

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

Present:

Mr. Justice Muhammad Saleem Jessar

Mr. Justice Omer Sial

(1) 1st Appeal No.20 of 2012

Water and Power Development Authority

Vs.

Land Acquisition Officer and others

AND

(2) 1st Appeal No.21 of 2012

Water and Power Development Authority

Vs.

Land Acquisition Officer and others

AND

(3) 1st Appeal No.22 of 2012

Water and Power Development Authority

Vs.

Land Acquisition Officer and others

Mr. Muhammad Idrees Nagshbandi, Advocate for the appellants.

Mr. Faisal Ali Raza Bhatti, Advocate for the respondents No.2 in 1st Appeal No.D-22 of 2012

M/s. Muhammad Humayoon Khan, Deputy Attorney General for Pakistan and Ashfaque Nabi Qazi, Assistant Attorney General for Pakistan.

Mr. Allah Bachayo Soomro, Additional Advocate General, Sindh.

Dates of hearing : 16.03.2022 & 17.03.2022.
Date of Judgment : 30.03.2022.
Date of announcement : _____.2022.

J U D G M E N T

MUHAMMAD SALEEM JESSAR. J- The appellant, Water & Power Development Authority (WAPDA), through these First Appeals, have assailed the Judgment dated 25.05.2012, passed by 1st Additional District Judge, Sanghar, acting as Referee Court, in Land Acquisition Reference No.03 of 1999 (I.A. No. 20 of 2012), 04 of 1999

(I.A. No. 21 of 2012), and 09 of 1999 (I.A. No. 22 of 2012), dismissing the same by holding that the above references were not maintainable. Since the facts and the law involved in all these first appeals are common, therefore, these three appeals are being disposed of by this common judgment.

2. Facts of the case, relevant for the purpose of disposal of instant appeal are that Land Acquisition Officer acquired the land of the private respondents for using the same in WAPDA project (beneficiary), and made an Award under section 11 of the Land Acquisition Act. Respondents 2 and 3, being the Khatears, namely, Ghulam Hussain and Mst: Shamila, both son and daughter respectively of Ghulam Farooque, resident of Deh 35, Jamrao, Taluka Sinjhor, District Sanghar, accepted the Award No. Nil 1999, dated: Nil, but appellant WAPDA did not accept and made a direct reference under section 18 of the Act, challenging the award. It was contended in the reference that (a) the Khatedars - opponents No:2 and 3 have no right to claim the award amount of exaggerated land from applicant WAPDA as they did not use the land to such extent in the concerned deh (b) the referring area is totally bogus and result of exaggerated measurement (c) under the above two points which are apparent and the opponents No.2 and 3 have no right to claim any amount from WAPDA which is wrongly given without solid evidence and (d) despite of existence of restrain order, later suspension order issued by Secretary Board of Revenue, Government of Sindh Hyderabad the Land Acquisition Officer has hurriedly announced the exorbitant award which leads to host of irregularity in award. In the end applicant prayed that the entire award passed against the applicant WAPDA be set-aside and cancelled and order passed accordingly.

3. After admission of the reference, notice upon opponents were issued and the opponents No:2 and 3 contested the reference and filed their joint written statement (Exh:09) through their special attorney. It was averred in the written statement that the applicant WAPDA with *malafide* intention has challenged the Award which was accepted by the applicant, but due to non-payment of huge commission of illegal gratification, the applicant has challenged the award passed by Land

