

# THE HIGH COURT OF SINDH, KARACHI

## **Suit No. 963 of 2018**

[M/s. Ruknuddin (Pvt.) Ltd. versus Province of Sindh & others]

Plaintiff : M/s. Ruknuddin (Pvt.) Ltd. through  
Mr. Zohaib Sarki, Advocate.

Defendants 1, 2 & 5-9(a) : Nemo.

Defendant 3 : Karachi Water & Sewerage Board  
through Mr. Waleed Khanzada,  
Advocate.

Defendant 4 : Project Director of Project K-4 through  
Syed Ali Ahmed Zaidi, Advocate  
along with Mr. Faisal Hussain Malik,  
Advocate.

Date of hearing : 11-02-2025

Date of decision : 14-02-2025

## **ORDER**

**Adnan Iqbal Chaudhry J.** - The Plaintiff, a construction company, owns private land comprising of various survey numbers in Deh Shah Mureed, Gadap Town, Karachi, admeasuring 275 acres where it had announced a housing society in the name and style of 'Green Valley'. Apparently, in 2015, part of the Plaintiff's land was marked by the Karachi Water & Sewerage Board (Defendant No.3) in the route plan for the laying of the K-IV Project, a bulk water supply scheme for Karachi. The Plaintiff received notice dated 09.04.2018 under section 9 of the Land Acquisition Act, 1894 [LAA], issued by the Assistant Commissioner Shah Mureed, District Malir, Karachi as Land Acquisition Officer (Defendant No.9), calling upon the Plaintiff to state the nature of its interest in, and claim for compensation for about 110 acres in Deh Shah Mureed [**subject land**] that was to be acquired for the public purpose of the K-IV Project. By letter dated 24-04-2018 the Plaintiff objected to the acquisition by submitting that it had already allotted the subject land to third-party allottees.

2. On 04-05-2018, the Plaintiff filed suit *inter alia* for declaration that notice dated 09.04.2018 under section 9 of the LAA was void **[impugned notice]**. On CMA No. 7171/2018 by the Plaintiff, the Court passed an interim order directing the Defendants to maintain *status quo*. The Nazir of this Court was also appointed Commissioner to inspect the subject land. His report enclosed a declaration dated 26.01.2015 that had been made by the Commissioner under sections 6 and 17(4) of the LAA to affirm that the subject land was required for public purpose and to exclude the provisions of section 5 and 5-A of the LAA for the purposes of acquiring the subject land.

3. A few weeks ago, on 17-01-2025, the Project Director K-IV (Defendant No.4) filed a statement to place on record an award that had been passed by the Land Acquisition Officer in respect of the subject land under section 11 of the LAA as far back as 30-04-2018. With that revelation, the Plaintiff's counsel was confronted on 25-01-2025 with the maintainability of the suit.

4. Learned counsel for the Plaintiff submitted that the award under section 11 of the LAA did not exist at the time of the suit; that it has been back-dated in that, had it been passed in 2018, the Defendants would not have waited for 6 years to bring it on record; that the date of the award is even before the date of hearing fixed by the impugned notice; that no notice under section 4 of the LAA was ever issued; that land allotted by the Plaintiff to third-party allottees could not be acquired; that the declaration dated 26.01.2015 issued under section 6 of the LAA had proposed acquisition of only 23 acres out of survey Nos. 137, 138 and 140, whereas the impugned notice under section 9 of the LAA was issued for 110 acres for all survey numbers held by the Plaintiff which demonstrates *malafides* of the Defendants; that since the Plaintiff questions the very foundation of the acquisition, the suit is maintainable notwithstanding the award.

5. On the other hand, learned counsel for the Defendants 3 and 4 submitted that the notification under section 4 of the LAA had been issued in 2014 which fact is recited in the award; that admittedly, on 24-04-2018 the Plaintiff had filed objections to the notice under section 9 of the LAA and was afforded a hearing by the Land Acquisition Officer, therefore it was aware of the award that followed on 30-04-2018 but suppressed the same in filing suit; that against the award the Plaintiff did not avail remedies provided by the LAA and therefore the suit was not maintainable; and that the *status quo* order operating in the suit has delayed a crucial public project and increased its cost.

6. Heard learned counsel and perused the record.

7. I advert first to the Plaintiff's argument that the acquisition proceedings and the award were *malafide*. The recital of the impugned notice dated 09-04-2018 issued under section 9 of the LAA had fixed the date of hearing as '24.04.2018'. The date mentioned further below in the same notice as '24.08.2018' was clearly a typographical error. Admittedly, the Plaintiff had filed objections and appeared before the Land Acquisition Officer on 24-04-2018. It is therefore apparent that the award followed soon thereafter and the argument that the award was back-dated to 30-04-2018 does not appear to be plausible. Furthermore, the award lists all prior notifications issued under the LAA towards the acquisition of the subject land starting with the notification under section 4 of the LAA. No reason has been advanced to doubt that such notice was not issued.

