

IN THE HIGH COURT OF SINDH AT KARACHI

HCA No. 74 of 2013

Present:-

Mr. Justice Sajjad Ali Shah, Chief Justice

Mr. Justice Muhammad Junaid Ghaffar.

The Military Estate Officer ----- Appellant

Versus

Ardeshir Cowasjee & others ----- Respondents

Date of hearing: 20.11.2015

Date of judgment: 04.01.2016

Appellant: Through Mr. Umar Hayat Sandhu Advocate.

Respondent: Through Mr. Afsar Ali Abidi Advocate.

J U D G M E N T

Muhammad Junaid Ghaffar, J. Through instant appeal the appellant has impugned order dated 3.4.2013, whereby, the review application filed by the appellant against order dated 26.2.2013, has been dismissed, after observing that the respondents are also entitled for compensation in terms of section 28-A of the Land Acquisition Act, 1894, up to 20.6.2010.

2. Briefly, the facts as stated are that on 12.10.1985 the Collector Karachi issued a Notification under Section 4 of the Land Acquisition Act, 1894, to acquire property of respondents bearing Plot No. CL-9/13, Civil Lines Quarters, Karachi, which was already in possession of the Ministry of Defence, therefore, provisions of Section 17 of the Land Acquisition Act, regarding taking of possession were deemed to have been fulfilled. The appellant thereafter filed a Reference under Section 18 of the Land Acquisition Act on 11.3.1987 in respect of the Award passed by the Land Acquisition Officer and by Judgment dated 2.5.2005 in Reference No. 02

of 1987 passed by a learned Single Judge of this Court, the value of the said property was determined to be Rs. 5,500/- per square yards for an area of 8172 square yards with 15% compensation of compulsory nature under Section 23(2) of the Act and 6% interest / profit / mark up as provided under Section 28 of the Act, 1894. Additionally, it was further held that respondents were also entitled to an additional compensation at the rate of 15% per annum of the above amount from the date of notification under Section 4 of the Act, 1894, till the date of payment of compensation as provided under Section 28A of the Act, *ibid*, whereas, the payment already received by the respondent under protest be deducted from the above amount. The said judgment was impugned by the appellant by filing an appeal bearing No. M.A. No.04 of 2005, which was dismissed *vide* judgment dated 21.5.2009, and no further appeal was preferred by the appellant. Thereafter, Execution Application No. 70 of 2011 was filed by the respondents / decree holders, wherein, an order was passed on 26.2.2013, whereby, the appellant was directed to deposit the decretal amount before objections filed by the appellant could be decided, which was sought to be reviewed by the appellant through CMA No. 83 of 2013 which has been dismissed through the impugned order.

2. Counsel for the appellant has contended that the learned Single Judge was not justified in dismissing the Review Application filed by the appellant, seeking review of order dated 26.2.2013, whereby, the appellant was directed to deposit the decretal amount within 30 days, as on that date, the Counsel for the appellant had left the Court due to the reason that the entire board was discharged, whereas, instant matter was subsequently taken up for hearing when he had already left the Court. Counsel has further contended that insofar as the amount of compensation is concerned, the respondents have already received much more than the amount due, as initially, the appellants had deposited the amount of compensation determined by the Land Acquisition Officer which was invested by this Court in Government Securities, and therefore, no further amount is due and payable to the respondents. He has further submitted that the learned Single Judge while passing the impugned order could only have dismissed the review application, whereas, through the said order the appellant has been further directed to make payment of the additional compensation as contemplated under Section 28-A of the Land Acquisition Act which according to the learned

Counsel stood omitted from the Statute w.e.f. 1.11.1992 on the basis of judgment passed by the Federal Shariat Court *In re: The Land Acquisition Act (I of 1894)* (PLD 1992 FSC 398). Even otherwise, per learned Counsel, subsequently, Section 28-A of the Act *ibid*, has been omitted by the Provincial Government through Act No.XVI of 2010 whereby, through Land Acquisition Sindh Amendment Act, 2009, Section 28-A of the Act No. I of 1894 has been omitted as if it has never been enacted, therefore, the appellant is not liable to pay any such additional compensation to the respondents.

3. Conversely, learned Counsel for respondents has contended that in terms of Order 47 Rule 7 no appeal lies against an order of rejection of a Review Application, and therefore, instant appeal is liable to be dismissed as being not maintainable in view of the judgment of the Hon'ble Supreme Court reported in the case of *Lahore Development Authority V. Fahmeeda Khatoon and others* (1986 SCMR 1478). Learned Counsel has further contended that the learned Single Judge has allowed the Execution Application only to the extent of judgment and decree for which directions were already passed while passing order dated 26.2.2013, and therefore, the learned Single Judge was fully justified in further clarifying the earlier order, whereby, the appellant has been directed to also pay the additional compensation under Section 28-A of the Land Acquisition Act. He has further submitted that insofar as the repeal / omission of Section 28-A is concerned, the same would only be applicable prospectively, whereas, a vested right has accrued in favour of the respondents, and therefore, such amendment shall not be applied retrospectively so as to disturb such rights of the respondents, which they have acquired through judgment and decree of the Court.