Acquisition Officer, LBOD, WAPDA, Sanghar, and on same date viz. 03.5.1999 the applicant WAPDA accepted so many awards passed by Land Acquisition Officer of different Dehs and has ordered for payment of the compensation of the land to the parties, vide case No:06/1996 Award No:238/1999 deh 3-Dim Khatedar Mir Hyder Ali & others, Case No:6/1996, Award No:238/1999, Deh Sinjhoru M/S: Khuda Bux & others, this case has been awarded on measurement of feet, case No:06/1996 Award No:239/99 deh Dhamrakhi Mst: Khanzadi & another. Case No:06/99 Award No:243/999 deh 40-Jamrao, Khan Bahadur & others. However, in C. P. Nos:D-425/1999, Ch: Abdul Qadir. Vs. Government of Pkistan & others, C. P. No:309/1999, Ghulam Shabbir Vs. Government Pakistan & others, C.P. No:D:427/1999, Muhammad Zain Vs. Government Pakistan & others, C.P. No:428/1999, Khan Muhammad. Vs. Government Pakistan & others, the Honourable High Court of Sindh accepted the awards passed by Land Acquisition Officer and after admission of applicant WAPDA authorities, in which they have not challenged the above awards passed by Land Acquisition Officer and had made payments to the petitioners/khatedars and such payment have been made through Additional Registrar, High Court of Sindh, Hyderabad to parties, while appellants WAPDA authorities have un-necessarily made reference under section 18 of Land Acquisition Act, 1894 in this case, only to drag the poor people and to avoid to make payments to the khatedars. It was further averred in the written Statement that reference area is correct, genuine and measurement shown is proper and correct which was carried out by Director Settlement Survey Land Hyderabad along with Tapedar WAPDA Sanghar, A project; and such certificate were issued by survey tapedar so also tapedar of Sanghar Project. Further when WAPDA authorities created problems for non-payment of compensation, therefore, they filed C.Ps before Honourable High Court of Sindh where so many C.Ps had been allowed by Honourable High Court of Sind Hyderabad. However, the appellants was in knowledge about the award passed by Land Acquisition Officer from very date of its passing but the appellants only in order to gain time from the date of knowledge that they came to

know about the award when C.P was filed, and prayed for dismissal of reference.

4. The Referee Court framed the following issues:

1. *Whether the suit/reference is not maintainable?*
2. *Whether plaintiff/applicant has no cause of action?*
3. *Whether plaintiff/applicant has utilized less area of the land than acquired under award dated:03-5-1999, if yes to what effect?*
4. *Whether the plaintiff is liable to pay compensation of only the area actually utilized by him?*
5. *What should the decree be?*

5. However, just before recording of evidence, an application under Order 14, Rule 5 C.P.C, was moved for framing of additional issues and the same allowed and pursuant to the order dated:23-9-2000, three following additional issues were framed:

- a) *Whether the opponents/khatedars have rightly claimed award amount while award is bogus, exaggerated measurement demand and claimed?*
- b) *Whether the khatedars have wrongly claimed the award amount, through award which is based on exaggerated measurement and un-used land?*
- c) *Whether the L.A.O deputed by the Government of Sindh has rightly passed the award without the measurement and legal requirements and also neither supplied the copy of award in time to the beneficiary?*

6. The Referee Court discussed Issues No.1 and 2 together and by answering them in the affirmative, dismissed the Reference being non-maintainable without discussing any other issue framed by him. Hence, these first appeals.

7. Mr. Muhammad Idrees Naqshbandi, Advocate for the appellants in all appeals submitted that the appellant is an acquiring agency and acquired the land belonging to the private respondents through proper procedure prescribed under Land Acquisition Act, 1984. The Land Acquisition Officer/respondent No.1 after completion of all codal formalities had issued award on 03.05.1999. The appellants being aggrieved by the award had directly submitted reference in terms of

section 18 sub-section (3) of the Land Acquisition Act, 1894 before District Judge Sanghar on 1st November 1999 which subsequently was admitted on 2nd November 1999. He further submitted that the issues framed by the reference Court/Trial Court were not discussed at length and the Trial Court without appreciation of the Act, by which appellants were provided right of appeal, had dismissed the reference on the ground that appellants had got no right to prefer appeal against the award, passed by the Land Acquisition Collector. He; however, admitted that evidence of appellants' side comprising of their witnesses namely Ex-S.D.E.O LBOD WAPDA namely Mokesh Kumar and one Chando Mal, the then Tapedar of Tapo 35, Jamrao were examined vide Ex. No.49 and Ex. No.64; however, the respondents' evidence was not recorded. Therefore, the evidence adduced by the appellants went un-shattered: even then the Trial Court dismissed their reference for which the appeals in hand have been preferred.

