

Land Acquisition 1894

ACT No 1 of 1894

[2nd February, 1894]

An Act to amend the Law for the acquisition of Land for public purposes and for Companies.

WHEREAS it is expedient to amend the law for the acquisition of land needed for public purposes and for Companies and for determining the amount of compensation to be made on account of such acquisition; It is hereby enacted as follows:-

PART I PRELIMINARY

1. Short title, extent and commencement- (1) This Act may be called the Land Acquisition Act, 1894.

(2) It extends to the whole of Pakistan; and
(3) it shall come into force on the first day of March, 1894.

2. [Repeal] Rep. partly by the Repealing and Amending Act, 1914 (X of 1914), s.3 and Schedule II, and partly by the Repealing Act, 1938 (1 of 1938) s.2 and Schedule.

3. Definitions:- In this Act, unless there is something repugnant in the subject or context, -

- (a) The expression "land" includes benefits to arise out of land, and things attached to the earth or permanently fastened to anything attached to the earth;
- (b) the expression "person interested" includes all persons claiming an interest in compensation to be made on account of the acquisition of land under this Act; and a person shall be deemed to be interested in land if he is interested in an easement affecting the land;
- (c) ^{1*}The expression "Collector" means the Collector of a District and

^{1*}Through out the Act, for the words "District Officer (Revenue)" the word "Collector" and for the words "Executive District Officer (Revenue)" the word "Commissioner" subs: by the Sindh Laws (Second Amendment) Act, 2012. Sindh Act NO. XXII of 2013.

includes any officer specially appointed by the Board of Revenue or Commissioner to perform the functions of a Collector under this Act.

^{1*}[(d) the expression “Court” means a principal Civil Court of original jurisdiction, and includes the Court of any Additional District Judge and any Civil Judge whom the Provincial Government may appoint, by name or by virtue of his office, to perform concurrently with any such principal Civil Court, all or any of the functions of the Court under this Act, within any specified area; provided that in the case of a Civil Judge such functions shall be exercised only up to the limits of his pecuniary jurisdiction].

(e) the expression “Company” means a Company registered under the Indian Companies Act, 1882,^{2**} or under the (English) Companies Acts, 1862 to 1890, or incorporated by an Act of Parliament of the United Kingdom or by an Pakistan law, or by Royal Charter of Letters Patent and includes a society registered under the Societies Registration Act, 1860 and a registered society within the meaning of the Co-operative Societies Act, 1912.

(f) the expression “public purpose” includes the provision of village-sites in districts in which the Provincial Government shall have declared by notification in the official Gazette that it is customary for the Government to make such provision; and

(g) the following persons shall be deemed persons “entitled to act” as and to the extent hereinafter provided (that is to say)— trustees for other persons beneficially interested shall be deemed the persons entitled to act with reference to any such case, and that to the same extent as the persons beneficially interested could have acted if free from disability;

¹ *The existing clause “(d)” substituted by the Land Acquisition (W.Pak Amendment) Ord. 1969 (XLIX of 1969), dt.17.12.1969.

² ** See now Companies Ordinance, 1984 (XLVII of 1984).

married woman, in cases to which the English Law is applicable, shall be deemed the person so entitled to act, and whether of full age or not, to the same extent as if she were unmarried and of full age; and

the guardians of minors and the committees or managers of lunatics or idiots shall be deemed respectively the persons so entitled to act, to the same extent as the minors, lunatics or idiots themselves, if free from disability, could have acted:

Provided that---

- (i) no person shall be deemed "entitled to act" whose interest in the subject-matter shall be shown to the satisfaction of the Collector or Court to be adverse to the interest of the person interested for whom he would otherwise be entitled to act;
- (ii) in every such case the person interested may appear by a next friend or, in default of his appearance by a next friend, the Collector or Court, as the case may be, shall appoint a guardian for the case to act on his behalf in the conduct thereof;
- (iii) the provisions of Chapter XXXI of the Code of Civil Procedure shall, *mutatis mutandis*, apply in the case of persons interested appearing before a Collector or a Court by a next friend, or by a guardian for the case, in proceedings under this Act; and
- (iv) no person "entitled to act" shall be competent to receive the compensation-money payable to the person for whom he is entitled to act unless he would have been competent to alienate the land and receive and give a good discharge for the purchase-money on a voluntary sale.

PART II

ACQUISITION

PRELIMINARY INVESTIGATION

4. Publication of preliminary notification and powers of officers thereupon.—

^{1*}[(1) Whenever it appears to the Collector of the district that land in any locality is needed or is likely to be needed for any public purpose or for a Company, a notification to that effect shall be published in the official Gazette, and the Collector shall cause public notice of the substance of such notification to be given at convenient places in the said locality.]

(2) Thereupon it shall be lawful for any officer, either generally or specially authorized by Collector in this behalf, and for his servants and workmen, -

to enter upon and survey and take levels of any land in such locality; to dig or bore into the sub-soil;

to do all other acts necessary to ascertain whether the land is adapted for such purpose;

to set out the boundaries of the land proposed to be taken and the intended line of the work (if any) proposed to be made thereon;

to mark such levels, boundaries and line by placing marks and cutting trenches; and,

where otherwise the survey cannot be completed and the levels taken and the boundaries and line marked, to cut down and clear away any part of any standing crop, fence or jungle:

Provided that no person shall enter into any building or upon any enclosed court or garden attached to a dwelling-house (unless with the consent of the occupier thereof) without previously giving such occupier at least seven days' notice in writing of his intention to do so.

^{1*} Subs. by the Land Acquisition (West Pakistan Amendment) Ord.1969 (XLIX of 1969) dt.17.12.1969.

^{1*}[3) The officer so authorized shall at the time of such entry pay or tender payment for all necessary damage to be done as aforesaid, and, in case of dispute as to the sufficiency of the amount so paid or tendered, he shall at once refer the dispute to the decision of the Collector or other chief revenue officer of the district, and such decision shall be final.]

2[5. Notification that particular land is needed for a public purpose or for a Company [(1)]** Where ^{3***}[land is to be acquired for a public purpose, if the Commissioner and where land is to be acquired for a Company, the Provincial Government, is satisfied, after considering the result of the survey, if any, made under sub-section (2) of section 4, or if no survey is necessary, at any time, that any particular land included in a locality notified under sub-section (1) of section 4 is needed for a public purpose or a Company, as the case may be, a notification to that effect shall be published in the official Gazette, stating the district or other territorial division in which the land is situate, the purpose for which it is needed, its approximate area and situation, and where a plan has been made of the land, the place where such plan may be inspected, and the Collector shall cause public notice to be given of the substance of the notification at convenient places on or near the land to be acquired.]

^{4****}[(2). The notification under sub-section (1) shall be issued not later than one year from the date of publication of the notification under section-4:

Provided that the time, if any, spent in the prosecution of a judicial remedy during which acquisition proceedings are stayed by Government before the issue of the notification under this section shall be computed to the said period of one year.

(3) If the notification under sub-section (2) is not issued within the specified time, the acquisition proceedings shall be deemed to have come to an end.]

^{1*} New sub-section (3) of Section 4 added by W.P. Ord.No.XLIX of 1969 Dt.17.12.1969.

^{2**} Sec.5 subs. by W.P. Ord. No.XLIX of 1969 and words "land is to be acquired for a public purpose if the Commissioner and where the land is to be acquired for a company" inserted by Sindh (Amendment of Laws) Act 1974.

^{3***} The above words were omitted by Sindh Ord.No.III of 1972 Dt.17.3.1972 and again inserted by Sind Act.No.XXVII of 1974 Dt.11.12.1974.

^{4****} The existing sec.5 numbered as sub-sec.(1) and new sub-sec.(2) added by S.Old.No.XXIII of 1984 dt.30.9.1984.

^{1*}[**5A. Hearing of objections:** (1) Any person interested in any land which has been notified under section 5 as being needed for a public purpose or for a Company may, within thirty days after the issue of the notification, object to the acquisition of the land or of any land in the locality, as the case may be.

(2) Every objection under sub-section (1) shall be made to the Collector in writing, and the Collector shall give the objector an opportunity of being heard either in person or by pleader and shall, after hearing all such objections and after making such further inquiry, if any, as he thinks necessary, submit the case for the decision of the Commissioner, together with the record of the proceedings held by him and a report containing his recommendations on the objections. The decision of the Commissioner, on the objections shall be final.

(3) Where land is needed for a Company, the Collector shall, after making such enquiries as he deems necessary, also make his recommendations to the Commissioner with regard to the area that in his opinion is reasonable for the purpose.

^{2**}[(3-A). The report under sub-section (2) or recommendations under sub-section(3), as the case may be, shall be forwarded to the Commissioner within a period of ninety days from the date of publication of the notification under section 5 and the Commissioner shall within ninety days of the receipt of the report or the recommendations, as the case may be, announce the decision and if the report or recommendations, as the case may be, is not forwarded or decision announced within the specified period, the objections shall be deemed to have been carried out and the acquisition proceedings shall come to an end.]

(4) For the purpose of this section, a person shall be deemed to be interested in land who would be entitled to claim an interest in compensation if the land where acquired under this Act.]

^{1*} Section 5-A subs. by Sindh Ordinance No.XLIX of 1969.

^{2**} Sub-sec.3A inserted by Sindh Ord.No.XXIII of 1984 Dt. 30.9.1984.

Declaration of intended Acquisition

6. Declaration that land is required for a public purpose. - (1) Subject to the provisions of Part VII of this Act, when ^{1*}[Commissioner] is satisfied, after considering the report, if any, made under section 5A, sub-section (2), that any particular land is needed for a public purpose, or for a Company, a declaration shall be made to that effect under the signature of ^{1*}[Commissioner] or of some officer duly authorized to certify its orders "Provided that no such declaration shall be made unless the compensation to be awarded for such property is to be paid by a Company, or wholly or partly out of public revenues or some fund controlled or managed by a local authority."

^{2**}(1-A) The declaration shall be made within six months of the publication of the notification under section 5 and if the declaration is not issued within that period, the acquisition proceedings shall be deemed to have come to an end:

Provided that the time, if any, spent in the prosecution of a judicial remedy during which acquisition proceedings are stayed after the issue of the notification under section 5 and before making the declaration under this section shall be computed to the said period of six months.]

(2) The declaration shall be published in the official Gazette, and shall state the district or other territorial division in which the land is situate, the purpose for which it is needed, its approximate area, and, where a plan shall have been made of the land, the place where such plan may be inspected.

(3) The said declaration shall be conclusive evidence that the land is needed for a public purpose or for a Company, as the case may be; and, after making such declaration, the ^{1*}[Commissioner] may acquire the land in manner hereinafter appearing.

^{1*}* Subs. for the words "Provincial Government" and for "a Secretary to such Government" by Sindh (Amendment of Laws) Act, 1974 (Act XXVII of 1974).

^{2**} New sub-sec. (1-A) inserted by the Land Acquisition (Sindh Amendment) Ordinance XXIII of 1984.

^{1*}[(4) When the area in respect of which the said declaration is made is less than the area previously notified under sub-section (1) of section 4, such previous notification, so far as it relates to the excess area, shall be deemed to have been superseded by the said declaration.]

7. After declaration, Collector to take order for acquisition: Whenever any land shall have been so declared to be needed for a public purpose, or for a Company, the Commissioner, or some officer authorized by the Commissioner in this behalf, shall direct the Collector to take order for the acquisition of the land.

8. Land to be marked out, measured and planned.-The Collector shall thereupon cause the land (unless it has been already marked out under section 4) to be marked out. He shall also cause it to be measured, and if no plan has been made thereof, a plan to be made of the same.

9. Notice to persons interested.-(1) The Collector shall then cause public notice to be given at convenient places on or near the land to be taken stating that the Government intends to take possession of the land, and that claims to compensation for all interests in such land may be made to him.

(2) Such notice shall state the particulars of the land so needed, and shall require all persons interested in the land to appear personally or by agent before the Collector at a time and place therein mentioned (such time not being earlier than fifteen days after the date of publication of the notice), and to state the nature of their respective interests in the land and the amount and particulars of their claims to compensation for such interests, and their objections (if any) to the measurements made under section 8. The Collector may in any case require such statement to be made in writing and signed by the party or his agent.

^{1*} New sub.sec.(4) added by W.P. Ord.No.XLIX of 1969 dt.17.12.1969.

(3) The Collector shall also serve notice to the same effect on the occupier (if any) of such land and on all such persons known or believed to be interested therein, or to be entitled to act for persons so interested, as reside or have agents authorized to receive service on their behalf, within the revenue district in which the land is situate.

(4) In case any person so interested resides elsewhere, and has no such agent, the notice shall be sent to him by post in a letter addressed to him at his last known residence, address or place of business and registered under Part III of the Indian Post Office Act 1866.

^{1*}[(5) The Collector shall also serve notice of the enquiry to be held under section 11(such notice not being less than fifteen days prior to the date fixed under sub-section (2) for determination of claims and Objections) on the Department of Government, local authority or Company, as the case may be, for which land is being acquired, and require it to depute a duly authorized representative to attend the enquiry on its behalf for the purpose of making objections (if any) to the measurement of the land, claims to any interest in the land or the amount of any compensation. Such authorized representative shall be a party to the proceedings.]

10. Power to require and enforce the making of statements as to names and interests: (1) The Collector may also require any such person to make or deliver to him, at a time and place mentioned (such time not being earlier than fifteen days after the date of the requisition), a statement containing, so far as may be practicable, the name of every other person possessing any interest in the land or any part thereof as co-proprietor, sub-proprietor, mortgagee, tenant or otherwise, and of the nature of such interest, and of the rents and profits (if any), received or receivable on account thereof for three years next preceding the date of the statement.

(2) Every person required to make or deliver a statement under this section or section 9 shall be deemed to be legally bound to do so within the meaning of sections 175 and 176 of the Pakistan Penal Code [(XLV of 1860)].

^{1*}New sub-sec. (5) added by W.P.Old.No.XLIX of 1969 Dt.17.12.1969.

Enquiry into Measurements, Value and Claims, and Award by the Collector

11. Enquiry and award by Collector. - ^{1*}(1) On the day so fixed or on any other day to which the enquiry has been adjourned, the Collector shall proceed to enquire into the objections (if any) which any person interested

^{2**} [and a Department of Government, local authority, or a Company, as the case may be] has stated pursuant to a notice given under section 9 to the measurements made under section 8, and into the value of the land at the date of the publication of the notification under section 4, sub-section (1), and into the respective interests of the persons claiming the compensation and shall make an award under his hand of-

(i) the true area of the land;

(ii) the compensation which in his opinion should be allowed for the land;^{1*}[-]

(iii) the apportionment of the said compensation among all the persons known or believed to be interested in the land, of whom, or of whose claims, he has information, whether or not they have respectively appeared before him ^{1*}[and]

^{2**} [(iv) the cost or a part of such cost actually and reasonably incurred for preparing the claim and putting the case before him for compensation which in his opinion should be allowed].

^{3***} [(2) The award shall be announced by the Collector within six months of the publication of declaration under section 6, failing which the officials or officers found guilty for the inordinate delay by such authority and after such enquiry as may be prescribed by rules shall, reimburse the Provincial Government the amount of the additional compensation assessed under section 28-A for the period of delay].

^{1*} The existing Sec.11 numbered as sub.sec.(1) and in sub-section (1) as so numbered in clause II the word “and” and in clause III for the full stop appearing at the end the semi colon add the word “and” substituted by Sindh Ord.No.XXIII of 1984 dt.30.9.1984.

^{2**} New Clause (iv) added by Sindh Ordinance No. XXIII of 1984 sub.sec.(2) added, *ibid.*

^{3***} New sub section (2) added, *ibid.*

12. Award of Collector when to be final. - (1) Such award shall be filed in the Collector's office and shall, except as hereinafter provided, be final and conclusive evidence, as between the Collector and the persons interested, whether they have respectively appeared before the Collector or not, of the true area and value of the land, and the apportionment of the compensation among the persons interested.

(2) The Collector shall give immediate notice of his award to such of the persons interested as are not present personally or by their representatives when the award is made.

^{1*}[**12-A. Correction of mistake:** Any clerical or arithmetical mistake in the award arising therein from any accidental slip or omission may, at any time, be corrected by the Collector either of his own motion or on the application of any of the parties.

13. Adjournment of enquiry. – The Collector may, for any cause he thinks fit, from time to time adjourn the enquiry to a day to be fixed by him.

14. Power to summon and enforce attendance of witnesses and production of documents. - For the purpose of enquiries under this Act the Collector shall have power to summon and enforce the attendance of witnesses, including the parties interested or any of them, and to compel the production of documents by the same means, and (so far as may be) in the same manner as is provided in the case of a Civil Court under the Code of Civil Procedure.

15. Matters to be considered and neglected. - In determining the amount of compensation, the Collector shall be guided by the provisions contained in sections 23 and 24.

^{1*} New Sec.12-A inserted by W.P.Old.No.XLIX of 1969 Dt. 17.12.1969.

Taking possession

16. Power to take possession: When the Collector has made an award under section 11, he may ^{1*}[subject to the provision of section 31] take possession of the land, which shall thereupon vest absolutely in the Government, free from all encumbrances.

^{4****}[“provided that the amount of compensation is to be paid to the owner of land or deposited in civil court in his name by the acquisition authority before taking over possession of land.”]

^{2**}[**17. Special powers in cases of urgency:**(1) In cases of urgency, whenever the Commissioner so directs, the Collector, though no such award has been made, may, on the expiration of fifteen days from publication of the notice mentioned in sub-section (1) of section 9, take possession of any land needed for public purposes or for a Company. Such land shall thereupon vest absolutely in the Government, free from all encumbrances:

^{3***}[Provided that the Commissioner shall not issue any direction to the Collector under this sub-section unless the Department of Government, the local authority, or Company, as the case may be, for which the land is being acquired, has first deposited the estimated cost of acquisition of such land as determined by the Collector of the district, keeping in view the provisions of sections 23 and 24.]

(2) Whenever, owing to any sudden change in the channel of any navigable river or other unforeseen emergency, it becomes necessary for any Railway Administration to acquire the immediate possession of any land for the maintenance of their traffic or for the purpose of making thereon a river-side or ghat station, or of providing convenient connection with or access to any such station, or whenever owing to a similar emergency it becomes necessary for the Commissioner to

^{1*} The above words Ins. by W.P. Ord. No. XLIX of 1969.

