

IN THE HIGH COURT OF SINDH AT KARACHI

C.P. No.D-632 of 1990

Present:

Mr. Justice Irfan Saadat Khan

Mr. Justice Zafar Ahmed Rajput

Petitioners/
Applicants. Rabiah Rana & Company,
through Mr.Shahenshah Hussain, Advocate.

Res. Nos.1,4&5. Province of Sindh, The Commissioner Karachi
Division and Deputy Commissioner Karachi-East,
through Mr. Ali Zardari, Assistant Advocate General
Sindh.

Res. Nos.2 and 3. Member (L.U) Board of Revenue Sindh, Hyderabad
and Deputy Secretary (L.U) Board of Revenue
Hyderabad Division, through Mr.G. N. Qureshi,
Advocate.

Date of hearing: 13. 04.2016.
Date of order: 22. 04.2016.

ORDER

IRFAN SAADAT KHAN, J. By means of this order, we intend to dispose of CMA Nos.8125/2013 and 9042/2008, filed by the petitioners on the ground that the alleged contemnors have not complied with the order/judgment dated 19.8.2004 passed by this Court and, thus, have exposed themselves for Contempt of Court Proceedings.

2. Mr. Shahenshah Hussain, learned counsel for the petitioners/ applicants has submitted that the land of the petitioners was acquired by Port Bin Qasim Authority under the Land Acquisition Act, 1894 ("**the Act**"), however, since the petitioners were not properly compensated in respect of their acquisitioned land, they filed the instant petition, which was disposed of vide judgment dated 19.8.2004 in the following manner:-

"10. In view of the above we are of the opinion that ample justification existed for the respondents to recall the order dated 13.12.1987. Nevertheless they are directed to pay the entire amount of compensation together with all permissible statutory increases within two months from today. The petition is dismissed subject to the above observation."

3. Mr. Shahenshah Hussain has further submitted that the petitioners deserved that they may be compensated in respect of the acquisition of their land on the following four counts:-

- 1) Compensation under Section 23(1) of the Act.
- 2) Additional compensation under Section 23(2) of the Act.
- 3) Payment of interest under Section 34 of the Act.
- 4) Additional compensation under Section 28-A of the Act.

He has added that so far as the first and second claims are concerned there is no dispute between the petitioners and the respondents and the petitioners have been compensated on these two issues. He, however, submitted that in so far as the third and fourth claims are concerned since the same were not paid in accordance with the law thereafter the instant Contempt of Court applications were preferred. According to the learned counsel it was incumbent upon the respondents to compensate the petitioner as per Sections 34 and 28-A of the Act, as the Collector was bound to award interest at the rate of 6% per annum as per section 34 of the Act from the time of taking possession of the land till it was paid or deposited. According to him the respondents have mis-interpreted the said provision of the law by giving the compensation to the petitioner after two months of the order/judgment passed by this Court, whereas they were legally required to pay the compensation at the stipulated rate from the date the land was taken in possession by the said respondents.

4. With regard to the claim of the petitioners for additional compensation under Section 28-A of the Act, Mr. Shahenshah Hussain has submitted that though the said law was omitted vide L.A (Sindh Amendment) Act, 2009 but since a vested right has already been created in favour of the petitioners, the omission of the said law, which is a subsequent event, would not affect the right already created in favour of the petitioners. He has added that the said omission has to be considered prospectively and hence a right accrued in favour of the petitioners could not be taken away by the omission of such law. He has, therefore, submitted that the compensation as accrued under Section 28-A of the Act may be granted to the petitioners. The learned counsel for the petitioners has further invited our attention to Section 6 of the General Clauses Act, 1897 and Articles 203-D and 264 of the Constitution of Islamic Republic of Pakistan, 1973 and stated that the repeal of Section 28-A of the Act would not affect the rights, privileges, obligations or liability already accrued or created under the law in favour of a person, hence according to him the petitioners are entitled to the additional compensation. In support of his above contentions the learned counsel has placed his reliance on the following decisions:-

