

**IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR**  
**Const. Petition No. D- 939 of 2011**

DATE OF HEARING	ORDER WITH SIGNATURE OF JUDGE.
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For hearing of main case.

Present:

**Mr. Justice Muhammad Shafi Siddiqui &  
Mr. Justice Rasheed Ahmed Soomro**

Mr. Imran Qureshi Advocate for petitioners.  
Mr. Ahmed Ali Shahani, Assistant A.G.

Date of hearing: 16-10-2018.

Date of Order: 16-10-2018.

**ORDER**

**MUHAMMAD SHAFI SIDDIQUI J.** This petition pertains to a claim of compensation under section 23(1&2) of the Land Acquisition Act, 1894 (hereinafter referred as the Act) along with mandatory benefits under sections 28-A and 34 of the Act.

2. Brief facts leading to the case are that initially a Notification under section 4 of the Act was issued in the year 1973 followed by a subsequent Notification under section 6 of the Act, issued in the year 2003. The award was passed on 13.12.2003 and in the subject award benefits as stated above, that should have been derived by the petitioners were not included, such as compensation in terms of sections 23(1&2), 28-A and 34 of the Act. A Reference, challenging the value of land was filed before learned Additional District Judge Naushhero Feroze **by the Government**, which

Reference was dismissed vide order dated 10.12.2010, followed by Civil Appeal No. 16 of 2012, which was also dismissed on 27.08.2013. Aggrieved of it, Civil Appeal No. 18-K of 2015 was preferred before Hon'ble Supreme Court which was dismissed vide order dated 23.09.2015. In the aforesaid appeal before Hon'ble Supreme Court, CMA No.485-K of 2015 was also filed by the petitioners/respondents, however it was not considered on the ground that it was an independent cause and cannot be proceeded in those (aforesaid) proceedings. The subject matter of CMA 485-K of 2015 was of the compensation under sections 23(1&2), 28-A and 34 of the Act. Petitioners had attempted to exhaust the remedy by filing this petition for claiming benefits under sections 23(1&2), 28-A and 34 of the Act, CMA No.485-K of 2015 was disposed of by the Hon'ble Supreme Court as being an independent cause.

3. The only question that may be relevant for the purpose of deciding this controversy is the question of laches since the award was passed in the year 2003 and being aggrieved of the award, which did not include compensation in terms of sections 23(1&2), 28-A and 34 of the Act, the petitioners could have made a Reference to the District Judge.

4. Learned counsel for the petitioners has relied upon some reported matters, which include exactly the same question.

5. In case of *Shaukat Ali v. DDO (Rev) and others (PLD 2005 Karachi 47)*, Division Bench of this Court observed that once Notifications under sections 4&6 of the Act have been issued, the acquiring agency was bound to deposit entire amount of compensation with the Land Acquisition

Officer. This judgment of Division Bench of this court was approved by Hon'ble Supreme Court in C.P.L.A No.767-K of 2004. Relevant para of Hon'ble Supreme Court is as under:

“2. Upon hearing Mr. Anwar Mansoor Khan, learned Advocate General, we completely agree and endorse the view of the High Court that amount of solatium under the above provisions of law is mandatory and payable in addition to compensation. It cannot be withheld by the Government for any reason, whatsoever. We also find that the High Court is perfectly justified in observing that delay in payment of such solatium has exposed the Sindh Government to huge financial losses, as such amount continues multiplying till final disbursement. There can also be no cavil with the direction issued to the Chief Secretary Sindh for issuance of appropriate direction to the Land Acquisition Officers to include the amount of solatium as per the mandate of law in order to save the Government from unnecessary monetary loss. We may add that with the issuance of notification under section 4 of the Act 1894, taking over the possession of the land and the passing of the award by the Land Acquisition Officer, it is solemn duty of the agency, for whose benefit private land is compulsorily acquired to deposit the entire amount with the Land Acquisition Officer for disbursement so that unnecessary amount of interest and additional compensation could be saved”.

6. In another matter reported as Imamuddin Shah v. DDO (Rev) and others (**2005 MLD 69**), the Division Bench of this Court while considering the claim of the solatium under section 28-A and 34 of the Act, observed that law requires the Collector to deposit the amount of compensation in the court, which has not been done. Relevant paras No.2&3 of the reported judgment are reproduced as under:-

“2. Through this petition, the petitioner claims that they received the amount of compensation from the respondents, **but such compensation did not include the amount of solatium under sections 28A and 34 of the Land Acquisition Act.** This fact has not been disputed by the learned Additional Advocate-General that the award does not include the amount of solatium. He, however, submits that this petition is hit by laches as the last payment was made on 23-11-1998 and the petitioner slept over his right and did not claim solatium, therefore, he was not entitled to the grant of solatium. He further submits that even otherwise the petitioner has not preferred any reference and on that score alone the petition was not maintainable.

