

**IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR**  
**1<sup>st</sup> Appeal No. D – 19 of 2002**

**(Province of Sindh through Land Acquisition Officer v. Abdul Tawab & others)**

**Hearing of Case**

- 1.For hearing of Main Case.
- 2.For hearing of CMA 217/2002

**Before:**

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

Date of Hearing: **12-04-2022**

Date of Decision: **12-04-2022**

**Mr. Ahmed Ali Shahani, Assistant Advocate General for the Appellant along with Moula Dad Durrani, Assistant Commissioner, Pano Akil.**

**Mr. Tariq G. Hanif Mangi, Advocate for the private Respondents.**

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

**Muhammad Junaid Ghaffar, J.** – Through this 1<sup>st</sup> Appeal, the Province of Sindh through Land Acquisition Officer, Pano Akil has impugned Judgment dated 28.02.2002, passed by the Referee Court / Additional District Judge (Hudood), Sukkur in Land Acquisition Reference / Suit No.13 of 1989, whereby, the Reference has been allowed in favour of private Respondents and decree of enhanced compensation has been passed.

**2.** Learned Assistant Advocate General has contended that the Reference was time barred; that the Reference was jointly filed by various persons, hence was not maintainable under the Land Acquisition Act, 1894; that the Referee Court was not justified in placing reliance on the report of the Commissioner, which had no basis to support the case of the Respondents; that instead independent persons ought to have been engaged for determination of fair market value, therefore, this 1<sup>st</sup> Appeal merits consideration and be allowed. In support of his contention, he relied upon cases reported as *Muhammad Sharif v. Land Acquisition Collector* **(2004 CLC 1048)**, *Mst. Noor un Nisa and others v. Collector Land Acquisition, Abbotabad* **(2015 YLR 2599)**, *Raja Sultan Eraj Zaman v. Military Estate Officer, Hazara Circle, Abbotabad* **(2007 CLC 857)**.

3. On the other hand, Respondents' Counsel has supported the impugned Judgment and submits that no case for indulgence is made out; hence the Appeal is liable to be dismissed.

4. We have heard learned AAG as well as learned Counsel for the private Respondents and perused the record.

5. As to the legal objections raised by learned Assistant Advocate General regarding limitation and maintainability, learned Referee Court had settled three Issues bearing Issues No.5, 6 & 7, which reads as under:

“5. Whether the reference made U/S 18 of the Land Acquisition Act is within time, if not what is the effect?

6. Whether joint application U/S 18 of Land Acquisition Act maintainable?

7. Whether the reference is maintainable?”

6. Finding in this context has been given collectively by the learned Referee Court and after going through the said finding, we are of the view that insofar as objections raised by learned AAG are concerned, they are not tenable inasmuch as the question of limitation, and whether the Reference is time barred or not; per settled law, once a Reference has been forwarded to the Referee Court by the Collector, then the Referee Court is not competent to enter into this controversy and decide as to whether the Reference is time barred or not. If the Collector was of the opinion that the Reference was time barred; then at the very first instance, it should not have been referred to the Referee Court under the Land Acquisition Act; rather ought to have been dismissed as time barred by himself. If no such exercise has been carried out by the Collector, then subsequently, it cannot be pleaded before the Referee Court that the reference was time barred. In view of such position, objection regarding limitation is misconceived and is hereby repelled. Reliance may be placed on the case of ***Muhammad Sharif***<sup>1</sup>.

7. As to whether Reference being jointly filed was maintainable or not, again the Collector himself has referred it to the Referee Court and apparently nothing has been placed on record to suggest that the same is

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<sup>1</sup> Muhammad Sharif v Oil and Gas Development Corporation (2001 YLR 618)

barred under the Land Acquisition Act. It further appears that after sending the Reference, the Collector had also filed an application under Order 7 Rule 11 CPC, which was also dismissed, against which no further remedy was availed by them. Lastly, once a Reference has been admitted even if the objection was to be sustained then the land owners/Khatedars would be non-suited for no fault of theirs. If the Collector had taken this objection at the very initial stage, then may be the land owners could have rectified the same within limitation; however, once it has been entertained by referring the matter to the Referee Court, then the Appellant cannot take such an objection at a belated stage. In view of such position, this objection also appears to be misconceived and are hereby repelled.

