

① SA 7/88 (466/88)

In the Federal Shariat Court  
( Original Jurisdiction)

Present

MR. JUSTICE GUL MUHAMMAD KHAN, CHIEF JUSTICE  
MR. JUSTICE MUFTI SYED SHUJAAT ALI QADRI  
MR. JUSTICE MUFTAKHIRUDDIN  
MR. JUSTICE KAMAL MUSTAFA BOKHARY  
MR. JUSTICE ALLAMA FIDA MUHAMMAD KHAN

SHARIAT PETITION NO.6/I OF 1988

Jamil-ur-Rehman son of Rehmat Ullah,  
House No.99, Aziz Shaheed Road,  
Sialkot Cantt. --- Petitioner

versus

1. Islamic Republic of Pakistan through  
Secretary, M/o Justice and Parliamentary  
Affairs, Justice Division, Islamabad.
2. Province of the Punjab through  
Chief Secretary, Lahore.
3. Province of N.W.F.P. through  
Chief Secretary, Peshawar.
4. Province of Sind through  
Chief Secretary, Karachi.
5. Province of Baluchistan through  
Chief Secretary, Quetta.--- Respondents

Counsel for the --- Petitioner in person  
petitioner:

For the Federal Government---Hafiz S.A. Rehman,  
and the Governments of Sind Advocate  
and Baluchistan.

For the Government --- Mr.Muhammad Nawaz Abbasi,  
of the Punjab: Asstt:Advocate General

For the Government of--- Mr.Mir Rehman Khan Khalil  
N.W.F.P. Asstt:Advocate General

Date of Institution; --- 9-5-1988

Date of hearing: --- 15-11-1988

Date of decision: ---- 30-3-1989

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①SA7/89

④66 89

JUDGMENT

KAMAL MUSTAFA BOKHARY, J.- This is a constitutional petition under Article 203-D of the Constitution of the Islamic Republic of Pakistan, 1973 for a declaration that failure to provide for right of reference and appeal to the Federal Government or its department or department of the Provincial Government concerned in Sections 18(3), 22-A and 54 of the Land Acquisition Act, 1894 is repugnant to Injunctions of the Holy Quran and Sunnah of the Holy Prophet. It has been prayed that the aforementioned Sections be amended to include the same.

2. It is contended that Section 18(3) and (4) of the Land Acquisition Act gives right of reference to the Provincial Government who has not accepted the award but does not provide for such a right to concerned department of the Provincial Government or to the Federal Government or its department concerned. It is further submitted that Section 22-A of the said Act relating to cross-objections does not give right to Federal Government or to its department or to the concerned department of the Provincial Government although land is acquired for and payment is to be made from the funds of the department. It is also agitated that Section 54 of the said Act does not provide any right of appeal to the Federal Government or to its department or to the concerned department of the

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① SA7/89  
4668

Provincial Government. It is submitted that absence of aforementioned provisions is repugnant to the Injunctions of the Holy Quran and the Sunnah. Reference has been made to Surah Nisa verse 59. Pir Khan V. Military Estate Officer and another (PLD 1987 S.C.485) and Behram Khan and 54 others V. M.E.O. and 20 others have been relied upon. In the case of Pir Khan the Supreme Court held that a right of appeal can be exercised only if it has been expressly conferred by the Statute. It was further held that a local authority or a company for whom the land is being acquired cannot demand a reference under Section 18 and under Section 50(2) of the Act such a local authority or a company was only conferred right to adduce evidence for determining compensation but could not prefer an appeal against a decision made upon a reference under Section 18 of the Act or against the award made by the Land Acquisition Collector. In the case of Behram Khan it was held that Central Government had no right to file appeal against rejection of its cross-objections because it was not included amongst those who had been given right to file a cross-objection against award of Collector.

3. We have heard the petitioner as well as Hafiz S.A.Rehman, learned counsel for the Federal Government, Mr.Muhammad Nawaz Abbasi, Assistant Advocate General, Punjab and Mr.Mir Rehman Khan Khalil, Assistant Advocate General, N.W.F.P. The learned counsel appearing for the Federal Government and the Provincial Governments, who have not opposed the petition, submit that the Act be amended and the right to make a reference and to file cross-objections

under Section 18 and 22-A of the said Act be also given to the Federal Government or department concerned of the Federal and Provincial Government, who should also be given the right of appeal under Section 54 of the same Act.

