Judgment Sheet

IN THE HIGH COURT OF SINDH CIRCUIT COURT LARKANA

Second Appeal No.S-06 of 2016

Appellants	:	Production Engineer PPL, I/C Camp office, Kandhkot and 04 others throughMr. Bhajandas Tejwani, Advocate
Respondents No.1:		Azizullah s/o Kajlo Chachar Through Mr.Ghulam Dastagir A. Shahani Advocate
Respondent No.2 to 5:		Through Mr. Abdul Hamid Bhurgri Additional Advocate General
Respondent No.6 :		Nemo
Date of hearing	:	**22.5.2023 & 29.5.2023**
Date of Decision	:	_____

J U D G M E N T

ARBAB ALI HAKRO, J.- Through this Second Appeal under Section 100 of the Civil Procedure Code 1908 ("**the Code**"), the appellants have impugned judgment and decree dated 06.9.2016 passed by the District Judge, Kashmore at Kandhkot ("**the appellate Court**") in Civil Appeal No.42 of 2016, whereby, the judgment and decree dated 18.5.2016, passed by Senior Civil Judge, Kandhkot("**the trial Court**") in F.C. Suit No.27of 2014, through which the Suit of respondent No.1was dismissed has been set-aside by decreeing the Suit.

2. The Plaintiff, referred to as respondent No.1 (herein), had filed a suit against the appellants and respondent No.2 to 6 for a "*Declaration and Permanent injunction*". Respondent No.1 asserts that he is the lawful owner of Survey No.352 & 412, admeasuring 08-00 Acres located in Deh Haibat Pako, Taluka Kandhkot. This land, known as "**the suit land**", was granted to respondent No.1 during an open *Katcheri* on *a Harap* basis. In accordance with this grant, respondent No.1 made payment in 19 (nineteen) instalments and an A-Form was issued to

him. However, before issuance of the T.O Form in the year 1986, defendants No. 1 to 5, referred to as appellants (hereinafter), forcibly occupied the Suit land and commenced construction of a well without the consent of respondent No.1. Consequently, he sought redress from the relevant authorities for compensation amounting to Rs.60,00,000/-. However, the Revenue officials misled him with false assurances and ultimately declined to provide compensation or relinquish possession of the Suit land. Therefore, respondent No.1 initiated legal proceedings before the trial court, requesting the following relief: -

a) *To declare that the Plaintiff is legal and lawful owner of the Suit land admeasuring 08-00 Acres S. Nos.352 and 412 situated in Deh Pako Haibat, Taluka Kandhkot, and defendant/PPL authorities have no right over the land.*

b) *To direct the defendant to pay Rs.60,00,000/- as compensation of land and crop of Plaintiff.*

c) *To direct the defendant Mukhtiarkar Revenue Kandhkot by way of mandatory injunction to mutate the Khata of Suit land in favour of Plaintiff and also direct the defendant/PPL authorities to remove the Well installed at the Suit land, which is installed without prior permission of owner of land plaintiff.*

d) *To grant permanent injunction restraining the defendants from mutating the Khata of suit land in the name of any other person except the Plaintiff, through themselves or through their subordinates or any other authority.*

e) *Costs.*

f) *Relief.*

3. Upon service of summons, the appellants contested the Suit and filed their Written Statements, respectively, while the trial Court declared the defendants/respondents No.2 to 6 *ex-parte*. According to the written statement of the appellants, the land, including the Suit land, admeasuring 161-09 acres, was acquired through Assistant Commissioner, Kandhkot to install the **WELL**. After

fulfilling all legal requirements, they obtained possession of the Suit land, which was identified as Survey No. 412, belonging to the Government as the T. O Form was not issued in the name of respondent No. 1, who also lacks ownership rights. It is also stated that the PPL Administration has already paid a compensation amount determined by the Revenue Board. Furthermore, it is noted that respondent No. 1 had previously filed Suit No. 32/2010 and 16/2013 but chose to withdraw the same. He concealed the facts of filling the above suits in the present Suit, rendering the fresh Suit not maintainable.

