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JUDGMENT SHEET
LAHORE HIGH COURT
RAWALPINDI BENCH RAWALPINDI
JUDICIAL DEPARTMENT

I.C.A.No. 296 of 2010.

(Civil Aviation Authority *vs.* Haji Pervez Khan & others)

J U D G M E N T

Date of hearing.	07.03.2023, 08.03.2023, 14.03.2023, 15.03.2023 and 21.03.2023.
Appellant by	Mr. Anis-ud-Din, Advocate alongwith Ahtsham Aslam, Senior Assistant Director Estates, Civil Aviation Authority.
Respondents No.1 to 4 by	Sardar Abdul Raziq Khan, Advocate.
Respondent No.5 by	Malik Amjad Ali, Additional Advocate-General Punjab.

MIRZA VIQAS RAUF, J.:- This single judgment shall govern the subject appeal as well as I.C.A.No.292 of 2010 (Province of Punjab *vs.* Haji Perwaiz Khan & others), as both these appeals stem out from judgment dated 26.10.2010, handed down by the learned Single Judge in Chamber, whereby W.P.No.1718 of 2006 filed by respondents No.1 to 4 (hereinafter referred to as "respondents") was accepted.

2. Briefly stated facts forming background of these appeals are that land measuring 111 acre, 5 kanal situated in the revenue estate of Tahlian Dehati, Tehsil and District Rawalpindi was acquired for the extension of Jet Airport under the Capital Development Authority Ordinance (XXIII of 1960) (hereinafter referred to as "Ordinance, 1960"). The acquired land included land of the "respondents" alongwith other land owners. The "respondents" after some time moved an application under Rules 14 and 15 of the Punjab Land Acquisition Rules, 1983 (hereinafter referred to as "Rules, 1983")

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before the Board of Revenue Punjab for restoration of 8 kanal 3 malras of land on the ground that it is lying surplus. The application was, however, turned down by way of order dated 11.02.2006. This prompted the “respondents” to file W.P.No.1718 of 2006, which was accepted by the learned Single Judge in Chamber through judgment dated 26.10.2010, hence these appeals under Section 3 of the Law Reforms Ordinance, 1972.

3. Mr. Anis-ud-Din, Advocate representing the Civil Aviation Authority submitted that land in question is a part of land acquired under the award dated 25.05.1966. He added that land was acquired under the “Ordinance, 1960” and with the acquisition, it vests in Capital Development Authority. Learned counsel contended that the “respondents” after receiving the compensation of the acquired land, have no locus-standi to claim its restoration. Learned counsel emphasized that while allowing the constitutional petition, “Rules, 1983” have wrongly been invoked. It is argued with vehemence that the “respondents” are estopped by their words and conduct to invoke the constitutional jurisdiction of this Court. Learned counsel maintained that land was acquired for public purpose and as such it can be utilized for any other purpose at the discretion of the acquiring/beneficiary department. Reliance is placed on Syed NAZAR ABBAS NAQVI vs. COMMISSIONER, SARGODHA DIVISION, SARGODHA and 29 others (1996 SCMR 1277) and RAHM DAD and 7 others vs. MANAGING DIRECTOR, FAUJI FOUNDATION, RAWALPINDI CANTT. and 2 others (PLD 2010 Lahore 349).

4. Malik Amjad Ali, Additional Advocate-General Punjab, at the very outset, submitted that writ petition in absence of the Province of Punjab was not proceedable. He added that this important aspect escaped notice of the learned Single Bench. Learned Law Officer contended that the “respondents” have no vested right to claim the restoration of acquired land and Rule 14 of the “Rules, 1983” is not attracted to the present case. It is further contended that the

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“respondents” have not approached the Court with clean hands and matter in issue requires factual determination. In support of his contentions, learned Law Officer placed reliance on GOVERNMENT OF BALOCHISTAN, CWPP&H DEPARTMENT and others vs. Nawabzada MIR TARIQ HUSSAIN KHAN MAGSI and others (2010 SCMR 115).

5. Conversely, Sardar Abdul Raziq Khan, Advocate for the “respondents” contended that the “Ordinance, 1960” is only restricted to Capital territory, whereas, land in question falls within the territorial limits of Rawalpindi. Learned counsel further contended that no party can travel beyond its pleadings and the contentions raised by the other side are not tenable at all. It is submitted that the “respondents” cannot be non-suited merely on account of misjoinder or non-joinder of parties. Learned counsel emphasized that after acquisition, the land was transferred to Civil Aviation Authority and, as such, Pakistan Civil Aviation Authority Ordinance, 1982 would come into play, whereunder Land Acquisition Act, 1894 and the rules framed thereunder are equally applicable. Learned counsel contended that Rule 14 of the “Rules, 1983” was fully applicable and judgment under appeal is unexceptionable. Learned counsel in the last submitted that rights of the “respondents” are duly protected under Articles 23 and 24 of the Constitution of the Islamic Republic of Pakistan, 1973. Reliance is placed on CAPITAL DEVELOPMENT AUTHORITY through Chairman and others vs. Dr. ABDUL QADEER KHAN and others (1999 SCMR 2636), KOHINOOR TEXTILES MILLS LTD. vs. CAPITAL DEVELOPMENT AUTHORITY, ISLAMABAD (PLD 2001 Lahore 379).

