

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

C .P No. D-1012 of 2017

Maqsood Ahmed s/o Muzaffaruddin Siddiqui

Versus

PROVINCE OF SINDH, THROUGH SEC. REVENUE DEPT, HYDERABAD

THE COMMISSIONER, SUKKUR DIVISION.

DEPUTY COMMISSIONER, KHAIRPUR

LAND ACQUISITION OFFICER/ASST. COMMISSIONER KHAIRPUR

BEFORE

MR. JUSTICE MUHAMMAD SHAFI SIDDIQUI

MR. JUSTICE KHADIM HUSSAIN TUNIO- JJ

MR. BHAJANDAS TEJWANI & MANOJ KUMAR TEJWANI, ADVOCATE  
FOR PETITIONER.

MR. AHMED ALI SHAHANI, A.A.G SINDH

**Date of hearing: 10.10.2018**

**Date of decision: 27.11.2018**

**ORDER**

**KHADIM HUSSAIN TUNIO, J-** The petitioner has invoked the constitutional jurisdiction of this Court with the prayers that:

- a. To declare that the proceedings, initiated Under the Land Acquisition Act, being void, ab-initio & in complete violation of the Act itself, as illegal, mala fide and without any lawful authority.*
- b. To declare that the award under section 11 of the Land Acquisition Act passed in the garb of notifications under section 4 & 6 of the Act without affording the opportunity of being heard in*

*complete violation/requirements of section 4 & 5-A of Land Acquisition Act as contrary to law and may be struck down.*

*c. To direct the respondents to adapt all prerequisite conditions in terms of the Land Acquisition Act and start the land acquisition process afresh, if so needed, by properly valuating the valuable landed property i.e. land including 30 constructed shops, 26 under construction shops, more than 300 date palm trees & other valuable trees, by further providing the opportunity of being heard to the Petitioner.*

*d. To refrain the respondents from interfering into peaceful possession of the petitioner over the valuable assets of life, i.e. landed property bearing Survey No. 1037, measuring 4-26 Acres, situated at Sukkur bypass Deh Babarloi, District Sukkur, adjacent to Toll Plaza Sukkur, constructed shops, date palm trees etc. in the garb of award under section 11 of the Land Acquisition Act, by granting ad-interim injunction in the matter till disposal of the petition.*

*e. To award the cost of this Petition to the Petitioner.*

*f. To grant any other relief(s) as deem fit in the circumstances of this case.*

2. Relevant facts of the present petition are that the petitioner had, in his possession, property bearing Survey No. 1037, measuring a total of 5-36 Acres, situated at Sukkur Bypass Deh Baberloi, Dist. Khairpur, which he had purchased in the year 10.12.1968. In the year 1985, 1995 & 1996, Petitioner was left with a total of 4-26 Acres as 1-10 Acres were acquired from him for the construction of National Highway. 7-8 years prior, petitioner constructed 30 shops and rented them out, making heaps in profit, he constructed a boundary wall surrounding his land and constructed rooms and sheds and used the land as a farm house. He had also planted well over 200 fully grown date trees, 50 immature trees and 50 trees of *Baid-Mushk* and to supply the land with electricity, he purchased a transformer from SEPCO. The allegations against the respondents were that they, in order to harass and blackmail the petitioner, the respondents filed unnecessary references to unlawfully acquire the land of the petitioner on false basis and allegedly respondent No. 3 & 4 started blackmailing him about surrendering 50% of his land to

the Govt. of Sindh and thereafter 30 shops of his would be excluded from the acquisition. Petitioner filed multiple petitions against the respondents, he withdrew two (C.Ps No. D-3706/2015 & D-3097/2016) and while one (C.P No. D-793/2017) was pending, the petitioner was issued notice to appear before Respondent No. 4, where the petitioner's attorney appeared and got to know that the respondent No. 4 had already passed Award under the garb of authority u/s 11 of Land Acquisition Act without hearing the petitioner or conducting any inquiry, hence petitioner filed present petition.

3. Learned counsel for the petitioner has argued that the acquisition proceedings were a misuse of power by the respondents and were ultra-vires of the Constitution and without lawful authority; that the petitioner, being a citizen, could not be deprived of his own assets/valuable property and could not be deprived of availing the opportunity of Section 5-A of the Land Acquisition Act; that the respondent No. 4 has not given the petitioner the opportunity to present his case and when the petitioner's attorney appeared, he was handed-over the already prepared notification u/s 11 of the Act; that there are no provisions in the Land Acquisition Act for passing another Award of standing structures and trees and other allied facilities, being enjoyed by the Petitioner in the compound wall of the farm; that it is unclear as to what the land is being acquired for as the notifications u/s 4 & 6 show that the land is being acquired for SIUT whereas the award u/s 11 of Land Acquisition Act shows that the land is being acquired for a Cancer Hospital; that the petitioner is being deprived from his life assets and valuable properties, which are the only source of bread and butter for him and his family; that the respondents have violated Article 4, 10-A, 23, 24 & 25 of the Constitution.

