

Civil Revisions Nos.3102 of 2012

NATIONAL HIGHWAY AUTHORITY VERSUS Haji SHAH AHMAD KHAN
Etc.

02.11.2012 Muhammad Rafiq Shad Advocate for
Petitioners

This order will dispose of Civil Revisions Nos. 3102 and 3103 of 2012 which involve common questions of law and facts.

2. The petitioner No. 1/National Highway Authority and petitioner No.2/Land Acquisition Collector have preferred both these civil revisions against the order dated 20-6-2012 passed by the learned Senior Civil Judge, Lahore in two references under section 18 of the Land Acquisition Act, 1894 preferred by the respondents of both the civil revisions against an award dated 28-2-1995 announced by the Land Acquisition Collector, National Highway Authority, Lahore.

3. Briefly stating the land measuring 60 kanals 10 marlas in Shera Kot Tehsil and District Lahore belonging to the respondents of Civil Revision No.3102 of 2012 was acquired by the petitioners through acquisition proceedings and ultimately award dated 28-2-1995 was announced by Land Acquisition Collector of National Highway Authority, Lahore. The land measuring 10 kanals of respondents of Civil Revision No.3103 of 2012 was similarly acquired and

an award dated 28-2-1995 was announced by the Land Acquisition Collector of National Highway Authority, Lahore. Both the class of respondents in two civil revisions preferred separate references under section 18 of the Land Acquisition Act, 1894 in the year 1995 which were referred by the Land Acquisition Collector, Lahore to the learned Senior Civil Judge, Lahore for decision on merits. The petitioners submitted their written replies to the references which were being heard by the learned Senior Civil Judge, Lahore together. The following issues were framed by the learned Senior Civil Judge, Lahore on 13-11-1995:-

ISSUES

- (1) *Whether the petition is not maintainable in its present form? OPR*
- (2) *Whether the petitioners have no cause of action against the respondents? OPR*
- (3) *Whether the petition is misconceived as the petitioners have been adequately compensated in accordance with law? OPR*
- (4) *Whether the petition is barred by law? OPR*
- (5) *Whether the petition is bad for non-joinder and mis-joinder of necessary parties? OPR*
- (6) *Whether the petitioners have not come to the court with clean hands? OPR*
- (7) *Whether the petition is liable to be dismissed as the petitioners have received the compensation amount without any protest? OPR*
- (8) *Whether the compensation is not adequately and fairly fixed in the impugned award? OPA*
- (9) *If issue No.8 is proved in affirmative, what should be fair and adequate price of the land per marla in addition to compulsory charges and compound interest till final payment? OPA*

(10) *Relief.*

4. The evidence of the respondents was completed on 13-4-2011 and the case was then adjourned for recording the evidence of the petitioners for 9-5-2011. The petitioners were granted 23 opportunities by the learned Senior Civil Judge, Lahore to produce their evidence. The petitioners failed to avail of those opportunities and the learned Senior Civil Judge, Lahore ultimately vide order dated 20-6-2012 refused to grant further adjournment to the petitioners and closed the right of the petitioners to produce their evidence and adjourned the case for final arguments for 21-7-2012. It is noticed from the copy of the order sheet that the arguments are not still being addressed by the parties and next date of hearing is fixed for 17-11-2012 for the purpose.

5. Through the instant civil revisions, orders dated 20-6-2012 have been assailed by the petitioners.

6. It is contended by the learned counsel for the petitioners after relying upon the judgments reported as SHEIKH KHURSHID MEHBOOB ALAM v. MIRZA HASHIM BAIG AND ANOTHER (2012 SCMR 361), QUTAB-UD-DIN v. GULZAR AND 2 OTHERS (PLD 1991 SC 1109) and MUBASHIR KHAN v. JAVAID KAMRAN ALIAS JAVED IQBAL (2007 MLD 1072) that provisions of Order XVII, Rule 3 of C.P.C. are penal in nature and have to be strictly construed. The learned counsel contends that prior to the date of hearing i.e. 20-6-2012 when the evidence of the

petitioners was closed, the previous date of hearing was 16-6-2012 on which date the lawyers were observing strike and the case was adjourned by the learned Senior Civil Judge, Lahore on that ground. The learned counsel contends that keeping in view the principle of law enunciated in the cited judgments, the last date was not granted at the instance of the petitioners, therefore, provisions of Order XVII, Rule 3, C.P.C. could not have been applied to the case of the petitioners and that closing of right of the petitioners to produce their evidence through the impugned order dated 20-6-2012 is absolutely illegal and unsustainable in the eyes of law.

