

Form No: HCJD /A38
JUDGMENT SHEET

IN THE LAHORE HIGH COURT, LAHORE
JUDICIAL DEPARTMENT

JUDGMENT

Regular First Appeal No.10887 of 2021

Iqbal Hussain etc.
Versus
Govt. of the Punjab etc.

Date of Hearing: **19.03.2024**

Appellants by: Raja Abdul Rehman, Advocate.
Respondents by: Mr. Tahrim Iqbal Butt, Assistant Advocate General, Govt. of the Punjab.

MASUD ABID NAQVI, J. Brief facts necessary for the adjudication of this appeal are that the respondents No.1 & 2 acquired a land measuring 28 Kanal 2 Marla owned by the appellants for construction of second new Ravi Bridge commonly known as Saggian Ravi Bridge, Lahore by issuing notifications under Land Acquisition Act, 1984 in years 1993-1994. Thereafter, Award was announced by assessing the value of land of appellants which was/is situated in the river-bed @ Rs.1062 per Marla. Reference Petition was instituted by the appellants and keeping in view the pleadings of the parties, the issues were framed by learned referee court and thereafter parties produced their respective oral & documentary evidence in support of their respective contentions and learned referee court vide judgment

dated 18.12.2020 **dismissed the reference petition** and upheld the award dated 19.08.2004. Feeling aggrieved by the judgment dated 18.12.2020, the appellants filed instant regular first appeal.

2. It has been contended on behalf of the appellants that the acquired land has been under-valued by the respondents and the price of the adjacent lands is much more than the compensation assessed. The value of the acquired land is not less than Rs.65,000/- per marla. In support of their contentions, the appellants produced Sameer Ashfaq/PW-1, Muhammad Abu Bakar Malik/PW-2 and Ch. Muhammad Yaqoob/PW-3 and exhibited copy of inheritance mutation No.6406/Ex.P-2, attested copy of Fard Malkiat/Ex.P-3 & copies of RFA & Order as Ex.P-4 & Ex.P-5. Conversely, it has been argued on behalf of the respondents by the Learned Assistant Advocate General that before announcing the award, proper procedure was followed and correctly assessed the value of appellants' acquired land by the authorities which is admittedly situated in river bed and was not under the use & even same was not actually occupied by the appellants and none of other persons challenged the acquisition proceedings whose land(s) were also acquired. In support of their contentions, the respondents produced Land Collector Officer/DW-1.

3. We have heard the arguments of learned counsels for the parties and minutely gone through the record as well as the judgment passed by the learned referee court.

4. Onus to prove issue No. 2 & 3 lies on the appellants and in order to prove that the assessment of compensation of acquired land is grossly inadequate by ignoring the potential value of land and the appellants are entitled for enhanced compensation, the appellants produced Sameer Ashfaq/PW-1, Muhammad Abu Bakar Malik/PW-2 and Ch. Muhammad Yaqoob/PW-3. While appearing on behalf of appellants, the PWs admitted in their respective cross-examination that land of the appellants is river land and adjacent land(s) were also acquired from different persons by the authority but intentionally withheld the information about initiation of any litigation by those persons against acquisition of their land(s) and simply denied any knowledge about the litigation. Appellants were under legal obligation to prove their claim of inadequate assessment of acquired land and potential value of land through corroborative and unimpeachable oral and documentary evidence but neither of them deposed in their examination in chief any contemporary sale transaction of adjacent land nor exhibited any documentary evidence i.e. sale deed or sale mutation. There is no documentary proof/revenue record about the cultivation of acquired land or

value of adjacent land(s) situated in river-bed pertaining to years 1993-1994. Hence, the appellants miserably failed to prove/substantiate their claim and mere claim of owners/appellant without supportive evidence would be inconsequential. In a judgment reported as 'Jind wadda & others v. General Manager NHA (LM & IS), Islamabad and others' (2023 SCMR 1005) the Hon'ble Supreme Court of Pakistan observed that: -

"The appellants have failed to produce any independent, trustworthy and credible evidence for their claim qua enhancement of the compensation. The burden of proof in such cases is 'incumbent' upon land-owners [see Land Acquisition Collector v. Muhammad Sultan (PLD 2014 SC 696)].

5. All the PWs had no personal knowledge about the proceedings of acquisition of land and just deposed hearsay evidence or expressed their personal opinion which has minimal value until and unless same has been corroborated with other documentary evidence. Under Article 71 of Qanun-e-Shahadat Order, 1984, it is basic requirement that the oral evidence must, in all cases whatsoever, be direct. The use of word "must" in the Article imposes a duty on the Court to exclude all Oral evidence which is not "direct" and hearsay evidence is not admissible subject to certain exceptions provided in Articles 46 & 64 Qanun-e-Shahadat Order, 1984. Reliance is placed on judgment reported as "Abdul Qayyum v. Muhammad Sadiq" (2007 SCMR 957).

