

JUDGMENT SHEET
THE HIGH COURT OF SINDH, CIRCUIT COURT, MIRPURKHAS

Before:
Mr. Justice Riazat Ali Sahar
Mr. Justice Muhammad Humayon Khan

First Appeals Nos. D-06 to 09 of 2024

Farman Ali and others	in I.A. No. D-06 of 2024
Muhammad Qasim	in I.A. No. D-07 of 2024
Nazar Muhammad and others	in I.A. No. D-08 of 2024
Akbar Ali and others	in I.A. No. D-09 of 2024
...Appellants	

Versus

Assistant Commissioner/ Land Acquisition Officer, Khipro and others	in all cases ...Respondents
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For the Appellants	:	Mr. Haji Khan, Advocate [in all cases]
For the Respondents	:	Mr. Harish Chander, Assistant Advocate General Sindh along with Executive Engineer, Chotiari Reservoirs-I, Sanghar [in all cases]
Date of Hearing	:	29.09.2026
Date of Judgment	:	08.10.2026

JUDGMENT

Muhammad Humayon Khan, J.: These four appeals under s. 54 of the Land Acquisition Act, 1894 (hereinafter the “1894 Act”) have arisen out of the acquisition of private land for the construction of a public project by the name of Makhi Farash Link Canal Project (Chotiari Phase-II) (hereinafter the “project”). The Appellants are the private landowners whose land in Deh Dadhro, Taluka Khipro, District Sanghar (more fully described in the memo of appeals) has been acquired for the said purpose under separate land acquisition awards each for the market value of Rs. 1,500,000/- (rupees fifteen lakh per acre) along with the statutory benefits under ss. 23(2) and 34 of the 1894 Act.

2. There were four awards altogether, numbered as 62 to 65 dated 01.01.2020 (except 65 which is dated 14.01.2020), all of which were in identical terms as mentioned above. The Appellants did not challenge the awards at any forum. They were challenged by the Government in Land Acquisition References Nos. 01 to 04 of 2020 under s. 18(3) of the 1894 Act before the District Court which came up before the learned Additional District Judge-II, Sanghar ("Referee Court"). The private landowners (Appellants) as well as the Land Acquisition Officer (Respondent No. 1) were the respondents in the references. The references were filed by the Executive Engineer, Chotiari Reservoir (I) Division, Sanghar, for himself and on behalf of the Province of Sindh, and in all of them it was stated that the Government had not received a copy of the awards dated 01.01.2020 and were obtained on 06.10.2020 from the Board of Revenue Sindh and that the references were being filed within the period of limitation. On merits, it was stated that the compensation granted to the private landowners was exorbitant in comparison to the previous awards of similar areas; that the objections under s. 18(1)(2) of the 1894 Act were not considered; that all interested persons were not heard before passing the awards; that the Land Acquisition Officer had failed to award the compensation as per government valuations; that the Land Acquisition Officer had passed the awards with *mala fide* intention and did not deliberately have the awards sent to the Government though it was passed on 01.01.2020; that the status of the acquired land was not proved nor did the Appellants prove their contentions through documentary and other evidence; and that because of the awards, the public interest was being affected. The prayer clause in the references, which will become important in the following discussion, reads as follows:

“a) It is therefore prayed that this Honorable court may intervene in the matter and get the Award Statement passed on 01.01.2020 reissued on rational grounds to save the government huge losses.

b) Mechanism to avoid such exaggerated claims be guided and enforced by the Honorable Court.

c) The matter may kindly be referred for enquiry and incase of delinquency the concerned personnel be held accountable.”

3. By separate orders all dated 19.01.2021, the learned Referee Court accepted the objection of the Appellants that the references were time-barred and dismissed all of them. These orders were challenged in First Appeals Nos. D-06 to 09 of 2021 and Constitutional Petitions Nos. D-1401 of 2020 and D-401 of 2021 which were disposed of by consent Order dated 15.03.2022 by a bench composed of our learned brothers, Muhammad Saleem Jessar and Omar Sial JJ, leaving the references to be decided after evidence. The Order dated 15.03.2022 reads as follows in its relevant part (emphasis added):

“Mr. Haji Khan Hingorjo Advocate appearing for petitioner(s) Haji Abdul Wasand & another in C.P. No. D-1401 of 2020 and 401 of 2021 submits that the petitioners have been shown as respondents in connected 1st appeals, therefore, under the instructions he does not wish to oppose the proposal advanced by learned Addl. AG Sindh seeking remand of the cases to decide the same after recording evidence of the parties. He, however, submits that learned trial Court/referee Court may be directed to ensure early commencement as well as conclusion of the trial under intimation to this Court.

Accordingly, all the listed appeal(s) are hereby allowed. Consequently, the impugned order(s) dated 19.01.2021 being Land Reference No. 01 of 2020 passed by 2nd Additional District Judge/MCAC/Referee Court, Sanghar is hereby set-aside; *the case is remanded back to the trial Court/referee Court with direction to decide the fate of the case after recording evidence of the parties preferably within a period of six (06) months under intimation to this Court through Additional Registrar.*

In view of the above mutual consent, the connected petitions being C.P. No. D-1401 of 2020 and 401 of 2021 are also hereby dismissed as not pressed along with pending application(s).”

4. Upon remand, the Respondent No. 1 filed his objections denying any *mala fide* or illegality in the passing of the awards. He stated, inter alia, that the awards were passed after following due procedure and law; that no objections were received within fifteen (15) days of the awards; that all the persons interested for the purposes of the 1894 Act were issued notices and their statements as required under s. 10 of the 1894 Act were recorded. He stated that the acquiring agency had not been paying proper attention to the acquisition process; that the acquisition was carried out according to the valuation reports of the Mukhtiarkar concerned as well as the *khatedars* of the vicinity. As to the non-receipt of the awards by the acquiring agency/Government, he strongly denied this allegation and stated that the awards were duly communicated to the Government and the Executive Engineer, Chotiari Reservoir (I), Sanghar was required by Letter No. AC/LA/65 dated 14.01.2020 to release funds for the compensation along with which the statements of the *khatedars* and copies of the awards were also communicated. He contended that no objections were filed by the Government during the proceedings though the acquisition was under the urgency clause of s. 17 of the 1894 Act.

5. The Appellants also filed their objections/written statements in their respective references. They foremost stated that the references were all time-barred and were filed beyond the period of limitation under s. 18(3) of the 1894 Act. They supported the awards and stated that the compensation was awarded in accordance with the law and was generously accepted by them although they had demanded Rs. 3,000,000/- per acre in view of the market value, location and potentiality of the land. They also stated that the awards had been unreasonably delayed since 2007 when the possession of the land was taken; that the land was their source of

livelihood and they were suffering due to the delayed acquisition procedure. They also stated that, from the date of the awards, the market value of the land had further increased which ought to have been kept in account in the references and that their adjoining property has also been damaged. They prayed for the dismissal of the reference.

