THE HIGH COURT OF SINDH AT KARACHI

C.P No.D-7273 of 2017

Date: Order with signature(s) of the Judge(s)

Before: Salahuddin Panhwar &
Khadim Hussain Soomro, JJ

Direction.

1. For Orders on Misc. No. 8298/2024.
2. For Hearing of CMA No.10702/2021.

Date of hearing: 07th May 2024.
Date of order: 22nd May 2024.

Ms. Baseerat Shafi advocate for the Petitioner.
Mr. Jawad Dero, Addl. A. G. Sindh.
Mr. Akhtar Mastoi advocate for Land Utilization Department.

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SALAHUDDIN PANHWAR, J. Precisely relevant facts are that the current Petition was filed to seek the implementation and enforcement of an Order bearing Reader / MBR/(LU)/266 Karachi, dated 20.07.2017 passed in SRO-A No. 48 of 2017 by the Respondent No. 2 (the "Order"); the Petitioner, through his predecessors in interest, is one of the lawful owners/inheritors of Land in Survey No. 93, 95, 115, 116, 134, 173, 174, 186, 187, 211 situated in Deh Mehran District Malir admeasuring a total of 36 acres and 25 Ghuntas (the "Subject Land"). The Subject Land was requisitioned under Rule 75-4 of the Defence of India Act, 1939 during the Second World War and was utilized for Military Purposes; that under the Scheme of the Land Acquisition Act the Petitioners were entitled to compensation as per the provisions of Section 19 of the Defence of India Act 1939 which was incorporated into Section 6 of the Requisitioned Land (Continuation of Powers) Order, 1956 (Presidents Order XVIII) of 1956 Under the provisions of the Land Acquisition Act 1984 (ACT 1984'), which was applicable to Notifications No. LA/1418, it was incumbent upon the erstwhile Commissioner to (A) seek Objections under Section 5-A of the Act 1984 (B) determine and Award compensation in terms of Section 10 of the Act 1984 and/or (C) compensate the Petitioners in terms of Section 31(3) of the Act 1984; that a further application, dated 31.11.1989, was made the by Petitioner's predecessor in interest to the Survey Superintendent stating therein that the residents of the Subject Land

objected to the surveys as compensation had not been paid to them; that further applications, dated 19-09-1991, were made to members of the Board of revenue requesting a Foti Khata Badal under the provisions of Section 31(3) of the Act 1984 which states "Notwithstanding anything in this section the Collector may, with the sanction of the Commissioner, instead of awarding a money compensation in respect of any land, make any arrangement with a person having a limited interest in such land, either by the grant of other lands in exchange, the remission of land-revenue on other lands held under the same title, or in such other way as may be equitable having regard to the interests of the parties concerned." The same was taken cognizance of by the Prime Minister, who through a Notification bearing No. 617/0/GW-III/92 was pleased the direct the Payment of Compensation to the Petitioner's Predecessor in Interest. No further action was taken by the concerned authorities on the basis of the Prime Minister's Notification. As such, the matter was re-agitated through an application, dated 23.10.1994, to the Deputy Commissioner; that an Application dated 09.04.1998, was made to the Prime Minister, whereby the Petitioner narrated the entirety of the events, and sought compensation but the same was in vain. In the circumstances, the Petitioner moved an application for mutation in the offices of the Mukhtiarkar Air Port Sub-Division. The Mukhtiarkar proceeded to issue a rubkari bearing No. MUKH/Air Port /131/2017/ dated 28.02.2017 whereby it is stated that entry No. 1598 dated 29.11.1981 and entry No.1628 dated 17.08.1982 had mutated the Subject Land to the Federation of Pakistan, Ministry of Defence and has been made without payment of compensation to the Petitioner's predecessor in interest. It further noted that no award been made under the Act 1984; that being aggrieved by these set of affairs, the Petitioner proceeded to file a revision petition before the revenue court titled SRO-A No. 48 of 2017 "seeking adjustment of land within Malir or anywhere in Karachi". The Board of Revenue ("BOR"), under the provisions of the Sind Board of Revenue Act 1957 ("Act 1957"), is the controlling authority in all matters concerning the administration of land and is the highest court of appeal in revenue cases. The BOR is also empowered, under the Sindh Rules of Business 1986, to deal with all matters relating to Land Acquisition; that the Subject Land was acquired without the payment and/or award of due compensation. The

Respondents in SRO No. 103 of 2016, i.e. the Ministry of Defence, admitted that no compensation that been paid to the Petitioner or his predecessor in interest. Lastly he prayed that the Petitioner, being entitled to the enforcement of the Order, Respondent No.2 sent a direction bearing No. Reader/MBR/LU/332/2017 dated 23.08.2017 the Respondent No.4. The Respondent No.3 -6 has failed to comply with the order of the Respondent No.2 and has failed to respond to any application and / or legal notice issued to his office.

