

JUDGMENT SHEET  
**IN THE HIGH COURT OF SINDH,**  
**CIRCUIT COURT, HYDERABAD**  
 1<sup>st</sup> Appeal No. 20 of 2008  
 1<sup>st</sup> Appeal No. 21 of 2008  
 1<sup>st</sup> Appeal No. 22 of 2008

DATE	ORDER WITH SIGNATURE OF JUDGE
Date of Hearing :	21.08.2015
Date of Decision :	30 .09.2015
Appellant :	Sui Southern Gas Company Limited through Mr. Muhammad Aslam Bhatti, advocate
Respondents :	Laiq Ahmed Shah and another in 1 <sup>st</sup> Appeal No. 20 of 2008 Muhammad Saleh and another in 1 <sup>st</sup> Appeal No. 21 of 2008 Ghulam Nabi and others in 1 <sup>st</sup> Appeal No.22 of 2008 Through Mr. Imran Qureshi, advocate
Official Respondent :	Land Acquisition Officer Through Mr. Allah Bachayo Soomro Addl.A.G  Mr. Muhammad Humayoon Standing Counsel

**JUDGMENT**

**NAZAR AKBAR, J.-** By this common judgment, I intend to dispose of 1<sup>st</sup> Appeal Nos. 20, 21 and 22 of 2008 filed by the appellant namely Sui Southern Gas Company Limited against respondents namely Laiq Ahmed Shah and another (1<sup>st</sup> Appeal No. 20 of 2008), Muhammad Saleh and another (1<sup>st</sup> Appeal No. 21 of 2008) & Ghulam Nabi and others (1<sup>st</sup> Appeal No. 22 of 2008) respectively against the judgment dated 11.9.2008 passed by the Referee Judge / Additional District Judge, Kotri in Land Acquisition Reference Nos. 1/C, 1/A & 1/B of 1998 respectively, whereby the initial award of compensation to the land owners/

respondents determined @ Rs. 1,00,000/- per acre was enhanced to Rs.2,50,000/- per acre under Section 23(1) of the Land Acquisition Act, 1894 (hereinafter referred as L.A Act) with 15% per annum on the said value upon compulsory nature of acquisition under Section 23(2) of the L.A Act and additional compensation of 15% per annum from the date of Notification i.e. 22.12.1994 under Section 5 of the L.A Act till payment of compensation amount as well as 6% per annum simple interest on the unpaid portion of the amount.

2. The brief facts leading to these appeals are that the appellant Sui Southern Gas Company acquired various pieces of land owned by private respondents from Survey No. 340 (in 1<sup>st</sup> Appeal No. 20 of 2008), Survey No. 446 (in 1<sup>st</sup> Appeal No. 21 of 2008) and Survey Nos. 699, 700 and 702 (in 1<sup>st</sup> Appeal No. 22 of 2008) all situated in Deh Bada Taluka Kotri district Dadu now Jamshoro from the respondents for laying gas pipeline between Kadanvari and Karachi. The respondent No.2 in 1<sup>st</sup> Appeal Nos. 20 & 21 of 2008 and respondent No.4 in 1<sup>st</sup> Appeal No. 22 of 2008 had initiated acquisition proceedings by issuing preliminary notification under **Section 4** of the L.A Act published in Government Gazette dated **22.12.1994** with corrigendum dated **21.11.1995** followed by notification under **Section 6** of the L.A Act also duly published in Government Gazette dated **26.05.1996**. The land was acquired urgently, therefore, notification under **Section 7** of the L.A Act was also issued. After conclusion of the proceedings, Land Acquisition Officer passed award whereby compensation at the rate of Rs. 1,00,000/- per acre plus 15% compulsory charges under Section 23(2) of the L.A Act with compensation charges 15% per annum under Section 28 of the L.A Act along with 6% interest per annum from the date of notification till the date of payment. The compensation of crop / trees etc were already awarded at the time of taking possession. Private respondents did not accept the award and

therefore, preferred above mentioned References claiming that the compensation should have been @ Rs.3,00,000/- per acres.

3. The appellant contested these References by filing objections and on the basis of pleadings of the parties the learned Referee Court framed following issues in each reference:-

1. Whether the suit / reference is not maintainable?
2. Whether the Award passed by the Land Acquisition Officer is not proper and according to the then market value of the suit land and the adjacent lands?
3. Whether the land in question is situated in Industrial area and is sikni land?
4. What should the order be?

The above issues were common in all the three references, however, in reference No. 1-B one more issue in addition to the above issues was added. This additional issue was as under:-

“Whether the Land Acquisition Officer had acquired more than area of plaintiff’s then already acquired and compensated?”