6. On 25.11.2022 the following (amended) issues were framed in all of the references and on which the parties recorded their evidence. The witnesses remained similar (except of course the landowners who recorded their evidence in the reference filed in their respective name) across all references and recorded identical evidence:

“(i) Whether the amount of award is exaggerated and nor as per prevailing market value of land in the area?

(ii) Whether award pass by the land acquisition officer wihtout giving due chance of hearing to the interested party specially plaintiff and the same termed as Ex-parte?

(iii) Whether award pass by the land acquisition officer was not sent to the executing engineer chotiari reservoir (1) Division Sanghar?

(iv) What should the judgment and decree be?”

7. By four separate (though identical) Judgments dated 29.08.2024, the learned Referee Court allowed the references and modified the compensation in terms of the rate settled in an earlier Award bearing No. 61 of 2019 dated 06.05.2019 in respect of some other area of land (which is hereinafter referred to as the “2019 Award;” pp. 591 to 597 of the Trial R&Ps of Reference No. 01 of 2020). The last paragraph of the Judgments dated 29.08.2024 which remains across all the cases reads as follows:

“24. Based on my findings regarding issue Nos. 1 to 3, I am of the considered opinion that the impugned award necessitates the intervention of this Court. As a result, the reference submitted by the applicants is hereby allowed. It is further observed that respondent Nos. 2 to 5 are entitled to compensation for the land at the rate established in Award No. 61/2019(Ex. 60/D), which applies to the adjoining land acquired during the same period. If the respondents have already received an amount exceeding this determined rate, they will be obligated to deposit the excess amount within one month. Failure to do so will entitle the applicants to initiate recovery proceedings against the respondents for the excess amount in accordance with the law. Consequently, this reference is allowed, and there shall be no order as to costs. Let such decree be prepared accordingly.”

The 2019 Award was in respect of the acquisition of land for excavation of Makhi Farash Link Canal Chotiari (Phase-II) in Deh Khipro, Taluka Khipro. It was for an area of 11-20 acres and the award was of Rs. 1,000,000/- per acre along with the benefits under s. 23(2) and 34 of the 1894 Act. Consequently, the market value in the acquisition before us presently was reduced from Rs. 1,500,000/- per acre to Rs. 1,000,000/- per acre, which means a difference of Rs. 500,000/-, and the remaining statutory benefits were also proportionally reduced.

8. These appeals have been laid against the said Judgments. They were taken up together on 29.09.2026 and were reserved by us by means of a short order of even date and are being decided by this common judgment. Mr. Haji Khan for the Appellants argued, inter alia, that the learned Referee Court had seriously erred in modifying the Awards passed by the Respondent No. 1. He foremost argued that the References under s. 18(3) filed by the Respondents were hopelessly time-barred and that the Government/Acquiring Agency were in complete knowledge of the awards and have pleaded a false story to make their references within time. He then stated that the learned Referee Court relied upon the 2019 Award in holding that the same was the true market value though he had no jurisdiction or authority to transmute one award from one

acquisition proceeding into another. He contended that the learned Referee Court has in fact dealt with the controversy in a slipshod manner without properly considering the evidence of the parties and the valuation provided by the Mukhtiarkar himself. He stated that the learned Referee Court has completely disregarded the legal procedure and principles relating to acquisition of land. He therefore prayed that the appeals may be allowed and consequently the impugned Judgments may be set-aside and the Awards as originally passed may be restored.

9. Mr. Harish Chander, on the other hand, supported the impugned Judgments and stated that the Awards were exorbitant and passed without regard to the true valuation of the land. He stated that even the current value was generous and in fact the sale deeds reflect a marginally lower value of the land across the area. He stated that the references filed by the Government were not time-barred; that in fact the awards were never communicated to the acquiring agency/Government and the references were filed as soon as the acquiring agency came to know of the awards. He stated that, in any event, the Order dated 15.03.2022 has finally settled the matter of limitation which cannot be reopened again. He contended that the learned Referee Court was correct to rely upon the 2019 Award and stated that the impugned Judgments require no interference and may be maintained by dismissing these appeals with costs. Learned Assistant Advocate General also filed a written synopsis of his arguments which was taken on the record and has been considered by us.

10. These appeals turn on the following common points for determination:

- i) Whether the references were time-barred?
- ii) Whether, in any event, the awards required interference on merits?
- iii) In view of the Court's answers to the above questions, did the learned Referee Court misread or non-read the evidence and/or misapply the applicable law?

11. To begin our discussion on the first point, we first consider whether, as contended by the learned Assistant Advocate General Sindh, the Order dated 15.03.2022 passed by this Court conclusively determined the matter of limitation or not. In our view, the answer to that must be in the negative. That is because the language of the Order dated 15.03.2022 does not admit of conclusively determining limitation. It will be seen, from a plain reading of the Order, that the Court had, by consent, remanded the matters "to decide the fate of the case after recording evidence of the parties preferably within a period of six (06) months." Consequently, limitation was never touched on its merits in the Order dated 15.03.2022 and, to put it in the context of the Order itself, the fate of the cases in its entirety remained to be answered within the references by the Referee Court after recording evidence. In our view, the Order dated 15.03.2022 does not place any condition on whether the issue of limitation has been disposed of or not, and if, on the language of the Order, it was said that limitation has been conclusively resolved, that would be incorrect. The consent of the parties, it seems to us again on the language of the Order, manifested in respect of the remand of the case for a full determination, and not for condoning any bar of limitation, which, if found to exist, would mandate the Court under s. 3 read with s. 28 of the Limitation Act, 1908 to dismiss the reference. It is already well-established that limitation is a statutory requirement and, being a matter of law, it cannot be waived by the parties by consent

or otherwise: *Commissioner of Income-Tax, Companies Zone-IV, Karachi v Hakim Ali Zardari* 2006 SCMR 170 (para 6) and *Jam Khurshid Khan v The Province of West Pakistan* PLD 1973 Lahore 131 (unnumbered para 4). We therefore hold that the issue of limitation was not conclusively determined by Order dated 15.03.2022 and remained open and undecided judicially.

12. There could perhaps be further argument from a separate angle, and we deal with it at the beginning as it will also turn on our subsequent, indeed substantive, discussion. It will be in view of the settled law that, once the land acquisition officer sends a reference under s. 18(1) of the 1894 Act, the Referee Court does not have the jurisdiction to go beyond the reference and to look into the question of limitation but rather to peruse and proceed with the reference in terms of the components (measurement of land, amount of compensation, persons to whom it is payable, apportionment of compensation among the persons interested and the amount of costs allowed) provided in s. 18(1). This has been settled in a number of cases beginning from *Government of West Pakistan (now Government of NWFP) through Collector v Arbab Haji Ahmed Ali Jan and others* PLD 1981 SC 516 (“Arbab Haji Ahmed Ali Khan”) which has stood the test of time in a number of subsequent matters. The relevant portion of the judgment reads as follows (emphasis added):

“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 the designated Court cannot go behind the reference.*”

The question as to whether the application is or is not within time, is in the exclusive domain of the Collector and the discretion exercised by him is not justiciable qua the exercise of judicial power by the designated Court having regard, in

particular, to the language of section 21 of the Act. It was, however, revisable under section 18-B of the Act, as applicable to this Province, and the final order thus passed could not, by any stretch of imagination, be the subject-matter of review by the designated court.

