

**IN THE SUPREME COURT OF PAKISTAN**

(Appellate Jurisdiction)

**Present:**

Mr. Justice Nasir-ul-Mulk, CJ

Mr. Justice Gulzar Ahmed

Mr. Justice Mushir Alam

**C.As.No.1011 & 2786 of 2006**

**AND**

**Civil Petition No.538 of 2006**

[On appeal against a common Judgment dated 31.05.2006 passed by the Lahore High Court, Multan Bench, in ICA No.229 of 1999 & RFA No.328 of 2001]

Mst. Nasreen Zahra

(in CA.1011)

Government of the Punjab through Secretary  
Communication & Works Department, Lahore

(in CA.2786)

***Appellant(s)***

Mst. Nasreen Zahra

(in CP.538)

***Petitioner(s)***

**VERSUS**

Multan Development Authority Multan & another

(in CA.1011)

Mst. Nasreen Zahra wife of Javed Haider Gardezi

(in CA.2786)

Assistant Commissioner (C) Land Acquisition  
Collector City Sub Division Multan & 6 others

(in CP.538)

***Respondent(s)***

**For the Appellant(s)**

[in CA.1011 & CP.538]

: Syed Najam-ul-Hassan Kazmi, Sr. ASC  
Mr. Muhammad Ali Shah Gillani, ASC

[in CA.2786]

: Mr. Razzaq A. Mirza, Addl.A.G.Punjab  
(also on Court's Notice in CP.538 & CA.1011)

**For the Respondent(s)**

[R.1 in CA.1011]

: Mr. Anwar Kamal, Sr. ASC

[R.2 in CA.1011]

: Ex-parte

[R.1 in CA.2786]

: Syed Najam-ul-Hassan Kazmi, Sr. ASC  
Mr. Muhammad Ali Shah Gillani, ASC

[R.2 in CA.2786]

: Mr. Anwar Kamal, Sr. ASC

[R.7 in CP.538]

: -do-

**Date of Hearing**

: 29.01.2015

## JUDGMENT

**GULZAR AHMED, J.**— Civil Appeal No.1011 of 2006 and Civil Petition No.538 of 2006 have been filed by Mst. Nasreen Zahra while Civil Appeal No.2786 of 2006 is filed by Government of the Punjab through Secretary Communication & Works Department, Lahore. There is a common impugned judgment dated 31.05.2006 of a learned Division Bench of the Lahore High Court, Multan Bench.

2. Brief facts of the matter are that a Notification dated 07.05.1976 was issued under Section 4 of the Land Acquisition Act, 1894 (**the Act**) by the Collector/Deputy Commissioner, Multan District, Multan, which was published on 10.12.1976 notifying the acquiring of certain lands by Government of the Punjab at the public expense for the public interest i.e. construction of Multan Bye-Pass. A Corrigendum Notification dated 18.03.1977 was issued whereby the land of Mst. Nasreen Zahra was included in the project of construction of Multan Bye-Pass. Another Notification dated 21.01.1980 was issued under Section 4(1) of the Punjab Acquisition of Land (Housing) Act, 1973 read with Chapter VI of the Punjab Development of Cities Act, 1976 by the Deputy Commissioner, Multan, notifying that the land specified in the Notification is needed by the Multan Development Authority (**MDA**) at its expense for the construction of Multan Bye-Pass Phase-II, which shall be deemed to be a Housing Scheme under Section 25 of the Punjab Development of Cities Act, 1976. Mst. Nasreen Zahra challenged this Notification dated 21.01.1980 by filing Writ Petition No.7932 of 1980, which was allowed vide judgment dated 23.12.1990. Against this judgment, MDA filed ICA No.12 of 1991 which through judgment dated 18.03.1992 was dismissed. The judgment of ICA was challenged by the MDA before this Court in Civil

