IN THE SUPREME COURT OF PAKISTAN

(Appellate Jurisdiction)

PRESENT:

MR. JUSTICE MIAN SAQIB NISAR
MR. JUSTICE UMAR ATA BANDIAL
MR. JUSTICE MAQBOOL BAQAR

Civil Appeal Nos. 939/2004, 144-K-145-K of 2009,
HRC Nos.20691-S of 2013 & 48247-S of 2013

(On appeal from the judgment dated 29.10.2002 & 04.10.2006, respectively passed by High Court of Sindh, Karachi & High Court of Sindh, Hyderabad Circuit passed in HCA No.114/1993, Const. P.D-219 & 337 of 2004)

Dilawar Hussain, etc. (In CA 939/2004)
DDO (Revenue), etc. (In CA 144-K/2009)
DDO (Revenue), etc. (In CA 145-K/2009)
Applications by Dilawar Hussain Rajabali (In HRC 20691-S/2013 & HRC 48247-S/2013)

... **Appellants**

VERSUS

The Province of Sindh & others (In CA 939/2004)
Shahabuddin Shah (In CA 144-K/2009)
Balocho (In CA 145-K/2009)

... **Respondent(s)**

For the Appellant(s): Syed Shahenshah Hussain, ASC
(In CA 939/04)

Mr. Adnan Karim, Addl. AG Sindh
Mr. Khair Muhammad, AC Sanghar
(In CA 144-K&145-K/09)

For the Respondent(s): Mr. Ghulam Mohiuddin Qureshi, ASC
Mr. Mazhar Ali B.Chohan, AOR.
(In CA 144-K & 145-K/09)

Mr. Adnan Karim, Addl.AG Sindh
Mr. Abdul Ghaffar Sheikh, AC Korangi
Muhammad Ibrahim Junejo, Mukhtiarkar
(In CA 939/04)

Date of Hearing: 14.01.2016

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JUDGMENT

MIAN SAQIB NISAR, J.- These appeals, by leave of the Court, are being disposed of together as the same legal points are involved therein.

Civil Appeal No.939 of 2004:

2. The facts in relation to the instant appeal are that the land owned by the appellants was acquired under the Land Acquisition Act, 1894 *(the Act)* through notifications under Section 4 thereof dated 2.2.1960 and 5.3.1960 respectively. The Land Acquisition Collector *(LAC)* announced the award on 17.12.1960 which was assailed by the respondents through a reference. The Referee Court enhanced the compensation *vide* judgment dated 27.8.1970. Being dissatisfied with the increase in compensation, the appellants approached the learned High Court in appeal and **further** enhancement was accorded to them through judgment dated 26.9.1977; and on their appeal before this Court compensation was **yet further** increased *vide* judgment dated 18.2.1987. The appellants then filed an execution petition for recovery of their dues *(enhanced compensation)* before the learned High Court *(which was the executing court)* and also for the first time sought additional compensation under Section 28-A of the Act, which reads as under:-

> *"**28-A. Additional Compensation.**– In addition to the compensation fixed on the basis of market value as prevailing on the date of notification under Section 4, an additional amount of fifteen percent per annum of the compensation so fixed shall be paid from the date of the notification under Section 4 to the date of payment of the compensation."*

The Executing Court *vide* order dated 31.5.1993 while interpreting the provisions of Section 28-A held that it *(section)* would not apply to past

and closed transactions. In this context the relevant portion of the order reads as:-

> *"It is, therefore, clear that Section 28-A in the Act, introduced through the amendment of 1984 is applicable to pending proceedings so long as it does not inter-act on past and closed transactions. Still, what may, in the present context, be such transaction? It would seems to be just and fair and in line with the spirit of the amendatory law as regards awards, rendered prior to the amendment but pending examination at subsequent levels, to say that to the extent a land-owner had already received compensation antecedent to the amendment, even though under protest, the question of permitting solatium on the amount or amounts already so paid, before the amendment, be treated as a transaction past and no additional payment may accrue following upon the amendment on such disbursement of compensation, duly paid and received. However, where compensation is enhanced and enhanced compensation is not received or paid and, during the time intervening, the amendatory law has appeared on the statutes book any subsequent payment including that already due before the amendment but not paid would carry a further solatium at the rate of 15% per annum from the date of notification upto the date of actual payment of compensation."*

Aggrieved of the above, the appellants filed an appeal before the High Court and the learned Division Bench of the Court held:-

> *"……..We are inclined to agree with Mr. Sharif that the question of amount of compensation payable from the date of Notification under Section 4 till the entire amount of*

