

*Judgment Sheet***IN THE HIGH COURT OF SINDH BENCH AT SUKKUR**

C.P No.D-2785 of 2013

Petitioner : Ghulam Muhammad Khoso
Through Mr. Sarfraz A. Akhund, Advocate

Respondents : Chairman National Highway Authority
and others through Mr. Zubair Ahmed Rajput,
Advocate

Province of Sindh : Through Mr. Ahmed Ali Shahani, AAG

Date of hearing : 26.10.2023

Date of Decision : 21.11.2023

J U D G M E N T

ARBAB ALI HAKRO, J.- Through this petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, the Petitioner seeks direction to the Respondent No.4 to release compensation amount in respect of land of the Petitioner acquired by National Highway Authority for construction of Khairpur Larkana Bridge Project, according to Award and its' revised report passed by Deputy District Officer (Revenue), LAO, Kingri.

2. Precisely, the facts of the case as narrated in this petition are that the Petitioner ("**land owner**") whose agricultural land admeasuring 00-17 Ghunta out of Survey No.516 and 02-13 Acres out of Survey No.607 total admeasuring 02-30 Acres situated in Deh Mari, Taluka Kingri District Khairpur ("**acquired land**") was acquired by the respondent No.4 for construction of 'Khairpur to Larkana Bridge Road'. Such Notifications under Sections 6 and 17 of the Land Acquisition Act 1894 ("**the Act of 1894**") were issued in 2009. The Petitioner has raised the grievance that the compensation for his acquired land has not yet been made to him even though the land has already been utilised for the aforesaid purpose. It is further averred that since the date of passing of the Award (initial and revised), the

Petitioner constantly approached Respondents No.2 & 3 for the release of compensation amount as per Award. However, he was informed that Respondent No.4 had not released such an amount inspite of various letters addressed to him. Finally, the Petitioner was denied payment of the compensation amount because Respondent No.4 is reluctant to release the amount despite construction of the Road was completed in 2010.

3. At the outset, learned Counsel representing the Petitioner submits that the Respondents, i.e., National Highway Authority, are reluctant to release the payment in lieu of compensation in respect of acquired land for construction of Khairpur to Larkana Bridge Road despite of the fact that Award dated 11.11.2010 in consideration of such land has been passed in favour of the Petitioner by Land Acquisition Officer. It is further argued that the amount as per Award has also been revised, which admittedly, respondents did not challenge before any forum. Therefore, Petitioner is entitled to receive compensation according to the Award with the revised rate.

4. Learned Counsel representing Respondents/NHA submits that the National Highway Authority has already deposited a sufficient amount of land acquisition for the construction of the said prefect and the excess amount was without the consent of NHA; hence NHA is not in a position to pay the amount twice for the same acquired land. It is argued that the amount paid in excess to khatedars, if any, is liable to be recovered and distributed amongst rightful owners. However, he submits that further funds adjustments must be forwarded by the Land Acquisition Officer to the National Highway Authority so that the same can be adequately scrutinised.

5. Learned AAG contends that the Land Acquisition Officer has rightly passed the Award with a revised report in favour of the Petitioner in respect of acquired land for the construction of Khairpur

to Larkana Bridge and Approach Roads, and the National Highway Authority is responsible for paying compensation amount as per Award.

6. We have heard Learned Counsel for the Petitioner, respondents and Assistant Advocate General and have perused the record with their able assistance.