7. After considering the arguments of the learned counsel for the petitioners, in the first instance, it is observed that the order dated 20-6-2012 has not been specifically passed by the learned Senior Civil Judge by applying the provisions of Order XVII, Rule 3, C.P.C. The order dated 20-6-2012 being short one is reproduced as under:-

"20-6-2012

Present: Counsel for the parties.

Today the case is fixed for evidence of respondents but respondents have failed to produce their evidence after availing 23 opportunities and request has been made for adjournment. Further adjournment will be abuse of process of law because no plausible reason has been explained in this regard. Therefore, the right of respondents to produce evidence is closed. Now to come up for final arguments for 21-7-2012."

8. The perusal of order sheet further reflects that vide order dated 25-2-2012, the learned Senior Civil Judge started giving warning to the petitioners to produce their evidence

and vide order dated 14-3-2012, it was observed by the learned Senior Civil Judge, Lahore that it is very old case and last opportunity was granted to the petitioners to produce their evidence on 3-4-2012. On 3-4-2012, the learned presiding officer has been transferred and next date of hearing was fixed for 11-4-2012. On this date of hearing i.e. 11-4-2012, evidence of the petitioners was not present and request for adjournment was made. Again the learned Senior Civil Judge granted final and last opportunity to the petitioners to produce their evidence on 26-4-2012. On 26-4-2012, petitioners did not produce their evidence and the case was adjourned to 8-5-2012 with a warning that a final and last opportunity is being granted to the petitioners to produce their evidence. On 8-5-2012, again the petitioners did not produce their evidence and the case was adjourned to 16-5-2012. On 16-5-2012, again the evidence was not produced by the petitioners and final and last opportunity was granted to the petitioners subject to payment of cost of Rs.500 and the case was then fixed for 29-5-2012. On the next date of hearing i.e. 29-5-2012, the petitioners again did not produce their evidence and the learned Senior Civil Judge, Lahore adjourned the case to 16-6-2012 subject to payment of cost of Rs.500. On 16-6-2012, although the lawyers were on strike but the learned counsel for the petitioners was present before the learned Senior Civil Judge, Lahore and final and last opportunity was granted to the petitioners for production of evidence on 20-6-2012. The order dated 16-6-2012 is very

important and is reproduced as under:--

"16-6-2012

Present: Counsel for the parties.

"Due to strike of the lawyers the case is adjourned. Final last opportunity is granted to the respondents for production of evidence for 20-6-2012 at 10-30 a.m."

9. Perusal of order dated 16-6-2012 reflects that it was passed at the instance of the petitioners as their counsel was marked present by the learned Senior Civil Judge, Lahore in the order sheet. It has not been stated by the petitioners in their respective memorandum of civil revisions that their counsel was not present when the order dated 16-6-2012 was passed. It was only noted by the learned Senior Civil Judge, Lahore that he is not recording the evidence as the lawyers were on strike yet the learned counsel for the petitioners was present and order was passed by the learned Senior Civil Judge, Lahore. There is no cavil with the proposition that provisions of Order XVII Rule 3, C.P.C. are penal in nature and have to be strictly construed and that the said provisions could not be applied to a case wherein upon the previous date on which the provisions of Order XVII Rule 3, C.P.C. are applied, the case was not adjourned at the instance of the defaulting party. However, it is observed that Lahore High Court through an amendment in rules while adding sub-rule (3) to Rule 1 of Order XVII, C.P.C. laid down as follows:--

"(3) Where sufficient cause is not shown for the grant of an adjournment under sub-rule (1) the Court shall proceed with the

suit forthwith."