8. Mr. Faisal Ali Raza Bhatti, Advocate for the respondent No.2 in 1st Appeal No.22 submitted that impugned award had rightly been pronounced by the concerned Land Acquisition Officer and the reference filed by the appellants was immaterial as the appellants intended to deprive the respondents of the amount for the land acquired by the appellant and more than twenty three (23) years have passed yet it has not been paid to the land owners/respondents for which the appellants themselves are responsible. He further submitted that Trial Court had rightly dismissed the reference, hence the appeals in hand are also liable to be dismissed. Learned counsel further submits that appellants may be directed to compensate the respondents for the delay caused in litigation besides the amount awarded under the award. He further submitted that though per sub-section (3) to section 18 of Act it is mentioned that acquiring agency may refer the matter to Court within a period of six months, per sub-section (1) of section 18, any person interested who has not accepted the award may, by written application to the Collector, require that the matter be referred to by the Collector to the Court for determination of issue involved in the reference; however, the appellants had directly submitted the reference, hence on this score alone it was liable to be

rejected. Learned counsel submitted that though the Land Acquisition Collector had not awarded the benefit of sections 34, 28-A, 23 sub-section (2) of the Act even then the respondents had accepted the award, hence submitted that appellants may be directed to submit fresh reference to the Land Acquisition Officer and the appellants may also be directed to deposit entire amount of compensation before the District Judge / Referee Court having jurisdiction. In support of his contentions, he places reliance upon the cases of LAND ACQUISITION COLLECTOR/OFFICER PAK-ARAB REFINERY LTD. (PARCO), SHIKARPUAR and another Vs. YASEEN KHAN and another (PLD 2008 Karachi 297).

9. Mr. Muhammad Humayoon Khan, learned Deputy Attorney General appearing for Federation submitted that appellants had rightly submitted the reference directly to the Court in terms of sub-section (3) of section 18 of the Act, therefore, objections raised by the counsel for the private respondents are not tenable. Learned D.A.G further submitted that trial Court had not discussed the issues framed by it properly though by virtue of Order XX Rule (5) of Civil Procedure Code, 1908 it is mandatory upon the Trial Court to discuss each and every issue properly. In support of his contentions, he placed reliance upon the case 2009 SCMR page-371, PLD 2007 Supreme Court page-271 and 2014 SCMR page-1187. Learned D.A.G further submitted that right of appeal was given to acquiring agency by Hon'ble Federal Shariat Court through its judgment reported as LAND ACQUISITION COLLECTOR and 6 others Vs. MUHAMMAD NAWAZ and 6 others (PLD 2010 Supreme Court 745). He also submitted that new sub-section (3) was added in section 18 of the Act through ordinance promulgated by West Pakistan Ordinance No.XLIX of 1969 dated 17.12.1969 subsequently which was amended by the Provincial Government, the Government of Sindh, through Sindh Act, No.VIII of 1992, therefore, the appellants have rightly filed the reference before the referee Court. He; however, is of the opinion that sub-section (3) to section 18 of the Act, shall be read in isolation and it has got no nexus with sub-section (1) of section 18 of Act as intention of the legislature is very much clear. He, therefore, submitted that by granting appeals


cases may be remanded to Trial Court with directions to re-hear the parties and decide the issues properly as well in accordance with law and according to the merits of the case.

10. Mr. Allah Bachayo Soomro, Additional Advocate General, Sindh appearing for the respondent No.1 submitted that though sub-section (3) of section 18 of the Act, provides the appellants to refer the matter to Court yet it cannot be read in isolation of sub-section (1) of section 18 of the Act which provides "any person interested who has not accepted the award may, by written application to the Collector, require that the matter be referred to by the Collector for determination of the Court", hence it was incumbent upon the appellants to have had submitted the reference through Land Acquisition Collector instead of its submission before the Court directly. He after going through the different clauses of section 18 of the Act, points out that language of section 18 of the Act is very much clear, hence reference directly submitted by the appeal appellants before the Reference Court was liable to be rejected on this score. As far as question of limitation is concerned, learned Additional Advocate General, Sindh submitted that reference was submitted by the appellants on 1st November whereas was registered on 2nd November 1999 even then it is time barred and the appellants in order to save their skin did not submit the reference through Land Acquisition Officer as the Land Acquisition Officer had to decide the question of limitation. He further submitted that reference Court was not competent to decide the question of limitation, hence the appellants willfully avoided to avail proper procedure. In support of his contentions, he placed reliance upon the case of FAZAL KARIM and 3 others Vs. AZAD GOVERNMENT OF THE STATE OF JAMMU AND KASHMIR through Chief Secretary, Muzaffarabad and others PLD 1998 SC (AJ&K) page-26. He further submitted that after filing of reference by the appellants before Referee Court directly they had dragged it for 23 years, hence have deprived the respondents of the amount awarded to them by Collector through the award. Learned Additional Advocate General, Sindh lastly submitted that appellants had to submit the reference through Land Acquisition Officer instead of submitting it directly before the Court and pray for dismissal of the