> *compensation is determined is a single transaction and additional compensation under Section 28-A would have to be calculated by bifurcating the unpaid amount from that which has already been received by the land owner.*
>
> *…….By incorporating Section 28-A, the legislature apparently intended to compensate such land owners by providing additional compensation and at the same time deter acquiring from delaying payment. However, it cannot be assumed that it permitted a owner to take a premium on the basis of the entire amount of compensation inclusive to amounts already pocketed by him. It may also be noticed that the legislature has not used the expression "final payments" and in a given case there could be several dates of payments of different amounts falling short of the payments to be made upon final determination.*
>
> *…….For the foregoing reasons, we dismiss the Appeal directing the parties that the Appellants were entitled to receive the additional compensation under Section 28-A for the unpaid amount of the compensation from the date of notification under Section 4 of the Act till the final payment of the compensation is made to the Appellants. There will be no orders as to costs."*

Leave in this case was granted *vide* order dated 28.7.2004 primarily to consider whether:-

> *"…….the petitioners would be entitled, in view of the above said provision of law, to claim benefit of additional compensation under the ibid Act on the entire amount of compensation from the date of notification issued under Section 4*

> *of the Land Acquisition Act till final payment of compensation is made to the petitioners or only on the amount of compensation which was not paid upto the time of promulgation of Ordinance No.XXIII of 1984?".*

3. Learned counsel for the appellants has argued that the language of Section 28-A leaves no room for doubt that the additional compensation is payable from the date of notification under Section 4 of the Act till the date of the payment of compensation. He states that to interpret the section in a manner whereby the compensation shall only be payable on the unpaid amount is not a valid construction of the said section; this is tantamount to reading into the provision which cannot be done as the provision is clear and the rule of literal interpretation of statutes should be resorted to rather than looking into the intent of the legislature. He states that the person whose land is acquired is *ipso jure* entitled to compensation as per the provisions of Section 34 of the Act with regard to interest and thus the additional amount of compensation under Section 28-A is also available to him as a matter of right. He relies on the Construction of Statutes (1940) by Crawford, **Government of Sindh and 2 others Vs. Syed Shakir Ali Jafri and 6 others (1996 SCMR 1361)**, **Province of Sindh through Collector of District Dadu and others Vs. Ramzan and others (PLD 2004 SC 512)**, and **Land Acquisition Officer and Assistant Commissioner, Hyderabad Vs. Gul Muhammad through Legal Heirs (PLD 2005 SC 311)**.

4. Learned Additional Advocate General, Sindh has submitted that the provisions of Section 28-A do not have any retrospective effect. As the award was announced on 17.12.1960 and the appellant had already received a substantial amount of compensation before the enforcement of the said section, therefore, he could not ask for a

premium over the amount so received. He submitted that Section 28-A was challenged before the learned Federal Shariat Court and was declared repugnant to the injunctions of Islam *vide* judgment reported as **In re: The Land Acquisition Act (I of 1894) (PLD 1992 FSC 398)** and pursuant thereto the law was repealed by virtue of the Land Acquisition (Sindh Amendment) Act, 2009 (Act XVI of 2010)[1] *(the "repealing Act")*.

5. Heard. Before considering the plea(s) raised by the learned counsel for the appellants, we deem it proper to dilate upon the submission of the learned Additional Advocate General about the declaration of Section 28-A as against the injunctions of Islam, its repeal and effect thereof. The provisions of the Act came under scrutiny before the Federal Shariat Court, in its *suo moto* jurisdiction, to consider whether those were in accordance with the injunctions of Islam and the Court *vide* judgment dated 27.3.1984 made some declarations and recommendations with regard to bringing the said law in conformity with Islamic principles and one of the recommendations stated:-

> *"In addition to the compensation fixed on the basis of market value as prevailing on the date of notification under section 4, an amount of 15% per annum shall be paid as additional compensation to the person found entitled to compensation from the date of notification under section 4 to the date of payment of compensation."*

It is pursuant to the above that Section 28-A was inserted in the Act *vide* Land Acquisition (Sind Amendment) Ordinance XXIII of 1984 notified in the Gazette of Sindh on 30.9.1984. However, the aforesaid

[1] *PLD Unreported Statutes, 2010 Sindh Statutes page 97.*

judgment of the Federal Shariat Court was assailed before the Shariat Appellate Bench of this Court and the judgment was set aside. Thereafter, the Federal Shariat Court took up the matter for reconsideration and *vide* its judgment dated 30.4.1992 specifically declared Section 28-A as violative of Islamic injunctions. The relevant portion of the said judgment reads as under:-