4. We have heard both the learned Counsel and have perused the record. By consent instant appeal is being finally decided at Katcha Peshi stage. It appears that the Execution Application in question was filed by the respondents in respect of judgment and decree dated 2.5.2005 passed in Civil Reference No.02 of 1987 against which the appellant had preferred an appeal bearing M.A.No.04 of 2005 which was also dismissed by a learned Division Bench of this Court through judgment dated 21.5.2009. It further appears that after service of notice in the Execution Application on the judgment debtor, objections were filed, whereafter, the matter was adjourned, and on 6.2.2013, at the request of learned

Counsel for the appellant it was adjourned to 26.2.2013. On 26.2.2013 no one had affected appearance on behalf of the appellant and the learned Single Judge was pleased to direct the appellant to deposit the decretal amount within 30 days, whereafter, the objections raised by the appellant / judgment debtor No.1 would be considered by the Court. The appellant though did not impugn the order dated 26.2.2013, however, preferred a Review Application before the same learned Single Judge, seeking review / recalling of the said order, whereby, the appellant was directed to deposit the decretal amount. The learned Single while dismissing the review application was pleased to observe that there appears no error or mistake on the face of record, whereas, a point already adjudicated and decided cannot be regarded as a mistake apparent from the face of record so as to invite interference in review jurisdiction. The learned Single Judge while dismissing the review application was further pleased to observe that since the appellant had failed to comply with the order dated 26.2.2013, whereby, they were directed to deposit the decretal amount, and admittedly they had failed to do so, the Execution Application was allowed. The learned Single Judge was also pleased to observe that insofar as the decree holder is concerned, he is entitled for compensation in terms of Section 28-A of the Land Acquisition Act, 1894 up to 20.6.2010 when the Governor of Sindh assented a bill passed by the Provisional Assembly of Sindh on 1.2.2010 in respect of the Land Acquisition (Sindh Amendment) Act, 2009.

5. At the very outset, we had confronted the learned Counsel for appellant that as to how this appeal is maintainable against an order, whereby, review application was dismissed, as in terms of Order XLVII Rule 7, an appeal only lies when the review application has been granted or allowed on the grounds provided therein, and not otherwise, the learned Counsel made a feeble attempt to respond to such query of the Court, however, was in fact unable to come up with any plausible justification. The Hon'ble Supreme Court in the case of **Lahore Development Authority (Supra)** has already settled the law *that under Order XLVII Rule 7, C.P.C. an order of the Court rejecting an application for review is not appealable*. Notwithstanding, in the alternative, learned Counsel argued that after having dismissed the review application, the learned Single Judge has been pleased to further observe that the decree holder is also entitled for compensation in terms of Section 28-A of the

Land Acquisition Act, which according to the learned Counsel, could not have been done by the learned Single Judge while dismissing the review application.

6. After having perused the record and material placed before us, we are not in agreement with the submissions made by the learned Counsel for the appellant, for the simple reason that even if such part of the order, whereby, it was observed that *the decree holder is entitled for compensation under Section 28-A of the Land Acquisition Act* is set aside, the same would have no bearing on the final outcome, as the judgment and decree passed in the instant matter, itself provides for payment of such compensation against which the appeal preferred by the appellant already stand dismissed which admittedly has not been challenged any further. In fact such observation was recorded by the learned Single Judge for the reason that while arguing review application, it was specifically pleaded on behalf of the appellant that since Section 28A of the Act stands omitted as if it was never on the statute, therefore, additional compensation is not payable. However, it was for the appellant to agitate the merits of the judgment and decree in further appeal, which otherwise has admittedly attained finality, and, not before the Executing Court through a review application. It appears that the appellant is making an attempt to get modification of judgment and decree by raising such objections which is impermissible as the Executing Court is bound by the judgment and decree passed in the instant matter and such observations in the impugned order cannot be challenged to seek a further opportunity of having the decree set aside. Even if the learned Single Judge had not made any such observations, the appellant was required to deposit the decretal amount as they had failed to prefer any appeal against such directions given on 26.2.2013. In fact the observations in the impugned order which has now been impugned by the appellant is partially in favour of the appellant as the appellant had filed Execution Application, wherein such compensation was being claimed by them up to 30.6.2011, however, the learned Single Judge has only granted it up to 20.6.2010 which in fact has reduced the quantum of liability of the appellant.

7. In view of hereinabove facts and circumstances of the case, we do not see any justification to respond to the objections being raised on behalf of the appellant, including the effect of the judgment passed by the

Federal Shariat Court in the case of *In re: The Land Acquisition Act (I of 1894) (PLD 1992 FSC 398)* and so also the effect of the Sindh Act No. XVI of 2010, whereby, Section 28-A of the Land Acquisition Act has been omitted, as if it had never been enacted as in our opinion, would not affect the judgment and decree in question which still holds field and has been affirmed by the Appellate Court, when no such amendment was in field, whereas, the appellant has not impugned the said appellate order any further; hence, the same has attained finality and is not a case of pending proceedings. In the circumstances, this appeal being misconceived and having no merits is accordingly dismissed, however, with no order as to costs.

Judge

Chief Justice

ARSHAD/