

**IN THE HIGH COURT OF SINDH BENCH AT SUKKUR**

**1<sup>st</sup> Appeal No. D – 13 of 2008**

**Muhammad Waris (deceased) through his legal heirs v.  
National Highway Authority of Pakistan and another**

**1<sup>st</sup> Appeal No. D – 17 of 2008**

**National Highway Authority of Pakistan and another v.  
Muhammad Waris (deceased) through his legal heirs**

**Before:**

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

Date of hearing: **10-02-2022**

Date of judgment: **10-02-2022**

Mian Abdul Salam Arain, Advocate for the Appellant in Ist Appeal No. D-13 of 2008 and for the Respondent in Ist Appeal No. D-17 of 2008.

Mr. Nishad Ali Shaikh, Associate of Mr. A. M. Mobeen Khan, Advocate for the Appellants in Ist Appeal No. D-17 of 2008 and for the Respondents in Ist Appeal No. D-13 of 2008.

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**J U D G M E N T**

**Muhammad Junaid Ghaffar, J.** – Mian Abdul Salam Arain has filed *vakalatnama* on behalf of Attorney of legal heirs of the Appellant in 1<sup>st</sup> Appeal No. D-13 of 2008 and for Respondent in 1<sup>st</sup> Appeal No. D-17 of 2008, which are taken on record.

2. Both these Appeals have been filed by the land owner as well as acquiring agency (National Highway Authority-NHA) impugning judgment dated 24-06-2008 passed by the 2<sup>nd</sup> Additional District Judge, Ghotki in Land Acquisition Application No.03 of 2003 (*Re. Muhammad Waris v. National Highway Authority of Pakistan and another*). Insofar as NHA (1<sup>st</sup> Appeal No. D-17 of 2008) is concerned, they have challenged the grant of compensation under Section 28-A of the Act as well as interest; whereas, the land owner has impugned the said judgment on the ground that the

prayer of enhancing the rate has been declined without lawful authority and jurisdiction, as according to him the award has been set-aside and modified in case of other land owners; hence, the Appellant is also entitled to the same treatment. Learned Counsel for the land owner has also argued that insofar as NHA is concerned, they had no right of appeal under the Land Acquisition Act, 1894, in view of the dicta laid down by the Hon'ble Supreme Court in the case of *B.P Pakistan Exploration and Production v Sher Ali Khwaja (PLD 2008 SC 400)*.

3. As to the very competency of the Appeals filed by the acquiring agency / NHA, we may observe that subsequently the said issue has been decided 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)* that an Appeal filed on behalf of 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.

4. As to the merits of the case it appears that a common Award was passed on 19-11-1995, which was in respect of various *dehs* including *Deh Odharwali* involved in this case. The said Award was challenged by various *khatedars*, and earlier, the said Award was set aside by the Referee Court and compensation of the land was enhanced from Rs.2 lacs to Rs.7 lacs per acre in respect of the land in the same *Deh*. Such order of the Referee Court was then impugned in various Appeals before this Court bearing Appeals No.5 to 11 of 2002 by NHA and other *khatedars*, and through a common judgment dated 10-04-2009, the Appeals of NHA were dismissed; whereas, of the private *khatedars* were allowed partly in respect of interest

and other benefits under the Act. The relevant portion of the said judgment dated 10-04-2009 passed in the Appeals reads as under:

*“Mr. Jamshed Ahmed Faiz learned counsel for private appellants have contended that in view of Section 28-A of Land Acquisition Act 15% compulsory acquisition charges have not been allowed either by Land Acquisition Officer or by Acquisition Judge. The perusal of award as well as judgment and decree passed by learned lower court also shows that no additional compensation as provided u/s 28-A of Land Acquisition Act has been allowed as such the private appellants are entitled for the same which are also allowed to them. Mr. Lachhmandas has controverted the said plea on the ground that section 28-A of Land Acquisition Act has been omitted, therefore the said compensation was not allowed by the Land Acquisition Officer, or by the lower court. Section 28-A of Land Act has been omitted by virtue of Sindh amendment vide Ordinance XV of 2007 but a perusal of Ordinance XV of 2007 shows that it has not been given retrospective effect but it has prospective effect. Even otherwise the ordinance which omits or curtails the right of person is always given prospective effect whereas in the present case the award has been passed in the year 1995 and the judgment and decree have been passed by the lower court on 2-12-2001 and at that time the provisions of section 28-A of Land Acquisition Act was very much available on the statute, therefore the khatidars were entitled to the benefit of section 28-A of Land Acquisition Act and the Land Acquisition Collector and Acquisition Judge were not empowered to deprive off the khatedars from the benefit of section 28-A of Land Acquisition Act, hence the appellants in Civil Appeal Nos. 5 to 7/2002 are entitled to 15% compulsory charges in view of section 28-A, ibid, as well as 15% interest on the said amount since from the date of possession till its final payment.*