- 1) Muhammad Shah vs. Syed Khalid Hussain Shah (2015 SCMR 869)
- 2) Province of Sindh vs. Ramzan and others (PLD 2004 SC 512)

5. On the other hand, Mr. G. N. Qureshi, learned counsel for the respondents/ Board of Revenue Sindh, so far the payment of interest under Section 34 of the Act is concerned, has half-heartedly opposed the submission of the learned counsel for the petitioner; the learned counsel could not controvert the fact that the petitioners are entitled to be compensated from the date of taking possession of their land acquired

till the amount is finally paid to them. He; however, submitted that whatever orders are passed by this Court would be complied with in letter and spirit.

6. Mr. G. N. Qureshi has, however, vehemently opposed the submissions made by the learned counsel for the petitioners in so far as claim of additional compensation under Section 28-A of the Act is concerned. He submitted that Section 28-A of the Act has been omitted by categorically mentioning that "it shall be deemed to have been so omitted as if it had never been enacted". He has submitted that the said Section 28-A of the Act was omitted by virtue of a decision given by the Federal Shariat Court terming the said provision to be against the Injunctions of Islam; hence, according to him the additional compensation claimed by the petitioners is not available to them and the applications for contempt of Court on this aspect deserves that the same may be dismissed being misconceived and not maintainable.

7. Mr. Ali Zardari, AAG has adopted the arguments of Mr. G.N.Qureshi.

8. We have heard all the learned counsel at considerable length on the above issues and have also perused the record.

9. Before proceeding any further, we deem it expedient to reproduce herein bellow the provisions of Sections 34 of the Act:-

"34. Payment of interest: When the amount of such compensation is not paid or deposited on or before taking possession of the land, the Collector shall pay the amount awarded with interest at the rate of six per centum per annum from the time of so taking possession until it shall have been so paid or deposited."

A plain reading of the above provision would clearly reveal that the amount of compensation is to be paid from the time of taking possession till it is paid or deposited meaning thereby that a person whose land has been acquired would become entitled for the payment of said compensation from the time of acquisition till it is finally paid to him. Hence, in our view, the interpretation adopted by the respondents appears to be incorrect. The petitioners are entitled for grant of compensation from the date from which their land was taken in possession till the date they are finally paid. Hence, we direct the respondents to recalculate the amount of compensation granted to the petitioners and to pay them the compensation as provided under Section 34 of the Act from the date of possession till the date they are finally paid. Since the matter requires calculation, we give two months' time to the Member (Land Utilization), Board of Revenue Sindh, for doing the needful in accordance with law.

10. As regards grant of additional compensation under section 28-A of the Act is concerned, we would like to reproduce herein below the omitted provision of section 28-A of the Act:-

"28-A. Additional compensation.-- In addition to the compensation fixed on the basis of market value as prevailing on the date of notification under Section 4, an additional amount of fifteen per cent per annum of the compensation so fixed shall be paid from the date of the notification under section 4 to the date of payment of the compensation."

We have attempted for tracing the history of insertion and deletion of Section 28-A in the Act. It appears that the Federal Shariat Court in its decision dated 27.03.1984 directed the Government of Sindh to make certain amendments in the Land Acquisition Act, 1984. Thereafter an Ordinance known as Sindh Ordinance No. XXIII of 1984 dated 30.09.1984 was introduced and certain amendments were made in

the said Act. Section 28-A of the Act, as reproduced above, was also inserted after Section 28. Thereafter in the decision Re. Land Acquisition Act of 1984 (PLD 1992 FSC 398) the Federal Shariat Court revisited the provisions of Section 28-A of the Act and observed as under:-