> *"34. In this respect, it is also noticeable that the Government of Balochistan as well as the Government of Sindh by Act XIII of 1985 amended on 9-10-1985 and Sindh Ordinance XXIII of 1984 as amended on 30-9-1984 respectively, the Land Acquisition Act, 1894, in pursuance of the decision dated 27-3-1984 of this Court, a new section 28-A was added which provided for additional compensation in the following words:--*
>
> *"28-A. Additional compensation.---In addition to the compensation fixed on the basis of market value as prevailing on the date of notification under section 4, an additional amount of fifteen per cent per annum of the compensation so fixed shall be paid from the date of the notification under section 4 to the date of payment of the compensation."*
>
> *We are afraid, the above provision in the Balochistan Act XIII of 1985, and Sindh Ordinance XXIII of 1984 is not sustainable in the light of the Injunctions of Islam as laid down in the Holy Qur'an and Sunnah of the Holy Prophet (p.b.u.h.) as discussed in the judgment on Riba, referred to above. Even otherwise, in view of the setting aside of this Court's judgment dated 27-3-1984 by the Shari'at Appellate Bench of the Supreme Court the earlier judgment of this Court does not hold the field*

> *and the view having not been adopted by us in our present judgment, Sindh Ordinance XXIII of 1984 and Balochistan Act XIII of 1985 call for their repeal, which also stand nullified by the judgment of the Supreme Court, referred to above."*

Pursuant to the above, Section 28-A was repealed by the repealing Act, mentioned above, which reads as under:-

> *"4. Omission of Section 28-A of Act No.I of 1894.--- In the said Act,* ***section 28-A shall be omitted and shall be deemed to have been so omitted as if it had never been enacted****."*
>
> *(Emphasis supplied)*

It is evident that repeal of Section 28-A ibid is a departure from the normal words employed to repeal the provisions of law. Why is this so? Perhaps because the amendment was not brought about by the Provincial Assembly on its own, but rather on the recommendation of the Federal Shariat Court, which judgment as mentioned above was set aside by the Shariat Appellate Bench of this Court and thereafter the Federal Shariat Court itself declared that amendment a nullity. Besides, there is the use of 'deeming' terminology whereby a legal fiction is created and secondly there is a retrospectivity given to the repeal of said section in that it is to be treated as it had never been enacted i.e. we are required to go back to a point of time *viz* 1984 and imagine that Section 28-A had never been brought into effect. As opposed to this unique repeal of said section we must consider the effects of Article 264 of the Constitution of the Islamic Republic of Pakistan, 1973 *(the Constitution)* which is couched in identical terms as Section 6 of the General Clauses Act, 1897. Article 264 of the Constitution is reproduced herein below:-

> *"264. Effect of repeal of laws.– Where a law is repealed, or is deemed to have been repealed, by, under, or by virtue of the Constitution, the repeal shall not, except as otherwise provided in the constitution,-*
>
> *(a) revive anything not in force or existing at the time at which the repeal takes effect;*
>
> *(b) affect the previous operation of the law or anything duly done or suffered under the law;*
>
> *(c) affect any right, privilege, obligation or liability acquired, accrued or incurred under the law;*
>
> *(d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against the law; or*
>
> *(e) affect any investigation legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment;*
>
> *and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed, as if the law had not been repealed*."

In the normal course of our jurisprudence when a provision of law is repealed protection is accorded to the previous operation of the repealed enactment and to those rights which may have accrued under the enactment so repealed. However, in these unique circumstances the question arises whether the appellants will be entitled to any compensation under the repealed Section 28-A given that the said section was repealed in terms of the repealing Act with effect from

29.10.2009 on which date the appellants were still in the process of agitating their rights/claims under Section 28-A and therefore they cannot even claim the benefit of a past and closed transaction. In this regard we may rely on the case cited as **Mehreen Zaibun Nisa Vs. Land Commissioner, Multan and others (PLD 1975 SC 397)**, wherein this Court *(at page 433)* interpreted a deeming clause as under:-

> *"When a statute contemplates that a state of affairs should be deemed to have existed, it clearly proceeds on the assumption that in fact it did not exist at the relevant time but by a legal fiction we are to assume as if it did exist. The classic statement as to the effect of a deeming clause is to be found in the observations of Lord Asquith in East End Dwelling Company Ltd v. Finsbury Borough Council (1) namely:*
>
> > *"Where the statute says that you must imagine the state of affairs, it does not say that having done so you must cause or permit your imagination to boggle when it comes to the inevitable corollaries of that state of affairs."*

