

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
High Court Appeal No.60 of 2020

Order with signature of Judge

Before: Justice Aqeel Ahmed Abbasi
Justice Mahmood A. Khan.

1. For hearing of main case
2. For hearing of CMA No.556 of 2020.
3. For orders on Nazir report dated 19.02.2022.

ORDER

17.03.2022

Mr. Hussain Bohra, Assistant Attorney General for the Appellants.

Mr. Imran Ahmed Abro, Assistant Advocate General Sindh.

Mr. Afsar Ali Abidi, Advocate for the Respondents No.1 to 4.

Mr. Aijaz Ahmed, Dy. Military Estate Officer is present.

Aqeel Ahmed Abbasi J.- Instant High Court Appeal was filed against the order dated 20.01.2020 passed by the learned Single Judge in Execution Application No.70 of 2011 passed on Civil Reference No.2 of 1987 relating to calculation of the amount of additional compensation under Section 28-A of the Land Acquisition Act, 1894 to the respondents.

2. It will be advantageous to reproduce the relevant finding of the learned Single Judge on the issue which reads as follows:

“14. In view of the plain wording of Section 28, it is apparent that the interest payable is in respect of the sum that the Court directs to be payable in excess of the amount awarded by the Collector, from the date on which he took possession of the land to the date of payment of such excess into Court. Whilst the excess awarded by the Court amounted to Rs.2500/- per square yard, the Nazir appears to have also computed the interest payable under section 28 on the basis of the overall compensation at the rate of Rs.5500/- per square yard, after deducting the amount received. From the standpoint of computation in terms of Section 28, the judgment of the Honorable Supreme Court in the case reported as Government of Sindh and 2 others v. Syed

Shakir Ali Jafri and 6 others 1996 SCMR 1361 is also of relevance in this regard, where it was held as follows:

“Section 28 enacts that “if sum which, in the opinion of the Court, the Collector ought to have awarded as compensation is in excess of compensation, the award of the Court may direct that the Collector shall pay interest on such excess at the rate of six per centum per annum from the date on which he took possession of the land to the date of payment of such excess into Court”. Here, by the judgment of the learned Additional District Judge, interest at the rate of 6% per annum in terms of section 28 of the Act was allowed on the amount of compensation determined by the Court under section 23, read with section 28-A of the Act and in view of what has been held above, the interest at the rate of 6% per annum has to be paid on the total amount of compensation, that is, the compensation determined under section 23, subsection (1), plus the compensation payable under section 23, subsection (2), plus the amount payable under section 28-A of the Act.”

15. The further discrepancy that has apparently arisen is that while the Order of 03.04.2013 allowing the execution envisages compensation in terms of Section 28-A of the LAA up to 20.06.2010, computation of such compensation has been undertaken up to 20.10.2010.

16. Subject to the foregoing observations, the matter is referred back to the Nazir for computation. The Objections of the Judgment Debtor are otherwise dismissed.”

3. During the course of hearing of instant High Court Appeal, Nazir has furnished his report dated 19.02.2022 pursuant to order passed by the learned Single Judge as well as by this Court vide order dated 26.01.2022, whereas learned counsel for the respondent argued that such report and the calculation of the amount of additional compensation under Section 28-A of the Act, 1894 is as per order of the Honorable Supreme Court in the case of Government of Sindh and 2 others v. Syed Shakir Ali Jafri and 6 others (1996 SCMR 1361).

4. On 10.03.2022, learned Assistant Attorney General requested for time to examine Nazir’s report and to file objections after consultation with Military Estate Officer. Pursuant to Court’s order dated 10th March, 2022, Assistant Attorney General has filed objections on the Nazir Report dated 19.02.2022 wherein, while conceding to the calculation, as made by the

Nazir of this Court in his report dated 19.02.2022 according to which the decretal amount has been calculated as Rs.157,506,344/- (Rupees one hundred fifty seven million five hundred six thousand and three hundred forty four only), whereas an amount of Rs.15,03,63,000/- was duly invested by the Nazir with the National Saving Certificates and thereafter in TDR with the National Bank of Pakistan, High Court Branch, which comes to Rs.23,79,10,893/-, including profit up to 24.09.2021, has raised objection to the effect that since the lease of the suit property in the name of the Decree Holder had expired in 1958, therefore, the lease charges at the rate of Rs.3 (three) per square yard per annum from the date of 1958 to 2057 amounting to Rs.1,59,10,884/- may be deducted from the aforesaid amount.

5. Learned counsel for the respondent has vehemently opposed such contention of the learned Assistant Attorney General on the ground that a baseless fresh objection has been raised which is neither subject matter of the suit proceedings or the appeal up to Honorable Supreme Court nor even before the Executing Court, therefore, the same is liable to be rejected. According to the learned counsel, the respondent is otherwise required to seek renewal of the lease, as the subject land was compulsorily acquired under the Land Acquisition Act by the appellants. It is prayed that instant appeal having no merits may be dismissed and the amount lying before the Nazir, as referred to hereinabove, may be released in favour of the respondents Nos.1 to 4, as considerable time has already lapsed and the respondents have been deprived from their legitimate dues since last so many years. Learned Assistant Attorney General present along with Deputy Military Officer while confronted to point out any error or discrepancy in the amount calculated by the Nazir of this Court in his report dated 19.02.2022, candidly submitted that as per his instructions, the same is in consonance with the judgments passed in the instant case up to Honorable Supreme Court.

6. Accordingly, in view of candid statement of learned Assistant Attorney General with regard to correctness of the calculation made by the Nazir, instant High Court Appeal stands dismissed. The Nazir is directed to release the aforesaid amount in favour of the respondents

Nos.1 to 4 preferably within a period of four weeks from the date of this order.

J U D G E

J U D G E

*Farooq ps/**