

IN THE SUPREME COURT OF PAKISTAN  
(Appellate Jurisdiction)

**Present:**

Justice Qazi Faez Isa, CJ  
Justice Irfan Saadat Khan  
Justice Naeem Akhtar Afghan  
Justice Shahid Bilal Hassan

**Civil Petition No.14-P/2015**

Against the judgment dated 07.11.2014  
passed by Peshawar High Court, Peshawar in  
W.P. No.2597-P of 2014

*Fazli Akbar Khan and others*

...Petitioners

Versus

*Government of Khyber Pakhtunkhwa through District  
Collector, Mardan and others*

...Respondents

For the Petitioners:

Mr. Khalid Mahmood, ASC  
(via video-link, Peshawar)

For the Respondents:

N.R.

Date of Hearing:

13.09.2024

**JUDGMENT**

**Irfan Saadat Khan, J.** The present CPLA has been filed against the judgement of the Peshawar High Court, dated 07.11.2014, passed in Writ Petition No. 2597-P of 2014 ("**impugned judgement**").

2. Brief facts of the *lis* before us are that the property of the Petitioners measuring about 12 *kanals* was acquired by the Respondents for a public purpose (playground of Government High Secondary School, Manga Tehsil and District Mardan) vide award No. 63/4/L.A., dated 11.10.2010, against the awarded rate of PKR 6,156/- per *marla*. As the compensation so fixed by the Land Acquisition Collector ("**Collector**") for the acquired land was not acceptable to the Petitioner/landowners, therefore they filed a Reference Petition under sections 18, 30, 31, and 34 of the Khyber Pakhtunkhwa-Land Acquisition Act, 1894 ("**the Act**") for the enhancement of the award rates. However, the Collector rejected the Reference Petition to the extent of section 18 of the Act for being barred by time and referred it to the Referee Court qua sections 30 and 31 of the Act only. The Referee Court entertained the Reference Petition accordingly and proceeded with it for its disposal. However, during pendency of the reference proceedings, it was revealed to the Referee Court, on 24.02.2014, that the



reference had been sent to it under sections 30 and 31 of the Act only and not under section 18 of the Act. Therefore, the Court fixed the case for considering its maintainability. On 22.04.2014, detailed arguments of the point of maintainability of the Reference Petition were heard and subsequently the Referee Court, held that the petition was not maintainable and rejected the same vide Order, dated 22.04.2014. Consequently, the Petitioners approached the High Court. However, the Petitioners in the Writ Petition before the High Court did not challenge the aforementioned Order of the Referee Court, dated 22.04.2014, rather they prayed for the Order, dated 02.11.2011, of the Collector to be set aside. The High Court found this to be puzzling as well as astonishing and directed the Petitioners to justify the delay of 33 months in filing the Writ Petition against the Order of the Collector. After hearing the Petitioner, the High Court observed the following in the impugned judgement:

“...if we assume for the sake of arguments, that the Petitioners were not heard by the Collector regarding their petition being barred by time qua enhancement of the awarded rates but undoubtedly they were present on 23.11.2013 before the learned Referee Court when their reference petition was received by the Referee Court from the Collector for its disposal only the extent of sections 30 and 31 of the Act. At least at this stage of the case, petitioners were required and supposed to know the fate of their reference petition relating to the point of enhancement of the awarded rates for their acquired land but they did nothing at that stage. Had they been aggrieved of the portion of rejection of their *ibid* prayer, they should have impugned the same before proper forum and within reasonable time but they kept themselves quiet for about 33 months and thereafter realized to assail the rejection of their prayer qua section 18 pf the Act when their reference petition was found not maintainable by the learned Referee Court sans section 18 of Act.

6. It has been held umpteenth times by the Superior Courts and which is also a cardinal principle of jurisprudence that law helps only those who are vigilant in pursuing their legal remedies. The present writ petition is hopelessly time barred and is squarely hit by the principle of laches. The delay of 33 months is unreasonable which cannot be condoned by this Court...”

