

JUDGMENT SHEET
IN THE LAHORE HIGH COURT, LAHORE
JUDICIAL DEPARTMENT
JUDGMENT

W.P.No.251251/2018

Muhammad Younis etc. **VS.** Federation of Pakistan through
Secretary Defence, Islamabad
etc.

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| Date of hearing | 08.03.2023 |
| Petitioners by | Mr. Najaf Muzammal Khan, Advocate |
| Respondents by | Mr. Tahir Mehmood Ahmad Khokhar, Deputy Attorney General for Pakistan alongwith Irfan Ahmad, Military Estate Officer, Lahore Circle, Istehsin Hadri, Assistant (Legal). |

Ch. Muhammad Iqbal, J:- Brief facts of the case, as mentioned in this constitutional petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 are that the petitioners are owners of land measuring 75 Kanal 14 Marla bearing Khewat No.379 Khatoni No.3553 and 353/407, Khasra Nos.5244 and 5245 situated in revenue estate Chunian Otar, District Kasur. The respondents No.2 to 4/Military Lands & Cantonments authorities took possession of the land including the land owned by the petitioners for establishing Chunian Cantonment and constructed a boundary-wall around it. Thereafter, the respondents dispossessed the petitioners from their aforesaid owned land. The petitioners alleged that the possession of land was taken without adopting the legal process i.e. purchasing the land through private treaty or acquisitioning

the land under Land Acquisition Act, 1894 or executing any lease agreement etc. The petitioners filed numerous applications for redressal of their grievance but in vain. On 06.10.2012, the petitioners moved an application before the respondent No.1/Secretary Defence, Government of Pakistan, Islamabad. In reply to the above application, the respondents No.2 to 4 admitted that the land owned by the petitioners is in possession of the respondents and that the acquisition process is underway and that due to financial constraints, the said process could not be got finalized as yet.

The petitioners filed another application to respondent No.5/Assistant Commissioner/Land Acquisition Collector, Chunian for return of the possession of the land in question or in alternate prayed for grant of the compensation of the land. The report was sought from the revenue officer who reported that the land owned by the petitioners fall within the boundary area of cantonment which has been leased out by the Defence Department. The respondent No.5 urged the respondent No.4/Military Estate Officer, Lahore Circle to resolve the dispute in question but no positive response was received from the said Quarters. The petitioners made request for the acquisition of the land of the petitioners but no substantive steps have been taken by the respondents. The petitioners have now prayed through the writ petition as under:

“In view of the above submissions it is humbly prayed that the titled petition may very kindly be accepted by directing the respondents to expeditiously complete the process of acquisition of their lands as per provisions of the Punjab Land Acquisition Act 1894 within a period of one month or the respondents may very kindly be directed to restore the petitioners’ possession in the light of Article 23 of the Constitution of the Islamic Republic of Pakistan, 1973.”

2. The respondents in their report and parawise comments have admitted that the land in question is owned by the petitioners and further stated that the acquisition process is

underway which will be completed at the earliest. During proceedings of this case, Irfan Ahmad, Military Estate Officer Lahore Circle appeared in person before this Court on 06.12.2022 and has stated that the issue of acquisition of the land in question would be finalized within one month as to whether the land is required for public purpose or the same is returnable to the petitioners. On 02.02.2023, said officer again appeared and wanted to record statement but due to non-availability of learned counsel for the petitioner, his statement could not be recorded and the case was adjourned to 02.03.2023. On 02.03.2023, a letter dated 17.01.2023 was produced by the respondents where an inability has been shown that due to financial constraints, the acquisition process is not possible for the time being; at this juncture, the learned counsel for the petitioners requested this Court to decide the case on merits.

3. I have heard the arguments of learned counsels for the parties and have gone through the record with their able assistance.

