

IN THE HIGH COURT OF SINDH AT KARACHI

Present: **Mohammad Ali Mazhar and Agha Faisal, JJ.**

First Appeal 113 of 2017	:	Province of Sindh & Another vs. Abdul Raheem Khan & Others
First Appeal 114 of 2017	:	Province of Sindh & Another vs. Azra Begum & Others
First Appeal 115 of 2017	:	Province of Sindh & Another vs. Naseem Begum & Others
For the Appellants	:	Mr. Jawad Dero Additional Advocate General
For the Respondents	:	Mr. Shaukat Ali Shaikh Advocate
Dates of Hearing	:	15.04.2019, 23.04.2019, 30.04.2019 & 09.05.2019
Date of Announcement	:	03.09.2019

JUDGMENT

Agha Faisal, J: The subject matter of these appeals is the issue of compensation payable in respect of the Lyari Expressway Project ("Project"). The land acquisition officer had delivered awards dated 16.05.2015 and 19.05.2015 ("Awards"), with respect to the acquisition of property in Angara Goth Liaquatabad and 'A'-Area Liaquatabad, respectively. The Awards came before the Referee Court, being the IInd Additional District Judge, Karachi-Central, and vide judgment dated 13.07.2016 in Reference Nos.1, 2 and 10 of 2016 ("Impugned Judgment") the Court was pleased to re-determine the said compensation. The present appeals have been preferred challenging the Impugned Judgment. Since the controversy is common to all three appeals, hence, they shall be determined vide this common judgment.

2. The facts relevant to the present controversy pertain to the acquisition of land for the Project. The record shows that the preliminary

notification in respect of acquisition of land, under Section 4 of the Land Acquisition Act, 1894 ("Act"), was issued on 11.02.2013, followed by the notifications under Section 6 and 7 of the Act dated 11.05.2013, which were published in the Sindh Government Gazette on 23.05.2013. The Awards, under Section 11 of the Act, were rendered on 16.05.2015 and 19.05.2013 respectively, wherein the quantum of compensation stood determined. It is considered appropriate to reproduce the relevant findings, and the basis thereof, recorded in the respective Awards.

Angara Goth

Section 11(ii) of the Land Acquisition Act, 1894 stipulates that the Collector has to form an opinion about compensation for the land to be acquired. The compensation is to be fair and reasonable.

To determine the fair value of the land in question it was pertinent to assess its market value. The Hon'ble Supreme Court of Pakistan had laid down in a judgment that the value of land and bungalows in registered documents cannot be relied upon (PLD-1986, SC-158). However, they were consulted to formulate an idea about the true value of land. It was essential to consider the opinion of the estate and property dealers of the area about the value of land in question. Also, other factors such as environment of the area, availability of civic amenities and infrastructure were also considered. Being on the beds of Lyari River – which serves as main sewer carrier of Karachi, the area is not desirable for real estate development. Hence, the expectation that the value of land will increase significantly in years to come is negligible. Essential civic amenities are not available in the area. The area lacks municipal infrastructure such as paved roads, streetlights etc. Being a 'Katchi Abadi', the structures are unplanned and to a certain extent dangerous. The land was given on lease by the Karachi Metropolitan Corporation for a period of 99 years. By doing so, Karachi Metropolitan Corporation regularized and recognized the right of encroachers on state land. It is taken into account that the bed of Lyari River is a natural endowment and no individual person can claim ownership or right of exclusive enjoyment of benefits driven from the same.

To ensure a transparent evaluation, all persons interest in the land in question were heard and enquired about their expectations about its value. However, they failed to present a just and reasonable evaluation of the land to be acquired. Their evaluation was exaggerated and devoid of ground realities.

All the factors affecting the value of land in question were taken into account.

Value of Constructed Structures:

The valuation of constructed structures, was a technical issue. Therefore, assistance of an expert was sought. The Chief Engineer of Karachi Metropolitan Corporation made the assessment. Hence, no ambiguity remains as to the values of constructed structures.

Being satisfied that the principles of natural justice, the requirements of Land Acquisition Act, 1894 and the orders of Hon'ble Supreme Courts are complied with I do hereby award, amount as per the statement attached herewith (list-A), as compensation for the acquisition of 1551 square yards of Angara Goth, Liaquatabad, Karachi.