6. There is no cavil to the proposition that if a person asserts his legal rights or liability depending upon the existence of certain facts, he has to prove those facts and to discharge the burden of proof under Article 117 of Qanun-e-Shahadat Order, 1984. In view of the meaning of “onus probandi”, if no evidence is produced by a person on whom the burden lies then such issue must be decided against him. The appellants were legally bound to produce tangible evidence in support of their plea of enhancement and they not only failed to discharge their burden but the appellants also badly failed to substantiate their point of view through any authentic, oral as well as documentary evidence and the Honourable Supreme Court of Pakistan in a judgment reported as “Hyderabad Development through M.D Civic center Hyderabad Vs Abdul Majeed and others” (PLD 2002 SC 84) held that: -

“However, during hearing of Reference under section 18 of the Act, judicial proceedings are conducted, therefore, party interested in enhancement of the compensation owes a duty to discharge the burden by producing convincing evidence.” (Land Acquisition Collector v. Muhammad Sultan (PLD 2014 SC 696).

7. From the above detailed discussion, it is quite obvious that learned referee court has thoroughly appreciated the material evidence placed on record while deciding the reference, keeping in view the price of adjacent land, market value of the land

acquired, its future potential value and prospective use of the land. Neither any misreading or non-reading of evidence by learned referee court has been pointed out, therefore, no interference is needed to be made in the impugned reference, which is in accordance with law, accordingly, this appeal is **dismissed** being devoid of any merit.

(SHAHID BILAL HASSAN)
Judge

(MASUD ABID NAQVI)
Judge

Approved for reporting.

Judge

Judge

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Form No: HCJD/C-121
ORDER SHEET

IN THE LAHORE HIGH COURT, LAHORE

JUDICIAL DEPARTMENT

Regular First Appeal No.10887 of 2021

Iqbal Hussain etc.
Versus
Govt. of the Punjab etc.

Sr. No. Of Order/ Proceeding	Date of Order	Order with signatures of Judge, and that of parties of counsel, where necessary.
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19.03.2024

Raja Abdul Rehman, Advocate for applicants/appellants.
Mr. Tahrim Iqbal Butt, Assistant Advocate General, Govt. of the Punjab.

C.M.No.1-C-2022

The appellants/applicants have filed instant application for production of additional evidence.

2. Order 41 Rule 27 of CPC deals with production of additional evidence in appellate court which is reproduced hereunder for better understanding:

“Rule 27. Production of additional evidence in Appellate Court.---(1) The parties to an appeal shall not be entitled to produce additional evidence, whether oral or documentary in the Appellate Court. But if--

(a) the Court from whose decree the appeal is preferred has refused to admit evidence which out to have been admitted, or

(b) the Appellate Court requires any document to be produced or any witness to be examined to enable it to pronounce

judgment, or for any other substantial cause, the Appellate Court may allow such evidence or document to be produced, or witness to be examined.

(2) Wherever additional evidence is allowed to be produced by an Appellate Court, the Court shall record the reason for its admission.”

From the perusal of above provisions of law it is quite clear that additional evidence can be allowed only where the trial court has improperly refused to admit the evidence which ought to have been admitted or the appellate court requires such document or witness and cannot pronounce judgment without such additional evidence or the appellate court requires such evidence for any other substantial cause. While discussing the power under Order 41 Rule 27 of CPC, the August Supreme Court of Pakistan in a case reported as Rana Abdul Aleem Khan Vs Idara National Industrial Co-operative Finance Corporation defunct through Chairman Punjab Co-operative Board for Liquidation, Lahore and another (2016 SCMR 2067) held as under:

“the power under the provisions of Order XLI, Rule 27 of the C.P.C. for allowing additional evidence available is not unfettered nor does the Appellate Court

has the discretion to allow additional evidence per its own caprice, rather it (discretion) is structured/limited by the factors enunciated in the said provision of law i.e. where the court from whose decree the appeal has been preferred has refused to admit any evidence which is ought to have admit.”

3. The suit was filed on 23.07.2005 and the same was decided on 18.12.2020. The applicants/appellants have filed instant application seeking permission to place on file the notification of 2004 as additional evidence. The request made by the applicants is without disclosing any valid reasons or sufficient cause for seeking production of additional evidence at this stage. The case of the applicants/appellants does not fall within the mischief of Rule 27 ibid, hence, this application is dismissed. This order be made part of the judgment of even date passed by this Court in main R.F.A.No.10887 of 2021.

(SHAHID BILAL HASSAN)
Judge

(MASUD ABID NAQVI)
Judge