

**ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT
COURT, HYDERABAD.**

Constitutional Petition No. D- 1478 of 2014

Before:-

**Mr. Justice Adnan-ul-Karim Memon,
Mr. Justice Adnan Iqbal Chaudhry.**

Petitioner: Mst. Hanifa Karim through Mr. Muhammad Sachal R. Awan, Advocate.

Mr. Allah Bachayo Soomro, Addl.A.G.

Date of hearing: 24.11.2021

Date of Decision: 24.11.2021

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ADNAN-UL-KARIM MEMON, J.- Through this petition, the petitioner has prayed as under:-

- a. To direct respondent No.4 to pass award in light of notification issued by the office of respondent No. 2 vide notification dated 16.06.2014 as early as possible.
- B. Direct respondent No. 2 & 3 to take necessary disciplinary action against respondent No.4 who being a sub-ordinate intentionally and deliberately floated the directions of respondent No.2 whereas he is bound under the law to comply with the same.

2. Brief facts of the case, as per memo of petition, are that respondent No.4 acquired the land of petitioner for Chotiari reservoir project in favour of respondent No.5 who utilized the land for a public purpose, but respondent No.4 with malafide intention did not issue notification under Section 4 of the Land Acquisition Act 1894 nor passed award; therefore, she filed C.P.No.D-771/2009. In the said petition the then-District Co-ordination Officer, Sanghar in his comments denied acquiring the land of the petitioner and at his statement counsel for petitioner did not press the petition; subsequently, the petitioner filed another CP. No. D- 261 of 2011 in which she prayed that if the land has been utilized in Chotari reservoir project then compensation of the same may be awarded and if the land has not been utilized then its location be given.

3. In the said petition this Court vide order dated 29.01.2013 directed the petitioner to approach the Director Settlement Survey & Land Record Sindh to measure the Site to ascertain factual position whether the land of the petitioner falls in Chotiryoon Dam or not; the petitioner approached Director, Settlement Survey and Land Records, Sindh who reported that the land of the petitioner was found utilized in Chotiyaroon Dam. That, after such Rubkari issued by Director Settlement Survey & Land Record, Sindh on the directions of this Court respondent No.3 directed respondent No.4 to prepare notification under Section 4 of Land Acquisition Act, 1894 regarding construction of Chotiari reservoir LBOD WAPDA Project Sanghar and respondent No.3 thereafter issued notification and after issuing notification yet the award has not been passed, hence the petitioner has filed the instant petition in the year 2014 with the above prayer.

4. We have heard learned counsel for the parties and perused the material available on record.

5. Today Assistant Commissioner has submitted statement to the effect that Deputy Commissioner Sanghar vide letter dated 27.02.2015 requested the Commissioner Shaheed Benazirabad Division for withdrawal of notification under Section 6 of Land Acquisition Act on the premise that land acquisition proceedings do not apply in the instant matter as the same has not attained finality and to save government from loss of billion of rupees as there are 320 affectees and 13288 acres of land involved.

6. We have seen that the petitioner filed C.P No.D-261 of 2011 which pertains to the same controversy, which was decided vide order dated 31.01.2013 with the following observation:

“7. We, therefore, in the light of the above circumstances have come to the conclusion that no case for interference, on our part is made out, the petition is, therefore, dismissed as such. However, the petitioner, if so desires, may approach the Director, Settlement Survey & Land Records Sindh to carry out measurement of the Site to ascertain factual position whether the land of the petitioner falls in Chotiarion Dam or not as suggested by the respondent No.3 in his comments, and the Director, Settlement Survey & Land Records Sindh upon receiving such application, if filed, would decide the matter in accordance with law.”

7. It is worth mentioning here that the petitioner in the earlier round of litigation in C.P No.D-771 of 2009 prayed for the same relief; however, this court vide order dated 05.10.2010 dismissed the petition as withdrawn with the following observation:

“ The comments of respondent No.5 have been filed.

In para-4 of the above comments, it is stated that vide Notification No.1139 dated 2.4.2005, under section 4 of the Land Acquisition Act, the land claimed by the petitioner has not been utilized for Chotiari Reservoir.

In view of the statement, made by respondent No.5, the counsel for the petitioner states that the petitioner is going to avail remedy of filing suit before the appropriate forum and states that the petition may be allowed to be withdrawn.

The petition is dismissed as withdrawn. The petitioner may avail remedy in accordance with law.”

8. Prima facie, there is confusion regarding acquiring and not acquiring of land of the petitioner and two notifications issued by Commissioner Mirpurkhas (now included in Shaheed Benazirabad Division) and now a letter has been issued for cancellation of notifications, as the subject land was not acquired for Chotiari Dam/Project. Even with regard to issue of compensation to the allottees and khatedars it is pointed out there is a policy matter of Government and it is to be decided by the Government either to provide land to MFRO in lieu of resumed land in any of the districts where the Government land is available for disposal or to decide as to whether payment of compensation can be made to the allottees in respect of resumed area under the provision of land grant policy or in any other law for the time being in force or land can be resumed by the Government free of cost.

9. The above questions are controversial, thus cannot be decided in constitutional petition. Since the land acquisition proceeding have not yet taken place; therefore, no proceedings could be initiated in constitutional petition under Article 199 of the Constitution as it is for the parties to take resort either under the hierarchy of land acquisition or the Court of plenary jurisdiction to decide the issue between the parties by recording evidence.

10. In view of the above, this petition being not maintainable is dismissed, leaving the petitioner at liberty to avail the remedy, if any, before the appropriate forum, under law.

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