LIST "A"

AWARD STATEMENT OF 27 CONSTRUCTED HOUSES OF ANGARA GOTH LIAQUATABAD KARACHI									
1	2	3	4	5	6	7	8	9	10
S. NO.	NAMES OF LEASEE / OCCUPANT	TOTAL AREA OF PLOT IN YARDS	AREA OF PLOT TO BE ACQUIRED YARDS	COMPLENSATION OF LAND RS.6,000/- PER SQUARE YARDS	COST OF CONSTRUCTION FLOOR RCC RS.600 PER SQ FT T.GR/TEEN SHEET @ RS.400/- PER SQ FT.	TOTAL (05+06)	SATURDAY ALLOWANCE 15% U/S. 23(2)I AND ACQUISITION ACT 1894	GRAND TOTAL (07+08)	GRAND TOTAL (07+08) TRANSFER ALLOWANCE 15%
1	Abdul Ghani S/o Abdul Haq	60.34	25	150,000	337,500	478,500	73,125	560,625	644,719
2	Kaleemuddin S/o Saleemuddin	48.6	12	72,000	43,200	115,200			115,200
3	Muhammad Akhtar S/o Muhammad Siddiq	63	63	378,000	226,800	604,800	90,725	695,520	799,848
4	Abdul Rafiq S/o Allah Bux	125	125	750,000	450,000	1,200,000	180,000	1,380,000	1,587,000

5	Naseem Begum W/o Syed Laik Ali	82	82	492,000	738,000	1,230,000	184,500	1,414,500	1,626,675
6	Syed Ashfaq Ali S/o Nayab Ali	63	63	378,000	226,800	604,800	90,720	695,520	799,648
7	Noshey Ali S/o Farvad Ali	58	58	348,000	208,800	556,800	83,520	640,320	736,368
8	Imdad Ali S/o Riaz Ali	58	58	348,000	548,100	896,100	134,415	1,030,515	1,185,092
9	Mukhtar Ahmed S/o Abdul Kareem	37	37	222,000	366,300	588,300	88,245	676,545	778,027
10	Raisa Begum W/o Syhed Ashraf Ali	69	69	414,000	248,400	662,400	99,360	761,760	876,024
11	Fayazi Begum W/o Muhammad Ali	76	76	456,000	273,600	729,600	109,440	839,040	964,586
12	Abdul Jabbar S/o Abdul Sattar	62	62	372,000	809,100	1,181,100	177,165	1,358,265	1,562,005
13	Mst. Rahime Jan W/o Abdul Qadeer	75.88	22	132,000	50,400	182,400			182,400
14	M. Hammad Tariq S/o Qalander Khan	69.44	19	114,000	30,000	144,000			144,000
15	Kareem Bux S/o Noor Bux	146	146	876,000	998,400	1,874,400	281,160	2,155,560	2,478,894
16	Abdul Rasheed S/o Qalander Khan	75.47	20	120,000	26,000	146,000			146,000
17	Abdul Rasheed S/o A. Rehman Shah	78	78	468,000	481,800	949,800	142,470	1,092,270	1,256,111
18	Muhammad Shakir S/o M. Hussain	79	97	582,000	349,200	931,200	139,680	1,070,880	1,231,512
19	Mst. Allah Wali W/o Abdul Ghani	35	35	210,000	251,700	461,700	69,255	530,955	610,598
20	Bahoo Khan Warsi S/o Chotay Khan	67	67	402,000	316,200	718,200	-----730	825,930	949,820
21	M. Ismail S/o Sheer Muhammad	61	61	366,000	494,100	860,400	129,015	989,115	1,137,137
22	Shabbir Burni S/o Khalil Burni	38	38	228,000	239,400	467,400	70,110	537,510	618,137
23	Mst. Sharifan Bano W/o S. Hamid Ali	94.05	25	150,000	202,500	352,500	52,875	405,375	466,181
24	M. Arshad S/o Qalander Khan	50.16	33	198,000	90,000	288,000	43,200	331,200	380,880
25	M. Sadiq S/o Abdul Qadeer	102	102	612,000	774,500	1,386,500	207,975	1,594,475	1,833,646
26	Syed Ahmed Ali S/o Akhlaq Ali	40	40	240,000	324,000	564,000	84,600	648,600	745,890
27	Muhammad Suleman S/o Ikramullah	66.44	38	228,000	195,000	423,000	63,450	486,600	559,418
			1551	9,306,000	9,299,800	18,605,800	2,702,730	20,720,930	24,416,670

'A'-Area

Section 11(ii) of the Land Acquisition Act, 1894 stipulates that the Collector has to form an opinion about compensation for the land to be acquired. The compensation is to be fair and reasonable.

To determine the fair value of the land in question it was pertinent to assess the market value. The Hon'ble Supreme Court of Pakistan had laid down in a judgment that the value of land and bungalows in registered documents cannot be relied upon (PLD 1986 SC-158). However, they were consulted to formulate an idea about the true value of land. It was essential to consider the opinion of the estate and property dealers of the area about the value of land in question. Also, other factors such as environment of the area, availability of civic amenities and infrastructure were also considered. It was observed during the inspection of the land that:

- The majority of the construction is haphazard and without planning.
- The constructed structures are dangerous as they have been built without planning.
- The environment of the area adversely affects the lives of the residents.
- The area lacks amenities and is not desirable for future development.