4. The trial Court formulated the following issues out of the divergent pleadings of the parties:-

i. *Whether the Suit of Plaintiff not maintainable under the law?*

ii. *Whether the Suit of Plaintiff is time-barred?*

iii. *Whether the Plaintiff is legal and lawful owner of suit land admeasuring 08 Acres Survey No.412 and 352 situated in Deh Pakko Haibat Taluka Kandhkot and defendant P.P.L. authorities have no right over the land?*

iv. *Whether the Defendants are liable to pay Rs.60,00,000/- to the Plaintiff as compensation of land and crop?*

v. *Whether the Defendant Mukhtiarkar Revenue, Kandhkot is liable to mutate the KHATTA of Suit land in favour of the Plaintiff?*

vi. *Whether the Defendant P.P.L. authorities are liable to remove the Well installed in the Suit land without prior permission of the owner of suit property?*

vii. *Whether the Plaintiff is entitled for the relief claimed?*

viii. *What should the decree be?*

5. Both parties examined themselves and produced relevant documents to support their respective claims. After

examining the evidence produced by the parties and hearing their submissions, the trial Court dismissed respondent No.1's Suit.

6. The judgment and decree of the trial Court were then impugned by respondent No.1 by an Appeal before the appellate Court. The appellate Court vide Order dated 10.8.2016, requiring the Assistant Commissioner/Land Acquisition Officer to provide additional evidence in order to reach a fair and appropriate conclusion. During the examination at Ex.14; the Assistant Commissioner/Land Acquisition Officer produced relevant documents related to the acquisition of land at Ex.14/A to Ex.14/F. The Mukhtiarkar (Estate) at Ex.15 was also examined, who produced A-Form issued in favour of respondent No.1 and a report at Ex.15/A and 15/B. Thereafter, through impugned judgment and decree, the judgment of the trial Court has been set-aside, and the Appeal has been allowed and decreed the Suit of respondent No.1.

7. At the outset, the learned counsel representing the appellants asserted that respondent No. 1 had initiated three separate lawsuits concerning the same property. The third lawsuit included an additional prayer for damages. In contrast, respondent No. 1 voluntarily withdrew the *first* two suits with permission to file a fresh one. He asserts that according to Order XXIII Rule 1 of the Code, the withdrawal of a lawsuit with *permission* to file a new one requires disclosure of technical defects in the original Suit that may lead to its failure; however, in the current Suit, respondent No.1 did not *identify* any such defects; therefore, fresh Suit filed by him deemed to be untenable. He contends that the Pakistan Petroleum Company Ltd, deemed a necessary party, was not named as a defendant. In contrast, its employees, who are not considered proper parties, were included without cause. He contends that respondent No. 1 did not seek any prayer of

possession, despite not being in possession. He argued that Suit was barred under Section 42 of the Specific Relief Act, 1877 ("**the Act of 1877**") as respondent No.1 failed to prove his legal character or right in the Suit land. He contends that the appellate Court's conclusions regarding the issue of limitation are inherently flawed, as the Suit in question, which had been considered time-barred, was incorrectly deemed to fall within the prescribed time limit through misinterpretation and misquotation of Section 23 of the Limitation Act of 1908 ("**the L.A., 1908**"), which has no nexus in the instant case, while Article 14 of the L.A., 1908 is attached in the instant case, which provides period of one year to challenge the official act and even if undue bonus is given to respondent No.1 by applying Article 120 of L.A., 1908, the same also provides six years for declaration of title. He argues that the entirety of the appellate Court's conclusion is founded upon additional evidence, surpassing its allocated authority and jurisdiction. Finally, he contends that the appellate Court has not appreciated the law and evidence, which resulted in gross injustice to the appellants; hence impugned judgment and decree of the appellate Court may be set aside by allowing the Appeal. In bolstering his argument, he relied upon legal precedents cited in **2007 SCMR 554, 2006 C.L.D. 91, 2006 YLR 108, 2005 MLD 657, 2002 CLC 1262, 1999 MLD 1026, PLD S.C. 123, 1990 CLC 962, 2002 YLR 2615, PLD 1995 S.C. 410, PLD 2001 S.C. 325, P.L.J. 1996 S.C. 678, 1995 C.L.C. 88, 2002 SCMR 1821, 1992 SCMR 1510, 2017 YLR 405, 1999 YLR 1610, 2017 YLR 2388, PLD 2002 S.C. 403, PLD 2007 Karachi 573, PLD 1998 Karachi 250, 2010 M.L.D. 68, PLD 2008 Karachi 80, PLD 1983 S.C. 5, A.I.R. (36 1949 Orissa 1, A.I.R. 1940 Lahore 359 Full Bench, A.I.R. 1957 ANDH. PRA 419 and A.I.R. 1959 S.C. 798.**