7. In the instant case, there is no dispute regarding the acquisition of the land, its possession having been taken from the land owner and utilisation of the same for the construction of a "**Khairpur to Larkana Bridge Road**". In response to a notice of this Court, Respondent No.5/N.H.A ("**Acquiring Agency**") filed para-wise comments, wherein they made Respondent No.2 and 3 responsible for payment of compensation to the land owner; therefore, for convenience, relevant paragraphs are reproduced hereunder:-

"The Para No.1 is matter of record, hence needs further clarification from Land Acquisition Collector that Survey Nos.615(01-25) and 607 (03-25) DEH MARI, Taluka Kingri District Khairpur is utilised in constructed of metal road (existing Road), as the land compensation amount for payment to the Khatedars has been given to the Deputy Commissioner Khairpur, however, the same payment was paid in excess so also to wrong Survey Nos. (Owners), by Land Acquisition Collector, therefore, the additional payment was required by the Deputy Commissioner Khairpur due to their wrong Act, for which the Deputy Commissioner Office Khairpur is responsible.

That in response to Para No.4 it is admitted fact that NHA has already deposited/released amount to Deputy Commissioner Khairpur, such fact can be evident from Letter No.AC/135/2015 Kingri Dated: 15.10.2015 of Assistant Commissioner Taluka Kingri, wherefrom it is clarified that amount has been disbursed the effectees/beneficiaries of DEH MARI and others and if the Petitioner has not been paid the Deputy Commissioner, Khairpur is responsible to make it clear the position.

That in response to Para No.5 it is humbly submitted that land Acquisition Collector acquired Survey Nos. beyond the proposed alignment/existing/metal road, the same was not requirement/demand of NHA and unfortunately payment thereof has been made to defaulting Khatedars and the real survey Nos. owner remained unpaid."

8. While in response, respondent No.2 and 3 submitted their Statement/reply. Therefore, it would also be conducive to reproduce relevant Paragraphs hereunder: -

"5. That after Notification U/S 6 of the Land Acquisition Act, 1894, the Assistant Commissioner/Land Acquisition Officer, Taluka Kingri passed Award U/S 11 vide No.DDO(R) /LAO/1010, dated 11.11.2010 and No.DDO(R) /LAO/621, dated 13.7.2010 etc. As per statement submitted by DDO Rev./LAO Kingri vide letter No.DDO/ (Rev)/125/2011, dated 31.01.2011 addressed to DO Rev. Khairpur, the LAO had made payment (up to that time) amounting to Rs.94,850,70/- against the area of 127-12 Acres and had further requested/demanded the amount of Rs.30,000,000/- in lump sum for payment to remaining Khatedars. The outstanding funds for payment to remaining Khatedars were demanded from time to time.

9. That the letter No.RB/1576/2016, dated 01.4.2016, issued by the then Deputy Commissioner Khairpur referred to in Order dated 11.01.2022 of this Court has been perused, which reveals that the then Deputy Commissioner, Khairpur mentioned that **"The payment of an area of 28-17 acres being approximately amount to Rs.21,318,750/- has been paid in excess in Taluka Kingri due to reason that different B-Forms were issued by the Survey Superintendent Khairpur / Director, Settlement Survey and Land Records Sindh, Hyderabad."** The so called excess amount Rs.21,318,750/- was paid to those Khatedars whose lands were shown/acquired as per land plan submitted by NHA and B-Form issued by Survey Superintendent Khairpur in the year, 2010. Hence the payment in question cannot be terms as "excess payment" as the same was made by the LAO on the basis of authentic documents. Also the land of those Khatedars who have been made payment (so called excess) has been mutated in Revenue record in the name of NHA. It is further mentioned here that in the same letter the then Deputy Commissioner Khairpur has also requested for provision of an additional amount Rs.43,993,950/- so that compensation may be awarded to the remaining Khatedars of Taluka Kingri, as an area of 50-02 acres still remains to be paid as per new B-Form issued in the year, 2012."

10. From the above facts, it is evidence that the NHA (acquiring agency) has remained entirely on board during all the proceedings of land acquisition process right from submission of land plan in 2010, notification u/s 4, joint demarcation (B-Form) in 2010, Notification u/s 6 and award u/s 11, payment thereto and mutation in favour of NHA and then afterwards cancellation of previous B-Forms and issuance of new/revised B-Forms

in 2012. Therefore, at this stage, the reluctance of NHA to release funds for payments to the remaining Khatedars is beyond understanding. Any further delay on the part of NHA to release funds for the remaining Khatedars will not only create more liability for NHA but also enhance burden on the Government exchequer. This delay will also add more miseries and inconvenience to the Khatedars whose land despite being acquired has not yet been paid."