The land in question has been leased by Karachi Metropolitan Corporation, Karachi. As per the report of Assistant Director (Rev.) Land Lease Liaquatabad, KMC. The lease of following plots situated on the land to be acquired has expired:

S. No.	Lessee	Plot No.	Period and Year of Lease
01	Hameeda Bano	4/36 'A' Area	30 years from 1965
02	M. Rafique	1/36 'A' Area	30 years from 1967
03	Khurshid Ahmed	2/35 'A' Area	30 years from 1967
04	Hakim	4/21 'A' Area	30 years from 1967

Also, from the said report, it transpired that no lease was ever issued by the Karachi Metropolitan Corporation in respect of the following plots situated on the land to be acquired:

S. No.	Claimant	Plot No.	Status of Land
01	Mahmood Baig	2/2-B 'A' Area	Un-leased
02	Abdur Rehman	2/36 'A' Area	Un-leased
03	Noor Muhammad	6/30 'A' Area	Un-leased
04	Kulsoom	7/30 'A' Area	Un-leased

As far as, un-leased plots and plots with expired lease are concerned the occupants have been drawing benefits without any lawful right. Hence, the only compensation the occupants can demand is the cost of construction.

To ensure a transparent evaluation, all interested in the land in question were heard and enquired about their expectations about its value. However, they failed to present a just and reasonable evaluation of the land to be acquired. Their evaluation was exaggerated and devoid of ground realities.

All the factors affecting the value of land in question were taken into account.

Value of Constructed Structures:

The valuation of constructed structures was a technical issue. Therefore, assistance of an expert was sought. The Chief Engineer of Karachi Metropolitan Corporation made the assessment. Hence, no ambiguity remains as to the value of constructed structures.

Being satisfied that the principles of natural justice, the requirements of Land Acquisition Act, 1894 and the orders of Hon'ble Superior Courts, are complied with I do hereby award, amount as per the statement attached herewith (List-A) as compensation for the acquisition of 4157 square yards of 'A' Area, Liaquatabad, Karachi.

AWARD STATEMENT OF 49 CONSTRUCTED HOUSES OF "A" AREA LIAQUATABAD KARACHI										
1	2	3	4	5	6	7	8	9	10	11
S. NO.	NAMES OF LEASEE / OCCUPANT	TOTAL AREA OF PLOT IN SQUARE YARDS	AREA OF PLOT TO BE ACQUIRED IN SQUARE YARDS	COMPLETION OF LAND RS.13,000/- PER SQUARE YARDS	COST OF CONSTRUCTION FLOOR RCC RS.600 PER SQ FT T,GR/TEEN SHEET @ RS.400/- PER SQ FT.	TOTAL (05+06)	SATURDAY ALLOWANCE 15% U/S. 23(2) LAND ACQUISITION ACT 1894	GRAND TOTAL (07+08)	TRANSFER ALLOWANCE 15%	GRAND TOTAL
1	M. Hanif S/o M. Ayub	353	353	4,589,000	1,917,000	6,505,000	975,000	7,481,900	1,122,285	8,604,185
2	Mehmood Khan S/o A. Gaffar Khan	80	80	1,040,000	288,000	1,328,000	199,200	1,527,200	229,080	1,756,280
3	Zubeeda Khatoon W/o A. Satriar	104	68	884,000	428,400	1,312,400	196,860	1,509,260	226,389	1,735,649
4	A. Sattar Qureshi S/o Shaikh Qadeer	104	8	104,000	144,000	248,000	-	-	-	248,000
5	Muhammad Idrees S/o M. Yousuf	47	47	611,000	634,500	1,245,500	185,825	1,432,325	214,849	1,647,174
6	Muhammad Idrees S/o M. Younus	50	50	650,000	180,000	830,000	124,500	954,500	143,175	1,097,675
7	Mst. Bilgees Begum W/o M. Ahmed	50	50	650,000	180,000	830,000	124,500	954,500	143,175	1,097,675
8	Bilgees Begum W/o Muhammad Ahmed	40	40	520,000	144,000	664,000	99,600	763,600	114,540	878,140
9	Sikandar Baig S/o Muhammad Baig	40	40	520,000	252,000	772,000	115,800	887,800	133,170	1,020,970
10	Azra Begum W/o Muhammad Baig	40	40	520,000	252,000	772,000	115,800	887,800	133,170	1,020,970
11	Hameeda Bano W/o Khalid Ahmd	40	18	-	64,800	64,800	9,720	74,520	11,178	85,698
12	M. Ayub Khan S/o Muhammad Khan	130	130	-	442,800	442,800	66,45	509,220	76,383	685,620
13	Mst. Nazneen Begum W/o M. Ayub	92	92	1,195,000	671,700	1,867,700	280,155	2,147,855	322,178	2,470,033
14	Abdul Raheem Khan S/o A Aziz Khan	80	80	1,040,000	144,000	1,184,000	177,800	1,361,600	204,240	1,565,840
15	M. Rafiq Ahmed S/o Lateef Ahmed	60	60	780,000	231,400	1,011,400	151,710	1,163,110	174,467	1,337,577
16	M. Nizamuddin S/o M. Sharfuddin	138	138	-	1,366,200	1,366,200	204,900	1,571,100	235,570	1,806,670
17	Abdul Aziz Khan S/o M. Ayub Khan	132	69	-	576,500	576,300	85,445	662,745	99,412	762,157
18	Muhammad Ramzan S/o Bundoo Khan	101	101	1,313,000	525,800	1,838,800	275,820	2,114,620	317,183	2,431,803
19	Abdul Aziz Khan S/o M. Ayub Khan	80	80	1,040,000	1,350,700	2,400,700	360,105	2,761,805	414,121	3,175,926

