

JUDGMENT SHEET

IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD

R.A. No.243 of 2010

R.A. No.244 of 2010

R.A. No.245 of 2010

R.A. No.246 of 2010

For Applicant: *Mr. Muhammad Idrees Naqshbandi, Advocate.*

For Private Respondents: *Mr. Poonjo Ruplani, Advocate.*

For Official Respondents: *Mr. Ashfaque Nabi Kazi, Asstt.A.G*

Date of Hearing: *08.12.2016.*

Date of Judgment: *15.12.2016.*

J U D G M E N T

MUHAMMAD FAISAL KAMAL ALAM-J:- Since common facts and point of law are involved in the above titled Revision Applications, therefore, the same are decided by this common judgement.

2. Material facts for deciding the present Revision Applications are that the Applicant (WAPDA) has challenged the Award dated 03.05.1999 before the Court of learned Ist Additional District Judge at Mirpurkhas, by filing a Reference No. Nil of 2000 dated 18.05.2000. With this reference, an Application under Section 5 of the Limitation Act was also filed, seeking condonation of delay, on the ground that the present Applicant/WAPDA came to know about passing of the Award when the present-private Respondents No.2, 3 and 4 preferred a Constitutional Petition No.D-562 of 1999 against the WAPDA and notice whereof was received by the Applicant {WAPDA}.

3. The present private Respondents, who are claiming compensation in pursuance of the above Award, filed their objections before the Court below by categorically refuting the stance of the present Applicant that the latter (WAPDA) did not know about passing of the Award. According to private Respondents, different lands were acquired by the concerned Authority in favour of present Applicant- which is the 'Company', in terms of the Land Acquisition Act, 1894 (**the Acquisition Law**), through various Awards and the present Applicant participated in all such proceedings.

4. The impugned Award is in respect of following lands:-

Sr. #	Taluka & District	Deh	Survey Nos.	Area acquired as per Form "B"
i)	Badin	Lundo	99 100 101	0-28 4-20 2-03 8-31
TOTAL AREA:- <i>(The subject matter of Civil Revision Application No.243 of 2010)</i>				8-31 Acres
ii)	Kot Ghulam Muhammad, Mirpurkhas	252	267 269 270 271 272 275 276 277 278	0-27 0-17 0-17 0-18 0-14 0-14 0-26 0-26 1-00
TOTAL AREA:- <i>(The subject matter of Civil Revision Application No.244 of 2010)</i>				5-03 Acres
iii)	Kot Ghulam Muhammad, Mirpurkhas	251	207 208 235 246 247	0-39 0-26 1-02 0-20 0-22
TOTAL AREA:- <i>(The subject matter of Civil Revision Application No.245 of 2010)</i>				3-29 Acres
iv)	Kot Ghulam Muhammad, Mirpurkhas	291	9 442 443	1-07 0-14 0-27
TOTAL AREA:- <i>(The subject matter of Civil Revision Application No.246 of 2010)</i>				2-08 Acres

5. Mr. Muhammad Idrees Naqshbandi, learned counsel for the present Applicant/WAPDA has strenuously argued that the contentious questions of law and facts are involved in the matter and the Award, which is available at Page-25 of the Court file relating to the respective pieces of lands of private Respondents, has determined a wrong and exaggerated value of lands in question, whereas, the ownership whereof is also questionable. To augment his arguments, Mr. Muhammad Idrees Naqshbandi has relied upon the following case law;

- i). 1984 CLC Page-2353 Karachi
(Shakir Ali Jafri and six others Versus Land Acquisition Officer).
- ii). PLD 2005 SC Page-153
(Board of Governors, Area Study Central and North Versus Mst. Farah Zehra) [University Case].
- iii). PLJ 2000 SC 1933
(Ghafoor Bux Versus Haji Muhammad Sultan).
- iv). 2001 SCMR Page-827
(Muhammad Shafi Versus Muhammad Hussain)
- v). PLD 2000 SC Page-214
(Mubeen Fatima Versus Muhammad Yameen).

6. The first reported case is a land acquisition matter, in which the Petitioners [of that case] were the land owners, whose grievance was that notice under Section 12 of the above Acquisition Law were not served on them and it was argued by the Petitioners that since the Petitioners did not receive any Award, therefore, the period of Limitation mentioned under Section 18 of the afore referred Acquisition Law should be calculated from the date when they came to know about the Award, that too, when their counsel addressed a Legal Notice to the Land Acquisition Officer. After an exhaustive discussion, the

learned Division Bench of this Court [in the above cited case] accepted the Petition of the Petitioners by observing on Page-2631, that if the Petitioners were systemically kept in the dark, rather misled by the official Respondent No.1 about the correct date of Award, then, the period of limitation for filing a reference under Section 18 of the Acquisition Law against the said Award was held to be commenced from the date of knowledge. The gist of other reported Judgments (*supra*) is with regard to the discretionary powers of the Courts to condone the delay or enlarge the time for filing the proceedings and that in a fit case the Court even has *suo moto* power to enlarge the time.

7. According to the learned counsel for the Applicant (WAPDA), the latter (WAPDA) was also kept in dark about the proceedings and they only came to know when the above Constitutional Petition was filed by the present Respondents. To substantiate his arguments, he referred to the relevant record of the above mentioned Constitutional Petition No.D-562/1999, available in the present Court File.

8. According to learned counsel, six (06) months period as mentioned in Section 18 of the said Acquisition Law would have started from 09.10.1999 when the above mentioned Constitutional Petition was fixed before a Division Bench of this Court and it was finally disposed of on 19.09.2000. (Ground 03 of the present Revision Application).