6. Heard. Record perused.

7. It evinces from the record that initially these appeals were dismissed, being not maintainable vide order dated 07.07.2011, which was assailed before the Supreme Court of Pakistan in Civil Appeals No.140 and 141 of 2012. The appeals were allowed by way of order dated 14.03.2018, hence these appeals are now before us.

8. Before embarking upon or delving into the matter in issue, it would be pertinent to point out some of the pivotal admitted facts, which are very relevant for the resolution of controversy. Land in question measuring 8 kanal, 3 marlas was part of total land measuring 111 acre, 5 kanal situated in the revenue estate of Tahlian Dehati, Tehsil and District, Rawalpindi. The land was acquired in terms of award dated 25.05.1966 for the extension of Jet Airport under the "Ordinance, 1960". The total land of the "respondents" was approximately 33 kanal. The "respondents" initially filed W.P.No.3389 of 2003, which was disposed of by way of order dated 31.03.2004 with the following observation:-

"2. When asked as to whether an application for relief has been filed before the competent authority under the Rules framed under the Land Acquisition Act, 1894 for Punjab, the learned counsel answers in the negative. The writ petition is accordingly disposed of with the observation, if so advised, the petitioners may file an application before Board of Revenue Punjab which shall be proceeded with in accordance with law.

In pursuance whereof, the "respondents" moved an application under Rules 14 and 15 of the "Rules, 1983" before the Board of Revenue Punjab for resumption/restoration of the surplus land. On the application of the "respondents", a report was requisitioned from the Executive District Officer, Revenue [(E.D.O(R)], Rawalpindi and on receipt of the report, the request of the "respondents" was turned down vide order dated 11.02.2006. This prompted the "respondents" to file W.P.No.1718 of 2006, which was accepted through judgment under appeals.

9. As is evident, land was admittedly acquired under the "Ordinance, 1960". Chapter IV of the "Ordinance" ibid deals with the acquisition of land. Power to acquire land was bestowed under Section 25, whereas, Section 32 ordains that immediately on the making of the award under Section 28, the land shall vest in the Authority free from all encumbrances. Section 51 of the "Ordinance, 1960" equips the

Capital Development Authority, power to make regulations. In exercise of said power, the Land Acquisition Regulation, 1961 (hereinafter referred to as "Regulation, 1961") was framed. Regulation 21 is of great import, which reads as under:-

"If once one award is given, the land shall vest in the Capital Development Authority as contemplated in Section 32 of the Ordinance and the Deputy Commissioner may take possession thereof irrespective of the fact that an appeal has been filed under Section 36 of the Ordinance or the owners have been or have not been paid compensation or whether they have been accepted the compensation under protest".

It is thus evident that after the acquisition of land, it vests in the Capital Development Authority.

10. As the land was acquired for the extension of Jet Airport, which was controlled by the erstwhile Department of Civil Aviation, but with the establishment of Civil Aviation Authority under Pakistan Civil Aviation Authority Ordinance, 1982 (hereinafter referred to as "Ordinance, 1982"), all the assets and liabilities of the Department of Civil Aviation stood transferred in the name of Civil Aviation Authority in terms of Section 11 of the "Ordinance, 1982".

11. Learned counsel for the "respondents" has though questioned the applicability of the "Ordinance, 1960" to the territory of Rawalpindi, but this objection has been answered by the learned counsel for the appellant while making reference to Section 1(2) and 2(p) read with the Schedule of the "Ordinance, 1960". Leaving aside the explanation offered by the learned counsel for the appellant, it would not be out of context to mention here that the acquisition proceedings have nowhere been challenged by the "respondents" and they have even received the compensation under the award, so it is too late for them to raise any question to that effect. This would only amount to beat the dead horse. The matter of acquisition even otherwise is a past and closed transaction. In this backdrop, judgments in the case of Capital Development Authority vs. Dr. Abdul Qadeer Khan etc. passed by a Single Bench of this Court and upheld by the Supreme Court of

Pakistan as well as Kohinoor Textiles Mills Ltd. (*supra*) would not be applicable, being rested on entirely different facts.