20	Muhammad Ramzan S/o Bundo Khan	80	80	1,040,000	1,008,000	2,048,000	307,200	2,355,200	353,280	3,174,920
21	Jameela W/o Kalo	80	80	1,040,000	490,500	1,530,500	229,575	1,760,175	264,011	2,765,480
22	Muhammad Yaseen S/o Kalo	80	80	1,040,000	792,000	1,832,000	274,800	2,468,500	316,020	2,024,086
23	Muhammad Yaseen S/o Kalo Ali	50	50	650,000	525,000	1,175,000	176,250	1,350,250	202,688	2,432,820
24	Khursheed Ahmed S/o M. Hanif	130.66	65	-	351,000	351,000	52,650	403,650	60,548	---4,198
25	Title dispute	116	63	819,000	910,500	1,729,500	259,425	1,988,925	298,339	2,287,284
26	Rasheeda Begum W/o A. Qadir	138	138	1,794,000	496,800	2,290,800	343,620	2,634,420	395,163	3,029,-3
27	Rasheeda Begum W/o A. Qadir	132	3	35,000	10,800	49,800	-	-	-	49,800
28	Yaseen Bano W/o Muhammad Umer	158.88	63	819,000	340,200	1,159,200	-	-	-	1,159,200
29	M. Sami S/o M. Naqi	62	62	806,000	223,200	1,029,200	154,380	1,183,580	177,537	1,351,117
30	M. Sami S/o M. Naqi	104	104	1,352,000	561,600	1,913,600	287,040	2,200,640	330,096	2,530,735
31	Tehseen Azmat W/o M. Azmat Ali	268	268	3,484,000	3,402,300	6,886,300	1,032,945	7,919,245	1,187,887	9,107,132
32	Hakimuddin S/o Zamiruddin	140	140	-	612,000	612,000	91,800	703,800	105,570	809,370
33	M. Ilyas S/o M. Yar	80	80	1,040,000	1,184,600	2,224,600	333,690	2,558,290	383,744	2,942,034
34	Noor Muhammad S/o	96	74	-	266,400	266,400	39,960	306,360	45,954	352,318
35	Mst. Kusloom Begum W/o Ahmed Raza	156	156	-	982,400	982,400	147,360	1,129,760	169,464	1,299,224
36	Baboo Khan S/o Allah Din	93.33	93	1,209,000	338,400	1,547,400	232,110	1,779,510	266,927	2,046,437
37	Abdul Hameed S/o M. Bux	150	150	1,950,000	1,890,000	3,840,000	575,000	4,416,000	662,400	5,078,400
38	Baboo Ali S/o Muhammad Ali	260	73	949,000	262,800	1,211,800	181,770	1,393,570	209,036	1,602,506
39	M. Younus S/o Ahmed	132	132	716,000	539,000	2,255,000	338,250	2,593,250	388,988	2,982,238
40	Naseem Jafri S/o M. Saleem Jafri	80	80	1,040,000	114,400	1,154,400	173,160	1,327,560	199,134	1,526,694
41	M. Naseem Jafri S/o M. Saleem Jafri	40	40	520,000	324,000	844,000	126,600	970,600	145,590	1,116,198
42	Naseem Jafri S/o M. Saleem jafri	80	67	871,000	663,300	1,534,300	250,145	1,764,445	264,667	2,029,112
43	Riaz Haider S/o Shoukat Hussain	40	40	420,000	504,000	1,024,000	153,600	1,177,600	175,640	1,304,240
44	S. Mustafa Raza Naqvi S/o Syed Mushtaq	100	60	780,000	216,000	996,000	149,400	1,145,400	171,810	1,317,219
45	Syed Riaz Haider S/o Shoukat Hussain	40	40	520,000	144,000	664,000	99,600	763,600	114,540	878,140
46	Syed Riaz Haider S/o Shoukat Hussain	84	84	1,092,000	453,600	1,545,600	231,840	1,777,440	266,616	2,044,058
47	S. Riaz Haider S/o Shoukat Hussain	80	20	250,000	108,000	368,000	-	-	-	368,000
48	Khuda Bux S/o M. Bux	160	160	2,080,000	2,592,000	4,672,000	700,800	5,372,800	895,920	5,178,720
49	Rasheed Ahmed S/o Chotte Khan	64	64	2,000	983,750	1,815,750	272,353	2,088,113	313,217	2,400,329
						74,813,150	10,943,223	83,936,373	12,590,456	98,351,828

