

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

**1st Appeal No. D-33 of 2004
1st Appeal No. D-34 of 2004**

Before:

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

Date of Hearing: **27-01-2022**
Date of Decision: **27-01-2022**

Mr. Nishad Ali Shaikh Associate of Mr. A.M Mobeen Khan, Advocate for the Appellants in both matters.

Mr. Ghulamullah Memon, Advocate for the Private Respondents in both matters.

O R D E R

Muhammad Junaid Ghaffar, J. – Both these 1st Appeals have been filed on behalf of the Federation of Pakistan and National Highway Authority (NHA), in terms of section 54 of the Land Acquisition Act, 1894, (“Act”) whereby in 1st Appeal No. D-33 of 2004, order dated 08.01.2004, has been impugned through which the Application under Section 12(2) CPC filed on behalf of Appellant No.2, has been dismissed, by the Additional District Judge, Moro in Reference No.01 of 1996, whereas, in 1st Appeal No.34 of 2004, Judgment dated 27.08.2001 and order dated 08.01.2004, have been impugned, whereby Reference under section 18 of the Act and the Execution Application filed by the Respondents has been allowed.

2. Appellants’ Counsel due to his illness has filed written arguments; whereas, we have heard the private Respondents’ Counsel and perused the record.

3. Record reflects that though no objection has been raised by the office, but on 30.10.2012 in 1st Appeal No.D-33 of 2004, an order was passed, as according to the Respondents’ Counsel, Appeals in question were time barred; that no Appeal lies against an order passed on an Application under Section 12(2) CPC in terms of Section 54 of the Act; and lastly, that the Appellant No.2 being a beneficiary of the land so acquired is not competent to file Appeal against the Judgment and Decree of the Referee Court. On merits it has been argued that no application can be filed under section 12(2) CPC in these proceedings emanating by of a Reference

under section 18 ibid, whereas, even otherwise the ground so urged in the said application is misconceived and does not fall either within fraud or misrepresentation; hence, the Appeals are liable to be dismissed.

4. As to the very competency of these Appeals filed by the acquiring agency along with the Federation of Pakistan, we may observe that in view of the law declared by the Hon'ble Supreme Court in the case of *Land Acquisition Collector v. Muhammad Nawaz* (**PLD 2010 SC 745**) and reiterated in the case of *WAPDA v. Bashir Hussain Shah* (**PLD 2015 SC 344**) an Appeal filed on behalf of the Federal Government or a beneficiary of the acquisition is maintainable. In the case of *Land Acquisition Collector (supra)* a six Member Bench of the Hon'ble Supreme Court has been pleased to hold that in view of the Judgment of Shariat Appellate Bench dated 18.02.1991 in Shariat Appeal No.7/89, provisions of Sections 18 (3) and (4), 22-A and 54 of the Land Acquisition Act as well as proviso to Section 50(2) of the said Act have been declared to be repugnant to the Injunctions of Islam with effect from the date of the said judgment, and since, as of today, at least Province of Sindh has carried out necessary amendments in the said Act; therefore, the objection to the extent that present Appeals are incompetent either on behalf of the Federal Government or NHA is not tenable and is hereby repelled.

5. As to the second objection regarding maintainability of the Appeals under Section 54 of the Act, it would be advantageous to refer to the said provisions, which reads as under:

"54. Appeals in proceedings before Court: Subject to the provisions of the Code of Civil Procedure 1908 (V of 1908), applicable to appeals from original decrees, and notwithstanding anything to the contrary in any enactment for the time being in force, an appeal shall only lie in any proceedings under this Act to the High court from the award, or from any part of the award, of the Court and from any decree of the High Court passed on such appeal as aforesaid an appeal shall lie to the Supreme Court subject to the provisions contained in section 110 of the Code of Civil Procedure, 1908, and (V OF 1908 in Order XLV thereof."

