

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

1st Appeal No.D-15 of 2004

Present:

Mr. Justice Mahmood A. Khan,
Mr. Justice Khadim Hussain Tunio,

Appellant : WAPDA through Mr. Muhammad Idrees Naqishbandi, Advocate.

Respondent : **1.** Land Acquisition Officer, Mirpurkhas.
2. Abdul Shakoor son of Khamiso Khan, through M/s. Noor Ahmed Memon and Poonjo Ruplani, Advocates.

State : Mr. Allah Bachayo Soomro, Additional Advocate General, Sindh

Date of hearing : 21.09.2021
Date of decision : 21.09.2021

ORDER

KHADIM HUSSAIN TUNIO, J.-Through instant appeal, the appellant **WAPDA** has challenged the judgment dated 28.04.2004, passed by the learned 1st Additional District Judge Mirpurkhas in Land Acquisition Reference No. 22 of 1999 filed against Award No. 35 of 1999 passed by the respondent No. 1.

2. Precisely, the facts of the present matter are that the respondent No. 2 filed Case No. 3 of 1998 before the Collector and Land Acquisition Officer LBOD (C) Project WAPDA Mirpurkhas (respondent No. 1) to claim compensation for land allegedly acquired by WAPDA while showing an area of 10-05 acres being consumed. The claim for compensation was allowed to the tune of Rs.40,000/- per acre plus 15% urgency charges, 15% additional compensation in terms of S.28-A and 6% interest, collectively being Rs.1,231,200/-, vide order dated 03.05.1999 through Award No. 35 of 1999. The award was challenged by the appellant **WAPDA** through Land Acquisition Reference No. 22 of 1999 while praying

for the dismissal of the award being based on bogus and managed ownership documents in the name of the respondent No. 2. Learned trial Court framed the issues after considering the pleadings of the parties and vide impugned judgment dated 28.04.2004, the same was dismissed and the appellant **WAPDA** was ordered to pay the compensation amount as declared by Award No. 35 of 1999.

3. In support of its case before the trial Court, the appellant **WAPDA** examined Executive Engineer LBOD Mohammed Subhan at Ex-62 who produced the letter issued by the Mukhtiarkar dated 16.4.1998 at Ex-63, the impugned Award at Ex-64, statement showing position at site at Ex-65, true copy of the letter dated 2.7.1999 issued by the Superintendent Engineer at Ex-66, Deh form VII-B of the land acquired at Ex-67 and Authority letter at Ex-68. Junior Engineer Abdul Malik was also examined at Ex-69 along with Tapedar Mohammed Younis at Ex-70. Thereafter, the side of the appellant/applicant was closed; vide statement at Ex-71.

4. On the other hand, the respondent No. 2 examined his attorney Mushtaque Ahmed at Ex-80 who produced a photo copy of his power of attorney at Ex.80/A. Thereafter, side of the respondent No. 2 was closed; vide statement at Ex-81.

5. Learned counsel for the appellant submits the respondent No. 2 had no right to claim any compensation from WAPDA as the appellant had not utilized the land so claimed to have been acquired by it for the project which attained finality; that the ingredients of S. 4, 6 and 17 of the Land Acquisition Act were not satisfied, therefore the award could not have been passed; that in fact the land acquired by the appellant was smaller in area than the one shown in the Award; that the concerned Land Acquisition Officer namely Muhammad Idris Bhutto was suspended on 23.6.1999 by the Board of Revenue for malpractice after the complaint of the appellant; that the award was passed wrongfully and is liable to be cancelled.

6. On the other hand, the learned counsel for the respondent No. 2 has argued that notifications as required u/s 4

and 6 of the Land Acquisition Act were published in the Sindh Government Gazette on 23.3.1990 and 21.7.1994; that the appellant failed to approach concerned authorities for recalling of notifications involving the acquisition of land of the respondent No. 2 and utilized the land of respondent No. 2 in the process of finalizing their project; that the impugned judgment passed by the learned trial Court is legal and proper as the same has been passed by applying their judicious mind, therefore, the same does not call for any interference through the present appeal, which is meritless and liable to be dismissed. Learned Additional Advocate General also supported the impugned order.

7. We have given due consideration to the arguments advanced by the learned counsel for the parties and perused the record minutely.

8. From the perusal of record, it transpires that the respondent No. 2 filed for compensation against the appellant **WAPDA** before the respondent No. 1. Considering the merits of the case in hand, the appellant has produced a letter dated 16.4.1998 of the then Mukhtiarkar at Ex-63, the contents of which entail that the Mukhtiarkar wrote to inform the respondent No. 1 about forged signatures in his name concerning fabricated and bogus documents presented to affirm ownership of lands in cases of compensation. This holds relevance primarily because a perusal of the Award No. 35 of 1999 dated 3rd day of May 1999 shows that the respondent No. 1 relied on the same to verify the copies of documents of ownership presented by the respondent No. 2. The authenticity and genuineness of the signature though most likely being forged was wrongfully relied on by the respondent No. 1 in order to award the compensation of the land concerned despite the Mukhtiarkar's letter, which as per the appellant was never utilized by them in the project. Besides the copy of Deh form VII and Khasra Girdawari for a period of five years issued by the Mukhtiarkar, nothing else was placed on the record to ascertain the land concerned or if the same was even acquired or not, which as per the contentions of the appellant was wrongly measured. Learned trial Court and the