In the remarkable 17 member judgment of this Court reported as **Federation of Pakistan through Secretary Ministry of Law, Justice and Parliamentary Affairs, Islamabad Vs. Dr. Mubashir Hassan and others (PLD 2012 SC 106)** the following question was formulated *(at page 126)*:-

> *"Issue No (iv) Whether the effect of repeal of an Ordinance or law in terms of Article 264 of the Constitution and section 6 of the General Clauses*

> *Act is the same as that of an Ordinance or law being declared non est and null and void."*

The earlier judgment of this Court reported as **Jannat-ul-Haq and 2 others Vs. Abbas Khan and 8 others (2001 SCMR 1073)** was quoted with approval wherein, *inter alia*, it was held *(at page 1081)*:-

> *"…….Similarly operation of a law declared to be repugnant to the Injunctions of Qur'an and Sunnah or anything done or suffered thereunder before a specified date or continuation of suits pending on the specified date also does not amount to the repeal of law……"*

The judgment of the Peshawar High Court reported as **Muhammad Iqbal and 17 others Vs. Ghaunsullah Khan and 17 others (2002 CLC 1533)** was also reproduced with approval, wherein it was held *(at page 1537)*:-

> *"7. A perusal of the abovequoted provisions of the Constitution and the General Clauses Act would reveal that the expression "ceased to have effect" cannot be held synonymous with repeal as is envisioned by Article 264 of the Constitution and section 6 of the General Clauses Act.* ***In the former eventuality even pending cases cannot be dealt with in accordance with the law which has been so held repugnant to the Injunctions of Islam and ceases to have effect after the date mentioned in the decision while in the latter eventuality a proceeding pending in a Court or any such right, privilege, obligation or liability, acquired, accrued or incurred under any enactment so repealed are fully protected***

> ***unless a different intention appears from repealing enactment****."*
>
> ***(****Emphasis supplied)*

In the present circumstances, the Federal Shariat Court found the provisions of the Section 28-A to be repugnant to the Injunctions of Islam. The preamble of the repealing Act states that the Federal Shariat Court has directed that certain amendments be made to the Act in its application to the Province of Sindh. The plain words of section 4 of the repealing Act indicate the intention of the legislature that this Section 28-A is *non est* and therefore as per the ratio of the **Dr. Mubashir Hassan** case *(supra)* the appellants cannot be granted the benefit of Section 28-A as claimed in the instant appeal. It is settled law that appeal is a continuation of the original *lis* and therefore there is no past and closed transaction which may have afforded them protection in the event of the Section 28-A being declared to have "never been enacted". But as this point has not been taken into consideration by the forums below, and this too is not a point on which leave was granted, therefore, we do not intend to refuse this appeal on the above score alone.

6. As the case has been argued at length before us we are minded to give our opinion as to the scope of Section 28-A had it been applicable to the appellants. The object of Section 28-A has been explained in the judgment reported as **Syed Saadi Jafri Zainabi Vs. Land Acquisition Collector and Assistant Commissioner (PLD 1992 SC 472)** in the following terms:-

> *"7. A perusal of section 28-A will show that it is mandatory in nature and provides for additional compensation from the date of publication of notification under section 4 to the date of payment*

> *of compensation. The main purpose of making this provision is to discourage the tendency to delay the payment of compensation in time and to ensure that the party whose property has been acquired, is duly compensated without unnecessary loss of time. It is the duty of the Collector that on making an award under section 11 he should tender payment of the compensation awarded by him to person entitled to it according to the award unless he is prevented by any reason provided in section 31. In case the party is not available or does not consent to receive, the Collector shall deposit the amount of compensation in the Court to which a reference under section 18 would be submitted. Therefore, after the award has been made there should be no delay in making payment or depositing the compensation in the Court."*

7. Now, attending to the arguments of the learned counsel for the appellants that by applying the rule of literal interpretation due effect to Section 28-A be given and the appellants be allowed additional compensation on the enhanced amount assessed by the Courts *(Referee/Appellate Courts)*, suffice it to say that the plain wording of said section does not stipulate that the additional compensation is to be paid even in cases where the enhancement has been made by the Courts. Obviously in such a situation where a section cannot be given its due effect while reading its plain word(s); the cardinal principle of interpretation is to be resorted to which has two intertwined aspects: one, the wording of the statute itself; and second, the purpose of the enactment. Thus the question before us is whether the object and **purpose** of the amendment *(insertion of Section 28-A ibid)* in the Act and the intention of the legislature in respect of the amendment should be given precedence or whether the provision should be given effect through a

literal construction. Where the language of the section is ambiguous, is the Court barred from examining it in order to discover its true purpose and intent *(especially where the provision has been brought into the statute through an amendment)*? Construction of Statutes (1940) by Crawford, relied upon by the learned counsel for the appellants in support of a literal interpretation, actually encourages a discernment of the purpose of the statute and the intention of the legislature; the relevant extract reads as follows:-