6. Perusal of the aforesaid provision reflects that subject to the provisions of the Code of Civil Procedure, applicable to appeals from original decrees and notwithstanding anything to the contrary in any enactment for the time being in force, an appeal shall only lie in any

proceedings under this Act to the High Court from the award, or from any part of the award of the Court ..” It appears that insofar as the case in hand and this Court is concerned, the Appeal is only provided from the “award or any part of the award” and not against an order passed either on an Application under Section 12(2) CPC nor for that matter against an order in an Execution Application. We have also examined a possibility that whether can an order on an application be treated as an order in respect of any part of the award of the Court; however, we do not see any possibility of holding so. Any part of the award of the Court could only be related to the very part of the award with which any of the parties is aggrieved. It only provides an appeal when partly either the award has been passed in favor of the claimant or the acquiring agency, as the case may be. Admittedly, at the relevant time the original judgment of the Referee Court passed in Reference No.01 of 1996 dated 27.08.2001 was never challenged and the same has attained finality. It is only, when the Application under Section 12(2) CPC has been dismissed, that the main Judgment has also been impugned along with order passed in the Execution Application by way of Appeal No. D-34 of 2004. In view of such position, we are of the view that insofar as Appeal under Section 54 of the Act is concerned, there is no provision for entertaining the same in respect of an order passed on an Application under Section 12(2) CPC or for that matter in respect of allowing an Execution Application. Hence, both these Appeals to that extent are apparently incompetent and not maintainable. As to the challenge to the main judgment dated 27.8.2001, it may be observed that it was never challenged at the relevant time; and even if we entertain the present appeal to that extent; it would be hopelessly time barred for which there is no plausible justification. Moreover, once a forum has been elected by a party for availing a remedy (in this case an application under section 12(2) CPC), then the party has to pursue that remedy alone and cannot abate the same and take recourse to another remedy. The law in this regard is already settled that once a party has selected a legal forum for seeking any relief, then the said party cannot abate such proceedings in between and seek any other remedy for the same relief. Once that remedy was elected, then, by implication of the doctrine of election, the other remedy by was barred¹.

¹ Reliance can be placed on the cases of Trading Corporation of Pakistan v. Devan Sugar Mills Ltd. (PLD 2018 SC 828); and Daan Khan v. Assistant Collector (2019 CLC 483)

7. Lastly, as to these Appeals being time barred is concerned, once again there is no objection by the office in this regard; however, we have, on our own, perused the record. The two order(s) (barring the main judgment dated 27.8.2001) in both the Appeals are dated 08.1.2004, whereas, the Appeals have been preferred on 8.4.2004. The Appellants had applied for the certified copies of these two orders on 17.01.2004, and on the same date cost was estimated and paid, whereas, the certified copies were issued on 23.01.2004. In that case the Appellant has filed these Appeals on the 89th day, whereas, in terms of Article 156 of the Limitation Act, 1908, the limitation for a regular first appeal against a judgment and decree of the District Court is 90 days from the date of the decree or order appealed from, and if this appeal is treated as a proper appeal against an order of dismissal of an application under section 12(2) CPC, then it is within time. However, as noted this is not an appeal per-se against the original judgment and decree; but against orders on applications, for which under the Act, there is no Appeal provided against such orders; rather a Revision Application ought to have been filed, for which the limitation again is the same i.e. 90 days and therefore, on this count we are of the view that we can treat these Appeals (if at all) within time. In the case of **Cholistan Co-operative**² an objection was raised that under section 54 of the Act, since no limitation by itself has been provided, therefore, appeals can be filed without any limitation; however, the Hon'ble Supreme Court held that;

We do not think that the provisions of the Limitation Act, which are relatable to the Civil Procedure Code stand excluded by this non obstante clause. It is only those provisions in the Civil Procedure Code or any other enactment which are inconsistent with any provisions of the Land Acquisition Act that will stand displaced on account of the above non-obstante clause, but the remaining provisions will continue to apply. For instance, notwithstanding any provision in any other enactment, in view of the express stipulation in section 54 of the Land Acquisition Act an appeal from an award of a reference Court shall lie to the High Court irrespective of the value of the appeal but other provisions dealing with the period in which such appeals shall be filed, etc. there being no provision in the Land Acquisition Act in this respect to the contrary will continue to apply. As no provision was brought to our notice which excludes the application of the Limitation Act to such appeals we are inclined to agree with the High Court that the provisions of Article 156 of the Limitation Act would apply to appeals filed under section 54 of the Land Acquisition Act.

