

ORDER SHEET
**IN THE HIGH COURT OF SINDH,
 CIRCUIT COURT, HYDERABAD.**

Ist. Appeal No.54 of 2010.

DATE	ORDER WITH SIGNATURE OF JUDGE
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1. For order on C.M.A. No.1212 of 2010.
2. For katcha peshi.
3. For hearing of C.M.A. No.1213 of 2010.

28.09.2015.

Mr. Allah Bachayo Soomro, Additional Advocate General Sindh and Mr. Muhammad Humayoon Khan, Special Counsel for appellants.

Mr. Irfan Ahmed Qureshi, Advocate for respondents No.2 and 3.

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NAZAR AKBAR, J.- This first appeal is directed against the order of rejection of Reference No.02/2009 filed by the appellant No.2 under section 18 (3) of the Land Acquisition Act, 1894 in the Court of District Judge, Jamshoro @ Kotri. The private respondents No.2 and 3 filed an application under Order VII Rule 11 C.P.C. before the Referee Court on the ground that the appellant being beneficiary was not competent to file reference against the award. The appellant filed objections to the said application. The learned Referee Judge by impugned order rejected the reference in the following terms:-

“I have gone through the reference as well as application U/O 7 Rule 11 CPC, counter affidavit of the plaintiff and also considered the arguments of learned counsel for the parties, it appears that the reference filed by the plaintiff, but Government of Sindh is not made a party in this case as provided section 79 of CPC. Moreover the section 18 sub-section (3) of the Land Acquisition Act, clearly shows that land acquired for the use of RBOD, which is beneficiary. The beneficiary of acquired land has no right and locus standi to file reference against the award of compensation or appeal against a judgment arising out of the reference under S.18 Land Acquisition Act, 1894. Reliance is placed on PLD 2008 Supreme Court 400 and 2009 SCMR 1051.”

2. Learned counsel for the appellants has relied on the judgment reported in **PLD 2010 SC 745** (Land Acquisition Collector v. Muhammad Nawaz), whereby in view of the judgment dated **18.02.1991** passed by the Shariat Appellate Bench of Supreme Court in Shariat Appeal No.07/1989, barring right of appeal to the Government/beneficiary was declared as repugnant to the Injunctions of Islam. The only ground for rejection of reference was two judgments reported as **PLD 2008 SC 400** (BP Pakistan Exploration and Production v. Sher Ali Khawaja) and **2009 SCMR 1051** (Water and Power Development Authority v. Ghulam Shabbir). Both these judgments in view of the judgment reported in **PLD 2010 SC 745** by a Larger Bench of (6) six Judges of the Honourable Supreme Court stand overruled. In principle the larger bench of Supreme Court in **PLD 2010 SC 745** on the basis of the judgment of Federal Shariat Court in Shariat Appeal No.7 of 1989 has held as under:-

“7. It is pertinent to mention here that out of the aforesaid sections, sections 18(3) and (4), 22-A, 54 of the Land Acquisition Act as well as depriving a company or a local authority of the right of appeal in Proviso to the section 50(2) of the Act are repugnant to the injunctions of Islam as held by the Shariat Appellate Bench of this Court vide judgment dated 18-02-1991 in Shariat Appeal No.7/89. A cut off date was fixed by the Shariat Appellate Bench for the competent bodies for necessary amendment in the aforesaid sections till 30-9-1991. The Shariat Appellate Bench further held as under:-

“The proposed amendments would advance remedy to an aggrieved party. It would be fair and just to give a right to make a reference, file a cross-objection, lead evidence and file an appeal to those parties who have been denied such a right under sections 18, 22-A, 50 and 54 of the Land Acquisition Act.”

As stated by the learned counsel for the parties that province of the Punjab had not yet amended the said provision in accordance with the directions of the Shariat Appellate Bench judgment dated 18-2-1991 in Shariat Appeal No.7/1989. According to Article 203-D, (3)(b) if any law or provision of law is held by the Court to be repugnant to the Injunctions of Islam, such law or provision shall to the extent to which it is held to be so repugnant cease to have effect on the day on which the

decision of the Court takes effect. The aforesaid provisions mentioned herein above which were declared against the injunctions of Islam after 30th September, 1991. The aforesaid provision of Land Acquisition Act including provision of section 50(2) of the Act barring right of appeal to Federal Government/beneficiaries shall cease to have effect, therefore, now after the cut off date the Federal Government/beneficiaries have a right to file an appeal, as per judgment of the Shariat Appellate Bench.”