The affectees disputed the quantification of compensation undertaken vide the Awards and eventually the dispute came before the Court in the form of references under Section 18 of the Act. The learned Referee Judge came to the conclusion that the amount of compensation granted to the affectees was not fair and reasonable, hence, re-determined the same. The operative findings contained in the Impugned Judgment are reproduced herein below:

“Keeping in view the settled law I have assessed, determined and evaluated the evidence led by the parties through oral as well as documentary evidence.

There is no denial of the fact that the both the properties situated at A Area and Angara Goth are situated in thickly populated and congested area as per contents of both awards dated 15.5.2015 and 19.5.2015 which are faced with almost all the civic facilities of present days viz electricity, Sui Gas, water connection, proper sewerage system, road, etc. The witness of the plaintiff Syed Sajjad Mustafa has produced assessment valued as per survey reports produced by him which are appearing to be nothing but are imaginary as in cross examination he has admitted that he has not obtained any document of ownership from any inhabitant of the locality and even he has shown his ignorance of about present market value of the construction as per square feet therefore it cannot be ascertained as to how he assessed the amount as he has not produced any concrete proof with regard to its proper valuation. The evidence of Estate Agent Muhammad Nazim in fact goes in favour of objectors/defendants rather in favour of plaintiff as he has admitted almost each and every suggestion of learned advocate for objectors/defendants while the evidence of Deputy Commissioner Karachi Central is also of no help to his case. He has deposed that the notices U/S 9 of the Act were issued to the occupants through TCS and he has produced P.S. copies of TCS receipts with the notices but the delivery receipts are not produced showing that actually the notices were served upon the objectors/defendants and even from perusal of notices and TCS receipts it appears that the addresses shown on them are neither complete nor proper therefore it can be said that the notices were not properly served upon the occupants of the properties in question.

So far as rate of land in question is concerned the evidence of objectors/defendants and their witnesses is also imaginary because they have also not produced cogent evidence with regard to present market value of the properties in question and now there remains evidence of Commissioner namely Mr. Hassan Imam Advocate, the Retired District & Sessions Judge who has remained well reputed Judge in District Judiciary and he inspected the site in presence of parties and has submitted his report along with photographs and information obtained from Estate Agencies in respect of market value of the properties in question. The learned advocate for the plaintiff has filed objections to his report but the same are not material therefore they cannot be considered and I have no reason to disbelieve the report of Commissioner which appears to be proper.

As stated in preceding paragraphs Land Acquisition Officer fixed the price of land at his own accord without any documentary evidence and his witnesses have also failed to produce any concrete evidence with regard to value assessed by him. It may be noted here that while determining the compensation the following factors are to be considered as provided in Section 23 of Land Acquisition Act 1894 which is reproduced as under:-

23. Matters to be considered in determining compensation: (1) In determining the amount of compensation to be awarded for land acquired under this Act, the Court shall take into consideration—

First, the market-value of the land at the date of the publication of the notification under Section 4, sub-section (1),

secondly, the damage sustained by the person interested, by reason of the taking of any standing crops or trees which may be on the land at the time of the Collector's taking possession thereof;

thirdly, the damage (if any) sustained by the person interested, at the time of the Collector's taking possession of the land, by reason severing such land from his other land;

fourthly, the damage (if any) sustained by the person interested, at the time of the Collector's taking possession of the land, by reason of the acquisition injuriously affecting his other property, movable or immovable, in any other manner, or his earnings;

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

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

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

From the overall assessment of the evidence and material available on record I am of the considered view that the Land Acquisition Officer/Deputy Commissioner Central has not passed awards in favour of effectees by examining their cases separately therefore amount of

compensation granted to the objectors/defendants is not fair and reasonable amount as per existing market value. Hence both these Issues are answered in Negative.