“33. In view of the above discussion, it is manifest that Islamic Injunctions as contained in the Holy Quran and Sunnah require the payment of price, which equally apply to compensation in case of compulsory acquisition, as soon as possible, and without any delay. But to provide for the payment of compensation at the rate of 15% per annum on account of delay in payment as held by this Court in its earlier decision dated 27.03.1984 cannot be endorsed by us. In our view, it amounts to Riba, for the reasons discussed in our detailed judgment on Riba reported as Dr. Mehmoodur Rehman Faisal v. Government of Pakistan (PLD 1992 Federal Shariat Court 1)

34. In this respect, it is also noticeable that the Government of Balochistan as well as the Government of Sindh by Act XIII of 1985 amended on 9.10.1985 and Sindh Ordinance XXIII of 1984 as amended on 30.9.1984 respectively, the Land Acquisition Act, 1894, in pursuance of the decision dated 27.3.1984 of this Court, a new Section 28-A was added which provided for additional compensation in the following words:-

“28-A. Additional Compensation.--- In addition to the compensation fixed on the basis of market value as prevailing on the date of notification under section 4, an additional amount of fifteen per cent per annum of the compensation so fixed shall be paid from the date of the notification under section 4 to the date of payment of the compensation.”

We are afraid, the above provision in the Balochistan Act XIII of 1985, and Sindh Ordinance XXIII of 1984 is not sustainable in the light of the Injunctions of Islam as laid down in the Holy Quran and Sunnah of the Holy Prophet (p.b.u.h.) as discussed in the judgment on Riba, referred to above. Even otherwise, in view of the setting aside of this Court's judgment dated 27.3.1984 by the Shri'at Appellate Bench of the Supreme Court the earlier judgment of this Court does not hold the field and the view having not been adopted by us in our present judgment, Sindh Ordinance XXIII of 1984 and Balochistan Act XIII of 1985 call for their repeal, which also stand nullified by the judgment of the Supreme Court, referred to above.

The said provision of law; thereafter, was omitted from the statute vide Sindh Amendment Act of 2009 with the specific observation that this law is to be considered as "if it had never been enacted".

11. Now the question raised in the instant application by the petitioner is whether in view of the explicit intention of the legislature to omit such provision of law by treating the same "as if it had never been enacted" could it be claimed by the petitioner that since a vested right has been created in their favour the omission of the said provision of law would not affect the rights and obligations already accrued. Whereas according to the learned counsel for the respondents since law has been omitted by specifically treating the same "as if it had never been enacted", the same is to be considered as a void law and no vested right could be claimed by the petitioners to have accrued in their favour.

12. It is seen from the above observations of the Federal Shariat Court that they have categorically stated that they cannot endorse the view previously made in the earlier decision dated 27.3.1984 as in their view the payment of the additional compensation as provided under Section 28-A of the Act at the rate of 15% had been held Ribah in the case of Dr. Mehmoodur Rehman Faisal v. Government of Pakistan, and it was; thereafter Section 28-A of the Act was omitted from the statute as "shall be deemed to have been so omitted as if it had never been enacted", through L.A. (Sindh Amendment) Act, 2009, hence in our view no vested right could be claimed under the law subsequently omitted as "if it had never been enacted". The decisions relied upon by the learned counsel for the petitioners with regard to the creation of vested right in our view appears to be distinguishable.

13. We have further observed that much emphasis has been laid down by the learned counsel for the petitioners on Section 6 of the General Clauses Act, 1897, which is reproduced herein below:-

6 Effect of repeal. —Where this Act, or any 1 [Central Act] or Regulation made after the commencement of this Act, repeals any enactment hitherto made or hereafter to be made, then, unless a different intention appears, the repeal shall not—

- (a) revive anything not in force or existing at the time at which the repeal takes effect; or
- (b) affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder; or
- (c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed; or
- (d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed; or
- (e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid;

and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed as if the repealing Act or Regulation had not been passed. (underline ours)

For the sake of brevity the Articles 203D and 264 of the Constitution are also reproduced herein below:-

203D. Powers, Jurisdiction and functions of the Court. (1) The Court may [either of its own motion or] on the petition of a citizen of Pakistan or the Federal Government or a Provincial Government, examine and decide the question whether or not any law or provision of law is repugnant to the injunctions of Islam, as laid down in the Holy Qur'an and Sunnah of the Holy Prophet, hereinafter referred to as the Injunctions of Islam.