4. On the contrary, learned A.A.G has argued that the petitioner has over-stated the facts in the present case; that the allegations regarding *harassment, blackmailing & mala fide intentions* are baseless; that the petitioner was fully aware of the Notification u/s 4 and nothing was concealed from him; that the allegation that the proceedings were held in a haphazard manner is totally false and fabricated; that a total of 3 hearing/meetings were held for the petitioner and he was given almost 6 months to prove his case and provide documentary proof regarding the compensation demanded by him; that the petitioner could have also filed a Reference in Civil Court u/s 18 of Land Acquisition Act; that the Award clearly mentions the market values determined as per registered deed of the vicinity land; that there is confusion regarding what the land is to be acquired for as it has been mentioned in the notifications that the land is required for "SIUT Cancer Hospital" and in the Award it is mentioned as Cancer Hospital.

5. We have heard the respective parties and perused the available record.

6. At the very outset, it could well be said that acquisition for **public purpose** cannot be denied *however* the rights of an *owner* in respect of immovable property have also not been left un-attended. The provisions of the Act comprehensively regulate issues relating to acquisition of land for public purpose, including the manner and mode of the classification and fixing the area of land to be acquired, the determination of compensation for the said land, the apportionment and payment of the compensation so determined, and finally the mode and manner of resolution of all the disputes thereof that arise between the parties or deemed appropriate or necessary by the Collector.

7. Further, on reviewing the provisions of the Act, it appears that the general scheme envisaged therein, can best be categorized into the following four stages;

Stage-I	Request is made for acquiring property for public purpose and a notification in this regard is made to the public.
Stage-II	The Collector determines the class and area to be acquired, the compensation to be made and the apportionment and payment of the said compensation for the said proposed acquired property.
Stage-III	All persons interested, who have an objection upon the terms determined in the Award, file their objections to the Collector, who in turn refers the same to the referee Court.
Stage-IV	The reference so filed by the Collector is to be decided by the Referee Court.

8. Further, we would like to divert the attention to the Act, which provides for two different circumstances in which references can be referred by a Collector to a ***referee Court***. The said two provisions are sections 18 and 30, which read as follows:-

*"Section 18. Reference to Court: (1) Any person interested who has not accepted the award may, by written application to the Collector, require that the matter be referred by the Collector for the determination of the Court **Whether his objection be to the measurement of the land, the amount of the compensation, the persons to whom it is payable, or the apportionment of the compensation among the persons interested.**"*

(2) ...

(a) ...

(b) ....

*"Section 30. Dispute as to apportionment: When the amount of compensation has been settled under section 11, if any dispute arises as to the apportionment of the same or any part thereof or as to the persons to whom the same or any part thereof is payable, the Collector may refer such dispute to the decision of the Court."*

These are *two* provisions which, *prima facie*, deal and control all matter (s), relating to *interests* of one in lands or compensation thereof. The *first* one

is not limited to dispute over **amount of compensation** only but includes determination of an **objection** towards measurement of the land. However, latter does not include disputes relating to **measurement of land**. The *difference* between scope and objectives of above two has been very comprehensively dealt with by the apex Court in Ghulam Muhammad case's. (supra).

*"Act has provided for two references, under section 18 and the other under section 30 of the Act, but the scope and the object of these two references are quite distinct and separate. **Under section 18 the reference is of a dispute with regard to the area or the quantum of the compensation or as to the apportionment of the same** amongst the person interested. This reference is strictly limited to the above matters, whereas under section 30 the reference may be made if a dispute arises as to the method of apportionment of the compensation or as to the persons to whom the same or any part thereof is payable. The subject-matter of these later references is limited to disputes purely of title in which the government is not directly interested ... but where there is a dispute as to who are the persons interested or as to the extent of their interest or as to the nature of their respective interest that would not be for the Collector to decide under section 18 but should be left to the Courts to decide upon under section 30".*

**(emphasis provided)**

9. Keeping in view the legally established position that none can deny acquisition but could at the most seek *determination* of **disputes**, defined above. *Prima facie*, the dispute in the instant matter is not with regard to **compensation** or **quantum** thereof but that of **area of land**; determination whereof is permissible within meaning of Section 18 of the Act. It is not a matter of dispute that the petitioners have caused their appearances before such *referee Court* therefore, it would always be *proper* to seek determination thereof by such *fora*. Thus, legally the relief (s), sought through instant petition, cannot be granted.

10. We have examined the available material. The *perusal* whereof shows that in the present case, the most essential and crucial issue for determination is; whether a reference pending before the Referee Court can be amended on the application of a party to the said proceedings or otherwise. This controversy relates to Stage - IV, stated hereinabove.

11. It may be noted that the petitioner sought the amendment soon after filing of their objections to the Collector. As there was no long protected delay in seeking the present amendment, it can safely be stated that the petitioners did not intent to abuse the process of law or were indolent in protecting their rights and interest. Moreover, this Court cannot lose sight of the fact that the parties are related to each other and that the acquired property was in fact owned by their common predecessor-in-interest.

12. Now, moving on to the governing provision relating to amendment provided under C.P.C.; Order VI, Rule 17 is relevant and the spirit behind the said provision is to serve and advance justice and thereby to preserve the valuable rights of the parties. Technicalities of procedure should never be at the cost of justice and rights of parties. In fact, technicalities have to be avoided, if not brushed aside, for advancing justice to the parties. Therefore, it can safely be concluded that such *amendments*, if are aimed to bring real controversy / dispute (permissible by *Act*), then it would always be in interest of justice to allow such amendments.

13. Accordingly, the instant petition is disposed of with direction to the *referee Court* to allow the petitioners to make sought *amendments* and to decide the matter, according to law.

**JUDGE**

**JUDGE**