Issue No.3

On the basis of my above discussion I am of the humble view that the report of Commissioner is just and equitable who has assessed the properties in question and determined the amount of compensation fairly and reasonably therefore while agreeing with the assessment of the amount of compensation determined by the Commissioner the three objectors/defendants whose houses are situated on the service lane of Shara-e-Altah in A-Area Liaquatabad are awarded amount of compensation at the rate of Rs.38000/- per square yard while the remaining objectors/defendants whose houses are situated in same area in narrow streets in between water stream and Shara-e-Altah are awarded amount of compensation at the rate of Rs.25000/- per square yard while the objectors/defendants whose houses are situated in Angara Goth are awarded amount of compensation at the rate of Rs.24000/- per square yard. The objectors/defendants are also entitled for allowance as admissible under the law.

The plaintiff is directed to issue fresh cheques of amount of compensation in the names of objectors/defendants within one month without fail.

The above Reference in terms of above increase are disposed of accordingly.”

Aggrieved by the Impugned Judgment, the appellants preferred the present appeals.

3. Mr. Jawad Dero, learned Additional Advocate General appeared on behalf of the appellants and submitted that the Impugned Judgment was predicated upon a commissioner's report and not upon any cogent evidence. Per learned counsel, the Referee Judge's reliance upon secondary information was unwarranted. Learned counsel submitted that it was imperative that the valuation relevant to the proceedings be benchmarked to the time at which the notice under Section 4 of the Act was issued and the same was not done. Learned counsel argued that the Awards had considered all material aspects and the findings therein were predicated upon the correct assessment of the facts and circumstances, hence, it was imperative that the Impugned Judgment be set aside and the Awards be restored.

4. Mr. Shoukat Ali Shaikh, learned counsel for the respondents at the very onset challenged the maintainability of the present appeals, on the premise that the present appellants were not the proper party/ies to have assailed the Impugned Judgment. Learned counsel argued that the uniform formula / offer for the constituents of the land acquisition was earlier challenged before this Court in Constitution petitions and the said petitions were disposed of with directions to the respondents to pass award in respect of each petitioner fairly and reasonably and that the same had demonstrably not been done in the Impugned Judgment. Per

learned counsel, the requisites for a declaration required under Section 6(1-A) of the Act had not been complied with; the recommendations of the commissioner were not adopted by the Referee Judge; and the determined values were significantly lower than proposed by the commissioner.

5. We have heard the arguments of the respective learned counsel and have also considered the documentation to which our surveillance was solicited. It is observed that both sides to the present appeals have expressed reservations about the Impugned Judgment and that neither side considers the same to have been rendered in consonance with the law. In conformity with the prescription of Order XLI rule 31 CPC, we do hereby frame the following points for determination:

- i) Whether the present appeals are maintainable.
- ii) Whether the quantification of compensation concluded vide the Impugned Judgment is sustainable upon consideration of the basis upon which the same was predicated.

6. The issue of maintainability merits deliberation at the very onset, as the respondents had challenged *locus standi* of the present appellants to maintain the present appeals. It was contended by the learned counsel for the respondents that the appeals ought to have been filed by the Deputy Commissioner Central, being the Land Acquisition Officer and not by the Province of Sindh and the Project Director, Resettlement Project Lyari Expressway/Deputy Commissioner South, Karachi, who have preferred the present appeals. Learned counsel for the appellants had sought to repel this challenge by submitting that at the relevant time, the person officiating as Deputy Commissioner South was also holding the office of Deputy Commissioner Central and Project Director, Lyari Expressway, therefore, the objection to maintainability was not sustainable. It was further submitted that in any event a beneficiary was entitled to file an appeal and that the said principal had been duly endorsed by the Superior courts.

7. Learned counsel for the appellants had drawn our attention to the judgment in the *State of Maharashtra (Public Works Department) vs. Babu Rao Dnyanoba Chiddarwar and Others*, reported as AIR 1973

Bombay 231, wherein it was maintained that the collector, when he makes an award, does so on behalf of the government. It was also noted that while making the award, and also any proceedings antecedent thereto, he is functioning as an agent of the government and as collector he is not a person who has to pay compensation, which in any event is to be paid out of funds of the government. It was thus recognized that the real person interested in challenging the enhanced compensation is the principal, being the government itself. It was thus maintained that there was no impediment to the beneficiary, being the government itself, filing an appeal in respect of an order / judgment whereby the quantum of compensation was enhanced by the Court.