appeals. In his view if an individual/land owner has to submit reference through Land Acquisition Officer, then there is no reason why the acquiring agency should be exempted from adopting the same course. Learned Additional Advocate General, Sindh submitted that if the contention advanced by learned D.A.G is presumed to be correct that the acquiring agency had a right to submit a reference directly to Court then it will tantamount to a clear discrimination with the land owners, hence according to him, the intention of legislature was not wrong and sub-section (3) to section 18 of the Act cannot be read in isolation but it must be read together with sub-section (1) of section 18 as well as sub-section (2) to sub-clause (b) of section 18 of the Act, therefore, by dismissing the appeals the appellants may be directed to submit fresh reference through Land Acquisition Collector. Learned Additional Advocate General, Sindh further contended if the fresh reference may be submitted by the appellants/acquiring agency to Land Acquisition Collector then the Land Acquisition Collector may be directed to submit it before District Judge having jurisdiction within fifteen days. Meanwhile, Trial Court/Reference Court may also be directed to decide the fate of reference after recording evidence of the respondents and making discussion over the issues in terms of order XX Rule 5 C.P.C within shortest possible time under intimation to this Court.

11. We have heard the learned counsel for the parties who were present and have also perused the record and the case law relied by learned counsel for the parties.

12. We will take up the objection that the trial Court has erred by not giving its finding on all the issues and referred to the provisions of Order XX, rule 5, CPC. Suffice it to observe that the Rule 5 of Order XX, CPC itself clarifies that the Court shall state its finding on each separate issue unless finding upon any one issue or more of the issues is sufficient for the decision of the suit. Therefore, a court can decide only one issue and if finding on such issue is sufficient to decide the suit, then there is no need to discuss all other issues framed in the suit. However, the finding on the issues No.1 and 2 in the reference is to be discussed and the fate of the same is to be decided hereafter.




13. Now adverting to the merits of these appeals, the first question that arises for determination before this Court is whether the acquiring agency has any right of appeal / reference or not. Learned counsel for the appellant submitted that the appellant was competent to file the reference by virtue of the amendment made by the Provincial Government under Sindh Act No.VIII of 1992, the Land Acquisition (Sindh Amendment) Act, 1992 whereby sub-section (3) was inserted in section 18 of the Act which provides that the Federal Government, the Provincial Government, a Company or a local authority, if it has not accepted the award, can refer the matter to the Court within a period of six months from date of announcement of award, therefore, reference submitted by the appellants before District Judge was competent. However, learned counsel for the respondent No.2 submitted that though per sub-section (3) to section 18 of Act it is mentioned that acquiring agency may refer the matter to Court within a period of six months, per sub-section (1) of section 18, any person interested who has not accepted the award may, by written application to the Collector, require that the matter be referred to by the Collector to the Court for determination of issue involved in the reference; however, the appellants had directly submitted the reference, hence on this score alone it was liable to be rejected. Hence, he submitted that appellant may be directed to approach the Collector for submitting fresh reference to the Land Acquisition Officer.

14. The trial Court has relied on the case of Pir Khan through LR's (PLD 1987 SC 485) to dismiss the reference filed by the Appellant / acquiring agency same as under:

"8. ...Admittedly, this reference has been made against the award passed by the opponent No:1 Land Acquisition Officer/Deputy Commissioner, Sanghar. Now, question arises as to whether beneficiary of the acquired land has any right and locus standi to file a reference or appeal against the determination or/enhancement of the compensation. Consistent view, till date, is that a beneficiary has no right to challenge the compensation awarded to the deprived owners of the acquired land by the competent Court.

"9. In case of Pir Khan through his legal heirs V. Military Estate Officer, Abbottabad and others", P.L.D 1987 SC 485. "the Honourable apex Court has been pleased to observe and decide that the award made by Land Acquisition Collector becomes final so far as a local authority or a company and that such authority or a company has neither right to ask for a reference under section 18 of the Act nor a



right to prefer an appeal against decision made upon a reference under section 18. It appears appropriate to re-produce certain portions out of the said judgment which reads as follows:

"From a perusal of the above provisions, it is manifest that section 50(2) expressly and in terms controls section 18 and takes away the right from the local authority or company for whom the land is being acquired to demand a reference under section 18. According to subsection (2) of section 50 a local authority or a company is only conferred the right to appear in proceedings before the Collector or the Court and adduce evidence for the purpose of determining the amount of compensation but a reference under section 18 by them is barred (vide the proviso to subsection (2) of section 50. It is, therefore, manifest that whatever may have been the object of the law, in view of plain language of section 50(2), there is no alternative but to give effect to it. Hence, so far as a local authority or a company is concerned, the award made by the Land Acquisition Collector becomes final; it has neither the right to ask for a reference under section 18, nor on a parity of reasoning, a right to prefer an appeal against a decision made upon a reference under section 18 of the Act by the Court."