**8.** As to the merits of this case, the only argument which has been raised by learned AAG was that the Referee Court was not justified in accepting the report of the Site Commissioner, appointed by the said Court. We have confronted the learned AAG as to whether, any objection was raised on the appointment of the Commissioner; whether after filing of report by the Commissioner, any objections were filed; and lastly, as to whether any request or application was made to the Referee Court to cross-examine the said Commissioner and in response to all these questions, he has answered in negative. In that case, now it does not lie with the Appellant to agitate or raise any such objection. Once they have consented to the appointment of the Commissioner, and thereafter, never challenged the report of the Commissioner, then no objection can be raised at this stage of the proceedings. Notwithstanding, these objections on the report of the Commissioner, we have even otherwise perused the said report and are of the view that the Referee Court was fully justified in placing reliance on the same inasmuch as the learned Commissioner had made all efforts to engage the concerned officials of the Appellant as well as others concerned, and no one turned up to assist him. Even if anyone turned up, they all along showed reluctance and never co-operated with the Court Commissioner. We may observe that though it is settled law that a Court Commissioners report is not always final and binding upon the Court and it is always dependent on the facts and circumstances of the case. However, interference with the result of a long and careful local investigation except upon clearly defined and sufficient ground is to be deprecated. It is not safe for a Court to act as an expert and to overrule an elaborate report of a Commissioner whose integrity and carefulness are

unquestioned, whose careful and laborious execution of his task was proved by his report, and who had not blindly adopted the assertions of either party"<sup>2</sup>. It is not safe for the Court to act as an expert and to overrule the elaborate report of a Commissioner; whose integrity and carefulness are unquestioned<sup>3</sup>. In view of such position, the objections regarding the appointment of the Commissioner, and reliance on the same by the Referee Court is also misconceived and is hereby repelled.

**9.** Lastly, as to the evidence led by the Appellant is concerned, it would be advantageous to refer to the deposition and cross-examination of the only witness produced by them i.e. Naseer Khan Kashani (available at page-349 of the paper book) which reads as under:

**"To DDA**

I am posted as Deputy District Officer Revenue Rohri since 25.4.2001 therefore I only produce the record as available in the office in respect of this case, otherwise I am not in a position to give such evidence which is other than the record. It is admitted position that the award was drafted and executed on 17.8.1987 with the Committee having authority to do so and duly signed by them. The rate of the land as acquired was properly calculated at that time rate as well as the trees and things therein were discussed and incorporated in the award as aforesaid. Further any objection raised by any of the complainant had been treated in the office by the concerned officer. The amount of award as due to be paid to the applicants in number 32 been deposited with the office situated at Rhori in order to distribute amongst the applicants. The 32 applicants obtained/secured the award amount accordingly from our office. There is no person amongst the applicants left behind who had not been paid that amount.

**Cross to Mr. Yakoob Memon Adv. for applicants.**

It is incorrect to suggest that at the time of acquisition of lands we had not issued notice to the applicants. It is incorrect to suggest that we had not called the applicants at the time of issuing award specifically said that we had sent the notice to all the applicants and award was granted in their presence. It is incorrect that the properties of applicants have not been shown fully owned by them in the award. It is not in my knowledge that any other award was issued in year 1989 by the office of Sub-Division Rohri in respect of other properties in the same area at the rate of Rs.100,000/- per acre as compensation of award. It is incorrect to suggest that our office had not paid correct compensation of the requisite land to the applicants."

**10.** From perusal of the aforesaid evidence, there appears to be no justification on the part of the Appellant to agitate and dispute the claim of

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<sup>2</sup> Chandan Mull Indra Kumar v. Chiman Lal Girdhar Das Parekh (AIR 1940 Privy Council 3). Also see 1980 CLC 1666.

<sup>3</sup> Chandan Mull Indra Kumar and others v. Chiman Lai Girdhar Das Parekh and another A I R 1940 P C 3

the Respondents as they have miserably failed to bring on record any material so as to rebut their claim, coupled with the report of the Commissioner. How in view of the above evidence, the Appellant justifies its stance and has opposed the impugned judgment is mind-boggling. The Appeal appears to have been filed just for the sake of it and to deny the legitimate right of the Respondents whose land was acquired long ago.

**11.** In view of hereinabove facts and circumstances of this case, the Appellant has failed to point out any illegality or impropriety in the impugned Judgment and therefore by means of a short order, this 1<sup>st</sup> Appeal was **dismissed** in the earlier part of the day and these are the reasons thereof.

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