

Judgment Sheet

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

1st Civil Appeal No.D-30 of 2020

Appellants : Land Acquisition Officer and another
Through Mr. Ali Raza Balouch, AAG

Respondent : Abdul Hakeem in person

Date of hearing : **26.09.2023**

Date of Decision : **24.10.2023**

J U D G M E N T

ARBAB ALI HAKRO J, Through this First Appeal under Section 54 of Sindh the Land Acquisition Act, 1894 (“**the Act of 1894**”), the appellants have impugned a Judgment dated 05.11.2020 and Decree dated 05.11.2020, passed by IV-Additional District Judge, Khairpur (“**Referee Court**”), in Land Acquisition Application No.01 of 1996, which was allowed.

2. The relevant facts of the case are that in the year 1983-84, the land of the Respondent (“**land owner**”) admeasuring 07-26 Acres from Survey No.398 situated in Deh Khairpur, Taluka and District Khairpur (“**acquired land**”) was acquired for construction of oxidation pond for Urban Drainage Scheme, Khairpur for public purpose. The compensation rate of acquired land was fixed at Rs.8500/- per acre, which was said to be unjustified. Even though the land owner accepted the same but under protest, and then negotiations for revising the rate were held between the land owner and the acquiring agency. However, the acquiring agency refused to revise the rate, despite the fact that in the same vicinity, the land rate was Rs.65,000/- per acre and was paid to other persons for acquiring their lands for the construction of the water supply scheme Sanwalo Khan Jamali. The same agency also paid a rate of Rs.150,000/- to Rs.500,000/- per acre in

the same vicinity for the land acquired for various purposes in the Municipal jurisdiction. The acquired land is also situated adjacent to the Municipal boundary, being residential property; therefore, the award at the rate of Rs.8500/- per acre was less than the existing market value of the land. Thus, the land owner dissatisfied with the compensation rate filed an application before Assistant Commissioner/Land Acquisition Officer Khairpur and claimed compensation at the rate fixed and paid to the other land owners of similar vicinity by the same agency in 1995.

3. It is pertinent to mention here that in the first round of litigation when the suit/application of the land owner was decreed by the Referee Court on 01.10.2009, the same was assailed by the appellants as well as the land owner in 1st Appeal No. D-29 of 2009 and C.P. No. D-772/2017. A learned Division Bench of this Court vide Judgment dated 07.02.2019 allowed the appeal by setting aside the Judgment dated 01.10.2009 and Decree dated 05.10.2009, holding that the Referee Court had failed to arrive at a particular conclusion for determination/fixing or assessing the compensation rate of the acquired land and remanded the matter to the Referee Court for its fresh disposal on merits in accordance with law for the purpose of determination of the prevailing compensation rate of the acquired land. The reasons for such a conclusion, as noted in the said Judgment, would be beneficial for understanding the present issue. The relevant portion of the findings of this Court on 07.02.2019, for ready reference, are reproduced herein below: -

"Accordingly, the impugned Judgment and Decree dated 01.10.2009 and 05.10.2009 respectively, passed by the trial Court are set-aside. As a result of the same, the matter is remanded to the trial Court of its disposal for the purpose of determining of the compensation/rate of the land in question after allowing the parties full opportunity of hearing within period of one month under compliance report to this Court through Additional Registrar."

4. The findings arrived at by this Court on 07.02.2019 were never further challenged by either party. As such, it can safely be held that both the parties in the reference/application accepted what was held in the said Judgment.

5. In the post-remand proceedings, the Referee Court, after hearing both the parties, determined/fixed the compensation rate at Rs.150,000/- vide impugned Judgment dated 05.11.2020 and Decree dated 05.11.2020. It would be conducive to reproduce such findings of Referee Judge, hereunder: -

“Considering the above position, I am of the view that the respondent/L.A.O. has not fixed the rate as per market value and applicant Abdul Hakeem is entitled for the rate of his land acquired by the opponent as per statement produced by witness No.1 at Ex.18/A, therefore, the compensation rate is fixed as Rs.150,000/- per acre of the land of applicant was acquired by Respondent. Applicant will be entitled for benefit of Section 23(2) & 28(a) of the Land Acquisition Act to the extent of 15% per centum of total compensation amount for one time. Applicant will also be entitled for the benefit of Section 34 (Sindh Amendment) of the Land Acquisition Act to the extent of 06% per centum from the date of possession of the acquired land by acquiring authority to the date of deposit of compensation amount. It is pertinent to mention here that amount which was received under protest by the applicant be deducted from the total compensation and thereafter the benefit of above sections will be applicable to remaining amount.”