^{2**} Subs. by W.P. Ord. No. XLIX of 1969.

^{3***} Proviso Subs. by Sindh Ord. No. III of 1972 and Sindh Act No. XXVII of 1974.

^{4****} Proviso added through L.A (Sindh Amendment) Act, 2009. XVI of 2010.

acquire the immediate possession of any land for the purposes of maintaining traffic over a public road, the Collector may, immediately after the publication of the notice mentioned in sub-section (1) and with the previous sanction of the Commissioner, enter upon and take possession of such land, which shall thereupon vest absolutely in the Government free from all encumbrances :

Provided that the Collector shall not take possession of any building or part of a building under this sub-section without giving to the occupier thereof at least forty-eight hours notice of his intention so to do, or such longer notice as may be reasonably sufficient to enable such occupier to remove his movable property from such building without unnecessary inconvenience.

(3) In every case under either of the preceding sub-sections the Collector shall at the time of taking possession offer to the persons interested compensation for the standing crops and trees (if any) on such land and for any other damage sustained by them caused by such sudden dispossession and not excepted in section 24; and, in case such offer is not accepted, the value of such crops and trees and the amount of such other damage shall be allowed for in awarding compensation for the land under the provisions herein contained.

(4) In cases where in the opinion of the ^{1*}[Commissioner] the provisions of sub-section (1) or sub-section (2) are applicable, the [Commissioner] may direct that the provisions of sections 5 and 5-A shall not apply, and, if [he] does so direct, declaration may be made under section 6 in respect of the land at any time after the publication of the notification under sub-section (1) of section 4.

^{1*} In sub-sec. (4) for words "Provincial Government" word "Commissioner" and for word "it" word "he" substituted by Sindh (Amendment of Laws) Act,1974.

PART III

REFERENCE TO COURT AND PROCEDURE THEREON

18. Reference to Court. – (1) Any person interested who has not accepted the award may, by written application to the Collector, require that the matter be referred by the Collector for the determination of the Court, whether his objection be to the measurement of the land, the amount of the compensation, the persons to whom it is payable, the apportionment of the compensation among the persons interested ^{1*}[or the amount of costs allowed].

(2) The application shall state the grounds on which objections to the award is taken:

Provided that every such application shall be made-

(a) if the person making it was present or represented before the Collector at the time when he made his award, within six weeks from the date of the Collector's award;

(b) in other cases, within six weeks of the receipt of the notice from the Collector under section 12, sub-section (2), or within six months from the date of the Collector's award, whichever period shall first expire.

^{2**}[(3) Notwithstanding anything to the contrary contained in section 21,
^{3***} [the Federal Government, the Provincial Government, a Company or a local authority as the case may be], if it has not accepted the award, refer the matter to the Court within a period of six months from the date of announcement of the award; provided that the Court shall not entertain the reference unless in its opinion there is a *prima facie* case for enquiry into and determination of the objection against the award].

^{1*} In sub-sec-(1) the word "or" omitted and the words "or the amount of costs allowed" added by Sindh Ord.XXIII of 1984, Dt.30.9.1984.

^{2**} New sub.sec. (3) added by W.P.Old.No.XLIX of 1969 Dt.17.12.1969.

^{3****} Subs. for the word "the Provincial Government" by the Land Acquisition (Sindh Amendment) Act,1992.

19. Collector's statement to the Court. - (1) In making the reference, the Collector shall state for the information of the Court, in writing under his hand;

- (a) the situation and extent of the land, with particulars of any trees, buildings or standing crops thereon;
- (b) the names of the persons whom he has reason to think interested in such land;
- (c) the amount awarded for damages and paid or tendered under sections 5 and 17, or either of them, and the amount of compensation ^{1*}[and of costs, if any,] awarded under section 11;
- (d) if the objection be to the amount of the compensation, the grounds on which the amount of compensation was determined.

(2) To the said statement shall be attached a schedule giving the particulars of the notices served upon, and of the statements in writing made or delivered by, the parties interested respectively.

20. Service of notice. - The Court shall thereupon cause a notice specifying the day on which the Court will proceed to determine the objection, and directing their appearance before the Court on that day, to be served on the following persons, namely: -

- (a) the applicant;
- (b) all persons interested in the objection, except such (if any) of them as have consented without protest to receive payment of the compensation awarded; and
- (c) if the objection is in regard to the area of the land or to the amount of the compensation ^{1*} [or costs if any], the Collector ^{2**}[the Federal Government, the Provincial Government, local authority or Company, as the case may be], for which land is being acquired.

^{1*} Above word inserted and substituted for the word "compensation" by the Land Acquisition (Sindh Amendment) Ord.XXIII of 1984 Dt.30.9.1984.

^{2**} Subs. for the word "and the Department of Government" by The Land Acquisition (Sindh Amendment) Act, 1992 (Act VIII of 1992).

21. Restriction on scope of proceedings. - The scope of the enquiry in every such proceeding shall be restricted to a consideration of the interests of the persons affected by the objection.

22. Proceedings to be in open Court. - Every such proceeding shall take place in open Court, and all persons entitled to practice in any Civil Court in the province shall be entitled to appear, plead and act (as the case may be) in such proceeding.

^{1*}[**22-A. Cross objections:** ^{2**}[The Federal Government or the Provincial Government], or a local authority or a Company for which land is being acquired, may lodge a cross objection to the objection made by any person interested and the court may reduce the amount awarded by the Collector if it considers it just and proper].

23. Matters to be considered in determining compensation. - (1) In determining the amount of compensation to be awarded for land acquired under this Act, the Court shall take into consideration-

first, the market-value of the land at the date of the publication of the notification under section ^{3***}[6], sub-section (1);

^{4****}[Explanation: For the purposes of determining the market value, the Court shall take into account transfers of land similarly situated and in similar use. The potential value of the land to be acquired if put to a different use shall only be taken into consideration if it is proved that land similarly situated and previously in similar use has, before the date of the notification under sub-section (1) of section ^{3***}[6], been transferred with a view to being put to the use relied upon as affecting the potential value of the land to be acquired].

Provided that:

- (i) If the market value has been increased in consequence of the land being put to a use which is

^{1*} New Sec. 22-A inserted by W.P. Ord.No.XLIX of 1969.

^{2**}Subs. for the word "The Provincial Government" by Land Acquisition (Sindh Amendment) Act, 1992 (Act VIII of 1992).

^{3***} subs: for figure "4" through L.A (Sindh Amend.) Act, 2009.

^{4****}Explanation added by W.P. Ord. No.XLIX of 1969.

unlawful or contrary to public policy, that use shall be disregarded and the market-value shall be deemed to be the market-value of the land if it were put to ordinary use; and

(ii) If the market-value of any building has been increased in consequence of the building being so overcrowded as to be dangerous to the health of the inmates, such overcrowding shall be disregarded and the market-value shall be deemed to be the market-value of the building if occupied by such number of persons only as can be accommodated in it without risk of danger to health from overcrowding,

secondly, the damage sustained by the person interested, by reason of the taking of any standing crops or trees which may be on the land at the time of the Collector's taking possession thereof;

thirdly, the damage (if any) sustained by the person interested, at the time of the Collector's taking possession of the land, by reason of severing such land from his other land;

fourthly, the damage (if any) sustained by the person interested, at the time of the Collector's taking possession of the land, by reason of the acquisition injuriously affecting his other property, moveable or immoveable, in any other manner, or his earnings;

fifthly if, in consequence of the acquisition of the land by the Collector, the person interested is compelled to change his residence or place of business, the reasonable expenses (if any) incidental to such change; and

sixthly, the damage (if any) *bona fide* resulting from diminution of the profits of the land between the time of the publication of the declaration under section 6 and the time of the Collector's taking possession of the land.

^{1*}[(2) In addition to the market value of the land as above provided, the Court shall award a sum of fifteen per centum on such market value, in consideration of the compulsory nature of the acquisition, if the acquisition has been made for a public purpose and a sum of twenty-five per centum on such market-value if the acquisition has been made for a company.]

^{1*} Subs. by W.P. Ord. No.XLIX of 1969 dt. 17.12.1969.

24. Matters to be neglected in determining compensation. - But the Court shall not take into consideration-

first, the degree of urgency which has led to the acquisition;

secondly, any disinclination of the person interested to part with the land acquired;

thirdly, any damage sustained by him which, if caused by a private person, would not render such person liable to a suit;

fourthly, any damage which is likely to be caused to the land acquired, after the date of the publication of the declaration under section 6, by or in consequence of the use to which it will be put;

fifthly, any increase to the value of the land acquired likely to accrue from the use to which it will be put when acquired;

sixthly, any increase to the value of the other land of the person interested likely to accrue from the use to which the land acquired will be put; or

seventhly, any outlay or improvements on, or disposal of the land acquired, commenced, made or effected without the sanction of the Collector after the date of the publication of the notification under section ^{***}[6], sub-section (1);

25. Rules as to amount of compensation: (1) When the applicant has made a claim to compensation, pursuant to any notice given under Section 9, the amount awarded to him by the Court shall not exceed the amount so claimed ^{1*}

(2) When the applicant has refused to make such claim or has omitted without sufficient reason (to be allowed by the Judge) to make such claim, the amount awarded by the Court shall in no case exceed the amount awarded by the Collector.

(3) When the applicant has omitted for a sufficient reason (to be allowed by the Judge) to make such claim, the amount awarded to him by the Court shall not be less than, and may exceed, the amount awarded by the Collector.

26. Form of awards. -(1) Every award under this part shall be in writing signed by the Judge, and shall specify the amount awarded under clause first of sub-section (1) of section 23, and also the amounts (if any) respectively awarded under each of the other clauses of the same sub-section, together with the grounds of awarding each of the said amounts.

^{1*} The words "or be less than the amount awarded by the Collector under section 11" omitted by W.P.Ord. No.XLIX of 1969.

^{2**} subs: for figure "4" through L.A (Sindh Amend.) Act, 2009.

(2) Every such award shall be deemed to be a decree and the statement of the grounds of every such award a judgment within the meaning of section 2, clause (2), and section 2, clause (9), respectively of the Code of Civil Procedure, 1908 (V of 1908).

27. Costs. - (1) Every such award shall also state the amount of costs incurred in the proceedings under this Part, and by what persons and in what proportions they are to be paid.

(2) When the award of the Collector is not upheld, the cost shall ordinarily be paid by the Collector, unless the Court shall be of opinion that the claim of the applicant was so extravagant or that he was so negligent in putting his case before the Collector that some deduction from his costs should be made or that he should pay a part of the Collector's costs.

28. Collector may be directed to pay interest on excess compensation:- If the sum which, in the opinion of the Court, the Collector ought to have awarded as compensation is in excess of the sum which the Collector did award as compensation, the award of the Court may direct that the Collector shall pay interest on such excess at the rate of ^{1*}[six per centum per annum] from the date on which he took possession of the land to the date of payment of such excess into Court.

^{2**}[28-A.] Omitted.

^{1*}Subs. for the word "interest on such excess at the rate of six per centum" by W.P.Act No.III of 1969. Dt.15.3.1969 and to that effect a Proviso was also inserted. However through the Land Acquisition (West Pakistan Amendment) (Repeal) Ordinance 1971 W.P.Act No.III of 1969 has been repealed.

^{2**} Sec. 28-A Omitted and shall be deemed to have been so omitted as if it had never been enacted through the L.A (Sindh Amend.) Act, 2009. Sindh Act No. XVI of 2010.

PART IV

APPORTIONMENT OF COMPENSATION

29. Particulars of apportionment to be specified: Where there are several persons interested, if such persons agree in the apportionment of the compensation, the particulars of such apportionment shall be specified in the award, and as between such persons the award shall be conclusive evidence of the correctness of the apportionment.

30. Dispute as to apportionment: When the amount of compensation has been settled under section 11, if any dispute arises as to the apportionment of the same or any part thereof, or as to the persons to whom the same or any part thereof is payable, the Collector may refer such dispute to the decision of the Court.

PART V

PAYMENT

31. Payment of compensation or deposit of same in Court: ^{1*}(1) When the Collector has made an award under section 11-

- (a) if the person interested entitled to compensation under the award and ^{2**}[the Federal Government or the Provincial Government, as the case may be] accept the award and intimate their acceptance in writing to the Collector before the expiry of the period prescribed in sub-section (2) of section 18 for making an application to the Collector for referring the award to the Court, or in sub-section (3) of the said section for referring the award to the Court by ^{2**}[the Federal Government, or the Provincial Government as the case may be], whichever is later, or if the period specified in sub-section (2) of the said section for making an application to the Collector or in sub-section (3) for referring the award to the Court has expired and no such application or reference has been made, the Collector shall, before taking possession of the land, tender payment of the full amount of compensation ^{3***}[and costs, if any], awarded by him to the persons entitled thereto according to the award, and shall pay it to them unless prevented by some one or more of the contingencies mentioned in sub-section (2);
- (b) if the person interested entitled to compensation under the award or ^{1*}[the Federal Government or the Provincial Government, as the case may be] object to the award and an application has been made to the Collector under sub-section (2) of Section 18 for referring the award to the Court, or the award has been referred to the Court by ^{1*}[the Federal Government or the Provincial Government, as the case may be] under sub-section (3) of that section, the Collector

^{1*} Sub section (1) of section (31) subs: by the L.A (W.P. Amend.) Ordinance XLIX of 1969.

^{2*} Subs. for the word "the Provincial Government" by the Land Acquisition (Sindh Amendment) Act, 1992

^{3***} Above words inserted by Sindh Ordinance No. XXIII of 1984.

shall, before taking possession of the land, tender payment of the compensation ^{1*}[and costs, if any] awarded by him or the estimated cost of acquisition of such land as determined by the Collector of the district under sub-section (1) of section 17, whichever is less, to the persons entitled thereto under the award and shall pay it to them unless prevented by some one or more of the contingencies mentioned in sub-section (2):

Provided that no payment under clause (b) shall be made until the person entitled to compensation furnishes to the satisfaction of the Collector a security for refund of the amount, if any, which may subsequently be found to be in excess of the compensation ^{1*}[and costs, if any] awarded to him by the Court].

(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 ^{1*}[and the cost, if any] or as to the apportionment of it, the Collector shall deposit the amount of the compensation in the Court to which a reference under section 18 would be submitted:

Provided that any person admitted to be interested may receive such payment under protest as to the sufficiency of the amount:

Provided also that no person who has received the amount otherwise than under protest shall be entitled to make any application under section 18:

Provided also that nothing herein contained shall affect the liability of any person, who may receive the whole or any part of any compensation awarded under this Act, to pay the same to the person lawfully entitled thereto.

(3) Notwithstanding anything in this section the Collector may, with the sanction of the Commissioner instead of awarding money compensation in respect of any land, make any arrangement with any person having a limited interest in such land, either by the grant of other land in exchange, the remission of land-revenue on other lands held under the same title, or in such other way as may be equitable having regard to the interests of the parties concerned.

(4) Nothing in the last foregoing sub-section shall be construed to interfere with or limit the power of the Collector to enter into any arrangement with any person interested in the land and competent to contract in respect thereof.

32. Investment of money deposited in respect of lands belonging to persons incompetent to alienate: (1) If any money shall be deposited in Court under sub-section (2) of the last preceding section and it appears that the land in respect whereof the same was awarded belonged to any person who had no power to alienate the same, the Court shall-

(a) order the money to be invested in the purchase of other lands to be held under the like title and conditions of ownership as the land in respect of which such money shall have been deposited was held, or

(b) if such purchase cannot be effected forthwith, then in such Government or other approved securities as the Court shall think fit; and shall direct the payment of the interest or other proceeds arising from such investment to the person or persons who would for the time being have been entitled to the possession of the said land, and such moneys shall remain so deposited and invested until the same be applied-

(i) in the purchase of such other lands as aforesaid; or

(ii) in payment to any person or persons becoming absolutely entitled thereto-

(2) In all cases of moneys deposited to which this section applies the Court shall order the costs of the following matters, including therein all reasonable charges and expenses incident thereto, to be paid by the Collector, namely: -

(a) the costs of such investments as aforesaid;

(b) the costs of the orders for the payment of the interest or other proceeds of the securities upon which such moneys are for the time being invested, and for the payment out of Court of the principal of such moneys, and of all proceedings relating thereto, except such as may be occasioned by litigation between adverse claimants.

33. Investment of money deposited in other cases: When any money shall have been deposited in Court under this Act for any cause other than that mentioned in the last preceding section, the Court may, on the application of any party interested or claiming an interest in such money, order the same to be invested in such Government or other approved securities as it may think proper, and may direct the interest or other proceeds of any such investment to be accumulated and paid in such manner as it may consider will give the parties interested therein the same benefit there from as they might have had from the land in respect whereof such money shall have been deposited or as near thereto as may be-

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 at the rate of ^{1*}[six per centum per annum] from the time of so taking possession until it shall have been so paid or deposited.

^{1*} Amendment in sec 34 through the L.A (W.P. Amend.) Act, 1969 Repealed and shall be deemed to never have been enacted through the L.A (W.P. Amend.) (Repeal) Ord. 1971-Sindh Ord. No. VI of 1971

PART VI

TEMPORARY OCCUPATION OF LAND

35. Temporary occupation of waste or arable land. Procedure where difference as to compensation exists: (1) Subject to the provisions of Part VII of this Act, whenever it appears to the Commissioner that the temporary occupation and use of any waste or arable land are needed for any public purpose, or for a Company, the Commissioner may direct the Collector to procure the occupation and use of the same for such term as it shall think fit, not exceeding three years from the commencement of such occupation.

^{1*}[(2) The Collector shall cause public notice of the substance of the direction to be given at convenient places in the locality in which the land is situate, and thereupon it shall be lawful for any officer, either generally or specially authorized by the Collector in this behalf, and for the servants and workmen of such officer, to enter upon and survey and take levels of any land in such locality.]

^{1*}[(3) On receipt of plans detailing the land acquired, the Collector shall give notice in writing to the persons interested in such land of the purpose for which the same is needed and shall, for the occupation and use thereof for such term as aforesaid, and for the materials, if any, to be taken there from, pay to them such compensation, either in a gross sum of money or by monthly or other periodical payments as shall be agreed upon in writing between him and such persons respectively.]

