

**IN THE HIGH COURT OF SINDH AT KARACHI**

C.P. No.D-577 of 2009

Shoukat Ali

Versus

Province of Sindh Through Secretary Law & others

BEFORE:

**Mr. Justice Mushir Alam, CJ  
Mr. Justice Muhammad Shafi Siddiqui**

Date of Hearing: 06.12.2012

Petitioner: Through Mr. Ghulam Mohiuddin Advocate.

Respondents: Through Mr. Adnan A. Karim Memon, AAG.

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

Muhammad Shafi Siddiqui, J.- Petitioner has initially challenged the act of the respondents in issuing Sindh Ordinance No.XV of 2007 to amend the Land Acquisition Act, 1894 but subsequently by way of filing amended petition challenged the Act of XVI of 2010 which is related to the amendment in the Land Acquisition Act, 1894 and its application to the Province of Sindh.

2. Very briefly the facts of the case are that the petitioner's lands were acquired for re-alignment of Nara Canal vide Award dated 05.12.1992. However, pursuant to section 28-A and 34 of the Land Acquisition Act, 1894, the Land Acquisition Officer failed to grant compensation to the petitioner in addition to the compensation awarded for acquiring lands.

3. Aggrieved with this the petitioner filed CP No.D-289 of 2003 for grant of additional compensation under section 28-A of the Land Acquisition Act, 1894 which petition was allowed vide order dated

07.04.2004. Such order passed by the Division Bench of this Court was complied with by the Land Acquisition Officer on 08.07.2004. However, since the payment of the aforesaid compensation was not made, the petitioner filed contempt application bearing CMA No.1004/2004 which application was disposed on 23.09.2004 with the following observations:-

*“We have noticed that the land acquisition officers while giving awards have stopped payment of solitium as provided under Section 23(2), 28-A and 34 of the Land Acquisition Act under an erroneous advise of law department. The amount of solitium is mandatory and cannot be withheld by the Government. Delay in payment of such solitium has exposed the Sindh Government to huge financial losses as such amounts continue multiplying till they are finally paid. We, therefore, direct the Chief Secretary Sindh to issue appropriate directions to the Land Acquisition Officers to give include all the solitium as provided under the Land Acquisition Act to save the Government from huge financial losses.*

*This order be communicated to the Chief Secretary Sindh for appropriate directions to all the concerned including the Land Acquisition Officers of the Province.”*

4. Respondents therein challenged the same before the Hon’ble Supreme Court of Pakistan in CPLA No.767-K of 2004 which was dismissed on 21.06.2005.

5. It is case of the petitioner that on 04.8.2007 the respondent on the judgment of the Federal Shariat Court issued Ordinance No.XV of 2007 to amend the Land Acquisition Act for its application to the Province of Sindh.

6. Subsequently on 01.02.2010 the Land Acquisition (Sindh Amendment) Bill 2009 having been passed by Provincial Assembly of Sindh on 01.02.2010 and assented to by worthy Governor of Sindh on 20.06.2010 the same was published as an Act of Legislature of Sindh thus bringing about the required amendments in Section 16, 23, 24 and 28-A.

7. It is contended by learned counsel for the petitioner that the aforesaid amendments brought about through this piece of legislation is

illegal and unlawful as the said amendments were given effect in compliance of the judgment of the Federal Shariat Court. It is the case of the petitioner that the issuance of Sindh Act No.XVI of 2010 to amend the Land Acquisition Act, 1894 and its application to Province of Sindh on the basis of Federal Shariat Court judgment is void ab-initio and ultra vires. Learned counsel also argued that the omission of section 28-A of the Land Acquisition Act with retrospective effect is void ab-initio and ultra vires.

8. Learned counsel further argued that the judgment of the Federal Shariat Court in appeal filed by the Province of Punjab was set aside and hence in view of Article 189 of the Constitution of Pakistan the direction of the Hon'ble Supreme Court has an overriding effect on the judgment of the Federal Shariat Court. Thus the amendments brought about in the Land Acquisition Act, 1894 are illegal and unlawful in terms of Article 189 of the Constitution of Pakistan as the judgment of the Federal Shariat Court is no more in existence.