6. At the very outset, learned Additional Advocate General representing the appellants contended that learned Referee Court has failed to appreciate the basic principles governing the assessment of the amount of compensation, as such failed to determine the reasonable compensation for the acquired land and has merely passed the impugned Judgment and Decree by directing the Appellants to consider the rate of the land of the Respondent in the light of statement of the Land Acquisition Officer (Ex.18-A), which was not conclusive in its character to determine the value,

and against which an appeal had been preferred before this Court, which was allowed by remanding the matter to the trial Court for determination of the compensation/rate of the land in question after affording opportunity of hearing, within a period of one month. However, after remand of the case, learned Referee Court was required to re-examine/ re-access of evidence or to call/ recall the witnesses in order to resolve the controversy but again on the basis of already available record passed the impugned Judgment and Decree, committing material irregularity and illegality, hence it can safely be construed that the same has been passed exactly upon similar set of evidence; besides issues framed therein were not specifically decided, hence the same is liable to be dismissed. In support of his contentions, learned A.A.G. has relied on the case law reported as **2022 SCMR 933, 2023 SCMR 1005, 2020 SCMR 2046 & 2010 SCMR 1630.**

7. Conversely, Respondent Abdul Hakeem, present in person, submits that he is the legal owner of land bearing Survey No.398/7-26 situated in Deh Khairpur Nizamani Taluka and District Khairpur, which the Appellants acquired for development work of oxidation ponds for urban drainage scheme Khairpur for a public purpose; however compensation of acquired land as per Land Acquisition Act, 1984 was not awarded as per market value; hence he preferred an application/reference before the Referee Court, which was allowed and the compensation of subject land was enhanced in light of the statement of Land Acquisition Officer (the then Colonization Officer/Ex.18-A). There is no any illegality or infirmity in the Judgment and Decree passed by learned trial Court, hence this first appeal lacking merits and is liable to be dismissed. At the end of his arguments, he relied on the case law reported as **PLD 2010 SC 879, PLD 1993 SC 418 and PLD 1963 SC 382.**

8. We have heard the arguments advanced by the learned Assistant Advocate General and Respondent in person and

minutely perused the material available on record, including written arguments/synopsis and the case law relied upon by them.

9. Learned Assistant Advocate General for the appellants mainly disputed the ownership of the land by its purported owner in respect of acquired land. As apparent from the record, this Court remanded the matter to the Referee Court for its disposal to determine the prevailing compensation rate of the acquired land. Further, the remand Order of this Court was not challenged by either party. The Referee Court was under legal obligation to act in accordance with the terms of the remand order. However, it appears from the record and findings that the Referee Court instead has given fresh findings on all issues, including issue No.3, framed for determining the prevailing rate of compensation. The Apex Court has observed in the case of **Muhammad Tahir v. Abdul Latif and 5 others (1990 SCMR 751)** that in post-remand proceedings, the Court will only confine to the terms of the remand order, such observation is reproduced as under: -

"The learned counsel is justified in saying that those issues, which had been decided by the High Court earlier, confining the remand to only issue No.6, could not be reopened subsequently, the respondent having sought no relief against them."

10. Therefore, the contention of learned A.A.G. concerning ownership of the land owner in respect of acquired land at this stage is not tenable. This issue had already been settled in the previous round of proceedings and the learned AAG had never questioned the status of the Respondent as the land owner.

11. Now advertent to the main object of the remand Order, ***"Whether Referee Court correctly determined the prevailing compensation rate of the acquired land or not?"***. The perusal of the impugned Judgment and Decree of

the Referee Court reveals that while determining/fixing the rate of compensation of acquired land, the Referee Court relied upon the oral evidence of the parties, admission in cross-examination as well as statement under Section 19 and (2) of the Act of 1894 (Exh.18/A), produced by appellant No.1.

