

IN THE SUPREME COURT OF PAKISTAN

(Appellate Jurisdiction)

PRESENT:

MR. JUSTICE SARDAR TARIQ MASOOD

MR. JUSTICE AMIN-UD-DIN KHAN

MR. JUSTICE JAMAL KHAN MANDOKHAIL

(AFR)

**CIVIL PETITIONS NO.819, 820 OF 2017 &
939-L OF 2015**

Against the Judgment dated 26.01.2017 passed by Lahore High Court, Lahore in ICA No.616 of 2016, ICA No. 617 of 2016 and order dated 30.3.2015 in ICA No. 357 of 2009.

National Highway Authority thr: Ghulam
Mujtaba, G.M, Lahore (in all cases)

...Petitioner(s)

VERSUS

Mazhar Siddique & others (in all cases)

...Respondent(s)

For the Petitioner(s):

Barrister Haris Azmat, ASC
Mr. Muhammad Ali, Dy. Dir.(L)
Hafiz Tanvir, G.M (M-II)

For the Respondent(s):

Malik Noor Muhammad Awan, ASC

Date of Hearing:

21.9.2022

ORDER

AMIN-UD-DIN KHAN, J.- Through different petitions under Article 185(3) of the Constitution of Islamic Republic of Pakistan, 1973 (the "Constitution"), leave has been sought against the judgment/order dated 26.01.2017 and 30.3.2015 passed by the learned Division Bench of the Lahore High Court, Lahore whereby ICA. No. 616 of 2016, 617 of 2016 were dismissed and ICA No. 357 of 2009 filed by the petitioner was disposed of with consent, respectively.

2. Necessary facts leading for determination of the instant petitions are that the petitioner/National Highway Authority (NHA) acquired land measuring 204 Kanals and 6

Marlas vide Award No. 5 dated 30.06.1996 for the construction of Pindi Bhatian Interchange on Islamabad/Lahore Motorway at the rate of Rs. 2000/- per Marla, which was accepted by owners of the land. Later, it transpired that land measuring 39 Kanals and 7 Marlas was acquired but inadvertently it escaped mention in the notification dated 01.03.1995 and following Award No. 5 dated 30.06.1996. For the acquisition of aforesaid 39 Kanals and 7 Marlas, a new Award No. 4 dated 30.11.2005 was announced, wherein the price of land was fixed at the rate of Rs. 2000/- per Marla. In W.P. 4226/2006 the High Court vide order dated 14.05.2009 set aside Award No. 4 dated 30.11.2005 and remanded the matter to the Collector to reassess the value of land in accordance with law. Subsequently, a fresh Award No. LAC/M2/NHA/2012/OI (Award No. 1) was announced dated 30.04.2012 and compensation amount was reassessed at the rate of Rs.50,000/- per Marla. Afterwards, fresh calculation of amount of compensation was made vide order dated 19.05.2015 and Corrigendum dated 10.07.2015 was issued and compound interest was held to be calculated from the date of possession i.e., 30.03.1993. The chequered history of the litigation may be summarised as under: -

- I. Respondents No. 1 & 2 assailed Award No. 4 dated 30.11.2005 through W.P. 4226/2006 in the High Court. The Court vide order dated 14.05.2009 set aside the Award and remanded the matter to Land Acquisition Collector to reassess the value of land in accordance with law. The Petitioner filed I.C.A. 357/2009 against the said order and the same was

dismissed vide order dated 04.05.2010. The Petitioner approached this court through C.P. 1200-L/2010. This Court with the mutual consent of the parties set aside the orders passed in ICA No. 357/2009 by the High Court and remanded the matter to decide afresh on merits. On remand, a Division Bench of Lahore High Court vide order dated 30.03.2015 disposed of the matter by holding that the ICA had become infructuous as Award No. 1 dated 30.04.2012 had already been announced by the Collector concerned. However, with the mutual consent of the parties, the matter was referred to the Collector to determine whether interest amount should be paid from the date of possession or from the date of Corrigendum dated 13.10.2004. The petitioner/NHA has impugned this order before this court through CPLA No. 939-L/2015.

- II. On the other hand, Respondents No. 1 and 2 sought implementation of order dated 14.05.2009 passed in W.P. 4226/2006 through contempt application CrI. Org. 1222/2011. The Court vide order dated 17.09.2012 disposed of the contempt petition as the petitioner/NHA deposited the compensation amount in terms of Award dated 30.04.2012 (Award No. 1). However, the amount was accepted under objection and the petitioners reserved the right to challenge the quantum of compensation.