4. Indeed, Islam is complete code which furnishes an elaborate and comprehensive guideline having universal approach regarding each and every aspect of the human life and inter alia protects / guarantees the rights of the life and property of every individual. The Islamic principles prohibit forcible taking of the property of people unless a fair compatible compensation is paid to the owners. For reference, the translation of relevant part of Ayat No.188 of Surah Al-Baqarah, is mentioned as under:

"اور تم اپنے مال آپس میں باطل طریقوں سے ہڑپ نہ کرو۔"

The Last Holy Prophet Muhammad (ﷺ) in his sermon/address delivered on the occasion of the farewell Hajj has bestowed the

people an absolute charter of human rights, while reiterating the importance of non-interfering into the properties of other Muslim which is quoted as under:

“Your blood, your properties, and your honour are sacred to one another like the sanctity of this day of yours, in this (sacred) town (Mecca) of yours, in this month of yours.”

[Sahih Al-Bukhari : Vol. II Chapter No.132, Hadith No.795
Translation by Dr. Muhammad Muhsin Khan]

Further, in the initial era of Islam first acquisition of land was made for the construction of Al-Masjid-an-Nabawi. The said land was owned by two orphan children (Sohul & Sohail) who offered the said land as a gift which was refused by the Holy Prophet Muhammad (ﷺ) and after payment of full price of the land, construction of the Mosque was started. This elevated event has been reported in Sahi Bukhari which prescribed as under:

"آخر آپ (ﷺ) کی سواری مدینہ منورہ میں اس مقام پر آکر بیٹھ گئی جہاں اب مسجد نبوی ہے۔ اس مقام پر چند مسلمان ان دنوں نماز ادا کیا کرتے تھے۔ یہ جگہ سہل اور سہیل (رضی اللہ عنہما) دو یتیم بچوں کی تھی اور کھجور کا یہاں کھلیان لگتا تھا۔ یہ دونوں بچے حضرت اسعد بن زرارہ رضی اللہ عنہ کی پرورش میں تھے جب آپ (ﷺ) کی اونٹنی وہاں بیٹھ گئی تو رسول اللہ ﷺ نے فرمایا ان شاء اللہ یہی ہمارے قیام کی جگہ ہوگی۔ اس کے بعد آپ (ﷺ) نے دونوں یتیم بچوں کو بلایا اور ان سے جگہ کا معاملہ کرنا چاہا تا کہ وہاں مسجد تعمیر کی جاسکے۔ دونوں بچوں نے کہا کہ نہیں یا رسول اللہ ﷺ ! ہم یہ جگہ آپ (ﷺ) کو مفت دے دیں گے، لیکن حضور ﷺ نے مفت طور پر قبول کرنے سے انکار کیا۔ زمین کی قیمت ادا کر کے لے لی اور وہیں مسجد تعمیر کی۔"

(صحیح البخاری : کتاب مناقب الانصار، 3902 - ترجمہ مولانا محمد داؤد راز)

The above text establishes a glorious principle that the land of even any feeble person cannot be taken away even for any sacred object without payment of its compensation. As per Article 227 of the Constitution of the Islamic Republic of Pakistan, 1973, [hereinafter referred to as "Constitution"] the principles of Quran and Sunnah are declared as supreme law of this country and all provisions, rules, regulations are to be legislated and framed

within the precincts of Islamic principles. For reference, Article 227 of the Constitution is reproduced as under:-

227. Provisions relating to the Holy Quran and Sunnah.-(1)

All existing laws shall be brought in conformity with the Injunctions of Islam as laid down in the Holy Quran and Sunnah, in this Part referred to as the Injunctions of Islam, and no law shall be enacted which is repugnant to such injunctions.

Explanation.-In the application of this clause to the personal law of any Muslim sect, the expression "Quran and Sunnah" shall mean the Quran and Sunnah as interpreted by that sect.

(2) Effect shall be given to the provisions of clause (1) only in the manner provided in this Part.

(3) Nothing in this Part shall affect the personal laws of non-Muslim citizens or their status as citizens.

As per Articles 4(1)(2)(a), 23 and 24 of the Constitution the petitioners enjoy the protection of constitution and law in respect of the property, as defined in Article 260 of the Constitution, owned by them. For ready reference, the aforesaid Articles are reproduced as under:

"4. Right of individuals to be dealt with in accordance with law, etc. (1) To enjoy the protection of law and to be treated in accordance with law is the inalienable right of every citizen, wherever he may be, and of every other person for the time being within Pakistan.

