

Order Sheet
IN THE HIGH COURT OF SINDH,
CIRCUIT COURT, HYDERABAD

CP No. D- 380 of 2017

Present:

Mr. Justice Muhammad Iqbal Kalhoro

Mr. Justice Adnan-ul-Karim Memon

Muhammad Usman

Petitioner

Versus

Federation of Pakistan and others -----

Respondents

Date of Hearing : 11.02.2019

Date of Announcement : 20.02.2019

Petitioner present in person

Mr. Fayaz Ahmed Leghari, Advocate for respondent Nos. 3, 4 & 5.

Mr. Muhammad Ismail Bhutto, Addl.A.G.

Mr. Aslam Pervaiz Khan, Asstt: Attorney General

ORDER

ADNAN-UL-KARIM MEMON, J. - Petitioner is seeking directions to Respondents No. 1 to 6 to pay compensation of his damaged land, which has become barren due to disposal of poisonous water of power plant installed by them, by paying annual lease amount equal to produce of the land of the petitioner for last 28 years with further; direction to respondent Nos. 1 to 6 to rehabilitate the land of petitioner to its original position and till its rehabilitation, they may be directed to continue paying lease amount equal to produce of the land in question or in alternative acquire the land of the petitioner as per market value.

2. Brief facts of the case as per pleadings of the parties are that the petitioner is owner of 29-34 acres agricultural land; 13-34 acres from Survey No. 320, 518, 519, 284 by way of inheritance and 16-00 acres from un-surveyed No.578 by way of allotment order, situated in Deh Bada Ryati, Tauka Kotri District Jamshoro. The son of petitioner is also owner of 7-00 acres agricultural land from un-surveyed No.578 situated in the same Deh by way of allotment order and another son of petitioner namely Kaisar Ali is owner of 16-00 acres agricultural land in Survey No. 308, situated in same Deh Rayati Taluka Kotri District Jamshoro, as such the petitioner and his sons are owners of total 52-34 acres land in Deh Bada Rayati. Petitioner has submitted that in the year 1989 a project of Jamshoro

Thermal Power House, consisting upon 04 power plant units was started and before its completion, no any survey and protective measures for environmental effects were conducted and even disposal of poisonous waste water was not planned, as a result of which, the poisonous water seriously affected the lands of the petitioner. Petitioner has added that damage caused to his lands was not compensated and the respondents did not pay any rent or acquire the land under Land Acquisition Act; that due to aforesaid act of the Respondents the lands of the petitioner had become barren. Petitioner has submitted that in the year 1994 after hectic efforts and protests, the petitioner was paid compensation at the rate of Rs.5000/- per acre, per three crops and in the year 2005, inspection team of Prime Minister visited the affected lands and recommended Rs.5000/- per acre for two crops and difference amount of Rs.5000/- per acre was also paid to the petitioner which was disclosed to be crop compensation for the years 1992-94, whereas the aforesaid power plant had been working since 1989-90 and their poisonous water had been damaging the land of the petitioner from the year 1990. That vide letter dated 2.8.2004, the respondent No.5 requested the respondent No.6 to settle this long pending issue once for all as advised by the legal advisor of Genco-I but inspite of passing 10 years the grievance of petitioner has not been redressed by the respondents, as such the petitioner has reached the verge of starvation inspite of being owner of 52-34 acres land and all this has been done with the petitioner due to negligence, malafide, inaction, illegalities and violation of laws by the respondent Nos. 2 to 6, hence the petitioner has approached this court on 10.2.2017.

3. Upon notice, the respondent Nos. 2 to 5 filed their objections controverting the allegations of the petitioner.

4. Mr. Fayaz Ahmed Leghari, learned counsel representing the respondent 2 to 4 has referred to the objections and argued that the project of JPCL (Jamshoro Power Company Limited GENCO 1) was started in the year 1989. The water which was being used in the project was being taken from Indus River and again left after treatment in same Indus River and it is flowing through a channel which is duly patched by stones. The said water is treated water which is even suitable for drinking purpose as such the question of causing infertility to the lands of the petitioner does not arise. In fact the petitioner and others moved an application through Syed Jalal Mahmood Shah the then Member of Provincial Assembly for using the waste water of plant for cultivation of their lands. On refusal of authorities the petitioner and others started tampering and stealing the water. In

such way some of their land through which they were flowing the water was damaged, as such the authorities accepted at that time to pay them compensation of Rs.5000/- per acre. In fact the land of the petitioner and others have no source of irrigation and the petitioner and his community wants to blackmail the WAPDA / JPCL / GENCO-I to acquire / purchase the land or in alternate provide them employment in the project. The petitioner has neither produced MAP showing that his any survey number is covered by the channel nor has he produced any title document of survey numbers to prove his ownership. The petitioner has also failed to submit the cultivation record of alleged affected survey numbers due to discharge of effluent from the power house. All these aforesaid ambiguities can only be resolved by way of evidence, hence he prayed for dismissal of instant petition.

