

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
C.P. No. D-717 of 2021

Date	Order with Signature of Judge
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Priority

1. For order on Misc. No. 5817/2025
2. For order on Misc. No. 3831/2023
3. For order as to non prosecution on CMA No. 10587/2021
4. For hearing on CMA No. 8457/2021
5. For hearing on CMA No. 2927/2021
6. For hearing of Main Case

19-03-2025

Mr. Qaim Shah Advocate for the Petitioners
M/s. Muhammad Ali Lakhani and Mujtaba Sohail Raja Advocate for the Respondent No.4
M/s. Muhammad Hanif Faisal Alam, Muhammad Ilyas Ahmed and Barkat Ali Metlo, Advocate for Respondent No.3/ Super Highway Construction Operation land Rehabilitation Engineering
Mr. Sarfaraz Ali Metlo Advocate for the Respondent
Sayed Yasir Ahmed Shah Advocate for the Respondent/NHA
Mr. Kashif Nazir, Assistant Attorney General
Mr. Sandeep Malani, Assistant Advocate General Sindh

This petition has been filed by 46 individuals, representing themselves to be residents of *Bahria Town* Karachi.

The primary prayer clause seeks a declaration that the collection of toll tax from the petitioners is in violation of a Concession Agreement dated 10.03.2015 ("Agreement") and Article 15 of the Constitution. The second prayer clause seeks specific performance of the Agreement and as a consequence thereof seeks relocation of a toll station on the M-9 Motorway. The final prayer clause seeks directions for construction of a dedicated four lane road to be constructed for the petitioners.

Ad interim orders were obtained herein in 2021, restraining the collection of toll tax not just from the petitioners but from *all vehicles of residents of Bahria Town and visitors thereto*.¹

Mr. Hanif Faisal Alam articulated the case for the respondents and submitted that the petition is *prima facie* misconceived, hence, ought to be dismissed forthwith. He argued that reliance upon a clause in the Agreement was misconceived as it is only in respect of urban traffic plying before the toll plaza. He sought to demonstrate that levy and collection of toll has statutory sanction under Section 10 (2) (vii) of the National Highway Authority Act, 1991, and the remit thereof subsists along the length of the entire 136 kilometers of the M-9 Motorway. Any abridgment of the statutory right would amount to suspension of the relevant law and / or reading the relevant provision as redundant. He concluded by stating that there are numerous residential societies along highways in general and the M-9 Motorway in specific and if tailor made preferential treatment was to be contemplated for a particular segment then the same would be *prima facie* discriminatory towards the rest.

¹ Order dated 11.02.2021.

The learned Assistant Attorney General for Pakistan seconded the arguments as aforesaid.

Learned counsel for the petitioners made no endeavor to controvert a single argument articulated on behalf of the respondents.

Irrespective of the fact that the Agreement is a contract and enforcement of contractual rights is not amenable in writ jurisdiction, it is observed that the Agreement is a contract between the respondent nos. 2 and 3 and the petitioners are not party thereto. No *locus standi* of the petitioners could be demonstrated before us, hence, no case is made out to befall them within the meaning of aggrieved persons; as envisaged per Article 199 of the Constitution.

Section 10 (2) (vii) of the National Highway Authority Act 1991² confers the jurisdiction to levy / collect tolls on national highways etc. and absolutely no case was made out to entertain a plea to abridge or countermand the statutory command.

Article 15³ of the Constitution enshrines protection for freedom of movement and under no stretch of imagination could the levy / collection of toll, in the present facts and circumstances, be demonstrated to infringe thereupon. Section 10 (2) (vii) of the National Highway Authority Act 1991 is in force and it was never the petitioners' case that it is unsustainable in view of Article 15 of the Constitution.

In view hereof, the petition is found to be misconceived, hence, is dismissed with all pending applications.

Judge

Judge

Amjad PS

² ... levy, collect or cause to be collected tolls on National Highways, strategic roads and such other roads as may be entrusted to it and bridges thereon.

³ Every citizen shall have the right to remain in, and, subject to any reasonable restriction imposed by law in the public interest, enter and move freely throughout Pakistan and to reside and settle in any part thereof.