...

In a later case of the same High Court reported as Bashir Ahmed and others v. The Collector, Multan (PLD 1962 Lah. 292), it was held that the plain language of sections 20 and 21 of the Act, when read together, restrict the scope of inquiry to a consideration of the objections raised by the interested parties in accordance with subsection (1) of section 18 of the Act. However, this section does not contemplate the decision on the question of limitation because that is a matter for the Collector to decide...The opinion of the Division Bench is in accordance with the language of the statute and we approve it...

In result, we would uphold the view of the Full Bench of the Peshawar High Court and dismiss the appeal but with no order as to costs.”

13. There is, however, a vital distinction between the situation envisioned in the aforementioned principle and the one in hand. It will be seen that the Hon’ble Supreme Court, in *Arbab Haji Ali Ahmed Jan* and a number of other cases in which this principle has been enunciated or reiterated, was concerned with references under s. 18(1) and (2) of the 1894 Act which are by “persons interested” and which is altogether a separate category of parties as defined by s. 3(b) of the Act as:

“3. Definitions. In this act, unless there is something repugnant in the subject or context: -

(b) the expression ‘person interested’ includes all persons claiming an interest in compensation to be made on account of the acquisition of land under this Act; and a person shall be deemed to be interested in land if he is interested in an easement affecting the land:”

14. In the present set of appeals, however, we have before us references that were filed under s. 18(3) (and not 18(1) and (2)) of the 1894 Act, which means that they were references by the Provincial Government (Respondent No. 2, and, for all that presently matters, Respondent No. 3). S. 18(3) reads as follows:

“18. Reference to Court.

(3) Notwithstanding anything to the contrary contained in section 21, the Federal Government, the Provincial Government, a Company or a local authority, as the case may be, may, if it has not accepted the award, refer the matter to the Court within a period of six months from the date of announcement of the award:

Provided that the Court shall not entertain the reference unless in its opinion there is a *prima facie* case for inquiry into and determination of the objection against the award.”

There is, as may already be clear, a categorical difference between a reference by a person interested and one by the Government. A reference by a person interested is filed to the Collector in the form of an application and thereupon, when the Collector is satisfied of its maintainability, it takes the shape of a reference and is sent to the referee court for decision on the objections so raised (the objections of course having to remain confined to the scope of s. 18(1) and 21 of the 1894 Act). However, a reference by the Government under s. 18(3) is directly addressed to the Referee Court and consequently the critical stage where the Collector would otherwise determine the maintainability of the reference on the touchstone of limitation is no longer there. This is where the proviso to s. 18(3) does its due work in permitting the Referee Court to see if there is, as the proviso says, a “*prima facie* case for inquiry into and determination of the objection against the award.” We are of the view that the Court’s ability, and indeed duty, to scrutinise limitation arises primarily because s. 18(3) itself prescribes a limitation period (six months from the date of the award) within which the Government may make a reference to the Court, and because the Government directly moves the Court rather than through the Collector. (It is to be minded that s. 21 of the 1894 Act restricts the scope of the proceedings to the interests of the persons affected by the objection, however, it would not apply to a reference

under s. 18(3) due to the plain language of the provision itself.) Thus, to our minds, although in a reference under s. 18(1) and (2), once referred by the land acquisition officer/collector, the Referee Court would not have the jurisdiction to look into maintainability on the touchstone of limitation or otherwise, in a reference under s. 18(3) such jurisdiction would remain available to the Referee Court (and hence to any court lawfully sitting in appeal) by virtue of s. 18(3) which properly explains itself. This conclusion has also been followed in *National Highway Authority v Senior Civil Judge, (Referee Court)*, *Lodhran* 2023 CLC 1798 (paras 12 and 13) and *Land Acquisition Collector and others v Mst. Fareena Shaukhat and others* 2005 MLD 1530, PLJ 2005 Lahore 1239 (para 5) (although we respectfully disagree with the line of reasoning in *National Highway Authority* to the extent it conflates limitation for the purposes of s. 18(1) and (2) and s. 18(3) of the 1894 Act and for which purposes our analysis is given above).

15. We may note in the same context that the references in the present case were filed by the Government through the Land Acquisition Officer/Collector as if it was filing them under s. 18(1) and (2), which was incorrect. It was not required to take such a course, and in so doing it added an additional and unnecessary step in the process. This was an illegality and irregularity in the procedure, and a reference not filed according to the prescribed procedure, in this case directly to Court by the Government, would not be maintainable and would have to be dismissed. Reference may be made to a judgment by a divisional bench of this Court in *Province of Sindh and others v Land Acquisition Officer and others* 2022 CLC 409 wherein it has been observed as follows (paras 8 and 9; emphasis in original):

“8. In the present case reference has not been made by the Provincial Government directly to the District Court. It must be remembered that while entertaining a reference under section 18, District Court would be a Court of limited jurisdiction and is bound to determine whether the matter in which it is asked to exercise its jurisdiction comes within the limits of its jurisdiction. Where the jurisdiction is dependent upon the existence of certain facts or circumstances, it is its obvious duty to see that those facts and circumstances exist to invest it with jurisdiction. Where a Court derives its jurisdiction from the Statute that creates it and that Statute also defines the conditions under which that Court can function, it goes without saying before that Court assumed jurisdiction, it must be satisfied that the conditions requisite for its acquiring seizing of that matter had in fact arisen. The Court functioning under Land Acquisition Act being a Court of Special jurisdiction it is its duty to see that the reference under that Act is made to it by an authority competent to make a reference and that the reference relates to a matter which may be referred to it under that Act. Reliance is placed on the case of **Abdul Sattar v. Hameed Bibi (P L D 1950. Lah. 370)**. This court in case of **The Additional Chief Secretary, Local Government, Public Health Engineering & Rural Development Department, Government of Sindh, Karachi through Executive Engineer, Public Health Engineering Division, Badin v. Assistant Commissioner, Badin & Land Acquisition Officer, Badin and 5 others (1993 MLD 635)**, has also held that no reference under S.18(3) of Land Acquisition Act, 1894 could be made by Provincial Government through Land Acquisition Officer, but reference could be made by Provincial Government directly.

9. It is well settled principle of law that where a law requires doing of something in a particular manner it has to be done in the same manner and not otherwise. Reliance in this respect is place upon the cases of **Muhammad Hanif Abbasi v. Imran Khan Niazi (PLD 2018 SC 189)**, **Shahida Bibi v. Habib Bank Limited (PLD 2016 SC 995)**, **Human Rights Cases Nos.4668 of 2006 and others (PLD 2010 SC 759)** and **Ajmir Shah, Ex-Sepoy v. The Inspector-General, Frontier Corps Khyber Pakhtunkhwa and another (2021 P L C (C.S.) 420).**”

(Reference may also be made to *The Additional Chief Secretary, Local Government, Public Health Engineering & Rural Development Department v Assistant Commissioner Badin & Land Acquisition Officer, Badin* 1993 MLD 635 (Karachi).) We fully endorse the view taken by our learned brothers in the above judgment and this is an additional matter on maintainability on which the references must have been rejected. We nevertheless proceed assuming for argument’s sake (without admitting) that the references were filed through the due process.

