

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

1st Appeal No. D – 04 of 2003

**Federation of Pakistan (Central Government) through Ministry of
Communication and Works, Islamabad and another v.
Syed Manzoor Hussain Shah and others**

Before:

Mr. Justice Muhammad Junaid Ghaffar
Mr. Justice Zulfiqar Ali Sangi

Date of hearing: **22-12-2021**

Date of decision: **22-12-2021**

Mr. Ahmed Ali Shahani, Assistant Advocate General Sindh along
with Abdul Ghafoor Dhamrah, Assistant Commissioner, Kandiaro.

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ORDER

Muhammad Junaid Ghaffar, J. – On the last date of hearing, Appellants' Counsel had filed written arguments and learned AAG was given certain directions, and today, he has filed requisite documents. Nobody has been appearing on behalf of private Respondent; whereas, this Appeal is pending since 2003, therefore, we have heard the learned AAG and perused the written arguments as well as the record available with us.

2. This Appeal impugns judgment dated 31-01-2003 passed by the Additional District Judge, Kandiaro in Land Acquisition Application No.01 of 2000, whereby the Application has been allowed as prayed directing the Appellants as well as official Respondents to pay compensation of land at the rate of Rs.60/- per sq. ft. being Urban property amounting to Rs.15,02,820/-.

3. Appellants' case is that, as acquiring Agency, they had paid the amount as per the Award and no further compensation was required to be paid; whereas, the Additional District Judge, Kandiaro had no jurisdiction in the matter, who entertained this Application.

4. Perusal of the record reflects that land in question was acquired on 10.6.1993 through a Notification under section 4 of the Land Acquisition Act, 1894, ("Act"). As stated no compensation was paid; compelling, Respondent No.1 to file F. C. Suit No.60 of 1996 for recovery of compensation. It further appears that by way of some compromise application, the Suit was compromised with the observation that the case would be decided in accordance with law by the defendants. Subsequently, a settlement award was passed and Respondent No.1 accepted the compensation and even no protest was lodged. Subsequently, he raised this plea that compensation given was only in respect of construction and no not for acquired land. He then filed some application before the Collector who for some unknown reasons advised to approach the Court of District Judge under the Land Acquisition Act, 1894; however, admittedly, no proper Reference was ever forwarded by the Collector to the District Court in accordance with Section 18 of the Land Acquisition Act, and instead, it is Respondent No.1, who came before the Court with some Land Acquisition Application on his own on the ground that a compromise had been reached; therefore, the Application is maintainable. Such conduct and the procedure so adopted is outside the scope of the Land Acquisition Act, as no compromise can be reached between the parties for such purposes, whereas, if no Reference was made under section 18 *ibid*, then the District Court could not have assumed such jurisdiction, which is a special jurisdiction under a special law. Admittedly, the claim before the District Court was not by way of a Civil Suit under section 9 CPC but purportedly by way of a Land Acquisition Application. In law, it is only a challenge to an award by way of a Reference for referral of the matter to a District Court which confers such jurisdiction; and that too within the limitation period as provided under the Act. No jurisdiction can be assumed on any such application as has been done in this matter, even by consent of the parties.

5. Be that as it may, as to merits of Respondents case even on perusal of the evidence and the record available, we do not see as to how the learned Additional District Judge came to the conclusion that

Respondent No.1 was entitled for further compensation as claimed, as apparently, a settlement award was passed with consent.

6. In view of the above it appears that the Additional District Judge while passing the impugned order has fallen in error, and has failed to appreciate that first the question of his assuming jurisdiction in the matter ought to have been decided and only then he could have proceeded on merits. In our considered view, the very maintainability of the Land Acquisition Application was doubtful; therefore, this Appeal merits consideration and is hereby **allowed**. The impugned judgment dated 31-01-2003 passed by the Additional District Judge, Kandiaro is hereby set aside.

J U D G E

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Abdul Basit