

Order Sheet
**IN THE HIGH COURT OF SINDH, CIRCUIT COURT
LARKANA**

Constt: Petitions No. D-775, D- 857 & D- 858 of 2017.

Present:

Mr. Justice Khadim Hussain Shaikh.

Mr. Justice Arshad Hussain Khan.

1. For orders on office objections as flag A.
2. For orders on maintainability of main case.

Mr. Rafique Ahmed K. Abro, advocate for the petitioner in CP No.D- 775 of 2017.

Mr. Muhammad Imran Abbasi, advocate for the petitioners in CP No.D-857 and 858 of 2017.

Mr. Safdar Ali Ghouri, advocate for the Respondent-NHA.

Mr. Abdul Hamid Bhurgri, Addl. A.G. Sindh a/w Sajjad Hyder, Assistant Commissioner, Shahdadkot.

Mr. Abdul Rasheed Abro, Assistant Attorney General.

Dated of hearing: 25.9.2019.

ORDER.

ARSHAD HUSSAIN KHAN, J. By this common order, we intend to dispose of the captioned Constitutional Petitions filed for recovery of compensation and damages to the petitioners in respect of the lands allegedly utilized by the National Highway Authority[NHA], in construction of Mega Project viz. Gawader-Ratodero Road Project Khuzdar.

2. The facts giving rise to the filing of captioned constitutional petitions are that the petitioners claiming to be the owners of agricultural lands situated in different Survey Numbers and Dehs of same Tapa and Taluka Qubo Saeed Khan District Kamber Shahdadkot, have filed the captioned petitions, contending that in the year 2007, the respondent-NHA intended to construct a Mega Project of Gawader-Ratodero Road Project Khuzdar[**The Project**], which was to be crossed through the lands of the petitioners for which they needed certain portions of lands out of the agricultural lands owned and possessed by the petitioners besides other *khatedars*. In this regard, the then District Officer Revenue, Kamber Shahdadkot issued requisite Notification under the Land Acquisition Act, 1894, mentioning the required lands bearing Survey Numbers and area of the lands to be acquired by them

for the purpose of construction of the Project and the petitioners' lands were also included in the said Survey Numbers. After issuance of above Notification, without following the requisite procedure under Land Acquisition Act, 1894, the respondents took over the possession of the lands and started construction work. Thereafter the petitioners repeatedly approached the respondents concerned for proceeding further in respect of notifications issued under Land Acquisition Act, 1894, and demanded payment of compensation as well as damages caused to their cultivated lands but they were put on false hopes and ultimately the project has been completed but till the date neither any compensation has been assessed nor the same has been paid to them. However, when the efforts of the petitioners yielded no fruits they filed the captioned constitutional petitions in the month of September & October 2017.

3. After service of the case, respondents viz. Deputy Commissioner Kamber Shahdatkot, Assistant Commissioner/Land Acquisition Officer Qubo Saeed Khan and Mukhtiarkar Taluka Qubo Saeed Khan have filed their respective para-wise comments wherein it has been stated that the Project was started in the year 2007 and an area of 303-33 acres land was required by the acquiring agency viz. N.H.A Baluchistan and in this regard requisite Notifications under Land Acquisition 1894 were issued in the year 2008. After initial land acquisition process the tentative demand for compensation of land for acquiring 303-30 acres including 109-30 acres of un-cultivated land at the rate of Rs.2,40,000/- per acre and 194-3 acres of cultivated land at the rate of Rs.300,000/- per acre were communicated to the N.H.A. A joint survey was also carried out by the representatives of NHA and staff of Survey Superintendent of Larkana including Revenue Village staff and finally the Survey Superintendent Larkana issued 'B' Form. It has been further stated by the respondents that after a lapse of three years, a short amount was received from the Project Director NHA Baluchistan resulting which *Khatedars*, whose lands were acquired for the Project, were not paid compensation.

