

IN THE HIGH COURT OF SINDH CIRCUIT COURT HYDERABAD

R. A No.27 of 2018

DATE	ORDER WITH SIGNATURE OF JUDGE
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Date of Hearing : 14.03.2018

Date of Order : 14.03.2018

Mr. Moula Bux Ayoub Leghari, Advocate for applicant.

ORDER

AGHA FAISAL, J: This revision application has been instituted impugning the order dated 23.12.2017 (*hereinafter referred to as the "Impugned Order"*), passed by the Court of the learned District Judge, Tando Muhammad Khan (*hereinafter referred to as the "Trial Court"*). The content of the Impugned Order is reproduced herein below:

"Heard both the sides and perused the record.

The plaintiff through this application has sought amendments in the issues already framed by this Court.

I have gone through the applications in hand and the proposed issues and the issues already framed, it appears that the proposed issues are already covered in the issues already framed and as such there is no reason to make amendment in the issues already framed. I therefore find no merit in the applications and as such the same are hereby dismissed."

2. The applicant had also filed an interlocutory application, wherein the suspension of proceedings in the Land Acquisition Case had been sought pending disposal of the subject revision application. However, it was considered proper by this Court that instead of merely deciding

the interlocutory application it may be prudent to hear the main revision application and pass the appropriate orders thereupon.

3. It was contended by the learned Counsel for the applicant that by virtue of the Impugned Order the learned Trial Court dismissed an interlocutory application, by which the applicant had prayed as follows:

“It is respectfully prayed on behalf of the plaintiff / objector that this Honourable Court may be pleased to frame following additional issues in addition of issues framed by this Honourable Court as the controversy between the parties mentioned in the pleadings which require to frame the issues. Without framing the following issues this Honourable Court cannot arrive to the just and proper, fair conclusion of the above suit.

PROPOSED ADDITIONAL ISSUES

1. *Whether the plaintiff was not issued any notice:?*
2. *Whether the defendant/Land Acquisition Officer has paid the compensation of other excess of land?*
3. *Whether the land of plaintiff is potential value for industries/commercial/residential one and its market value is Rs.2000/- per Sq.Ft?*
4. *Whether the plaintiff is entitled to have 15% compulsory allowance U/S 23(2) of Land Acquisition Act, 1894?*
5. *Whether the plaintiff is entitled for Rs.50,000/- per acre for crops and trees standing on suit land?*
6. *Whether the plaintiff is entitled for Rs.5000,000/- for damages for severance of the land acquired?*
7. *Whether the plaintiff is entitled for Rs.2000,000/- for injuriously affecting his other property and Rs.10,000,000/- for injuring/affecting his income?*
8. *Whether the plaintiff is entitled for 25% on compensation amount from 17.12.2015 upto date of making payment to him?*
9. *Whether the plaintiff is entitled for 25% compensation amount in compensation of acquisition of land?*
10. *Whether the plaintiff is entitled for statutory allowances on said amount?*

11. *Whether the plaintiff is entitled for Rs.500,000/- for preparation of water channels and farm roads/patrees which were supplying the irrigation water to the land have been dismantled?*
12. *Whether the Land Acquisition Officer has acquired the land of Muhammad Amin and Dr. Mir Hassan and Abdul Latif at the rate of Rs.1000,000/- per acre for cultivated/barren land?*
13. *Whether the plaintiff is entitled for 15% on market value of the acquired land as additional compensation U/S 28-A since the notification till the final payment is made?*

4. The learned Counsel for the applicant stated that the Impugned Order is contrary to the law and hence the same may be set aside.

5. The learned Counsel did not raise any specific grounds in support of his generalized assertion that the Impugned Order was liable to be set aside.

6. The provisions of Section 115 CPC were pointed out to the learned Counsel for the applicant and it was queried as to which of those provisions were infringed by the learned Trial Court while rendering the Impugned Order.

7. It may be pertinent to reproduce the relevant provisions of Section 115 CPC herein below:

“Sec. 115.—Revision.—[(1) The High Court may call for record of any case which has been decided by any Court subordinate to such High Court and in which no appeal lies thereto, and if such subordinate Court appears--

- (a) to have exercised a jurisdiction not vested in it by law, or
- (b) to have failed to exercise a jurisdiction so vested, or
- (c) to have acted in the exercise of its jurisdiction illegally or with material irregularity.

the High Court may make such order in the case as it think fit]”

[Provided that, where a person makes an application under sub-section, he shall, in support of such application, furnish copies of the pleadings, documents and order of the subordinate Court and the High Court shall, except for reasons to be recorded, dispose of such application without calling for the record of the subordinate Court.”