III. The respondents No. 1 and 2 filed another constitutional petition W.P. 5757/2013 seeking correction of Award No. 1 to the effect that the compensation to be paid from the date of possession i.e., 30.03.1993. The High Court vide order dated 11.03.2013 disposed of the petition with the direction to the Collector to decide the matter in accordance with law. The Respondents No. 1 and 2 filed Crl. Org. 1255/2013 seeking implementation of the said order. This petition, vide order dated 11.06.2013 was disposed of with the direction to implement the order dated 11.03.2013 within 02 weeks.

IV. The respondents No. 1 and 2 filed another contempt/implementation application Crl. Org. 1530/2014 seeking implementation of order dated 11.06.13, in Crl. Org. 1255/2013 and order dated 11.03.2013 passed in W.P. 5757/2013. However, during the pendency this petition, the Collector made correction in Award No. 1 vide Order dated 19.05.2015 and determined that the interest is to be paid from the date of possession i.e. 30.03.1993. Subsequently, a Corrigendum dated 10.07.2015 was issued whereby, the amount payable to the petitioner under the modified Award was calculated in terms of fresh determination. The petitioner/NHA agreed to pay compensation within 01 month. The Contempt application was disposed of accordingly on 14.07.2015.

V. Respondents No. 1 and 2 filed another contempt application Crl. Org. 2326/2015 seeking the implementation of order dated 14.07.2015 passed in Crl. Org. 1530/2014. This petition was dismissed as withdrawn vide order dated 17.03.2016.

VI. The petitioner/NHA filed two constitutional petitions W.P. 23156/2015 and W.P. 35091/2015 wherein Corrigendum dated 10.07.2015 and calculation of Award dated 19.05.2015 were challenged. Both the petitions were dismissed through single order dated 17.03.2016 and the Court directed the petitioner/NHA to pay compensation from the date of possession i.e., 30.03.1993. The petitioner being aggrieved by the said order filed Intra Court Appeals I.C.A. 616/2016 and I.C.A. 617/2016. The High Court dismissed both the appeals through single Order dated 26.01.2017. The petitioner/NHA has challenged this order through C.P. 819/2017 and C.P. 820/2017 in this Court.

3. We have heard the learned counsel for the parties at length. The learned counsel for the petitioner has also submitted the case law in support of his arguments advanced before us while the learned counsel for the respondents has filed a concise statement wherein the case law on each and every point argued before us has been cited.

4. The learned counsel for the respondents/landowners states that when the rights of the land owners were not being honoured with regard to the land owned by them and land was in the

utilization of the petitioner department, they were not being compensated, therefore, they were forced to file various writ petitions before the Lahore High Court and thereafter contempt petitions. It is true that under the orders passed by the learned High Court in the contempt proceedings the Award was announced for compensation of the acquired land at the rate of Rs:50,000/- per marla as well as a correction in the Award was also made and further the interest was granted under the orders passed in the contempt proceedings w.e.f. 30.3.1993.

5. The learned counsel for the petitioner after arguing the case at full length has narrowed down the question for determination of this Court stating that it is not on the record or proved that the possession of the land owned by respondents No. 1 and 2 was taken in the year 1993 but now he will not press this controversy as in some of the proceedings either under the pressure of the orders of the High Court issued in contempt proceedings or with the connivance of the land owners by the land acquisition agency admitted some facts against the record, therefore, at this stage he cannot dispute the said factual controversy and he will only press for determination of the legal points i.e. **whether the writ petition by the land owners was competent for compensation of the land acquired for utilization of Pindi Bhattian motorway interchange; whether in a contempt proceeding an order can be passed for execution of the previous order; whether any further order of executory nature can be passed in the contempt proceedings; further from which date under section 34 of the Land Acquisition Act, 1894 compound interest can be**

granted to the land owners and further what is the relevant date for granting compensation to land owners for the land acquired. Learned counsel for the petitioner prays for grant of leave to appeal and acceptance of appeal. On the other hand, learned counsel for the respondents prays for dismissal of the petition.