(2) In particular---

(a) no action detrimental to the life, liberty, body, reputation or property of any person shall be taken except in accordance with law;

.....

23. Provision as to property.

Every citizen shall have the right to acquire, hold and dispose of property in any part of Pakistan, subject to the Constitution and any reasonable restrictions imposed by law in the public interest.

24. Protection of property rights.

(1) No person shall be deprived of his property save in accordance with law.

(2) No property shall be compulsorily acquired or taken possession of save for a public purpose, and save by the authority of law which provides for compensation therefor and either fixes the amount of compensation or specifies the principles on and the manner in which compensation is to be determined and given.

(3) Nothing in this Article shall affect the validity of :-

(a) any law permitting the compulsory acquisition or taking possession of any property for preventing danger to life, property or public health; or

- (b) any law permitting the taking over of any property which has been acquired by, or come into the possession of, any person by any unfair means, or in any manner, contrary to law; or
- (c) any law relating to the acquisition, administration or disposal of any property which is or is deemed to be enemy property or evacuee property under any law (not being property which has ceased to be evacuee property under any law); or
- (d) any law providing for the taking over of the management of any property by the State for a limited period, either in the public interest or in order to secure the proper management of the property, or for the benefit of its owner; or
- (e) any law providing for the acquisition of any class of property for the purpose of-
 - (i) providing education and medical aid to all or any specified class of citizens; or
 - (ii) providing housing and public facilities and services such as roads, water supply, sewerage, gas and electric power to all or any specified class of citizens; or
 - (iii) providing maintenance to those who, on account of unemployment, sickness, infirmity or old age, are unable to maintain themselves; or
- (f) any existing law or any law made in pursuance of Article 253.

(4) The adequacy or otherwise of any compensation provided for by any such law as is referred to in this Article, or determined in pursuance thereof, shall not be called in question in any court.

.....

260. Definitions...

“Property” includes any right, title or interest in property, movable or immovable, and any means and instruments of production;”

The sole grievance of the petitioners is that their land has been taken over by the respondent for establishment of Cantonment Area and no compensation has been paid to them even after passing of a considerable period. For this willful inaction of the respondents, the petitioners are suffering from mental agony and also facing the financial losses. In this regard, the petitioners moved an application to the Ministry of Defence who in respect to the above application vide letter dated 10.01.2013 admitted the ownership of the petitioners and observed that respondents are in possession of the said land. It was further intimated that the case of acquisition of land measuring 1434 Kanal, including the land

of the petitioners, is in process and due to some financial constraints the acquisition process could not be finalized.

It is a settled law that if the land owned by the petitioners was required to the respondent-authorities, then it was their bounded duty to assess its price, pay the compensation to the petitioners and then use the land for the required purpose but unfortunately the settled legal process has not been adopted rather in contravention of law, the possession of the subject land was straightaway taken over by the respondent without payment of even a single penny. Since then unfortunately, petitioners are running from pillar to post with their request to either grant compensation or return the possession of the land, if not required any further by the respondent-authorities.

5. As after lapse of considerable period, the grievance of the petitioners was not redressed by the respondent-authorities. The petitioners have also filed numerous applications for redressal of their grievance to the Assistant Commissioner/Land Acquisition Collector, Chunian, who through letter dated 12.04.2014 obtained report from the concerned revenue officer. As per report of the Revenue Officer, the land of the petitioners has fallen within the boundary wall of the cantonment area and possession whereof is with the defence department who has leased it to some other persons. For ready reference, the aforesaid report is reproduced as under:

"رپورٹ بر درخواست محمد یونس ولد جلال الدین وغیرہ ساکن چوئیاں اوتاڑ درخواست ہمراہ دلائے جانے
معاوضہ مطابق مارکیٹ ویلیورقہ تعدادی 75K-14M زیر قبضہ کینٹ ایریا نمبر ان خسرہ 4-
5244/10-49/5245، رقبہ واقع موضع چوئیاں اوتاڑ تحصیل چوئیاں