4. In support of their claim in L.A. Reference No. 1-A of 1998 ( 1<sup>st</sup> Appeal No. 21 of 2008) the respondent No.1/ plaintiff Muhammad Saleh Rajar appeared himself as witness. In L.A Reference No. 1-B & 1-C of 1998 (1<sup>st</sup> Appeal Nos. 22 & 20 of 2008), respondent No.1 / plaintiff No.1 Ghulam Nabi Rajar appeared for self as well as attorney of Laiq Ahmed and one Mansoor Ahmed appeared as P.W-2 and after their examination their counsel close their side.

5. On behalf of the appellants / defendants, Tarique Ahmed Memon, Land Acquisition officer, SSGC was examined as D.W-1 at Ex.86. Respondent / defendant No.2 examined D.W-2 Muhammad Akram, Executive Officer (Legal) SSGC at Ex.88 and then side of the defendants / appellant herein was closed by

statement at Ex.91. The Land Acquisition Officer, Dr. Riaz Ahmed has also appeared as witness of defendant No.1 at Ex.100.

6. Learned Referee Court after hearing counsel for the parties decided each Reference by identical orders in favour of respondent as stated above. These appeals are directed against the said order of enhancement of the compensation by the Referee Judge.

7. In 1<sup>st</sup> Appeal Nos. 20 & 21 of 2008 the respondents have not entered their appearance, however, in 1<sup>st</sup> Appeal No. 22 of 2008 the respondents have been represented by Mr. Imran Qureshi advocate.

8. These appeals were filed on 11.11.2008 and on 7.8.2015 almost after seven years I heard Mr. Muhammad Aslam Bhatti, learned counsel for the appellant in all the three appeals and Mr. Imran Qureshi, advocate for the private respondents in 1<sup>st</sup> Appeal No. 22 of 2008 . The record shows that prior to the hearing, Mr. Nisar Ali Mughal was representing the appellants and originally these appeals were filed by him in 2008 but the counsel for the appellant had always avoided to proceed. Mr. Bhatti was engaged in October, 2010. He concluded his half heartedly prepared arguments on **7.8.2015**. Mr. Muhammad Humayoon Khan, Standing Counsel for Federation of Pakistan after the arguments of both the counsel, requested the Court to allow him to argue on behalf of the appellants. Therefore it is pertinent to mention here the circumstances in which he was allowed to make his submissions.

9. Mr. Muhammad Humayoon Khan, Standing Counsel was present in court during the course of arguments on behalf of the appellant and he has realized that no serious assistance was provided to the court and therefore, he developed fear in

his heart about the fate of these appeals and rightly so. Therefore, he felt compelled by his conscious to come to the rostrum and requested the court that he may be allowed to argue these appeals on the ground that the appellants are governed by OGRA and by default controlled by Federal Government. He conceded that the Federal Government is not party in these cases and therefore Federation was not on notice. However, irrespective of the fact that the interest of Federal Government was involved in these matters or not, with consent of counsel for the respondents, Mr. Imran Qureshi, he was allowed to assist the court on the condition that he will not seek adjournment on the next date on any ground whatsoever and the case was adjourned to **21.8.2015**. Mr. Muhammad Humayoon Khan, learned Standing Counsel as promised comprehensively addressed on behalf of the appellants. Mr. Imran Qureshi, counsel for the respondents argued in rebuttal to the arguments of Mr. Muhammad Humayoon Khan Standing Counsel.

10. Learned Standing Counsel has advanced the following arguments.

- i. That the Court of Additional District & Sessions Judge had no jurisdiction to entertain the References filed by Land Acquisition Officer / SSGC Hyderabad, who was Respondent No.1 in Land Acquisition matter.
- ii. Without prejudice to the question of jurisdiction, on merit he contended that learned Additional District & Sessions Judge Kotri, failed to appreciate that the respondent had no case for enhancement of compensation awarded by the Land Acquisition Officer. In this context he pointed out the following illegalities in the impugned order of the Referee Court.
  - (e) The burden of proof was on the respondents to prove enhancement of compensation which they failed to discharge.
  - (a) The Respondent miserably failed to place on record tangible evidence in support of their pleadings for enhancement of the compensation awarded by Land Acquisition Officer.
  - (b) The learned Referee Court enhanced the compensation from Rs. 1,00,000/- to Rs.2,50,000/- without assigning any reason to justify the enormous enhancement

He has relied on the following case law in support of above contentions:-

- i) 1985 SCMR 1181 (Muhammad Sharif vs. Afsar Textile Mills Ltd and another)
- ii) 1984 CLC 3406 (Government of Sindh and 2 others Vs. Muhammad Usman and 2 others)
- iii) 1987 CLC 1844 (Pakistan through Secretary Ministry of Defence Rawalpindi and another Vs. Nizakat Shah and 7 others.
- iv) 1970 CLC 506 (Muhammad Hussain Vs. Abdul Razzaq and another).