3. Mr. Khalid Mahmood, ASC appeared on behalf of the Petitioners and contended that the impugned judgement was passed in glaring disregard of the facts and thus was not sustainable in the eyes of the law. The learned Counsel stated that the proceedings under the Act involving the property of the Petitioners were completed only to the extent of paper work and not in actuality as neither any notice was sent to the Petitioners nor any physical possession was taken from them up until August of 2011; it was only when the Petitioners tried to sell the land that they became aware that not only acquisition proceedings had



started but award No. 63/4/L.A., dated 11.10.2010, had been announced. The learned Counsel stated that when the Petitioners became aware of the award they filed a Reference Petition before the Collector on 26.10.2011, which was referred by the Collector to the Referee Court vide Order, dated 02.11.2011. The learned Counsel argued that the Referee Court had not appreciated the merits of the case and had declined to entertain the Reference Petition merely by stating that there was no case before the Court and that the High Court by upholding the Order, dated 22.04.2014, of the Referee Court, had also erred in law. In support of his contentions the learned Counsel relied on the Lahore High Court's decision in *Fazal Khaliq*<sup>1</sup> and this Court's decision in *Government of West Pakistan*<sup>2</sup>.

4. We have heard the learned Counsel for the Petitioners at some length and have also perused the record with his assistance.

5. At the outset, it is apt to mention that we, like the High Court, find it puzzling that the Petitioners' grievance is related to the Order, dated 22.04.2014, of the Referee Court, but instead they impugned the Order of the Collector, dated 02.11.2011, in Writ Petition No. 2597-P of 2014. Be that as it may, the aforementioned Order of the Collector<sup>3</sup> is reproduced hereunder for the sake of clarity:

"Memo:

Enclosed is a reference petition under section 18/30/31 of the Land Acquisition Act, 1894 titled Fazal Akbar etc. V/S Government of Khyber Pakhtunkhwa etc. received in this office on 31.10.2011 for disposal only under section 30/31 please as period for filing of reference u/s 18 is barred by limitation which is rejected."

**(UNDERLINING IS OURS, ADDED FOR EMPHASIS)**

The Order of the Collector makes it quite clear that the Referee Court was being sent the Reference Petition for disposal under sections 30 and 31 of the Act only and not under section 18 of the Act, as the reference on the face of it was barred by limitation. Therefore, for the learned Counsel to argue and expect that a Referee Court was to consider a reference, which was clearly barred by time, seems odd at best. It is our considered view that the learned Counsel in his arguments conceded that the award No. 63/4/L.A. was passed on 11.10.2010<sup>4</sup>, and the Reference Petition was filed before the Collector by the Petitioners, on 26.10.2011, exactly a year later. In this regard section 18 of the Act is clear:

<sup>1</sup> Fazal Khalid v. National Highway Authority (2014 CLC 465)

<sup>2</sup> Government of West Pakistan (now Government of NWFP) v. Arbab Haji Ahmed Ali Jan (PLD 1981 SC 516)

<sup>3</sup> Available at pg. 49 of the paper book submitted by the Petitioners in CPLA No. 14-P of 2015.

<sup>4</sup> Available at pg. 86 of the paper book submitted by the Petitioners in CPLA No. 14-P of 2015.



"18. (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 person to whom it is payable, or the apportionment of the compensation among the persons interested.  
 (2) The application shall state the grounds on which objection 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.

(4) Notwithstanding anything to the contrary contained in section 21, ["the Federal Government, the Provincial Government,"] a local authority or a Company, as the case may be, for or on behalf of whom the land is being acquired, may, 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 inquiry and determination of the objection against the award."

**(EMPHASIS SUPPLIED)**

The Petitioners were indeed barred by time by virtue of section 18 of the Act and thus the Collector's Order accurately referred the matter to the Referee Court under sections 30<sup>5</sup> and 31<sup>6</sup> of the Act only. Moreover, it is a matter of record that notification under section 4<sup>7</sup> of the Act was duly issued on 06.03.2010 and

<sup>5</sup> Section 30 of the Act provides that 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.

<sup>6</sup> Section 31 of the Act provides that when the Collector makes an award under Section 11 regarding compensation for acquired land, the following procedures apply: If the persons entitled to compensation and the relevant government (Provincial or Federal) accept the award within the prescribed period, or if no objection is raised within this time, the Collector must offer and pay the full compensation before taking possession of the land. If an objection is raised and the award is referred to the court, the Collector must offer either the awarded compensation or the estimated acquisition cost, whichever is less. Payment will only be made once the recipient provides security for refund in case of any excess compensation. If there is a dispute over who is entitled to compensation, the amount is deposited in court. Any person receiving compensation without protest cannot later challenge the award. The Collector may also, with government approval, compensate through alternative arrangements like land exchanges or tax remissions instead of monetary compensation, while maintaining the flexibility to enter into other agreements with interested parties.