Appeal No.492 of 1993, which was dismissed vide judgment dated 26.05.1998 with direction to the Land Acquisition Collector, Multan (**LAC**) to deliver the Award allowing compensation under the Land Acquisition Act, 1894 and also determine the Authority who will pay the compensation. The Award dated 26.08.1998 was announced and Mst. Nasreen Zahra was awarded compensation of her land @ Rs.20,000/- per marla with 15% compulsory acquisition charges and the acquiring agency namely MDA was directed to deposit the amount of compensation. The Award was reviewed by the LAC through his further order dated 04.10.1998 whereby the rate of acquisition was reduced from Rs.20,000/- per marla to that of Rs.10,000/- per marla. Mst. Nasreen Zahra, being aggrieved, challenged the order of review dated 04.10.1998 by filing Writ Petition No.11480 of 1998 while the MDA also filed Writ Petition No.1439 of 1999 challenging the Award dated 26.08.1998 and its review dated 04.10.1998. Both these Writ Petitions were decided vide judgment dated 25.10.1999 whereby the order of review dated 04.10.1998 was declared illegal while the Award dated 26.08.1998 was upheld. Writ Petition of Mst. Nasreen Zahra was thus allowed and that of the MDA was dismissed. MDA filed ICA No.229 of 1999 which was dismissed vide judgment dated 08.10.2001, against which the MDA filed C.P.No.3857-L of 2001 in this Court. In the meanwhile Mst. Nasreen Zahra had filed Reference under Section 18 of the Act with the Referee Court for enhancement of compensation, which was dismissed vide judgment dated 30.07.2001. Against this judgment of Referee Court, Mst. Nasreen Zahra filed RFA No.328 of 2001. The MDA also filed RFA No.366 of 2001 against this judgment. The C.P.No.3857-L of 2001 was disposed of by this Court vide order dated 07.07.2004 by consent of the parties' counsel

whereby the ICA No.229 of 1999 was remanded to the Lahore High Court, Multan Bench for decision along with the two RFAs. By the impugned judgment dated 31.05.2006 the learned Division Bench of the Lahore High Court, Multan Bench partly allowed ICA No.229 of 1999 to the extent that it is the Punjab Government and not the MDA who has to pay the compensation. The RFA No.366 of 2001 filed by the MDA was found to be not maintainable and dismissed while the RFA No.328 of 2001 filed by Mst. Nasreen Zahra was not pressed for enhancement of compensation instead only the claim under Section 34 of the Act was pressed, which the Court did not allow and therefore dismissed the said RFA. Mst. Nasreen Zahra filed C.A.No.1011 of 2006 and C.P.No.538 of 2006 while Government of the Punjab has filed C.A.No.2786 of 2006 in this Court.

3. Syed Najam-ul-Hassan Kazmi, learned Senior ASC appearing for the appellant/petitioner Mst. Nasreen Zahra has taken us through the record of the case and has contended that Mst. Nasreen Zahra is entitled for payment of interest in that no compensation was deposited in Court nor was it paid to her. He contended that under Section 31 of the Act, it was the responsibility of the Collector to tender the payment of compensation awarded by him to Mst. Nasreen Zahra and that at no time she has refused to receive the compensation. The learned Senior ASC contended that where such default is made, the Collector becomes liable to pay interest in terms of Section 34 of the Act. In support of his arguments, the learned Senior ASC has relied upon the case of Hissar Improvement Trust V. Smt. Rukmani Devi & another [AIR 1990 SC 2033]; Mangat Ram Tanwar & another V. Union of India [AIR 1991 SC 1080]; and Imamuddin Shah through Attorney V. Deputy District Officer

(Revenue) and Land Acquisition Collector Sanghar & another [2005 MLD 69 Karachi].

4. Mr. Razzaq A. Mirza, learned Additional Advocate General, Punjab, appearing for Government of the Punjab has contended that there were in all 108 effected parties whose land was acquired by the MDA out of whom 107 effected parties have received compensation without any protest. Only Mst. Nasreen Zahra did not receive the compensation. He further contended that Government of the Punjab was not a party in the proceedings before this Court; therefore, it was not heard and that the Reference was filed against the MDA and it was the MDA who filed appeal against the judgment given in the Reference. He further contended that the first Award given by the LAC was @ Rs.20,000/- per acre which comes to Rs.153/- per marla while in the present case the Award is given @ Rs.20,000/- per marla, which is challenged by Government of the Punjab. He contended that though the project for which the land was acquired was funded by the Federal Government but the Federal Government has assigned the project to the Provincial Government of the Punjab and MDA was its executing agency. He contended that Government of the Punjab had no opportunity to contest the Award announced in favour of Mst. Nasreen Zahra.

5. We will first of all deal with the contentions of the learned Additional Advocate General, Punjab because they are in the nature of preliminary objections. The learned Additional Advocate General has raised the objection that Government of the Punjab was not heard in the determination of compensation of the land acquired from Mst. Nasreen Zahra and that its challenge to the award of compensation be accepted now by this Court. We may note that Mst. Nasreen Zahra

