

# IN THE HIGH COURT OF SINDH AT KARACHI

Civil Reference No. 01 of 2010

[Muhammad Karim-ud-Din Qureshi .....v.....The Deputy  
Commissioner, District East, Karachi & others]

Date of Hearing : 24.11.2021  
Applicant : Through Mr. Naraindas C. Motiani,  
Advocate  
Respondents : Through Mr. Pervez Ahmed Mastoi,  
AAG.

## JUDGMENT

**Zulfiqar Ahmad Khan, J:-**The respondent No.1 moved a reference to the learned Registrar of this Court vide letter dated 13.05.2010 forwarding an application made under Section 18 of the Land Acquisition Act, of 1894 for judicial adjudication.

2. Brief facts of the case are that the applicant Muhammad Karim-ud-Din Qureshi owned a house bearing No. 1/67-A Shah Faisal Colony, Deh Drigh, Karachi admeasuring 665 square yards, his grievance is that an area of 460 square yard out of his 665 square yarded house was acquired under the Land Acquisition Act, 1894 (“**Act of 1894**”) for the construction of a bridge connecting Shah Faisal Colony to Korangi via Malir River. Proceedings for the determination of compensation were initiated which were attended by the applicant upon receiving a notice under Section 9 of the Act, 1894. The applicant filed his claim demanding value of land upto Rs.40,950/- per square yard alongwith demanded Rs. 1500/- per square yard in respect of construction made on the said land. Having heard the applicant and upon alleged completion of procedural formalities, an Award was passed under Section 11 of the Act of 1894 on 13.11.2008

at the rate of only Rs.10,000/- per square yard for the plot and cost of construction roughly Rs.800 per sq. feet was also awarded category wise which was received by the applicant by recording his protest, thereafter, applicant moved application under Section 18 of the Act, 1894 to respondent No.1 for forwarding the same before this court for proper adjudication and made the following prayers:-

“It is therefore prayed that reference may be made to the High Court of Sindh at Karachi which is exercising principal District Court to set aside the Award and give the compensation at the rate of Rs.63,000/- per sq. yds. and more and with all the modalities and benefits provided under the Land Acquisition Act and mark-up at the rate of 15% deducting the amount already received by the applicant under protest cost of litigation and further litigation.”

3. The lis at hand has chequered history. Firstly, applicant moved an application under Section 18 of the Act of 1894 for forwarding the same in the shape of reference to this court on 12.01.2009 which was declined on the ground that applicant has already received the compensation. The applicant impugned the said decision by filing a Constitutional Petition bearing C.P. No.D-1529 of 2009 which was allowed vide order dated 25.03.2010 directing the respondent No.1 to forward the reference application of the applicant moved under Section 18 of the Act of 1894 to this court and in compliance of the said verdict of the learned Division Bench, the respondent No.1 through letter dated 13.05.2010 forwarded the instant reference application of the applicant for proper adjudication.

4. Summons/notices were issued to the respondents and in response thereof, the respondents in conjunction with each other filed joint written statement and contested the matter. Respondents in their written plea has taken the stance that the house of the

applicant is a residential and not a commercial property that was acquired in urgency, having approved by the committee in consultation with City Nazim, CDGK and the applicant was awarded just compensation, which the applicant had already received. It is further mentioned in the written statement of the respondents that applicant was also awarded 15% compulsory allowance as well as interest in accordance with the Act of 1894.

5. Record reflects that originally the matter in hand was filed by the applicant Muhammad Karim-ud-Din Qureshi, however, with the passage of time, the said applicant expired and now his legal heirs are in the arena and such amended title was also filed vide order dated 10.10.2018.

6. Record also shows that on 25.02.2012, issues proposed by the learned counsel for the applicant were adopted and on the same day with mutual consent, the matter was referred to a Commissioner for the recording of evidence. The issues adopted by this court are as under:-

- “1. Whether the factors for grant of compensation to the plaintiff has been duly considered by the Land Acquisition Officer, if not, its effect?
2. Whether plaintiff’s property was of Rs.3,86,94,630/-?
3. Whether plaintiff is entitled to compensation as prayed?
4. What should the decree be?”