16. In view of our above discussion, we understand that neither the Order dated 15.03.2022 nor the statutory mandate obstructs this Court from determining the substantive point as to whether the references were time-barred and as to which we now begin our discussion. It must be quite clear that under s. 18(3), the limitation for the government to make a reference to court is six months from the date of the announcement of the award. The awards in the present case were passed and announced on 01.01.2020 and one on 14.01.2020, and the references were made on 30.10.2020 though six months lapsed on 01.07.2020 (or 14.07.2020) and there was a delay of three months and more or less fifteen days in filing of the references. The Respondents Nos. 2 and 3 sought to explain the delay by stating that they were not communicated the awards and they acquired knowledge of the same in October 2020. As to this, the relevant part is para 11 in all of the references which reads:

“11. Though award statement by the land acquisition office (MFLC) Khipro has been passed on 01.01.2020, no copy of the said award has been provided by the Land Acquisition Officer to the acquiring agency paying authority which tantamount the mala fide intention, alter-motives of Land Acquisition Officer Khipro.”

17. However, the stance is refuted by the Respondents Nos. 2 and 3 according to the annexures to their own references. They have provided a Letter No. HC/G-148/CRDS/185 dated 24.03.2020 with the references as an annexure (pp. 41 and 43 of the R&P of Reference No. 1 of 2020). The letter was issued in March 2020 by the Executive Engineer Chotiari Reservoir (I) Division, Sanghar, and, with utmost respect to the Respondents Nos. 2 and 3, it demolishes their entire plea that they were not aware of the awards. The second paragraph of the letter reads as follows (p. 41 of the R&P; entirety may be read as emphasised; special emphasis added):

“It is pertinent to mention here that some photo stat copies of awards were given by hand as an extract, the same seems as an exaggerated and preferred without representation of acquiring agency though vide this office letter dated 22-10-2019 Mr. Ramesh Kumar, AXEN of this division was nominated as Focal Person in respect of land acquisition matters and same was conveyed to all concerned. *The awards No: 62 dated 1-1-2020, 63 dated 1-1-2020, 64 dated 1-1-2020 and 65 dated 14-1-2020 framed on the basis of Form-B of year 2014 looks as assumption work.*”

It is important to note that this same Letter was produced in evidence in all references. In Reference No. 01 of 2020, it was produced at Exh-48/D at pp. 557 and 559 by Taimoor Khan, Assistant Executive Engineer, Chotiari Reservoir (PW-4).

18. Not only has the Executive Engineer stated that the awards were conveyed to his office, he has categorically mentioned the numbers and dates of the awards in the letter issued in March 2020, and that being so, we are unable to accept the argument or ground that the awards were not communicated to the Respondents Nos. 2 and 3 or that they acquired knowledge after the limitation, in October 2020. The letter was attached with the references and the Respondents Nos. 2 and 3 were bound by its contents as well as their admissions therein, and could not have taken an inconsistent stance, a stance that very much contradicts the factual position. The Respondents Nos. 2 and 3 could not avoid their own earlier admission. This principle has been discussed time and time again by the Supreme Court, including in *Combind Investment (Pvt.) Ltd v Wali Bhai and others* PLD 2016 SC 730. This principle was also followed in *Mst. Nur Jehan Begum through LRs v Syed Mujtaba Ali Naqvi* 1991 SCMR 2300.

19. In *Muhammad Nawaz alias Nawaza v Member Judicial Board of Revenue* 2014 SCMR 914, it has been held that anything stated in evidence outside the scope of the averments made by parties

cannot be considered and no evidence beyond the pleadings and averments of the parties can be considered by the Court. Consequently, even if a contrary position is available in the evidence of the parties, we hold that the Respondents Nos. 2 and 3 were fully bound by their own averments and annexures, including the Letter dated 24.03.2020. We are in fact compelled to believe that the statement made in para 11 of the references in contradiction with the second para of the Letter dated 24.03.2020 is a deliberate misrepresentation on the part of the Respondents Nos. 2 and 3 intended to evade the time-bar on the references. In *John Paul v Irshad Ali and others* PLD 1997 Karachi 267, this Court has held that every representation which is deliberately false amounts to fraud upon a Court. Although that observation was in the context of s. 12(2) of the CPC which is a different proceeding altogether, we are of the considered view that, for similar reasons, the misrepresentation in the present case amounts to fraud against the judicial process and we shall be making an appropriate order at the end of this judgment.

20. In view of the statement made in the Letter dated 24.03.2020 as aforesaid, we are fully convinced that the Respondents Nos. 2 and 3 were aware of the awards when about three months remained in the limitation period and they could have conveniently instituted the references within the prescribed time but they failed in doing so. On their facts, the references were filed beyond the six month period and, consequently, they were time-barred and ought to have been rejected on that point alone. Nonetheless, there may be contention as to whether proper communication or notice of the awards was necessary to be given to the Respondents Nos. 2 and 3 (Government) and which point we shall now consider. The requirement of post-

award intimation notice arises under s. 12(2) of the 1894 Act which reads as follows:

“12. Award of Collector when to be final.

(2) The Collector shall give immediate notice of his award to such of the persons interested as are not present personally or by their representatives when the award is made.”

21. It will be seen that the requirement to give notice of a land acquisition award is in relation to “such of the *persons interested* as are not present personally...when the award is made” (emphasis added). The language of s. 12(2) is plain and unambiguous in nature and as such it has to be given full effect: *Messrs Kassim Textile Mills (Pvt.) Limited v Commissioner Inland Revenue Karachi* 2025 SCMR 1248 (para 13) and *Baz Muhammad Kakar and others v Federation of Pakistan through Ministry of Law and Justice and others* PLD 2012 SC 923 (5 judges; para 50) and *Syed Mukhtar Hussain Shah v Mst. Saba Imtiaz and others* PLD 2011 SC 260 (para 8). In our view, if we were to understand s. 12(2) as requiring the awards to be separately communicated to the Government or the concerned acquiring department/agency, that would be against the plain language of the provision. We therefore hold that s. 12(2) of the 1894 Act provides for notice of intimation of award to be given only to those persons interested (as defined in s. 3(b)) who are not present; it does not include the Government or the acquiring agency and as such there is no duty on the Collector/Land Acquisition Officer to issue proper notice under s. 12(2) to them. He or she may reasonably want to provide copies of the awards to the Government department concerned, but there is no obligation, and even if no notice, let alone one under s. 12(2), is issued in writing and merely the award is communicated (as was done presently and admitted by Letter dated

24.03.2020), that would be an extraordinary grace for the Government department and/or acquiring agency and not a right.