(4) In case the Collector and the persons interested differ as to the sufficiency of the compensation or apportionment thereof, the Collector shall refer such difference to the decision of the Court.

^{1*} Sub.sec. (2) Subs and existing sub.sec.(3) re-numbered as sub.sec.(4) and sub.sec.(3) Inserted. by W.P. Ord. No.XLIX of 1969.

36. Power to enter and take possession, and compensation on restoration: (1) On payment of such compensation, or on executing such agreement, or on making a reference under section 35, the Collector may enter upon and take possession of the land, and use or permit the use thereof in accordance with the terms of the said notice.

(2) On the expiration of the term, the Collector shall make or tender to the persons interested compensation for the damage (if any) done to the land and not provided for by the agreement, and shall restore the land to the persons interested therein:

Provided that, if the land has become permanently unfit to be used for the purpose for which it was used immediately before the commencement of such term, and if the persons interested shall so require, the Commissioner shall proceed under this Act to acquire the land as if it was needed permanently for a public purpose or for a Company.

37. Difference as to condition of land: In case the Collector and persons interested differ as to the condition of the land at the expiration of the term, or as to any matter connected with the said agreement, the Collector shall refer such difference to the decision of the Court.

PART VII

ACQUISITION OF LAND FOR COMPANIES

38. Company may be authorized to enter and survey: ^{1*}[(1) The Commissioner may authorize any officer of any Company desiring to acquire land for its purpose to exercise the powers conferred by sub-section (2) of section 4].

(2) In every such case Section 4 shall be construed as if for the words "for such purpose" the words "for the purpose of the Company" were substituted; and ^{2**}[sub-section (3) of section 4], shall be construed as if after the words "the officer" the words "of the Company" were inserted.

38-A. Industrial concern to be deemed Company for certain purposes: An industrial concern, ordinarily employing not less than one hundred workmen owned by an individual or by an association of individuals and not being a Company, desiring to acquire land for the erection of dwelling houses for workmen employed by the concern or for the provision of amenities directly connected therewith shall, so far as concerns the acquisition of such land, be deemed to be a Company for the purposes of this Part, and the references to Company in sections 5A, 6, 7, 17 and 50 shall be interpreted as references also to such concern.

39. Previous consent of Commissioner and execution of agreement necessary: The provisions of sections 6 to 37 (both inclusive) shall not be put in force in order to acquire land for any Company, unless with the previous consent of the Commissioner, nor unless the Company shall have executed the agreement hereinafter mentioned.

40. Previous Enquiry: (1) Such consent shall not be given unless the Commissioner be satisfied; either on the report of the Collector under section 5A, sub-section (2), or by an enquiry held as hereinafter provided -

^{1*} Substituted by W.P. Ord. No. XLIX of 1969. Dt.19.12.1969

^{2**} Subs. for the word "Section 5" by W.P. Ord. No. XLIX of 1969.

(a) that the purpose of the acquisition is to obtain land for the erection of dwelling houses for workmen employed by the Company or for the provision of amenities directly connected therewith, or

(aa) that such acquisition is needed for the construction of some building or work for a Company which is engaged or is taking steps for engaging itself in any industry or work which is for a public purpose, or

(b) that such acquisition is needed for the construction of some work, and that such work is likely to prove useful to the public,^{1*}[or]

^{1*}[(c) that the area proposed to be acquired is reasonable for the purpose.]

(2) Such enquiry shall be held by such officer and at such time and place as the Commissioner shall appoint.

(3) Such officer may summon and enforce the attendance of witnesses and compel the production of documents by the same means and, as far as possible, in the same manner as is provided by the Code of Civil Procedure, 1908 (V of 1908) in the case of a Civil Court.

41. Agreement with Commissioner: If the ^{2**} [Commissioner] is satisfied after considering the report, if any, of the Collector under section 5A, sub-section (2), or on the report of the officer making an inquiry under section 40 that ^{3***}[the object of the proposed acquisition is to obtain land for one of the purposes referred to in clause (a) or clause (aa) or clause (b) of sub-section (1) of section 40] he shall require the Company to enter into an agreement with the Commissioner, providing to the satisfaction of the Commissioner for the following matters, namely:-

^{1*} Word "or" in clause (b) and new clause (c) added by W.P. Ord. No.XLIX of 1969.

^{2**}. In Section 41 for Provincial Government word "Commissioner" substituted by Sindh (Amendment of Laws) Act,1974.

^{3***}In Sec.41 the words "the object of the proposed acquisition is to obtain land for one of the purposes referred to in clause(a) or clause (aa) or clause (b) of subsection (1) of section 40" subs. through L.A (W.P. Amend.) 1969.

(1) the payment to the Provincial Government of the cost of the acquisition;

(2) the transfer, on such payment, of the land to the Company;

(3) the terms on which the land shall be held by the Company;

(4) where the acquisition is for the purpose of erecting dwelling houses or the provision of amenities connected therewith, the time within which, the conditions on which and the manner in which the dwelling houses or amenities shall be erected or provided; and

^{1*}[(5) where the acquisition is for a purpose falling under clause (b) of sub-section (1) of section 40, the time within which and the conditions on which the work shall be constructed and maintained.]

42. Publication of agreement: Every such agreement shall, as soon as may be after its execution, be published in the official Gazette, ^{1*}[and the acquisition shall be deemed to have been made subject to the terms of such agreement].

43. Section 39 to 42 not to apply where Government bound by agreement to provide land for Companies: The provisions of sections 39 to 42, both inclusive, shall not apply and the corresponding sections of the Land Acquisition Act, 1894, shall be deemed never to have applied, to the acquisition of land for any Railway or other Company, for the purposes of which, under any agreement with such Company, the Secretary of State for India-in-Council, the Secretary of State, the Federal Government or any Provincial Government is or was bound to provide land.

^{3***} **[43-A. Restrictions on transfer, etc.** No Company for which any land is acquired under this Part shall be entitled to transfer the said land

^{1*}Clause (5) of Sec. 41 added. through W.P. Ord. No.XLIX of 1969.

^{2**} In Sec.42 the words “ and the acquisition shall be deemed to have been made subject to the terms of such agreement. Substituted through *ibid*

^{3**} Added by L.A (W.P. Amend.) Ordinance 1969.

or any part thereof by sale, mortgage, gift, lease or otherwise except with the previous sanction of the Provincial Government].

44. How agreement with Railway Company may be proved: In the case of the acquisition of land for the purposes of a Railway Company, the existence of such an agreement as is mentioned in section 43 may be proved by the production of a printed copy thereof purporting to be printed by order of Government.

PART VIII

MISCELLANEOUS

45. Service of notices: (1) Service of any notice under this Act shall be made by delivering or tendering a copy thereof signed, in the case of a notice under section 4, by the officer therein mentioned, and, in the case of any other notice, by or by order of the Collector or the Judge.

(2) Whenever it may be practicable, the service of the notice shall be made on the person therein named.

(3) When such person cannot be found, the service may be made on any adult male member of his family residing with him; and, if no such adult male member can be found, the notice may be served by fixing the copy on the outer door of the house in which the person therein named ordinarily dwells or carries on business, or by fixing a copy thereof in some conspicuous place in the office of the officer aforesaid or of the Collector or in the Court-house, and also in some conspicuous part of the land to be acquired;

Provided that, if the Collector or Judge shall so direct, a notice may be sent by post, in a letter addressed to the person named therein at his last known residence, address or place of business and registered under Part III of the Indian Post Office Act, 1866 (XIV of 1866), and service of it may be proved by the production of the addressee's receipt.

46. Penalty for obstructing acquisition of land: Whoever willfully obstructs any person in doing any of the acts authorized by section 4 or section 8, or willfully fills up, destroys, damages or displaces any trench or mark made under section 4, shall, on conviction before a Magistrate, be liable to imprisonment for any term not exceeding one month, or to fine not exceeding fifty rupees, or to both.

47. Magistrate to enforce surrender: If the Collector is opposed or impeded in taking possession under this Act of any land, he shall, if a Magistrate, enforce the surrender of the land to himself, and if not a Magistrate, he shall apply to a Magistrate and such Magistrate shall enforce the surrender of the land to the Collector.

48. Completion of acquisition not compulsory, but compensation to be awarded when not completed: (1) Except in the case provided for in section 36, the Government shall be at liberty to withdraw from the acquisition of any land of which possession has not been taken.

(2) Whenever the Government withdraws from any such acquisition, the Collector shall determine the amount of compensation due for the damage suffered by the owner in consequence of the notice or of any proceedings there-under, and shall pay such amount to the person interested, together with all costs reasonably incurred by him in the prosecution of the proceedings under this Act relating to the said land.

(3) The provisions of Part III of this Act shall apply, so far as may be, to the determination of the compensation payable under this section.

49. Acquisition of part of house or building: (1) The provisions of this Act shall not be put in force for the purpose of acquiring a part only of any house, manufactory or other building, if the owner desires that the whole of such house, manufactory or building shall be so acquired:

Provided that the owner may, at any time before the Collector has made his award under section 11, by notice in writing, withdraw or modify his expressed desire that the whole of such house, manufactory or building shall be so acquired;

Provided also that, if any question shall arise as to whether any land proposed to be taken under this Act does or does not form part of a house, manufactory or building within the meaning of this section, the Collector shall refer the determination of such question to the Court and shall not take possession of such land until after the question has been determined.

In deciding on such a reference the Court shall have regard to the question whether the land proposed to be taken, is reasonably required for the full and unimpaired use of the house, manufactory or building.

(2) If, in the case of any claim under section 23, sub-section (1), thirdly, by a person interested, on account of the severing of the land to be acquired from his other land, the Commissioner is of opinion that the claim is unreasonable or excessive, he may, at any time before the Collector has made his award, order the acquisition of the whole of the land of which the land first sought to be acquired forms a part.

(3) In the case last hereinbefore provided for, no fresh declaration or other proceedings under sections 6 to 10, both inclusive, shall be necessary; but the Collector shall without delay furnish a copy of the order of the Commissioner to the person interested, and shall thereafter proceed to make his award under section-11.

50. Acquisition of land at cost of a local authority or Company: (1) Where the provisions of this Act are put in force for the purpose of acquiring land at the cost of any fund controlled or managed by a local authority or of any Company, the charges of and incidental to such acquisition shall be defrayed from or by such fund or Company.

^{1*}[(1-A) Any charges to be defrayed from the funds of a Local Authority or a Company under sub-section (1), may be recovered, in addition to any other mode of recovery provided in any other Law, as arrears of land revenue.]

¹Added by the Land Acquisition (West Pakistan Amendment) Ordinance XLIX of 1969.

(2) In any proceeding held before a Collector or Court in such cases the Local Authority or Company concerned may appear and adduce evidence for the purpose of determining the amount of compensation.

Provision deleted by the Land Acquisition (Sindh Amendment) Act, 1992.

51. Exemption from stamp duty and fees: No award or agreement made under this Act shall be chargeable with stamp duty, and no person claiming under any such award or agreement shall be liable to pay any fee for a copy of the same.

52. Notice in case of suits for anything done in pursuance of Act: No suit or other proceeding shall be commenced or prosecuted against any person for anything done in pursuance of this Act, without giving to such person a month's previous notice in writing of the intended proceeding, and of the cause thereof, nor after tender of sufficient amends.

53. Code of Civil Procedure to apply to proceedings before Court: Save in so far as they may be inconsistent with anything contained in this Act, the provisions of the Code of Civil Procedure, 1908 (V of 1908), shall apply to all proceedings before the Court under this Act.

54. Appeals in proceedings before Court: Subject to the provisions of the Code of Civil Procedure, 1908 (V of 1908), applicable to appeals from original decrees, and notwithstanding anything to the contrary in any enactment for the time being in force, an appeal shall only lie in any proceedings under this Act to the High Court from the award, or from any part of the award, of the Court and from any decree of the High Court passed on such appeal as aforesaid an appeal shall lie to the Supreme Court subject to the provisions contained in section 110 of the Code of Civil Procedure, 1908, and (V OF 1908 in Order XLV thereof.

55. Power to make rules: (1) The Provincial Government shall have power to make rules consistent with this Act for the guidance of officers in all matters connected with its enforcement, and may from time to time alter and add to the rules so made.

(2) The power to make, alter and add to rules under sub-section (1) shall be subject to the condition of the rules, being made, altered or added to after previous publication.

(3) All such rules, alterations and additions shall be published in the Official Gazette, and shall thereupon have the force of law.

LAND ACQUISITION

GUIDE LINES FOR THE IMPLEMENTATION OF THE LAND ACQUISITION "ACT"

KEEPING IN VIEW INSTRUCTIONS ISSUED BY:

**GOVERNMENT OF WEST PAKISTAN
BOARD OF REVENUE, VIDE NO.493-70/209-LAH
DATED: 2ND FEBRUARY 1970.**

1. For the acquisition of land for a public purpose or for a company in any locality, under the Land Acquisition Act 1894, as the first stage of operation starts with the issue of the preliminary notification in the official gazette under section 4 by the Collector of the District, and a public notice thereof is to be given by him at convenient places in the said locality. The notification should clearly indicate the name of the Taluka, Deh and broad details of the survey numbers or block numbers as the case may be and the approximate area sought to be acquired. Since the date of issue of the notification under Section 4 is most important as it fixes the material date for determining the market value of the land and also for awarding the additional compensation under Section 28-A, the Collector of the Districts only have been empowered to issue this notification to expedite the process of acquisition and safe guard against any apprehension in the rates of compensation. The delay in issuance of this notification will provide opportunity to the concerned land owner to get initiated prices recorded through fictitious mutations to enable them to claim compensation at high rates. They can also change the use of the land from Agriculture to non-Agriculture in order to get the compensation at higher rates. While working the estimated cost of the land to be acquired the details of the sale of the land, and the rate at which it is sold should be obtained from

the Sub-Registrars and the District Registrars as well as the Muktiarkars.

2. The Collectors of the Districts should personally ensure that the notification issued under Section 4 is got published in the official gazette not later than 15 days.

3. The issue of the notification under Section 4 is to be followed by survey of the area as required by Section 4(2) and after considering the result of such survey a further notification has to be issued under Section 5 stating that the land in question is needed for a public purpose or for a company and showing clearly Deh, Taluka and the District where the land is situated, and its survey numbers or block numbers and the area, the Collector of the District may send formal request to the Director Settlement Survey & Land Records for issuance of B-Forms showing the actual area required. The representative of the acquiring agency should be bound down to accompany the survey staff for carrying out measurement on the site. After receipt of B-Form from the Director Settlement Survey & Land Records the same should be sent to the acquiring agency to confirm its correctness. This B-Form can be sent to the Director Settlement Survey & Land Records confidentially for verification of its correctness in appropriate cases as in the recent past cases have been detected in which the area shown in the B-Forms was tempered with after its dispatch to the Collector and before its receipt by the addressee.

4. Notification under Section 5 is to be issued by the Commissioner when the land is being acquired for public purpose and by the Provincial Government if it is being acquired for a company. The Commissioners are advised to keep the following consideration in view while issuing the notification under Section 5, 6 & 17 of the Land Acquisition.

- (i) full description of the Deh, Taluka and District, Survey Number or Block Number and area of the land is mentioned in the notification.

- (ii) a note is given at the bottom of the notification to exclude Waqf, State and Evacuee Land, Tombs, Graveyards and Places of religious character.
- (iii) to ensure that the Collector of the District has carefully and prudently calculated the estimated cost of the land sought to be acquired in terms of Section 23 and 24 of the Land Acquisition Act and these funds have been physically placed at the disposal of the Collector and deposited in the treasury under the head "Revenue Deposit".
- (iv) before the issue of the notification under Section 6 it should be ascertained that the area sought to be acquired is not excessive and is reasonable for the purpose. Excess area if any should be deleted while issuing the declaration under Section 6.

5. While forwarding the draft notifications under Section 5, 6 & 17 to the Commissioner the Collector of the District should append the following certificates, documents and information with each case:-

- (i) a certificate to the effect that estimated cost as worked out by the Collector of the District according to the provisions of Section 23 & 24 of the Land Acquisition Act, has been physically placed at the disposal of the Collector and deposited in the Treasury under Head "Revenue Deposit"
- (ii) a recommendation to the fact that the area sought to be acquired is not excessive and is reasonable for the purpose (for declaration under Section 6 & 17).
- (iii) a certificate to the fact that any State, Waqf, Evacuee land, tombs, graveyards or places of religious nature have not been included in the draft notification.
- (iv) site plan of the land involved.
- (v) the position of the land i.e. whether Ghair Mumkin/Banjar, culturable or under cultivation, whether irrigated or not and its distance from the main road and town, should be shown to enable Commissioner to form an opinion whether it will be proper to acquire it or the

possibility of acquiring some other less valuable land should be explored to minimize the loss to the Agricultural economy and the Government Exchequer.

6. The ultimate responsibility for working out the estimated cost of the land sought to be acquired devolves on the Collector. This estimate has assumed special importance. They have to work out not only the estimates of prices but also the preliminary estimates of each item for which compensation is admissible, keeping in view the provisions of Section 23 & 24. It should be borne in mind that the result of pitching the estimates too low will probably be that the award will exceed the estimates; on the other hand if they are pitched too high, they may possibly be taken as a guide by officer who makes the award and thus cause unnecessary expense to Government. Therefore, whenever it is found that the original rates were made materially under estimated or over estimated and no sufficient reason is apparent, the officers responsible for supplying them should invariably be called on for an explanation. A copy of the data will be supplied to the acquiring officer. Since responsibility for the accuracy of the estimated cost devolved on the Collector of the District, they should form their own opinion on the value of the land, keeping in view the prices shown in the registered sale deeds for the similar type of land rather than depend on the advice of the Tapedars and Supervising Tapedars.