جناب عالی۔

گزارش ہے کہ آمدہ حکم جناب اسسٹنٹ کمشنر صاحب چوئیاں مورخہ 12.04.2014 و حکم جناب افسر
اشتہال چوئیاں مورخہ 12.04.14 کے مطابق ریکارڈ ملاحظہ کیا گیا۔ مطابق ریکارڈ درخواست دہندگان
کھاتہ نمبر 379 کھتونی 3563 کے تحت نمبر ان خسرہ 4-26/5244/10-49/5245 کل رقبہ تعدادی

75K-14M کے مالکان اراضی ہیں۔ موقعہ ملاحظہ کیا گیا۔ مطابق موقعہ نمبر ان خسرہ 5245-5244 اندر چار دیواری کینٹ ایریا میں واقع ہے اور موقعہ پر کینٹ ایریا ہی قابض ہے۔ مطابق موقعہ رقبہ ہذا کاشتہ ہے اور محکمہ دفاع نے ہی رقبہ مذکور ٹھیکہ پر دے رکھا ہے۔ رپورٹ ہمراہ مناسب احکام و کاروائی پیش خدمت ہے۔

فرد ملکیت لف ہذا ہے۔ 12.04.2014

رپورٹ پٹواری حلقہ مفصل درخواست دہندہ کے ملکیتی نمبر ان خسرہ 4-26/5244-10 قطعہ کل رقبہ تعدادی 14-75 کنال جو اندر چار دیواری کینٹ ایریا میں واقع ہے۔ یہ رقبہ کینٹ ایریا میں کاشت اور محکمہ دفاع نے ہی رقبہ مذکور ٹھیکہ پر دے رکھا ہے۔ درخواست دہندہ نمبر ان خسرہ کا ٹھیکہ دیا جانا مناسب ہے۔ مناسب احکام افسر اشتمال چونیاں پیش خدمت ہے۔ 12.04.2014

رپورٹ عملہ فیلڈ مفصل اور قابل ملاحظہ ہے۔ مطابق رپورٹ درخواست دہندگان کو رقبہ متذکور بالا کا ٹھیکہ دلویا جانا مناسب ہے۔ بمراد مناسب احکام بخد مت جناب اسسٹنٹ کمشنر صاحب چونیاں ملاحظہ ہووے۔ 21.4.2014

(emphasis supplied)

تحصیلدار چونیاں "

After receiving the aforementioned report, the Assistant Commissioner, Chunian wrote a letter to the respondent No.4/Military Estate Officer, Lahore Region on 19.05.2014 for redressal of the grievance of the petitioners whose land is in possession of the respondents and is also being cultivated by the lessee of the respondents. For reference, aforesaid letter is reproduced as under:

“To

The Military Estates Officer,
Lahore Circle, Lahore Cantt.

Subject:- APPLICATION OF MUHAMMAD YOUNIS S/O JALAL-UD-DIN ETC R/O CHUNIAN.

Muhammad Younis S/O Jalal-ud-Din etc R/O Chunian filed application before the undersigned with the contention that they are owner of the land measuring 76K-14M in village Chunian Ottar. For the last about 25 years the Pakistan Army of Chunian Cantt has occupied the said land and is leasing out to other persons without any permission. It has also been contended in the application that the land in question has also been rented out to the Bricks Killen owners for lifting of earth for bricks. The applicants stated that the lease money may be given to them and their possession be restored.

The matter was referred to the Consolidation Officer, Chunian for report. It has been reported by the field staff that according to record, the applicants are owners of land measuring

75K-14M bearing Khasra No.5244 and 5245 of village Chunian Ottar which is situated within the boundary wall of Cantt area. The land is under the possession of Pakistan Army and is cultivated at site. It has clearly been stated that the Defence Department has leased out the land. It has been recommended by the Tehsildar, Chunian that the lease money be made to the applicants.

In view of the above, you are requested to redress the grievance of the applicants under intimation to this office.

