

**IN THE HIGH COURT OF SINDH,
CIRCUIT COURT, HYDERABAD**

1st Appeal No. D- 34 of 1986

[Muhammad Alam v. Assistant Commissioner, LAO,
Shahdadpur]

Before:

Mr. Justice Muhammad Junaid Ghaffar
Mr. Justice Adnan-ul-Karim Memon,

Appellant : Through Mr. Parkash Kumar, Advocate.
Respondents : Through Mr. Allah Bachayo Soomro, Addl. A.G.
Date of hearing & Judgment : 10.05.2023

J U D G M E N T

ADNAN-UL-KARIM MEMON, J.- Through this appeal, the appellants/land owners have called in question the legality of judgment and decree dated 30.08.1986, passed by the Referee Court / District Judge, Sanghar in Land Acquisition Appeal No. 01 of 1985 (Re: *Pir Muhammad and 7 others v. Assistant Commissioner and Land Acquisition Officer, Shahdadpur*), whereby, the Award passed by the Land Acquisition Officer (L.O) was maintained.

2. Brief facts of the case are that in the year 1984, Assistant Commissioner/ Land Acquisition Office, Shahdadpur passed an Award for acquisition of agricultural land bearing SNos: 89,85/1, 86/1,2,3, 163, 164/1,2, 165/12, 166/2,3, 167/A, B and 635, (the total area of 9-0 acres) situated in deh Junejani, Taluka Tando Adam for Bye-pass Regulator Kumb Darhoon, Taluka Tando Adam District Sanghar. However, the appellants were not satisfied with the Award, compelling the L.O. to refer the matter to the Referee Judge for determining the compensation of the subject land in accordance with law.

3. To settle the above controversy, the Referee Court examined the witnesses of the appellants and after recording evidence and hearing the parties maintained the Award vide Judgment and Decree dated 30.08.1986. An excerpt of the judgment is reproduced as under:-

“As a result of above, keeping in view the evidence produced by applicants, I come to the conclusion that the Land Acquisition Officer has properly and correctly assessed and valued the reasonable compensation to be awarded to the applicant. The demand of applicants for enhanced compensation appears unjustified and unreasonable. I, therefore, do not find any reason to disturb or to interfere with the Award passed by the learned Land Acquisition Officer, which is hereby sustained”.

4. Mr. Parkash Kumar counsel for appellant has argued that the appellants were owners of agricultural land bearing S.Nos. 89, 85/1, 86/1,2,3, 163, 164/1,2, 165/12, 166/2,3, 167/A, B and 635, total area 23-17 acres situated in deh Junejani, Taluka Tando Adam; that an area of 9-00 acres of land of the appellants was acquired by the Irrigation Department, Government of Sindh to construct Bye-Pass Regulator Kumb Darhoon, Taluka Tando Adam and the rate of land was fixed at Rs. 30,000/- per acre plus 15% urgency charges in respect of agricultural land and the cost of houses as estimated by the Sub-Divisional Officer, Provincial Buildings, Shahdadpur; and erroneously determined the price of fruit trees. Counsel for appellants contends that while passing the Award, the L.O. had failed to appreciate the material available on record about the quantum of compensation; that the Referee Court has misconstrued the criterion laid down under Land Acquisition Act and erroneously maintained the Award. He maintains that there has been misreading and non-reading of evidence and the Referee Court has erroneously concluded that the quantum of compensation, as determined by L.O, was correct; that the lower court committed material irregularity by not awarding Rs. 60,000/- per acre; that the factual as well legal aspects of the controversy have not been appreciated in its true perspective by the Land Acquisition Officer as well as by District Judge Sanghar, resulting in serious miscarriage of justice; that the District Judge has failed to frame the issues to resolve the controversy between the parties; that documentary evidence produced by the appellants has not been considered with diligent application of mind; and, the quantum of compensation determined by the Land Acquisition Officer violates the provisions of Land Acquisition Act, 1894; that L.O as well as the District Judge failed to consider that as per Section 9, 10 & 11 of the Land Acquisition Act, 1894 all the interested persons / parties were / are required to be heard mandatorily by the Land Acquisition Officer while proceedings for passing

award; that the version of appellants was not controverted by the respondents about the cost of residential house and boundary walls amounting to Rs. 5,40,000/-; that the trial court erroneously rejected the claim of appellants as it was established from the evidence that fruit trees were giving an income of about Rs. 1000/-, Rs. 400/- and Rs. 500/- per tree per year; that no additional compensation as provided under Section 28-A of Land Acquisition Act has been allowed by the District Judge as such the appellants are entitled to the same; that, though Section 28-A of the Land Acquisition Act has been omitted, however, it has not been given retrospective effect but it has a prospective effect; that the law which omits or curtails the right of a person is always given prospective effect whereas in the present case, the award has been passed in the year 1986 and the judgment and decree has been passed on 30.08.1986 and at that time the provisions of Section 28-A of the Land Acquisition Act were very much available in the statute; therefore, the khatedars were entitled to the benefit of Section 28-A of Land Acquisition Act and the Land Acquisition Collector and Acquisition Judge were not empowered to deprive the khatedars from the benefit of Section 28-A of Land Acquisition Act, hence the appellants are entitled to 15% compulsory charges because of Section 28-A, *ibid*, as well as 15% interest on the said amount from the date of possession till its final payment; that the land acquired is a valuable as it falls within the boundary of Municipal Committee / Town Committee Taluka Tando Adam District Sanghar, hence being a commercial property, the appellants were / are required to be compensated accordingly. In support of his contentions he relied upon the case of Nisar Ahmed Khan v. Collector, Land Acquisition (PLD 2002 S.C. 25), Province of Punjab v. Jamil Ahmed Malik (2000 SCMR 870) Dilawar Hussain v. Province of Sindh (PLD 2003 Karachi 174). He prayed for allowing the appeal.