8. Conversely, learned counsel representing respondent No.1 contended that the suit land was granted to

respondent No. 1 for Survey No. 412, 352, and he made payment in nearly 19 instalments and the person's status changes once the instalments are paid. He contends that neither the Estate nor the appellants (PPL) have refuted the grant in favour of respondent No.1. He asserts that the appellants were granted suit land without any objections being called for as stipulated in Section 5A of the Land Acquisition Act, 1894, and without any award being passed under the aforementioned legislation. He contends that the appellants have unlawfully and coercively assumed control of the possession of the suit land from respondent No.1. He argues that any proceedings commenced without adhering to the appropriate procedural requirements are considered invalid or with no legal effect. He contends that under Order XLI Rule 27 of the Code, the appellate Court is empowered to require any document to be produced or any witness to be examined to enable it to pronounce judgment or for any other substantial cause. He maintained that the previous lawsuits, which were voluntarily withdrawn by respondent No.1 with authorization to initiate a new Suit, were granted such permission by the trial Court. Finally, he contends that the impugned judgment of the appellate Court is in accordance with the law, and instant Appeal is liable to be dismissed. He cited legal precedents reported in **1968 SCMR 214, 2007 YLR 405 and PLD 1997 Karachi 299 to support his argument.**

9. The learned Additional Advocate General representing respondents No.2 to 5 argued that respondent No.1 has the burden of proving his case, and the weaknesses of the appellants are irrelevant. He contends that official respondents No.2 to 5 were declared ex-parte vide Order dated 05.12.2014 and 31.01.2015, and Rule 98 has not been complied with for service against the Government officials. Finally, he argues that the Government did not allocate land to either party involved and that the Government has already revoked the allocation, and there are ongoing Constitutional

Petitions in relation to this matter.

10. The arguments have been heard at length, and the available record has been carefully evaluated with the able assistance of the learned counsel for the parties. To evaluate whether justice has been dispensed, it is imperative to analyze the findings recorded by the appellate Court. The counsel representing the appellants questioned that respondent No.1 had filed two suits in the past but withdrew them to subsequently file a third suit with an added claim for damages, and he has failed to identify any shortcomings in the previous two suits. In order to ascertain this aspect, it would prove beneficial to closely scrutinize the stipulations outlined in Order XXIII Rule 1 of the Code, which is articulated as follows: -

> *"**1. Withdrawal of Suit or abandonment of part of claim.—**(1) At any time after the institution of a suit the Plaintiff may, as against all or any of the defendants, withdraw his Suit or abandon part of his claim.*
>
> *(2) Whether the Court is satisfied—*
>
> *(a) that a suit must fail by reason of some formal defect, or*
>
> *(b) that there are other sufficient grounds for allowing the Plaintiff to institute a fresh suit for the subject matter of a suit or part of claim, it may, on such terms as it thinks fit, grant the plaintiff permission to withdraw from such Suit or abandon such part of a claim with liberty to institute a fresh suit in respect of the subject matter of such Suit or such part of a claim.*