4. Respondent No.7- Project Director NHA has also filed his comments wherein it has been stated that the petitions badly suffer from latches as it has been filed after ten years of land acquisition; in response to the demand made by the then Land Acquisition Officer [LAO] /District Officer (Revenue) Kamber Shahdadkot, a cheque amounting

Rs.9,72,46,875.00 was issued by the NHA in favour of the Deputy District Officer (Revenue) Kamber-Shahdadkot vide letter dated 17.6.2010 for payment of compensation to the *Khatedars* whose lands were acquired for the Project while the N.H.A withheld 6% simple interest charges for one year amounting to Rs.50,74,750/- as the amount of demanded funds had been released within 8 months to the date of issuance of Notification under Section 4 of Land Acquisition Act, 1894, hence the same was not justified. It has been further stated that in response to the letter dated 1st August, 2011 of NHA to the Land Acquisition Officer for provision of adjustment of Funds and copy of Award, the LAO/District Officer Revenue, Kamber Shahdadkot submitted that according to the calculation the total demand would be Rs.18,05,82,330.00 including all other charges and made a demand of more amount of Rs.8,33,35,455.00 while informing that earlier amount received from NHA was paid to the khatedars along with 6% as well as 15% interest. However, despite constant correspondence to the Deputy Commissioner Kamber Shahdadkot and LAO/District Officer Revenue Kamber Shahdadkot by the NHA for providing copies of Award and details of adjustment of earlier amount of Rs.9,72,46,875.00 already released by NHA for land compensation as per attached Proforma so also to withdraw the additional demand of funds, till the date no response is given either by Land Acquisition Officer or the Deputy Commissioner Kamber Shahdadkot and always they are found reluctant to provide copy of Award and details of adjustment in respect of aforesaid amount.

5. We have heard learned counsel for the parties and perused the material brought on record as well as the relevant case law.

6. Learned counsel for the petitioners in all three captioned petitions mainly contended that in respect of construction of the Project, the respondents utilized the lands of the petitioners without adopting proper procedure under the provisions of Land Acquisition Act, 1894; that the respondents have neither made assessment of lands of petitioners acquired by them nor made the payment of compensation to the petitioners despite elapse of more than 12 years. Further contended that the petitioners have repeatedly approached the respondents for payment of compensation and damages but to no avail. It has been further contended that the NHA, instead of making payments to the petitioners made payments of compensation to the *Khatedars* of their choice. Further contended that the

Project has been completed long time back but till date respondents have deprived the petitioners from their payment of compensation as well as damages for the loss caused to their cultivated lands. On all these scores learned counsel for the petitioners have argued that the petitioners are entitled to the payment of compensation of their lands utilized by the NHA along with damages as well as additional interest as permissible under the provisions of Land Acquisition Act, 1894.

7. Conversely, learned counsel for the respondent-NHA while reiterating the contents of para-wise comments filed on behalf of respondent No.7, has contended that the petitions are not maintainable as the same badly suffer from the laches being filed after elapse of almost ten years of the land acquisition. He further argued that the entire amount towards land acquisition as demanded by the then LAO/District Officer (Revenue) Kamber Shahdaskot has already been paid and nothing more is to be paid by NHA.

8. Learned Additional Advocate General Sindh and Assistant Attorney General, have argued that the petitions are not maintainable and the petitioners have adequate remedy before the civil court.

9. From perusal of the record, it appears that for the purpose of construction of Mega Project viz. Gawader-Ratodero Road Project Khuzdar 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 purpose. The petitioners despite having knowledge of the said fact, instead of availing the remedy available to them under the Land Acquisition Act, 1894, filed the present constitutional petitions after a lapse of ten (10) years; and the learned counsel for the petitioners have also failed to give any plausible reason for such an inordinate delay, hence, the present petitions are not maintainable on this ground alone. Besides this, the petitions are also not maintainable on other two counts as well; (i) the petitioners through the instant petition seek recovery of compensation and damages, which cannot be allowed in the constitutional petition and (ii) the plea raised in this case by the petitioners are controverted question of fact. Even otherwise, ownership and title over the subject lands, their utilization in the Project and claims of compensation and damages can only be

established by adducing the evidence of the nature in appropriate proceedings before the court of competent jurisdiction by the petitioners. 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].

10. 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 extra ordinary jurisdiction of High Court may be invoked to encounter and collide with extraordinary situation and non-availability of any alternate remedy under the law and 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 were confronted with the question of maintainability of the instant petitions, but they have not been able to satisfy this Court. Accordingly, these petitions are dismissed.

JUDGE

JUDGE

LARKANA
Dated: 11.10.2019