

SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Present:

Mr. Justice Munib Akhtar
Mr. Justice Shahid Waheed
Ms. Justice Musarrat Hilali

CIVIL APPEAL NO.13-Q OF 2020

(Against the judgment dated
24.11.2020 passed by the High
Court of Balochistan, Circuit
Bench at Turbat in RFA No.(T)01
of 2017

Gul Zaman

...Appellant(s)

Versus

Deputy Commissioner/Collector
Gwadar & others

...Respondent(s)

For the Appellant(s) : Mr. Kamran Murtaza, Sr. ASC

For the Respondent(s) : Mr. Muhammad Ayyaz Swati,
Addl. AG with Qamar Abbas,
Focal Person

Date of Hearing : 08.11.2023

ORDER

Shahid Waheed, J: This direct appeal is by the land owner and arises out of the proceedings brought by him under Section 18 of the Land Acquisition Act, 1894 (**the Act**), seeking enhancement for compensation of his land, which was acquired for the construction of Free Trade Zone, Gwadar (**FTZ**).

2. This case has a chequered history and has been dealt with in detail by *fora* below, and so we are not needed to elaborate on it. We will omit unnecessary facts and state only those, which help determine the question here presented. Those facts are as follows: an extent of 1665 Acres, 02 Rods and 13 Poles land in *Mouza Dhore Ghatti* and *Mouza Surbunder, Tehsil Gwadar*, was acquired by the Gwadar Port Authority, Government of Pakistan, for the construction of FTZ. The land of the present appellant was also included in it. On the 1st of January, 2014, an award of Rs.6.216 billion, determining the compensation of the acquired

land, was announced. The compensation of land per acre was fixed at Rs.3.000 million, but out of 1665-2-13 acres, a piece of land measuring 80 acres was to be paid at Rs.4.000 million per acre. The appellant, after having received partial compensation of Rs.276,000,000, on 15th of May, 2014, directly filed an application under Section 18 of the Act in the Court of District Judge, Gwadar, praying therein to enhance the compensation of land, by setting aside the award, dated 1st of January, 2014, announced by the Land Acquisition Collector. The District Judge entertained this application, registered it as a suit, and proceeded with its trial. During the trial, an amended award was announced by notification dated 24th of November, 2015. It may be noted that the appellant had an opportunity to challenge the compensation determined in the amended award by asking the Collector to send his reference to the Court. Yet he did not choose to do so. Notwithstanding this fact, the District Judge proceeded with the matter, and by his order dated 31th of May, 2017, restored the compensation of the appellant's land fixed in the first award, Rs.4,000,000 per acre, including 15% compulsory acquisition charges. The Deputy Commissioner/Collector, Gwadar (respondent No.1 herein), thereupon, presented an appeal before the High Court, which on consideration, came to hold that the application filed by the appellant under Section 18 of the Act was not only incompetent, but it was barred by time. Based on this conclusion, the High Court, accepted the appeal and set aside the order of the District Judge by judgment dated 24th of November, 2020. So, this appeal.

2. The above facts give rise to the question whether it was open to the land owner-appellant to have directly made an application under Section 18 of the Act before the District Judge, Gwadar. To answer this question, we do not need to examine various principles of law, but it is to be found within the four corners of the Act. 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) & (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 thereof¹ 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 and raise the jurisdiction, and if they are not complied with, the jurisdiction does not arise.²

3. In the circumstances, we are of the view that the remedy by filing an application under the Act directly to the Court of District Judge was clearly

¹ Prayag Upnivesh Awas Evam Nirman Sahavi Samiti Ltd. v. Allahabad Vikas Pradhikaran and Ors. (AIR 2003 SC 2302); Shyamali Das v. Illa Chowdhry and Ors. (AIR 2007 SC 215); and The Land Acquisition Collector, Pak-Arab Refinery Limited and others v. Khan (deceased) and others (2019 MLD 968)

² Nusserwanjee Pestonjee and others v. Meer Mynodeen Khan Wullud [(1885) 6 MIA 134]; and Mansab Ali v. Amir and Ors. (PLD 1971 SC 124)

misconceived, inasmuch as Section 18(1) of the Act does not authorise or permit or provide for a person aggrieved, to make an application directly to the Court, and the Trial Court had no jurisdiction whatsoever to decide the points arising in the application; therefore, the proceedings of the District Judge were *void ab-initio*. Thus, the High Court was justified in reversing the same.

4. Before parting, we wish to record that we considered modifying the decree passed by the two Courts below and examined whether it will be in the interest of justice to return the application, filed under section 18 of the Act, to the appellant so that he may avail himself of the remedy by presenting it before the appropriate forum under the Act, but on careful analysis of the facts and the provisions of the Act, we do not think it fit to do so, because not only the period of limitation to seek remedy before the Collector, under section 18 of the Act, has expired but it will also amount to encouraging procedural gamesmanship that would not be conducive to the administration of justice, as the purpose of law is to settle down and not to devise means to multiply contest between the parties.

5. The result is that this appeal must fail, and is accordingly dismissed.

Judge

Judge

Judge

Announced in Court on -----2023 at Islamabad

Judge

Islamabad
08.11.2023
APPROVED FOR REPORTING
Rashid*/Agha M. Furqan, LC