

FORM No. HCJD/C-121
ORDER SHEET
IN THE LAHORE HIGH COURT
MULTAN BENCH MULTAN
JUDICIAL DEPARTMENT

W.P. No.4874 of 2020

Haji Mushtaq Hussain Shah Versus Senior Civil Judge/Referee Judge,
Khanewal and others

Sr. No. of order/ proceeding	Date of order/ Proceeding	Order with signature of Judge, and that of parties of counsel, where necessary
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28.10.2025	Malik Arab Hassan Asif, Advocate for petitioner. Mr. Waqar Saeed Khan, Asst. Advocate General for respondent Nos.2 and 6. Mr. Ahmad Usman Khan Miana, Advocate for respondent Nos.3 to 5.
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This Constitutional petition has been filed to challenge order dated 11.2.2020 of learned Civil Judge (Civil Division)/Referee Judge, Khanewal whereby application under Order XVI, Rule 1, C.P.C. was dismissed.

2. Petitioner filed a Reference under section 18 of Land Acquisition Act, 1894 against Award dated 16.10.2017 made and announced by Land Acquisition Collector, National Highway Authority/M-IV, Section III, Faisalabad for the construction of Abdul Hakeem Interchange Mauza Jala Pahore, Tehsil Kabirwala District Khanewal challenging the compensation assessed in the Award by Land Acquisition Collector. Reply to the Reference was submitted by respondent, issues were framed and list of witnesses filed by the petitioner; who produced oral evidence comprising three witnesses including himself as AW1. On completion of oral evidence learned counsel for the petitioner recorded his statement dated

28.9.2019 wherein he closed his oral evidence and requested for adjournment to produce documentary evidence. Thereafter an application dated 05.11.2019 seeking permission to produce certain officials as his witnesses was moved which was contested by the respondents and was dismissed by learned Senior Civil Judge vide order 11.2.2020 which is impugned herein.

3. Learned counsel submits that the order is not legally sustainable which was passed without application of judicial mind and that being Referee Judge, learned Senior Civil Judge had the power to summon official record for adjudication of Reference and that being holder of record as Land Acquisition Collector respondent No.3 had himself filed the Reference and, therefore, the learned Senior Civil Judge could have directed the officials of respondents to produce the record and by refusing the application serious error of law was committed.

4. As against this, learned counsel for the respondent Nos. 3 to 5 has controverted the submissions and supported the impugned order of the court by submitting that the order was just, fair and in accordance with law which could not be challenged on frivolous pleas raised by the petitioner.

5. Submissions made by learned counsel for the parties have been duly considered in the light of documents/material placed on record with the petition. It is manifest therefrom that the above-mentioned Reference was filed by the petitioner on the ground that compensation of the land was not

correctly assessed and that the actual true value of the property was not awarded. The Reference was contested by the respondents who submitted that the claim was not legally entertainable. Issues were framed whereafter oral evidence of the petitioner comprising of Haji Mushtaq Hussain Shah as AW1, Sarfraz Ahmad as AW2 and Iqbal Hussain Shah as AW3 was recorded and, thereafter, the learned counsel for the petitioner recorded his statement on 28.9.2019 stating that the oral evidence was completed and that he may be given time for production of documentary evidence. Instead of producing documents the noted application was filed on 05.11.2019 for seeking permission to summon the witnesses through the court which application was dismissed by the impugned order. The application was rejected by the learned Senior Civil Judge for the reason that the petitioner had already completed his oral evidence and made a statement that the oral evidence had been completed and that an opportunity to produce documentary evidence be allowed; and no ground for not mentioning the names of the witnesses in the list of witnesses already filed under Order XVI, C.P.C. was given and that no good cause/ground for non-mentioning the names of witnesses sought to be summoned in the list of witnesses was given and that application was moved after conclusion of oral evidence and in case such permission is allowed it will amount to reopening of oral evidence which will prejudice the rights of other party.

6. Deeper analysis of record shows that in the application under Order XVI, Rule 1, C.P.C. it was stated that the petitioner intended to summon official witnesses namely (i) Record Keeper of Land Acquisition, (ii) Land Acquisition Collector concerned (iii) Patwari Halqa, Revenue Department with record, (iv) Record keeper D.C. Office Khanewal with record of Award, (v) Secretary Union Council, Jala Pahore as he was not supplied the certified copies of the documents and that they are not willing to accompany the petitioner for appearance in the court as witnesses. Perusal of record shows that the petitioner in his list of witnesses had only given four names out of which three witnesses including himself appeared in the court in evidence as AW1 to AW3 and after recording their statements-in-chief and lengthy cross-examination, learned counsel for the petitioner made his statement that the oral evidence of the petitioner was completed and that he want to produce documentary evidence for which an opportunity may be given. Instead of tendering documents in evidence, the instant application under Order XVI, Rule 1, C.P.C. was filed without disclosing that the name of persons which the petitioner wanted to summon had not been mentioned in the earlier list filed by the petitioner after framing of issues. So much so no detail of documents for which certified copies were applied or not given were recorded in the application nor any proof of applying for certified copies of particular documents was given in the application instead the general request for summoning of

record of entire acquisition was claimed. It was not claimed that the documents which were required to be produced had been specifically relied upon in the list of reliance under Order VII, Rule 14, C.P.C. which provides that the petitioner in the case shall mention three sets of documents in the list of reliance viz. (i) documents in possession and copy whereof has been annexed with the claim, (ii) documents in possession and will be filed at the relevant time and (iii) documents/record in the custody of opposite party which the petitioner intended to requisition in support of his case. Under Order VII, Rule 18, C.P.C. any such document if not mentioned in the list of reliance cannot be produced without permission of the court after satisfying and giving “*good cause*” for not mentioning earlier in the list of reliance. There being no material in support of the plea of the petitioner that he was not supplied copy of documents, petitioner in the first instance should have applied for certified copies to place on record the proof of having so applied and the refusal for not supplying the copy of record and could move an application for seeking appropriate orders of the court for a direction to the respondent for producing copies thereof in the Court, which course is still open for him to follow for appropriate relief.

7. Under Order XVI, Rule 1, C.P.C. a list of witnesses of the official witnesses need to be filed within seven days from the date of framing of issues. Order XVI C.P.C. mandates that the party shall not be permitted to call witnesses other than

those contained in the said list, except with the permission of the Court and after showing good cause for the omission of the said witnesses from the list; and if the Court grants such permission, it shall record reasons for so doing. Perusal of the application shows that no good reasons have been given to explain the omission to mention the names in the list of witnesses of the persons for whom the application was filed. The only ground taken by the petitioner was that the document being part of acquisition record, the petitioner was entitled to summon the documents which were not provided. In point of fact oral evidence of any document will not be admissible. If the petitioner was interested to produce any document, the appropriate course for him was to obtain certified copy of documents, if any, he wanted to produce in the evidence and submit the same in evidence. The learned Civil Judge, therefore, rightly dismissed the application under Order XVI, Rule 1, C.P.C. which order being fair, just, reasonable, does not call for any interference.

8. For the reasons herein above, the instant writ petition is dismissed. No Order as to costs.

(RASAAL HASAN SYED)
JUDGE

Approved for reporting

Judge