22. This is for two reasons, the first being substantive and the second being grounded in commonsense and legislative wisdom. The first is that if the legislature had intended for notice to be given to the Government of a land acquisition award, it would not have left such an obvious lacuna in s. 12(2) of the 1894 Act. It did not do so because there was no such intention and we would not be assuming or introducing such an intention without intruding in legislative function. The second and perhaps the more important reason has to do with the entire acquisition process and may be stated as follows. The arguments of lack of knowledge or the supposed requirement of notice all have this misconception at heart that, somehow, the Government (and through it the acquiring department) and the Land Acquisition Officer/Collector are distinct entities altogether. We do not disagree or deny that the Land Acquisition Officer has a certain independent and neutral function under the scheme of the 1894 Act. However, the fact of the matter is that a land acquisition is not initiated at the whims and wishes of the Collector or Land Acquisition Officer. It is initiated by and at the instance of the Government through the process usually under ss. 4, 6, 9 and 11 of the 1894 Act. Consequently, in the acquisition process the Government and the acquiring department are deeply involved from the inception and it is highly improbable and conceivably even impossible for the Government not to have knowledge of acquisition proceedings and awards the process of which it has itself triggered. Indeed, the Land Acquisition Officer or Collector is an official within the administrative hierarchy of the Government itself and acts at the Government's instance and behest though essentially in an impartial and neutral manner. Thus, in

Assistant Commissioner and Land Acquisition Collector, Badin through Additional Secretary (Revenue), Board of Revenue Sindh v Haji Abdul Shakoor through Legal Heirs and another 1996 CLC 2002, this Court has observed as follows (emphasis added):

“In view of the above discussion, the logical conclusion that may be drawn is that an appeal under section 54 could be preferred by the Government or the Land Acquisition Collector; and that the Advocate-General Sindh being duly authorised under the above referred Rules is competent to sign the memorandum of appeal on behalf of the Provincial Government or Government Officer. *The Land Acquisition Officer acts as an agent of the Government and merely because he does not act as such Collector he does not lose his status as that of Government Officer.* In the case of Bhajan Lal and others v. Secretary of State (AIR 1932 Allahabad 568) a Special Bench of three Judges headed by Suleman, CJ, has observed that ‘a Collector throughout the proceedings resulting in an award acts as Administrative Officer and not as a Judicial Officer. He is not suddenly converted from an Administrative Officer into judicial one for the purpose of making or refusing to make reference under section 18 and he continues to act as an agent of the Government in an administrative capacity throughout.”

To put it in simple words, the Government cannot be reasonably unaware of acquisition proceedings and awards which it has itself initiated. That is probably why the Government does not need to be specially notified under s. 12(2) of the 1894 Act, and quite sensibly so. In our view, the Government and the acquiring department/agency are the direct beneficiaries and initiators of acquisition proceedings and they ought to be assumed as having knowledge of the proceedings they have themselves initiated. If they do, they do so as a matter of duty. If they do not, that shall be a case of bureaucratic failure, gross negligence and of lack of coordination within the internal hierarchy of the Government for which the persons interested in the awards ought not to be burdened or prejudiced.

23. As such, in relation to the first point, we hold as follows:

- i) The referee court is not competent to adjudicate on matters other than those referred to it by the Collector/Land Acquisition Officer in a reference under s. 18(1) and (2) of the 1894 Act by persons interested. However, in a reference by the Government under s. 18(3) of the 1894 Act, the reference is to be made directly to court and the Court, when it receives the reference, is competent to adjudicate on all such matters relating to the maintainability of a reference, including limitation, that are necessary to make a reference valid for the purposes of s. 18(3) of the 1894 Act.
- ii) The Respondents Nos. 2 and 3, according to their admission in their own Letter dated 24.03.2020 attached to the references, had complete knowledge of the awards within the limitation period and at least in March 2020. The references were filed beyond the six-month limitation period under s. 18(3) of the 1894 Act and were *ex facie* time-barred and ought to be rejected on this point alone.
- iii) In the present case, the practice of the Respondents Nos. 2 and 3 of not directly filing the references before the District Court and instead remitting them through the Land Acquisition Officer was irregular, illegal and in violation of s. 18(3) of the 1894 Act. On this ground separately, the references ought to have been rejected.

24. We now turn to the second point. Although the first point is dispositive in and of itself, we proceed to discuss the merits of the case for the reason that the learned Referee Court has given findings thereon which need to be considered by us, and in that context we first consider whether the references were *prima facie* validly framed. As to prayer clauses (b) and (c), reproduced above, we have no hesitation to hold that the same were plainly beyond the mandate of s. 18 of the 1894 Act and therefore could not have been adjudicated upon. To the extent of these prayer clauses, the

reference was absolutely misframed and could not have been entertained. Now remains prayer clause (a) which is reproduced below at the cost of some necessary repetition:

“a) It is therefore prayed that this Honorable court may intervene in the matter and get the Award Statement passed on 01.01.2020 reissued on rational grounds to save the government huge losses.”

25. For purposes of this prayer clause, the relevant paragraphs within the references are paras 12 to 15 (as taken from Reference No. 1 of 2020) and in which the Respondents Nos. 2 and 3 stated that the status of the land was not proved through evidence; that the value of the land was wrongly assessed and the compensation was awarded without considering the facts and evidence; that the awards are based upon misreading and nonreading; and that they are on the exorbitant side and Government interest will be affected if they are allowed to stand. They have attached a list of previous awards (Annexure-C; pp. 45 and 47 of the R&Ps in Reference No. 1 of 2020) from past years. It will be seen that all these pleadings as well as the prayer clause are vague in nature and imprecisely framed. The Respondents Nos. 2 and 3 failed to plead any of the grounds with certainty and at the end they have prayed vaguely for the awards to be reissued on “rational grounds.” There is no claim whatsoever as to the extent to which the awards should be modified or the amount of compensation that should be awarded for the present acquisition. In our view, even attaching the previous acquisition rates does not help the case of the Respondents Nos. 2 and 3 for the reason that those awards date from 2009 to 2018, which was much before the present awards. In any event, the Respondents Nos. 2 and 3 failed to plead the causal link on why the prices of the lands should be ascertained on the previous rates as opposed to the common trend of increase in market values and

potentiality. It seems to us that the references, overall, were vaguely framed and left the Referee Court (and, for all that matters, this Court as well) to do guesswork for the Respondents Nos. 2 and 3, an exercise which no court is to indulge in. The law does not operate on guesswork, surmises or conjectures, and for the Respondents Nos. 2 and 3 to have their references considered they were obligated to have made a certain set of pleadings and unambiguous prayers which they did not do.

26. Based on the prayer of reissuing the awards on “rational grounds,” one could easily conceive even increasing the compensation awarded which is something that, we understand, the Respondents Nos. 2 and 3 would not desire, but for which their own prayer apparently leaves complete latitude. In our view, this goes to show that the references have no direction in their frame. These were basic jurisdictional facts that were required to be considered at the *prima facie* stage and we are at a loss to understand why the learned Referee Court failed to do so.