7. Within 30 days of the publication of the notification under Section 5, any person interested in the land may, vide Section 5.A(1), object to the acquisition. After hearing the objection the Collector of the District has to submit his report with his recommendations on the objections and after considering this report the Commissioner has to publish a declaration in the official Gazette under Section 6 that the land in question is needed for a public purpose or for a Company. The formalities under Section 5 & 5A may be dispensed with if, as provided in Section 17(f), the Commissioner issues a direction in that behalf in a case of urgency. After the publication of the declaration under Section 6, the Collector appointed under Section 3(c) of the Land Acquisition Act has to be directed to start the proceedings for the acquisition of land as required by Section 7. On receipt of this direction,

the Collector has to cause the land to be marked out and measured and also to get a plan of the land made under Section 8. He has then to issue a public notice under Section 9 stating that the Government intends to take possession of the land and that claims of compensation for all interests in such land may be made to him. A notice has to be served under Section 9(5) on the department of Government, Local Authority or Company, for which the land is being acquired, requiring it to depute its authorized representative to attend the inquiry on its behalf. Such authorized representatives are entitled to question all mutations/documents which are not genuine and in which antedated prices appeared to have been got recorded to defeat the pre-emption proceedings are to claim higher compensation. In the case of registered transaction it should be ascertained whether the price recorded therein was actually paid or not and whether the transaction was not benami or whether the price recorded was correct or inflated. Such authorized representatives shall be a party to the proceedings and have every right to take all legal steps and to adduce evidence etc. to cause a correct determination of the compensation. Inquiry has to be conducted by the Land Acquisition Collector under Section 11 in to the objections that may be raised by the parties pursuant to the notice given under Section 9 and as a result of the enquiry award has to be made by him regarding the true area, prudent market value of the land and the apportionment of the compensation amongst the persons interested.

8. According to Section 18 the Government would be competent if it has not accepted the awards to file a reference before the Civil Court within the period of 6 months from the date of announcement of the award. Under Section 22A, the Government or Local Authority or a Company for which the land is being acquired may lodge a cross objection to the objections made by any interested person to the amount of the award.

9. Under Section 16 except in cases covered by Section 17, possession of land cannot be taken over without the payment of compensation in terms of Section 31. In cases where the Government and the persons interested accept the award within 6 months of the announcement or where no reference under Section 18 has been filed by

the Government or the persons interested, through the Collector within⁶ months of the date of award, the Collector has to tender payment of full amount of compensation awarded by him before taking possession of the land. In cases however, where the Government or the person interested object to the award and make a reference to the court under Section 18 the Land Acquisition Collector should before taking possession of the land tender payment of the compensation awarded by him or the estimated cost of acquisition of such land as determined by the Collector of the District concerned whichever is less to the persons entitled thereto in the award. In case where a reference is made to the Court, and it is decided to take over the possession of the land, the compensation should not be disbursed to the persons entitled to it unless they furnish to the satisfaction of the Collector, a security for the refund of the amount which may subsequently be determined by the Court to be in excess of the actual entitlement. The Land Acquisition Collector should carefully understand the implication of the Sections 16, 17 and 31 of the Land Acquisition Act in this respect.

10. It is advisable that the Collectors and the Commissioners should review the disposal of Land Acquisition cases in periodical meetings. They may particularly exercise a proper check on the following aspects.

- (i) The funds (estimated cost etc) in respect of each case have been deposited in the Treasury under the proper head.
- (ii) Cases in which possession has been taken under Section 17, should be decided within six months of their institution and the compensation disbursed immediately, as provided by Law, to safeguard public interest and to avoid accumulation of interest. The acquiring agency should make it a point to file objections against the exaggerated claims of compensation by the interested persons and also to refer the matter to the Court within a period six months from the date of announcement of award if the award is not acceptable as provided

in sub section (3) of section 11 of the Land Acquisition Act.

- (iii) The responsibility for delay in the disposal of cases and payment of an exorbitant amount as interest in cases where notification under Section 17 was issued should also be fixed to improve efficiency and to ensure that the Public Exchequer is not burdened with any avoidable expenditure.

INSTRUCTIONS IN THE LIGHT OF STANDING ORDER NO.12 REGARDING LAND ACQUISITION

Instructions which are given in standing order No. 12 regarding Land Acquisition have mainly become repugnant due to amendments in the Act and on account of discontinuance of procedure of getting the award approved from the superior officers before announcement. However some instructions are still in force and require to be strictly followed. Such instructions are given below which may be adhered to in letter and spirit in order to streamline the land acquisition work.

1. The reference for acquisition of land is to be made to the Collector of the District by the acquiring agency. The land acquisition proceedings are only to be initiated for kabuli (Private) land and not for na kabuli (State) land.
2. There are three different stages in the acquisition of kabuli (Private) land:-
 - (i) Preliminary investigation and publication of notification under Section 4 of the Land Acquisition Act by the Collector of the District.
 - (ii) Issuance of notification under Section 5 by the Commissioner. Hearing of objections under Section 5-A.
 - (iii) Publications of declaration to be issued by the Commissioner under section 6.
 - (iv) Land to be marked out, measured and planed under section 8.
 - (v) Issuance of notice under section 9 by the Collector.
 - (vi) Enquiry and Award by the Collector under section 11.
 - (vii) Notice of the Award to be given to such of the persons interested as are not present personally or by their representatives when the Award is made as required under sub section (2) of section 12.

- (viii) Payment of compensation and completion of the proceedings by getting the acquired land mutated in favor of acquiring agency.

1st Stage:

1. On receiving a reference for acquisition of land the Collector of the District should satisfy himself about the following preliminaries: -
 - (a) Are the land statements and the plan attached with the requisition and are in order?
 - (b) Is nicking reported to have been done on the site?
 - (c) Is the acquisition proposed under the "ordinary" or "urgency" clause? If under the "urgency" clause, are full reasons given for such acquisition?

If any of the above preliminaries is not satisfactorily observed, the requisition may be returned for completion of the requirements?
2. After completion of preliminaries the Collector of the District should get a draft notification under Section 4 of the Land Acquisition Act carefully prepared in his office to avoid issuance of amended notification and corrigendum's. This notification should be got published in the Gazette.
3. After the publication of notification under Section 4, the Collector shall cause public notice of the substance of such notification to be given at convenient places in the said locality. There after survey of the land should be got completed and the boundaries and lines be marked.
4. If the land is to be acquired under ordinary clause, the Commissioner may be requested for issuance of notification under Section 5.
5. After publication of notification under Section 5, Collector should issue the notice containing the

substance of above notification and inviting the objections under Section 5-A of the Land Acquisition Act. Such objections if any, received within thirty days after issuance of notification should be heard by the Collector and if necessary further enquiry be made by him. He should then submit to the Commissioner his report together with the record and draft notification under Section 6, if necessary in duplicate.

6. If no objection is received or objections are not sustainable the Commissioner may issue a Declaration Notification under Section 6 which should be got published in the Government Gazette contain a declaration of the purpose for which the land is proposed to be acquired and also necessary particulars in connection there with.
7. If the land is to be acquired under the "urgency" clause of Section 17, the Collector should estimate the market price of the land and require the acquiring agency to deposit it in the Government Treasury under the proper head.

Second Stage:

1. Second stage commences with the action for measurement of the land under Section 8 of the Act. As soon as the Declaration under Section 6 is published, a survey challan for measurement of the land should be issued. The measurement should be carried out by the Director Settlement, Survey and Land Records. The survey party deputed to do the work should communicate the date of measurement to the acquiring agency with a request to send a responsible representative on the site on that date without fail. The object is that the presence of the representative will ensure that the requisite land is not different from and is included in what is declared

in notification. It will be for the above representative to show on the site the precise area of the land required within the special boundaries given in the declaration. The measurement work however should not be postponed owing to the absence of such a representative.

2. After completion of the measurement work the joint measurement certificate should be drawn up and measurement paper should be prepared, checked and sent to the Director Settlement, Survey and Land Records, where the same should be scrutinized and then be forwarded by the Director Settlement, Survey and Land Records to the Collector in a sealed envelope.
3. Notices under Section 9 of the Land Acquisition Act should then be issued by the Collector. These notices are to be published at convenient places on or near the land for the information of the persons interested in or having right over it. Notice under sub-sections (3), (4) of Section 9 should be served on the occupiers, land owners, other persons known or believed to be interested in the proceedings, mortgagee, share holders to prefer their claims. The date of hearing the parties should be fixed at least fifteen days after publication or service of the notice. The Collector should also serve notice of the enquiry to be had under section 11 on the Department of Government, Local Authority or Company, as the case may be, for which land is being acquired as provided in sub section (5) of section 9.

Third Stage:

On the date fixed for enquiry and award the Collector should obtain the objections over the claims from the acquiring agency and then make the award under his hand as provided in section 11.

2. If any party is absent personally or through his representative at the time of declaration of the award, the Collector should note this fact below the award and immediately give a notice of the award to that party under Section 12(2) of the Land Acquisition Act.
3. While giving notices to the payees, the Land Acquisition Officer should give a warning that in case of their failure to appear on the date fixed to receive compensation, no interest will be allowed to them thereafter.
4. The payment should be made by preparing refund voucher as the amount kept at the disposal of the Collector for payment of compensation is necessarily to be deposited in the Government Treasury under the proper head.
5. If the persons interested do not consent to receive payment of compensation, or if there be no person competent to alienate the land, or there be any dispute as to the title to receive compensation or as to the appointment of it, the Collector should deposit the amount of compensation in the Court to which a reference under Section 18 would be submitted as provided in sub section (2) of section 31.
6. Any person admitted to be interested may receive such payment under protest as to the sufficiency of the amount.
7. Subsidiary statements giving particulars regarding acceptance by the persons concerned of the amounts entered in the award statement should be prepared and forwarded to the authorities concerned and vouchers should be forwarded to the Treasury Officer.
8. If any person interested in the award does not accept it and makes a written application to the Collector under Section 18 of Act for referring the matter to

Court, the Collector should make a reference to Court, provided the application is made within the time specified in Section 18 of the Land Acquisition Act, viz.,

- (a) If the person making it was present or represented at the time when the award was made, within six weeks from the date of the award.
- (b) In other cases, within six weeks of receipt of the notice from the Collector under Section 12(2) or within six months from the date of the award, whichever period shall first expire.
- (c) No person who received the amounts otherwise than under protest shall be entitled to make application under Section 18.
- (d) The Federal Government or Provincial Government, a Company or a Local Authority as the case may be, may if it has not accepted the award, refer the matter to the Court within the period of six months from the date of announcement of the award. Provided that the Court shall not entertain the reference in its opinion there is a *prima facie* case for enquiry into and determination of the objection against the award.

9. After payment of the compensation the Collector should take possession of the land, if not already taken under the “urgency” clause, and hand it over to the representative of the acquiring party and obtain a receipt for it.

10. When the land acquired for a Government Department is no longer required for the purpose for which it was acquired, it should be relinquished by the Department concerned to the Revenue Department and the notices of relinquishment should *inter alia* be accompanied by the following information:-

- (i) Whether the land relinquished was originally kabuli or na-kabuli.
- (ii) In case of originally it was kabuli land, whether it was used for the purpose for which it was acquired.
11. After possession of the land is taken over, the Collector should get *Ghat Whadh* form prepared from the survey and Settlement Department and then send the measurement papers received by him from the Director Settlement, Survey and Land Records to the Mukhiyarkar of the Taluka concerned for mutation in the record of rights. The papers should not be filed until above compliance.
12. *Temporary acquisition of land.* – If land is required temporarily, it may be obtained by private negotiations in writing. If this is not possible, the land may be acquired under the Act (Sections 35 to 37). For temporary acquisition of land, issue of a notification is not necessary.
13. On receipt of the requisition, the Collector shall give notice in writing to the persons interested in such land of the purpose for which it is needed, of its occupation and use and the term for which it is required, which should not exceed three years from the commencement of the occupation, and of the materials, if any, to be taken there from.
14. The Collector should pay compensation to such persons either in lump sum of money or by monthly or other periodical payments as shall be agreed upon in writing by the parties.
15. In case of disagreement over the amount of compensation or its apportionment, the Collector should under Section 35(4) of the Act refer the matter to the Court for decision. After the Collector has paid the compensation, or executed such agreement or has made a reference to Court, he may

enter upon the land, take its possession and use it or permit its use in accordance with the terms of the notice.

16. *General.* – A diary of the proceedings should be maintained by the Collector like a diary in a magisterial case, in the model form given in para. 136 of the Land Acquisition Manual. This diary should be regularly written by the Collector, as far as practicable, in his own handwriting and not left to be written by a clerk.

**SPECIMEN OF NOTIFICATION UNDER SECTION 4 OF THE
LAND ACQUISITION ACT.**

OFFICE OF THE COLLECTOR, -----DISTRICT

NOTIFICATION

Dated the 20

No: Where as it appears to the Collector-----
District that land is needed or likely to be needed for the public purpose
or for Company required to be taken by Government at the public
expense/Company expense for a public purpose/Company purpose,
namely for the -----

-----, it is hereby notified that land in the
locality described below is likely to be required for the above purpose.

1. The notification is made under the provisions of Section 4 of the Land Acquisition Act, 1894 to all whom it may concern.
2. In exercise of the powers conferred by the aforesaid Section the Collector,-----District is pleased to authorize the officers for the time being engaged in the undertaking with their servants and workmen to enter upon and survey any land in the locality and do all other acts required or permitted by that Section.

SPECIFICATION

District	Taluka	Deh	S.No./B.No	Area of S.No.	Area Required

Direction and Boundaries: -

North:

South:

East:

West:

Collector-----District

SPECIMEN OF NOTIFICATION UNDER SECTION 5 OF LAND ACQUISITION ACT

OFFICE OF THE COMMISSIONER-----DISTRICT.

NOTIFICATION DATED THE -----20

No: Where as the Commissioner -----Division is satisfied that the land notified under Section 4 of the Land Acquisition Act, vide Collector-----District Notification No:----- dated the-----and published in the Sindh Government Gazette dated----- is needed for a public purpose/Company purpose, namely for -----

2. Now, therefore in exercise of the powers under Section 5 of the Land Acquisition Act, 1894 the Commissioner-----Division is satisfied that the land specified below of which plans can be inspected in the office of the (1)----- (2)----- is needed for the said purpose.

3. Any person who is interested in land which has been notified as being needed for public purpose or for Company, may, within thirty days of the publication of this notification, file an objection in writing before the Collector,-----DISTRICT

LAND UPON WHICH ANY RELIGIOUS PLACE OF WORSHIP, SHRINE, TOMB, GRAVEYARD OR ANY IMMOVEABLE PROPERTY ATTACHED TO ANY SUCH INSTITUTION AND THE BOUNDARIES OF WHICH ARE CONTIGUOUS WITH THE SITE OF THE SAME SHALL BE EXCLUDED FROM THE SAID LAND. SIMILARLY WAQF AND EVACUEE PROPERTIES AND STATE LAND SHALL BE EXCLUDED.

SPECIFICTION

District	Taluka	Deh	S.No./B.No.
----------	--------	-----	-------------

Direction and Boundaries: -

North:

South:

East:

West:

Commissioner -----Division

Note: In case of land being acquired for a Company this notification shall have to be issued under the signature of the Secretary to Government of Sindh, Revenue Department.

**FORM OF PUBLIC NOTICE UNDER SECTION 5(1) OF THE LAND
ACQUISITION ACT 1894 (I OF 1894)**

Whereas in Notification No.----- Dated ----- issued by the Collector ----- it has been notified under Section 5(1) of the Land Acquisition Act, 1894 (I of 1894), that land as mentioned below is needed for the public purpose of ----- (or for the purpose of ----- Company/Society) and whereas every interested person in the said land, is hereby informed that if any one has any objection to this acquisition under the provisions of the said Act, he must lodge his objection in writing on or before (date).

*(Describe the land by survey number or by approximate area as may be convenient).

Any person interested in any land which has been notified under section 5 as being needed for the purpose mentioned therein may within 30 days after the issue of the notification under section 5 may file objection to the acquisition in writing to the collector.....

Every interested person is further advised that all contracts supporting to dispose in any way of the rights in and over the notified land commenced or effected without my sanction, after the date of the aforesaid notification, will be disregarded and no compensation will be paid for any outlay or improvement made on the land.

Dated

Collector

**OFFICE OF THE COLLECTOR
NOTICE**

Notice is hereby given under Section 9 of the Land Acquisition Act, 1894 that the land specified in the Sub-joined Schedule in Deh. _____ Taluka _____ District _____, which is to be acquired for a public purpose viz, _____ in accordance with _____ Notification under Section 4 issued by the Collector of _____ District vide his No: _____ dated _____ and duly published in Sindh Government Gazette dated _____ and declared under Section 6 vide notification No. _____ dated _____ issued by the Commissioner _____ District and published in Sindh Government Gazette dated _____.

All persons interested in the land mentioned below are hereby required to appear personally or by their agents on _____ at the undersigned's office and to submit:-

(i) A statement in writing signed by them or by their agents showing the nature of their respective interest in the land herein below mentioned, the amount and particulars of their claim to compensation for such interests and their objections, if any, to the measurements and area of the land to be acquired.

(ii) A statement under Section 10 of the Land Acquisition Act, containing so far as may be practicable, the name of every person possessing any interest in or right over the land or any part thereof as co-proprietor, sub-proprietor, mortgagee, tenant or otherwise and of the nature of such interest and of the rents, profits (if any), received or receivable on account, thereof for three years next preceding the date of the statement.

SCHEDULE

Taluka

District

Name of Deh	S.No.	Total Area	Approx: Area Required	Date Fixed for Appearance
•				

**BY THE COMMISSIONER
NOTIFICATION UNDER SECTION 6 AND 17 OF
THE LAND ACQUISITION ACT, 1894.**

NOTIFICATION

No _____ Whereas, it was notified by the Collector of _____ District, vide his notification No _____ dated _____ published at page No. _____ of Part-I, Sindh Government Gazette under section 4 of the land Acquisition Act, that Kabuli lands as specified in the schedule appended below was needed for the purpose stated in the said notification viz: _____.

2. And whereas the Commissioner _____ District is satisfied that the said land is needed for the public purpose as stated above.

3. It is hereby declared under provision of section 6 of the Land Acquisition Act, 1894 that the said land is needed for the public purpose as stated above.

4. The _____ is hereby appointed under clause (C) of the section 3 of the said Act, to perform functions of Collector for all proceedings hereafter to be taken in respect of the said land. He is also directed under section 7 of the said Act, to take order for the Acquisition of the said land.