9. Learned counsel for petitioner has also placed on record copy of order of the Hon'ble Supreme Court of Pakistan in Civil Appeal No. 939 of 2004 and 114-145 of 2009 wherein a copy of the aforesaid Sindh Amendment was placed on record of the Hon'ble Supreme Court of Pakistan and it was noted that Section 28-A of the Act of 1894 stands omitted as if it was never enacted. The counsel appearing for the appellant in the aforesaid case before the Hon'ble Supreme Court showed his ignorance that this position was not in his knowledge and he sought time for the preparation of the brief. The said order was passed on 02.12.2012 and no further orders were placed on record of this file.

10. On the other hand learned A.A.G. submitted that the amendments under challenge are neither ultra vires to Constitution nor against the

injunction of Islam. He further submitted that the matter is subjudice before the Hon'ble Supreme Court.

11. At the very outset it appears that the petitioner's case stood settled regarding additional compensation in relation to section 28-A which stood omitted by virtue of the impugned amendments which amendment has no application to the case of petitioner, hence neither the question of the petitioner's claim of additional compensation could be revisited by us nor we are inclined to give our findings on this issue since it is settled question upto Hon'ble Supreme Court.

12. The petitioner perhaps has raised an academic question regarding the impugned amendments in Land Acquisition Act, 1894. We have minutely perused the amendments which are as under:-

*"1. (1) This Act may be called the Land Acquisition (Sindh Amendment) Act, 2009.*

*(2) It shall come into force at once and shall be deemed to have taken effect on and from 29<sup>th</sup> October, 2009.*

*2. In the Land Acquisition Act, 1894, in its application to the Province of Sindh, hereinafter referred to as the said Act, in section 16, the full stop at end shall be replaced by a colon and the following proviso shall be added:-*

*"Provided that the amount of compensation is to be paid to the owner of land or deposited in civil court in his name by the acquisitioning authority before taking over the possession of land.*

*3. In the said Act, in section 23, in sub-section (1) and the Explanation thereunder and in section 24, for the figure "4" the figure "6" shall be substituted.*

*4. In the said Act, section 28-A shall be omitted and shall be deemed to have been so omitted as if it had never been enacted. "*

13. The amendments brought in section 16 of the Land Acquisition Act is an addition of a proviso concerning the amount of compensation to be paid to the owners of the land or deposit the same in Civil Court in his name by the acquisitioning authority before taking over the possession of

the land. Such proviso prima facie appears to be reciprocal to section 28-A which stood omitted by virtue of the impugned amendments. Similarly in section 23 and 24 necessary amendments were brought about in relation to determine the amount of compensation to be awarded for land acquired under this Act in terms of Section 6 i.e. the value of the land to be determined at the time declaration of intended acquisition in terms of section 6 and the amount so determined by the land acquiring officer is to be deposited in terms of the proviso before taking over the possession of the land.

14. Now apparently there seems to be a controversy as to the stage when the amount to be determined by the competent authority after deletion or omission of Section 28-A of the Act of 1894. The question that is arisen is as to whether value of the land to be acquired could be fixed or adjudged at the time of notification or at the time when the intention of such acquisition was shown by the competent authority at the time of survey to find their suitability. This question apparently seems to be subjudice before the Hon'ble Supreme Court of Pakistan in Civil Appeal No.939 of 2004 along with Civil Appeal No.144-145 of 2009 in which on 02.07.2012 the Hon'ble Supreme Court was pleased to pass following order:-

*“Learned counsel for the respondents in C.A. No.939 of 2004 has placed on record copy of Act XVI of 2010 (Land Acquisition) (Sindh Amendment) Act of 2009 and states that under Section 4 of amending Act, Section 28-A of Act of 1894 stands omitted as if its was never enacted. Learned counsel for the appellants states that this position was not in his knowledge and he seeks time to further prepare the brief. Adjourned to a date in office during next session of the Court at Karachi.”*

15. The question of deletion of section 28-A of the Act and application of newly inserted proviso to section 16 is directly related to such question as to what could be the right time to determine the value

of the land, which is to be acquired for public benefit. Will the intended desire of the acquisition authority be the right time; would the survey of the land to adjudge its suitability be the right time; or would it be the date of notification or would it be actual physical possession to be the right time. Such intricate questions will certainly be agitated/argued before the Hon'ble Supreme Court and we feel it appropriate to let this questions be decided by the Hon'ble Supreme Court who is seized with the same.

This petition is accordingly disposed in the above terms.

Dated:

**Judge**

**Chief Justice**