11. According to the aforementioned provisions of the Code, a plaintiff seeking to withdraw his lawsuit with intent of subsequently filing a reconstituted lawsuit must demonstrate the existence of a substantive flaw within the initial lawsuit, the presence of which could lead to a subsequent failure. Nonetheless, in the present case, the available documentation

indicates that in the initial F. C Suit No.32 of 2010, filed by respondent No.1submitted the application under Order XXIII Rule 1 of the Code, requesting permission to withdraw the Suit due to certain formal defects in the plaint which need to be rectified by him to avoid protracted legal proceedings. As a result, the trial Court dismissed the Suit as withdrawn, granting permission to file a fresh suit if necessary. In the same vein, respondent No.1in the second F.C. Suit No.16 of 2013 submitted a statement wherein he requested to withdraw the Suit due to a technical error and sought permission to file a new suit specifically for seeking payment for the land and crops related to the Suit land. After examining the terms of sub-section (1) of Order XXIII Rule 1 of the Code, it can be inferred that respondent No. 1 can retract his lawsuit at any point during the legal process, whether against all or some of the defendants, without any conditions. Upon examining the content of sub-section (2) of the above Order, it is evident that if there is a request for conditional withdrawal of the lawsuit and permission to file a new suit, the withdrawal is contingent upon the Court's satisfaction and the fulfilment of specific requirements. In the case of **Haji Muhammad Boota and others vs Member (Rev.), Board of Revenue, Punjab and others (PLD 2003 Supreme Court 979),** Apex Court has illuminated the relevant provisions as under: -

> *"The principle **underlying** this provision for the **withdrawal** of the Suit or **abandonment** of the same is that the law confers upon a person no rights or benefits which he does not wish to retain. **The object is to permit the plaintiff/party to have a fair trial on merits in cases where the defects are of formal nature.** Further it is not an absolute right and is subject to certain limitations based on the principle that where third parties have acquired a right, there can be no withdrawal to their prejudice. **This demonstrates that the party can disclaim any concession or right which he does not wish to retain**. Any person can disclaim any right or benefit but adverse Order passed by a Court of competent jurisdiction could only be done away with if the same is set aside."*
>
> *[Emphasis added]*

12. Upon careful examination of the provisions outlined in Order XXIII Rule 1 of the Code, alongside considering the guiding principle of the aforementioned judgment, respondent No.1 was fully entitled to withdraw his lawsuits in question. Moreover, it was also within his right to seek permission to re-file the same Suit concerning either the same subject matter or cause of action.

13. Learned counsel representing the appellant also raised questions during arguments that the PPL, a necessary party, was not included as a defendant. In contrast, their employees, who are unnecessary parties, were included without reason. The fact that Rules 1 and 3 of Order I in the Code are enabling and permissive rules is widely accepted, allowing for other possible expansions. Joinder of several persons as co-plaintiffs or co-defendants in a suit under the Code rests upon the right of relief arising out of the same act, transaction or series; of acts or transactions involving common questions of law and facts. The overarching legal principle states that when persons possess joint entitlement or liability, they must be included as parties to the lawsuit. Failure to do so may render the Suit ineffective, unenforceable, or lacking in binding power. It is not imperative that every Plaintiff or defendant exhibits equal interest in the subject matter under litigation. Rules 1 and 3 of the Code aim to avoid a multiplicity of suits. To attain this object, the Court also possesses the power to add defendants (Rules 6, 7 or 10), irrespective of their limited interest in the subject matter of the Suit (Rule 5). So much so that a plaintiff in doubt as to the persons against whom he has or could have the right of relief, wholly or partially, been allowed the right, under Rule 7, to implead/join them as defendants "*in order that the question as to which of the defendants is liable, and to what extent, may be determined as between all "parties*". The object of the law is that even a doubt should not