8. The learned Counsel failed to cite any infirmity in the Impugned Order which would precipitate in exercise of jurisdiction of this Court under Section 115 CPC.

9. It is well settled law that amendment of issues could be permitted by a Court under lawfully sanctioned parameters and further that the parties are not entitled to set up a case or to lead evidence on issues which do not arise from their pleadings and their evidence must be restricted to the points in controversy in the strict sense.

10. Therefore, it was the duty of the applicant to have demonstrated before the learned Trial Court that the grant of relief sought, vide the interlocutory application, was essential to further the cause of justice.

11. It is *prima facie* apparent that the Impugned Order is passed on an interlocutory application and there is ample authority to suggest that interference in such orders by the High Court could only be merited in exceptional or extraordinary circumstances.

12. The aforesaid principle is fortified by the judgment in the case of *KHALID MEHMOOD THROUGH SPECIAL ATTORNEY V. JUDGE FAMILY COURT, FAISALABAD AND ANOTHER*, reported as 2010 YLR 336, wherein it was held as follows:

“The Impugned Order passed by the learned Judge, Family Court, is not only clothed with authority but is also fully justified. The Impugned Order dated 16-1-2009 was to all intents and purposes of interlocutory in nature. The law does not provide any appeal or revision in the hierarchy of Family Laws. The petitioner on proper showings would have an opportunity to challenge the same if and when he would bring an appeal against the final decision/judgment in terms of section 14 of the Family Courts Act, 1964. There is no dearth of authority that the expression “decision” means final decision and the same will be read ejusdem generis with “judgment”. In other words, the petitioner will have an adequate and alternative remedy at the time of appeal as aforementioned. Considering the conduct of the petitioner, the learned Judge Family Court was constrained to pass the Impugned Order dated 16-1-1999. There was no illegality or irregularity in passing these orders. The present writ petition is without any substance. It is not entertainable and is consequently dismissed in limini.”

13. This issue has also been deliberated upon by the august Supreme Court *inter alia* in the case of *MUHAMMAD BARAN AND OTHERS V. MEMBER (SETTLEMENT & REHABILITATION) BOARD OF REVENUE, PUNJAB AND OTHERS*, reported as *PLD 1991 SUPREME COURT 691*, wherein it was maintained as follows:

“Therefore, before a person can be permitted to invoke this discretionary power of a Court, it must be shown that the order sought to be set aside had occasioned some injustice to the parties. If it does not work any injustice to any party, rather it causes a manifest illegality, then the extra ordinary jurisdiction ought not to be allowed to be invoked.”

14. It is observed that there is no provision for appeal against the interlocutory orders within the purview of the Land Acquisition Act (hereinafter referred to as the "Act"), where under the proceedings before the learned Trial Court are taking place, and that the final order therein is subject to appeal under the provisions of Section 54 therein.

15. It would follow that any detriment suffered by the applicants by virtue of the Impugned Order, if any, could be determined in an appeal against the final order in the proceedings and that in the presence of such a remedy being available to the applicants the interference of the Court at this stage is not merited.

16. Even otherwise, no extraordinary or exceptional circumstances have been demonstrated by the applicants to compel this Court to exercise its jurisdiction in this regard

17. It is also observed from a perusal of the Impugned Order that the learned trial Judge passed the same after hearing of the parties concerned and had come to the assessment that the issues sought to be framed were already covered in the issues which had already been framed in the subject proceedings.

18. It is the considered view of this Court that no grounds have been invoked by the applicants to merit the interference of this Court as there is no suggestion that the Impugned Order is either an exercise without jurisdiction or a failure to exercise jurisdiction or an act in exercise of jurisdiction illegally or with any material irregularity.

19. In view of the foregoing, it is the view of this Court that the Impugned Order is in due conformity with the law and does not suffer from any infirmity whatsoever and therefore the same is hereby upheld.

20. The present revision application, alongwith the interlocutory application/s therein, was dismissed earlier today vide a short order, the contents whereof are reproduced herein below:

“The Court has heard the learned Counsel for the applicant and for the reasons to be recorded later, the present revision application, along with listed application, is dismissed.”

21. These are the reasons for the above short order dated 14.03.2018, wherein subject revision application was dismissed.

22. It is stipulated that the observations made herein are of a tentative nature and shall have no impact upon the determination of any dispute between the parties before any forum of appropriate jurisdiction in due consonance with the law.

23. The Office is directed to convey a copy hereof to the learned Trial Court for reference and record.

JUDGE

Shahid