Assistant Commissioner
Chunian”

(emphasis supplied)

Subsequently, the Assistant Commissioner, Chunian sent as many as four reminders on 25.02.2015, 09.05.2016, 08.08.2016 & 22.08.2016 to the respondent-authorities with the request to initiate a legal process under Land Acquisition Act, 1894 regarding the land in question but no bonafide endeavour is exhibited by the respondent.

As a moral, religious, constitutional and legal sanctity is attached to the fundamental rights of the citizen under Articles 23, 24 & 38 of the Constitution, whereby every citizen has the right to hold and use his property for his fiscal and social wellbeing and Article 3 of the Constitution placed the state under obligation to eliminate all forms of exploitation of citizens. Thus, it is not behove of a State or its Department to take away property of the individual without adhering to the principle of law. There is no cavil and cudgel that fortunately we have a written Constitution and written law with regard to every field of life and State institution/government functionary are placed under mandatory obligation to act in accordance with law, thus any willful non-compliance of the principles of law will be a dangerous menace which would lower the dignity of the country in the Comity of the Nations. Thus, the right to hold and use of the land by the owner of the said land cannot be taken away forcibly at the whims & caprice of State functionaries except as provided under the law and after payment of fair compatible compensation. In an identical matter, the government did not give

compensation to the land owners who knocked the door of this Court and this Court passed direction to the government-functionaries to pay the compensation to the said aggrieved person. The decision was assailed before the Hon'ble Supreme Court of Pakistan who upheld the order of this Court in a case cited as Province of Punjab through Secretary Irrigation, Government of the Punjab, Lahore and 2 others Vs. Abdur Rehman Shaukat (1999 SCMR 2610) wherein it is held that the land acquired without giving compensation violates the Articles 23 & 24 of the Constitution and also observed as under:

“3. We do not find any substance in the argument inasmuch as it is admitted that the land of the respondent has been acquired and no compensation has been given to him in lieu of the said land. The aforesaid order of the High Court is just, fair and proper. We agree with the view taken by the High Court that the act of the petitioner in acquiring the land of the respondent without giving him the compensation is in violation of Articles 23 and 24 of the Constitution of Islamic Republic of Pakistan, 1973.”

In another case, land measuring 38 Kanal of a citizen was utilized by the Irrigation Department, without acquisition or his consent, to construct a bund to protect the lands owned by the then Chief Minister. The said matter went up to the Hon'ble Supreme Court of Pakistan wherein vide judgment cited as District Officer Revenue, Kasur Vs. Abdul Rehmat Shaukat (2006 SCMR 188) the Hon'ble Apex Court held as under:

“5. Admittedly, the land of the respondent was utilized without recourse to lawful procedure. This act was not only illegal but highly immoral and reprehensible since the Province/State and its functionaries are supposed to protect the life, liberty and the property of citizen rather than forcibly using it for the benefit of the man in power. The petition filed by the petitioner to question the legality of takeover was allowed by the Lahore High Court on 8.5.1997 on the statement of the then Advocate-General, with direction to the Punjab Government to allot 25 acres of agricultural land to the respondent. The judgment dated 8.5.1997 of the Lahore High Court was upheld by this Court when C.P. No.854/L of 1997 filed by the Punjab Government was dismissed. For almost five years the petitioner and other functionaries of the Province dragged their feet and did not implement the direction of the Court. Respondent was compelled to file contempt application in the Lahore High Court on 9.6.2004. Instead of punishing the delinquent officials the High Court considered it expedient to once again direct

such officials to implement the direction within one month of receipt of judgment. It is regrettable that once again they did not comply with the directions and instead filed the present petition for leave to appeal. This Court took notice of non-compliance on 10.8.2005 and it was on 15.8.2005 that (sensing the mood of the Court?) the Chief Secretary of the Province appeared and stated that “the compact piece of 25 acres agricultural land is being mutated and handed over to respondent today”. The matter was adjourned to 19.8.2005. We are informed that consequent to the undertaking of the Chief Secretary the land measuring 200 Kanals has been mutated in favour of respondent in village Rakh Bhoniki Ottar Tehsil Pattoki, District Kasur and its possession delivered.