4. For ready reference relevant Sections of the Land Acquisition Act, 1894 are reproduced below:-

18. Reference to Court - (1) Any person interested who has not accepted the award or the Authority may by written application to the Collector, require that the matter be referred by the Collector for the determination of the Court, whether his objection be to the measurement of the land, the amount of the compensation, the persons to whom it is payable, or the apportionment of the compensation among the persons interested, ( or the amount of the costs allowed) (per Punjab amendment).

(2) The application shall state the grounds on which objection to the award is taken:-

- (a) if the person making it was present or represented before the Collector at the time when he made his award, within six weeks from the date of the Collector's award;
- (b) in other cases, within six weeks of the receipt of the notice from the Collector under section 12, sub-section(2) or within six months from the date of the Collector's award, whichever period shall first expire.

Per West Pakistan Amendments:-

(3) Notwithstanding anything to the contrary contained in section 21, the Provincial Government may, if it has not accepted the award, refer the matter to the Court within a period of six months from the date of announcement of the award; provided that the Court shall not entertain the reference unless in its opinion there is a prima facie case for inquiry into and determination of the objection against the award.

Per N.W.F.P. Amendments:-

(4) Notwithstanding anything to the contrary contained in Section 21, the Provincial Government may, if it has not accepted the award, refer the matter to the Court within a period of six months from the date of announcement of the award:

22-A. Cross-objection.- The Provincial Government, or a local authority or a company for which land is being acquired, may lodge a cross-objection to the objection made by any person interested and the Court may reduce the amount awarded by the Collector if it considers it just and proper.

50. Acquisition of land at cost of local authority or Company- (1) Where the provisions of this Act are put in force for the purpose of acquiring land at the cost of any fund controlled or managed by a local authority or of any Company, the charges of and incidental to such acquisition shall be defrayed from or by such fund or Company.

Per West Pakistan Amendments:-

(2) In any proceeding held before a Collector or Court in such cases the local authority or Company concerned or the Thal Development Authority may appear and adduce evidence for the purpose of determining the amount of compensation.

Provided that no such local authority or Company shall be entitled to demand a reference under Section 18.

54. Appeals in proceedings before Court.- Subject to the provisions of the Code of Civil Procedure, 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 and in Order XLV thereof.

5. The Holy Quran and Sunnah lay great stress on bargains with consent of parties as will appear from the following:-

"يا ايها الذين امنوا لا تاكلوا اموالكم بينكم بالباطل الا ان تكون تجارة  
عن تراض لمنكم <sup>قف</sup> ..... (سورة النساء: آيتا 29)

ترجمہ: اے ایمان لانے والو! ایک دوسرے کا مال ناحق مت کھاؤ، ہاں یہ کہ  
اپس کی رضامندی سے تجارت کالین دین ہو۔

" O ye who believe ! Squander not your wealth among yourselves in vanity, except it be a trade by mutual consent..."

اور حدیث میں ہے کہ :

(۲) انما البيع عن تراض۔

ترجمہ : بیع تو دونوں کی باہمی رضامندی سے ہی ہوتی ہے۔

(صحیح ابن حبان: ابواب البيوع)

(۳) لا ضرر ولا ضرار فی الاسلام (یحییٰ بن آدم: کتاب الخراج ص: ۶۸)

ترجمہ : نہ نقصان اٹھاؤ اور نہ کسی کو نقصان پہنچاؤ۔

(۲) " عن علی قال بعثنی رسول اللہ صلی اللہ علیہ وسلم الی الیمن قاضیا فقلت یا رسول اللہ ترسلنی وأنا حدیثُ السنن ولا علم لی بالقضاء فقال ان اللہ سیهدی قلبک ویثبت لسانک فاذا جلس بین یدیک الخصمان فلاتقضین حتی تسمع من الآخر کما سمعت من الاول فانه احرى ان یتبین لک القضاء قال ماشکت فی قضاء بعد :

(ابوداؤد: کتاب القضاء)