2. On 20th April 2018, this Court adjudicated the instant Petition and, consequent to its deliberations, mandated Respondents Nos.3 to 6 to act in accordance with the stipulations of the Order rendered on 18th July 2017 by the Member of the Land Utilization Department. This directive was contingent upon the order's standing unchallenged in a competent jurisdiction. Subsequent to this, a contempt application was filed. Despite multiple directives, compliance remained elusive. The Assistant Advocate General requested an adjournment, contending that the aforementioned order had been vacated. Nevertheless, he has yet to furnish the pertinent Order that would invalidate the order rendered on 18th July 2017 by the Member of the Land Utilization, Government of Sindh. The advocate representing the Petitioner, while invoking SRO No.A-48/2016 before the same departmental authority, underscored specific clauses of the order dated 18th July 2017, which are as follows:

> ***"a) That the Ministry of Defense Government of Pakistan has requisitioned the land (continues of powers) order 1956 has decided that the land specified in the schedule hereto annexed which at present stand requisitioned under the defense of India Act 1939, (XXXV) 1939, be acquired presently of the Military purpose, Military Cantonment, by the Collector Karachi exercising the power of delegations to me (S.M Muneer CSP) by Central government under article VIII for requisitioned land (continuance of powers) order 1956, do hereby notified under the provision of article 5 (1) of said, the land are hereby acquired permanently for the Military purpose, along with schedule of land requisitioned for Military-purpose vide letter No. LA/1418 dated 1961, Karachi dated 27.11.1961.***
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> ***b). The office of the Collector Karachi issued letter vide No. LA/521/72 Karachi dated 29-08-1972, publishes in the Sindh Government Gazette dated10-08-1972. It has been notice under section 4 of the Land Acquisition Land Act 1 of***

1984, Land out of the lands roughly indicated in the subjoined schedule is needed for public viz Military Farm Malir Cantt, Karachi.

c). The applicants submitted application to the Station Commander Malir Cantt, dated 28-10-1996, for forwarded the application to the Deputy Commissioner for survey of land in the possession of Malir Cantt; Karachi.

d). The applicants submit application to the Chairman Malir Cantt, that we are the legal heirs of deceased Mithan whose land are in possession of Malir Cantonment, Karachi.

e). That the applicant has submitted application dated 21-02-1984, for land Acquisition scrutinized the record of survey Nos. which are in the possession Malir Estate Officer.

f). That our of the relative of applicant has submitted the application to the Survey Superintendent Karachi dated 31-01-1989, for survey of the land which are in possession of the Malir Cantonment.

g). That one of the relative of the applicant has submitted the application to the Member (LU) Board of Revenue Sindh dated 19-12-1991, which was referred to the Deputy Commissioner East Karachi to submit the report as per direction of Chief Minister of Sindh for compensation of payment for the land which is in possession of the Malir Cantt, the copy of the letter to the Deputy Commissioner for further action intimation to Board of Revenue, which is lying on the record.

h). That one of the relative of the applicant Haji Arab submitted application dated 19-09-1991, to the Deputy Commissioner Malir for Fotikhata Badal which survey No.'s are in possession of Malir Cantonment, Karachi.

i). That one of the relative of Haji Arab applicant submitted application to the Prime Minister of Pakistan which was forwarded vide letter No. 61710/GW-III/92, dated 15-01-1992, by Prime Minister Secretariat (Public to Ministry Railway) Government of Pakistan for compensation of agriculture Land and action and intimation to this office.
j). That the applicant submitted application dated 29-08-1993, to the Assistant Commissioner East, Karachi for Fotikhata Badal of the land in possession of Malir Depot Karachi.

k). That the applicant submitted application dated 11-01-1995, to the Assistant Commissioner Malir for Fotikhata Badal entered into the record of rights the land in possession of Malir Depot

l). That one of the relative of applicant dated 11-01-1995, to the Assistant Commissioner for Fotikhata Badal of Mst. Hajani Khatija w/o Haji Arab land in the possession of Malir Depot.

m). That the Chief Ordinance Officer written letter to the Ammunition Depot Malir Cantt, Karachi vide letter No. CNO-/1369 CLD dated 27 March 1995, for provision of INFO-Depot Land to the AC Malir Karachi land are urgently required for Military purpose to the Headquarter".

3. The learned Assistant Advocate General has predicated his argument on the Order dated 28th January 2021, passed by the Board of Revenue Sindh in Revision Petition No. SROR-11(FB)/2020, involving the Deputy Commissioner of Malir, the Member of Land Utilization and others. He contends that the order cited in the final disposition of this petition has been overturned. In stark contrast, the advocate for the Petitioner has asserted that the aforementioned order bears no relevance to the Order passed on 20th July 2017 under SRO-A No. 48/2017, as the current order pertains to a disparate parcel of land and distinct "Katehdars" as delineated in SRO 41/2016.