11. In rebuttal the counsel for the respondents Mr. Imran Qureshi has advanced the following arguments:-

- (1) On the question of jurisdiction of Additional District Judge, Kotri he contended that the reference was filed by the Land Acquisition Officer who was an employee of the appellants for whose benefit the land had been acquired under **Section 4** of the L.A Act, and they have submitted to the jurisdiction of Additional District Judge by their own choice, therefore, they cannot claim that the court had no jurisdiction.
- (2) He contended that the learned Referee Judge had relied on the official documents i.e. report of concerned Mukhtiarkar, which was called by the Land Acquisition Officer himself.
- (3) The findings of the Referee Judge according to the learned counsel are supported by the following case law.
  - (i) PLD 2002 SC 25 (Nisar Ahmed Khan and another v. Collector, Land Acquisition, SWABI)
  - (ii) PLD 2004 SC 512 (Province of Sindh through Collector of District Dadu and others v. Ramzan and others)
  - (iii) PLD 1986 SC 158 (Fazaalur Rahman and others v. General Manager, S.I.D.B. and another).
  - (iv) PLD 2010 SC 719 (Land Acquisition Collector and others v. Mst. Iqbal Begum and others)
  - (v) 1997 MLD 717 ( Collector, Land Acquisition, Nowshera and others Vs. Malik Shams Khan and others).
  - (vi) 1992 CLC 1775 (Muhammad Rafique Khan v. Province of Punjab through Collector Bahawalpur and another
  - (vii) 2000 CLC 99 (Government of sindh through Deputy Commissioner District Dadu Vs. Ramzan and others).
  - (viii) 1993 CLC 179 (Province of Punjab Vs. Malik Altaf Ahmed and others).

12. I have heard learned counsel for the parties and perused the record and examined the case law relied upon by them.

13. The perusal of objections of private respondents under **section 9** of the L.A. Act shows that each of the land owner had made an identical claim in para No.2 & 3 of their written objections for claiming enhancement of compensation which are reproduced below:-

*2. That the land is in vicinity of Indus Highway, adjacent to Sandoz Company and other Industrial concern, as such the claim is made on the basis of plot at the rate of Rs.7.00 per square feet i.e. Rs.3,15000/- per acre.*

*3. That we claim Rs.300,000/- as further amount for detachment of the land. The land is more or less bifurcated in parts.*

14. Learned Land Acquisition Officer after hearing the parties and their objections and formal inquiry awarded compensation at the rate of Rs.100,000/- per acre. The private respondents being aggrieved and dissatisfied with the said award regarding valuation of the land requested the Land Acquisition Officer to refer the matter to learned District Judge under **section 18** of the L.A. Act for judicial ascertainment of the compensation. The appellants filed their written statement before Referee court wherein their contention was summarized in para 3 which is reproduced below:-

*3. That the total area of the plaintiff was acquired is about 3-29 acres and according to its valuation of the land the award was announced at the rate of Rs.100,000/- (Rupees One Lac) per acre plus compulsory acquisition charges, plus additional 15% of compensation per annum and plus 6% interest per annum from date of notification of payment. The sub Registrar and Mukhtiarkar were asked to intimate the market value of the land. The compensation of the award is fairly and properly determined on the well established principles of the previous year's sale of the land in the vicinity which has also been approved by the superior courts. Even at the record and report of Sub Registrar Kotri vide letter No.360 dated 15.7.97 that the market value of the land and vicinity is not more even the adjacent deh Bada Gojati ranging from Rs.16000/- to 30,000/-*

*during th year 1994 and 1995. Whereas the Mukhtiarkar intimated without record of the market price of suit land in Rs.2,50,000/- it was not considered as unjustified by him.*

