

Additional Note:

Syed Arshad Hussain Shah, J. — While respectfully concurring with the sound, well-reasoned and valuable findings of my learned Lord, the Chief Justice, and appreciating the law laid down to the effect that courts shall remain within four corners of law, I may, with utmost respect, add the following limited observation, which is intended only to address the consequential aspect arising from the judgment and not to detract from, qualify or otherwise affect the reasoning or conclusions recorded therein.

2. The judgment of my learned Lord, in setting aside the impugned judgment to the extent it extends the benefit of enhanced compensation to those landowners who neither invoked the remedy under Section 18 of the Act nor remained parties to the reference proceedings, and in holding that, henceforth, landowners who have neither objected to the acquisition proceedings nor pursued any legal remedy/litigation shall not be entitled to claim enhanced compensation, is, with respect, a considered and principled exposition of the law.

3. However, it is added that the landowners who have already received enhanced compensation pursuant to the judgment rendered in the case of Sadaqat Ali Khan (supra) shall not be called upon to refund or reimburse the amount so received. This observation is confined to the question of recovery of amounts already paid and received in good faith under a judicial determination then holding the field. In this regard, reference may appropriately be made to the judgment reported as PLD 2013 SC 829 (Judges Pension Case), wherein it was, inter alia, held that *‘it is nobody’s case that they have practiced and played any fraud or committed some foul in gaining and procuring the pension, so as to disentitle them to retain such*

gain, on the known principle, that no one should be allowed to hold the premium of his wrong/fraud and/or retain ill gotten gains. Rather to the contrary they have received the monies under the judicial dispensation by the apex Court, which was considered as valid enunciation of law, till the present decision and the pension was paid and received by them in bona fide belief of the entitlement' and that 'enforcing the refund of the amount upon them may cause innumerable predicament for them and may lead to a very pathetic and a ludicrous situation for them.'

4. Needless to mention that the landowners who were not party to, or did not agitate the acquisition proceedings, shall be entitled to avail the benefit of Section 148 CPC, in case they now come forward to join the proceedings in pending cases at any stage.

5. This limited observation, be taken in the context of fairness, bona fide reliance upon a subsisting judicial pronouncement, and avoidance of undue hardship, without in any manner detracting from the ratio, reasoning or conclusions of the main judgment.

Syed Arshad Hussain Shah
Judge

Approved for reporting.