9. Mr. Poonjo Ruplani, Advocate for the private Respondents, has controverted the arguments of Applicant's side and has relied

upon his objections, which he filed in the above mentioned reference before the learned Court (available at Page-45 of the case file). The learned counsel submits that same Land Acquisition Officer (LAO) has passed various Awards in respect of other lands, which the present Applicant has acquired, therefore, the present Applicant was fully aware of the proceedings before the concerned LAO, as in various other cases Applicant has challenged the different Awards passed on the same day; 03.05.1999.

10. Mr. Ashfaque Nabi Kazi, the learned Assistant Advocate General has defended the Award and argued that even the above Reference was not properly filed as provided in law, as the Award in question cannot be challenged by the Applicant directly, besides, being hopelessly time barred. He submits that Award once made is duly gazetted and the Applicant Company in whose favour the land has been acquired was also duly notified about the proceedings under Section 12 of the Acquisition Law. It is further contended that Applicant being a beneficiary Company, cannot plead ignorance about the land acquisition proceedings, as at different stages in terms of Sections 4 to 12 of the said Law, the parties are duly notified and the notices are gazetted/published.

11. I have heard arguments of learned counsel representing the parties and with their able assistance, have gone through the record of the case.

12. Perusal of the Award (impugned), which is available at Page-25 of the Court file, clearly shows that it has been published in the Gazette. Secondly, in the condonation application under Section 5

of the Limitation Act (available at Page-36 of the Court file) as well as in their objections/subject reference, the present Applicant has not disclosed the specific details about acquiring the knowledge of the Award in question and general averments have been made that the present Applicant came to know about the Award in question through the above mentioned Constitutional Petition. Thirdly, in their present Revision Applications, for the first time, the present Applicant has made a specific reference to the date of acquiring the knowledge, which is already mentioned in the preceding paragraph, that is, 09.10.1999. Even, for the argument's sake, if six (06) months period as mentioned in Section 18 of the Land Acquisition Law for filing a Reference is calculated from the above date, the subject Reference then should have been filed latest by **09.04.2000, but admittedly the Reference has been filed on 18.05.2000,** that is, {even as per the averments of present Applicant}, the same is time barred by **six (06) weeks.** For this, no plausible justification has been stated or argued except that the Court has wide discretionary powers to condone the delay in view of the above mentioned reported decisions.

13. There is **another inescapable aspect of the case,** that the beneficiary or company in whose favour the land has been acquired cannot file a direct reference or appeal in terms of Sections 18 and 50 of the Acquisition Law, as expounded through various judicial pronouncements.

14. The cited decisions on behalf of the Applicant have been considered and discussed hereinabove and the same are clearly distinguishable from the admitted facts of the present case, therefore,

their *ratio decidendi* [of the cited case by Applicant] does not apply to the present Revision Applications. What is applicable to the facts of present Civil Revisions, keeping in view the fact that initially the Application under Section 18 of the Acquisition Law was filed way back in year 2000 (as mentioned above), is the rule laid down by the Hon'ble Supreme Court in its well-known Judgment of Pir Khan Versus Military Estate Officer-PLD 1987 SC page 485. The other case law of learned Division Bench of this Court, which is directly applicable to the facts of the present case is 1989 CLC (Karachi) page 1019 (Karachi Development Authority Versus Duty Commissioner South Karachi), in which Mr. Justice Ajmal Mian [as his lordship then was] speaking for the Court and after considering the above reported decision of Peer Khan case, has held, **that beneficiary cannot file a reference directly in Court, but it is the Provincial Government that can file a Reference.** Admittedly, present Applicant (WAPDA) is a beneficiary. Relevant portion of the Judgment is reproduced herein under:

“We are unable to agree with the above submission. Even under subsection (3) of Section 18 of the Act it is the Provincial Government, which can make the reference and not a company or a local body at whose behalf the land has been acquired. The above judgment of the Supreme Court is binding on us.”

15. The examination of Award (at Page-25 of the Court file) shows that specific details with regard to the lands in question have been mentioned, *inter alia*, that no ownership dispute exists with regard to the same, which in terms of the Award and subject to payment of compensation would vest in the present Applicant.

16. In the above cited decision of Pir Khan, a detailed reasoning has been given that why a beneficiary cannot file a Reference or Appeal; because a beneficiary or a government can have an option to purchase a land either through private negotiations or, in terms of the Acquisition Law. Since, that option is not exercised and Applicant opted to invoke the Acquisition Law, it cannot now take a contrary stance.

17. Taking into account the above discussion and the principle laid down by the Hon'ble Apex Court in Pir Khan case, by this Court in the above reported Judgment and further fortified in a subsequent decision of Hon'ble Supreme Court reported in PLD 2008 Supreme Court Page-400 (BP Pakistan Exploration and Production Versus Sher Ali Khawaja and another), I have no hesitation to hold that even the Reference No. nil of 2000 filed by the Applicant directly before the learned Court below was inherently erroneous, besides being time barred and the impugned order dated 19.07.2010 in the above Reference has been passed by applying a judicial mind and taking into account the submissions of all contesting parties.

18. The upshot of the above case is that the impugned order dated 19.07.2010 (passed by the learned Ist Additional District Judge at Mirpurkhas) does not suffer from any material irregularity, justifying any interference in this revisional jurisdiction, thus, all these titled Revision Applications are dismissed being devoid of merits. Parties to bear their own costs.

JUDGE