

[Supreme Court of Pakistan]

Present: Syed Mansoor Ali Shah and Qazi Muhammad Amin Ahmed, JJ
GOVERNMENT OF KHYBER PAKHTUNKHWA through District Collector/District
Officer (R&E) (Now) Deputy Commissioner Mardan and others---Petitioners
Versus

MISAL KHAN and others---Respondents

Civil Review Petitions Nos.758 and 759 of 2019 and Civil Review Petitions Nos. 7 to 84 and 121 of 2020, decided on 14th October, 2021.

(For review of the order dated 14.11.2019, passed by this Court, in Civil Appeal No.169-P/2018 and other connected matters)

Land Acquisition Act (I of 1894)---

---S. 28 [as amended by the Khyber Pakhtunkhwa Land Acquisition (Amendment) Ordinance 2001]---Interest on enhanced compensation---Scope---Section 28 of the Land Acquisition Act, 1894 as it existed in the Province of Khyber Pakhtunkhwa (KPK), authorized the Court to determine the amount of compensation to be paid to a land owner, which was over and above the enhanced sum of compensation awarded by the Court---Said determination of the amount included the interest on the enhanced sum of the compensation for the period when the possession of the land was taken till the payment of the enhanced sum of the compensation to the land owner---In the Province of KPK the Court was not bound by any fixed rate of interest and could grant interest at any just, proper and reasonable rate as it determined, which could also be the rate determined by the State Bank of Pakistan.

Atif Ali Khan, Additional A.G. Khyber Pakhtunkhwa and Malik Akhtar Awan, Additional A.G. Khyber Pakhtunkhwa for Petitioners (in all cases).

Nemo for Respondents.

Date of hearing: 14th October, 2021.

ORDER

SYED MANSOOR ALI SHAH, J.---These review petitions have been filed against the consolidated order dated 14.11.2019 passed by this Court, whereby the civil appeals filed by the Government of KPK through District Collector, Mardan were dismissed. The solitary contention of the learned counsel for the petitioners in these petitions is that section 28 of Land Acquisition Act, 1894 ("Act") as amended by the North-West Frontier Province Land Acquisition (Amendment) Ordinance 2001, does not provide for payment of 6% interest on the enhanced compensation to the landowner from the date of taking possession of the land till the date of payment, yet the same has been granted by the Referee Court and the High Court and maintained by this Court in the order under review. It is further contended that the amended section 28 of the Act simply provides for the payment of the enhanced compensation to the landowners without any interest irrespective of the date of possession and the actual date of payment of compensation to the landowner.

2. We have considered the contention of the learned counsel for the petitioners. Section 28 of the Act, as amended by the North-West Frontier Province Land Acquisition (Amendment) Ordinance, 2001 (XVII of 2001) provides as follows:-

28. If the sum which, in the opinion of the Court, the Collector ought to have awarded as compensation is in excess of the sum which the Collector did award as compensation, the award of the Court may direct that the Collector shall deposit with the Court such amount as determined by it. (emphasis supplied)

Before we examine the meaning and scope of the aforementioned amended section 28, it is important to trace the genealogy of section 28 from its inception in the year 1894. History of section 28 of the Act, across Pakistan, shows that interest has been an integral part of the

enhanced compensation which is paid to the landowner to cover for the period between the actual taking over of the possession of the land and the actual date of payment to the landowner. The said interest has originally been 6%, which was increased to 8% compound interest in 1969, as shown below:-

Land Acquisition Act, 1894

28. Collector may be directed to pay interest on excess compensation: If the sum which, in the opinion of the Court, the Collector ought to have awarded as compensation is in excess of the sum with the Collector did award as compensation; the award of the Court may direct that the Collector shall pay interest on such excess at the rate of six per centum per annum from the date on which he took possession of the land to the date of payment of such excess into Court.

Provincial Amendments

West Pakistan Amendment of 1969 (applicable to all the provinces including Punjab)

By Land Acquisition (W.P. Amendment) Act, III of 1969.

In Section 28, for the words "interest on such excess at the rate of six per centum" the words "compound interest on such excess at the rate of eight per centum" shall be substituted; and the following proviso be added at the end:

Provided that in all cases where the Court has directed that Collector shall pay interest on such excess at the rate of six per centum from the date on which possession was taken and the payment of compensation or a part thereof has not been made up to the commencement of the Land Acquisition (West Pakistan Amendment) Act, 1969, the rate of compound interest on such excess or balance shall be eight per centum.

Sindh Amendment of 1971 By the Land Acquisition (W.P. Amd.) (Repeal) Ordinance, VI of 1971

The Land Acquisition (West Pakistan Amendment) Act, 1969 was repealed and section 28 was substituted with the following:

Where a Court has directed payment of interest on any amount of compensation payable under the Land Acquisition Act, 1894 (Act I of 1894), at a rate exceeding six per centum simple interest per annum, interest shall be able on such amount, notwithstanding any judgment, decree or order of the Court, at six per centum simple interest per annum.