*Mr. Lachhmandas learned counsel for National Highway Authority has contended that lower court enhanced the compensation from Rs.2 lac per acre to Rs.7 lac per acre without any sufficient evidence regarding market value of land in question as such enhancement is illegal and exorbitant which cannot be allowed without any convincing evidence. The contention of Mr. Lachhmandas has not convinced me for the reason that at the time of passing of award the market value of land in question was called from survey department as well as Mukhtiarkar who vide minutes available on record as Ex.17 have informed the market value of land in the said vicinity being uncultivated at the rate of Rs.6 lac per acre and cultivate land at the rate of Rs.7 lac per acre and commercial land at the rate of Rs.8 lac per acre. Through out the proceedings the National Highway Authority has not objected about the said market value of land in question. Even Land Acquisition Officer, who passed award has not been examined by the appellant National Highway Authority before the lower court so as to say on what basis he had awarded Rs.2-00 lac per acre instead of Rs.7-00 lac per acre which price of land was available on record whereas no material was available before him to show that market value of the land in question, was Rs.2-00 lac per acre. There is therefore no reasonable and plausible evidence available on record to justify that enhancement of award at the rate of Rs.7*

*lac per acre was granted exorbitantly by the learned trial court. I, therefore do not find any infirmity or illegality in the enhancement of compensation at the rate of Rs.7 lac per acre passed by learned lower court which is fully in consonance with the evidence available on record. The trial court has also awarded the compensation of trees as well as the compensation for the wells available at the site which is reasonable and adequate and the learned counsel for private respondents has also not attacked on the compensation of trees and well, however they are also entitled for the interest on compensation of trees and well since from the date of acquiring the land till its payment. The case law relied upon by Mr. Jamshed Ahmed Faiz is supporting the case of khatedars as discussed above whereas none of authority relied upon by Mr. Lachhmandas Advocate is applicable under the circumstances of this case.*

*For all the aforesaid reasons and circumstances, I do not find any merit in Civil Appeal Nos. 8, 9, 10 and 11 of 2002 filed by National Highway Authority and the same are hereby dismissed with no order as to cost. The Civil Appeal Nos. 5, 6 and 7 of 2002 filed by private appellants are partly allowed to the extent indicated above with no order as to cost.”*

5. It further appears that NHA was still not satisfied and challenged the same before the Hon’ble Supreme Court by way of Civil Appeals No.134-K, 135-K and 237-K of 2009 and vide judgment dated 15-02-2010, the Hon’ble Supreme Court has been pleased to dismiss the Appeals of NHA in the following terms:

*“6. It is stated by the learned counsel for NHA that so far as Bakaulah Land Acquisition Officer is concerned in his cross examination as well as in the cross-examination of the Tanveer Ahmad, one of the khatedars, it has been recorded that the land was not residential, therefore, its value was wrongly enhanced to Rs.7 lac. We have gone through the statement of both the witnesses. It may be noted that the said statements have duly been considered and discussed by the learned Additional District Judge as well as by the learned High Court in their respective judgments. From the record it appears that this property was acquired as far back as in the year 1993 details of which have been mentioned in the plaint and after a period of 17 years no compensation has been paid to the land owners, therefore, merely for the technical reasons, after a long period the amount of compensation which has been worked out on the basis of material available on record, cannot be reduced from Rs.7,00,000/- to a different amount. It is important to note that on the last date of hearing when the case was heard at Karachi, we had directed the NHA to deposit the amount of compensation with the Registrar of this Court in terms of the High Court judgment, but now learned counsel for the appellant/ NHA has informed that process is going on and it will take two or three days more within which the cheque will be prepared and it shall be deposited. Therefore, keeping in view all these aspects of the case instead of non-suiting the appellants/petitioners (NHA) on the ground of limitation, we are of the opinion that it would be in the interest of justice, as discussed herein above, the appeals and the*

*petitions are disposed of on merits so that agony suffered by the respondents for the last 17 years may come to an end. Accordingly for what has been discussed above, the appeals as well as the petitions filed by the National Highway Authority are dismissed. The appellants/petitioners are directed to make payment of the balance amount to the respondents as per their respective shares within a period of 7 days through the E.D.O. Ghotki without fail and send the compliance report to the Registrar of this Court for our perusal in Chambers failing which action in accordance with law shall be taken against them. Parties are left to bear their own costs.”*

6. Since the issue already stands decided in favour of the *khatedars* by way of the aforesaid judgment; whereas, even otherwise pursuant to judgment of the Hon'ble Supreme Court reported as *Saddaqat Ali Khan through L.Rs. and others v. Collector Land Acquisition and others* (**PLD 2010 Supreme Court 878**), when a benefit had accrued to some land owners pursuant to filing of appeals, per settled law, such benefit is also applicable to the non-appealing affected *khatedars* and they are also entitled for the same treatment. In this case, not only this judgment supports the case of the private *khatedars* but so also the fact that they had also challenged the award and such challenge as well as further Appeals were pending.

7. Accordingly, 1<sup>st</sup> Appeal No. D-13 of 2008 is **allowed** in the same terms as recorded in the judgment dated 10.4.2009 passed in Civil Appeal No.10 of 2002 (*National Highway Authority v Noor Muhammad and others*) and other connected matters duly approved by the Hon'ble Supreme Court as above; whereas, the Appeal of NHA bearing 1<sup>st</sup> Appeal No. D-17 of 2008 stands **dismissed**.

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Abdul Basit