

JUDGMENT SHEET
LAHORE HIGH COURT, LAHORE
(JUDICIAL DEPARTMENT)

R.F.A No.150 of 2011

The Land Acquisition Collector, Pak-Arab Refinery Limited & another

Vs.

Khan deceased & others

Appellants by:- Mian Abdul Quddoos, Advocate

Respondents by: - Mr. Javed Gill, Advocate

&

R.F.A No.302 of 2011

Khan Deceased & others

Vs.

The Land Acquisition Collector, Pak-Arab Refinery Limited & another

Appellants by: - Mr. Javed Gill, Advocate

Respondents by:- Mian Abdul Quddoos, Advocate

JUDGMENT

Date of hearing: - 26.03.2019

SHAHID WAHEED, J:- These two appeals are directed against the order dated 19th January, 2011 of the Senior Civil Judge, Jhang, passed on an application filed on behalf of the land owners, that is, the appellants of R.F.A. No.302 of 2011 under Section 18 of the Land Acquisition Act, 1894.

2. The application in question was filed directly in the Court of Senior Civil Judge, Jhang by the land owners under Section 18 of the Land Acquisition Act (1 of 1894) against the Land Acquisition Collector, Pak-Arab Refinery Limited (PARCO), Lahore and the Pak-Arab Refinery Limited, Lahore through its Managing Director,

Korangi, Creek Road, Karachi who are appellants of R.F.A. No.150 of 2011 (hereinafter called the respondents). The facts out of which these two appeals have arisen may be briefly stated: An extent of 5 *Kanals 9 Marlas* land in *Chak* No.214/J.B. Tehsil and District Jhang belonging to the appellants of R.F.A. No.302 of 2011 (hereinafter called the land owners) was acquired by the Land Acquisition Collector, Pak-Arab Refinery Limited for the "Right of Way" of PARCO oil pipeline and allied installations by the Pak-Arab Refinery Limited, Karachi who made an award dated 6th October, 1998 (Ex.R-1) determining the compensation of land at the rate of Rs.132,000/- per Acre. The land owners had apparently on 23rd July, 1999 (this date finds mentioned in Ex.A-21) applied under Section 18 of the Land Acquisition Act, 1894 (hereinafter referred to as the Act) to the District Collector requesting him to make a reference to the Civil Court having jurisdiction. The District Collector purportedly having not being satisfied that the belated request of the land owners had any merits, did not make a reference under Section 18 of the Act. Accordingly, the land owners, on 18th December, 1999 filed application under Section 18 of the Act directly in the Court of Senior Civil Judge, Jhang praying to enhance the compensation of land by setting aside the award made by the Land Acquisition Collector.

3. Preliminary objection was taken to the maintainability of the application on the ground that the Act did not contemplate the filing of an application of the kind now sought to be filed by the land owners and that the application was not therefore maintainable in law. To be precise this was preliminary objection No.1 of the written reply. On merits the application was also resisted by the respondents.

4. The above said material proposition of law formed the subject of a distinct issue, to wit, issue No.2, "*whether this Court has no jurisdiction to adjudicate upon the matter in view of preliminary*

objection No.1 of the written reply?” In respect of this issue the land owners in their documentary evidence tendered two documents. The first document was a report dated 2nd August, 1999 (Ex.A-19) of the Head Vernacular Clerk (HVC). This report was presumably presented before the District Collector, who on 3rd August, 1999 vide Ex.A-20 recorded thereon “Examine and put up” and marked the file to the Extra Assistant Commissioner (Revenue)/EAC(R). The said officer further remitted the file to the DRA for his report. The second document was the report dated 16th August, 1999 (Ex.A-21) of the DRA who submitted the same to the EAC(R). Upon appraisal of above stated two documents the Trial Court came to the conclusion that though application under Section 18 of the Act was not routed through the Collector, yet it was on record that the land owners had submitted application to the Collector for making reference to the Court and thus, the objection was not sustainable. On the basis of said conclusion the application filed by the land owners was construed a reference as envisaged under Section 18 of the Act. The Trial Court also returned its findings on the claim of the land owners. It was held that compensation at the rate of Rs.132,000/- per Acre of the land acquired as determined by the Land Acquisition Collector in his award was inadequate and that they were entitled to get an amount of Rs.1,200,000/- in lump sum as compensation vide order dated 19th January, 2011.

5. The land owners as well as the respondents are aggrieved by the order dated 19th January, 2011 of the Senior Civil Judge, Jhang. So they have preferred separate appeals challenging the said order.

6. Plea of the land owners is that compensation determined by the Trial Court is inadequate and the same is liable to be enhanced whereas the objection of the Land Acquisition Collector etc. (the respondents) is that there was no proper reference under Section 18

of the Act and as there was no such reference, the Senior Civil Judge lacked jurisdiction and therefore, the order passed by him is non-est and is liable to be set aside.