8. Learned counsel for the Plaintiff had compared the declaration issued under section 6 of the LAA with the impugned notice under section 9 of the LAA to submit that the area of the Plaintiff's land sought to be acquired had been increased from 23 acres to 100 acres by way of *malafides*. However, that seems to be a misconception. The award records that some of the Plaintiff's survey numbers had been amalgamated in the record of rights with other survey numbers. As a

result the Plaintiff's land sought to be acquired included survey Nos. 108, 111 to 115, 118, 129, 130, 131, 135 and 136 and not only survey Nos. 137, 138 and 140 as contended by the Plaintiff. All those survey numbers are reflected in the declaration dated 26.01.2015 issued under section 6 of the LAA. In other words, the area of the Plaintiff's land sought to be acquired was always 110 acres.

9. Learned counsel for the Plaintiff had then submitted that the Plaintiff had already allotted the subject land to third-party allottees who were not issued any notice under the LAA. But then, learned counsel acknowledged that the Plaintiff has yet to transfer title to those allottees and the record of rights still reflects the Plaintiff as the land owner. Therefore, *prima facie*, the acquisition proceedings do not appear to be with *malafides*.

10. Be that as it may, the fact of the matter remains that at the time the suit was filed on 04.05.2018 to impugn the notice dated 09.04.2018 issued under section 9 of the LAA, an award under section 11 of the LAA had already been passed on 30.04.2018 which fact was not brought before the Court until now.

11. The LAA provides special remedies against an award issued under section 11 thereof starting with an application to the Land Acquisition Officer to make a Reference against the award to the Civil Court under section 18 of the LAA. The award then passed by the Civil Court is deemed to be a decree by virtue of section 26 of the LAA which can be appealed to the High Court under section 54 of the LAA. Admittedly, the Plaintiff did not challenge the award by way of section 18 of the LAA.

12. It was held by this Bench in *Executive Engineer, Highways Division Moro v. Nazeer Ahmed* (2012 CLC 915) that given the special mechanism and remedies prescribed in the LAA, a civil suit is generally not maintainable to challenge acquisition proceedings. It was held:

“12. .... From the award it appears that while the said land was occupied by the Government in the year 1986, the notice inviting claims for compensation pursuant to section 9 of the Land Acquisition Act was delayed until 1994, after the suit had been filed in 1993. However, even after the suit, when compensation proceedings under the Land Acquisition Act were disclosed in the written statement of the Highways Division, the Plaintiffs did not file a claim for compensation before the Collector pursuant to section 9 of the Land Acquisition Act, nor did they move under section 18 thereof for making a Reference against the award to the court designated for such purpose. The acquisition proceedings remained unchallenged. Therefore, the suit of the Plaintiffs cannot be said to be one envisaged under section 52 of the Land Acquisition Act to question anything done in pursuance of the said Act.

13. In the circumstances of the case, given the failure of the Plaintiffs to invoke the special jurisdiction of the designated court under section 18 of the Land Acquisition Act, 1894, there was an implied bar, as contemplated under section 9 CPC, to the general / plenary jurisdiction of the civil court to decide the Plaintiffs’ suit for compensation. Such implied bar could only be circumvented if the Plaintiffs demonstrated that the case attracted one of the established exceptions to the ouster of the plenary jurisdiction of a civil court<sup>1</sup>, which, as already noted, was not the case set-up by the Plaintiffs.”

The aforesaid view is fortified by the case of *Land Acquisition Collector v. Mian Khan* (PLD 2007 SC 620). There, the Supreme Court had cited with approval the cases of *Begum Jan v. Abdul Wahab* (PLD 1988 SC (AJ&K) 142) and *Ziauddin v. Assitant Commissioner-cum-Collector* (1996 MLD 731) which had held that all grounds for challenging an award can be taken before the Court to which a Reference lies under section 18 of the LAA and not by way of a civil suit. In the instant suit also, the Plaintiff has not been able to draw an exception to the ouster of a civil suit to challenge acquisition proceedings under the LAA. All grounds urged here could have been taken under section 18 of the LAA.

13. There is, however, some force in the Plaintiff’s submission that it was not made aware of the award dated 30.04.2018 and an application under section 18 of the LAA would now be time-barred. Though the suit was filed in 2018, none of the Defendants filed written statement for the longest time to disclose the award. The

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<sup>1</sup> These exceptions are reiterated in *Searle IV Solution (Pot.) Ltd. v. Federation of Pakistan* (2018 SCMR 1444).

KW&SB eventually filed written statement on 07-11-2024 but did not disclose the award until such fact was brought on the record by the Defendant No.4 on 17-01-2025. Therefore, I am inclined to observe that the Plaintiff may still approach the Collector for making a Reference against the award under section 18 of the LAA by invoking section 14 of the Limitation Act, 1908 to exclude the period spent before this Court, which aspect shall be considered by the Collector by a speaking order.

14. With the observation above, the plaint is rejected under Order VII Rule 11 CPC as being impliedly barred by the provisions of the LAA.

**JUDGE**

Karachi  
Dated: 14-02-2025

\*PA/SADAM