12. We have reappraised the entire oral and documentary evidence furnished by the appellants and the Respondent. The evidence of appellants comprises official witness No.1 Ahmed Khan (Asst. Engineer, Public Health Khairpur) Exh.15 and Witness Hidayatullah (the then Assistant Commissioner & Land Acquisition Officer, Khairpur) Exh.18, who produced a statement under Section 19 and (2) of the Act of 1894 Exh.18/A. The respondent/landowner examined himself as Exh.19 and produced Form VII-B (mutation entry) at Ex.19/A.

13. The most noteworthy feature of the case is that witness Hidayatullah (the then Assistant Commissioner/Land Acquisition Officer) when he appeared in the witness box, stated that the land owner Abdul Hakeem filed an application for enhancement of compensation of land under Section 18 of the Act of 1894 and he after completing enquiry came to the conclusion that the rate of land given to the land owner was less than existing market rate prevailing in the locality. In the statement (Exh.18/A), it is stated that the prevailing market value of the acquired land was fixed at Rs.6000/- per acre in the year 1983-84 and in the same vicinity, Rs.65,000/- per acre was fixed and paid in the year, 1987-88, for the land acquired for water supply scheme Sanwlo Khan Jamali village by the same agency. It is also admitted fact in the statement that in the year, 1995 value of the land situated in the same vicinity rose from up to Rs.100,000/- to Rs.150,000/- per acre. It is a settled principle of law that the admissions under Articles 30 and 151 of the Qanun-e-Shahadat Order, 1984, although not

conclusive proof of the matter admitted, are of decisive significance if they remain unchallenged. In Case of **Manager, State Bank Of Pakistan and another v, Ch, Muhammad Ikram and 2 others (1999 SCMR 2578)**, it was held by the Apex Court that:

“It is well-settled law that an admission may be relevant but not conclusive proof of the fact which may be proved to be incorrect or to have been erroneously made”.

14. In this matter nothing has been placed on record to show that the admissions were incorrect or erroneously made. Thus, the said admissions with regard to the value of the land are very much relevant as per facts and circumstances of the subject matter.

15. We are, therefore, of the opinion that the admissions made by the appellants in their evidence in respect of the prevailing market value of the acquired land, are to be preferred. It is evident from the record that the appellants neither tried to controvert the evidential value of their admission nor even disowned this value in the memo of appeal. It is clear that the price of land given by the appellant No.1 in his statement is an admission and binding upon them. The acquiring agency has not cross-examined the statement of above witness No.1; therefore, it is deemed to be admitted.

16. The witness, namely Ahmed Khan (Asst. Engineer Public Health Department, Khairpur), examined on behalf of the acquiring agency has, in his evidence, admitted that the Land Acquisition Officer, in his statement under Section 19 of the Act of 1894, stated and admitted that at the time of acquiring the land in question, the Market value of the acquired land was Rs.100,000/- to Rs.150,000/- per acres. He has also stated that they did not challenge the statement filed by the Land Acquisition Officer before any higher forum.

At this stage, we rely upon the case of **Malik Tariq Mahmood and others vs Province of Punjab and others (2023 SCMR 102)**, wherein Apex Court has held as under: -

“We may now examine the evidence adduced in this case in the light of the principles, enumerated above, and make a bid to find out the use, nature and kind of the appellants' land. As the burden of proof was placed on the appellants, they first produced the Patwari of the village Baddo as PW-1, who in his examination-in-chief clearly stated that to the east of the land of appellant was Ghulam Rasool's commercial land, to the west was bypass road (which was Sagian Bridge Road), to the north was the Sheikhupura - Lahore Road, and to the south was the commercial area. This statement was not cross-examined, and thus, it will be deemed to have been admitted by the respondents.”

[Emphasis supplied]

17. No material illegality or irregularity or misreading and non-reading of the evidence in the impugned Judgment of the Referee Court has been noticed. The case law cited by the learned A.A.G. for the appellants is distinguishable from the facts and circumstances of the instant case. The Judgment and Decree passed by the Referee Court is well within the remit of law and based on sound and cogent reasoning, need not be interfered. Learned A.A.G. for the appellants has not been able to make out a case for interference.

18. For the foregoing reasons and exposition of law, the appeal being devoid of merit is **dismissed**. Parties are left to bear their costs.

JUDGE