

Order Sheet
**IN THE HIGH COURT OF SINDH,
CIRCUIT COURT, HYDERABAD**

CP No. D- 201 of 2003

Nabi Bux and others v. Land Acquisition Officer
and another

CP No. D- 202 of 2003

Ghulam Mustafa Shah v. Land Acquisition Officer
and others

CP No. D- 203 of 2003

Saifal Shah and others v. Land Acquisition Officer
and others

BEFORE :

Mr. Justice Adnan-ul-Karim Memon
Mr. Justice Adnan Iqbal Chaudhry

Petitioners: Nabi Bux and others in CP No. D- 201 of 2003,
Ghulam Mustafa Shah in CP No. D- 202 of 2003 &
Saifal Shah and others in CP No. D- 203 of 2003
through Mr. Imran Qureshi, Advocate.

Mr. Allah Bachayo Soomro, Addl.A.G.

Date of hearing & Decision: 10.11.2021

ORDER

ADNAN-UL-KARIM MEMON, J: - The captioned constitutional petitions were disposed of vide order dated 7.4.2004. The relevant part of the order is reproduced as under:-

Learned Additional A.G. has placed on record statement on behalf of respondent No.1, mentioning therein that an amount of Rs.26, 05,138.00 has already been paid to the petitioners on 11.3.2004. Respondent No.1 present in court did not dispute that still some claim of the petitioners is outstanding and remains to be paid.

In view of the above, respondents are directed to make payment of the remaining outstanding legal claim of the petitioners to them within thirty (30) days from the date of this order. Compliance report be submitted accordingly.

2. Subsequently counsel for petitioners moved an application under Section 151 CPC praying therein that Land Acquisition Officer has sent a report that still outstanding amount is payable to the

petitioners but the said report has not yet been placed on record of this Court, hence he prayed that respondent No.1 may be directed to place on record copy of the said report.

3. Notice on the application was issued to learned A.A.G. who controverted the stance of the petitioners on the premise that in compliance of order dated 7.4.2004 passed by this Court, respondent No.1 has paid the remaining amount of Rs.16,52,521/- to the petitioners and placed reliance on such documents.

4. This Court vide order dated 18.3.2009 observed as under:-

“ By this application, the petitioners have prayed for payment of remaining amount under the award.

From the order sheet, it appears that the amount of Rs.26,05,138/- was paid to the petitioner and after order dated 7.4.2002 further amount of Rs.16,52,521/- was paid to the petitioner making a total sum of Rs.42,57,659/-. Learned counsel for the petitioner states that the award was passed in the year 2000 and the payments were made in 2004 without interest as provided under Section 28-A & 34 of the Land Acquisition Act. He then submits that the petitioner is entitled to the interest as provided under Section 28-A from the date of notification and interest from the date of possession as provided under Section 34 of the Land Acquisition Act.

Learned A.A.G. requests for some time to call the concerned officer and to submit a statement showing payments made to the petitioners. Adjourned.

Learned A.A.G. may file a statement showing the payments made to the petitioners in office before the next date of hearing with advance copy to other side.”

5. On the last date of hearing learned A.A.G. filed a statement dated 21.9.2021 along with the statement of respondent No.1. In his statement, respondent No.1 has stated that as evident from the order sheet dated 7.4.2004 an amount of Rs.26,05,138/- had already been paid to the attorney of petitioners, whereas the remaining outstanding amount of Rs.16,52,521/- was paid on 12.4.2004 thus the full payment of (3) Awards amounting to Rs.42,57,659/- including interest up to 10.2.2000 stood made, and in support of the version he has placed on record copies of C.C. Vouchers showing payments to the attorney of landowners. However, concerning the interest under Section 34 of the Land Acquisition Act, he has filed a copy of Sindh Ordinance XV (Published on 4.8.2006) promulgated by the Governor of Sindh called the Land Acquisition (Sindh Amendment) Ordinance, 2007. In Section 4 of the Ordinance, it is laid down as under:-

“In the said act Section 28-A shall be omitted and shall be deemed to have been so omitted as if it had never been enacted”.

6. It is further stated in the statement that since the benefit allowed under Section 28-A of the Act has been withdrawn in the past, therefore, as per the law laid down by this Honourable Court, the excess amount received by the land-owners is required to be recovered from them, as the relevant provision of law has been omitted from the statute retrospectively.

7. 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 petitioner on the aforesaid pleas. Prima-facie, we do not see any justification to respond to the plea being raised on behalf of the petitioners, including the effect of the judgment passed by the Federal Shariat Court in the case of 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. The repealing section reads as under:-

“Omission of section 28-A of Act No.I of 1894. In the said Act, section 28-A shall be omitted and shall be deemed to have been so omitted as if it had never been enacted.”

8. The aforesaid issue has already been decided by the Honorable Supreme Court regarding the entitlement of additional compensation under Section 28-A of Land Acquisition Act 1894 in Civil Appeals No. 939 of 2004 etc.

9. In the circumstances, the listed application being misconceived and having no merits is accordingly dismissed, however, with no order as to costs.

JUDGE

JUDGE