be permitted to hinder an effective adjudication of a trial. Similarly, Rule 10 empowers the Court to substitute or add a party in a Suit or to strike out an improperly joined plaintiff or defendant, as the case may be. The rule therein is that "*the name of any person who ought to have been joined*, whether as plaintiff or defendant or whose presence before the Court may be necessary in order to enable the Court effectually and completely, to adjudicate upon and settle all the questions involved in the suit, be added". This is 'to obtain complete and effective decision of all the questions/issues arising from a suit and importantly to prevent separate actions on the same cause or causes between the same parties. A party who ought to have been joined is a 'necessary party' and one whose presence is necessary for adjudicating all issues and matters involved in the Suit is a "*proper party*". In the absence of a 'necessary party', a suit cannot be proceeded with, and a final and binding decree cannot be passed. To pass an effective and binding decree, all questions/issues/matters arising from the Suit will need to be adjudicated upon; for which the presence of certain other persons before the Court is essential. They have been classed as the proper parties; whose interest in or against the relief or the subject matter of the Suit may be marginal, nominal, limited or none. The presence of proper parties before a Court is also to prevent frustration or embarrassment of the Suit by containing investigations/inquiries on the same controversies in more than one trial. An objection to their joinder, misjoinder or nonjoinder must be taken at the earliest. Failing which, as per Rule 13 thereof, such objection will be deemed to have been waived. However, as per provision of Order I Rule 9 of the Code*, "No suit shall be defeated by reason of the misjoinder or nonjoinder of parties, and the Court may in every suit deal with the matter in controversy so far as regards the rights and interests of the parties actually before it"*. In the case of **Mst. Jannat Bibi v. Saras Khan (2011 SCMR 1460)**, it was held by the Apex Court that: -

> *"It is by now settled principle of law that* ***a plaintiff cannot be denied relief on the ground of mis-joinder or nonjoinder of a party****. Even otherwise, it is the duty of the Court to do justice and not to knock out the parties on technical grounds".*
>
> *[Emphasis added]*

14. The learned counsel representing the appellants has raised another question, stating that the lawsuit filed by respondent No. 1 is time-barred according to Article 120 of L. A, 1908. From the perusal of the contents of the plaint, it *evince*s that the suit land was granted to respondent No.1 in an open *Katcheri* on *a Harap* basis. He made payment in 19(nineteen) yearly instalments, besides A-Form (Ex.20-D) demonstrate that respondent No. 1 made payment of the first instalment on 30.4.1986, second and third instalment on 10.6.1987, sixteen instalments from 10.12.1988 to 10.12.2003 were paid in a lump sum on 09.02.1988. He pleaded in his plaint that after remitting the instalments to the revenue authorities, he consistently requested mutation of Khata; however, they consistently deceived him with false assurances. It was also pleaded that in April 2010, respondent No.1 sought the revenue authorities' intervention to effect a Khata mutation. However, he was denied this request because the PPL authorities had established a WELL on the Suit land, consequently rendering it ineligible for mutation. It was pleaded that upon obtaining awareness of this information, respondent No. 1 initiated contact with PPL authorities approximately a month ago and presented to them the A-Form issued in his name and additional ownership of documents pertaining to the Suit land. It was conveyed to the authorities that a WELL had been installed upon the land without obtaining the respondent's prior consent, and therefore, it should be removed. However, the WELL was not removed. Subsequently, after ten days, he approached them again for the same purpose. However, they informed him that they had installed a well on the Suit land after incurring significant expenses. According to the regulations of the PPL authorities, they promised to offer him employment and will compensate

him for the land within a week. However, despite all efforts, respondent No.1 ultimately resorted to initiating legal proceedings by filing the Suit on 05.4.2014. Needless to add, Section 23 of L.A., 1908, provides the remedy to a person whose case involved continuous breach. This section provides a fresh time limit for every instance of the breach. The exact wording of the section is as follows: -

> "***23. Continuing breaches and wrongs****. In the case of a continuing breach of contract and in the case of a continuing wrong independent of contract, a fresh period of limitation begins to run at every moment of the time during which the breach or the wrong, as the case may be, continues."*

15. It is quite clear from the plain reading of Section 23 of the Limitation Act 1908 that in the case of a continuing breach of a contract and case of an ongoing wrong independent of the contract, a fresh period of limitation begins to run at every moment of the time during which the breach or the wrong, as the case may be, continues. This legal provision similarly applies to the current issue, and the appellate Court judiciously assessed it in its verdict in the Case of **Wali and 10 others v. Akbar and 5 others (1995 SCMR 284)**; it was held by the Apex Court of Pakistan that:

> *"The right to sue accrues when the right in respect of which the declaration is sought is denied or challenged by the Defendants. The time starts running only when the rights are actually interfered with. In such cases, a fresh cause of action would arise from the date of the last attack on the Plaintiffs' right or denial thereof. Where the Plaintiff is in possession, more particularly as a co-sharer in the joint Khata, he is not bound to sue on every denial of his right. He can file a declaratory suit at his option, because every denial or invasion of his right will furnish him a fresh cause of action".*In the case of ***The Fauji Foundation Charitable Trust through Major (Retd.) Ikram-ul-Haq v. Federal Land Commission through Chairman and 7 others (2020 YLR 2188)***, it was held by a division bench of this Court that: *"There is apparently no purpose behind obtaining permission for filing fresh petition as* ***for any fresh cause no permission was required*** *and the "****subject cause****" i.e.*

> *resumption of land was being dealt with when parties negotiated to resolve it by way of 30 years lease and which cause deemed to have been consumed. Under Order XXIII, Rule 1, C.P.C., a litigant is only allowed to withdraw a lis and to file it again if the defects in the petition are not curable and* ***so far as fresh cause is concerned, no permission was required****".*
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> *[Emphasis added]*

16. The primary matter of concern for discussion pertains to the legal status of respondent No.1 as a lawful grantee and his entitlement to compensation as awarded by the appellate Court. The available evidence indicates that the suit land was granted to respondent No.1 under the Land Grant Policy 1972. The A-Form, presented as Exhibit 20-D, confirms that this grant was made during an open *Katcheri* session. Additionally, the A-Form reveals that respondent No.1 fulfilled his financial obligations by making a total of nineteen instalments to the Government, as evidenced by receipts submitted during his evidence. However, it is a matter of record that the Suit land, along with adjacent land, had been granted to the appellants/PPL before the issuance of the T.O Form/transfer of ownership right in favour of respondent No.1 despite receiving instalment from him in lieu of the Suit land. This granting of land was confirmed through a Notification dated 28.9.1988 under Section 4 of the Land Acquisition Act, 1894 **("the Act of 1894")**, which was issued by the Collector/Deputy Commission, Jacobabad, in favour of the appellants/PPL. Upon examination of the aforementioned Notification, it becomes evident that the land, measuring a total area of 22-07 Acres, including the Suit land, was acquired by the appellants/PPL to utilize it for constructing a WELL, thereby serving a public objective. It is irrefutable that the Government possesses the legal power to procure land under the Act of 1894; however, this authority should be contingent upon the completion of specific legal and codal procedures. Accordingly, the legislation states that if the land is required for public use, a notification must be published in

the official Gazette, as stipulated by Section 4 of the Act 1894, constituting an obligatory prerequisite. As per Section 5 of the Act of 1894, where the land is required for a public purpose, a notification to that effect shall be published in the official Gazette, stating the district or other territorial division in which the land is situated. It has also been provided in subsection (2) of section 5 that the Notification under subsection (1) shall be issued by one year from the publication date of the Notification. It has further been provided under subsection (3) of section 5 that if a notification is not issued within the specified time, the acquisition proceedings shall be deemed to have ended. Section 5A of the Act of 1894 provides that any person interested in any land which has been notified under Section 5 as being needed for a public purpose or a Company may, within (30) thirty days after the issuance of the Notification, object to the acquisition of the land or any land in the locality, as the case may be. Section 6 of the said Act provides that if any particular land is needed for public purposes, a declaration shall be made to that effect under the signature of the Commissioner. Subsection (1-A) of section 6 provides that the said declaration shall be made within six months of the publication of the Notification under section 5 of the Act. If the declaration is not issued within stipulated period, the acquisition proceedings shall be deemed to have ended. Subsection (2) of Section 6 provides that the declaration shall be published in the official Gazette and shall state the district or other territorial division in which the land is situated. In the present case, the relevant provisions relating to the granting of land to the appellants/PPL have not been adhered to by the Government.