> *"Since the purpose of construction is to ascertain the legislative intent, this constitutes the major step in the process of interpreting statutes…ascertaining the intention of the legislature forms the very heart of the interpretative process……* ***The first source from which the legislative intent is to be sought is the words of the statute. Then an examination should be made of the context, and the subject matter and purpose of the enactment****."*
>
> *(Emphasis supplied)*

In the case reported as **Union of India Vs. Sankalchand Himatlal Sheth and another (AIR 1977 SC 2328)** *(5 member bench)* at paragraphs 11 and 55 it has been held as under:-

> *"11. The normal rule of interpretation is that the words used by the legislature are generally a safe guide to its intention……But if the words of an instrument are ambiguous in the sense that they can reasonably bear more than one meaning, that is to say, if the words are semantically ambiguous, or if a provision, if read literally, is patently incompatible with the other provisions of that instrument, the court would be justified in construing the words in a manner which will make*

the particular provision purposeful. That, in essence is the rule of harmonious construction. In M. Pentiah v. Veeramallappa, AIR 1961 SC 1107 at p. 1115 this Court observed:

"Where the language of a statute, in its ordinary meaning and grammatical construction leads to, a manifest contradiction of the apparent purpose of the enactment, or to some inconvenience or absurdity, hardship or injustice presumably not intended, a construction may be put upon it which modifies the meaning of the words, and even the structure of the sentence……"

……In the view which I am disposed to take, it is unnecessary to dwell upon Lord Denning's edict in Seaford Court Estates Ltd. v. Asher (1949) 2 All ER 155 at p. 164 that when a defect appears in a statute, a Judge cannot simply fold his hands and blame the draftsman, that he must supplement the written word so as to give force and life to the intention of the legislature and that he should ask himself the question how, if the makers of the Act had themselves come across the particular ruck in the texture of it, they would have straightened it out. I may only add, though even that does not apply, that Lord Denning wound up by saying, may be not by way of recanting, that "a Judge must not alter the material of which the Act is woven, but he can and should iron out the creases."

"……language at best is an imperfect medium of expression and a variety of significations may often lie in a word of expression……It was said by Mr. Justice Holmes in felicitous language in Towne v. Eisner (1917) 245 US 418 that "a word is not a crystal, transparent and unchanged; it is the skin of

a living thought and may vary greatly in colour and content according to the circumstances and the time in which it is used". The words used in a statute cannot be read in isolation: their colour and content are derived from their context and, therefore, every word in a statute must be examined in its context. And when I use word 'context', I mean it in its widest sense "as including not only other enacting provisions of the same statute but its preamble, the existing state of the law, other statutes in pari materia and the mischief which-the statute was intended to remedy". The context is of the greatest importance in the interpretation of the words used in a statute. "It is quite true" pointed out by Judge Learned Hand in Helvering v. Gregory, 69 F 2d 809 "that as the articulation of a statute increases, the room for interpretation must contract; but the meaning of a sentence may be more than that of the separate words, as a melody is more than the notes, and no degree of particularity can ever obviate recourse to the setting in which all appear, and which all collectively create." Again, it must be remembered that though the words used are the primary, and ordinarily the most reliable, source of interpreting the meaning of any writing, be it a statute, a contract, or anything else, it is one of the surest indexes of a mature and developed jurisprudence not to make a fortress out of the dictionary, but to remember that a statute always has some purpose or object to accomplish, whose sympathetic and imaginative discovery, is the surest guide to its meaning. The literal construction should not obsess the Court, because it has only prima facie preference, the real object of interpretation being to find out the true intent of the law maker and that can be done only by reading the statute as an organic whole, with each part throwing light on the other and bearing in mind the rule in Heydon's case

> *(1854) 76 ER 637 which requires four things to be "discerned and considered" in arriving at the real meaning : (1) what was the law before the Act was passed; (2) what was the mischief or defect for which the law had not provided; (3) what remedy Parliament has appointed; and (4) the reason of the remedy. There is also another rule of interpretation which is equally well settled and which seems to follow as a necessary corollary, namely, where the words, according to their literal meaning – "produce an inconsistency, or an absurdity or inconvenience so great as to convince the Court that the intention could not have been to use them in their ordinary signification", the Court would be justified in "putting on them some other signification, which, though less proper, is one which the Court thinks the words will bear." Vide River War Comrs v. Adamson, (1877) 2 AC 743."*

More recently, "The Judge in a Democracy" by Aharon Barak[2] sets out the merits of purposive construction which ought to consider the context of the statute as well as principles, values, and the fundamental views of society rather than a literal or textual interpretation of a statute.