5. Mr. Allah Bachayo Soomro, Additional A.G. has supported the impugned judgment and decree passed by the District Judge Sanghar and prayed for dismissal of the instant appeal with costs. In support of his contention he relied upon the cases of Dilawar Hussain v. Province of Sindh (PLD 2016 S.C 514) and Land Acquisition Collector v. Muhammad Sultan (PLD 2014 S.C. 696).

6. We have heard learned counsel for the parties and have also gone through the judgment and decree passed by the Referee Court and perused the record with their assistance and the case law cited at the bar.

7. It appears from record that the compensation amount of land was paid to the land owners after completion of proceedings under Section 11 of Land Acquisition Act-1894 vide Award statement dated 27.01.1986; the details of compensation are as under:-

Name of the Co-Sharer	Compensation of Agriculture land	15% Urgency charges	Compensation of fruit plants	Compensation of dwellings	Total compensatiion of each sharer
Pir Mohd	1,23,435-00	18,515-25	27,150-00	-	1,69,100-25
Noor Alam	31,387-50	4,708-1 2½	7,059-00	4,439-00	47,593-6 2½
Mohd Siddiq	42,637-50	6,395-6 2½	7,059-00	14,675/-	2,04,767-1 2½
Mohd Rafiq	28,800-00	4,320-00	6,516-00	2900/-	42,536-00
Mohd Nazir	24,975-00	3,746-25	5,586-00	--	34,307-25
Mohd Akram	6,885-00	1,032-75	930-00	1558/-	10,405-75
Abdul Sattar	11,880-00	1,782-00	--	--	13,662-00
Mohd Shafi	--	--	--	2577/-	2,577-00
Grand Total	2,70,000-00	40,500-00	54,300-00	160149/-	5,24,949-00

8. It appears from the judgment penned down by the Referee's Court that the acquired land was being used for agricultural purposes and that it was not situated within an urban area. Even, there is no evidence on record that the land was situated within the limits of Municipal Committee/ Town Committee. It is also admitted that no person from the locality has been examined by the appellants in support of their claim nor even the Mukhtiarkar / Tapedar of deh Junejani had been examined regarding the location of acquired land. The existence of developing towns in the near future, if any near the lands of appellants has not been proved. The appellants have failed to produce evidence regarding sale of neighboring lands in the vicinity at exorbitant rates, as claimed by him before the acquisition of land.

9. On the contrary, it appears from the judgment so authored by the Referee Court that the lands of other khatedras acquired by the Government along with the land of appellants were valued at Rs. 30,000/- per acre, and such

compensation had been paid to other khatedars. The record does not reflect that the appellants examined any buyer/broker of Shahdadpur or Hyderabad fruit markets to whom they were selling their fruit; besides the value of the land claimed by the appellants in their evidence at Rs. 60,000/- per acre was / is an afterthought, as, before the Land Acquisition Officer, the appellants had claimed the price of land at Rs.50,000/- per acre; that no special feature or potentiality about the land has been proved by the appellants in their evidence. The documentary evidence has been appreciated by the trial court in its true perspective and the potentiality of land has been determined after taking into consideration all the relevant factors as required under the law; therefore no further appraisal of evidence is required on our part.

10. From the appraisal of all the above set-forth facts, the law and also that the appellants/plaintiffs are barred from claiming the compensation of suit-land much more than the market value, this Court cannot award compensation more than the actual price of the land at the time of issuance of notifications under Land Acquisition Act, 1894 for the reason that when the land was acquired, the position of land was agricultural, as in the evidence the appellants failed to establish Pacca houses, fruit garden at the suit property, and they also failed to produce the buyer to substantiate the claim and in absence of the aforesaid factum this court cannot help the appellants to take a contrary view of the two fora below, however, the findings could only be upset once it is brought on record that the location of the land was within the limits of urban area at the relevant time, which factum is missing in the present case.

11. Insofar as the contention of Appellant's counsel that the compensation under Section 28-A of the Land Acquisition Act ought to have been awarded to the appellants, suffice it to say that Section 28-A of the Land Acquisition Act has been omitted by Sindh Amendment Act, 2009; therefore, the said compensation was/is not payable to the appellants. Accordingly, in our opinion, the Land Acquisition Officer and the trial court have rightly awarded the amount of compensation of the subject land to the appellants.

12. We have examined the reasoning given by L.O. while passing the Award and have also gone through the impugned judgment rendered by the District Judge; and, we are in agreement with the reasoning adopted by Referee Court. Both the L.O. and Referee Court have elaborately examined

and appreciated the record/evidence as well as the relevant provisions of Land Acquisition Act, of 1894, and recorded cogent and valid reasons while awarding compensation to the land owners.

13. The Appellants counsel has failed to point out any illegality, jurisdictional defect, perversity, or misreading and non-reading of evidence in the concurrent findings recorded by both the competent fora. The impugned judgment of Referee Court dated 20.8.1986 is even otherwise well-reasoned and has considered all the aspects of the case. Resultantly, the captioned Appeal is dismissed with no order as to costs.

14. These are the reasons for our short order dated 10.05.2023, whereby the appeal was dismissed.

JUDGE

JUDGE