

ORDER SHEET
IN THE HIGH COURT OF SINDH,
 CIRCUIT COURT, HYDERABAD
 R.A. No.261 of 2011

DATE	ORDER WITH SIGNATURE OF JUDGE
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1. For orders on MA 1101/2014.
2. For orders on MA 1102/2014.
3. For Katcha Peshi
4. For hearing of MA 1054/2011.

24.08.2015.

M/s Muhammad Humayoon Khan Standing Counsel and Mr. Rafique Ahmed
 Advocate for the applicant
 Mr. Imran Qureshi Advocate for respondents.
 Mr. Allah Bachayo Soomro Addl Advocate General Sindh.

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This Revision Application is arising out of Land Acquisition Award passed on **07.03.1985**, whereby the respondents were given compensation of their land acquired by the applicants at the rate of Rs.15000/- per acre.

To be very brief, the respondents preferred a Reference bearing Land Acquisition Matter No.06/1992, which was dismissed by Judgment dated **30.11.1999** passed by learned Additional District Judge, Kotri. Before dismissal of their Reference, the respondents had already received entire payment under the Award and they did not prefer any appeal against the dismissal of their Reference. The matter remained past and closed chapter right from 1999 to 2011 and the respondents had no grievance. However, on **14.05.2009** the respondents filed Execution proceedings on the basis of Judgment of High Court in Ist Appeal No.25/1998, which was preferred by applicants against the enhancement of compensation awarded to some other land owners and not the respondents herein. The said HCA No.25/2009 was dismissed for non-prosecution. Even after filing execution proceedings, the respondents remained silent for next two years and on or about **27.04.2011**, one Muhammad Khan claiming to be attorney of respondents filed an statement wherein he relied on the Judgment of Supreme Court in Civil Appeal which was decided back on **30.03.2004** and reported as **PLD 2004 SC 512**. Thereafter execution application was numbered as Execution Application No.01/2011. Subsequently, on the basis of certain observations in paras

No.12 to 19 of yet another Judgment of Supreme Court reported in **PLD 2010 SC 878**, the executing court allowed the Execution Application No.01/2011 almost as prayed.

Be that as it may, this is an admitted fact that the findings of High Court in aforementioned Appeal (HCA No.25/1998) and the observations of the Honourable Supreme Court in PLD 2004 SC 512 and PLD 2010 SC 878 were not direct findings in favour of the respondents. It was more or less an interpretation of the Judgments passed by the Honourable supreme Court, which were made the basis of execution proceedings and question of maintainability of such execution proceedings has yet to be decided on merits because the respondents have not any Judgment and Decree in their favour with their execution application of the respondents. Whether the observations of Honourable Supreme Court in a matter in which respondents were not even party can be treated by interpretation as Judgment and Decree in favour of respondents. The latest position is that last mentioned Judgment of the Hon'ble Supreme Court (**PLD 2010 SC 878**) persuaded the executing court to allow an execution application is directly or indirectly under review in Civil Petition No.291/2014 as its ratio has tentatively been found misapplied. Therefore, possibility of having any observation which may elaborately explain the meaning and import of the observations of Supreme Court in **PLD 2010 SC 878** cannot be ruled out. Leave granting order in Civil Petition No.291/2014 is to the following effect:-

Leave to appeal is granted in this petition to examine whether the ratio of Judgment in the case of *Sadaqat Ali Khan through L.Rs & others Vs. Collector Land Acquisition & others* (PLD 2010 SC 878) has been correctly pressed into service in this case in favour of the respondent.

C.M.A No.1338/2014

Notice to the respondents. In the meantime operation impugned orders shall remain suspended.

Indeed there is no cavil to the proposition that leave granting orders passed by Honourable Supreme Court are not supposed to be binding upon the courts below. However, in the case in hand, learned counsel for the respondents has based his case in execution application upon the order of the Honourable Supreme Court reported in

PLD 2010 SC 878 though they were not even party in the said civil petition. Therefore, leave granting order specifically on the point as to whether the ratio of said Judgment of the Honourable supreme Court has been correctly applied or not is enough, atleast to come to the conclusion, that there is some possibility of modification in the aforesaid orders on the basis of which the respondents have based their claim in execution application No.01/2011. The anxiety of the respondents that their right under the impugned order would be frustrated by passage of time since execution application has already been allowed is ill founded. It has already been taken care of by this court, when the Government/applicant were directed to deposit entire amount awarded to the respondents by the executing court in this court and of course I am not going to pass order for refund of the said amount to the Government till the Supreme Court is ceased of the fresh matter (C.P. No.291/2014) which would touch upon the merit of the respondent's claim.

This matter is, therefore, adjourned sine die till the decision of the Honourable Supreme Court in Civil Petition No.291/2014.

A.K

JUDGE