5. And whereas the Commissioner _____ District is satisfied that the land specified below is urgently required and provision of Sub-section (I) of Section 17 of Land Acquisition Act, are applicable for said land.

6. Now therefore in exercise of the powers under Sub-section (4) of section 17 of the said Act the Commissioner _____ district is further pleased to direct that the provision of section 5 & 5-A of the said Act, shall not be applicable in the case of said land and the _____ should take action accordingly.

7. Survey No. wise details of the Land are attached as annexure-“A” and can be inspected in the office of Collector _____ District.

LAND UPON WHICH ANY RELIGIOUS PLACE OF WORSHIP, SHRINE, TOMB, GRAVEYARD OR ANY IMMOVEABLE PROPERTY ATTACHED TO ANY INSTITUTION AND THE BOUNDARIES OF WHICH ARE CONTIGUOUS WITH THE SITE OF THE SAME SHALL BE EXCLUDED FROM THE SAID LAND. SIMILARLY WAQF AND EVACUEE PROPERTY AND STATE LAND SHALL BE EXCLUDED.

SPECIFICATION

District	Taluka	Deh	S.No:/B.No:	Area of S.No:	Area required
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Direction and Boundaries: -

North:

South:

East:

West:

Commissioner-----District

IV. FORM OF NOTICE UNDER SECTION 12(2)

Project

Number of case

To,

Notice is hereby given that in the above case, in which you have been treated as a person interested, an award was made by me on _____ under Section 11 of Act I of 1894, as follows:-

- (1) The true area of the land is _____
- (2) The compensation to be paid for the land is Rs. _____
- (3) The compensation is apportioned as under:-

To A. _____ Rs. B. _____ Rs.

2. The sum payable to you is Rs. _____. You should appear before me personally or by a duly authorised agent on or before _____.

3. You may accept the payment "under protest" without prejudice to your right to have the matter referred to the Civil Court. Interest will not be payable in the case of failure to appear.

Dated

Collector

**MODEL FORM OF AGREEMENT TO BE EXECUTED
UNDER THE PROVISIONS OF SECTION 41 AND 42 OF
THE LAND ACQUISITION ACT.**

AN AGREEMENT made this _____ day of _____ in the year two thousand _____ between the Governor of Sindh (which expression shall be deemed to include this successors-in-office and assigns) hereafter referred to as "the Government," of the one part and _____ a limited Company registered under the Companies ordinance 1984, duly incorporated in Sindh and having its registered office at _____ here in after called the "Company" (which expression shall be deemed to include its successors and assignees) of the other part.

WHEREAS, the Company has made an application to the Government for acquisition of land measuring _____ acres situated in village/Deh _____ Tehsil/Taluka _____ District _____ hereinafter referred to as the land, under the provision of the Land Acquisition Act 1894 and more particular described in the Schedule and delineated in the plan hereunto annexed, which have been signed by the Commissioner _____ District and the duly authorised representative of the Company for the purpose of identification.

AND WHEREAS, on an enquiry held under section 40 of the Act, the Government is satisfied that the land is needed for the purpose of _____ and that the said work is likely to prove useful to the public, has consented to acquire the land on behalf of the Company.

AND WHEREAS the Government has required the Company, under the provision of Section 41 of the Act to enter into agreement with Government hereinafter contained.

NOW THEREFORE THIS AGREEMENT WITNESSETH as follows: -

- (1) On Demand, the Company shall pay to the Government all and every compensation in respect of the land tendered, paid or awarded by the Collector under the Land Acquisition Act

by the court to which reference under Part III of the Act, may be made or by the appellate Court or Courts and all the costs, charges and expenses of the proceedings in the said Courts, or otherwise incidental to the proposed acquisition or payable in respect thereof under the provisions of the Act.

(2) On payment by the Company of all demands under the foregoing clause the Government shall make, execute and do all such acts, deeds as may be necessary and proper for the effectually vesting the land in the Company and giving the Company an absolute title thereto, subject to the following terms and conditions:-

(a) The land shall be used only for the purpose of _____ ancillary buildings, godowns, roads etc. In accordance with the rules prescribed for the sanction of plans by the Municipal Committee, Improvement Trust or Town Committee concerned, within two years from the date of the possession of the land being given to the Company by the Government, or within such further period as may be agreed to in writing between the Company and the Government.

(b) The Company shall annually pay to the Government the land revenue, and the other cesses to which the land is or under the law for the time being in force may be assessed.

(c) That the Company shall not transfer the land or any part thereof by sale, mortgage, gift, lease or otherwise except with the previous permission of the Government.

(d) The Company shall provide employment to the public, and it shall also provide technical knowledge and training to suitable members of the public.

(e) The Company does hereby acknowledge and recognize the right now and hereafter of the Government to and in all mines, mineral, a coal, earth, oil and gold washing and quarries of every description in or under the land and also the right of

the control of Provincial Governments to do such act, deeds or things as may be necessary or required to be done for the enjoyment there of.

- (f) The Company shall not do or suffer to be done any act inconsistent with or injurious to any of the rights accepted or reserved to the Government.
 - (g) The Company shall abide by the rules and regulations framed by the Government or any other Authority as may be legally applicable.
 - (h) In the event of the Company being wound up, or in the event of the failure on the part of the Company to carry out any of the terms of this Agreement, the land shall be liable to be resumed and taken back by the Government on re-payment to the Company, of the amount of award as finally settled, less the compulsory acquisition charges, or the estimated market value of the land at the time of resumption, whichever shall be less and if there are any buildings on the land, the Government may at its option either purchase the buildings on the payment of their estimated value at the time, or direct the Company to remove the building at its own cost within such time as may be allowed by Government, provided that if the breach is capable of rectification, the Government shall not order resumption unless a written notice requiring the Company to rectify the breach within reasonable time has been issued and the Company has failed to comply with such notice.
 - (i) If at any time the Government feels that the land acquired is in excess of the requirements of the Company, such portion as may be found in excess of the requirement shall be resumed keeping in view the principals of the consolidation subject to the conditions laid down in para (h) above.
- (3) All the costs and expenses of and incidental to the preparation, and execution of this Agreement (including

stamp duty and cost of registration, if registration be required by the Government) shall be paid by the Company.

(4) If any dispute arises between the Government and the Company in respect of the subject matter of this agreement or any convenient, clause or thing herein contained, the same shall be referred to the Collector) _____ District and the decision of the said Commissioner upon such dispute shall be final and conclusive and binding on the parties hereto.

In witness whereof the parties to this Agreement have here unto set and subscribe their respective hands on the date first above written.

SCHEDULE

S.No.	Tehsil/Taluka	Deh	S. Nos.	Area

For and on behalf of
Government of Sindh.

For and on behalf of
_____ Ltd.

Commissioner _____ District.

Managing Director

Witness

- (1)
(2)

Witness

- (1)
(2)

Significant Pronouncements of Superior Courts on the Land Acquisition Act

----Ss. 4 & 28-A---Civil Procedure Code (V of 1908), O.XLIII, R.1---Additional compensation---Entitlement---Entitlement to claim additional compensation during Pendency of execution application in which prayer was made for grant of additional amount by way of decretal amount where decree was passed prior in time to date of insertion of S.28-A in Land Acquisition Act, 1894---Where claimants had not been paid amount of compensation awarded by competent Court of Law notwithstanding the circumstance that judgment and decree was passed at that time when S. 28-A was not operative, he would be entitled to such additional compensation with effect from the date of notification under S.4, Land Acquisition Act, 1894 till deposit of amount in the account of District Court---Executing Court, generally, would not go beyond decree but in appropriate cases Executing Court could take into consideration change in law which pertained not only to state of facts where law was enacted subsequent to passage of decree but also at a point of time when decree had not attained finality and for some reason intervening law either escaped examination or was otherwise omitted---Provision of S.28-A, Land Acquisition Act, 1894 was self-executory which would not envisage any intervention by referee Court or Appellate Court---Amount in question deposited in District Court by respondent and same having been invested in Defense Saving Certificates, claimants would be entitled to interest thereon. Syed Saadi Jafri Zainabi v. Land Acquisition Collector and Assistant Commissioner PLD 1992 SC 472; Dilawar Hussain v. Province of Sindh PLD 1993 Kar. 578 and Land Acquisition Officer, Badin v. Pir Altaf Hussain Shah 1994 CLC 160 ref. [(Rana Bhagwan Das, J.), Abdul Hamid Ali v. Land Acquisition Officer, Badin: **PLD 1998 Kar.50**].

Ss. 54---Civil Procedure Code (V of 1908), O.XXVI, R.9 & O.XLI, R.27---Constitution of Pakistan (1973), Art. 185(3)--- Appointment of Commission by High Court to evaluate fair compensation for purposes of finding out potentiality of land in question --- Validity---Apparently, there was ample legal justification for appointment of Commissioner in order to evaluate land acquired to find out potential value of land-When

Court deemed it proper for purpose of elucidating any point in dispute or for ascertaining any matter referred to in terms of O.XXVI, R.9, C.P.C., Commissioner was deputed for required purpose---Object of local investigation was to obtain evidence which from its peculiar nature could best be had from spot inspection itself---Such evidence would enable Court to properly and correctly understand and assess evidence on record---High Court did not order or allow production of additional evidence, but merely directed Commissioner to inspect spot in question and report actual location of land acquired and find out distance of such land from industrial estate with view to determining correctly potential value of land---Impugned order was not described to be one under O.XLI, R.27, C.P.C.---If, however, impugned order conveyed impression that appointment of Commissioner for carrying out specific job tantamounted to allowing additional evidence still under circumstances of case High Court was justified in passing order for additional evidence within contemplation of O.XLI, R.27, C.P.C. for it had it deemed proper to do so---No Possible exception could, therefore, be taken to impugned order which was substantially just and proper---Leave to appeal to Supreme Court was refused in circumstances. [(Saleem Akhtar, Muhammad Ilyas and Muhammad Bashir Jehangiri, JJ.), Sarhad Development Authority v. Land Acquisition Collector / Deputy Commissioner, Abbottabad: **1998 SCMR 730**].

----S. 18---Application to the Collector under S.18 of the Land Acquisition Act, 1894 for reference to the Court---Benefit of a revision in compensation at the appellate stage on a parity of reasoning emerging from O. XLI, R. 33, C.P.C. can be extended to non-appealing land owners as well---Common enhancement of compensation by the Court in contemplation of the Land Acquisition Act, 1894 to ensure to the benefit of all the affectees. Province of Punjab v. Abdul Majeed 1997 SCMR 1692 ref. [(Saiduzzaman Siddiqui, Raja Afrasiab Khan and Wajihuddin Ahmed, JJ.), Muhammad Sarwar Khan v. Government of Pakistan: **1998 SCMR 2197(c)**].

----Ss. 23(2) & 28--- Compensation---Determination---Yardstick of compensation in another acquisition case could not be applied to a case, without examining all the attending circumstances and analogies applicable to the acquisition in question---Principles---Supreme Court,

in circumstances, enhanced the compensation with award of interest. [(Khalil-ur-Rehman Khan, Munir A. Sheikh and Wajihuddin Ahmed, JJ.), Province of Punjab v. Muhammad Akram: **1998 SCMR 2306(b)**].

----Ss. 28-A & 4---Civil Procedure Code (V of 1908), O.XLIII, R.1---Additional compensation---Entitlement---Entitlement to claim additional compensation during Pendency of execution application in which prayer was made for grant of additional amount by way of decretal amount where decree was passed prior in time to date of insertion of S.28-A in Land Acquisition Act, 1894---Where claimants had not been paid amount of compensation awarded by competent Court of Law notwithstanding the circumstance that judgment and decree was passed at that time when S.28-A was not operative, he would be entitled to such additional compensation with effect from the date of notification under S.4, Land Acquisition Act, 1894 till deposit of amount in the account of District Court---Executing Court, generally, would not go beyond decree but in appropriate cases Executing Court could take into consideration change in law which pertained not only to state of facts where law was enacted subsequent to passage of decree but also at a point of time when decree had not attained finality and for some reason intervening law either escaped examination or was otherwise omitted---Provision of S.28-A, Land Acquisition Act, 1894 was self-executory which would not envisage any intervention by referee Court or Appellate Court---Amount in question deposited in District Court by respondent and same having been invested in Defence Saving Certificates, claimants would be entitled to interest thereon. Syed Saadi Jafri Zainabi v. Land Acquisition Collector and Assistant Commissioner PLD 1992 SC 472; Dilawar Hussain v. Province of Sindh PLD 1993 Kar. 578 and Land Acquisition Officer, Badin v. Pir Altaf Hussain Shah 1994 CLC 160 ref. [(Rana Bhagwan Das, J.), Abdul Hamid Ali v. Land Acquisition Officer, Badin: **PLD 1998 Kar. 50**].

----Respondents/appellants Collector Land Acquisition have not brought any reliable and satisfactory evidence on record to controvert / rebut evidence produced by land owners with regard to potentiality and future prospective of land so acquired---Land under reference is also adjacent to different important schemes and roads---It has higher potentiality and

future prospective value---One year average and market rate as per evidence on record, compensation awarded by Collector Land Acquisition and affirmed by Referee Judge is inadequate---In circumstances considering various factors including location of acquired land, sale price of adjoining land, its potentiality and likelihood of development and improvement, report of Local Commissioner, evidence on record produced by landowners not having been controverted satisfactorily, general tendency of vendees to show smaller amount as to price of land purchased by them than actual price paid by him order to avoid imposition of heavy gain tax and stamp duty etc. so also inflationary trends and depreciation in currency in between date of acquisition and date of award, learned Division Bench was justified in awarding compensation at rate of Rs. 40, 000 per Kanal which would be adequate hence required no further enhancement or reduction in rate of compensation per Kanal---Contentions of learned counsel for appellants/ Collector Land Acquisition that Division Bench has erred in enhancing market value of acquired property (ii) misread evidence and (iii) has not considered Revenue Record have no merit and substance---Held: Division Bench has given valid and cogent reasons in awarding rate of compensation at enhanced rate of Rs. 40, 000 per Kanal with other benefits permissible under law hence no interference is required by Supreme Court---Appeals have no merits consequently same are dismissed. [(Iftikhar Muhammad Chaudhry, Qazi Muhammad Farooq and Hamid Ali Mirza, JJ.), Muhammad Saeed v. Collector, Land Acquisition: **PLJ 2001 SC 1373(ii) = 2001 PLR 1894 = 2002 SCMR 407**].

----Ss.3(e), 4(1), 6 & 23(1)---Acquisition of Land for WAPDA---Market value of acquired land --- Determination --- Principles --- Date of determination of market value --- Relevant date for assessment was that of notification under S.4 of the Land Acquisition Act, 1894 and not that of declaration under S.6 of the Act---Stump in the prices subsequent to the one year average at the date of notification under S.4 would be relevant factor in determining the potentiality but not for the purpose of laying the foundation in determining the market value of the land---WAPDA being a company under S.3(e) for the purpose of Land Acquisition Act, 1894, enhancement of compulsory acquisition charges

from 15% to 25% was justified. Government of Sindh v. Syed Shakir Ali Jafiry 1996 SCMR 1361; Abdul Qayyum v. Pakistan through Secretary, Ministry of Defence, Rawalpindi 1996 SCMR 1820; Sadiq Niaz Rizvi v. The Collector, District Lasbella PLD 1993 SC 80; Pakistan Burmah Shell Ltd. v. Province of N.W.F.P. 1993 SCMR 1700; Market Committee, Kanganpur through Administrator v. Rayyat Ali 1991 SCMR 572; Malik Aman v. Land Acquisition Collector PLD 1988 SC 32 and Muhammad Mushtaq Ahmed Khan v. Assistant Commissioner, Sialkot PLD 1983 Lah. 178 ref. [(Irshad Hasan Khan, C.J., Ch. Muhammad Arif and Syed Deedar Hussain Shah, JJ.), Secretary to Government of N.W.F.P., Peshawar v. Fateh Khan: **2001 SCMR 974 (a)**].

----S. 3(f)---Expression “public purpose”---Connotation---“Public purpose” is an object in which the general interest of community as opposed to particular interest of individuals is directly and vitally concerned---Such is a purpose which is in furtherance of general interest of the community at large as opposed to the particular interest of an individual. [(Mian Shakirullah Jan and Talat Qayum Qureshi, JJ.), Zafeer Gul v. N.W.F. Province: **2001 CLC 1853(b)**].

----Ss. 4, 9, 11, 12, 18, 25 & 28-A---Acquisition of Land--- Determination of market value and amount of compensation---Reference to Court---Landowner who was served with notice under S.9(3) of Land Acquisition Act, 1894 did not file any claim supported with documentary evidence with regard to the market value of land and its future potentiality and Collector passed the award taking into consideration the market value of the land on well-established principle of last five years sales of land in the vicinity---Landowner despite service of notice having failed to file any particular claim specifying the amount of compensation before passing of award without sufficient reasons could not ask the referee Court to award more compensation than the Collector had already awarded particularly in absence of any evidence on the point of market value of the land---Referee Court had rightly dismissed reference, holding that the compensation awarded to landowner by Collector was adequate and proper---Referee Court, however, should have awarded additional compensation under S.28-A

of Land Acquisition Act. 1991 MLD 90; PLD 1986 Kar. 164; 1985 SCMR 45; 1997 SCMR 1692; PLD 1998 SC 32; 1996 SCMR 1820; 1992 CLC 1775; 1993 CLC 179; 1994 CLC 160; Abdullah and others v. Assistant Commissioner and Land Acquisition Officer, Hyderabad and another (unreported); Muhammad Sharif v. Afsar Textile Mills Ltd. 1985 SCMR 1181; Secretary of State v. C.R. Subranmania Ayyar AIR 1950 Mad. 576; Province of Bengal v. Ram Chandra Bhutika and others AIR 1994 Cal. 247; Land Acquisition Officer, Karachi v. Hiranand Lilaram AIR 1941 Sindh 52; Secretary of State v. Tikka Jagtar Singh AIR 1936 Lah. 733; Province of Bengal v. P.L. Nun AIR 1945 Cal. 312 and Pakistan through Secretary, Ministry of Defence and another v. Nizakat Shah and 7 others 1987 CLC 1844 ref. [(Muhammad Mujeebullah Siddiqui, J.), Akhtar Bhurgri Associates v. Land Acquisition Officer and Assistant Commissioner, City Hyderabad: **PLD 2001 Kar. 221(a)**].

