

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

C. P. No. D – 729 of 2013
C. P. No. D – 546 of 2014
C. P. No. D – 547 of 2014
C. P. No. D – 3416 of 2011 (Disposed of)

Before:

Mr. Justice Muhammad Junaid Ghaffar
Mr. Justice Amjad Ali Sahito

Date of Hearing: **26-01-2022**

Date of Decision: **26-01-2022**

Mr. Abdul Rehman Baloch, Advocate for the Petitioners in all matters.
Mr. Muhammad Hamzo Buriro, Deputy Attorney General.
Nemo for the Respondents-National Highway Authority.

ORDER

Muhammad Junaid Ghaffar, J. – All these Petitions have been filed in respect of claim of compensation against the Respondents-National Highway Authority (NHA) for having utilized their land for construction of Sukkur-Shikarpur / Jaccobabad road. C.P. No. D-729 of 2013 has been filed by one Amanullah who had earlier filed C.P.No.D-3416 of 2011, which in fact stands disposed of vide order dated 30.01.2013. Insofar as C.Ps. No.D- 546 and 547 of 2014 are concerned, they have been filed by two sons of Amanullah, the other Petitioner. All are in respect of the same issue and are based on identical set of facts; hence, are being decided through this common order.

2. Heard learned Counsel for the Petitioners and perused the record.

3. Insofar as earlier Petition No.D-3416 of 2011 filed by Amanullah is concerned, same stands disposed of vide order dated 30.01.2013, which reads as under:-

“Mr. Zubair Ahmed Rajput, learned counsel for the Respondents No.1 to 3 undertakes that petitioner will be compensated accordingly, in case, his land is acquired for construction of road subject to verification.

In view of above Mr. Shevak Ram Valeecha, learned counsel for petitioner being satisfied seeks disposal of the instant petition in above terms. Order accordingly. This exercise shall be completed within one month”.

4. Perusal of aforesaid order reflects that learned Counsel for the Respondents/NHA had undertaken that the Petitioner will be compensated in case his land is acquired for construction of road subject to verification. The Petitioner's Counsel was then satisfied to this statement and sought disposal of the same. It appears that thereafter a survey was carried out by Respondents on 28.02.2013 and said report has been placed through comments in this petition which reads as under:

“Subject: - **SURVEY REPORT / VERIFICATION**”

In compliance of the order dated 30.01.2013 passed by Honorable High Court of Sindh Sukkur in C.P No.D- 3416 of 2011, Amanullah V/s Chairman, NHA & others, the proper verification has been conducted on the spot by surveyor and Patwari of NHA under the supervision of Assistant Director (LM&IS) NHA, Sukkur, the detail of survey is hereby given below.

A proper sketch of your land in question has been prepared by survey team and the position of distance of installations from the center of the road which is very much evident and appears from the plan, the same is filed herewith and marked as **Annexure "A"**.

In accordance with the sketch and ground reality, the National Highway Authority has not utilized your land as claimed by you in above referred petition.

The National Highway Authority is carrying out work in the area between 46 feet from the center of the road and in accordance with Survey Department Khairpur, the National Highway Authority owns 95 feet i.e. 47 ½ feet of ROW on either side from the center of existing road, the clear position of the existing road reveals from the road plan the copy of road plan is filed herewith and marked as **Annexure "B"**.

Hence, you are therefore do not deserve to the compensated as neither the National Highway Authority has utilized your land as claimed by you in said petition no any structure has been damaged during the construction of the road in question, the same can be evident from the photographs that are filed herewith and marked as **Annexure "C to C-3"**.

5. Firstly, once the petition was disposed with certain directions, then how on the same cause another petition has been filed. This has gone unexplained insofar as the Petitioner is concerned. Nonetheless, perusal of the aforesaid report reflects that insofar as the Petitioners' claim is concerned, the same has been disputed and it has been observed that the Petitioners do not deserve any compensation as their land has not been utilized. It appears that (though not specifically impugned), but in essence, in

the second Petition, the Petitioner besides reiterating the same claim, has also disputed the said survey report. It further appears that on 04.03.2021, the Assistant Commissioner New Sukkur had filed statement along with certain documents and had stated that as per available revenue record and report of Mukhtiarkar (Revenue), no land acquisition was made in respect of the Petitioners' survey numbers, which are still entered in the revenue record. It was also stated that the title is still intact in their names.

6. In that case, in our considered view, firstly, there was no occasion to challenge the survey report which had been issued with the consent of the petitioner in the earlier petition; secondly, there appears to be disputed facts involved in these Petitions as apparently the claim of the parties is at variance which in our constitutional jurisdiction cannot be looked into and decided. It requires leading of evidence, as on the one hand, Petitioners claim that their land has been utilized in construction of the road; whereas, on the other hand Respondents' case is that said area was never owned by the Petitioners and it was in the right of way (ROW) as per NHA Rules, therefore, neither the land was owned by them; nor it was required to be acquired for construction of the road in question. These disputed facts cannot be adjudicated by us in our constitutional jurisdiction. For that Petitioners may seek appropriate civil remedy as may be available in accordance with law as they have to first establish that the land in question was allotted to them and was still owned; and if that is so, then it can be utilized after proper acquisition, and only thereafter, the question of compensation could arise which then has to be dealt with in accordance with the Land Acquisition Act, 1894.

7. In view of such position Petitions bearing Nos. D-729 of 2013, 546 of 2014 and 547 of 2014 stand **dismissed** as being not maintainable; As to C.P.No.D-3416 of 2011, same already stands disposed of vide order dated 30.01.2013; whereas, pending Contempt Application in the said Petition is also **dismissed**. ***Office to place a signed copy of this order in captioned connected matters.***

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