6. It is clear that not only the petitioner but all the concerned officials of the Punjab Government have been guilty of the non-compliance of not only the judgment and direction of the High Court dated 8.5.1997 but even of this Court since the said order of the High Court has been upheld by this Court. Even the initiation of contempt proceedings did not spur the officials to do that which they were legally bound to do. In its wisdom the High Court did not take the penal action and instead gave these officials another opportunity to comply with the direction. The officials were still not moved and they chose to challenge the direction of the High Court by filing the present petition for leave to appeal. It is crystal clear that had this Court not shown its displeasure, the petitioner and other officials had no intention to implement the direction of the High Court. It only reflects an extremely unsatisfactory state of affairs.”

Another reliance is placed on a case cited as Nasirabad Properties Ltd. Vs. Chittagong Development Authority and other (PLD 1966 Dhaka 472) wherein it has been held that to use and hold possession of an owned property is fundamental right of an owner and imposing any restriction thereupon is illegal. Further reliance is placed on a case cited as Mst. Mukhtiar Fatima Vs. Deputy Commissioner, Multan and 2 others (1997 MLD 1792) wherein this Court has held that non-payment of compensation to a person whose land has been acquired would amount to violation of fundamental right guaranteed under Article 24 of the Constitution. Relevant portion of the judgment (supra) is reproduced as under:

“3.....It is thus clear that the State cannot deprive a person of his property without paying compensation, therefore, in accordance with law. The relevant law under which the petitioner has been deprived of her land is the Land Acquisition Act. The compensation in terms of this Act has to be made to the owners of the property. If

an owner is not paid the price/compensation of the property acquired within the reasonable time, then it may amount to depriving the person of his property without compensation, in contravention of the fundamental right guaranteed under Article 24 (supra). Violation of a fundamental right guaranteed by the Constitution cannot be countenanced by Courts of law, particularly the High Court on which powers have been conferred as per clause (c) of Article 199(1) of the Constitution for issuing direction any person including any Government for enforcement of any one of the fundamental rights conferred by the Constitution. This clause reads as under:-----

“(c) On the application of any aggrieved person, make an order giving such directions to any person or authority, including any Government exercising any power of performing any function in, or in relation to, any territory within the jurisdiction of that Court as may be appropriate for the enforcement of any of the Fundamental Rights conferred by Chap. 1 of Part II. ”

This Court in a case cited as Ch. Muhammad Ishaq, Advocate Vs. Cantonment Executive Officer, Chunian, District Kasur and another (PLD 2009 Lahore 240) has already held that to impose a restriction upon an owner qua the free use of his property, it is the breach of the fundamental rights and it was held that the possession in such like cases is without lawful authority. For reference, relevant portion of the judgment (supra) is reproduced as under:

“9. While construing and enforcing such rights, generous and purposive interpretation should be made and fullest possible meaning and amplitude must be given conforming to the real spirit of these rights, thus keeping the above principles in view, the expression/word “HOLD” appearing in Article 23 does not simply mean to “keep”, “retain” or “occupy” the property rather in its true sense, it entails its use by an owner in the manner, he chooses to, with all the rights to enjoy the benefits of the property which necessarily flows and are pertinent and appurtenant to his ownership. Thus, when a restriction, which is not otherwise imposed by the law, is thrust upon the owner qua the free user of his property, it is a clear case of the breach of his fundamental rights. Reliance can be placed on Ramhari Mandal v. Nilmoni Das AIR (39) 1952 Cal. 184, Bhaurao Atmaram Patil v. Sub-Divisional Officer, Chandur-Morsi and another AIR 1955 Nag. 1, Nasirabad properties Ltd. v. Chittagong Development Authority and another PLD 1966 Dacca 472. Besides, it has been held in the judgments reported as The Municipal Board, Manglaur v. Mahadeoji Maharaj AIR 1965 SC 1147, Pakistan National Oils and another v. Sattar Muhammad 1980 SCMR 686 and Lahore Cantonment Cooperative Housing Society Limited through Secretary v. Messrs Builders and Developers (Pvt.) Ltd. and another PLD 1999 Lah. 305, that access by a person from public road cannot be curtailed and in our view on

account of the action of the respondents, not only that the appellant's fundamental right has been breached, but his right to way has been violated. Therefore, while allowing this Intra Court Appeal, the impugned order passed by the learned Single Judge is set aside, the action of the respondents in fixing/installing the wire/hedge across the frontage of the appellant's land is declared as without lawful authority, with the direction to the respondents to remove the wire/hedge with immediate effect."