3. The learned counsel for the respondents concedes to this proposition, however, he argues that this judgment was not in the field at the time of passing of the impugned order dated **13.05.2010**, but he has not been able to deny that judgment of Shariat Appellate Bench of the Hon’ble Supreme Court whereby barring right of appeal to such Government/beneficiary was declared as repugnant to the Injunctions of Islam was in the field and therefore, the order of the Referee Court rejecting the reference was contrary to judgment of the Shariat Appellate Bench of Supreme Court.

4. The learned counsel for the respondents has also raised the question of limitation on the ground that the appeal has been filed after 90 days of passing of the impugned order. The order of the Referee Judge impugned herein is dated **13.05.2010** and the appeal has been filed on **15.11.2010**. To meet this argument, learned counsel for the appellant has contended that the impugned order was void abinitio and therefore bar of limitation does not arise. He has relied on judgment reported as **PLD 2001 SC 514** (Land Acquisition Collector v. Sarfaraz Khan). The Referee Court refused to entertain the reference filed by the beneficiary of the award under the misconception of law that the beneficiary had no right to file a Reference or an appeal, therefore, the impugned order is without jurisdiction, as the jurisdiction so vested in the Referee Judge was not exercised by the Referee Court. The reference was very much maintainable and the

order impugned herein was in contravention of the Law laid down by the Shariat Appellate Bench of Hon'ble Supreme Court and the learned Referee Court followed those provisions of Land Acquisition Act, 1894 which were repugnant to the injunctions of Islam, therefore, the order was nullity in the eyes of law. In **PLD 2001 SC 514**, the Hon'ble court has held that on order of Referee Court in contravention to Section 34 of the Land Acquisition Act was nullity and against which no limitation would run. This judgment of the Hon'ble Supreme Court squarely covers the facts and circumstance of the case in hand, therefore, I hold that the bar of limitation is not applicable to this appeal as the order impugned herein was void ab-initio and nullity. Learned counsel for the respondents has referred **PLD 2012 Sindh 293** (Sherbano v. Kamil Muhammad Khan). The case relied upon by the learned counsel for the respondents is out of context since in this case a suit was found barred by time and the facts and circumstances of a case dealing with limitation for filing a suit and limitation for an appeal against void order cannot be on same footing, therefore, **PLD 2012 Sindh 293** has no relevancy in the facts and circumstances of the present case.

5. The other objection raised by learned counsel for the respondents before the Referee Court was that the Reference has been filed by the beneficiary and not by the Government Department, therefore, in terms of **Section 79** of the CPC, the reference was not maintainable. However, from the plain reading of **Sections 18(3)** of the Land Acquisition Act, 1894 read with **PLD 2010 SC 514** it is clear that the beneficiary of acquisition can file a Reference or appeal if he was a party before the Referee Court. In execution proceedings, copy of which is available at page-67 as Annexure-"F" of the Court file the

respondents themselves in column No.11 have mentioned the Executive Engineer, Right Bank Outfall Drainage, (RBOD) Division-II Hyderabad (appellant No.2) as one of the judgment debtors as per award. Even in the impugned order the learned Referee Court has clearly stated that land was acquired for the use of RBOD which is beneficiary. Therefore, the reference was filed by the beneficiary in terms of Section 18(3) of the Land Acquisition Act and the provision of **Section 79** of the Civil Procedure Code was not relevant as the Reference under Section 18(3) Land Acquisition Act filed by the beneficiary was not inconsistent to the Land Acquisition Act, 1894. Therefore, the Reference No. 02 of 2009 before the Referee Court was not hit by **Section 79** of CPC.

4. In view of the above facts and circumstances of the case and law cited by the counsel this appeal is allowed and the case is remanded to the Referee Court for deciding the Reference No.02/2009 in accordance with law, within a period of three months.

JUDGE

Karat/-