ترجمہ : حضرت علی رضی اللہ عنہ سے روایت ہے کہ مجھے رسول اللہ صلی اللہ علیہ وسلم نے یمن کی طرف قاضی بنا کر بھیجا تو میں نے کہا اے رسول خدا صلی اللہ علیہ وسلم آپ مجھے بھیج رہے ہیں حالانکہ میں جوان ہوں اور قضا کا علم مجھے حاصل نہیں ہے تو آپ صلی اللہ علیہ وسلم نے فرمایا، اللہ تعالیٰ تیرے دل کو ہدایت بخشدیگا اور تیری زبان کو ثبات۔ جب کبھی تیرے سامنے مقدمے کے دو فریق پیش ہوں تو اس وقت تک کوئی فیصلہ ہرگز نہ کرو جب تک دوسرے سے (اس کا موقف) نہ سناؤ، جیسے کہ پہلے سے (اس کا موقف) سنا یہ طریقہ واضح فیصلہ کرنے کیلئے زیادہ مناسب ہے۔ وہ فرماتے ہیں اس کے بعد میں فیصلہ کرنے میں کبھی متردد نہ ہوا۔

The Holy Prophet ( peace be upon him) said on one occasion that all human beings are equal like teeth of a comb. (Abdul Qadir Oada, Al- Tashreeul Janai-ul-Islami 26/1). In Surah Nisa verse 59 reproduced below it is clearly laid down that all disputes have to be returned to Allah and the Holy Prophet ( peace be upon him).

"یا ایہا الذین آمنوا طیعوا اللہ واطیعوا الرسول واولی الامر

منکم فان تنازعتم فی شئی فردوه الی اللہ والرسول ان کنتم

تُوْمِنُوْنَ بِاللّٰهِ وَالْيَوْمِ الْاٰخِرِ ، ذٰلِكَ خَيْرٌ وَّاحْسَنُ تَاوِيْلًا"  
 (اے لوگو: جو ایمان لائے ہو ، اطاعت کرو اللہ کی ، اور  
 اطاعت کرو رسول اللہ صلی اللہ علیہ وسلم کی ، اور ان لوگوں  
 کی جو تم میں سے صاحب امر ہوں - پھر اگر تمہارے درمیان کسی  
 معاملہ میں نزاع ہو جائے تو اسے اللہ اور رسول اللہ صلی اللہ  
 علیہ وسلم کی طرف پھیر دو ، اگر تم واقعی اللہ اور روز آخر پر  
 ایمان رکھتے ہو۔ یہی ایک صحیح طریق کار ہے اور انجام کے  
 اعتبار سے بھی بہتر ہے۔)

No doubt land under the Land Acquisition Act is acquired and the payment of its price has to be made either by agreement with the seller or according to the price determined by the Land Acquisition Collector. The Land Acquisition Collector is generally an employee of the Provincial Government. Despite that the law gives a right to the Provincial Government to file reference, cross-objections or appeal against the award or decree. However, if the acquisition is to be made for the Federal Government or its department or for department of Provincial Government or a company or a local authority and they have not accepted the award they have not been given any of the above rights though it is their funds which are directly involved. This unequal treatment is obviously unjust and in violation of the Holy Quran and Sunnah of the Holy Prophet ( peace be upon him).

6. For the aforesaid reasons we declare that omission to give right of making reference, filing cross-objections and appeal to the Federal Government or to the department of the Federal Government or of the Provincial Government or a company or a local authority for whose benefit

land is acquired in Sections 18(3) and (4), 22-A and 54 of the Land Acquisition Act, 1894 as well as depriving a company or a local authority of the right of appeal in Proviso to Section 50(2) of the Act are repugnant to the Injunctions of Islam.

7. We order that the aforementioned sections of the Act shall be amended so as to provide for right of making reference, filing cross-objections and appeal to the Federal Government or the concerned department of the Federal Government or of the Provincial Government as also the Company or the local authority for whose benefit the acquisition is made. In that context the proviso to Section 50(2) of the Act shall be deleted.

8. Necessary amendments shall be made by the 30th of September, 1989, failing which the exclusion of the above agencies shall cease to have legal effect.

*Qudus Khan*  
Chief Justice

*Muflak Hussain*  
Judge-II

*Qudus Khan*  
Judge-III

*Qudus Khan*  
Judge-I

*Qudus Khan*  
Judge-VI

Islamabad, the  
Nazir Ahmad Zia

Fit for reporting.

*Qudus Khan*  
Judge-III

*Qudus Khan*

*Qudus Khan*

*Qudus Khan*

30.3.89