9. After carefully examining the aforementioned responses, it becomes apparent that both the Authorities blame each other. The acquiring agency asserts that they have fulfilled their obligation by disbursing compensation to Respondent No. 2, hoping that the latter would subsequently distribute it to the respective Khatedars/land owners, whose land was acquired by them. However, it appears that the Land Acquisition Officer has erroneously made excessive payments and thus bears responsibility for this oversight. On the other hand, Respondents No. 2 and 3 contend that the acquiring agency is at fault as the so-called excess amount was paid to the Khatedars, whose lands were reflected as acquired in the land plan submitted by NHA and B-Form issued by Survey Superintendent Khairpur in the year, 2010; therefore, this payment cannot be deemed as excessive. In the given context, wherein a disagreement arises between two departments or authorities, the landowner must not be unjustly denied the rightful disbursement of the compensation amount.

10. It is evident that the land owner was deprived of possession of the land about more than 15(fifteen) years back, and the compensation has not so far been received from the relevant quarter, much less its payment to the land owners. This situation is profoundly disappointing. State officials are responsible for ensuring that the citizens' rights, especially the fundamental rights protected by the Constitution, are not violated or taken away. The officials responsible for the NHA or Revenue Departments should have been aware that the value of money is decreasing rapidly. The issue of compensation owed to the landowner in this case was established and merited for

disbursement during the fiscal year, 2009/2010; however, regrettably, the compensation still remains outstanding.

11. It is evident that the landowner has endured significant hardship due to the lack of remuneration for his property. We wonder who should be blamed and who will cover the costs for the landowner when the compensation is paid to him late. Obviously, the delinquent officers in the NHA/Revenue Department are responsible for the same. It is all, in fact, delaying tactics to frustrate the legitimate claim of the Petitioner, who handed over possession of land in good faith in the hope that adequate compensation would be paid to him swiftly in accordance with the law.

12. It is essential to mention that the Constitution of Pakistan, 1973 has protected proprietary rights under the chapter of fundamental rights, under Articles 23 and 24 of the Constitution, which reads as follows: -

***“23. Provision as to property.** Every citizen shall have the right to acquire, hold and dispose of property in any part of Pakistan, subject to the Constitution and any reasonable restrictions imposed by law in the public interest.*

***24. Protection of property rights.** (1) No person shall be compulsorily deprived of his property save in accordance with law.*

(2) No property shall be compulsorily acquired or taken possession of save for a public purpose, and save by the authority of law which provides for compensation therefore and either fixes the amount of compensation or specifies the principles on and the manner in which compensation is to be determined and given....”

The Apex Court, in the case of Nisar Ahmad Khan and others v. Collector, Land Acquisition; Swabi and others (PLD 2002 SC 25), observed hereunder: -

“Obviously, under the provisions of the Act, private lands are acquired for public purpose without the consent of the owners and the paramount consideration behind the scheme appears to be the welfare of the people at large. The object behind the legislative dispensation is not to deprive the landowners of their Constitutional right to acquire, hold and dispose of property. Subject to Constitution and with reasonable restrictions; such rights are guaranteed under Articles 23 and 24 of the Continuation, stipulating that no person

shall be deprived of his property save in accordance with law and no property, shall be compulsorily acquired for a public purpose except by the authority of law, which provides for compensation and either fixes the amount of compensation or specifies the principles on and the manner in which the compensation is to be determined and paid.”