8. Similarly, in the case of Land Acquisition Officer³ the Appellant had impugned an order passed on an application under section 151 CPC filed by the respondent after passing of a judgment on a reference under section

² 1983 SCMR 1105

³ 1994 SCMR 344

18 of the Act. A learned Division Bench of this Court held that the appeal was time barred as no appeal was competent against order passed on application under section 151 CPC by consent, whereas, limitation would run from the date of the original judgment of the District Court. The contention of the Appellant that the appeal ought to have been treated as within time was repelled by the Hon'ble Supreme Court in the following manner;

6. The above contention seems to be devoid of any force. The judgment/decrees as to the amount of compensation was passed on 1-10-1979 and, therefore, the period of limitation for the purpose of appeal was to be computed from the above date. The above consent order dated 5-12-1979 awarding 15% statutory compensation to the respondents passed by the learned District Judge would not have stopped the running of the above limitation, as no appeal could have been filed by the petitioners against the above consent order. In this view of the matter, no exception can be taken to the High Court's conclusion that the appeal was time-barred against the judgment/decrees dated 1-10-1979 and no appeal could have been filed against the above consent order dated 5-12-1979.

7. Then it was urged by Ch. Ijaz Ahmad that under Article 187 of the Constitution of the Islamic Republic of Pakistan, this Court has been empowered to issue such directions, orders or decrees as may be necessary for doing complete justice in any matter and that the case in hand is a fit case, in which the above provision of the Constitution should be pressed into service by this Court.

8. We are unable to subscribe to the above submission as we do not feel that the impugned judgment is unjust or unfair. A perusal of the judgment of the learned District Judge indicates that he has assessed the amount of compensation *inter alia* on documentary evidence. Leave is, accordingly, refused.

9. Nonetheless, and since, both these Appeals have been admitted by way of order dated 10.5.2004 without dilating upon / looking into this aspect of the matter on the assumption that these appeals are statutory appeals; hence, ought to be admitted for regular hearing, whereas, office had also never raised any such objections; we have examined the record and even on merits, the Appellants have no case. The only ground which has been raised in their Application under Section 12(2) CPC and which is relevant, is to the effect that the Chairman, NHA was not joined as party to the Reference filed under Section 18 of the Act; and to this, it may be observed that firstly, it is not the Respondent who has to join a party to such proceedings, as in terms of section 18 *ibid*, the person interested who has not accepted the award, may by a written application to the Collector require that the matter be referred for the determination of the Court; whereas, in terms of section 19(b)⁴ *ibid* it is the Collector who has to name the persons who he has reason to think is interested in such land. Here, the Project

⁴ 19. Collector's statement to the Court.— (1) In making the reference, the **Collector** shall state for the information of the Court, in writing under his hand,—
 (a);
 (b) **the names of the persons whom he has reason to think interested in such land;**

Director, NHA was very much a party before the District Court before whom the Reference was filed; and not only this, evidence was also led by him in his defence and such defence was not of the Project Director himself; but of NHA who was the acquiring agency. Therefore, non-joining of the Chairman of NHA can hardly be a ground to entertain an Application under Section 12(2) CPC, as neither it amounts to misrepresentation nor to fraud. As to the other grounds so raised in the said Application, it may be observed that these were in respect of the merits of the case, which could only have been taken when the main judgment and decree of the Court were impugned by them. Admittedly, this is not so, and therefore these grounds cannot be taken while filing an Application under Section 12(2) CPC. In the same manner, the order in the Execution Application is an off-shoot to these proceedings and no ground could be urged or agitated in respect of the grant of the Execution Application as the Judgment and Decree was never challenged within time as such they have attained finality.

10. Record further depicts that certain payments have already been made by the Appellant No.2, which also reflects that present proceedings have been initiated just to delay payment of the full amount adjudicated by the Court to the Respondents and to raise petty objections notwithstanding the fact that the land was acquired much earlier in time and the compensation was to be paid as per the award and judgment of the Court.

11. In view of hereinabove facts and circumstances of the case, both these 1st Appeals are not only time barred; otherwise not maintainable; but even on merits do not warrant any interference by this Court; hence, by means of a short order passed in the earlier part of the day they were dismissed and these are the reasons thereof. ***Office to place a signed copy of this order in captioned connected matter.***

J U D G E

J U D G E

Ahmad