In view of the legal and factual position I find that applicant is not competent to make reference and the same is not maintainable under the law discussed hereinabove, therefore, applicant has no cause of action to file present suit, in hand. Accordingly, I answer these both issues are replied in affirmative."

15. Thus, in view of the Referee Court, relying on Pir Khan's case (supra) it was held that, so far as a local authority or a company is concerned, the award made by the Land Acquisition Collector becomes final; it has neither the right to ask for a reference under section 18, nor on a parity of reasoning, a right to prefer an appeal against a decision made upon a reference under section 18 of the Act by the Court.

16. We are constrained to observe that the trial Court has relied on a judgment (Pir Khan through LRs v. Military Estate Officer, Abbottabad (PLD 1987 SC 485) which was not at all relevant to the facts of the case. In the cited case, on 21-8-1969, a Notification No.32330 was issued under section 4 of the Land Acquisition Act 1894 by the Additional Commissioner, Peshawar, wherein it was recited that the land, inter alia, belonging to the appellant measuring 105 Kanals 7 Marlas situated in the revenue estate of Nowshera, Tehsil and District Abbottabad was likely to be required to be taken by the Central Government at public expense for public purposes. Thus, the

proceedings for acquiring land in the cited case were initiated way back in 1969. Much water has flown under the bridge since then as many amendments have been made, inter alia, in sections 18 and 50 of the Land Acquisition Act since pronouncement of the judgment in Pir Khan's case (supra). It may be stated that depriving a company or a local authority of the right of appeal, in view of Proviso to section 50(2) of the Act, was held repugnant to the injunctions of Islam by the Shariat Appellate Bench of the apex Court vide judgment dated 18-2-1991 in Shariat Appeal No.7/89. A cut-off date was fixed by the Shariat Appellate Bench for the competent bodies for necessary amendment in the aforesaid sections till 30-9-1991. The Shariat Appellate Bench further held as under:--

"The proposed amendments would advance remedy to an aggrieved party. It would be fair and just to give a right to make a reference, file a cross-objection, lead evidence and file an appeal to those parties who have been denied such a right under sections 18, 22-A, 50 and 54 of the Land Acquisition Act."

Prior to the Judgment of the Shariat Appellate Bench, referred above, sub-section (3) of section 18 of the Act was as under:

*(3) 'Notwithstanding anything to the contrary contained in section 21, the **Provincial Government may**, if it has not accepted the award, refer the matter to the Court within a period of six months from the date of announcement of award; provided that the Court shall not entertain the reference unless in its opinion there is a prima facie case for inquiry into and determination of the objection against the award'.
(emphasis supplied by us)*

17. Thus, it can be seen that only "Provincial Government" was provided the right to refer the matter to the Court while a company or a local authority was not provided such right. However, in view of the above judgment of the Shariate Appellate Bench of the apex Court, necessary amendments were made in the relevant sections of Land Acquisition Act, 1894 through the Land Acquisition (Amendment) Act,. In sub-section (3) of Section 18 of the Act, for the words "*the Provincial Government*", the words and commas "*The Federal Government, the Provincial Government, a Company or a local authority, as the case may be,*" shall be substituted. Thus, in line with the direction of the Hon'ble Shariate Appellate Bench of the apex Court, right of reference and appeal was provided to a company as well as a local authority.



18. Before the amendment, relevant part of section 50 read as under:

(50) Acquisition of land at cost of a local authority or company--
(1).....

(2) In any proceedings held before a Collector or Court in such cases the local authority or company concerned may appear and adduce evidence for the purpose of determining the amount of compensation.

Provided that no such local authority or company shall be entitled to demand a reference under section 18.
(emphasis supplied by us)

19. As per the above quoted (un-amended) sub-section (2) of section 50 a local authority or a company is only conferred the right to appear in proceedings before the Collector or the Court and adduce evidence for the purpose of determining the amount of compensation but a reference under section 18 by them was barred (vide the proviso to subsection (2) of section 50. Hence, so far as a local authority or a company was concerned, the award made by the Land Acquisition Collector becomes final; it has neither the right to ask for a reference under section 18, nor a right to prefer an appeal against a decision made upon a reference under section 18 of the Act by the Court." However, after the amendment under Land Acquisition (Amendment) Act, 1992, the above proviso has been deleted.