15. The parties led their evidence and in terms of **Article 114** of Qanoon-e-Shahadat Order, 1984, the burden to prove the market value at the rate of Rs.300,000/- per acre was on the land owners. As reproduced above, the land owners/ private respondents only and only made a bald statement of their claim without any supporting document before Land Acquisition Officer. Even in the court of Referee Judge, they only relied on the statement made by their witness in affidavit in evidence. In their affidavit in evidence, they have claimed enhancement only and only on the basis of location of their land acquired by the appellants. They heavily relied upon the placing of the land/ adjacent locality as stated in para 7 of their affidavit in evidence and rest of the paras of their affidavit in evidence have no reference to the question of valuation. The witness had not produced any document to show that how their claim of Rs.7/- per Sq. Ft, which comes to Rs.3,15000/- per acre was justified. Para 7 of the affidavit in evidence of Muhammad Saleh which is common with affidavit in evidence of Ghulam Nabi Rajar, the witness in other appeals, which is reproduced below:-

*7. That the land in question being just contiguous/adjacent to Sandoz Jamshoro, and other installation concerned, and as such even conservatively claiming, it would be atleast Rs.7/- per Sq. Ft and by simple calculation it would come to Rs.3,15000/- per an acre, instead of paultry amount of Rs.100,000/- per ace instead of minimum Rs.7/- per Sq. Ft.*

16. Learned Referee court while deciding crucial issue about market value of the land while passing the impugned Judgment in September, 2008 had no documents before it to determine the value at the rate of Rs.2,50,000/- per acre in 1997 except a letter dated 15.07.1997 issued by the Mukhtiarkar Kotri and declared that the Land Acquisition Officer did not give any reason as to why he had not accepted the report of the Mukhtiarkar and taken it into consideration and



how it was exorbitant. Learned counsel for the appellants has contended that even this report of Mukhtiarkar was not produced by the respondents in evidence before learned Referee court, therefore, by referring to a document which was not produced in evidence, the learned Referee Judge erred in law in coming to the conclusion that the same was to be considered as a market value. He has referred to the findings on issue No.2 wherein learned Judge himself has quoted that adjacent land to the land in question was acquired by WAPDA for their Power Station at the rate of Rs.85000/- per acre and this fact was stated by the Land Acquisition Officer in his examination-in-chief in evidence on oath. The respondent had not denied or disputed the said statement of Land Acquisition Officer in their cross examination. It has gone un-rebutted. The respondents have also challenged the market value of the similar land reported by Sub Registrar through his letter on inquiry from the Land Acquisition Officer.

17. The leaned Referee Court ignored the evidence recorded in terms of Qanoon-e-Shahadat Order 1984 and relied on the document which was not produced in evidence. Though it was duty of the private respondents that if they wanted to rely on the so called certificate issued by the Mukhtiarkar, they should have called him in the witness box to produce the original and justify the contents thereof after going through the cross-examination by the appellants. The learned Land Acquisition Officer in his cross examination has clearly given reasons for not relying on the certificate of Mukhtiarkar. In his cross examination, he has stated that the Mukhtiarkar had not given proof of such exorbitant value of the land. Therefore, in absence of Mukhtiarkar from the list of witnesses on behalf of the private respondents would amount to withholding of evidence available to them and reliance of Referee Judge on such document which was not even part of evidence was illegal and improper. In this context, learned counsel for the appellant has rightly relied on the Judgment reported in **1984 CLC 3406**

(Government of Sindh and 2 others Vs. Muhammad Usman and 2 others). The relevant part of this Judgment reads as follows:-

*The third contention of the learned counsel was that the enhancement of the compensation from Rs.4,000 to Rs.15,000 is not justified. According to the learned counsel the evidence produced by the owner of the land in the shape of 17 transactions was not trustworthy and could not be relied upon because mere production of the revenue record without examining the purchasers or the sellers involving these transactions was not enough. He relied on a reported case PLD 1976 Pesh. 50. The view taken in this case supports the contention of the learned counsel. Relevant para from this judgment may be produced:-*

*“It is well-settled that the burden to prove their entitlement for higher compensation was on respondents. But they have not discharged this burden. The mere production (production) of Q.W 1/1 in evidence was entirely insufficient. It was the burden of respondent to examine some of the parties to the sale-transaction recorded therein. But admittedly they chosen not to do so. And the presumption would, therefore, be that had the summoned some of the parties to these transactions, they would not have supported their case”.*

*If this evidence is excluded from consideration then the only evidence in favour of enhancement would be the oral version of Muhammad Usman and two others Zamindars namely Wasi Hyder and Nasir Ahmed. The question arises whether these oral versions based merely on conjectures and surmises would be sufficient to inspire confidence and fulfil the requirements of section 23 of the Land Acquisition Act. Section 23 of the Act may be reproduced for ready reference:*