8. The honorable Supreme Court has also recognized the eligibility of a beneficiary to file an appeal in the case of *Land Acquisition Collector and Others vs. Muhammad Nawaz and Others* reported as *PLD 2010 SC 745*. The pertinent observations in such regard are reproduced herein below:

“7. It is pertinent to mention here that out of the aforesaid sections, sections 18(3) and (4), 22-A, 54 of the Land Acquisition Act as well as depriving a company or a local authority of the right of appeal in Proviso the Section 50(2) of the Act are repugnant to the injunctions of Islam as held by the Shariat Appellate Bench of this Court vide judgment dated 18-2-1991 in Shariat Appeal No.7/89. A cut-off date was fixed by the Shariat Appellate Bench for the competent bodies for necessary amendment in the aforesaid sections till 30-9-1991. The Shariat Appellate Bench further held as under:

“The proposed amendments would advance remedy to an aggrieved party. It would be fair and just to give a right to make a reference, file a cross-objection, lead evidence and file an appeal to those parties who have been denied such a right under sections 18, 22-A, 50 and 54 of the Land Acquisition Act.”

As stated by the learned counsel for the parties that province of the Punjab had not yet amended the said provision in accordance with the directions of the Shariat Appellate Bench judgment dated 18-2-1991 in Shariat Appeal No.7/1989. According to Article 203-D, (3)(b) if any law or provision of law is held by the Court to be repugnant to the Injunctions of Islam, 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. The aforesaid provisions mentioned herein above which were declared against the injunctions of Islam after 30th September, 1991. The aforesaid provision of Land Acquisition Act including provision of section 50(2) of the Act barring right of appeal to Federal Government/beneficiaries shall cease to have effect, therefore, now after the cut-off date the Federal Government/beneficiaries have a right to file an appeal, as per judgment of the Shariat Appellate Bench.”

9. The learned counsel for the respondents despite having argued that the appeals were required to have been instituted by the Deputy Commissioner South, made no attempt to controvert the assertion of the learned Additional Advocate General that at the time when the appeals

were filed, the same person was officiating as the Deputy Commissioner Central, Deputy Commissioner South and Project Director, Lyari Expressway. The learned counsel for the respondents also did not seek to distinguish the Supreme Court's judgment cited supra, wherein right of a beneficiary to file an appeal was recognized. In view hereof, we are not persuaded to non-suit the appeals on the grounds of maintainability, hence, proceed to address the merits thereof.

10. The starting point of this exercise is to consider whether the basis of quantum of the compensation was reliable as argued on behalf of the appellants. It may be prudent to initiate this discussion by adverting to the order issued by a Division bench of this Court dated 15.05.2013, in *CP D 60 of 2013 Muhammad Hanif & Others vs. Province of Sindh & Others* ("*Muhammad Hanif*"), directing the respondents to pass award in respect of each petitioner fairly and reasonably. Learned counsel for the respondents had argued that the aforesaid order clearly required the award to consider the individual constituents of the property sought to be acquired; whereas the Awards had not taken the said directions into consideration. The said grievance was brought to the attention of an earlier Division Bench of this Court, via applications preferred in the aforesaid case and connected petitions, and the learned Division Bench, vide judgment dated 03.11.2015, was pleased to maintain that grievances of such nature were to be determined via a reference pursuant to Section 18 of the Act, however, the respondents therein were directed to deposit the compensation cheques of the applicants, per quantification arrived at vide the Awards, with the Nazir of this Court.

11. The references were filed and the primary issue framed to be determined therein was whether the awards took into consideration the distinctive and mutually exclusive nature of the constituents of the land under acquisition proceedings. The learned Referee Judge decided the issue in the negative. The learned Additional Advocate general has not disputed the said findings in the arguments articulated before us. In view hereof it stands demonstrated that the Awards were discrepant in so far as they did not take into consideration the variation in the constituents of the area / land subject matter of the acquisition proceedings.

12. Learned counsel for the respondents had pointed out that the Impugned Judgment suffered from the same infirmity as the Awards, in so far as the Referee Court had not considered the distinguishing features of the constituents of the area / land subject matter of the acquisition proceedings. It was argued that property in the middle of the respective areas could not be determined to have the same value as that on the periphery / facing the main road. It was further argued that the distinctive value of dwellings was also not factored in while determining the valuation and the same was manifestly unjust.

Learned counsel for the appellants did not controvert the apparent discord of the Impugned Judgment with the directions rendered in *Muhammad Hanif* and the said dissonance is also apparent from the record. This leads to the second issue, being whether the quantification of compensation concluded vide the Impugned Judgment is sustainable upon consideration of the basis upon which the same was predicated.