6. After hearing the learned counsel for the parties, we have formulated the following questions which are necessary for the disposal of the case: -

1. Whether the constitutional petitions of respondents No. 1 and 2 were competent, if so to what extent?
2. What is the relevant date under section 34 of the Land Acquisition Act, 1894 for the computation of compound interest?
3. Whether High Court was justified in using its contempt of court jurisdiction as a substitute of execution proceedings?

7. There is no denying the fact that the Constitution of Pakistan (through Articles 23 and 24) provides every citizen the right to acquire, hold and dispose of property in any part of the country subject to reasonable restrictions imposed by law in the public interest. This right, like any other fundamental right cannot be defeated or destroyed without the Constitution compliant law. This court, in the case of "Nisar Ahmad Khan and others vs. Collector, Land Acquisition; Swabi and others" (PLD 2002 SC 25) observed:-

Obviously, under the provisions of the Act, private lands are acquired for public purpose without the consent of the owners and the paramount consideration behind the scheme appears to be the welfare of the people at large. The object behind the legislative dispensation is not to deprive the landowners of their Constitutional right to acquire, hold and dispose of property. Subject to Constitution and with reasonable restrictions; such rights are guaranteed under Articles 23 and 24 of the Continuation, stipulating that no person shall be deprived of his property save in accordance with law and no property, shall be compulsorily acquired for a public purpose except by the authority of law, which provides for compensation and either fixes the amount of compensation or specifies the principles on and the manner in which the compensation is to be determined and paid. (emphasis added)

8. It is also an undisputed fact the petitioner/NHA acquired the subject land without observing the process prescribed under the Land Acquisition Act and the issuance of Award No. 4 was without lawful authority. The learned High Court vide order dated 14.05.2009 in W.P. 4226/2006 rightly remanded the matter to the Collector "to reassess the value of land in accordance with law." The Collector announced Award No. 1. **Respondents No. 1 and 2 accepted this Award under protest and the petitioner reserved the right to challenge the quantum of compensation** (Vide Order dated 17.09.2012 in

CrI.Org. 1222/2011). The learned counsel for respondents No.1 and 2 once again apprised the learned Division Bench of Lahore High Court that compensation amount has already been paid (Vide order dated 30.03.2015 in ICA No. 357/2009).

9. The only controversy left between the parties is regarding the quantum of the compensation amount. Now, the question is whether the law provides any remedial mechanism for the same? And if so, whether, in the given circumstances, the remedy provided under the law is adequate? In the instant case, after the remand of the case to the Collector the subject matter squarely fell within the domain of Land Acquisition Act 1894 and afterwards the High Court should not have extended its extraordinary jurisdiction under Article 199 of the Constitution. Land Acquisition Act provides adequate and comprehensive mechanism for the determination of the compensation amount and recourse to the judicial forums to the aggrieved and interested parties. This Court has repeatedly observed that in case of disputed facts, High Court cannot exercise its extraordinary Constitutional jurisdiction. Reference may be made to "Pakistan WAPDA Employees Pegham Union vs. Member, National Industrial Relations Commission, Islamabad and Others" (2015 PLC 45), "Fida Hussain vs. Mst. Saiqa" (2011 SCMR 1990) and "Ahmad Developers vs. Muhammad Saleh" (2010 SCMR 1057).

10. Now moving to the next question, the relevant starting date for the payment of compound interest on compensation amount, in terms of Section 34 of Land Acquisition Act, is the date of taking possession of the acquired land till the date of

payment by the Collector where normal statutory procedure has been observed. In this regard, reference may be made to the case of "Sheikh Muhammad Ilyas Ahmed and others v. Pakistan through Secretary Ministry of Defence, Islamabad and others" (PLD 2016 SC 64). However, in "Syeda Nasreen Zohra v. Government of the Punjab" (2022 SCMR 890) it was held, "We find that the compound interest would continue to accrue till such time that the entire compensation is paid in its entirety. **Once the original amount has been deposited, the matter goes out of the penal consequences of section 34 of the Act**".

