated:24.4.2015

J U D G E