had filed her claim for awarding compensation before the LAC through her petition dated 30.06.1998 in which respondent No.1 was the Province of Punjab. Yet again we note that in Writ Petition No.7932 of 1980 filed by Mst. Nasreen Zahra, Government of the Punjab was a party where it was represented by its Additional Advocate General, as is apparent from the judgment dated 23.12.1990. Against this judgement, MDA filed C.A.No.492 of 1993 in this Court in which too Government of the Punjab was a party but as it appears it did not make appearance in the said Civil Appeal. In the second round of litigation before this Court, the MDA also filed C.P.No.3857-L of 2001, in which Government of the Punjab was a party. In the RFA No.328 of 2001 filed by Mst. Nasreen Zahra, Government of the Punjab was not impleaded as a party but in the RFA No.366 of 2001 filed by the MDA, Government of the Punjab was very much a party. At the time of hearing of the two RFAs so also ICA No.229 of 1999, Government of the Punjab was very much represented through its learned Assistant Advocate General namely Mr. Muhammad Qasim Khan and this is reflected from the impugned judgment. In the face of so many proceedings in which Government of the Punjab was a party, it is hard to imagine as to how Government of the Punjab could be considered to have remained unheard in the matter of determination of the compensation to Mst. Nasreen Zahra. In the three proceedings in which the impugned judgment was announced by the High Court, at least in two of them Government of the Punjab was directly a party, and those proceedings contained all material facts relating to acquiring of land from Mst. Nasreen Zahra for construction of Multan Bye-Pass and in the determination of compensation and giving of Award by the Collector. Government of the Punjab had an opportunity of raising this

objection that it has not been heard in the proceedings of determination of compensation but no such objection seems to have been raised by Government of the Punjab before the High Court. In any case, it became aware of the fact of acquiring of land of Mst. Nasreen Zahra when initial Writ Petition No.7932 of 1980 was filed by her and the culmination of such proceedings into an Award when RFA of MDA was served upon it. No steps were taken by Government of the Punjab to ensure its representation at the stage of determination of compensation before the Collector or before the Referee Court. It, however, was represented in the two RFAs which arose from judgment of the Referee Court. Thus, we find no substance in this objection of the learned Additional Advocate General, Punjab. As regard the next submission of the learned Additional Advocate General that there were 108 effectees of whom 107 have been paid compensation and only Mst. Nasreen Zahra has not received the compensation. Though such submission was made by the learned Additional Advocate General but he did not point out from record as to who were those 107 effectees to whom compensation was paid and if paid at what rate and on the basis of which Award and of what date, as the proceedings for acquiring of land for construction of Multan Bye-Pass were initiated as early as on 07.05.1976 when the first Notification under Section 4 of the Act was issued. The Award in the case of Mst. Nasreen Zahra was made by the Collector on 26.08.1998 by which Mst. Nasreen Zahra was allowed compensation @ Rs.20,000/- per marla and it was not shown to us from the record that such compensation, after the Award, was tendered to Mst. Nasreen Zahra and that she refused to receive the same. What this argument of the learned Additional Advocate General reflects is that there was no cavil to the compensation awarded to Mst.

Nasreen Zahra but the grievance was that she did not receive the same while the other effectees have received their compensation. As regards the submission of the learned Additional Advocate General that the first Award given by the LAC was @ Rs.20,000/- per acre which comes to Rs.153/- per marla while in the present case the Award is given @ Rs.20,000/- per marla and the latter Award is claimed to be challenged by Government of the Punjab before this Court. The Award in this case was made by the Collector as back as on 26.08.1998 and it could not be directly challenged by Government of the Punjab before this Court by filing C.A.No.2786 of 2006. However, we have looked into the record to ascertain the factum on the basis of which this argument of the learned Additional Advocate General is based and have found a copy of an Additional Award of the Collector, Land Acquisition, MDA, Multan, dated 02.10.1980 in respect of land in villages Ravi Mari Seatal and Kotla Muhammad Baqa for Multan Bye-Pass Phase-II. This Additional Award is available at page 226 of CMA No.1831 of 2006 filed by the learned Senior ASC for Mst. Nasreen Zahra. This Award was made under the Punjab Acquisition of Land (Housing) Act, 1973, where it was noted that average sale price for two years prior to acquisition proceedings supplied by the Tehsildar, Multan, was Rs.91,318/40 P.A., whereas the maximum compensation prescribed by the Act was Rs.20,000/- per acre and the latter amount was awarded as compensation. It has already been noted above, that application of Punjab Acquisition of Land (Housing) Act, 1973 for acquiring of land of Mst. Nasreen Zahra for Multan Bye-Pass was declared to be illegal by this Court vide its judgment dated 26.05.1998 and directions were given for computation of the Award according to the Land Acquisition Act. In the face of the judgment of



this Court being in the field we cannot at all look into this argument of the learned Additional Advocate General as the same is not tenable. In any case, there is nothing on record to show that compensation allowed by the Additional Award dated 02.10.1980 @ Rs.20,000/- per acre was accepted by any of the effectees whose land was acquired for the construction of Multan Bye-Pass. As regards the liability of Government of the Punjab for payment of compensation for the land acquired for construction of Multan Bye-Pass, the very first Notification dated 07.05.1976 issued under Section 4 of the Act shows that the land was acquired by Government of the Punjab for public purpose i.e. construction of Multan Bye-Pass. Through a Corrigendum Notification dated 18.03.1977, the land of Mst. Nasreen Zahra was included in the project i.e. construction of Multan Bye-Pass. The beneficiary of land in terms of the above Notification is Government of the Punjab and this fact alone is sufficient to establish its liability for payment of compensation for the land acquired.