[(1A) Where the Court takes up the examination of any law or provision of law under clause (1) and such law or provision of law appears to it to be repugnant to the Injunctions of Islam, the Court shall cause to be give to the

Federal Government in the case of a law with respect to a matter in the Federal Legislative List [***], or to the Provincial Government in the case of a law with respect to a matter not enumerated [in the Federal Legislative List], a notice specifying the particular provisions that appears to it to be so repugnant, and afford to such Government adequate opportunity to have its point of view placed before the Court.]

(2) If the Court decides that any law or provision of law is repugnant to the Injunctions of Islam, it shall set out in its decision_____

(a) the reasons for this holding that opinion;
and

(b) the extent to which such law or provision is so repugnant;

and specify the day on which the decision shall take effect[:]

[Provided that no such decision shall be deemed to take effect before the expiration of the period within which an appeal therefrom may be preferred to the Supreme Court or, where an appeal has been so preferred, before the disposal of such appeal.]

(3) If any law or provision of law is held by the Court to be repugnant to the Injunctions of Islam_____

(a) the President in the case of a law with respect to a matter in the Federal Legislative List or the Concurrent Legislative List, or the Governor in the case of a law with respect to a matter not enumerated in either of those Lists, shall take steps to amend the law so as to bring such law or provision into conformity with the Injunctions of Islam; and

(b) Such law or provision shall, to the extent to which it is held to be so repugnant, cease to have effect on the day on which the decision of the Court takes effect.

264. Effect of repeal of laws. Where a law is repealed, or is deemed to have been repealed, by, under, or by virtue of the Constitution, the repeal shall not except as otherwise provided in the constitution.

(a) revive anything not in force or existing at the time at which the repeal takes effect;

(b) affect the previous operation of the law or anything duly done or suffered under the law;

(c) affect any right, privilege, obligation or liability acquired, accrued or incurred under the law;

(d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against the law; or

- (e) affect any investigation legal proceeding or remedy in respect of any such right, privilege, obligation, liability penalty, forfeiture or punishment;

and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed, as if the law had not been repealed.

14. Perusal of Section 6 of the General Clauses Act, 1897 indicates that the law makers while dealing with the aspect of rights, obligations or liabilities have further mentioned that "unless a different intention appears" which in our view would connote that if a different intention appears then in such case rights, privileges and obligations could not be claimed. It is seen that the Section 28-A of the Act was introduced, as per the directions issued by the Federal Shariat Court, vide its order dated 27.03.1984, which order subsequently was declared by the Federal Shariat Court itself to be against the injunctions of Islam by giving reference of another decision given by the Federal Shariat Court which means that the earlier decision given by the Federal Shariat Court on 27.3.1984 was reversed and nullified with the result that through the Ordinance of 2009 Section 28-A of the Act was omitted with the clear intention to consider the same as omitted "as if it had never been enacted". Hence in our view neither any vested right of the petitioners has been created nor it could be claimed that the provisions of the said law has to be applied prospectively. In our view this provision of law has to be considered as omitted with retrospective effect as a law which has been termed as the one which never existed on the statute and could hardly be construed to create any vested right in favour of any person and the provision of Section 6 of General Clauses Act and that of Articles

203D & 264 of the Constitution would not be of any help to the petitioners.

15. Hence so far as the claim of additional compensation under Section 28-A of the Act is concerned, we do not find any merit in the submission made by the learned counsel for the petitioners and hold that the petitioners are not entitled to claim any additional compensation under the omitted section of the Act. We; therefore, find that no contempt in this regard has been made by the alleged contemnors and dismiss these applications so far as this aspect is concerned.

JUDGE

JUDGE

Karachi:
Dated:

S.Akhtar