7. Mr. Naraindas C. Motiani, learned Senior Counsel presented the case of applicant before the Court. Main thrust of his arguments was that the respondents in their written plea failed to deny the

assertions of the applicant and it is a settled principle of law that evasive denial is deemed to be read as having admitted claim of the other side. According to him, the said house was a three-side corner house admittedly acquired by the respondents but all just factors for compensating the applicant in lieu of the said house were not taken into consideration by the respondents. He contended that the witness of the respondents unequivocally admitted that the said house was a three sided corner and the said witness went on to admit that the said house was situated on a thoroughfare, surrounded by land having commercial uses such as banquet halls, marriage halls, schools, shopping centers and such other ancillaries commercial activities, but the committee failed to take this key aspect into consideration while awarding the compensation. He vociferously argued that the respondents could well acquire any property of the citizens under the Act of 1894 but at the same time they are also bound by the said Act to compensate the owners according to law, while taking into consideration the factors and potentiality of the land as settled by law and elaborated by the Higher Courts. While summing up his prime submission, he placed reliance on the precedents of Superior Courts reported as PLD 1995, S.C. 314, PLD 2011 S.C. 119, 2000 SCMR 870, PLD 2004 S.C. 512, 2009 SCMR 771, PLD 2010 S.C. 719, 2011 SCMR 1244 and 2000 SCMR 870.

8. Learned AAG took the stance that the applicant has already received full and final compensation, therefore, the reference made by him be dismissed on this score alone, however, he adopted the written submissions filed on behalf of respondents.

9. Heard the arguments, perused the record. In my considerate view, the Issue No.1 & 2 are inextricably linked based upon similar evidence of the parties, therefore, it would be advantageous to discuss the same together.

10. While acquiring the land of any person, the acquiring body is required to consider the market value for providing compensation in respect of acquired land as prevalent on the date of publication of notification under Section 4 of the Act of 1894. Courts have settled certain guidelines and provided methodology with regard to determination of market value which are reproduced hereunder<sup>1</sup>:-

- a) The court has to treat the Reference as an original proceedings before it and determine the market value afresh on the basis of the material produced before it.
- b) The claimant is in the position of a plaintiff who has to show that the price offered for his land in the award is inadequate on the basis of the material produced in the Court. Of course the material placed and proved by the other side can also be taken into account for this purpose.
- c) The market value of the land under acquisition has to be determined as on the crucial date of publication of the Notification under Section 4 of the Land Acquisition Act (date of Notifications under Sections 6 and 9 are irrelevant).
- d) The determination has to be made standing on the date line of valuation (date of publication of notification under S. 4) as if the valuer is a

---

<sup>1</sup> [Chimanlal Hargovinddas vs. Special Land Acquisition Officer, Poona and Another](#) (1988) 3 SCC 751.

hypothetical purchaser willing to purchase land from the open market and is prepared to pay a reasonable price as on that day. It has also to be assumed that the vendor is willing to sell the land at a reasonable price.

- e) In doing so by the instance method, the Court has to correlate the market value reflected in the most comparable instances which provides the index of the market value.
- f) Only genuine instances have to be taken into account (sometimes instances are rigged in anticipation of acquisition of land).
- g) Even post notification instances can be taken into account (1) if they are very proximate, (2) genuine and (3) the acquisition itself has not motivated the purchaser to pay higher price on account of the resultant improvement in development prospects.
- h) The most comparable instances out of genuine instances have to be identified on the following considerations:
  - Proximity from time angle
  - proximity from situation angle
- i) Having identified the instances which provides the index of market value, the price reflected therein may be taken as the norm and the market value of the land under acquisition may be deduced by making suitable adjustments for the plus and minus factors vis-a-vis land under acquisition by placing the two in juxtaposition.
- j) A balance sheet of plus and minus factors may be drawn for this purpose and the relevant factor may

be evaluated in terms of price variation, which a prudent purchaser would do.

- k) The market value of the land under acquisition has thereafter to be deduced by loading the price reflected in the instance taken as norm for plus factors and unloading it for minus factors.
- l) The exercise indicated in clause (i) to (k) has to be undertaken in a commonsense manner which a prudent man would do. Some of the illustrative (not exhaustive) factors may include:—

#### PLUS FACTORS

- Smallness of size
- Proximity to a road
- Frontage on a road
- Nearness to developed area
- Regular shape
- Level vis-a-vis land under acquisition
- Special value for an owner of an adjoining property to whom it may have some very special advantage.