3. **Admittedly, the award does not include the solatium under sections 28A and 34 of the Land Acquisition Act.** The law requires the Collector to deposit the amount of compensation in Court, which has not been done. **As long as the amount is unpaid, by the acquiring agency to the party required to be compensated the question of limitation or laches will not come in their way”.**

7. In the subject petition, admittedly award did not include the subject claim i.e. claim under sections 28-A and 34 of the Act. The question of laches was also involved in the subject petition, which was decided by the Division Bench that as long as payment as claimed above was unpaid, question of laches would not come in the way. The aforesaid judgment of the Division Bench was also approved by the Hon’ble Supreme Court in C.P.L.A No.719 of 2004 and the relevant para-3 of the Hon’be Supreme Court is reproduced as under:

“3. On plain reading of both the provisions of law, it is clear to us that the mandate of law is clear unambiguous and self-executory. Learned Additional Advocate General, after going through these provisions, is unable to advance any arguments in support of these

petitions, which are frivolous and devoid of any merit. These are accordingly dismissed with the observation that, in future, Provincial Government should hesitate from preferring such kind of petitions before this Court, which only adds to the agony of the litigant public and results in wastage of valuable time of this Court and burden on the public exchequer”.

8. In another case of P.O. Sindh v. v. Ramzan and others (**PLD 2004 SC 512**), the Hon’ble Supreme Court while dilating upon the issue that concerns with the compensation under sections 23(1&2), 28-A and 34 of the Act observed that this compensation as inserted by the Sindh Government is healthy enactment in law to check the highhandedness of the acquiring department as well as acquiring agency who sometimes sleep over the matter after issuing a Notification under section 4 of the Act and avoid making payment even after announcement of the award. Relevant para is reproduced as under:-

“17. Lastly, it was contended that an additional amount of 15% per annum of the compensation fixed has illegally been granted. We have given our considered thought to the matter and are of the view that the above additional amount being altogether independent of the one described in subsection (2) of section 23 of the Land Acquisition Act could very well be granted under section 28- A of the Land Acquisition Act as promulgated in the Province of Sindh and inserted by Sindh Government Ordinance 23 of 1984. This in our view is quite an healthy, enactment provided in law to check the highhandedness of the acquiring department as well as the acquiring agency who sometimes sleep over the J matter after once issuing a Notification under section 4 of the Act and avoid making payment even after the announcement of the award. We have already, in case of Saadi Jafri Zainabi (PLD 1992 SC 472) held that section 28- A added by Land Acquisition (Sindh Amendment) Ordinance

1994 is mandatory to nature. In the instant case the Notification under section 4 of the Act was issued in the year 1981, the awards were made somewhere to the year 1985 and the objection petitions of the landowners were referred by the Collector to the Court more than seven years thereafter. Having no regard for the rights of the people and having dealt with them in such a careless, and ruthless manner, they were bound to be checked under section 28A of the Land Acquisition Act. It is exactly for these eventualities and circumstances that the section was enacted.

9. In this matter as well initially a Notification was issued in the year 1973 under sections 4&6 of the Act, which is followed by a subsequent Notification under section 6 of the Act in the year 2003. Surprisingly, the payment was not made even in terms of orders of this court passed on 05.09.2012, when one month's time was granted to deposit the amount before Additional Registrar of this Court. The matter went up to the Hon'ble Supreme Court and only then on directions, the amount was deposited and that too only the principal amount that is value of the land at the relevant time, which infact was determined in the year 2003.

10. The question of claim under sections 23(1&2) and 28-A of the Act was also raised in another matter before Division Bench of this court in the case of Government of Pakistan v. Government of Sindh in Civil Appeal No. 21 of 2001 at Circuit Court, Hyderabad and the appeals of land owner for such claims were allowed.

11. While considering the question of claim under section 34 of the Act, which is in addition to claim under sections 23(1&2) and 28-A of the Act, it appears that Hon'ble Supreme Court has already resolved the controversy

that this claim under section 34 of the Act is neither contrary to law nor amounts to vexing the acquiring agency/company twice. The Hon'ble Supreme Court in the case of Government of Sindh v. Syed Shakir Ali Jafri and others (**1996 SCMR 1361**), observed that the interest at the rate of 6% per annum (section 34 of the Act) has to be paid on the total amount of compensation that is the compensation determined under section 23(1&2) of the Act plus the amount payable under section 28-A of the Act.

12. In view of above, the question of laches which apparently was available has been resolved by the aforesaid dictums of the apex Court as payment was never made to these Khatedars/petitioners until order was passed by the Hon'ble Supreme Court in the year 2017 and that too in terms of amount calculated in the year 2003, whereas payment was made in the year 2017. This question of compensation under sections 23(1&2), 28-A and 34 of the Act was left open by the Hon'ble Supreme court by observing that this was an independent cause and cannot be proceeded in the proceedings pending before Hon'ble Supreme court.

13. In view of the above, the claim of the petitioners under sections 23(1&2), 28-A and 34 of the Act is justified and is allowed and the petition is granted to the above extent. The amount be calculated by the Land Acquisition Officer and be deposited by acquiring agency / company / department within 06-weeks before learned District Judge, Naushehro Feroze in the subject Land Acquisition Matter No. L.A. 02 of 2004.

**JUDGE**

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