An analysis of the cases of **Syed Shakir Ali Jafri** *(supra)*, **Ramzan** *(supra)* and **Gul Muhammad** *(supra)* does not support any enunciation of law wherefrom it can be said that some bar or fetter has been placed upon the court in interpreting the said provision by seeking out its object and purpose whilst also taking into account its literal meaning.

8. In fact, a purposive approach in interpretation has been approved and employed to achieve the intent of the legislature while

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[2] *2006 Edition, Chapter 5.*

interpreting certain provisions of the Constitution in the cases reported as **Messrs Gadoon Textile Mills and 814 others Vs. WAPDA and others (1997 SCMR 641)**, **Rana Aamer Raza Ashfaq and another Vs. Dr. Minhaj Ahmad Khan and another (2012 SCMR 6)**, **Province of Sindh through Chief Secretary and others Vs. MQM through Deputy Convener and others (PLD 2014 SC 531)** and **Dr. Raja Aamer Zaman Vs. Omar Ayub Khan and others (2015 SCMR 1303)**. In **Gadoon Textile Mills** (*supra)* it has been stated:

> *"To interpret is to understand. For a purposive construction of the statutory and constitutional provisions, the courts now freely make use of their parliamentary history, policy statements of the movers of the Bills and the concerned ministers in particular. That is interpreting the constitutional provisions in light of the well-known circumstances that produced them. Even in England, the historic rule that the court must not look at the parliamentary history of legislation as an aid to the interpretation of a statute has been recently relaxed in Pepper (Inspector of Taxes) v Hart (1993) 1 ALL ER 42)."*

In **Reference No.01 of 2012 (PLD 2013 SC 279)** this Court opined:-

> *"34. The function of the Court, while interpreting the statute, is to discover the true legislative intent. Having ascertained the intention, the Court must strive to interpret the statute as to promote/advance the object and purpose of the enactment. For this purpose, where necessary, the Court may even depart from the rules that plain words should be interpreted according to their plain meaning.……"*

It is also a fundamental rule of interpretation that while interpreting an **amended** provision, the object and purpose of the amendment must necessarily be looked into, as has been done by this Court in the case reported as **Federation of Pakistan through Ministry of Finance and others Vs. M/s Noori Trading Corporation (Private) Limited and 14 others (1992 SCMR 710)**. In this context Crawford propounds as follows:-

> *"……in construing the amended statute, the court should consider the change sought to be affected by the legislature. The amendatory act should be construed in relation to the condition created by the amended act as well as the objects and purposes of the act itself as therein defined. In short, regard must be had for the law as it was before being amended, and the amendatory act should be construed to repress the evils under the old law and to advance the remedy provided by the amendment."*

The "cardinal rule of construction of statutes" *(which as we observe below encompasses the purposive rule of interpretation)* was explicitly referred to by this Court in the judgment reported as **Mumtaz Hussain Vs. Dr. Nasir Khan and others (2010 SCMR 1254)** wherein it was held as under:-

> *"……while interpreting an Act, the intent of the Legislature is of supreme importance. The cardinal rule of the construction of Acts of Parliament is that the words of the Act should be construed according to the intention expressed in the Acts themselves. The word "intent" essentially include two concepts – that of purpose and that of meaning. In many cases, the Court will endeavour to ascertain the legislative purpose but, only as a step in the process of discovering the*

> *legislative intent. And it is perhaps possible that the legislative intent and legislative purpose may coincide. Moreover, so far as legislation is concerned, the law maker may have several purposes in mind when they enact a given law. The fact which can be taken into account in ascertaining the intention of the Legislature is the history of the Act, the reason which led to the passing of the Act, the mischief which had to be cured, as well as the cure proposed and also other provisions of the Statute."*
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> *(Note: We may, however, find that the same Hon'ble Judge in a subsequent part of his opinion seems to have departed from the above view)*