(emphasis supplied)

13. It is thus clear that the State cannot deprive a person of his property, without paying compensation, except in accordance with the law. The relevant statute under which the land owner has been deprived of his land is the Act of 1894. The compensation in terms of Section 31 of the Act of 1894 has to be made to the property owners. For ready reference, the said provision of the Act reads as follows: -

"31. Payment of compensation or deposit of the same in Court.---*(1) When the Collector has made an award under section 11-*

(a) if the persons interested entitled to compensation and costs (if any) under the Award and the Provincial Government accept the Award and intimate their acceptance in writing to the Collector before the expiry of the period prescribed in sub-section (2) of section 18 for making an application to the Collector for referring the Award to the Court, or in sub-section (3) of the said section for referring the Award to the Court by the Provincial Government, whichever is later, or if the period specified in subsection (2) of the said section for making an application to the Collector or in subsection (3) for referring the Award to the Court has expired and no such application or reference has been made, the Collector shall, before taking possession of the land, tender payment of the full amount of compensation and costs (if any) awarded by him to the persons entitled thereto according to the Award, and shall pay it to them unless prevented by some one or more of the contingencies mentioned in subsection (2);

14. If an owner is not paid the price/compensation of the acquired land within a reasonable time, then it may amount to depriving him of his property without compensation, which would be in contravention of the fundamental right guaranteed under Article 24 *supra*. Violation of a fundamental right guaranteed by the Constitution cannot be countenanced by Courts of law, particularly the High Court, on which

powers have been conferred as per clause (c) of Article 199(1) of the Constitution for issuing direction to any person including any Government for enforcement of any one of the fundamental rights conferred by the Constitution. It would be conducive that clause (c) of Article 199(1) of the Constitution is reproduced hereunder: -

"(c) on the application of any aggrieved person, make an order giving such directions to any person or authority, including any Government exercising any power of performing any function in, or in relation to, any territory within the jurisdiction of that Court as may be appropriate for the enforcement of any of the Fundamental Rights conferred by Chap. 1 of Part II."

15. In the instant case, there is no dispute regarding the acquisition of the land, its possession having been taken from the land owner and utilisation. Undeniably, it is the duty of the functionaries of the State to ensure that the rights of the citizens, particularly the fundamental rights guaranteed under the Constitution, should not be trodden or denied. The compensation to be paid to the land owner in 2009/2010, has not been done so far. Needless to say, the land owner has already suffered a lot on account of non-payment of the compensation to him. In this scenario, a question arises, who is responsible for making up the losses sustained by/caused to the land owner? Obviously, the delinquent officers in the NHA/ Revenue Department are responsible for the same. It is pertinent to mention that the compensation has already been paid to the other land owners, whose lands were acquired for the same public construction project of "**Khairpur to Larkana Bridge Road**". In view of this position as well, non-payment of compensation to the land owner/petitioner is a clear-cut act of discrimination.

16. Section 34 of the Act of 1894 deals with compound interest; therefore, for convenience, the same is reproduced hereunder: -

"34. Payment of interest. ---When the amount of such compensation is not paid or deposited on or before taking possession of the land, the Collector shall pay the amount awarded with compound interest at the rate of eight per centum] per annum from the time of so taking possession until it shall have been so paid or deposited."

17. A bare reading of the above-referred provision of the Act of 1894 reveals that awarding such interest is statutory and cannot be withheld. Thus, the land owner is also fully entitled to a grant of compound interest at the rate of 8% per annum from the date of taking possession of acquired land till the date of payment of its compensation. In this context, we are fortified with the case of National Highway Authority through Ghulam Mujtaba, G.M, Lahore vs Mazhar Siddique and others (2023 SCMR 493), wherein August Court has held as under: -

“Now moving to the next question, the relevant starting date for the payment of compound interest on compensation amount, in terms of section 34 of Land Acquisition Act, is the date of taking possession of the acquired land till the date of payment by the Collector where normal statutory procedure has been observed. In this regard, reference may be made to the case of "Sheikh Muhammad Ilyas Ahmed and others v. Pakistan through Secretary Ministry of Defence, Islamabad and others" (PLD 2016 SC 64). However, in "Syeda Nasreen Zohra v. Government of the Punjab" (2022 SCMR 890) it was held, "We find that the compound interest would continue to accrue till such time that the entire compensation is paid in its entirety. Once the original amount has been deposited, the matter goes out of the penal consequences of section 34 of the Act".”