<sup>7</sup> Section 4 of the Act provides that when the Collector of a District identifies land that is needed or likely to be needed for public purposes or for a company, a notification must be published in the official Gazette, with public notices posted in the locality. This allows authorized officers to enter the land, conduct surveys, and assess its suitability for the proposed use. Officers may perform actions such as digging, marking boundaries, and removing crops or



endorsement to that effect was duly issued on 07.09.2010 vide endorsement No.2429-32/LA, whereafter the Petitioners filed their objections, which were duly considered by the Collector before passing the award No. 63/4/L.A., on 11.10.2010. This simple fact alone points out that the Petitioners took part in acquisition process and that the Reference Petition before the Collector filed on 26.10.2011 was merely an afterthought, perhaps intended to get more money for their land. Moreover, it is also an admitted position that no appeal, as required under section 18-B<sup>8</sup> of the Act, was filed by the petitioners against the said award.

6. This Court, recently, in *Gul Zaman*<sup>9</sup> held:

“When we peruse the various Sections in the Act, particularly sections 18, 19, 20 and 21 thereof, it becomes abundantly clear that there are certain conditions which have to be fulfilled before the Collector is empowered to make the reference, and then alone the Court has any jurisdiction to entertain the reference. These conditions are: a) A written application should be made before the Collector; b) The person applying should be one interested in the subject matter of the reference, but who does not accept the award; c) The grounds of objection as to the measurement, or the amount of compensation, the persons to whom it is payable or the apportionment of the compensation among the persons interested should be stated in the application; and d) The application should be within the period prescribed under the provisos (a) and (b) to section 18 of the Act. These are all matters of substance, which may be conveniently called jurisdictional facts, and their compliance is a condition precedent to the exercise of the power of reference under section 18 of the Act. The matter goes to Court only upon a reference made by the Collector. It is only after such a reference is made that the Court is empowered to determine the objections made by a claimant to the award. In fact, it is the order of reference which provides the foundation of the jurisdiction of the Court to decide the objections referred to it. The Court is bound by the reference and cannot widen the scope of its jurisdiction or decide matters which are not referred to it. It is thus, not within the domain of the Court to entertain any application under the Act pro interesse suo (that is, according to his interest) or in the nature thereof because whenever jurisdiction is given by a statute and such jurisdiction is only given upon certain specified terms contained therein, it is a universal principle that those terms should be complied with in order to create

vegetation, but they must notify property occupants seven days in advance before entering enclosed spaces. Compensation must be offered for any damages caused, and disputes over compensation are referred to the Collector, whose decision is final. If land is confirmed as necessary for public purposes or a company, a notification detailing the land's location, purpose, and area is published, and the public is informed about where to inspect any related plans.

<sup>8</sup> Section 18-B of the Act provides that any person dissatisfied with the Collector's order under Section 18-A may appeal to the Commissioner within six weeks. Upon receiving the appeal, the Commissioner will schedule a hearing, notify the relevant parties, and allow them to appear either personally or through legal representatives. After hearing the parties, the Commissioner can either accept the appeal and direct the Collector to make a reference to the court under Section 19, or reject the appeal, providing written reasons for the decision. If the Commissioner finds the appeal to be frivolous and without just cause, they may order the appellant to pay costs up to 500 rupees, recoverable as arrears of land revenue. The Commissioner's decision is final, with no further appeal, review, or revision permitted.

<sup>9</sup> *Gul Zaman v. Deputy Commissioner/Collector Gwadar* (2024 SCMR 481)



and raise the jurisdiction, and if they are not complied with, the jurisdiction does not arise.”

**(EMPHASIS ADDED)**

7. It is also pertinent to state that we have considered the case law relied upon by the learned Counsel for the Petitioners and found that the facts in those are distinguishable from the facts in the present matter rather the dictum as laid down in *Government of West Pakistan*<sup>10</sup> goes against the petitioner wherein this Court concluded that:

“The respondents, on gaining knowledge of the Award on 19th of August, 1964, filed an application under section 18 of the Land Acquisition Act before the Land Acquisition Collector on 12th of September, 1964, for referring the matter to the Court for decision in regard to the compensation awarded. They accepted the compensation under protest and disputed the rate of compensation which according to them, was on the low side. The Collector refused the prayer on the ground that it had become time-barred; but on appeal the Additional Commissioner, exercising powers under section 18-B of the Act as applicable to this province, allowed the prayer by order dated 21st of October, 1965, and directed the Land Acquisition Collector to the required reference, which was accordingly made to the designated Civil Court on 16th of December, 1965. The appellant took objection that the reference was incompetent as it was barred, but the designated Civil Court held against the appellant by order dated 1st of November 1967. The rate of compensation was also enhanced from Rs. 625 to is. 2,200 per Kanal. The appellant went in appeal to the Peshawar High Court and a learned Single Judge of that Court referred the following question to a larger Bench by order dated 7th of February, 1972 "Whether a reference can be thrown out by the Court on the ground that the application was not made to the Collector within six months particularly when an objection in this regard was already raised and decided in favour of the objector under section 18-B." The Full Bench answered the question holding :- ". . . that once the Collector has made reference to the Court, the Court would be incompetent to go behind the reference to see if the objection application before him (the Collector) had been filed within time, as prescribed in proviso to section 18 of the Act." Leave to appeal was granted to examine this question as there was no authoritative pronouncement of this Court in the context of conflicting judicial opinions on this point. The question posed for consideration relates to the scope and extent of jurisdiction exercised by the Court mentioned in section 18 of the Land Acquisition Act. Sections 18 and 30 of the Land Acquisition Act authorize the Collector to make references to the Court for the determination of those matters referred to therein. Such matters are enumerated in those sections. For reference sake it will be convenient to reproduce those sections:- "18.-(1) Any person interested who has not accepted the award may by written application to the Collector, require that the matter be referred by

<sup>10</sup> *Government of West Pakistan (now Government of NWFP) v. Arbab Haji Ahmed Ali Jan* (PLD 1981 SC 516)



the Collector for the determination of the Court, whether his objection be to the measurement of the land, the amount of compensation, the persons to whom it is payable, or the apportionment of the compensation among the persons interested. (2) The application shall state the grounds on which objection to the award is taken 30. 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 Collector may refer such dispute to the decision of the Court." This is not all. There are other sections which follow section 18, that is, sections 19, 20 and 21 which determine the scope and extent of jurisdiction exercised by such Court. Section 19 relates to the information to be furnished to the Court which also includes, amongst it the objection of the persons interested. Section 20 regulates the procedure for the determination of the objection and section 21 confines the scope and inquiry of proceedings only to the consideration of the interest of the persons affected by the objection. Similarly, section 30 restricts the scope of jurisdiction to the determination of the apportionment of the amount of compensation. These sections are a part of a special Act which provides for the acquisition of land for a public purpose and the determination of the compensation payable to the persons affected by such acquisition. Therefore, the extent and scope provided therein must constitute the jurisdiction of the designated Court which hears the reference. Such is the connotation of the word "jurisdiction". As held by this Court in State v. Zia-ur-Rahman (PLD1973SC49):- "It may well be asked at this stage as to what is meant by 'jurisdiction'? How does it differ from 'judicial power'? Apart from setting up the organs the Constitution may well provide for a great many other things, such as the subjects in respect of which that power may be exercised and the manner of the exercise of that power. This it may provide that the Courts set up will exercise revisional or appellate powers or only act as a Court of a cessation or only decide constitutional issues. It may demarcate the territories in which a particular Court shall function and over which its writs shall run. It may specify the persons in respect of whom the judicial power to hear and determine will be exercisable. These are all matters which are commonly comprised in what is called the jurisdiction of the Court. It expresses the concept of the particular res or subject-matter over which the judicial power is to be exercised and the manner of its exercise. Jurisdiction is, therefore, a right to adjudicate concerning a particular subject-matter in a given case, as also the authority to exercise in a particular manner the judicial power vested in the Court. It is, accordingly, in aid of this jurisdiction that the judicial power, which resides in it, is exercisable for resolving the matters in controversy. Clearly, therefore, the extent of this jurisdiction is not the same as one conferred on a Court of general jurisdiction while hearing a suit under section 9, C. P. C. It is only when a reference is made under section 18 A that the designated Court is empowered to act and not otherwise; and while exercising its jurisdiction, it cannot go behind the reference and hold that it was illegally made for the reason that the Collector had no power to do so as the application for making the reference was made beyond time."

**(EMPHASIS ADDED)**



Therefore, the Referee Court had no other option but to hold that the petition was not maintainable and rejected the same vide Order dated 22.04.2014. Having said that it is our understanding that the Petitioners realized the fault in their legal strategy, therefore, impugned the Order dated 02.11.2011 of the Collector rather than that of the Referee Court before the High Court. However, the High Court realized this and quite rightly held that the challenge to the Collector's Order was time barred and attracted the doctrine of laches.

8. In light of what has been discussed herein above, leave to appeal is refused and this petition is dismissed.

Announced in open Court on 25/9/2024

ISLAMABAD  
Arshed/AJK. L.C

Approved for Reporting