11. In the case in hand, the petitioner/NHA previously had acquired land measuring 204 Kanals and 6 Marlas in the year 1993 for the construction of Pindi Bhatian Interchange on Islamabad/Lahore Motorway at the rate of Rs. 2000/- per Marla, which was accepted by owners of the land. Later, it transpired that land measuring 39 Kanals and 7 Marlas was acquired but inadvertently was not mentioned in notification dated 01.03.1995 and Award No. 5 dated 30.06.1996. In the normal course of action, in remedial and rectification proceedings, respondents No.1 and 2 were entitled for the compound interest amount from the date of possession at the rate of Rs. 2000/- per Marla till the payment was made by the petitioner. However, in view of the directions of High Court, Award No.1 was announced, and the compensation amount was redetermined and raised to Rs. 50,000/- per Marla. It is astonishing that respondents No.1 and 2 claim compound interest on this at the rate from 1993 (when the possession of the acquired land was actually taken by the petitioner/NHA) while they already have accepted the

compensation at the rate of Rs. 2,000/- per Marla for the same kind of bigger chunk of the acquired land. The best legal course of action would have been to allow the parties to file their objections with the Collector and they, subject to law, could have been able to get referred the matter to the Referee Court (u/s. 18 of Land Acquisition Act) for the determination of compensation amount in accordance with law. However, keeping in view two decades long litigation and the peculiar circumstances of case, we consider it appropriate that the compensation amount determined at the rate of Rs. 50,000/- per Marla through Award No.1 was just and adequate, which as per record has been paid by the petitioner/NHA.

12. Moving to the next question we observe that the use of contempt jurisdiction by the High Court as a substitute of execution proceeding especially in this case has been undesirable. This Court in the case of "Saeeda Sultan v. Liaqat Ali Orakzai" (PLD 2021 SC 671) observed: -

25. It is noted that the tool of contempt is often and rampantly misused as a substitute for execution and implementation of the final orders, judgment and decree of the trial Court as may be upheld, reversed, modified or varied by the apex Court. Where it is a case for implementation of order, judgement, and decree of the Court below simpliciter, the course available is to seek execution in the manner provided for exhaustively in the Code of Civil Procedure and not by way of contempt either under Article 204 of the Constitution of Pakistan, 1973 or Contempt of Court Ordinance, 2003, or under Order XXVII of the Supreme Court Rules, 1980.

26. Indeed the Contempt jurisdiction vests in superior Courts to ensure the maintenance of the dignity of court and the majesty of law. Such jurisdiction is to be exercised with circumspection and sparingly and not merely at whims and fancy of any person to satisfy personal ego or as an arm-twisting tool. The exercise of Contempt jurisdiction is discretionary and is between the Court and the alleged Contemnor. However, where efficacious remedy is available by pursuing execution proceedings to seek implementation of the Order/Judgment of the Superior Court, contempt proceeding is not a choice but an exception.

Supreme Court of India, in "R.N. Dey and others v. Bhagyabati Pramanik and others (2000) 4 SCC 400 in a similar situation held: -

7. Weapon of contempt is not to be used in abundance or misused. Normally, it cannot be used for execution of the decree or implementation of an order for which alternative remedy in law is provided for. Discretion given to the Court is to be exercised for maintenance of Courts dignity and majesty of law. Further, an aggrieved party has no right to insist that Court should exercise such jurisdiction as contempt is between a contemner and the Court. It is true that in the present case, the High Court has kept the matter pending and has ordered that it should be heard along with the First Appeal. But, at the same time, it is to be noticed that under the coercion of contempt proceeding, appellants cannot be directed to pay the compensation amount which they are disputing by asserting that claimants were not the owners of the property in question and that decree was obtained by suppressing the material fact and by fraud. Even presuming that claimants are entitled to recover the amount of compensation as awarded by the trial court as no stay order is granted by the High Court, at the most they are entitled to recover the same by executing the said award wherein the State can or may contend that the award is nullity. In such a situation, as there was no willful or

deliberate disobedience of the order, the initiation of contempt proceedings was wholly unjustified.

13. In the given scenario, once the Award was made by the Collector in furtherance of High Court order, then later on, matter should have been governed by Land Acquisition Act and not under Articles 199, 204 of the Constitution.

14. In the circumstances, we convert these petitions into appeals and allow the same in terms that the compensation amount Rs.50,000/- per Marla has fairly been determined (under original Award No.1) and the same has already been received by respondents Nos.1 and 2. The subsequent modification in Award No. 1 is hereby declared unjust and consequently set aside. Disposed of accordingly.

Announced in open Court on

03-01-2023

ISLAMABAD

(Mazhar Javed Bhatti)

APPROVED FOR REPORTING