12. From the bare reading of the provisions of "Ordinance, 1960", it clearly manifests that it contains an independent mechanism for the acquisition and the provisions of Land Acquisition Act, 1894 or the rules framed thereunder are alien to the scheme provided therein. Even if we assume that after vesting of the land in the Civil Aviation Authority by virtue of the "Ordinance, 1982", the provisions of the Land Acquisition Act, 1894 as well as rules framed thereunder would come into play in terms of Section 5(8) of the said "Ordinance", we shall have to examine the scope of Rule 14 of the "Rules, 1983". For ready reference and convenience, same is reproduced below:-

"14. (1) Where any land has been acquired for any Department of the Government or a local authority for a public purpose and it is proposed to abandon the same, it shall be handed over to the Collector who shall be responsible for the disposal of the same in accordance with the order of Government.

(2) The disposal of land under sub-rule (1) shall be made by Government in its discretion, and its possession restored to the persons from whom it was acquired or to their heirs as under:-

(i) Free of cost to the original owners or their heirs, if compensation for the acquisition of land has not been paid.

(ii) On refunding the amount paid as compensation less than 15 percent granted for compulsory acquisition, if the original landowners or their heirs have already received cash compensation in respect of their land. The price may be lowered, if necessary, on account of deterioration, or enhanced in the rare case of land having been improved by the use to which Government has put it.

(3) Where the original land-owners or their heirs were provided ultimate land in lieu of their acquired land, such land shall not be restored to them, but shall be utilized or disposed of by the Board of Revenue in accordance with the policy of the Government regarding disposal and alienation of lands".

From the bare perusal of the above, it clearly reveals that power to restore the possession of acquired land to the persons from whom it was acquired lies with the Government and that too in the case, when the Department of the Government or a local authority for which land was acquired proposed to abandon the public purpose for which it was acquired. The “respondents” are claiming restoration of meagre part of acquired land on the ground that it has become surplus. Rule 14 ibid thus cannot be stretched in favour of the “respondents”.

13. So far contention of learned counsel for the “respondents” that no one can travel beyond its pleadings, suffice to observe that there can be no second opinion to this well settled proposition of law, but this is also an oft-repeated principle that a question of law can be raised at any stage of the proceedings and there can be no estoppel against law.

14. There is yet another important aspect, the “respondents” while filing constitutional petition did not implead the Province of Punjab in the array of respondents in oblivious of Article 174 of the Constitution of the Islamic Republic of Pakistan, which itself goes to the root of their case. Reference to this effect can be made to PROVINCE OF PUNJAB through Secretary Excise and Taxation Department, Lahore and others vs. MURREE BREWERY COMPANY LIMITED (MBCL) and another (2021 SCMR 305), Qazi MUNIR AHMED vs. RAWALPINDI MEDICAL COLLEGE AND ALLIED HOSPITAL through Principal and others (2019 SCMR 648) and GOVERNMENT OF BALOCHISTAN, CWPP&H DEPARTMENT and others vs. Nawabzada MIR TARIQ HUSSAIN KHAN MAGSI and others (2010 SCMR 115).

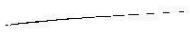
15. There can be no cavil that every citizen has a right to acquire, hold and dispose of property in any part of Pakistan and no person can be deprived of his property, except in accordance with law as these rights are guaranteed by the Constitution in terms of Articles 23 and 24, but right to property is neither unbridled nor unlimited, but it is always subject to reasonable restrictions imposed by law in the public interest. Article 173 of the Constitution empowers the Federal Government as

well as the Provincial Government to acquire property and for the said purpose certain laws have also been framed.

16. The claim of the "respondents" that land in question has become surplus, is founded upon a demarcation report, which has no legal value unless it is weighed after recording of evidence. There are only oral assertions to this effect and there is no concrete material that the acquiring/beneficiary department did not utilize the land for the purpose for which it was acquired. Even otherwise, matter relating to return of acquired land cannot be left at the whims of the ex-land owners. Allowing the "respondents" to claim part of acquired land having become surplus would open a pandora box and a flood gate for other land owners as well. Guidance in this respect can be sought from Syed NAZAR ABBAS NAQVI vs. COMMISSIONER, SARGODHA DIVISION, SARGODHA and 29 others (1996 SCMR 1277) and RAHM DAD and 7 others vs. MANAGING DIRECTOR, FAUJI FOUNDATION RAWALPINDI CANTT, and 2 others (PLD 2010 Lahore 349).

17. The crux of above threadbare discussion is that the judgment under appeals is not sustainable under the law. Resultantly, while allowing these appeals, writ petition filed by the "respondents" is dismissed with no order as to costs.


 (Sultan Tanvir Ahmad)
 Judge


 (Mirza Viqas Rauf)
 Judge

Dictated
27.03.2023.


Approved for reporting,

Signed


 Judge

Judge


Announced in open Court on 05.04.2023


 Judge


 Judge