Reference may be made with good effect to the case cited as **Oliver Ashworth (Holdings) Ltd. Vs. Ballard (Kent) Ltd ([1999] 2 All ER 791)** wherein it has been stated by Law, LJ:

> *"By way of introduction to the issue of statutory construction I should say that in my judgment it is nowadays misleading—and perhaps it always was—to seek to draw a rigid distinction between literal and purposive approaches to the interpretation of Acts of Parliament. The difference between purposive and literal construction is in truth one of degree only. On received doctrine we spend our professional lives construing legislation purposively, inasmuch as we are enjoined at every turn to ascertain the intention of Parliament. The real distinction lies in the balance to be struck, in the particular case, between the literal meaning of the words on the one hand and the context and purpose of the measure in which they appear on the other. Frequently there will be no opposition between the two, and then no difficulty arises. Where there is a*

> *potential clash, the conventional English approach has been to give at least very great and often decisive weight to the literal meaning of the enacting words. This is a tradition which I think is weakening, in face of the more purposive approach enjoined for the interpretation of legislative measures of the European Union and in light of the House of Lords' decision in Pepper v. Hart [1993] A.C. 593. I will not here go into the details or merits of this shift of emphasis; save broadly to recognise its virtue and its vice. Its virtue is that the legislator's true purpose may be more accurately ascertained. Its vice is that the certainty and accessibility of the law may be reduced or compromised. The common law, which regulates the interpretation of legislation, has to balance these considerations."*

The cardinal principle of construction entails two features: (i) meaning, and (ii) object and purpose. "Meaning" refers to what the precise words of the statute *[or its particular provision(s)]* denote whereas "object and purpose" refers to the reason, rationale, objective, aim, underlying principle, or raison d'être of the statute. Thus, such interpretive approach necessarily combines both the literal and purposive approach in discerning the legislative intent. That is to say, the intention of the legislature is discovered, determined and understood by bearing in mind the meaning of the words used in the statute, while taking into consideration the purpose and object of the statute and also the mischief which the statute sought to curb.[3]

9. Clearly, the intent of the legislature carries significant weight for purposes of construing Section 28-A. In the light of the object and purpose of the said section mentioned above *(**Syed Saadi Jafri Zainabi**'s case),*

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[3] *See AIR 2007 SC 1563 and AIR 2001 SC 724*

and also the history as to how and why this amendment was brought about, it is not a provision *simpliciter* which can be said to provide compensation to the persons whose land has been acquired as compulsory charges or interest which are provided under other sections of the Act *(see Section 34 of the Act)*; rather this enactment prescribes an inducement to compel the acquiring agency to make prompt payment of the amount of compensation assessed. In other words, this provision does not provide an additional premium for the benefit of the land owner. Obviously as an "inducing" provision it has to be given a narrow effect; it is to be limited to the extent of the amount which has not so far been paid to the land owners *(i.e. only payable on the outstanding amount)*. In the above context, various scenarios may arise, for instance, where the amount of compensation has been assessed by the LAC but payment is not made within reasonable time on that assessment; the land owner shall be entitled to compensation at the rate provided under Section 28-A from the date of issuance of the notification under Section 4 till the final payment is made. On the other hand, where partial payment is made promptly and some amount is left outstanding; in such eventuality, compensation would only co-relate to the amount unpaid. However, as mentioned earlier this amount shall not *ipso jure* be given to the land owner from the date of notification till the date of payment of the balance amount on the entire amount including the portion which has been received by him. Therefore we do not find any merit in this appeal which is accordingly dismissed.

Civil Appeal Nos.144-K- & 145-K of 2009

10. The facts of these cases are that the land of the respondents was acquired and the award was passed by the LAC on 5.12.1992.

Being satisfied with the compensation so granted, they accepted the same and did not challenge it. However, on 8.9.2004 a constitutional petition was filed by the respondents before the learned High Court seeking additional compensation as per the provisions of Section 28-A *ibid*. This was allowed by the learned High Court through the impugned judgment dated 4.10.2006. Aggrieved by the said judgment, the appellants approached this Court and leave was granted *vide* order dated 11.06.2009 to consider:-

> *"whether respondents' constitutional petitions were not hit by the principle of laches."*

11. The learned Additional Advocate General argued that the writ petition filed by the respondents was hit by *laches*, that it was a past and closed transaction and that the claim of the respondents was barred under the law and such bar could not be surmounted by invoking the constitutional jurisdiction of the learned High Court. It is submitted that the rule of estoppel, acquiescence and waiver come in the way of the respondents as they had already accepted the amount of compensation awarded by the LAC and failed to challenge the same till 14 years later.