6. We now take up the issue of payment of interest, as claimed by Mst. Nasreen Zahra in her petition dated 30.06.2006 filed before the Collector and in the Reference application also such claim was made by her. In RFA No.328 of 2001 this was the only claim pressed by Mst. Nasreen Zahra. The relevant provisions that deal with payment of compensation in the Act is Section 31 (1) & (2) which read as follows :-

***"Sec.31. Payment of compensation or deposit of sum in the Court.--(1) On making an award under Section 11, the Collector shall tender payment of the compensation awarded by him to the persons interested entitled thereto according to the award, and shall pay it to them unless prevented by some one or more of the contingencies mentioned in the next sub-section.***

*(2) If they shall not consent to receive it, or if there be no person competent to alienate the land, or if there be any dispute as to the title to receive the compensation or as to the apportionment of it, the Collector shall deposit the amount of the compensation in the Court to which a reference under Sec.18 would be submitted".*

Section 34 of the Act deals with the payment of interest and it reads as follows :-

***"Sec.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 interest thereon at the rate of six per centum per annum from the time of so taking possession until it shall have been so paid or deposited".*

7. It is clear from reading of the provisions of Section 31 that on making of Award under Section 11 of the Act, the Collector is bound to tender the payment of compensation awarded by him to the person entitled thereto according to the Award. In case the Collector is prevented from tendering compensation awarded by him, the Collector is required to deposit the compensation in the Court to which Reference under Section 18 of the Act is made. The compliance of the provision of Section 31 of the Act by the Collector is mandatory for the simple reason that its non-compliance give rise to penal consequences and such penal consequences are those as are provided in Section 34 of the Act i.e. interest prescribed therein will become payable.


8. Syed Najam-ul-Hassan Kazmi, learned Senior ASC for Mst. Nasreen Zahra has emphatically contended before us that neither the compensation awarded by the Collector to Mst. Nasreen Zahra was tendered to her nor was it deposited in the Referee Court where Reference was filed by Mst. Nasreen Zahra. The learned Additional

Advocate General was unable to show us that on making of the Award, the Collector in fact tendered/offered compensation awarded by him to Mst. Nasreen Zahra. Further we also note that the learned Additional Advocate General did not point out to us that the compensation awarded by the Collector was deposited in the Court where Mst. Nasreen Zahra has filed Reference under Section 18 of the Act. The payment of interest as provided in Section 34 of the Act is mandatory and it has been so held by this Court in the case of Collector of Land Acquisition, Nowshera V. Fazal Rahim & 3 others [1984 SCMR 1043]. Therefore, in the absence of any proof that compensation amount awarded by the Collector was tendered to Mst. Nasreen Zahra or was deposited with the Referee Court, in our view, will establish the claim for payment of interest, as provided under Section 34 of the Act. We may note that in the impugned judgment, the High Court while disallowing the claim for payment of interest to Mst. Nasreen Zahra assigned the reason that the Provincial Government has released Rs.10 Million to the MDA for compensation. This reason from reading of the provisions of Section 31 and 34 of the Act becomes altogether irrelevant in that the mandatory requirement of law is that the compensation amount awarded by the Collector was required to be tendered to Mst. Nasreen Zahra and in case the Collector was prevented from tendering the compensation amount to Mst. Nasreen Zahra, he was required to deposit the same in the Referee Court where Reference under Section 18 of the Act was filed by Mst. Nasreen Zahra. This having not been done, we are of the view that Mst. Nasreen Zahra is entitled to payment of interest, as provided under Section 34 of the Act.

9. We, therefore, allow Civil Appeal No.1011 of 2006 to the extent as noted above and dismiss Civil Appeal No.2786 of 2006. Civil Petition No.538 of 2006 is converted into an appeal and is also allowed in the above terms.

*CJ.*

*J.*

Bench-I  
ISLAMABAD  
APPROVED FOR REPORTING  


*J.*

Announced in open Court on 07.07.2015

*J.*