7. The objection raised by the respondents is a threshold question touching jurisdiction of the Trial Court and, thus, is required to be determined at the first instance. It goes without saying that the Land Acquisition Act (1 of 1894) is a complete code by itself. It is a special enactment making provision for the acquisition of land for public purpose by the Collector having jurisdiction and also for determining the amount of compensation to be paid on account of such land acquisition. Being a special enactment dealing with a particular subject, any relief claimed in respect of the subject matter must be found within the four corners of the enactment as a general rule. It provides for remedies not only to those whose lands have been acquired but also those who claim the awarded amount or any apportionment thereof. The jurisdiction of the Court under this Act is a special one and is to determine adequacy or otherwise of the amount of compensation paid under the award made by the Collector.

8. The point for consideration is whether it was open to the land owners in this case to have directly made an application under Section 18 of the Act before the Trial Court. A perusal of the various Sections in the Act, particularly Sections 18, 19, 20 and 21 thereof, makes it 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) 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 of time 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 the 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 intersse suo* (that is, according to his interest) or in the nature thereof. In this connection it is pertinent to refer to the observations of the Judicial Committee in the Privy Council in the case of *Nusserwanjee Pestonjee and others v. Meer Mynoodeen Khan Wullud Meer Sudroodeen Khan Bahadoor* (1855) 6 MIA 134 = VI Moore Ind. App. 134 = (1855) UK PC 15 where their Lordships stated that 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. This principle is also contained in the maxim: *a communi observatia non est recendum* (where a thing is provided to be done in a particular manner it has to be done in that manner and if not so done, same shall not be lawful), which has been recognized and augmented in the cases of “*Mansab Ali v. Amir and 30 others*” (PLD 1971 SC 124) and “*Rashid Ahmed v. The State*” (PLD 1972 SC 271) wherein it has been held that if a mandatory condition for

the exercise of a jurisdiction before a Court, tribunal or authority is not fulfilled, then the entire proceedings which follow become illegal and suffer from want of jurisdiction

9. An ancillary question arises as to what are the remedies, if any, open to the person interested who makes an application to the Collector under Section 18 of the Act but who receives no satisfaction and the Collector fails to make the reference. If the person interested feeling aggrieved on account of the Collector either refusing or omitting to make a reference under Section 18, it would appear that he has no remedy under the provisions of the Act, as there is no Section in the Act which, for example, provides that on an application made to the Collector under Section 18 of the Act, and on the Collector failing or refusing to make a reference, it would be open to the party aggrieved to approach the Court by an application directing the Collector to make reference. In the absence of any such provision, there is no relief that the Court could give to the aggrieved party as contemplated by the Act. It is indeed a lacuna in the Act which requires to be set right by suitable amendments to the Act by the legislature. Notwithstanding the said omission in the Act, the proper remedy would be to seek a mandamus by invoking the extra-ordinary constitutional jurisdiction of a High Court for the enforcement of that statutory obligation. The Civil Court, as already stated, is a Court with a special jurisdiction and cannot direct a reference to itself, nor proceed on the footing that a reference has been made when it ought to have been made but was not. Exactly on the same lines it has been held in the case of *“Government of West Pakistan (Now Government of N.W.F.P.) through Collector, Peshawar versus Arbab Haji Ahmed Ali Jan and others”* (PLD 1981 Supreme Court 516) that it is only when a reference is made under Section 18 that the designated Court is empowered to act and not otherwise.

10. In the circumstances, we are of the view that the remedy by filing an application under the Act directly to the Court of the Senior Civil Judge, Jhang was clearly misconceived, inasmuch as Section 18(1) of the Act does not authorize or permit or provide for a person aggrieved, to make an application directly to the Civil Court; and the Trial Court had no jurisdiction whatsoever to decide the points arising in the application, therefore, the proceedings of the Senior Civil Judge were void abinitio. Thus, the findings of the Trial Court in respect of issue No.2 are hereby reversed.

11. As we have held that the application filed by the land owners before the Trial Court was not competent, there is no need to dilate upon other question raised therein, that is, as to whether compensation determined by the Land Acquisition Collector in his award dated 06.10.1998 (Ex.R-1) was adequate.

12. The result of the above discussion is that the appeal preferred by the Land Acquisition Collector, etc, that is, R.F.A No.150 of 2011 is accepted whereas the appeal of the land owners viz. R.F.A No.302 of 2011 is dismissed and consequently, by setting aside the order dated 19th January, 2011 of the Senior Civil Judge, Jhang, the application filed by the land owners under Section 18 of the Act is dismissed being not maintainable. No order as to costs.

(MAMOON RASHID SHEIKH)
JUDGE

(SHAHID WAHEED)
JUDGE

Approved for reporting

JUDGE