

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Present:

MR. JUSTICE YAHYA AFRIDI
MR. JUSTICE SYED HASAN AZHAR RIZVI
MR. JUSTICE IRFAN SAADAT KHAN

Civil Appeals No.1653 to 1655/2007

(On appeal from the judgment dated 31.08.2007 passed by the High Court of Sindh, Hyderabad Circuit in 1st Appeals No.22, 23 & 24/2005)

B.P. Pakistan Exploration and Production, Inc.
(in all cases)

...Appellants

Versus

Ashique Hussain Halepoto and others (in CA 1653/07)
Muhammad Halepoto and others (in CA 1654/07)
Zulfiqar Ali Shah and others (in CA 1655/07)

...Respondents

For the Appellants: Mr. Hussain Ali Almani, ASC
Syed Mehmood Abbas, AOR

For the Respondents: Mr. Azhar Farid, ASC

Date of hearing: 07.02.2024

JUDGMENT

Yahya Afridi, J.- Through the listed appeals, M/s. B.P. Pakistan Exploration and Production, Inc. (**'the appellant-company'**), has invoked the jurisdiction of this Court under Section 54 of the Land Acquisition Act, 1894 (**'the Act'**) read with Article 185(2) of the Constitution of Islamic Republic of Pakistan, 1973, and challenged the impugned judgment dated 31.08.2007 of the High Court of Sindh, Hyderabad Circuit, wherein the compensation awarded by the Referee Court to the respondents for acquisition of their property was maintained.

Facts of the Case

2. The brief and essential facts leading to the present appeals are that three parcels of agricultural land measuring 49 *acres* and 27 *ghuntas*, 5 *acres* and 1 *ghunta* and 5 *acres* and 20 *ghuntas* in Taluka Matli, District Badin (**'acquired-property'**), belonging to the private-respondents/landowners, were acquired in pursuance of two notifications dated 24.10.1985 and 12.12.1985, followed by a declaration under Section 6 of the Act dated 23.06.1987 duly published in the Official Gazette on 23.07.1987 and 30.07.1987. The notifications stated that the acquisition of acquired-property in favour of the appellant-company was being made for 'public purpose'. The acquisition proceedings culminated in passing of the Award dated 18.01.1995 (**'the Award'**), wherein the compensation to the private-respondents/landowners was determined at the rate of Rs. 95,000/- per acre. Aggrieved thereof, the private-respondents/landowners challenged the same through References filed before the Referee Court seeking enhancement of the compensation. Respondents No. 1 to 14 in C.A. No. 1653 of 2007 and respondents No. 1 to 9 in C.A. No. 1654 of 2007 sought enhancement up to Rs. 360,000/- per acre, while respondents No. 1 to 11 in C.A. No. 1655 of 2007 sought enhancement up to Rs. 260,000/- per acre. After considering the claims and supporting evidence of the parties, the Referee Court enhanced the compensation to Rs. 120,000/- per acre. The private-respondents/landowners accepted the said enhancement. However, the present appellant-company challenged the same before the High Court in appeals. The High Court, after considering the contentions of the parties, maintained the

compensation, so adjudged by the Referee Court and also held the appeals filed by the appellant to be not maintainable. Hence these appeals.

Submissions

3. The learned counsel for the appellant contended that an appeal filed by a company was competent, and thus, the impugned judgment wrongly dismissed the appellant's appeals, failing to take into account the amendments introduced in Section 18(3) of the Act, through the Land Acquisition (Sindh Amendment) Ordinance, 1992 whereby, an aggrieved company could also refer the matter to the court. He further submitted that the application of the capitalization method for land valuation should involve an appropriate multiplier, typically not exceeding annual rental value of ten years. He also argued that the land has been acquired for a 'public purpose', as stated in the notifications issued under Sections 4 and 6 of the Act. Therefore, the appellant is liable to pay 15% and not 25% of the market value of the acquired-property, as compulsory charges under Section 23(2) (*supra*). The learned counsel further asserted that Section 28-A of the Act was omitted with retrospective effect through Section 4 of the Land Acquisition (Sindh Amendment) Act, 2009, and thus, no compensation under Section 28-A of the Act could be saddled on the appellant-company. Finally, he submitted that the appellant is entitled to refund or adjustment of the rents paid to the respondents from the date of the notification issued under Section 4 of the Act till the date of the Award.

4. In rebuttal, the learned counsel for the respondents contested the assertions of the learned counsel for the appellant-company and

submitted that the two Courts below have correctly adjudged the compensation, and hence the matter requires no interference by this Court.

5. We have heard the learned counsel for the parties and have gone through the record with their able assistance.

Maintainability

6. The High Court has declared the appeals filed by the appellant to be not maintainable under Section 18 of the Act. We are afraid, it escaped the attention of the High Court that Section 18 of the Act relates to appeal filed against the award passed by a Collector. In the present case, the Award was not challenged before the Referee Court by the present appellant-company, but by the respondents/landowners. Therefore, Section 18 of the Act would not be applicable in the facts and circumstances of the present case, regardless of the assertion of the learned counsel for the appellant-company that a company could challenge an award under Section 18 of the Act. As far as the appeal of the appellant-company against the judgment of the Referee Court is concerned, the challenge could be made under Section 54 of the Act. The said provision reads:

"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 in Order XLV thereof."