12. Answering the above, learned counsel for the respondents states that there is no estoppel against law; that the respondents were entitled to the additional compensation under the clear terms and mandate of Section 28-A; that it was the duty of the appellants to pay the compensation and thus, in order to seek enforcement of such a duty, the respondents could validly invoke the constitutional jurisdiction of the High Court in terms of Article 199 of the Constitution.Constitution. st0 0 rg (st0 0 rg99(regtnstitution.)-13 BT /F2 10 rg 1

compensation had been awarded to an aggrieved person, the matters were brought to this Court and either they were not pressed or in some cases the Court declined relief to them. The respondents rely upon the case reported as **Niaz Muhammad and others Vs. Assistant Commissioner/Collector, Quetta and others (2005 SCMR 394)**.

13. Heard. While deciding Civil Appeal No.939 of 2004 above, we have held that the land owner shall not be entitled to receive additional compensation for the amount already received and that Section 28-A *ibid* would only be attracted to those cases where some amount remained unpaid/outstanding on account of delay by the acquiring authority. In these matters *(Civil Appeal Nos.144-K- & 145-K of 2009)* the respondents never claimed that some amount of the original compensation was outstanding on the basis of which they became entitled to receive the compensation in terms of Section 28-A. Besides, the doctrine of past and closed transaction comes in their way which *(doctrine)* has been adopted and applied in a catena of judgments including those reported as **Pakistan International Airlines Corporation Vs. Aziz-Ur-Rehman Chaudhry and another (2016 SCMR 14)**, **Waris Vs. Muhammad Sarwar (2014 SCMR 1025)** and **Trustees of the Port of Karachi Vs. Organization of Karachi Port Trust Workers and others (2013 SCMR 238)** in refusing to re-open or interfere with such transactions as they stood concluded.

14. If the respondents thought they were entitled to the additional amount of compensation as per Section 28-A they should have moved the Collector to give them such compensation and this could have been done within the time prescribed by law and if not so prescribed, within a reasonable period of time. Likewise, the respondents could also have invoked the plenary jurisdiction of the Civil

Court for the recovery of that amount within the prescribed period of limitation; the maximum period in this regard, if no other article of the Limitation Act, 1908 was attracted, was six years from the date of the award. Further, if they were not advised to file a civil suit they could have directly invoked the constitutional jurisdiction of the High Court within reasonable time if it was so permissible under the law. None of this was done. In fact, the respondents kept silent and slept over their rights for over fourteen years whereafter they decided to invoke the constitutional jurisdiction of the learned High Court directly which is discretionary in nature. We are not persuaded to hold that in these circumstances the rule of past and closed transaction as mentioned above is not attracted to the instant matters. The rule of laches *(the point on which leave was granted)* is/was duly attracted to the matter in hand because the petitioners (before the learned High Court) *(respondents in CA No.144-K and 145-K/2009)* have been unable to explain as to what steps they took to ascertain and agitate their right on the basis of the Section 28-A *ibid* before the competent authority before the filing of the constitutional petition. In the case of **S. Sharif Ahmed Hashmi Vs. The Chairman, Screening Committee, Lahore and another (1980 SCMR 711)** a four member bench of this Court refused to condone the delay of twelve years in approaching the constitutional jurisdiction of the High Court and held that the case was squarely hit by the doctrine of laches. In the absence of any explanation as to why the rule of laches should not be duly applied the discretionary relief of issuance of a writ as envisaged by Article 199 of the Constitution should not have been granted, especially when the claim of the respondents to enforce their right under Section 28-A in the ordinary course before the LAC and the Court of plenary jurisdiction was barred by limitation. With regard to the

submission on behalf of the respondent that as it was the legal duty of the appellants to pay the amount under Section 28-A thus, for enforcing such duty and the right of the respondent neither rule of laches could be attracted nor the principles of estoppel could be resorted to, it may be mentioned that the discretionary relief in the nature of a writ cannot be granted to compel the appellants to perform its duty in favour of persons who are so indolent in matters relating to enforcement of their rights that they slept over the same for more than fourteen years and whose remedy in normal course was time-barred, as such, discretion is not exercisable in favour of those who slumber on their rights.. In light of the above, these appeals are allowed and the impugned judgments are set aside.

HRC Nos.20691-S of 2013 & 48247-S of 2013

15. As the main appeals stand decided, these cases are accordingly disposed of.

JUDGE

JUDGE

JUDGE

Announced in Open Court
on 21.3.2016 at Karachi
Approved For Reporting
*Ghulam Raza/**

JUDGE