17. The Government or the appellants/PPL has not denied the land grant in favour of respondent No. 1. Therefore, the appellate Court's findings can be considered substantiated in this respect. There exists a question as to whether respondent No.1 is eligible for compensation under

the provisions of the Land Grant Policy of 1972. For expediency, the Notification dated 12.01.1980, which pertains to the amendment made within the Land Grant Policy of 20.11.1972, is being reproduced as follows: -

GOVERNMENT OF SINDH
LAND UTILIZATION DEPARTMENT,
NOTIFICATION

Hyderabad dated 12-1-1980

No.KB-II/6-48/78/Policy/138- In exercise of the powers conferred by Sub-Section (2) of Section 10 of the Colonization of Government Lands Act-1912, the Government of Sindh are pleased to make the following amendment in the statement of conditions published with the Government Sindh, Land Utilization Department Notification No.KB-I/1/30/72/7179/7784, dated 20th November 1972.

A M E N D M E N T

After condition 23, the following new condition shall be added: -

"24(1) If the land or any portion thereof is required for any public purpose, the grantee shall on demand by the Collector surrender the whole or so much of the land as may be required.

(2). If the land is surrendered under Sub-rule (1), the **grantee shall be entitled** to the refund of the purchase price of the land, if any, paid by him and such additional sum as may be determined by the Collector in accordance with the general principles application to the acquisition of land for public purpose, including any sum for the standing crops and structure, if any, on the land, and the said sums shall be recovered from the acquiring agency and paid to the grantee.

Sd/-
(GHULAM QADIR KHAN)
SECRETARY TO GOVERNMENT OF SINDH,
LAND UTILIZATION DEPARTMENT.

18. The above condition, No.24, unequivocally establishes the entitlement of respondent No. 1 to receive compensation in the event of land acquisition for public purposes. Notably, the Suit land has undeniably been

granted to the appellants/PPL for the installation of a WELL, which is inherently a public purpose.

19. Nevertheless, the trial Court failed to appreciate the legal and factual aspects of the case and dismissed the Suit of respondent No.1. In contrast, the appellate Court, after discussing the facts as well as evidence of the parties, including additional evidence, through a well-reasoned judgment has rightly decreed the Suit of respondent No.1 to the extent that respondent No.1 is declared as lawful grantee in respect of the Suit land and is entitled for compensation and has committed no illegality. The present legal doctrine firmly establishes that when conflicting verdicts arise, decisions made by the appellate Court should be accorded greater deference and esteem unless it can be demonstrated from the available documentation that such determinations lack substantiation from evidentiary support. Now, I would like to direct my focus towards the finer details of the entitlement to submit a Second Appeal as outlined in Section 100 of the Code, which can be set into motion only when the decision is contrary to law; failure to determine some material issue of law, and substantial error or defect in the procedure provided by the Code or law. In the case of **Madan Gopal vs Maran Bepari (PLD 1969 SC 617)**, the Apex Court has held that if the finding of fact reached by the first Appellate Court is at variance with that of Trial Court, such a finding by the lower Appellate Court will be immune from interference in second Appeal only if it is found to be substantiated by evidence on the record and is supported by logical reasoning, duly taking note of the reasons adduced by the first Appellate Court, in another case reported as **Amjad Ikram v. Mst. Asiya Kausar (2015 SCMR 1)**, the

Apex Court held that in case of inconsistency between the trial Court and the Appellate Court, the findings of the latter must be given preference in the absence of any cogent reason to the contrary.

20. For the foregoing reasons, I am of the view that the Appellate Court was fully justified in setting aside the judgment of the trial Court by decreeing the Suit of respondent No.1 as stated above, and there does not appear to be any justification to interfere with such finding of the appellate Court, nor a case of any exception is made out; hence, this Second Appeal does not merit any consideration and is accordingly **dismissed**. Parties are left to bear their costs.

J U D G E