

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

**1<sup>st</sup> Appeal No. D – 21 of 2010**

**Khan Muhammad Jamali v. Province of Sindh and others**

**1<sup>st</sup> Appeal No. D – 23 of 2010**

**The Chairman, National Highway Authority, Islamabad and others v. Khan Muhammad Jamali and others**

**Before:**

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

Date of hearing: **24-05-2022**

Date of decision: **24-05-2022**

Mr. Zuber Ahmed Rajput Advocate for Appellants in 1<sup>st</sup> No.D-23 of 2010 and for Respondents No.2 to 4 in 1<sup>st</sup> Appeal No.D-21 of 2010.  
Mr. Ahmed Ali Shahani, Assistant Advocate General Sindh.  
None for Appellant in 1<sup>st</sup> Appeal No.D-21 of 2010 and for Respondent No.1 in 1<sup>st</sup> Appeal No.D-23 of 2010

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**ORDER**

**Muhammad Junaid Ghaffar, J.** – Through both these Appeals, the Appellants have impugned judgment dated 15-09-2010 passed in Land Acquisition Reference No.01 of 2004 by the Referee Court on a Reference under Section 18 of the Land Acquisition Act, 1894. Insofar as 1<sup>st</sup> Appeal No. D-21 of 2010 is concerned, the land owner was aggrieved by the said judgment, whereby his request for enhancement of compensation was declined. However, nobody has effected appearance despite being served, therefore, this Appeal is dismissed for non-prosecution.

2. Insofar as 1<sup>st</sup> Appeal No. D-23 of 2010 is concerned, the Appellants' Counsel has referred to order dated 01-02-2010 passed in Civil Petition No. 652-K of 2009 (*Deputy Director (Maint)/Project Director, National Highway Authority (HMP) Sakrand at Moro, Naushehro Feroze (Sindh) and*

*2 others v. Khan Muhammad and 3 others*) passed by the Hon'ble Supreme Court and submits that the grievance of the Appellants has not been attended to by Referee Judge in the impugned judgment. He has argued that the Reference by itself under Section 18 of the Act was time barred; whereas, the fate of the amount deposited earlier by the Appellants pursuant to certain orders of the Court has also not been decided. According to him, after passing of the Award, another Award was passed, wherein the compensation was enhanced but the Appellants had no notice of such proceedings, and therefore, this Appeal merits consideration and be allowed accordingly.

3. We have heard the Appellants' Counsel in 1<sup>st</sup> Appeal No. D-23 of 2010 and perused the record.

4. In fact, two objections have been raised on behalf of the Appellants and the same are based on the Appellants' contention before the Hon'ble Supreme Court in the above Petition. It would be advantageous to refer to the contentions of the Appellants before the Hon'ble Supreme Court and the order passed thereon, which reads as under:

*"2. On the basis of his submissions noted above, he has argued that the matter of whether the amount of the award was deposited earlier also and the time at which this was done, will be an issue before the learned trial Court. He also contended that the question of liability of the petitioners to pay interest on the amount alongwith a number of connected issues, including specifically the question as to whether the application under Section 18 ibid filed by the respondents was time barred, will also require determination by the trial Court. These contentions are well-founded. All the objections raised by the petitioners to the application filed by the respondents under Section 18 ibid, including the question of the amount deposited, will be considered and decided by the learned trial Court.*

*3. Learned counsel for the respondents stated that the only grievance expressed by the petitioners relates to the amount of Rs.1,67,500/- which the High Court had directed to be deposited in the trial Court within two weeks. According to him, since this order has been complied with, the present petition has become infructuous. He, therefore, contended that the petition be disposed of as such. We have made a note of this contention but observe that the questions relating to the payment made pursuant to the impugned order will require adjudication by the trial Court.*

*4. In the foregoing circumstances, this petition has not become infructuous. It is, however, disposed of with the above observations."*

5. Perusal of the aforesaid observations and the discussion by the Hon'ble Supreme Court reflects that it has been observed that all objections

raised by the Appellants to the application filed by the Respondents under Section 18 *ibid* including the question of the amount deposited will be considered and decided by the Trial Court.

6. Insofar as the question of limitation and whether the Reference being time barred in terms of section 18 of the Act is concerned, apparently, this objection has no merits inasmuch as per settled law if a Collector had already sent a Reference under Section 18 to a Referee Court, then the said Court has no jurisdiction to decide the question of limitation as it is beyond the purview of Section 18 *ibid*. Reliance in this regard may be placed on *Government of West Pakistan (Now Government of N.-W. F. P.) through Collector, Peshawar v. Arbab Haji Ahmed Ali Jan and others (PLD 1981 Supreme Court 516)*, *Government of West Pakistan (Now N.-W. F. P.) and 2 others v. Mst. Asmatun Nisa and 6 others (PLD 1983 Supreme Court 109)*, *Messrs Galadari Cement (Gulf) Ltd. v. District Judge Khuzdar and 6 others (1986 CLC 10)*, *Province of Sindh through Collector of District Dadu and others v. Ramzan and others (PLD 2004 Supreme Court 512)*.

7. As to the determination of the amount, it appears that the dispute is only in respect of Rs.1,67,500/- which was required to be deposited pursuant to judgment dated 26-05-2009 passed in C. P. No. D-54 of 2007 by this Court, and apparently, the said order was complied with. As to the question that whether the said amount was to be returned to the Appellants or not, we have confronted the Appellants' Counsel as to how this could have been decided by the Referee Court while dealing with a Reference under Section 18 *ibid* when no evidence was led on behalf of the Appellant, and he has not been able to refer to any portion of evidence led by them as to the amount in question. The entire evidence of the Appellants' witness is silent in this regard; whereas, even otherwise, in a Reference under Section 18 filed by an aggrieved land owner, they were not in a position to establish such claim. In fact, the issues were settled much prior in time to the order of the Hon'ble Supreme Court, and admittedly, no efforts were made on behalf of the Appellants to get the said issued amended in conformity with the order as relied upon on their behalf.

8. Appellants' Counsel has also referred to their objections against the Award and submits that they had also filed a Reference before the Revenue authorities, however, we are afraid insofar as the present Appeal is concerned, it is only in respect of the Reference filed by the Respondent. The Reference, if any, made by the present Appellants is not before us.

9. In view of hereinabove facts and circumstances of this case, apparently, we do not see that as to how the Appellants are aggrieved by the impugned judgment as it is the Respondent who was aggrieved by enhancement of compensation was declined, and after filing an Appeal, has failed to pursue the same. Therefore, by means of a short order in the earlier part of the day, **1<sup>st</sup> Appeal No. D-23 of 2010** was **dismissed**; whereas, the Appeal of the Respondent bearing **1<sup>st</sup> Appeal No. D-21 of 2010** was **dismissed for non-prosecution**, and these are the reasons thereof.

J U D G E

J U D G E

Abdul Basit