The above provision clearly vests an aggrieved person to challenge the judgment of the Referee Court before the High Court, as was done by the appellant-company in the present case. Hence, the appeals of the appellant-company before the High Court were maintainable.

Determination of Compensation

7. The main thrust of the learned counsel for the appellant-company challenging the criteria for determination of compensation to be awarded for acquisition of the acquired-property was that the same could not be hinged on a 20-year multiplier of the annual rent paid for the acquired-property. While contesting the validity of such a long period, he proposed 10-year multiplier of the annual rent paid for the acquired-property. In our opinion, this line of argument addressed by the learned counsel merits consideration, but would not be positively received, in the circumstances of the present case, as the appellant-company itself leased and used the acquired-property before it was acquired. Since the appellant-company negotiated and set the rent, the possibility for manipulation of the potential value of the demised property would be minimal. Furthermore, the time period that had lapsed between the issuance of Section 4 notification and the passing of the Award in respect of the acquired-property that was already leased by the appellant-company does not render the amount of compensation adjudged to be unreasonable. Even otherwise, it is by now settled that the compensation for the property being acquired must not only be based on its market value but also the potential value thereof. In the peculiar circumstances of the present case, we find that compensation adjudged appears to have been reasonably determined.

Thus, the objection on the part of the appellant-company regarding the compensation awarded to the private-respondents/ landowners does not hold any legal ground.

Compulsory Charges

8. As far as the compulsory compensation is concerned, subsection (2) of Section 23 of the Act governs the matter, which reads as under: -

"23. Matters to be considered in determining compensation—

(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."

9. We have noted that in the present case, the Notification under Section 4 of the Act, clearly provided that the acquisition of the acquired-property was made for a 'public purpose'. However, the appellant-company has been saddled with 25% compulsory charges, based on the premise that the acquisition has been made for a company. This particular issue regarding the rate of compulsory charges in cases of acquisition made for a company came up for determination before this Court in Land Acquisition Collector v. Mst. Surraya Mehmood Jan (2015 SCMR 28). The Court explained that the determining factor, for the determination of the rate of compulsory charges would be the declaration made by the acquiring government in the notifications issued under Sections 4 and 6 of the Act. The Court most aptly explained the matter in terms that: -

"17. It is clear and obvious from a bare reading of section 23(2) of the Act of 1894, which reveals that the purpose for which the land is acquired, is the determining factor for ascertaining compulsory acquisition charges. If the purpose, as is admitted in

the instant case, is a public in nature, then such compulsory acquisition charges will be payable at the rate of 15%, even if, such acquisition is for a Company. However, when the land is acquired simpliciter for a Company for its private use only then the compulsory acquisition charges will be payable at the rate of 25%. Such an interpretation of section 23(2) of the Act of 1894 is consistent with the precedent law, on the subject, as laid down by this Court in its judgments referred to above. Therefore, the two learned Courts below have erred in awarding the compulsory acquisition charges at the rate of 25% instead of 15%."

10. In the present case, we note that the notification issued under Section 4 of the Act, declared the acquisition to be made for a 'public purpose', and thus, the compensation awarded to the private-respondents/landowners requires correction. Accordingly, the compulsory charges payable by the appellant-company to the respondents/landowners is reduced from 25% to 15% of the market value of the acquired-property.

Additional Compensation - Section 28-A of the Act

11. As far as additional compensation determined and adjudged by the Referee Court and maintained by the High Court under Section 28-A of the Act is concerned, we note that the said provision then read as under: -

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

We have been informed that the afore-stated provision has been omitted through Section 4 of the Land Acquisition (Sindh Amendment) Act, 2009 (Act XVI of 2010) in terms that:

"Section 4. In the said Act, section 28-A shall be omitted and shall be deemed to have been so omitted as if it had never been enacted."

12. The purport of the above omitting provision came up for consideration before this Court in the case of Dilawar Hussain v.

Province of Sindh (PLD 2016 SC 514), wherein it was opined that: -

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

Thus, it would be safe to state that in view of the present legislative dispensation, the appellant-company cannot be burdened with the payment of additional compensation to the private respondents/landowners under Section 28-A of the Act.

Rent Already Paid

13. It is an admitted fact that prior to the commencement of the acquisition proceedings for the acquired-property in 1985, the same was leased by the appellant-company. We have been informed that the appellant-company kept on paying the lease-money to the private-respondents/landowners till 1995. The appellant-company in these circumstances cannot simultaneously be taxed to pay the lease amount and also the interest on the compensation for the acquired-property since 1985. The provisions of the Act relating to the payment of interest are governed by Section 34, read with Section 28 of the Act, which clearly provide that interest on the un-paid part of compensation accrues from the date possession is taken from the landowners. Given the peculiar facts of the case, the private-respondents/landowners would be considered to be in possession, as

landlords until the time the appellant-company, acting as a tenant, continued to pay them lease money. Therefore, in all fairness, the private-respondents/landowners are entitled to interest on the compensation amount only after they ceased to receive the lease money for the acquired-property. Accordingly, we hold that the appellant-company is only liable to pay interest on the compensation awarded to the private respondents/landowners from the time they stopped paying rent until the full compensation for the acquired property was paid.

Conclusion:

14. In view of the above, the instant appeals are allowed in the above terms, and the impugned judgment is modified, accordingly.

Judge

Judge

Judge

Karachi,
7th February, 2024
Approved for reporting.
Nasir Khan /-