#### MINUS FACTORS

- Largeness of area
- situation in the interior at a distance from the road.
- Narrow strip of land with very small frontage compared to depth
- Lower level requiring the depressed portion to be filled up
- Remoteness from developed locality
- Some special disadvantageous factor which would deter a purchaser

- m) The evaluation of these factors of course depends on the facts of each case. There cannot be any hard and fast or rigid rule. Common sense is the best and most reliable guide. For instance, take the factor regarding the size. A building plot of land for viz is 500 to 1,000 sq. yds. cannot be compared with a large tract or block of land that is

10000 sq. yds. or more. Firstly while a smaller plot is within the reach of many, a large block of land will have to be developed by preparing a layout, carving out roads, leaving open space, plotting out smaller plots, waiting for purchasers (meanwhile the invested money will be blocked up) and the hazards of entrepreneur. The factor can be discounted by making a deduction by way of an allowance at an appropriate rate ranging approx between 20% to 50% to account for land required to be set apart for carving lands and plotting out small plots. The discounting will, to some extent, also depend on whether it is a rural area or urban area, whether building activities are picking up, and whether waiting period during which the capital of the entrepreneur would be locked up, will be longer or shorter and the attendant hazards

- n) Every case must be dealt with on its own facts bearing in mind as these factors as a prudent purchaser of land in which position the Judge/Jurist must place himself.
- o) These are general guide-lines to be applied with understanding informed with common sense.

11. Now, let's examine the evidence and the material produced by the applicant and respondents taking into consideration the above touchstone criterion.

12. Muhammad Abul Hassan Qureshi being son as well as attorney of the applicant appeared in the witness box before learned Commissioner and introduced on record certain documents. Exh. P.W-1/8 to Exh. P.W-1/18 (evidence file) being photographs of the applicant's acquired house as well as the commercial activities in the



same vicinity. A cursory glance over Exh. P.W-1/14 to Exh. P.W-1/18 (evidence file) reveals that these photographs prove that the acquired house of the applicant was surrounded as well as in the midst of the commercial activities like marriage halls/banquet halls, schools, community centers and petrol pumps. The said witness further introduced on record during his examination-in-chief an approved site plan of the said house and layout location (Exh P.W-1/24 of the evidence file) as well as valuation certificates provided by different estate agents of the vicinity which are as Exh. P.W-1/25 to Exh. P.W-1/30 (available at page 123 to 127 of the evidence file). Exh. P.W-1/28 is a Valuation Certificate issued by Al-Star Estate Agency. Exh. P.W-1/29 is a Valuation Certificate issued by Al-Rehman Associates, whereas, Exh. P.W-1/30 is a Valuation Certificate issued by M. Arif Associates. These valuation certificates connote that the said house was worth rupees between 3,85,00,000/- to Rs.3,90,00,000/-. The acquiring body i.e. respondents only introduced on record the impugned Award and such other ancillaries documents through their witness Mumtaz Ali who was exposed to the test of lengthy cross-examination by the learned counsel for the applicant. It is worth reproducing hereunder certain admissions of the said witness as follows:

“It is correct to suggest that these are rates of construction and cost of land is not included in these rates. It is correct to suggest that the plaintiff’s plot No.1/67 is three side corner plot. It is correct to suggest that in the vicinity of the plaintiff there is Shama Shopping Center, Al-Raiayan Shopping Center, Sindh Government Hospital and the marriage halls are on the other side of the road which are at the distance of about 1000 meters from the plot of the plaintiff. It is correct to suggest that smaller house or huts are less value. It is correct to suggest that bungalows must

fetch higher value. It is correct to suggest that in our record there is no[thing]<sup>2</sup> price criteria of bungalows.”  
[Emphasis supplied]

13. It is gleaned from appraisal of the foregoing that the respondents' witness admitted various suggestions of learned counsel for the applicant during his cross-examination. Not only he admitted that the said house was built on a three sided corner plot but also the same was surrounded by plots where commercial activities like community centers, shopping centers, marriages halls, banquet halls, hospitals and such other businesses were operating. He went on to admit further in his cross-examination that a bungalow was to fetch higher price as compared to a house/small houses as well as he admitted that the respondents do not have any criteria for assessing the value of the said bungalow.

14. The applicant's attorney in his examination-in-chief further introduced on record a letter issued by Additional District Officer (Commercial), City District Government Karachi which was exhibited by him as Exh. P.W-1/36 (available in evidence file at page 141) which is a No Objection Certificate for conversion of the said house from residential to commercial, as issued by the CDGK. A perusal of record shows that the factors which are described and explained in the preceding paragraphs were clearly not taken into consideration and adhered to by the acquiring body/respondents, coupled with the fact that witness of the acquiring body/respondents admitted in his cross examination that the bungalow was to fetch more price as compared to a small house or a hut. It is also an admitted position that the said house was in the vicinity of commercial area facing

---

<sup>2</sup> SIC

thoroughfare and in the midst of commercial activities as admitted by the witness of the acquiring body but the respondents/acquiring body failed to assess true value of the said house nor took into consideration the factors for assessing the value. It is also important to note that commercialization of the said piece of land was already permitted by CDGK vide Exhibit P.W.-1/36.