*23. Matters to be considered in determining compensation. (1) In determining the amount of compensation to be awarded for land acquired under this Act, the Court shall take into consideration first, the market-value of the land at the date of the publication of the notification under section 4, subsection (1);*

- Secondly, the damage sustained by the person interested, by reason of taking of any standing crop or trees which may be on the land at the time of the Collector's taking possession thereof;*
- Thirdly, the damage (if any) sustained by the person interested at the time of the Collector's taking possession of the land, by reason of serving such land from his other land;*
- Fourthly the damage (if any) sustained by the person interested, at the time of the Collector's taking possession of the land, by reason of*

*acquisition injuriously affecting his other property movable or immoveable, in any other manner, or his earnings;*

*Fifthly, if, in consequence of the acquisition of the land by the Collector, the person interested is compelled to change his residence or place of business, the reasonable expenses (if any) incidental to such change; and*

*Sixthly, the damage (if any) bona fide resulting from diminution of the profits of the land between the time of the publication of the declaration under section 6 and the time of the Collector's taking possession of the land.*

*(2) In addition to the market-value of the land as above provided, the Court shall in very case award a sum of fifteen per centum on such market-value, in consideration of the compulsory nature of acquisition”.*

18. Learned counsel for the appellant has also relied on **1985 SCMR 1181** (Muhammad Sharif Vs. Afsar Textile Mills Ltd and another) and **1987 CLC 1844** (Pakistan through Secretary Ministry of Defence, Rawalpindi and another Vs. Nizakat Shah and 7 others) on the point that the pleadings of the respondents were their objections under **section 9** of L.A. Act read with their request for reference under **section 18** of L.A. Act and they were required to confine themselves within the contents of their objections and reference to prove their claim of enhancement of award money. The respondents have not done anything beyond making a simple statement that the market value of their land should have been at the rate of Rs.300,000/- per acre. No details of such claim were presented before the Land Acquisition Officer and the Referee Judge and therefore, the findings were devoid of any legal basis.

19. In rebuttal, the learned counsel for the respondents Mr. Imran Qureshi had conceded that he is bound by the record and nothing has been placed by the respondents before the Referee Court in support of their claim. However, he has attempted to justify the determination of enhanced value of the land at Rs.2,50,000/- per acre on the basis of the solitary document which was not

produced in evidence and the case law referred in para 10 above. I have examined each and every case law referred by the learned counsel and there is no cavil to any of the propositions advanced in the aforesaid case laws. Each of the case law is on one or the other point which helps the Land Acquisition Officer and the Referee court in determining the market value but none of the case law could be relevant without the support of evidence for determination of the market value. For example to apply the proposition of potential market value of the land, there has to be some reference to the market value of the land on the date on which it was acquired. In the absence of putting a single word about the market value, its potential value cannot be guessed or presumed without the base value. There has to be some cogent evidence at the relevant time to apply the various tests given in the Judgments relied upon by the learned counsel for the respondents. In fact the case of the respondents for enhancement of compensation was without any basis even on the date of making the claim in the form of objections under **section 9** of L.A. Act and the opportunity of producing evidence to dispute the compensation awarded by the Land Acquisition Officer and prove their own claim by producing evidence in support thereto was not properly utilized by the land owners. In the absence of any proof of market value claimed by the respondents in terms of Qanoon-e-Shahadat Order, 1984, the court cannot change the market value determined by the Land Acquisition Officer on the basis of documents available to him in the shape of compensation awarded in respect of adjacent land to its owners in case of acquisition of their land for WAPDA, the market value of the recent past available from the office of Sub Registrar Kotri. No doubt, the value of property with Sub Registrar was supposed to be less than market value as executants of sale document generally like to disclose lower side of the market value for evading the stamp duty. In the case in hand, the valuation reports from the Sub Registrar Office were ranging between **Rs.16000/-** to **30,000/-** and the compensation given

to the land owners in case of Wapda was **Rs.85000/-** per acre therefore, the wisdom of Land Acquisition Officer in determining the value at the rate of Rs.100,000/- per acre which was Rs.15000/- more than the compensation awarded to the land owners of the adjacent land to the land in question was reasonable and justified. The order of learned Referee Judge is not only a case of failure to appreciate the evidence available on record but also a case of overlooking the facts and circumstances which prevailed with the Land Acquisition Officer at the relevant time for determination of the market value of the land in question.

20. The upshot of the above discussion is that the findings of the referee Judge in Reference No.1/A, 1/B and 1/C of 1998 are set-aside. The appeals in hand are allowed with no order as to costs.

JUDGE

\*Karar/-