10. Thus when sufficient cause is not shown for the grant of an adjournment under sub-rule (1), the court is not obliged to grant further adjournment and can proceed with the case forthwith. A learned Division Bench of this court in a reported judgment **PIRZADA AMIR HASSAN AND OTHERS v. MRS. SHAMIM SHAH NAWAZ AND OTHERS** (1984 CLC 3080) in paragraph No.8 laid down the following principles of law at page 3084:--

"8. However, the order of the learned trial Court in closing the evidence of the appellants and proceeding further with the case can be justified on the basis of the provisions of sub-rule (3) of Rule 1 of Order XVII. This sub-rule was introduced in the Province of the Punjab in 1937. It reads as follows:

"Where sufficient cause is not shown for the grant of an adjournment under sub-rule (1) the Court shall proceed with the suit forthwith."

Here the trial Court was confronted with a situation where the appellants were not ready with their evidence and they did not show sufficient cause for obtaining an adjournment. In the circumstances the learned trial Court could while proceeding with the suit under sub-rule (3) (ibid) close their evidence so as to get to the next stage in the trial. This is what it precisely did."

11. Same view was expressed in another reported judgment **THE ADMINISTRATOR, LAHORE MUNICIPAL CORPORATION, LAHORE v. ABDUL HAMID AND OTHERS** (1987 CLC 1261) by another learned Division Bench of this Court where evidence of the litigants was closed by specifically applying the provisions of Order XVII rule 3 CPC, but the learned Division Bench at page 1264 in paragraph No.2 observed as follows:--

"Under sub-rule (3) ibid the Court is competent to close the evidence of a party if it is of the opinion that no adjournment should be granted to a party who has defaulted in production of evidence. The conduct of the appellant in pursuing the case has been detailed above to show that they had been careless and negligent in pursuing the same. Similarly the order dated 10-5-1967 through which the case was adjourned for evidence for 24-10-1967 has also been analyzed. It had been made clear in that order that it was the responsibility of the appellant to produce evidence and it was for him to obtain the summons Dasti if he wanted to summon any witness through the Court and as such the said order meant that this was the last adjournment. Keeping in view the said conduct of the appellant and the said conditions in the order dated 10-5-1967 it was incumbent upon the appellant to produce evidence. As stated above not only the learned counsel for the appellant did not care to be present but also no evidence of the appellant had been summoned and none was present on 24-10-1967. Therefore, the appellant was not entitled to any further adjournment and his evidence could rightly be closed under sub-rule (3) of Rule 1 of Order XVII, C.P.C. The citation of Order XVII, Rule 3, C.P. C. in the order dated 24-10-1967 does not make any difference because the substance of the said Order shows that the learned trial Court meant to close the evidence under Order XVII, Rule 1(3), C.P.C. Accordingly we hold that the evidence of the appellant was rightly closed."

12. The petitioners in the instant case were given 23 opportunities and order dated 20-6-2012 was passed by the learned Senior Civil Judge, Lahore keeping in view the principles embodied in Order XVII, Rule 1(3), C.P.C. The grant of adjournment is in the discretion of the court and keeping in view the fact that on all the dates, the petitioners who were the official respondents before the learned Senior Civil Judge, Lahore, wilfully and contumaciously defaulted in production of their evidence, therefore, the learned Senior Civil Judge was left with no option but to refuse further adjournment to the petitioners on the date 20-6-2012 and he, therefore, rightly closed the evidence of the petitioners on the said date. The learned Senior Civil Judge, Lahore having not specifically applied the provisions of Order XVII, Rule 3,

C.P.C., therefore, the impugned orders cannot be said to have been passed under Order XVII Rule 3 C.P.C. which orders were fully envisaged and covered under Order XVII, Rule 1 sub-rule (3), C.P.C. The discretion having duly been exercised by the learned Senior Civil Judge for refusal to grant the adjournment on 20-6-2012, this Court finds that it is not a fit case for any interference in the orders dated 20-6-2012. The civil revisions are devoid of any force and are dismissed in limine.

(NASIR SAEED SHEIK)
Judge