15. In view of the foregoing reasons and rational contained hereinabove, **the issue No.1 is answered in negation** while **issue No.2 is answered in affirmation.**

16. The issues which remain to be discussed now are in respect of the compensation claimed by the applicant in this reference application as well as the decree/order of the court. It has become evident through the preceding paragraphs that the acquiring body failed to take into consideration the reasonable factors for awarding the compensation to the applicant which are described in the earlier part of this judgment, therefore, no caveat exists restraining the applicant's entitlement for compensation as prayed by him in his reference application alongwith interest that be deducted from the amount that had already been received by him already. So far as the issue of decree is concerned, it would be relevant to reproduce Section 26 of the Act of 1894 which reads as follows:-

“26. Form of awards. (1) Every award under this part shall be in writing signed by the Judge, and shall specify the amount awarded under clause first of sub-section (1) of section 23, and also amounts (if any) respectively awarded under each of the other clauses of the same sub-section, together with the grounds of awarding each of the said amounts.

(2) Every such award shall be deemed to be a decree and the statement of the grounds of every award such award a judgment within the meaning of section 2, clause (2), and section 2, clause (9), respectively, of the Code of Civil Procedure, 1908.”

17. No doubt the term “Award” is not defined in the Act, but if the sections in which the word “Award” occurs are referred to, it is noticeable that in all cases the word “Award” is used with reference to compensation in the same form or other, whether it be the amount of compensation or disposal of compensation. The first formal order to which term “Award” is applied in the Act of 1894 is that of the Collector under section 11, while sections 26 and 27 of the Act of 1894 provide for the form of award to be made by a Judge. Hence the award passed by the Collector under section 11 of the Act and judgment passed by the Court on a reference by the Collector under section 18 on that award are both to be understood as “Award”, in my humble view, therefore, these will also constitute a “decree” by virtue of deeming provisions in subsection (2) of section 26 of the Act of 1894. Similar view was taken by this court in the case of Government of Sindh v. Meho Khan (1988 CLC 715). It is expedient to reproduce the certain dictum laid down by this court which is as follows:-

“Every award by Land Acquisition Judge about compensation to be paid for land acquired, held, would be deemed to be a decree and statement of grounds, thereof, a judgment within meaning of S.2(2) & S.2(9) of Civil Procedure Code, 1908”

“Word "award" though not defined in Land Acquisition Act, 1894, yet was used therein with reference to compensation for land acquired. Both award made by Collector and judgment passed by Acquisition Judge on reference by Collector on such award, were to be deemed as "award" and

also a decree within meaning of provisions of Section 26(2) of Land Acquisition Act, 1894 and Section 2 of Civil Procedure Code, 1908.”

18. The hon’ble apex court of Azad Jammu & Kashmir also laid down the similar dictum in the case of Azad Government of the State of Jammu & Kashmir v. Muhammad Rafique Khan (2009 CLC 1378).

The relevant excerpt of the said judgment reads as under:-

“8. Our above view is fortified by the judgment of this Court delivered in a reported case titled as Military Estate Officer, Hazara Circle, Government of Pakistan, Abbottabad and others v. Muhammad Bashir and 6 other PLD 2000 SC (AJ&K) 34 wherein it was observed as under:--

“It is evident from the provisions contained in subsection (2) of section 26 of the Land Acquisition Act and the cases referred to above that an award would be deemed to be a decree; the copy of the same duly accompanied the appeals in the present case. Therefore, irrespective of the fact that a formal decree-sheet was drawn by the District Judge, the filing of the copy with the memorandums of appeals was not necessary. Thus, there was no violation of Order XLI, rule 1, C.P.C. and the order of the High Court in dismissing the appeals as being incompetent due to the non-filing of the decree-sheet is not sustainable.”

19. As this Court has reached to an irresistible conclusion that fair market value of the land was not determined by the Respondents as per the guidelines established for such calculations and that the value of Rs.63,000/- per sq. yards which is fully supported by valuation certificates remained un-challenged by the Respondents.

**Issue No.3 is thus answered in affirmative.**

20. It is crystal clear from the above deliberations also that reasonings contained hereinabove will be deemed to be a decree and the statement of grounds of every such award a judgment within the

meaning of Section 2, clause (2), and Section 2, clause (9) of the Code of Civil Procedure, 1908.

21. In sequel to the above deliberation and discussion, **Issue No.4** **is answered** in the manner that the Civil Reference at hand is allowed as prayed but with reduced mark-up at the rate of 5% instead of 15% as claimed.

Karachi  
Dated:15.07.2022

JUDGE

Aadil Arab