----Ss. 4, 9, 11, 18 & 25---Acquisition of Land---Determination of compensation and market value of land---Reference to the Court---Collector before giving award was required to hold enquiry under S.11, Land Acquisition Act, 1894---Claim as was required to be preferred and the particulars of the claim, were in the nature of pleadings on behalf of claimant which could form foundation for subsequent inquiries including inquiry under S.11, Land Acquisition Act, 1894 by the Collector and reference made to the Court under S.18 of the Act---Collector was required to confine the inquiry to the pleadings and the Court was also required to consider and to determine the amount of compensation on the basis of specific claim preferred before the Collector---If no claim was preferred or no particulars and details of the compensation were filed in reference to notice under S.9(3) of Land Acquisition Act, 1894 and the objection was filed before the Court in general nature, the stringent condition contained in S.25(2) of the Act, would come into play and would preclude the Court from awarding any compensation exceeding the amount awarded by the Collector. [(Muhammad Mujeebullah Siddiqui, J.)' Akhtar Bhurgri Associates v. Land Acquisition Officer and Assistant Commissioner, City Hyderabad: **PLD 2001 Kar. 221(b)**].

----Ss. 4, 23(2) & 54---Appeal---Compulsory acquisition charges, awarding of---Land was acquired by Notification under S.4 of Land Acquisition Act, 1894---Compensation awarded to the landowners was disputed---High Court, while deciding the compensation, awarded the compulsory acquisition charges at the rate of 25% per annum---Contention of the appellant was that the Notification of acquisition was issued under S.4 of Land Acquisition Act, 1894, and the provisions of S. 23(2) of the said Act, were not applicable to the present case---Validity ---Where the appellants were not incorporated as a company, when the Notification under S.4 of Land Acquisition Act, 1894 was issued, the landowners could not invoke the provisions of S.23(2) Land Acquisition Act, 1894---Incorporation of the appellant as company under the provisions of Companies Ordinance, 1984, would not operate retrospectively---Landowners could not be awarded the compulsory acquisition charges at 25% per annum and the High Court was not justified to award the compulsory acquisition charges to the respondents/owners taking the appellants to be a 'Company' within contemplation of S.23(2) of the Act---Award of 25% compulsory acquisition charges to the landowners was set aside by Supreme Court. [(Muhammad Bashir Jehangiri and Nazim Hussain Siddiqui, JJ.), Collector, Land Acquisition v. Muhammad Said: **2001 SCMR 1032**].

---Ss. 4, 6, 17(1) & 48(1)---Constitution of Pakistan (173), Art.199— Constitutional petition---Acquisition of Land---Initiation of acquisition proceedings after withdrawal of earlier notice---Failure to issue fresh notice qua acquisition proceedings regarding the same land---Disputed land was acquired in year 1994, and possession on papers only was said to have been taken over by the Authorities---Compensation had not been paid to the owners---Neither any progress had been made at the site, nor any action had been taken towards the preparation of alleged "Tonga-donkey cart stand" and "fruit and vegetable market"---Effect---Proper course, after withdrawal of notification for the Authorities was to initiate fresh, proceedings under the Land Acquisition Act, 1894--- Where the same had not been done, the order passed by the Authorities without issuing notice and without hearing the parties, was fanciful and mala fide---Order passed by the Authorities was set aside but High Court did not debar the Authorities from initiating the proceedings afresh in

accordance with the provisions of law, if the land in question was required by the Authorities in the larger interest of public. PLD 1992 FSC 398, Pakistan through Secretary, Ministry of Defence and others v. Late Ch. Muhammad Ahsan through Legal Heirs and others 1991 SCMR 2180; Iftikhar Hussain Shah and others v. Pakistan through Secretary, Ministry of Defence, Rawalpindi and other 1991 SCMR 2193; Abdul Rauf and others v. Abdul Hamid Khan and others PLD 1965 SC 671; Malik Salahuddin and others v. Collector, Land Acquisition, Peshawar and 3 others 1999 CLC 776 and The State v. Ziaur-Rehman and others PLD 1973 SC 49 ref. [(Muhammad Roshan Essani and Muhammad Ashraf Leghari, JJ.), Muhammad Ismail v. Province of Sindh: **2001 CLC 1280(b)**].

---Ss. 4, 9, 11, 12, 18, 25 & 28-A---Acquisition of Land---Determination of market value and amount of compensation---Reference to Court---Landowner who was served with notice under S.9(3) of Land Acquisition Act, 1894 did not file any claim supported with documentary evidence with regard to the market value of land and its future potentiality and Collector passed the award taking into consideration the market value of land on well-established principle of last five years sales of land in the vicinity---Landowner despite service of notice having failed to file any particular claim specifying the amount of compensation before passing of award without sufficient reasons could not ask the referee Court to award more compensation than the Collector had already awarded particularly in absence of any evidence on the point of market value of the land---Referee Court had rightly dismissed reference, holding that the compensation awarded to landowner by Collector was adequate and proper---Referee Court, however, should have awarded additional compensation under S.28-A of Land Acquisition Act, 1991 MLD 1985 SCMR 45; PLD 1986 Kar. 164; 1997 SCMR 1692; PLD 1998 SC 32; 1996 SCMR 1820; 1992 CLC 1775; 1993 CLC 179; 1994 CLC 160; Abdullah and others v. Assistant Commissioner and Land Acquisition Officer, Hyderabad and another (unreported); Muhammad Sharif v. Afsar Textile Mills Ltd. 1985 SCMR 1181; Secretary of State v. CR. Subramania Ayyar AIR 1950 Mad.576; Province of Bengal v. Ram Chandra Bhutika and others AIR 1994 Cal. 247; Land Acquisition Officer, Karachi v. Hiranand Lilaram AIR 1941

Sindh 52; Secretary of State v. Tikka Jagtar Singh AIR 1936 Lah. 733; Province of Bengal v. P.L Nun Air 1945 Cal. 312 and Pakistan through Secretary, Ministry of Defence and another v. Nizakat Shah and 7 others 1987 CLC 184 ref. [(Muhammad Mujeebulah Siddiqui, J)]. Akhtar Bhurgri Associates v. Land Acquisition Officer and Assistant Commissioner, City Hyderabad; **PLD 2001 Kar. 221(a)**].

---Ss. 4, 9, 11, 18 & 25---Acquisition of Land---Determination of compensation and market value of land---Reference to the Court---Collector before giving award was required to hold enquiry under S.11, Land Acquisition Act, 1894---Claim as was required to be preferred and the particulars of the claim, were in the nature of pleadings on behalf of claimant which could form foundation for subsequent inquiries including inquiry under S.11, Land Acquisition Act, 1894 by the Collector and reference made to the Court under S.18 of the Act---Collector was required to confine the inquiry to the pleadings and the Court was also required to consider and to determine the amount of compensation on the basis of specific claim preferred before the Collector---If no claim was preferred or no particulars and details of the compensation were filed in reference to notice under S.9(3) of Land Acquisition Act, 1894 and the objection was filed before the Court in general nature, the stringent condition contained in S.25(2) of the Act, would come into play and would preclude the Court from awarding any compensation exceeding the amount awarded by the Collector. [(Muhammad Mujeebulah Siddiqui, J.), Akhtar Bhurgri Associates v. Land Acquisition Officer and Assistant Commissioner, City Hyderabad: **PLD 2001 Kar. 221(b)**].

---Ss. 11, & 12---Government cannot challenge award when validity of award was not questioned before any forum under the law---Held: It was rather climax of paradoxical position of Government willingly and unhesitatingly paid the amount of compensation to seven Khatedars and withheld the same as regards other Khatedars (respondents) without any legal justification. [(Rana Bhagwan Das, Syed Deedar Hussain Shah and Hamid Ali Mirza, JJ.), Government of Sindh v. Sohail Akhtar: **NLR 2001 Revenue 198(b) = 2001 CLR 1205 = 2002 SCMR 120**].

--Ss. 17---Acquisition of land---Urgency---Provisions of S.17, Land Acquisition Act, 1894---Applicability---Where after applying provisions of S.17 of Land Acquisition Act, 1894, neither possession of the suit-land was taken by the Authorities, nor boundaries had been prepared or the land was surveyed, no urgency was shown in the proceedings---Provisions of S.17, Land Acquisition Act, 1894 were not applicable in circumstances. [(Muhammad Roshan Essani and Muhammad Ashraf Leghari, JJ.), Muhammad Ismail v. Province of Sindh: **2001 CLC 1280(a)**].

--Ss. 17(1), 4, 6 & 48(1)---Constitution of Pakistan (1973), Art.199---Constitutional petition---Acquisition of land---Initiation of acquisition proceedings after withdrawal of earlier notice---Failure to issue fresh notice qua acquisition proceedings regarding the same land---Disputed land was acquired in year 1994, and possession on papers only was said to have been taken over by the Authorities---Compensation had not been paid to the owners---Neither any progress had been made at the site, nor any action had been taken towards the preparation of alleged “Tonga-donkey cart stand” and “fruit and vegetable market”---Effect---Proper course, after withdrawal of notification for the Authorities was to initiate fresh proceedings under the Land Acquisition Act, 1894---Where the same had not been done, the order passed by the Authorities without issuing notice and without hearing the parties, was fanciful and mala fide---Order passed by the Authorities was set aside but High Court did not debar the Authorities from initiating the proceedings afresh in accordance with the provisions of law, if the land in question was required by the Authorities in the larger interest of public. PLD 1992 FSC 398, Pakistan through Secretary, Ministry of Defence and others v. Late Ch. Muhammad Ahsan through Legal Heirs and others 1991 SCMR 2180; Iftikhar Hussain Shah and others v. Pakistan through Secretary, Ministry of Defence, Rawalpindi and others 1991 SCMR 2193; Abdul Rauf and others v.s Abdul Hamid Khand and others PLD 1965 SC 671; Malik Salahuddin and others v. Collector, Land Acquisition, Peshawar and 3 others 1999 CLC 776 and The State v. Ziaur-Rehman and others PLD 1973 SC 49 ref. [(Muhammad Roshan Essani and Muhammad Ashraf Leghari, JJ.), Muhammad Ismail v. Province of Sindh: **2001 CLC 1280(b)**].

---Ss. 18---Reference---Court hearing a reference under S.18, Land Acquisition Act, 1894 cannot go behind such a reference and cannot dismiss the same on the ground that an application submitted before the Collector seeking admission of a reference was barred by limitation. Government of West Pakistan (now Government of N.-W.F.P) through Collector, Peshawar v. Arbab Haji Ahmed Ali Jan and others PLD 1981 SC 516; Government of West Pakistan (now N.-W.F.P) and 2 others v. Mst. Asmatun Nisa and 6 others PLD 1983 SC 109; Sindh Industrial Trading Estates Ltd. V. First Assistant Judge, Hyderabad, West Pakistan and 4 others PLD 1960 (W.P.) Kar. 826; Collector of Karachi v. Haji Gola and others PLD 1965 (W.P.) Kar. 413; Muhammad Rafique Khan v. Province of Punjab through Collector, Bahawalpur and another 1992 CLC 1775 and Fazal Karim and 3 others v. Azad Government of the State of Jammu and Kashmir through Chief Secretary, Musaffarabad and others PLD 1998 SC(AJ&K) 26 ref. [(Asif Saeed Khan Khosa, j.), Muhammad Sharif v. Oil & Gas Development Corporation, Club Road Branch Karachi: **2001 YLR 618(a)**].

---Ss. 18---Constitution of Pakistan (1973), Art. 199---Constitutional petition---Dismissal of reference by Referee Court on point of limitation---Referee Court in its judgment of dismissal of reference had also attended to the merits of the case and while deciding the relevant issue it had been found by the Referee Court that other landowners (not party to the Reference) were entitled to be compensated at a specified rate instead of the one determined in the award---Referee Court, for arriving at the said conclusion had recorded detailed and otherwise satisfactory reasons for determining the compensation to which the landowners were entitled---All the other landowners had accepted the decision of the Referee Court and they had already received the said amount of compensation after the said judgment of the Referee Court---Neither the Collector Land Acquisition nor the Corporation for whom the land was acquired, had challenged the determination of proper compensation by the Referee Court before any higher Court or forum---Lands in question were not proved to be different from the lands of landowners who had received the compensation determined by the Referee Court---Held, there was no reason, in circumstances, to remand

the matter to the Referee Court for decision as the merits of the case relating to land in question and compensation therefore stood practically determined in favour of the contesting landowners through the impugned judgment of the Referee Court---If the questions of limitation were taken out of consideration then the landowners of the land in question were also entitled to the same amount of compensation as the other landowners whose lands had been acquired alongwith that of landowners of lands, in question---Petitioners, however, agreed not to claim interest on the amount involved for the relevant period. [(Asif Saeed Khan Khosa, J.). Muhammad Sharif v. Oil & Gas Development Corporation Club Raod Branch, Karachi: **2001 YLR 618(c)**].

---Ss. 23(2), 34 [as amended by Land Acquisition (West Pakistan Amendment) Act (III of 1969)] & 54---Land Acquisition (West Pakistan (Amendment) (Repeal) Ordinance (VI of 1971), S.3---Civil Procedure Code (V of 1908), Ss.114, 151, 152, 153 & O.LXVII, R.1---Award of compulsory acquisition charges and interest---Trial Court omitted to pass order with regard to such amounts---Landowners' application under Ss.114, 151, 152, 153 & O.LXVII, R.1, C.P.C., for granting payment of such amounts Trial Court-contention of the authority was that original order determining the compensation as well as rectification order were void ab initio; and that non-specification of date of deposit by Land Acquisition Officer in both such orders had made them void---Validity---While determining the award, Trail Court had inadvertently omitted to include such two payments, which it was required to do under the law---Defect/omission/error crept in judgment did not fall either within the purview of S.152, C.P.C., as there was no clerical or arithmetical mistake in the order or under S.153, C.P.C. as there was no defect or error in the proceedings---Such defect/omission/error in judgment would fall under S.114, C.P.C., as the same was apparent on the face of record that Trail Court had overlooked the relevant applicable provisions and had made the mistake of not awarding compulsory acquisition charges under S.22(3) and interest under S.34 of the Act---Trial Court could remove such defect, rectify such error or fill in the omission in exercise of its inherent powers---Trial Court had corrected the mistake/filled in the omission by exercising its power under S.114 and / or S.151, C.P.C.---Impugned judgment/order in its un-amended or un-rectified state could not under any principle of law be termed as void or unenforceable---Judgment supported the purpose for which the same had been passed except that the same had not provided the full benefit, which defect could be cured by taking action under S.114 and/or S.151, C.P.C.---Such simple omission by oversight of

Court could be filled in, corrected, cured or rectified at any time---Non-inclusion of payment of interest under S.34 of the Land Acquisition Act could not render the award as unenforceable or that Trial Court had no jurisdiction to correct its inadvertent omission---Trial Court had committed mistake while ordering payment of interest @ Rs.8 per cent. Under S.34 of the Act---Amendment made by Land Acquisition (West Pakistan Amendment) Act, 1969, had been withdrawn by Land Acquisition (West Pakistan Amendment) (Repeal) Ordinance, 1971 and by virtue of newly – added S.3 thereof the interest payable would not be in excess of 6% per annum---High Court in exercise of powers under Ss.114 & 151, C.P.C., amended the award and ordered that landowners were entitled to payment of simple interest on award @ 6% only---Impugned order read with rectification order could not be termed as void by any stretch of imagination in circumstances. [pp.873, 874, 875] C, D, E, F, G & H. **CLC-2002-Kar-866.**

1996 S C M R 1361

[Supreme Court of Pakistan]

Preent: Saleem Akhtar and Fazal Karim, JJ

GOVERNMENT OF SINDH and 2 othersAppellant

VERSUS

Syed SHAKIR ALI JAFRI and 6 othersRespondents

Civil Appeal No:285 of 1994, decided on 13th May, 1996.

(On appeal from the judgment dated 3-2-1994 of the High Court of Sindh at Hyderabad passed in Misc: Civil Appeal No.5 of 1993).

(a) Land Acquisition Act (I of 1894):---

-----S. 28-A [as incorporated by Land Acquisition (Sindh Amendment) Ordinance (XXIII of 1984), & S.23(2)---- Constitution of Pakistan (1973), Art, 185(3)---Leave to appeal was granted to consider the

questions as to whether 15% additional compensation payable under S. 28-A, Land Acquisition Act, 1894 [as amended by Sindh Province] was to be computed on the amount of compensation for land and on compensation for brick-kiln etc, or the same was to be calculated after adding 15% payable under S. 23(2) of the Land Acquisition Act, 1894 and on what amount 6% interest was to be calculated in term of final judgment. [p. 1365]A.

-----**S. 23** ----- Acquisition of Land---Compensation---Determination--- Factors to be taken into consideration for determining the compensation. In determining the amount of compensation to be awarded for the land acquired under Land Acquisition act, 1894, the Court shall take into consideration first, the market value of the land at the date of publication of the notification under section 4, subsection (1); secondly, the damage sustained by the persons interested, by reason of the taking of any standing crops or trees which may be on the land at the time of the Collector's taking possession thereof; thirdly, the damage (if any) sustained by the person interested at the time of the Collector's taking possession of the land, by reason of severing such land from his other land; fourthly, the damage (if any) sustained by person interested at the time of the Collector's taking possession of the land, by reason of the acquisition injuriously affecting his other property, movable or immovable in any other manner, or his earnings; fifthly, if, in consequence of the acquisition of the land by the Collector, the person interested is compelled to change his residence or place of business, the reasonable expenses (if any) incidental to such change; and sixthly, the damage (if any) bona fide resulting from diminution of the profits of the land between the time of publication of the declaration under section 6 and the time of the Collector's taking possession of the land.[p. 1366] B.

-----**S. 23 (1)(2)**--- Acquisition of Land---Compensation---Sum of 15% per annum under S. 23(2), Land Acquisition Act, 1894 is awardable on the market value of the land [p. 1366]C.