13. Learned Additional Advocate general had argued that valuation relevant to the proceedings was required to be benchmarked to the time at which the notice under Section 4 of the Act was issued. This contention appears negated by the Land Acquisition (Sindh) Amendment 2009 ("Amendment Act") whereby Sections 23 and 24 of the Act were amended and references therein to Section 4 of the Act were replaced with references to Section 6 thereof. Per the record placed before us the relevant notification in respect of acquisition of land, under Section 4 of the Act was issued on 11.02.2013 and the notification under Section 6 of the Act was issued 11.05.2013. There is no argument before us that any material change did or could have taken place in the intervening three months with respect to the valuation, therefore we shall endeavor to consider the implication of the objection itself.

14. It is an admitted fact that the quantification scribed vide the Impugned Judgment was predicated upon the commissioner's report. It is thus imperative to consider the relevant passage, in the Impugned Judgment itself defining the scope of the task entrusted to the commissioner, wherein it is stated as follows:

"In order to arrive at proper decision of these references this Court appointed Mr. Syed Hassan Imam Advocate, retired

District & Sessions Judge as Commissioner to inspect the site viz A Area Liaquatabad and Angora Goth Liaquatabad in the presence of parties and their advocates and submit report about the civic facilities, conditions and locations of the houses coming under Lyari Express Way Project and also make enquiry about the market value of the disputed properties at the time of passing of awards..."

(Underline added for emphasis.)

The report submitted by the commissioner to the referee Court, dated 04.06.2016, reproduces the afore highlighted terms of reference, albeit with a typographical error being that *time of passing of awards* is mistyped as *time of awarding of plots*. It is apparent from a bare reading of the relevant constituent of the Impugned Judgment itself, and the recital contained in the commissioner's report, that the value to be evaluated was that prevailing at the time of passing of the Awards, being 16.05.2015 and 19.05.2015, and not that prevailing at the time that the notifications, per Section 4 / Section 6, were issued, being 11.02.2013 and 11.05.2013 respectively.

15. The commissioner's report concludes with the following inscription:

"It is also necessary to state that it is my assessment based on only two estate brokers reports because of very short time allowed by the Court."

The aforesaid reliance upon the information collected from the respective brokers is notwithstanding the commissioner having deprecated the assessment of the said brokers in the following terms:

"... however the information collected from two real estate brokers is on higher side due to personal attachment with the people ..."

It would thus follow that the valuation arrived at vide the Impugned Judgment is predicated upon the commissioner's report, which in itself is predicated upon the views of two real estate brokers, considered unsound by the commissioner himself.

16. Learned counsel for the respondents had stressed that witnesses for the appellant had supported the higher valuation of land / property subject matter of the acquisition proceedings than provided vide the Awards, hence, their present challenge to the quantum was unmerited.

Learned counsel for the appellants had argued to dispel that impression and dilated at length upon the context and backdrop of the depositions to denote that the assertion of the respondents was incorrect. Be that as it may, the Impugned Judgment has prima facie disregarded the evidence advanced by the said witnesses and in once instance observed as follows:

“The witness has produced assessment valued as per survey reports produced by him which are appearing to be nothing but imaginary as in cross examination he has admitted that he has not obtained any document of ownership from any inhabitant of the locality and even he has shown his ignorance of about present market value of the construction as per square foot therefore it cannot be ascertained as to how he assessed the amount....”

17. It was observed at the very onset that the Awards were dissonant with the directions of the Division Bench of this Court, in *Muhammad Hanif*, wherein the varying nature of constituents of the property subject to acquisition proceedings was required to be taken into account. The learned referee Judge had reached the same conclusion, however, the same infirmity was also apparent from the Impugned Judgment.

It is also found that the valuation exercise conducted by the learned Referee Court was dissonant with the directives of Section 23(1) of the Act as the exercise was conducted to reflect the value at the time of passing of the Awards instead of the time at which the relevant notification was issued.

Finally, it is apparent that the basic starting point of the valuation, demonstrated vide the Impugned Judgment, is the opinion of two real estate brokers, considered unreliable by the very commissioner who relied upon their views.

18. In view of the reasoning and rationale herein contained we are constrained to hold that the Impugned Judgment cannot be sustained as the valuation arrived at and the very basis thereof is not supported by factors upon which the same is predicated. Therefore, we do hereby allow the present appeals and remand the matter/s back to the Referee Court

for a *de novo* determination in accordance with the law. It is expected that the Referee Court shall conduct and conclude the proceedings expeditiously, preferably within three months from the date hereof.

JUDGE

JUDGE

Khuhro/PA