27. Now, even assuming prayer clause (a) to be unambiguous, it still cannot be granted, for the reason that it calls upon the Referee Court to have the award “reissued on rational grounds” which is, again, not envisioned in the 1894 Act. For the awards to be “reissued” they would have to be set-aside and it has been settled in a number of cases that, once an award is passed, it attains finality under s. 12(1) of the 1894 Act and it cannot be set-aside or remanded back by the Referee Court to be issued afresh. In fact a referee court can only affirm or modify the award but it cannot set it aside or remand it: *Sh. Muhammad Saeed and others v Deputy Commissioner, Karachi* PLD 1969 Karachi 314 (paras 10 and 11) and *Muhammad Saeed v Government of West Pakistan* PLD 1968 Lahore

1176 (para 5). (We may note that there is a distinction between the award being set-aside by the referee court and by the High Court in its constitutional jurisdiction on legal or statutory grounds, as was done in *Amir Aftab Hussain v Land Acquisition Collector, Punjab Provincial Highway Department* PLD 2012 Lahore 440 where the requirement of mandatory notice under s. 12(2) of the 1894 Act to the landowner/person interested was not issued. We are not presently concerned with this aspect and so we make no further comment.) In our view, therefore, the relief sought in prayer clause (a) is not merely an inelegant prayer, but rather one outside the jurisdiction under s. 18 of the 1894 Act and consequently could not have been considered.

28. Anyhow, we now turn to the substantive aspect of the second point. We begin by stating that it is indeed on the record that no notices under s. 9 of the 1894 Act were issued to the Respondents Nos. 2 and 3. However, does the non-issuance of notices under s. 9 have any effect on the maintainability or ultimate fate of the references at hand? In our view, the answer to that ought to be in the negative. That is because the references filed before the referee court were *ex facie* time-barred and, because of that, the Respondents Nos. 2 and 3 foreclosed themselves from obtaining relief upon this objection once the limitation period had expired. In our view, the Respondents Nos. 2 and 3 had a perfect ground of being not issued notices under s. 9 of the 1894 Act, however, they lost the statutory remedy to pursue this ground as soon as they failed to institute references both within limitation and in the manner prescribed in s. 18(3). Secondly, even if they were not issued notices under s. 9 of the 1894 Act, we are of the view that the learned Referee Court could not have remanded the matter to fully cure this aspect and it heard the Respondents Nos. 2 and 3 before it during

the reference proceedings (however defective, illegal or irregular they were). It therefore follows that, assuming that the references were properly and within time instituted, the Referee Court had the jurisdiction to go into the merits of the references in the absence of notices under s. 9(5) of the 1894 Act to the Government, but it could not have remanded the matter or set-aside the awards for proceedings afresh within the limited scope of its jurisdiction; it could have modified the awards to appropriately dispose of the acquisition proceedings based on the evidence. Therefore, we accept without further cavil the objection that notices under s. 9 were not issued to the Respondents Nos. 2 and 3, but in our view this ground does not save the references because they are not maintainable on other independent, and indeed preliminary, grounds of limitation and improper institution.

29. Consequently, we proceed further towards the evidentiary aspect of the matter to see whether the awards of Rs. 1,500,000/- and entailing statutory benefits were exorbitant and based on misreading of evidence. As to this, we may first clarify two important matters. The first is the burden of proof. It is well-established that proceedings in a reference under s. 18 of the 1894 Act are akin to a civil suit and in the context the party who makes the reference takes the role of a plaintiff while the opposing party takes that of a defendant.

30. This was discussed by an earlier single bench of this Court in *Deputy Commissioner v Raja Amir Zaman and others* PLD 1985 Karachi 385. The matter was a reference under s. 18 (though it is referred to in the judgment as one under s. 19, which is not wrong but perhaps imprecise) of the 1894 Act and it was filed in the original jurisdiction of this Court at Karachi (as it then existed). The

judgment was written by his Lordship Nasir Aslam Zahid J (as he then was) and who enunciated the following relevant principles in his judgment (emphasis added):

“On an analysis of the case-law, certain general principles appear to be well-settled about the scope of proceedings and jurisdiction of Courts under section 18 of the Land Act, 1894 and the basis for determination of market value under sections 23 and 24 of the Act and these are enunciated here:

(a) In a reference under section 18 of the Land Acquisition Act, 1894, the Court is not empowered to go behind the reference to examine the legality of acquisition proceedings.

(b) ...

(c) The Court has no power to remand the case back to the Collector for a fresh decision.

(d) Status of party seeking reference objecting to the award of the Collector or Land Acquisition Office is that of a plaintiff. He has to establish before the Court that the award is illegal or inadequate. If this burden is not discharged, the Court will confirm the award.

(e) to (h) ...”

As such, we hold that the burden of proof to the effect that the awards in the present case were illegal or inadequate was upon the Respondents Nos. 2 and 3, and they had to affirmatively prove their case on the balance of probabilities.

31. The second aspect is the principles relating to determination of compensation that have been settled in jurisprudence over time. These may be synthesised in the following manner:

- i) Land acquisition proceedings under the 1894 Act must be carried out strictly according to the procedure prescribed within the act, failing which, they would not be regularly or legally carried out. Specifically, all the requirements relating to issuance of notices, hearing of parties, principles relating to compensation and so on must be properly and cautiously followed by the

Collector or Land Acquisition Officer as well as the Referee Court.

- ii) The 1894 Act is a confiscatory and colonial statute that deprives landowners of their valuable properties. Consequently, it must be interpreted strictly against the Government and acquiring agencies and with a favourable view towards the landowners. (*Federal Government of Pakistan and others v Mst. Zakia Begun and others* PLD 2023 SC 277; *Commissioner, Rawalpindi/Province of the Punjab and others v Naseer Ahmed and others* 2024 SCMR 1037; *Pervaiz Iqbal v WAPDA and others* 2020 YLR 538; *Azad Jammu and Kashmir Government and others v Muhammad Ishaq and others* PLD 2004 HC AJ&K 22).
- iii) A landowner cannot refuse acquisition of his or her land under the 1894 Act in accordance with the exceptions created in Arts. 23 and 24 of the Constitution of the Islamic Republic of Pakistan, 1973.
- iv) In determining compensation, there are six primary matters that have to be considered under s. 23 of the 1894 Act:

first, the market value of the land on the date of publication of the declaration under s. 6 of the 1894 Act. If land similarly situated has been put to a different use before the declaration under s. 6 of the 1894 Act, the potential future value of the land must also be considered, subject to the explanations provided;

secondly, the damage sustained by the person interested by reason of the taking of any standing crops or trees;

thirdly, the damage if any sustained by the person interested by reason of severing his land from other land;

fourthly, the damage if any sustained by the person interested by reason of his or her other property, moveable or immovable, or his or her earnings being injuriously affected;

fifthly, the reasonable expenses if the person interested is compelled to change his residence or place of business as a result of the acquisition; and

sixthly, the *bona fide* damage resulting from diminution or reduction of 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.