-----**Ss. 28-A, 23 & 3(a)**--- Acquisition of Land---Compensation--- Market value---Damages---Brick kiln---Expression "Land" as defined in S. 3(a), Land Acquisition Act, 1894 "includes benefits to arise out of

land, and things attached to the earth or permanently fastened"--- Valuation certificate issued by the Court showed that "present value" of the property was assessed on the basis of chimney for bricks kiln, built on land, brick kiln constructed on land, ground floor Katcha Pucca huts constructed on land; ground floor office constructed on land; ground floor manager's residence constructed on land; tubewell constructed on land and a number of trees. All such items fell within the definition of "Land" as defined in S. 3(a), Land acquisition Act, 1894 and total amount awarded was as value of land which is the same thing as "market value" of land and not as damage sustained by landowners on account of any of the factors mentioned in Cls. Secondly to sixthly of S. 23(1) of the Land Acquisition Act, 1894---Sum of 15% awardable under S. 23(2); Land Acquisition Act, 1894 is part of compensation---Entire amount awarded as such, therefore, was compensation on the basis of the market value of the land at the date of notification under S. 4(1) of Land Acquisition Act, 1984 and 15% per annum was on that sum [pp. 1366, 1367]D & E.

Province of West Pakistan v. M. Salim Ullah **PLD 1966 SC 547** ref.

-----**S. 28**—Acquisition of Land---Compensation awarded by Court was in excess of the sum which the Collector had awarded---Such case thus fell to be dealt with under S. 28, Land Acquisition Act, 1894, [p. 1367] F.

-----**S. 34**--- Provision of S. 34, Land Acquisition Act, 1894 applies when the amount of compensation is not paid or deposited on or before taking possession of the Land---Collector, in that case shall pay the amount awarded with interest thereon at the rate of 6% per annum from the time of so taking possession until it shall have been so paid or deposited. [p. 1368]G

-----**S. 28 & 23**--- Acquisition of Land---Compensation---Interest at the rate of 6% per annum in term of S. 28, Land Acquisition Act, 1894 was allowed on the amount of compensation determined by the Court under S. 23 read with S. 28-A, Land Acquisition Act, 1894--- Such interest, thus, had to be paid on the total amount of the compensation determined

under S. 23(1) of the Act, plus the compensation payable under S. 23(2) of the Act and the amount payable under S. 28-A of the Act. [p.1368] H.

Ijaz Ahmed, Advocate instructed by Imtiaz Muhammad Khan, Advocate-on-Record for Appellants.

Fakhruddin G.Ebrahim, Senior Advocate Supreme Court instructed by Ejaz Muhammad Khan, Advocate-on-Record for Respondents.

Date of hearing: 10th April, 1996.

JUDGMENT

FAZAL KARIM, J --- The litigation leading to this appeal has a long and tortuous history harking back to the year 1975 when the respondents' land was compulsorily acquired under the Land Acquisition Act, 1894 (the Act). And it has, indeed, been at great public and private expenses – the parties have been before the High Court a number of times and this is the third time that they have been before this Court.

Unfortunately for the respondents, whose land, as stated above, was compulsorily acquired, that is acquired against their will, in 1975, the parties are still involved in arithmetical calculations, with the consequence that the respondents have not received, or have at least not received in full, the compensation for their land.

2. The Land Acquisition Collector (the Collector) gave his award on 25.6.1978 fixing the amount of compensation of the land in question at the rate of Rs.1.00 per sq.ft. and though the respondents had applied for the matter to be referred to the Court under section 18 of the Act, yet the Collector did not do so and the respondents had to invoke the High Court's extraordinary jurisdiction under Article 199 of the Constitution. In the consequent reference under section 18 of the Act, a learned Additional District Judge held by his order dated 14.7.1987 that the respondents were entitled to compensation of the land at the rate of

Rs.7 per sq.ft.; compulsory acquisition charges at the rate of 15% per annum, interest at the rate of Rs.6 per centum per annum from the date of possession and a sum of Rs.7,23,000 for various installations on the land.

3. The first time that the matter came to this Court was against the judgment of the High Court dated 3.4.1991, whereby the High Court had affirmed in appeal the compensation comprising the above items and had also allowed additional compensation under section 28-A of the Act. By this Court's order dated 27.11.1991, leave to appeal was refused against that judgment. The appellants, the Government of Sindh, the Collector and the Water and Power Department Authority (for whose benefit the land in question had been acquired) sought a review of this Court's order dated 27.11.1991 but were unsuccessful; their review petition was dismissed on 27.1.1992. The second time that the appellants approached this court was against a judgment of the High Court dated 8.7.1992. It is sufficient to say that judgment of the High Court was upheld by this Court's judgment dated 3.11.1992 in Civil Petition No.247-K of 1992 with this modification that the amount under section 23, subsection (2) of the Act was held to be "15% of the market value of the land" and not per annum". Accordingly the executing Court was directed to proceed with the execution application and to recalculate the decretal amount " in terms of the above modification". In this Court's judgment dated 3.11.1992, it was held that "there is a marked distinction between drawing of a decree and calculation of the amount in terms of the decree. The Court's duty is to draw a decree in terms of the judgment, whereas it is for the decree-holder to calculate the amount in terms of such a decree and it is for the judgment-debtor to point out calculation mistake, if any, but the judgment-debtor cannot challenge the merits of the decretal items while challenging the calculation of the decretal amount".

4. This is now the third time that the appellants have come to this Court. This appeal is directed against the High Court's judgment dated 3.2.1994 which again arose out of the execution proceedings. Leave to appeal was granted to consider the following questions:-

- (i). Whether 15% additional compensation payable under section 28-A (incorporated by Sindh Ordinance XXIII of 1984) of the Act is to be computed on Rs.28,62,948 (i.e. Rs.21,03,948 being the compensation for land and Rs.7,23,000 being compensation for brick-kiln etc) or the same is to be calculated after adding 15% payable under section 23(2) of the Act.
- (ii). On what amount 6% interest is to be calculated in terms of the final judgment.

5. At the hearing before us, learned counsel for the appellants raised a preliminary objection. It was that the questions raised in the leave granting order all stood decided by this Court's judgment dated 3.11.1992 in Civil Petition No.247-K of 1992 and they cannot be allowed to be raised again. We are unable to agree. The questions that were raised and decided before this Court in Civil Petition No.247-K of 1992 are noted in para-5 of this Court's judgment. We should be content to say that none of the questions now being raised was sought to be raised before this Court or decided by its judgment dated 3.11.1992.

6. The first question requiring determination turns upon the provisions of section 28-A of the Act. That section was inserted by Sindh Ordinance XXIII of 1984 and reads:-

“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 of the date of payment of the compensation”.

Learned counsel for the appellants referred to section 23 of the Act and maintained that the market value of the land is one of the factors to be taken into consideration for determining the amount of compensation to

be awarded for the acquired land under the Act. His contention further was that the sum of 15% per centum awardable under subsection (2) of section 23 of the Act is “in addition to the market-value of the land as above provided” and the sum to be awarded is 15% on such market-value. In other words, the contention is that the sum of 15% awardable under section 23, subsection (2) of the Act in consideration of the compulsory nature of the acquisition is to be calculated on one of the items namely the market value of the land and not on the total amount of the compensation arrived at after taking into consideration all the factors mentioned in clauses firstly to sixthly of subsection (1) of section 23. The consequence should be, so went the argument, that the 15% awardable under subsection (2), section 23 of the Act will be on Rs.21,03,948 which was determined to be the market value of the land at the date of publication of the notification under section 4, subsection (1) of the Act and not Rs.21,03,948 plus Rs.7,23,000.

7. Section 23 of the Act provides that in determining the amount of compensation to be awarded for the land acquired this Act, the Court shall take into consideration first, the market value of the land at the date of the publication of the notification under section 4, subsection (1); secondly, the damage sustained by the persons interested, by reason of the taking of any standing crops or trees which may be on the land at the time of the Collector’s taking possession thereof; thirdly, the damage (if any) sustained by the person interested, at the time of the Collector’s taking possession of the land, by reason of severing such land from his other land; fourthly, the damage (if any) sustained by the person interested, at the time of the Collector’s taking possession of the land, by reason of the acquisition injuriously affecting his other property, movable or immovable, in any other manner, or his earnings; fifthly, if, in consequence of the acquisition of the land by the Collector, the person interested is compelled to change his residence or place of business, the reasonable expenses (if any) incidental to such change; and sixthly, the damage (if any) bona fide resulting from diminution of the profits of the land between the time of the publication of the declaration under section 6 and the time of the Collector’s taking possession of the land. Subsection (2) of section 23 reads:

(2) In addition to the market-value of the land as above provided, the Court shall in every case award a sum of fifteen per centum on such market-value, in consideration of the compulsory nature of the acquisition.

A plain reading of the provisions of subsection (1) of section 23 shows, and learned counsel for the respondents was fair enough to concede, that the sum of 15% per annum to be awarded under subsection (2) of section 23 is awardable on the market value of the land, that is the amount come to under clause first of subsection (1) of section 23. But the contention of the appellants' counsel proceeds on an assumption, and if we may say so with great respect a wrong assumption of fact, that the sum of Rs.7,23,000 was not awarded under clause first of subsection (1) of section 23. The expression 'land' as defined in section 3, clause (a) of the Act "includes benefits to arise out of land, and things attached to the earth or permanently fastened". In arriving at the sum of Rs.7,23,000, the learned Additional District Judge in his judgment dated 14.7.1987 and the learned Judge in the High Court in his judgment dated 3.4.1991 relied upon the valuation certificate, Exh.46. That certificate shows that the "present value" of the 'property' was assessed as follows:-

5 Nos. Chimney for bricks kiln Rs. 60,000.00
constructed @ Rs.12,000 each.

Brick kiln constructed rounded area 2.15 Rs.1,50,000.00
acres 10'-0" deep with pacca ends.

Ground floor katcha pucca huts 85 Nos. Rs.2,55,000.00
@ Rs.3,000 each.

Ground floor office constructed covered Rs. 24,000.00
area 600 sft. @ Rs.40 per sft:

Ground floor manager's residence Rs. 24,000.00
constructed covered area 600 sft: @
Rs.40 per sft.

2 Nos. tube well constructed @ Rs.1,40,000.00
Rs.70,000 each.

Trees 12 Nos. @ Rs.5,000 each. Rs. 60,000.00

Undoubtedly all these items fell within the definition of 'land' as defined in section 3, clause (a) of the Act. There can, therefore, be no question that the sum of Rs.7,23,000 was awarded as the value of the land, which is the same thing as the market-value of the land and not as 'damage' sustained by the respondents on account of any of the factors mentioned in clauses secondly to sixthly of section 23, subsection (1).

8. It was settled in the Province of West Pakistan v. M.Salim Ullah (PLD 1966 SC 547) that the sum of 15% awardable under section 23, subsection (2) of the Act is part of compensation. So is the sum awardable under section 28-A of the Act as that section itself plainly provides. We hold, therefore, that the entire sum of Rs.28,62,948 was awarded as compensation on the basis of the market value of the land at the date of the publication of the notification under section 4, subsection (1) of the Act. It must follow that the additional amount of 15% per annum awarded under section 28-A is on that sum, that is 28,62,948, and not on Rs.21,03,948 only. We hold accordingly.

9. That brings us to the second question namely on what amount 6% interest is to be calculated in terms of the final judgment. The matter was argued before us on the basis that it was governed by the provisions of section 34 of the Act. However, as this was a case in which the compensation awarded by the Court was in excess of the sum which the Collector had awarded, the case more properly fell to be dealt with under section 28 of the Act. In practical terms, however, the result remains unaffected. Section 34 applies when the amount of compensation "is not paid or deposited on or before taking possession of the land". In that case 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". Section 28 enacts that "if the sum which, in the opinion of the Court, the Collector ought to have awarded as compensation is in excess of the sum which the Collector did award as compensation, the award of the Court may direct that the Collector shall pay interest on such excess at the rate of six per centum per annum from the date on which he took possession of the land to the date of payment of such excess into Court". Here, by the judgment of the learned Additional District Judge, interest at the rate

of 6% per annum in terms of section 28 of the Act was allowed on the amount of compensation determined by the Court under section 23, read with section 28-A of the Act and in view of what has been held above, the interest at the rate of 6% per annum has to be paid on the total amount of compensation, that is, the compensation determined under section 23, subsection (1), plus the compensation payable under section 23, subsection (2), plus the amount payable under section 28-A of the Act.

10. The appeal is disposed of in the above terms. The appellants shall pay the costs throughout.

M.B.A./G-554/S.

Order accordingly.

---Ss. 3, 31 & 32--- Acquisition of land—Award of compensation--- “Person interested”--- Widow holding life estate was a person having a limited interest while her reversionaries were the “person interested” within the meaning of S.3 of Land Acquisition Act, 1894--- Provisions of Ss. 31 & 32 of the Act apparently provide for the case of person not having absolute power to alienate the property as was a widow holding a life estate under the custom--- Section 31 & 32, Land Acquisition Act, 1984 are intended by the Legislature to protect the interest of reversioners when land is taken from the possession of a person who holds it only on a life estate. *Sheo Prasad Singh v. Jaleha Kunwar* ILR 1901 All. AWN 1902 and *Mst. Gangi v. Santu* AIR 1929 Lah. 736 ref. [(Iftikhar Muhammad Chaudhry, Rana Bhagwandas and Sardar Muhammad Raza Khan, JJ.), Faisalabad Development Authority v. Jahangir Nasir: **2004 SCMR1247 (h)**].

---S. 3(b)--- Acquisition of land--- Claimants of alternate land in lieu of money compensation have no right at all under the law to be so compensated through a transfer of any other land in the alternative as entire scheme of the Land Acquisition Act, 1894 is devoid of such arrangement. [(Iftikhar Muhammad Chaudhry, Rana Bhagwandas and Sardar Muhammad Raza Khan, JJ.), Faisalabad Development Authority v. Jahangir Nasir: **2004 SCMR1247 (b)**].

---S. 3(b) --- Constitution of Pakistan (1973), Art. 199--- Constitutional jurisdiction of high Court under Art. 199 of the Constitution--- Scope--- Land acquisition--- Title of land in question was disputed by the department even prior to the institution of the Constitutional Petition by the landowner--- Held, it was incumbent upon the alleged landowners that once their title was disputed, they ought to have had resorted to the Court of plenary jurisdiction--- High Court, as a Court exercising constitutional jurisdiction under Art. 199 of the constitution, could not go into the disputed question of title and could not have the opportunity of recording evidence of the parties, the resort in the circumstance must have been made to the court of original jurisdiction having power to Court of original jurisdiction having power to declare or not to declare the title in question [(Iftikhar Muhammad Chaudhry, Rana Bhagwandas

and Sardar Muhammad Raza Khan, JJ.) Faisalabad Development Authority v. Jahangir Nasir: **2004 SCMR1247 (c)**].

---Ss. 3(b),23, 24 & 25--- “Person interested” within the contemplation of S.3(b), Land Acquisition Act, 1894 cannot be granted any land in the alternative for the land acquire from him for a public purpose--- Law envisaged the grant of compensation in terms of money and money alone---“Person interested” thus can or could have claimed compensation in terms of money alone--- Even if the Government, outside the purview of Land Acquisition Act, 1894 comes with a gesture acceding to owner’ wish that compensation should be in form of land instead of cash, it is or would be an agreement not enforceable through Court. M. Salim Ullah’s case PLD 1960 (W.P) Lah. 450 ref [(Iftikhar Muhammad Chaudhry, Rana Bhagwandas and Sardar Muhammad Raza Khan, JJ.) Faisalabad Development Authority v. Jahangir Nasir: **2004 SCMR1247 (e)**].

---Ss. 3(b), 30, 31, 32, & 11 --- Acquisition of land--- Compensation --- Provisions of Ss. 30, 31, 32, Land Acquisition Act, 1894 presupposes the determination, existence and the availability of amount of compensation in terms of money as finalized by the award under S.11, Land Acquisition Act, 1894--- Where there is no complication, the amount is paid to the “Person interested” and at times it is deposited in Court and under certain conditions other arrangements are resorted to such arrangements are the subject-matter of S.31 (3) of the Land Acquisition Act, 1894. [(Iftikhar Muhammad Chaudhry, Rana Bhagwandas and Sardar Muhammad Raza Khan, JJ.) Faisalabad Development Authority v. Jahangir Nasir: **2004 SCMR1247 (f)**].

---Ss. 3(b) & 31(3)--- Acquisition of land--- Person interested--- Award of compensation--- Arrangements--- Most important ingredient of S.31(3) has to be kept in view that all the arrangements as enumerated in S.31(3) of the Act or anyone thereof can be made with person having “limited interest in such land”--- Claimants, in the present case, claim to be full owners of the land acquired and fall accordingly within the definitions of “person interested” as defined in S.3(b) of the Act and have nothing to do with person having limited interest in such land.

[(Iftikhar Muhammad Chaudhry, Rana Bhagwandas and Sardar Muhammad Raza Khan, JJ.) Faisalabad Development Authority v. Jahangir Nasir: **2004 SCMR1247 (g)**].

---Ss. 3(e) & 4--- Army Welfare Trust--- Such Trust fell within definition of a “company”--- Land could be acquired for a public purpose having nexus with such Trust. [(Tanvir Bashir Ansari, J.) Basharat Hussain v. Capital Development authority, Islamabad: **2004 YLR 629(e)**].

---S. 3(f) --- Acquisition of land--- “Public purpose”--- Connotation--- Anything which is useful to public in the sense of conferring some public benefit or conducive to some public advantage is a public purpose. Federation of Pakistan V Province of Punjab and 2 others 1993 SCMR 1673 and Dr. Muhammad Nasim Javed v. Lahore Cantonment Housing Society Ltd. And 2 others PLD 193 Lah. 552 ref. [(Tanvir Bashir Ansari, J.), Bostan v. Land Acquisition Collector, Rawalpindi: **PLD 2004 lah. 47(a)**].