20. Thus, a company and a local authority, which were not provided the right of referring the matter to the Court earlier, were now also provided the right to prefer a reference to the Referee Court under section 18 of the Act.


21. In Pir Khan's case (supra) it was also held that in view of the proviso to section 50 of the Act, a company or a local authority cannot file an appeal also. However, by virtue of Land Acquisition (Amendment) Act, 1992, the proviso has also been deleted and as such there was no embargo on a company or an authority to file an appeal as provided under the Act. However, the trial Court completely ignored the amendments and the recent case law on the subject and relied on an irrelevant citation while dismissing the reference filed by

the appellant. The trial Court would have been justified if it had directed the appellant to approach the Collector for referring the matter to the Court as envisaged under sub-section (1) of section 18 of the Act. However, the trial Court was not justified in relying on case of Pir Khan through his legal heirs V. Military Estate Officer, Abbottabad and others, P.L.D 1987 SC 485, wherein the Honourable apex Court has been pleased to observe and decide that the award made by Land Acquisition Collector becomes final so far as a local authority or a company and that such authority or a company has neither right to ask for a reference under section 18 of the Act nor a right to prefer an appeal against decision made upon a reference under section 18 in view of the fact that the cited judgment was pronounced before the amendments in the Act.

22. In view of the above discussion, and consequent upon the amendments made to sections 18 and 50 of the Act, we are of the opinion that now a company and a local authority can also prefer a reference to the Referee Court under section 18 of the Act and can also file an appeal.

23. It is settled principle of law that a Judge must wear all the laws of the country on the sleeve of his robe and failure of the counsel to properly advise Court is not complete excuse in the matter as law laid down in Muhammad Sarwar v. The State (PLD 1969 SC 278). It is very unfortunate that such an important matter was treated with scant attention and a very old case pertaining to the year 1969 was relied by the trial Court to dismiss the references filed by the appellant. The trial Court, before penning down the judgment, should have sought the latest case law on the subject so that a judgment based on law prior to its amendment was not cited.

24. The next question which comes up for determination is whether the Reference filed by the appellant directly before the Referee Court instead of approaching the Collector to refer the same to the Referee Court, was properly filed.



25. Learned counsel for the appellant submitted that the Land Acquisition Officer/respondent No.1 issued the award on 03.05.1999 and the appellant, being aggrieved by the award, had directly submitted reference in terms of section 18 sub-section (3) of the Land Acquisition Act, 1894 before District Judge Sanghar. It was contended that sub-section (1) of section 18 of the Act has no nexus with sub-section (3) of the said section, therefore, sub-section (3) can be read in isolation. On the other hand, learned AAG Sindh submitted that sub-section (3) cannot be read in isolation of sub-section (1) of section 18 of the Act as it would result in discrimination qua the owners of the land as they cannot file a reference directly before the Court and have to approach the Collector for referring the matter for the determination of the Court.

26. Once again reference in this regard would be made to sub-section (1) of section 18 of the Act which reads as under:

18. Reference to Court. - (1) Any person interested who has not accepted the award may by written application to the Collector, require that the matter be referred by the Collector for the determination of the Court, whether his objection be to the measurement of the land, the amount compensation, the persons to whom it is payable, the apportionment of the compensation among the persons interested or the amount of cost allowed.

27. It is crystal clear that no one can refer the matter to Court except the Collector. Thus, the intention of the legislature is very clear that it has not allowed any person to refer the matter to the Court except the Collector. It is admitted fact that the appellant has filed the reference directly without calling upon the Collector to refer the matter to the Court for determination.

