

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

1st Civil Appeal No.D- 16 of 2008

(National Highway Authority & another V. Muhammad Waris through his Legal Heirs)

Hearing of Case

- 1.For orders on CMA 396/2021.
- 2.For hearing of Main Case

Before:

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

Date of Hearing: **16-03-2022**

Date of Decision: **16-03-2022**

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

Mr. Abdul Salam Arain, Advocate for the Respondents.

ORDER

Muhammad Junaid Ghaffar, J. –Through this 1st Civil Appeal, the Appellants have impugned Judgment dated 24.02.2008, passed by 2nd Additional District Judge, Ghotki in Land Acquisition Application No. 02 of 2003 (**Muhammad Waris v. National Highway Authority of Pakistan and another**), whereby, while dismissing the claim of Respondents in respect of enhancement of compensation, benefit under Sections 28-A and 34 of the Land Acquisition Act, 1894 has been granted.

2. The Appellants' Counsel has chosen to file written synopsis and we have perused the same, whereas, the Respondents Counsel has opposed the Appeal on the ground that no illegality has been committed by the Referee Court in awarding the additional compensation and interest as it is provided in law.

3. As to the objection regarding benefit of Section 28-A (since repealed) and Section 34 of the Act is concerned; we do not see any reason to interfere in the impugned Judgment inasmuch as both the relief(s) so granted are the relief(s) under the law and have been held to be valid by various pronouncements of the Superior Courts. The benefit of Section 28A, notwithstanding its repeal has to be decided and paid, if any, in accordance with dicta laid down by the Hon'ble Supreme Court in the case of **Dilawar Hussain**¹ which has finally set the controversy at naught. Therefore, no exception can be drawn. Insofar as the other benefit under

¹ Dilawar Hussain v Province of Sindh (PLD 2016 SC514)

Section 34 *ibid* is concerned, the same is also a matter of law and cannot be denied, except that it cannot be a “*compound interest*” as granted by the Referee Court; but “*six per centum per annum*” as per the law prevailing in the Province of Sindh. Moreover, the Land Acquisition Officer in his award has already granted the same and the Appellants had never challenged the award. As to argument that these benefits were never claimed by the Respondent; it would suffice to observe that if a benefit is available in law; then it is the bounden duty of the Court to grant the same irrespective of the fact that it was never claimed. Reliance may be placed on the case of ***Mir Ghulam Abid***².

4. As to the other objection that Application under Section 18 of the Land Acquisition Act, 1894, by itself was time barred, we do not see as to how this objection can be raised at this stage; whereas, before the Court below no such objection was taken. Even otherwise, once a Reference has been made by the Collector, then even the Referee Court cannot touch upon this objection. Reliance may be placed on the case of ***Muhammad Sharif***³.

5. In view of the above no case for indulgence is made; hence, this 1st Civil Appeal is liable to be dismissed, and it is so ordered; however, subject to the above observations.

J U D G E

J U D G E

Ahmad

² Mir Ghulam Abid v Land Acquisition Officer (2004 YLR 77)

³ Muhammad Sharif v Oil and Gas Development Corporation (2001 YLR 618)