

ORDER SHEET  
IN THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANA  
Constitutional Petition No.D-1407 of 2015.

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Date	Order with signature of Hon'ble Judge
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**PRESENT:**

Mr. Justice Khadim Hussain M. Shaikh  
Mr. Justice Arshad Hussain Khan

- 1.For orders on M.A No.2227 of 2019.
- 2.For hearing of main case.

28.8.2019.

Mr. Muhammad Ashique Dhamrah, advocate for the petitioners.

Mr. Habibullah G. Ghouri, advocate for the intervener.

Mr.Munawar Ali Abbasi, Asstt: A.G.

**ORDER**

**ARSHAD HUSSAIN KHAN, J:** Through this petition, the petitioner

seeks following relief(s):

- a) To direct the respondents to make payment of acquired land of the petitioners from their respective Survey Numbers of Deh Chhajra Tapo Lakha Taluka Kamber after due measurement and verification of their lands for making Kamber-Shahdadkot bypass road and pass the award according to the current rate of local area in accordance with law and one Saeed Ahmed Chhajro co-sharer of the similar lands in the same subject matter has been paid the compensation in the result of order of this Court dated.22.2.2010 hence the petitioners are also entitled for this relief as rule of consistency.
- b) To direct the respondents to compensate the loss of digging/excavating the rest of the area excluding the bypass road for construction purpose.
- c) Award costs.
- d) Grant any other equitable relief.

Brief facts given rise to file the present petition are that the petitioners are the owners/co-sharers of Survey No.46, 47, 36 and 52 of Deh Chhajra Tapo Lakha Taluka Kamber [subject land]. The properties of the petitioners were acquired by the respondent No.2 for the purpose of construction of bypass road leading towards Kamber-Shahdadkot [subject bypass road] in the year 2005. It has been stated

that due to the said construction, the petitioners' remaining lands, going alongside the subject bypass road, were destroyed on account of excavation for construction of the subject bypass road. The petitioners through heavy expenditures leveled their remaining lands and subsequently, approached the respondents for compensation of the acquired subject lands and the loss caused to them on account of excavation to support the construction of subject bypass road. However, the respondents did not pay any heed and finally refused to pay any amount either towards acquisition of land or towards the cost incurred by the petitioners for levelling their remaining land. It has been further stated that the respondents are bound to make measurement of the lands of the petitioners in order to evaluate their occupied area and pass the Award as per current rate of the lands. It has been also stated that one of the co-sharers namely Saeed Ahmed son of Sirai Abdul Hadi in Survey No.47 of Deh Chhajra was paid his compensation in the identical petition filed before this Court in the year 2010. The petitioners seek similar relief in the present case as well. It has been further stated that the petitioners having no other alternate remedy available to them filed the present constitutional petition for redressal of their grievances.

Upon notice of the case, the respondents have filed para-wise comments wherein while denying the allegations leveled in the petition it has been stated that the land for the purposes of construction of subject bypass road was acquired in accordance with law and the company has already paid the land owners whose lands were acquired. It has been further stated that as soon as the scheme was approved the statement/land plan was communicated to respondent No.4 Land Acquisition Officer (B&R) Hyderabad who after getting verification thereof from respondent No.3, passed Award wherein the subject survey numbers were not mentioned which clearly reflects that lands of the petitioners were not acquired. It has been stated that the petition is not maintainable and is liable to be dismissed as such.

From the perusal of record, it appears that for the purpose of construction of bypass road, the Land Acquisition Officer after completing requisite formalities passed the award and also paid the compensation to the land owners whose lands have been acquired for the said purposes. The petitioners despite having knowledge of the said fact and having been aggrieved of the said Award instead of availing the remedy available to them under the Land Acquisition Act,

1894, filed the present petition. The plea raised in this case by the petitioners appears to be a controverted question of fact specially, in view of comments filed by respondent No.1 wherein the claim of the petitioners was denied, *inter alia*, on the ground that the petitioners land was never acquired as such the question of compensation does not arise. It is also a settled position of law that the factual controversy cannot be resolved except adducing evidence that too through proper trial and the cases involving such question do not qualify for invoking the constitutional jurisdiction of the High Court. Reliance in this regard can be placed on the case of MUHAMMAD YOUNUS KHAN and 12 others v. GOVERNMENT of N.W.F.P. through Secretary, Forest and Agriculture, Peshawar and others (1993 SCMR 618), FEDERATION OF PAKISTAN and 2 others v. Major (Retd.) MUHAMMAD SABIR KHAN (PLD 1991 SC 476) AND ANJUMAN FRUIT ARHTIAN and others v. DEPUTY COMMISSIONER FAISALABAD and others (2011 SCMR 279).

It may also be observed that Article 199 of the Constitution casts an obligation on the High Court to act in the aid of law and protects the rights within the framework of Constitution and this extraordinary jurisdiction of High Court may be invoked to encounter and collide with extraordinary situation and non-availability of any alternate remedy under the law where the illegality of the impugned action of an executive or other authority can be established without any elaborate enquiry into complicated or disputed facts. Controverted questions of fact, adjudication on which is possible only after obtaining all types of evidence in power and possession of parties can be determined only by the courts having plenary jurisdiction in the matter.

Keeping in view the above facts and circumstances, during the course of arguments, learned counsel for the petitioners was confronted with the maintainability of the present petition, however, he has not been able to satisfy this Court. Resultantly, the titled petition was dismissed through a short order dated 28.08.2019.

Foregoing are the reasons for our short order dated 28.08.2019 whereby the present petition as well as the listed intervener application was dismissed with no order as to cost.

**JUDGE**

**JUDGE**