28. Prior to amendment effected by Land Acquisition (Amendment) Act, 1992, sub-section (3) of section 18 of the Act was as under:

*"(3) Notwithstanding anything to the contrary contained in section 21, **the Provincial Government may**, if it has not accepted the award, refer the matter to the Court within a period of six months from the date of announcement of award; provided that the Court shall not entertain the reference unless in its opinion there is a prima facie case for inquiry into and determination of the objection against the award".*

29. After the above amending Act was promulgated, in the above sub-section (3) of section 18 of the Act the Legislature replaced the words "the Provincial Government" with the words "The Federal Government, the Provincial Government, a Company or a local authority, as the case may be.". From perusal of the above amendment, it is clear that the Legislature only intended to include certain other persons in the sub-section who can now refer the matter to a court. It does not speak of "file a reference before the Court". Thus, for all purposes and intent the procedure provided under sub-section (1) of section 18 of the Act cannot be over looked that too by only a company or a local authority. Learned counsel for the appellant has not been able to demonstrate before us that a company or a local authority does not fall within the purview of the term "Any person" used in sub-section (1) of section 18 of the Act. It was also not argued that earlier i.e. before the above amendment in sub-section (3) of section 18 of the Act, the Provincial Government was entitled to file a reference directly before the Court. The Provincial Government, if it was aggrieved by any award, was also required to approach the Collector for referring the matter to the Court. Therefore, we are not inclined to agree with the learned counsel for the appellant that sub-section (3) of section 18 of the Act is to be read in isolation of sub-section (1) of section 18 of the Act. We are of the view that both the above sub-sections of section 18 of the Act are to be together and if read together, the intent is clear that any person aggrieved by an award has to approach the Collector in writing to refer the matter to the Court for its determination.

30. It may also be kept in mind that the Shariate Appellate Bench of the Hon'ble Apex Court in Shariat Appeal No.7/89 explained the purpose of the amendments in the following words:

"The proposed amendments would advance remedy to an aggrieved party. It would be fair and just to give a right to make a reference, file a cross-objection, lead evidence and file an appeal to those parties who have been denied such a right under sections 18, 22-A, 50 and 54 of the Land Acquisition Act."

31. Now, it would be absurd to infer from the above judgment of the Shariate Appellate Bench that it intended to do justice with a company or a local authority by providing it the right to make a reference, file a cross objection and file an appeal, and the amendment in the above provisions of law has been made in such a way that it would result in disparity between the owners and a company or a local authority by not allowing the company or a local authority to directly file a reference or appeal and denying the same right to an owner.

32. We are of the opinion that though sub-section (3) of section 18 of the Act, provides a company or a local authority to refer the matter to Court by treating them at par with the owners yet it [sub-section (3)] cannot be read in isolation of sub-section (1) of section 18 of the Act which stipulates that any person interested who has not accepted the award may, by written application to the Collector, require that the matter be referred to by the Collector for determination of the Court, hence it was incumbent upon the appellant to have approached the Collector for referring the matter for determination of the Court, instead of submission of the reference before the Court directly.

33. The upshot of the above discussion is as under:

- (a) The impugned Judgment passed by 1st Additional District Judge, Sanghar, acting as Referee Court, in Land Acquisition References No.03 of 1999 (I.A. No. 20 of 2012), 04 of 1999 (I.A. No. 21 of 2012), and 09 of 1999 (I.A. No. 22 of 2012) is hereby set aside.
- (b) A company or a local authority can, by written application to the Collector, require that the matter be referred to by the Collector for determination of the Court;
- (c) That the appellant may, by written application to the Collector, require that the matter be referred to by the Collector for determination of the Court; on such written application, the Collector must refer the matter to the Court within 15 days. However, the trial Court is directed to decide the same, after recording evidence of all the parties interested, as expeditiously as possible; however, in any event not later than **one year** from the date of receipt of the reference from the Collector.
- (d) That the Referee Court is also directed to record the evidence of the respondents as well and after framing



issues, decide all the issues as envisaged under the provisions of Order XX, rule 5, CPC.

- (e) The Collector is the author of the Award, therefore, he is an important witness, therefore, he should be examined.
 - (f) That a company or a local authority can also file an appeal but in accordance with law.
 - (g) Since the matter pertains to 1999, therefore, it is expected that all the parties would make endeavor to dispose of the reference within shortest possible time.
 - (h) The appellant shall deposit a lump sum amount of Rupees **Five Million** within two months with the District Judge/Referee Court, having jurisdiction.
 - (i) The Referee Court shall render a decision keeping in view all the relevant sections of Land Acquisition Act, 1894
34. The above First Appeals stand disposed of in the above terms.
35. Office to keep a copy of judgment in each file.
36. Let a copy of this judgment be sent to the learned District Judges through the learned M.I.T.


Judge


30/3-2022

Hyderabad,

Dated: -04-2022.


6/4/2022