4. Upon diligent examination of the pertinent orders, it is evident that the assertion by the learned Assistant Advocate General (AAG) regarding setting aside of the order is unsubstantiated, as no corroborative order has been produced before this Court. This Court finds that the order in question, as cited by the learned AAG, bears no relation to the Order dated 20th July 2017 and concerns a separate issue altogether. The Order rendered on 28th January 2021 by the "Full Board" of the Board of Revenue Sindh, under Revision Petition No.SROR-11(FB)/2020, concerning Na-Class Nos.243, 259, and 435, is extraneous to the crux of the current petition. The extant petition is concerned with Survey Nos.93, 95, 115, 116, 134, 173, 174, 186, 187, 211, located in Deh Mehran, District Malir, Karachi, spanning 36 acres and 25 ghuntas. It is duly noted that the Deputy Commissioner, Malir Karachi, presented a Revision Application before the "Full Board" of the Board of Revenue, Sindh, which was subsequently dismissed as per the order dated 30th May 2023. The respondents have not sought redress against this order in a higher echelon, thereby rendering it conclusive for all legal consequences and intents.

5. Furthermore, this Court, on 20th April 2018, adjudicated the present petition, contingent upon the no-objection of the learned Assistant Advocate General (AAG), provided that the order dated 18th July 2017, passed by the then Member of the Board of Revenue, Land Utilization Department, Sindh, Hyderabad, had not been assailed in a competent appellate/revisional forum. Consequently, a mandate was issued to Respondents Nos.3 to 6 to adhere to the stipulations of the order dated 18th July 2017, in the absence of any challenge in a pertinent forum. It is a matter of judicial record that the respondents have not assailed the order dated 20th April 2018 passed by this Court before the Honourable Supreme Court; hence, the said order has attained finality for all legal intents, purposes, and implications.

6. The record incontrovertibly establishes that the Member of the Land Utilization Department has failed to discharge the duties mandated by the Order of 18th July 2017, as passed by the then presiding Member of the Land Utilization Department, in conjunction with the Order of 20th April 2018, as adjudicated by this Court. The evident non-compliance with judicial directives, prima facie, signifies a violation of legal obligations. Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, vests the High Courts with the authority to adjudicate upon applications from aggrieved parties. Upon satisfaction of the court, it may issue orders compelling any individual or entity, within its jurisdiction, engaged in the administration of the Federation, a Province, or a local authority, to desist from any unauthorized act or to perform a mandated legal obligation. This provision empowers the High Court to issue directives akin to the traditional English writ of mandamus. The writ of mandamus is a venerable and expansive prerogative writ, emanating from the High Court, commanding a person, body corporate, or inferior tribunal to execute a particular act that pertains to their office and constitutes a public duty. The essence of this writ is to ensure the delivery of justice in instances where a legal right is established but lacks an adequate legal remedy for its enforcement. This principle is encapsulated in the authoritative decision of the Apex Court of Pakistan in the case of ***Wala Khan v. Government of Balochistan through Chief Secretary, and 3 others [2006 SCMR 290].*** Notwithstanding the existence of an alternative remedy, the Court

remains vested with its inherent power of judicial review. This authority persists even when the aforementioned alternative remedy is neither efficacious nor expeditious. Should a legal right necessitate the performance of a duty, and if the remedy provided by law is less convenient, beneficial, or effective, the jurisdiction of the High Court can be invoked. Furthermore, in cases where a statutory functionary acts mala fide, or in a partial, unjust, or oppressive manner, the Court, in the exercise of its writ jurisdiction, possesses the authority to grant relief to the aggrieved party. Reference may be made to the authoritative decision of the Apex Court of Pakistan in Case of ***Dr. Akhtar Hassan Khan and others v. Federation of Pakistan and others (2012 SCMR 455)***.

7. It is hereby ordered that the Land Utilization Department shall, with immediate effect and without equivocation, adhere to the Order passed on the 18th July 2017 by the then Member of the Land Utilization Department, as well as the subsequent Order rendered by this Court on the 20th April 2018. The Petitioner shall be awarded compensation in strict accordance with the terms delineated in the aforementioned Orders. Specifically, the Petitioner shall be appropriately recompensed through allocation of land within the territorial jurisdiction of the District Malir or an adjacent district, in accordance with the land's appraised value. A detailed report, thoroughly documenting adherence to the aforementioned Orders, is to be submitted to this Court within a period of three months following the issuance of this directive. In the event of non-compliance, it is incumbent upon the Member of the Land Utilization Department to appear before this Court, providing a cogent and substantial explanation for the failure to comply with the mandated directives.

8. To come up **after three months**. Meanwhile, progress report shall be filed through learned MIT-II of this Court.

JUDGE

JUDGE

M.Zeeshan