Similarly, the Apex Court in the case of Syed Nasreen Zohra (Deceased) through L.Rs and others vs Government of Punjab through Secretary Communication and Works Department, Lahore and others (2022 SCMR 890), has held as under: -

“6. This Court through its judgment dated 07.07.2015 decided that the Award made by the Collector on 26.08.1998 granted the Petitioner compensation at the rate of Rs.20,000/- per marla, which amount was neither paid nor deposited by the Respondents. The Petitioner was, therefore, entitled to recover this amount for the land that was acquired. With reference to the issue of payment of interest under section 34 of the Act, this Court concluded that on making the Award the Collector was bound to tender payment of compensation awarded by him to the person entitled to the Award and in case the Collector was prevented from tendering compensation, he was required to deposit the compensation amount in Court to which the Reference under Section 18 of the Act was made. This Court

reasoned that section 31 of the Act being a mandatory section meant that its non-compliance gave rise to penal consequences and those penal consequences are provided in section 34 of the Act that is the interest prescribed therein becomes payable. In terms of the judgment of this Court, the Petitioner is entitled to receive the payment of interest as provided under section 34 of the Act.”

18. Prior to the amendment in the Land Acquisition Act, 1894 by virtue of the Land Acquisition (West Pakistan) Amendment Act of 1969, indeed the maximum interest rate that a Court could impose under Section 28 was six percent. However, post-amendment, the said section now provides that once the Court is satisfied that legal and factual grounds exist to enhance the rate of compensation, it is obligated to award interest on the differential at the rate of eight percent. The said section does not provide any discretion to the Referee Court to vary the rate of interest. In Case of National Highway Authority v. Rai Ahmad Nawaz Khan and others (2023 SCMR 700), it was held by the Apex Court that:-

“It is important to state that the intention of the legislature behind Section 23 was that whenever a Court is determining the quantum of compensation to be awarded to those who had been subjected to exercise of the power of eminent domain under the LAA 1894, it needs to be considerate and sympathetic towards the claims made by those whose property was compulsorily taken by the state against their will for a public purpose. Section 23 allows a Court to compensate such landowners for giving up their properties for the greater good, on the doctrine of individual rights must give way to the greater public interest (salus populi suprema lex esto)”.

19. As stated above, in exercising the powers conferred under clause (c) of Article 199(1), this Court can issue an appropriate direction to any person or authority, including any Government, to enforce any fundamental rights. *“The High Court may issue any directions, as may be appropriate for the enforcement of any of the Fundamental Rights conferred by the Constitution to any person or authority exercising any power or performing any function in (or in relation to) any territory within its jurisdiction (which includes but is*

not limited to any Government). The amplitude of Article 199(1)(c) of the Constitution is wider than the other parts of Article 199 of the Constitution and is not restricted to public functionaries only but even it could extend to private parties, as long as there is a question of enforcement of fundamental rights under the Constitution". Reference may be made to the Case of Human Rights Commission of Pakistan and others v. Government of Pakistan and others (PLD 2009 SC 507). We have carefully considered the facts and circumstances of this case. We are of the view that this is a fit case in which such a direction should be issued to the acquiring agency/revenue department for expeditious compensation to the land owner.

20. For the preceding reasons, the instant petition is allowed. We direct the acquiring agency and concerned Land Acquisition Officer to provide compensation to the land owner/Petitioner regarding his acquired land with the benefit of compound interest under Section 34 of the Act of 1894. Further, needful shall be done within one month under intimation to this Court.

JUDGE

Faisal Mumtaz/PS

JUDGE