- v) There are six matters under s. 24 of the 1894 Act that have to be ignored and neglected in determining compensation:

firstly, the degree of urgency in acquiring the land;

secondly, any disinclination of the person interested to part with the acquired land;

thirdly, any damage sustained by him which, if caused by a private person, would not render him liable to a suit, basically meaning any non-actionable damages under the law of the land;

fourthly, any damage to the land acquired after the issuance of the declaration under s. 6 of the 1894 Act;

fifthly, any increase to the value of the land resulting from the acquisition itself; and

sixthly, any increase to the value of the other land of the person interested likely to result from the acquisition of the land.

- vi) The market value of land is not static and limited only to the value of the land at the time of the acquisition. It includes the potential value of the land as well according to its future potential uses as, instead of being coerced into giving their land, the landowner could have put it to other profitable uses. Regarding market and potential values, the judgments of this Court in *Province of Punjab and others v Malik Abdul Latif Amar* 2025 SCMR 830 and *Federal Government of Pakistan and others v Mst. Zakia Begum and others* PLD 2023 SC 277 are very elaborate, and hold the following points:
- a. Compensation is not limited to market value.
 - b. Compensation is a very wide term, indicating that the landowners are to be compensated and not merely paid the price of the land which is just an interaction of supply and demand.
 - c. Escalation of value between passing of award and issuance of notification under Section 4 of the 1894 Act is also to be considered for judging potential value.
 - d. Potential value has to be factored in where other land is put to different usage.
 - e. When agricultural land is acquired for commercial, industrial or residential purposes, the Act requires that along with the market value, potential value be considered.
 - f. Potential value is the value based on the use the acquired land is capable of being put to in the future. It means assessing that if the land were fully developed or used at its fullest potential, what would its value be.
 - g. The land has potentiality if it is in close proximity to a residential area, or the municipal limits of a city.

Also to be considered is that the acquisition of such land is proof of its potential for development.

- h. The land is not to be valued merely by reference to the use to which it is put at the time at which its value has to be determined, but also by reference to the uses to which it is reasonably capable of being put in the future.
 - i. The market value is the potential value of the property at the time of acquisition which would be paid by a willing buyer to a willing seller, when both are actuated by business principles prevalent in the locality at that time.
 - j. Potentiality also includes foreseeable price escalation in the future.
 - k. Amenities such as roads, water, gas, electricity, schools, colleges, etc. are relevant considerations. Urbanization shows great potentiality of the area.
 - l. Location and proximity of the acquired land to other residential, commercial or industrial areas are important considerations for judging potentiality.
 - m. Landowners must be compensated “gold for gold” and not “copper for gold”, i.e. compensation should be reflective of a fair open-market bargain.
- vii) Mere classification of land in the revenue records is not a conclusive proof of the future uses of the land. It is very much possible that an area of land may be classified lower in the revenue record but may have tremendously high market value because of its location, neighbourhood, potentiality and other benefits and advantages attached to it. Therefore, if the land is capable of being put to other uses reasonably, then simply because it is classified as agricultural or in some other category is not relevant. (*Mst. Zakia Begum case*

and *Malik Tariq Mehmood and others v Province of Punjab and others* 2023 SCMR 102).

- viii) Registered sale deeds cannot usually be taken as a reliable or conclusive determinant of market value as there is a recognised tendency, in the experience of the Court, on the part of the buyers and sellers to undervalue their lands in sale deeds to avoid stamp duties. Therefore, due to this tendency, landowners who are made subject to proceedings under the 1894 Act cannot be prejudiced. (*Muhammad Saeed and others v Collector, Land Acquisition and others* 2002 SCMR 407 and *Murad Khan and 13 others v Land Acquisition Officer, Peshawar and another* 1999 SCMR 1647).
- ix) The statutory benefit under s. 23(2) of the 1894 Act is mandatory in nature. Consequently, upon every acquisition, the person interested is entitled to an additional amount/solatium of 15% on the market value calculated under s. 23(1). The solatium under s. 23(2) includes all the factors (including base market value and damages) as provided in s. 23(1).
- x) The statutory benefit under s. 34 of the 1894 Act being 6% on the total compensation is also mandatory where the possession of the land is taken before payment of the compensation to the person interested or the deposit of the same before the competent authority. The amount under s. 34 is to be calculated on the complete amount of the award, including market value and all other statutory benefits. (*Government of Sindh and 2 others v Syed Shakir Ali Jafri and 6 others* 1996 SCMR 1361; unreported Order dated 16.10.2018 of this Court in C.P. No. D-939 of 2011, upheld by the Supreme Court by Order dated 15.08.2023 in CPLA No. 01-K of 2022).
- xi) The amount under s. 34 is payable until the entire amount is paid after full and final adjudication after all proceedings in appeal and reference. (*Sheikh*

Muhammad Ilyas Ahmed and others v Pakistan and others PLD 2016 SC 64)

- xii) All statutory benefits under the 1894 Act are mandatory in nature and cannot be withheld from the landowners in any manner whatsoever. (*Sheikh Muhammad Ilyas Ahmed and others v Pakistan and others* PLD 2016 SC 64; *Province of Sindh through Collector of District Dadu and others v Ramzan and others* PLD 2004 SC 512; *Balocho v Deputy District Officer and others* SBLR 2007 Sindh 1234; and *Shoukat Ali and 25 others v Deputy District Officer and Land Acquisition Officer, Sanghar and another* PLD 2005 Karachi 47).

32. This finally brings us to the facts.

33. As we have already discussed, the Land Acquisition Officer awarded a sum of Rs. 1,500,000/- plus the benefits under s. 23(2) and 34. In relation to it, there are two points that we need to consider, the first being as to the propriety of the market value of Rs. 1,500,000/- and the second as to the date of grant of the benefit under s. 34 of the 1894 Act.

34. In respect of the market value, the landowners had claimed a sum of Rs. 3,000,000/- per acre as compensation. On the other hand, the Mukhriarkar had reported the market value to be from Rs. 1,500,000/- to Rs. 2,000,000/- for the land in the vicinity, and whereas the Land Acquisition Officer also carried out personal inspection of the area to ascertain the value and potentiality of the acquired lands and he discovered the value to be between Rs. 1,800,000/- to Rs. 2,200,000/- per acre. In his award, the relevant findings on the market value are from paras 8 to 14 which may be summarised as follows:

- i) The population of Deh Dhadhro is mostly agricultural and the people are engaged in agriculture and livestock farming. The cultivated lands touch the limits of Khipro town and hence the valuation of the lands is high. The land is irrigated through canal water and is a major source of income for the household of the landowners. The land is highly fertile and the landowners earn good annual yields.
- ii) The land is valued according to the duly verified Mukhtiarkar report to be between Rs. 1,500,000/- and Rs. 2,000,000/-.
- iii) The notifications under s. 4 were issued in the years 2006 and 2009, however, due to delayed acquisition proceedings the market value and potential values of the lands has considerably increased which has to be kept into account.
- iv) Following the guidelines provided by his department, the Land Acquisition Officer personally visited the area and, upon enquiry from the locals, he found the lands to have a valuation trend of Rs. 1,800,000/- to Rs. 2,200,000/-. The Land Acquisition Officer also considered the various judgments mentioned in the awards as well as the last ten entries of the Deh, valuation, etc., and consultation of local landowners was also made.
- v) The Land Acquisition Officer did not give primacy to registered sale deeds and noticed the trend in the area of lowering the market values in registered deeds to save stamp duties.