Balochistan Amendment of 1985 By the Land Acquisition (Balochistan Amd.) Act, XIII of 1985

Section 34 was omitted and section 28 was substituted with the following:

28. 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 compensation.

N.W.F.P. Amendment of 1983 By the Land Acquisition (N.-W.F.P. Amd.) Ordinance, V of 1983.

For Section 28, the following section shall be substituted:

28. Collector may be directed to pay interest on excess compensation: If the sum which, in the opinion of the Court, the Collector ought to have awarded as compensation is in excess of the sum which the Collector did award as compensation, the award of the Court may direct that the Collector shall pay simple interest on such excess at the rate of six per centum per annum from the date on which he took possession of the land to the date of payment of such excess into Court.

N.W.F.P. Amendment of 2001 By the NWFP Land Acquisition (Amendment) Ordinance, 2001

In section 28, for the words "pay simple interest on such excess at the rate of six per centum per annum from the date on which he took possession of the land to the date of payment of such excess into Court", the words "deposit with the Court such amount as determined by it"

were substituted.

Reading of the above provisions shows that interest is to be paid for the period from the date of the taking over of the possession of the land till the date of the payment of the enhanced compensation and this is the position prevalent all over Pakistan. In this background, we examine the amended section 28 which reads that once the "sum" of compensation granted by the collector is enhanced by the court, the court shall direct the Collector to deposit such "amount" (as opposed to the enhanced "sum") as determined by it. The amendment has retained the power of the Referee Court to determine the "amount" payable by the Collector to the landowner over and above the enhanced sum of compensation after considering the factum of possession and the date of actual payment. If it were just the enhanced sum of the award which had to be paid to the landowner, the phrase "amount as determined by it" would have no significance. Section 28 envisages that after the enhanced sum of the award has been worked out, the Court then embarks upon determining the "amount" to be paid to the landowner after considering the sum and the delay in payment. This determination has to be of the period that has passed by after the possession of the land of the landowner was taken over and of the interest over and above the enhanced sum of the compensation to be paid to the landowner who has been deprived of this amount of compensation since then. Our reading of the amended section 28 in KPK shows that the court is now free to award any rate of interest on the enhanced sum of compensation and is not bound by the limit of 6%. It does not mean that the court is not to grant any interest on the sum enhanced. The argument of the learned counsel for the petitioner that the enhanced sum of compensation by the court, even though paid to the landlord several years after taking over of the possession of the land, will still be the same sum and will carry no interest because the amendment takes away the term 6% interest, appears to us to be not only fanciful but also hopelessly misconceived. The distinction between the terms sum and amount to be determined is that while the "sum" is simply the enhanced compensation, the "amount" is the interest over and above the enhanced compensation to provide for the loss caused to the landowner due to the delay in making payment of the adequate compensation since the taking over of the possession of the land. This construction of section 28 (KPK amendment) blends with the prevalent law in other provinces in Pakistan and is true to the spirit of the original law and is also constitutionally compliant with Article 24 of the Constitution of Pakistan 1973.

3. Another dimension of the case which reinforces the concept of interest is under section 34 of the Act (which was not amended by the 2001 Ordinance in KPK), which deals with the payment of interest on the sum of compensation awarded by the Collector. Section 34 states as follows:

34. When the amount of such compensation is not paid or deposited on or before-taking possession of the land, the Collector shall pay the amount awarded with simple interest thereon at the rate of six per centum from the time of so taking possession until it shall have been so paid or deposited.

Under the said provision, the Collector is to pay simple interest at the rate of 6% on the amount of the compensation for the delay in the payment of compensation from the date of taking over of the possession of the land till the date of payment. This provision is still intact in KPK. So, while interest is provided for on the compensation awarded by the Collector, the same cannot be denied when the compensation is enhanced by the court. Sections 28 and 34 have to complement each other and, therefore, section 28 also provides for interest but unlike other provinces, KPK has no statutory limit on the interest to be granted by court.

4. For the above reasons we hold that section 28 of the Act, as it exists in the Province of KPK, authorizes the Court to determine the amount of compensation to be paid to a land owner, which is over and above the enhanced sum of compensation awarded by the Court. This

determination of the amount includes the interest on the enhanced sum of the compensation for the period when the possession of the land was taken till the payment of the enhanced sum of the compensation to the land owner. Under the amended section 28, the court is no more bound by any fixed rate of interest and can grant interest at any just, proper and reasonable rate as it determines, which could also be the rate determined by the State Bank of Pakistan. Therefore, the award of 6% interest is well within the scope of the powers of the Referee Court under section 28 of the Act (as amended) and is in line with the interest to be granted under section 34 of the Act.

5. For the above reasons, we find no merit in these review petitions, which are therefore dismissed.

MWA/G-30/SC

Petitions dismissed.