5. We have heard the parties and perused the material available on record.

6. We have noted that in pursuance of the directions of learned Water Commission regarding payment of compensation to the khatedars that have been affected by water logging caused by outflow of JPCL, the Deputy Commissioner Jamshoro, had notified the Committee comprising of Mr. Noor Ahmed Chandio, Civil Judge & Judicial Magistrate-II, Jamshoro, Chairman of the committee, Mr. Shahzb Shaikh, Additional Deputy Commissioner-I, Jamshoro Member, Mr. Ghulam Rasool Panhwar, Assistant Commissioner Kotri, Member, Mr. Shah Muhammad Nizamani, Additional Director (PIU) Project Manager, Mr. Aijaz Ali Chandio, Mukhtiarkar Kotri, Member and Jamal-u-Din Rajpar, Supervising Tapedar Kotri, Member, with the following TORs of the Committee:-

- i. To assess the exact quantum of land of each owner that has been water logged due to outflow of Jamshoro Power Company Limited (JPCL).
- ii. To indicate state land if any that has been waterlogged.
- iii. To ascertain the share of owners in case of joint land if any

7. As per record, on 10-05-2018 the committee conducted joint visit of the affected area under water logging and it was found that the water channel was under construction from the lands situated in Deh Bada Rayati Taluka Kotri. The inspection of the outflow water channel was carried out jointly from the 0 point towards its end at the River Indus; that the relevant revenue record was also consulted, existing in the names of various owner of the land which was under water logging; that the representative of JPCL Mr. Long Khan Sand and other

were also accompanied with the committee during the entire process of inspection of outfall, and lands under water logging; that the affected khatedars were also present at site and were taken into confidence by committee.

8. It is further noted from the record that the committee members had also shown reservation about the module and capacity of the outfall at the 0 point where huge quantity of waste water was found stored to discharge through drain outfall. It was further observed by the committee that the capacity of outfall was not satisfactory, in view of the waste water's discharge. It is reported by the committee that the total area under water logging is 187-00 acres (all Private/Qabuli land) The details of the Qabuli land damaged due to water logging by outfall of JPCL, and sketch of the site showing the survey numbers and area on both sides of the water channel were submitted to the competent authority.

9. Record further reflects that Mukhtiarkar also submitted report to the learned Additional Sessions Court-II, Kotri with regard to Criminal Complaint lodged by the petitioner under Illegal Dispossession Act 2005. An excerpt of the same reproduced as under:-

“ I, have the honour to submit that the Honourable court directed the undersigned to investigate into the matter and furnish the report in Criminal Complaint No.27/2018 U/S. 3, 5, 7, 8 & 9 of Illegal Dispossession Act 2005 filed by Muhammad Usman Rajar v. SSP Jamshoro and others. In this regard necessary enquiry has been made through Tapedar/ Supervising Tapedar of the beat, who after verification of Record of Rights and visiting the site furnished a detailed report on each point are as under:

- a. That the Complainant is owner of immovable property in question, and in pursuance of the directions of Honourable Water Commission regarding payment of compensation to the khatedars that have been affected by water logging caused by outflow of JPCL, the Deputy Commissioner Jamshoro has notified the committee comprising upon Mr. Noor Ahmed Chandio Civil Judge & Judicial Magistrate Kotri and other Revenue Officers, they after conducting enquiry submitted joint inspection report in respect of damages of agricultural land including land of complainant vide letter No. AC/660 dated 16-05-2018 along with details of the Qabuli land damaged due to water logging by outfall of JPCL, and sketch of the site showing the survey numbers and area on both side of the water channel. However the same are submitted herewith for kind perusal.
- b. That there is no any occupation of property by the respondents.
- c. That there is no any entry in favour of the respondents.

d. That there is no intention of respondents to occupy/dispossession of complainant property ”

10. During the course of arguments we have been informed that the petitioner approached the learned provincial Ombudsman, his findings show the factual position of the case as under:

“In his petition dated 8th March 97 Mr. Muhammad Usman of Dadu stated that he is owner of Survey No. 284, 305, 618, 320, 319, 316, 317, 518, 519, and 05 in Deh Badatia Bada, Taluka Kotri District Dadu. In the year, 1989 effluent water was released from Thermal Power Station Jamshoro which destroyed his crops. He took up the case with the Deputy Commissioner, Dadu. The A.C. wrote to P.D. vide his letter dated 6.6.90 that compensation @ 5000/- rupees per acre be given to the khatedars. No arrangements were made to stop this water. He was paid compensation with delay of 4 years in 1993. The land was again surveyed as WAPDA had failed to stop flow of water. Wapda has made payment for only one year and has not stopped flow of this harmful drain. He has requested that he should be paid compensation for seven years for crop damage @ Rs.5000/- per acre per crop i.e. Rs.10000/- year.

2. Wapda in its report dated 3.5.97 stated that the disposal arrangement were in progress and the power house was to be put up in operation , therefore a piece of land adjacent to power house was damaged which included the survey Nos of the complainant. The payment to the affected khatedars at the rate of Rs.5000/- per acres was paid by WAPDA and Rs.40,700/-were paid to the petitioner Muhammad Usman for the survey No. 305, 317 & 618 for the period 1991, 1992 and 1993. Wapda is regularly making payment to claims of crop compensation duly verified by Asst. Land Acquisition Officer as and when received. For settlement of claims additional budget of Rs.4.00 Million is being arranged and on receipt will be disbursed to the khatedars. The joint survey was carried out by Director Settlement survey. Wapda did not agree to it and made reference on 25.2.97. After fresh joint survey the claim will be settled. Wapda has constructed a drain for the disposal of effluent water from power house in to the River Indus which is working satisfactorily and all the effluent is disposed off into river safely. A copy of the report was supplied to the petitioner. Arrangements were made for joint survey in association with WAPDA. The joint survey was carried out. The Director of settlements survey and land records Sindh Hyderabad vide its report dated 12.1.98 stated that the measures of S.Nos. 518, 519, 317, 316, 319, 320 and 234 was carried out in presence of Haji Bux Civil Engineer and it was found that above survey nos. are under discharge of effluent water from Power Jamshoro into irrigated area. On receipt of this joint survey report, the resident engineer operation TPS Jamshoro was directed to settle the case of crop compensation and furnish report. In its report dated 17th January, 98 and the 16th April, 98 the resident engineer operation TPS Jamshoro stated and accepted that survey Nos. 518, 519, 317, 316, 319, 320 234 are affected. The crop compensation for above survey Nos. for the period from 1989 to 1993 has been paid except survey No.319 which is under dispute and pending in the Court of Sessions Civil Judge at Kotri. Regarding the payment of

crop compensation for the period of 1994 Asst. Land Acquisition Officer is being requested to prepare the claims. The petitioner was required to submit the cultivation records of affected survey Nos. prior to discharge of effluent from the Power House. The matter requires ascertainment of facts for payment of compensation to be assessed by the authorities and the Land Acquisition Officer. The complainant has to have recourse to normal remedies provided by law. No further investigation is called for. The case is closed.”

11. The basic grievance of the petitioner is that he was not given the crop compensation and damage caused to his land viz survey Nos. 518, 519, 317, 316, 319, 320 234 by the respondents No.3 to 5, who have denied the allegations.

12. We, on the basis of contentions of the parties with the material produced before us, have reached to the conclusion that we cannot determine the veracity of these documents brought on record and claims and counter claims of the parties as these are disputed questions of facts between the parties, which cannot be adjudicated by this Court, while exercising the Constitutional Jurisdiction.

13. In view of the foregoing, this Court cannot give sanctity to the claim of the Petitioner regarding all the issues involved in the present proceedings and leave it for the Competent Authority to determine the genuineness or otherwise of the documents and claims, therefore on the aforesaid plea the Constitutional Petition cannot be maintained.

14. In the light of above, we direct the Secretary WAPDA/respondent No.1 to constitute a Committee headed by him and comprising deputy commissioner Jamshoro and another appropriate member co-opted by him, conduct an inquiry with regard to the compensation of petitioner’s damaged land, if any, which has become barren due to disposal of poisonous water of Thermal Power Station Jamshoro, after providing ample opportunity of hearing to the Petitioner and fix responsibility in the matter and take appropriate measures strictly in accordance with law and submit report to this Court through Registrar of this Court within a period of 90 days from the date of receipt of this order.

This petition stands disposed of in the above terms along with pending applications, if any.

JUDGE

JUDGE