In another case cited as Muhammad Saleem Chaudhry Vs. Defence Housing Authority, Commercial Area through Secretary and 4 others (2009 MLD 720) wherein the Defence Housing Authority without the consent of the owner and without purchasing and acquisition got possession of land and this Court held such act of the authority as void and unlawful and directed to restore the possession of the land or pay compensation by holding as under:

"6. As to whether relief can be granted in this writ petition, learned counsel for the petitioner has cited the cases of District Officer Revenue, Kasur v. Abdul Rehmat Shaukat (2006 SCMR 188), Province of Punjab through Secretary Irrigation, Govt. of the Punjab, Lahore and 2 others v. Abdur Rehman Shaukat (1999 SCMR 2610) and Mst. Mukhtiar Fatima v. Deputy Commissioner, Multan and 2 others (1997 MLD 1792). In the said judgments the act of the State functionaries in taking over the land of the citizens and utilizing for their purpose without lawful acquisition or payment of compensation/consideration were declared to be void.

7. For all that has been discussed above, the writ petition is allowed. The act of the respondents in depriving the petitioner of his property without his consent, proper acquisition or purchase or payment of compensation/consideration is declared to be without lawful authority and void. A mandamus is accordingly issued to the respondents to act in the matter in accordance with law and to consider the matter of payment of adequate compensation/consideration to the petitioner for his land and to pay the same within two months from the date of this judgment and in case they fail to do so, to restore the possession of the land to the petitioner. At the moment parties are left to bear their own costs."

6. On 14.11.2022, Military Estate Officer, Lahore Region submitted report before this Court in this petition that acquisition process under Land Acquisition Act, 1894 would be initiated after the approval of the Government as well as GHQ but till to-date, no such process has been initiated.

7. So far as the arguments of learned counsel for the respondents that the matter is factual in nature and alternate remedy of civil suit is available, as such instant constitutional petition is not maintainable. Suffice it to say in this regard that the petitioners are admittedly owners of the land which is in possession of the respondent-authorities and this fact has been corroborated by the lengthy correspondence of the respondent-authorities as well as that of the revenue functionaries with the petitioners, and even in the report submitted to the instant petition by the respondents before this Court, thus no factual controversy is involved in this case, as such the argument of learned Law Officer being against the record is hereby repelled.

8. Furthermore, the case of the petitioners is at par with Muhammad Ismail etc. whose land was situated adjacent to the land the petitioners and his land was also taken over by the respondent without payment of any compensation. Said Muhammad Ismail etc. filed Writ Petition No.2700/2011 in which this Court vide order dated 24.02.2011 passed a direction and in compliance whereof, his land was acquired, award No.2 was announced on 06.02.2014 and accordingly compensation was paid to him, as such the petitioners are also entitled for similar treatment without any discrimination.

9. For what has been discussed above, this writ petition is allowed and the respondents are directed that if the land is required to them then complete the process of acquisition of the land in question positively within three months after receipt of certified copy of this order, otherwise restore the possession of the land to the petitioners immediate after the above stipulated period. As the land is admittedly in possession of the respondents and has been leased out to some other blue-eyed persons from whom the respondents are receiving rental/ lease money, thus the

respondents shall pay the rent/lease of the land in question, as per market rate, to the petitioners from the date of taking over possession of the land till its acquisition or return of possession to the petitioners.

(Ch. Muhammad Iqbal)
Judge

Approved for reporting.

Judge

Abdul Hafeez