35. In evidence, the Respondents Nos. 2 and 3 sought to disprove the above findings. They examined multiple witnesses and most of their evidence has remained identical across all the references. In any case, the same has been perused by us and in our view they have totally failed to disprove the market value of the land as

awarded by the Land Acquisition Officer. For example, in Reference No. 1 of 2020, the first witness examined was Tahir Farooque (PW-1; Exh-37; pp. 255 to 263 of the R&P of Reference No. 1) who produced entries and dhal receipts and during cross-examination, he stated that the acquired land is adjacent to Deh Khipro and Khipro town is within a three kilometre reach from the acquired lands. He stated that the land is also one and a half (1.5) kilometres away from Khipro-Hathongo link road meaning that there is road access nearby as well. He also admitted that he had valued the land at Rs. 1,500,000/- to Rs. 2,000,000/- per acre. The next relevant witness is Muhammad Khan, Junior Clerk, Sub-Registrar Office, Sanghar (PW-2; Exh-38; pp. 265) who produced different sale deeds. In our view, the sale deeds are probably undervalued. They date from 2012 to 2020 and range from Rs. 100,000/- to Rs. 450,000/- which is unreasonable and inconsistent with the trend of inflation and rise in market values which naturally occurs through time. These sale deeds are probably reflective of the same trend wherein parties tend to undervalue their property to save stamp duties, and we are of the view that the same ought not to have been relied upon in isolation. The said witness was cross-examined and admitted that the Mukhtiarkar was the authority to actually value land.

36. The main witness for the Respondents Nos. 2 and 3 was Taimor Khan, Assistant Executive Engineer Chotiari Reservoir, Nawabshah (PW-4; Exh-48; pp. 539 to 559). He was examined on oath wherein he stated that the price was highly overpaid and simply stated that the same was not consistent with previous awards. He further stated that the possession of the land was taken in 2020 while the benefit under s. 34 was awarded from 2007. He also stated that no notice under s. 9 was issued, which we have

already dealt with above. In cross-examination, he has made certain statements which need to be reproduced verbatim:

“...It is fact that, Deh Dhadro and Deh Choru are situated adjacent to each other...I do not know the date of completion of project. It is incorrect to suggest that, in the year 2007, the possession of disputed land was handed over to us. Voluntarily says that, the possession was handed over to us in the year 2020. It is correct to suggest that, in reference we have not mentioned the actual value of disputed land...Voluntarily says that I have annexed list of 29 awards of the same deh in which lands were acquired at low rate. It is fact that, I have not annexed the copy of any award. It is fact that, list of award produced by me is not duly attested by the Land Acquisition Officer. It is fact that, survey number and location of land is not mentioned in the list of award. It is incorrect to suggest that the said list is managed by me. It is fact that disputed land was well fertile... It is fact that during land acquisition process usually value of the land is being by Mukhtiarkar concerned... It is fact that, the reference was filed with the delay of about 09 months. Voluntarily says that we received he copies of original award with delay. We received the copy of original award in the month of Ocotber, 2020 through Board of Revenue. It is fact that I have produced no proof in respect of receipt of copy of original award with delay.”

37. It will be seen that the predominant reliance of the Respondents Nos. 2 and 3 was on previous awards made under earlier acquisitions, however, no purportedly real value of the lands has been pleaded in either the references or in evidence. In our view, previous awards on their own are not reliable indicators of market value of other land. There may well be cases, like the one in hand, where the parties may not have contested the awards although the market value would have been possibly higher. There may also have been cases where appeals would be pending against awards as also situations where, by way of ground realities, the value of the lands in which those earlier awards were passed may have been lower. In our respectful view, the valuation of lands is to be done on the basis of a proper and whole assessment of the evidence where the compensation is reflective of a proper, open and free market bargain as opposed to any pedantic or isolated readings of previous awards. The Respondents Nos. 2 and 3 and thereafter the learned Referee

Court have only relied upon previous awards without even referring to the grounds that prevailed over the Land Acquisition Officer. Neither the learned Referee Court nor the Respondents Nos. 2 and 3 have dealt with the aspect of personal inspection, Mukhtiarkar's valuation and the location and nature of the land and have, it seems to us with all due respect, made one previous award (Award No. 61 of 2019 reproduced above) their only document of reliance. This, in our view, was completely incorrect.

38. In the impugned Judgment it has been observed that “[a]s previously discussed, the respondents [in this case the Appellants] have not provided any evidence to demonstrate that the disputed land has a significantly higher market value compared to the land involved in Award No. 61/2019 (Ex. 60/D). In the absence of such evidence, it is clear that the valuation in the impugned award appears to be exaggerated.” With all due respect, we are of the view that the learned Referee Court has confused even the law on burden of proof. In fact, since the references were made by the Government, burden was on it to prove that the valuation in the awards was exaggerated. There was no burden on the Appellants to prove the negative, i.e. the awards were *not* exaggerated, and we will therefore hold that the learned Referee Court has erred upon its application of the law on burden of proof. We may note that we have been surprised in our reading of the impugned Judgment which, and we say so with great respect, is neither correct on facts nor on law and must be set-aside.

39. On the second aspect as to the date of possession being in 2007 or 2020, we have seen that the Respondents Nos. 2 and 3 failed to make any such pleading or prayer in their references. They introduced this matter for the first time in their evidence and it is

already well-established that any evidence beyond the pleadings of the parties is inadmissible and cannot be considered. Consequently, even on this aspect, we are not satisfied that the references require consideration.

40. In our answer to Points Nos. 2 and 3, we hold that the Awards passed by the Land Acquisition Officer were correct and are based upon a proper determination of the market value and statutory benefits. The impugned Judgments in all four references are based upon nonreading and misreading of evidence as well as misapplication and non-application of law and call for interference. For these reasons, we allow all these appeals and set-aside the impugned Judgments of the Referee Court in all four references and the four Awards of the Land Acquisition Officer are therefore restored. An order of costs of Rs. 100,000/- in each of the appeals is made against the Respondents Nos. 2 and 3 to be paid to the Appellants as part of the awards.

41. Office is directed to prepare a decree in all the appeals in these terms to comply with s. 54 of the 1894 Act. R&Ps may be returned.

JUDGE

JUDGE

APPROVED FOR REPORTING
FAISAL