--- S.3 (f) --- Constitution of Pakistan (1973), Art. 199--- constitutional petition --- Public purpose, interpretation of --- Contention of the petitioner was that the ‘public purpose’ for which the acquisition of land was made by the Government had remained unfulfilled therefore, the land could not be put to any other use--- Validity --- Once the land had vested in the Government it could make use of the same for any public purpose considered appropriate and best for its utility--- Concept of public purpose was quite exhaustive and could not be confined to a limited definition--Broadly speaking, the expression ‘public purpose’ would include a purpose in which the general interest of the community, as opposed, to the particular interested of the individuals, is directly and vitally concerned. Syed Zainuddin and 9 others v. Assistant Commissioner-cum-Collector, Quetta and 2 other 1996 MLD 731 and Allah Ditta and others v. Province of Punjab PLD 1997 Lah. 499 [(Syed Zahid Hussain, J.), Kishwar Sultana v Province of Punjab: **2004 MLD 1604(b)**].

---S.18 --- Higher rate of compensation---Proof of--- Burden to prove--- Scope--- Burden of proving entitlement to higher rate of compensation is on the landowner. Government of Sindh and 2 others v. Muhammad Usman and 2 others v 3406 ref. [(Syed Zahid Hussain and Muhammad Akhtar Shabbir, JJ) Acquisition Collector v. Abdul Wahid Chaudhry: **2004 YLR 608(c)**]

---Ss. 3(f) & 4--- Acquisition of land for public purpose--- Deviation from the purpose--- Issuance of new notification under S.4 of Land Acquisition Act, 1894--- when required--- Where the main and overriding purpose remains the same, a minor diversion of public purpose does not require a fresh notification under S.4 of Land Acquisition Act, 1894. Fazal Rahim and 6 others v. commissioner, Peshawar Division and another PLD 1979 Pesh. 91 ref. [(Tanvir Bashir Ansari, J.), Bostan v. Land Acquisition Collector, Rawalpindi: **PLD 2004 Lah. 47(c)**].

---Ss. 3(f) & 31--- Acquisition of land by company--- source of payment--- compensation not made from public funds--- Falling of such acquisition within the definition of public purpose--- Validity--- Although there may be cases where the acquisition of land by company may not strictly fall within the definition of 'public purpose' e.g. it may, confine to the purpose specific only to the company, yet where it is held that acquisition by company is for a public purpose, it would not be material if the compensation in whole or in part had been made by the company itself--- Primary determination of the purpose and not the source of payment of compensation is relevant--- If the common denominator relates to the acquisition of land for public purpose, it does not make any difference whether the source of payment of compensation is the Government or the company itself [(Tanvir Bashir Ansari, J.), Bostan v. Land Acquisition Collector, Rawalpindi: **PLD 2004 Lah. 47(d)**].

---S 4--- Acquisition of land--- Compensation--- Determination --- Inclusion of agriculture land in Town Committee --- Price of big Chunk of land and smaller plots--- Comparison --- Plea raised by land owners was that the land in question had been merged in residential area and

accordingly compensation should be awarded by taking into consideration the prevailing price of residential area--- Validity--- Land in question was agricultural and, therefore, it was selected for construction of drain--- Had it been residential area, the question of such selection would have not been arisen--- big chunks of land could not be compared with a smaller plots of a housing scheme which provided all the amenities and hence it had become more valuable--- Land was acquired for construction of drain which could not have been constructed in residential area and basic object whereof was to enhance the potential value of agricultural land by protecting it from water logging and salinity which was not the problem of residential area--- Land acquired was agricultural in nature and was not part and parcel of the Town Committee and its inclusion in Town Committee in particular election would neither change its nature nor value. Collector of Karachi v. M.N.E Dinshaw PLD 1965 (W.P) Kar. 557 [(Nazim Hussain Siddiqui, C.J., Javed Iqbal and Abdul Hameed Dogar, JJ.), Nasim Ahmed Aheer v. WAPDA: **PLD 2004 SC 897(c)**].

---S. 18----Objection petition, filing of---Limitation---Landowners were not proved to be present or represented before collector at the time of making award--- Notice from collector under S.12 (2) of Land Acquisition Act, 1894 to landowners was also not proved--- Held: In absence of proof of both factors, limitation to file objection petition under S.18 of Land Acquisition Act, 1894 would be six months [(Iftikhar Muhammad Chaudhry, Rana Bhagwandas and Sardar Muhammad Raza Khan, JJ.) Province of Sindh v. Ramzan: **PLD 2004 SC 512(d)**)]

---Ss. 4, 6, 18, 48 & 54--- Acquisition of land--- Non-utilization of acquired land--- Entitlement of landowners to compensation--- Appeal against judgment of Referee Court--- appellant for whom lands in dispute were acquired, was put in possession of such lands against proper acknowledgement of possession--- Contention of appellant was that it was liable to pay compensation amount only in respect of land which, was utilized by it and was not bound to pay compensation for land which though was notified in Notification, but was not used by it--- Contention was repelled because once notification was issued and

appellant was put in possession of notified lands and notification whereby lands were acquired, was in field, appellant could not deny or refuse compensation amount to different landowners who were dispossessed pursuant to notification competently issued by Land Acquisition Officer--- appellant could not take shelter under the grab that it had not utilized portion of acquired lands, when appellant had not resorted to provisions of S.48 of Land Acquisition Act, 1894 requesting the Government for denotifying such un-utilized land--- Once landowners were deprived of their lands, they were entitled to compensation in terms of Notification on basis of which award had been made--- Order passed by Referee Court, being lawful, would not warrant interference in appeal--- Appeals filed by appellant, were dismissed, in circumstances. [(Amir Hani Muslim, J.) WAPDA v Land Acquisition Officer, LBOD Project, WAPDA Sanghar now Land Acquisition Officer, Deputy Commissioner, Nawabshah: **2004 CLC 1041**].

---Ss. 4 & 23 [as amended by land Acquisition (West Pakistan Amendment) Ordinance (XLIX of 1969)]--- Compulsory acquisition of land --- Matters to be considered in determining compensation--- Entitlement of landowners is compensation and not market value--- “potential value” “and market value”--- Distinction--- Landowners is to be compensated and not merely paid price of land --- Market value at the time of notification under S.4 of Land Acquisition Act, 1894 is merely one of the modes, but not an absolute yardstick for assessment of compensation--- any rise in value of land from date of notification till announcement of award being a potential value of land must be taken into consideration---Classification or nature or land, though relevant considerations, but not an absolute one--- Principles. Malik Aman’s case PLD 1988 SC 32; Land Acquisition Collector Abbottabad v. Muhammad Iqbal 1992 SCMR 1245; Pakistan Burmah Shell’s case 1993 SCMR 1700; Murad Khan’s case 1999 SCMR 1647; Nisar Ahmed’s case PLD 2002SC 25 and Hyderabad Development Authority’s case PLD 2002 SC 84 rel. [(Iftikhar Muhammad Choudhry, Rana Bhagwandas and Sardar Muhammad Raza Khan, JJ.), Province of Sindh v. Ramzan: **PLD 2004 SC 512(a)**].

---Ss. 28-A [as added by Land Acquisition (Sindh Amendment) Ordinance (XXIII of 1984)] & 23(2)---Additional compensation at 15% per annum of compensation fixed from date of notification till date of payment of compensation---Notification under S.4 of Land Acquisition Act, 1894 was issued in year 1981 --- Awards were made in year 1985--- Collector referred objection petitions of landowners to Court after seven years --- Awards of additional compensation to landowners by Referee Court and High Court--- Validity--- Such additional compensation being altogether independent of those described in S.23(2) of the Act could very well be granted under S.28-A as promulgated in the Province of Sindh --- Section 28-A was mandatory in nature and its purpose was to check highhandedness of acquiring department and agency avoiding payment after issuance of notification and announcement of award--- Such delay was exploitation by itself---Section 28-A was enacted exactly for such eventualities and circumstances--- Supreme Court dismissed appeal with costs. Saadi Jafri Zinabi's case PLD 1992 SC 472 fol. [(Iftikhar Muhammad Chaudhry, Rana Bhagwandas and Sardar Muhammad Raza Khan, JJ.), Province of Sindh v. Ramzan: **PLD 2004 SC 512(b)**]

---Ss.28-A & 54 --- Acquisition of Land --- Additional compensation --- Entitlement Decree- holders / landowners had prayed for granting them additional compensation under S.28-A of Land Acquisition Act, 1894, but their prayer was refused by Executing Court for the reasons that said amount was not claimed by decree- holders in their original claim and that additional compensation had not been awarded in the decree--- Validity --- Intervention of Court and adjudication, was not required for payment of additional compensation under S.28-A of Land Acquisition Act, 1894 --- Omission on part of decree- holder/ land owners to claim additional compensation to which they were entitled under mandate of law itself or omission of Court to grant the same, was totally immaterial and of no consequence--- Decree- holder / landowners were entitled to additional compensation under S.28-A of the Land Acquisition Act, 1894 which could be granted by Executing Court while executing the decree--- Statement filed by decree- holders before Executing Court during course of execution proceedings containing claim for additional compensation at 15% per annum under S.28-A of Land Acquisition Act,

1894, was correct and payable in law to which they were entitled to claim--- respondent being bound to pay additional compensation to appellants/ decree-holders, they were ordered to deposit said amount within specified period. Dilawar Hussain v. Province of Sindh and 2 others PLD 1993, Kar. 578; Province of West Pakistan v. Mehboob Ali PLD 1976 SC 483 and Syed Saadi Jafri Zainabi v Land Acquisition Collector and Assistant Commissioner PLD 1992 SC 472 ref. [(Muhammad Mujeebulah Siddiqui, J.) Mir Ghulam Abid v. Land Acquisition Officer/Collector, now Deputy Collector, Khairpur:**2004 YLR 77**]

---Ss. 4, 6, 18 & 26---Civil Procedure Code (V of 1908), Ss. 2 & 151---- Acquisition of land --- Award of compensation ----- Execution of award--- Award under S. 26(2) of Land Acquisition Act, 1894 is a decree and statement of grounds of award is judgment within meaning of S.2(2) (9), C.P.C. and is executable as Civil Court decree by same Court which had decided reference---- Invocation of provisions of S. 151, C.P.C. for direction for payment of a decretal amount was unwarranted, more particularly when execution application was pending. [p. 726] A & B.. [**MLD 2005 725**].

---Ss. 9 & 25(1) (3)---Land Acquisition – Enhancement in rate of compensation --- Due service of notice issued under S.9 of Land Acquisition Act, 1894 --- Landowner claiming compensation at a specific rate by filing objection/ application in response to such notice -- - Validity – Provisions of S.25 of Land Acquisition Act, 1894 had limited jurisdiction of Court in mater of enhancement of compensation -- - No question of waiver of such provisions would arise --- Mandatory for Court in view of S.25(1) of Land Acquisition Act, 1894 not to enhance amount what was claimed by landowner in pursuance of such notice --- Such being a statutory duty cast upon Court must be given effect to and same was not a benefit conferred on any party--- Landowner would not be entitled to claim more than what they had claimed in pursuance of service of such notice --- High Court had no jurisdiction to enhance such claimed rate of compensation in cross-objection filed by landowner --- Principles illustrated. (d) [**PLD-2003-SC-311**].

---Ss. 23(2) & 28-A [as added by Land Acquisition (Sindh Amendment) Ordinance (XXIII of 1984)] --- Awarding of Additional compensation @ 15% per annum of compensation fixed from date of notification till payment of entire amount of compensation --- Validity -- - Such additional compensation could be awarded in view of S.28-A Land Acquisition Act, 1894. (g) SC 311 [PLD-2003-SC-311].

---Ss. 25(1) --- Limitation Act (IX of 1908), S.12 & Art.156--- Constitution of Pakistan (1973), Art. 185(3)--- Land Acquisition – Enhancement of compensation --- Validity --- Supreme Court granted leave to appeal to consider, whether High Court was justified to enhance the rate of compensation to Rs.70,000, when respondents' predecessor had himself demanded compensation @ of Rs.40,000 per acre, which enhancement was against the provisions of S.25(1) of Land Acquisition Act; and whether petition/appeals were barred by law of limitation. (a) SC 311 [PLD-2003-SC-311].

---Ss. 26 & 54 --- Constitution of Pakistan (1973), Art, 199---Supreme Court Rules, 1980, O.XXVI, R.1--- Review of judgment --- Filing of Constitutional Petition instead of appeal --- Petitioners being dissatisfied with the award of compensation, filed Constitutional Petition before High Court and then filed Intra-Court Appeal-constitutional Petition as well as Intra-Court Appeal were dismissed by High Court and the judgments were maintained by Supreme Court-Validity---Petitioners failed to point out any apparent error or defect in the judgment sought to be reviewed-Grounds urged by petitioners had already been considered by Bench of three Judges of Supreme Court---Petitioners, instead of filling appeal in High Court against award and then appeals to Supreme Court under S.54 of Land Acquisition Act, 1894, opted to file Constitutional Petitions under Art.199 of the Constitution for the reasons best known to them-Judgment passed by Supreme Court did not suffer from any legal infirmity so as to justify a review --- Petition was dismissed. (e) SC 45 [PLD-2003-SC-45].

---Ss. 16 & 17 --- Term ‘vest’ --- Applicability --- Possession of land acquired --- Effect --- Once possession of the land has been taken under S.17 (1) of Land Acquisition Act, 1894, the land vests in the

Government---Property so acquired, upon happening of certain events, vests absolutely in the Government free from all encumbrances --- In the cases contemplated by SS.16 and 17 of Land Acquisition Act, 1894, the property acquired becomes the property of Government without any condition or limitation either as to title or possession --- Legislature has made it clear that the vesting of the property is not for any limited purpose or limited duration---Word ‘vest’ does not have fixed connotation/meaning in all cases that the property is owned by the person or the authority in whom it vests. (c) Karachi. 302 [PLD-SC-].

---Public purpose --- Evacuee property --- If land was required by the Government for defence or for any public purpose, there was no bar for its acquisition under the law-Government, if was in need of land for use of public purpose, it could still acquire the same in accordance with law. [(Mian Muhammad Ajmal, Muhammad Nawaz Abbasi and Karamat Nazir Bhandhari, JJ.), Masooda Begum v. Government of Punjab: **PLD 2003 SC 90(f)**].

---Ss 4 & 23 --- Acquisition of land --- Award of compensation --- “Market value” – Concept – Assessment of market value--- Essentials -- Market value has been described as what a willing purchaser would pay to the willing seller --- For assessing the market value, it is also essential to look into the location of the land in question, potentially and the sale price of similar kind of land in vicinity at the relevant time --- Principles. Secretary to Government of N.W.F.P., Peshawar and 15 others v. Haji Fateh Khan and 15 others 2001 SCMR 974 and Pakistan Burmah Shell Ltd. v. Province of N.W.F.P. and 3 others 1993 SCMR 1700 ref. [(Qazi Muhamamnd Farooq, Syed Deedar Hussain Shah and Abdul Hameed Dogar, JJ.), Fazal Haq College v. Said Rasan: **PLD 2003 SC 480**].

---S. 18 --- Qanun-e-Shahadate (10 of 1984), Art.72 --- Acquisition of land-Compensation--- Determination---Potential value of land, consideration of---Document neither produced nor exhibited--- Effect--- Grievance of appellant was that after acquiring his land and while determining compensation, the authorities did not take into consideration the potential value of the land---Referee Judge while

deciding the compensation had taken into consideration the extracts from the register concerned and other documents placed on file and enhanced compensation from Rs.2,190.27 to Rs.4,000 per Marla--- While enhancing the compensation, the Judge had taken into consideration the only transaction which took place during five years prior to the issuance of notice under S.4 of Land Acquisition Act, 1894, according to which 10 Marlas of land was sold at the price of Rs.40,000---Land sold for post office was relied upon by the appellant and the Judge had taken into consideration the transaction relied upon and had found that the land was not within the vicinity of the land of the appellant---Compensation fixed by the Referee Judge was maintained by High Court---Validity---Appellant had failed to bring on record the sale-deed pertaining at the relevant time to determine the market value of the land in question --- Land of the appellant and that relied upon by the appellant were situated in two different Mozas (villages) but Wand was same---Sketch showing location of the land referred by the appellant was neither produced/exhibited in the evidence nor its marker was examined, as such, the sketch had no value in the eye of law---Supreme Court declined to enhance compensation awarded by the Referee Judge---Appeal was dismissed. [(Qazi Muhammad Farooq, Rana Bhanwandas and Abdul Hameed Dogar, JJ.), Taj Muhammad v. XEN Irrigation, Dargai: **2003 SCMR 129(b)**].

---S 28-A [as inserted by Land Acquisition (Sindh Amendment) Ordinance (XVIII of 1984)]---Additional compensation---Import, scope and object---Government or other acquiring agencies often avoid or delay payment of compensation to landowners who keep on litigating for decades---Legislature, by incorporating S.28-A in Land Acquisition Act, 1894, intended to compensate such landowners by providing additional compensation and at the same time to deter acquiring agencies from delaying the payment---Landowner under S.28-A of Land Acquisition Act, 1894, cannot take a premium on the basis of the entire amount of compensation inclusive of amounts already pocketed by him. [(Sabihuddin Ahmed and Amir Hani Muslim, JJ.), Dilawar Hussain v. Province of Sindh: **PLD 2003 Kar. 174(c)**].

Land Acquisition Act, 1898 ---Plea, absence of gazette notification, presumption attached to judicial and official acts under Qanun-e-Shahadat Order, Article 129(e) presumption – disputed land acquired after observing all formalities of Law, compensation for acquisition paid, notification under sections 4 & 6 of the Act issued, held once possession of the land acquired has been taken under sections 16 & 17 of the Act, the land vests in the government, “vests” – vests absolutely free from all encumbrances. **SBLR Sindh 194/C 2003.**

In the Supreme Court of Pakistan
(Appellate Jurisdiction)

Present:

Mr.Justice Iftikhar Muhammad Chaudhry

Mr.Justice Rana Bhagwandas

Mr. Justice Sardar Muhammad Raza Khan

Civil Appeals No.139 & 140 of 1999 and Civil Petition
No.561-K of 2002

(On appeal from the judgment dated 22.7.1998 & 29.3.2002 passed by the High Court of Sindh, Circuit Bench Hyderabad in 1st Appeals No.95 of 1997, 13 of 1998 & 94 of 1997).

CAs 139 & 140 of 99:

Province of Sindh through
the Collector of District Dadu others.....Appellants

(in both cases)

Versus

Ramzan & others..... Respondents
(CA 139 / 99).

For the appellants..... Mr.Nasir Saeed Sheikh,
ASC with Ch. Akhtar Ali, AOR.