respondent No. 1 have unnecessarily given weight to the said documents despite the same not even being titled documents despite the fact that the appellant produced Deh form VII-B concerning the land that was acquired by them for the project. Even otherwise, the same documents were not verified in any way, shape or form nor were the authors of the same examined. Both, the court below and respondent No. 1, ignored the well settled principle of law that there is considerable difference between production of a document on record and proving contents thereof. Thus, simply bringing papers on record cannot be considered as *synonymous* with that of *proving* them. Reliance in this respect is placed on the case of **Province of the Punjab through Collector v. Syed Ghazanfar Ali Shah & Others (2017 SCMR 172)** wherein it was held that:-

“8. ... Where did NOC come from, who issued, and countersigned it and what is the latter fate of this document is again anybody’s guess. How did the Solicitor edge in and where did the letter purportedly written by him come from and how did it reach the hands of the person producing it in the Court? How did the Minister step in the matter when it was pending in the Court? Where did go the record of the letter and the register showing its dispatch, if at all it was written? Why did the respondents bypass the mode of proving the document prescribed by Articles 2 and 78 of the Qanun-e-Shahadat Order and what did constrain the Court to rely upon them? **How could, bringing of papers on the record, be considered synonymous with proving them?** All these questions are fundamental and foundational but the learned Additional; District Judge hearing the appeal and the learned Single Judge of the High Court hearing the revision petition relied on these documents without addressing anyone of them.

9. The argument that where a party did not raise objection as to the admission of a document and its exhibition, it cannot subsequently complain about its mode of proof has not impressed us **as the provisions governing the mode of proof cannot be compounded or dispensed with, nor can the Court, which has to pronounce a judgment, as to the proof or otherwise of the document be precluded to see whether the document has been proved in accordance with law, and can, as such, form basis of a judgment.**”

9. The Hon’ble Apex Court has been pleased to hold in the another case of ***Khan Muhammad Yousuf Khan Khattak v. S.M. Ayoub and 2 others (PLD 1973 Supreme Court 160)*** that;

“Even documents are brought on record and exhibited without objection, they remain on the record as “exhibits” and faithful copies of the contents of the original but they cannot be treated as evidence of the original having been signed and written by the persons who support to have been written or signed them, unless the writing or the signature of that person is proved in terms of the mandatory provisions of section 67 of the evidence act”.

In the present case, the respondent No. 2 failed to do just that; ascertain the documents so placed on record by him. Instead, the appellant presented the letter at Ex-63 which questions the genuineness of the documents placed on the record by the respondent No. 2 before the Land Acquisition Officer then and the learned trial Court failed to consider the same aspect when it was duty-bound to do so. The learned trial Court even failed to consider the Deh form VII-B available at Ex-67 presented by the appellant with regard to the land actually acquired by them; however again the Court failed to consider the genuineness or otherwise of the same so as to ascertain proper dispensing of justice. In the case of ***Khurshed Ali & 06 others v. Shah Nazar***(PLD 1992 Supreme Court 822), it has been held by the Hon’ble Supreme Court that;

“It is incorrect to think now under and Islamic dispensation that the Courts are only to sit and watch as to who commits a mistake and who does not commit a mistake and who does not commit a mistake, from amongst the contesting litigants, and one who commits a mistake, in procedural matter should be deprived of the right claimed; even if he is entitled to it. This court has not approved of such like practice. In the case of Muhammad Azam v. Muhammad Iqbal (PLD 1984 SC 95), even if the application had not been pressed “so called”, if it was necessary for just decision of the case, as held by High Court (to summon the material relied upon by the appellants side), is should have been summoned and treated as evidence in the matter without any formalities. And mere failure to exhibit a document formally would not make any difference”.

10. The learned trial Court committed material irregularity and illegality while not summoning the original record as well as adducing the evidence in respect of the land though, per law, the Court(s) is/are competent to exercise such discretion even without an application from parties. Thus, the judgment passed by the

learned trial Court is not sustainable under the law and the same is liable to be set aside. In view of the above facts and circumstances, particularly the law laid down by the Honourable Supreme Court as referred hereinabove, the impugned judgment passed by the learned trial Court is set aside. The matter is remanded back to the learned trial Court i.e. 1st Additional District Judge Mirpurkhas to summon the original notifications u/s 4, 6 and 17 through which the land alleged to have been acquired by the Land Acquisition Officer and the mother entry of land alleged to have been owned by the respondent Abdul Shakoor and appoint a Commissioner to ascertain the area of land actually utilized by the appellant in the light of the documents either produced by the respondent No. 2 or by the appellant. The trial Court may examine their representatives as Court witnesses if needed and pass a fresh judgment in accordance with law, within a period of six(6) months from the date of receipt of R&Ps. The parties are directed to appear before the trial Court on 02.10.2021 without claiming further notice. The parties are also left to bear their own costs.

Appeal stands disposed of in the above terms along with pending applications, if any.

JUDGE

JUDGE

Muhammad Danish*