

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT:

MR. JUSTICE IJAZ UL AHSAN
MR. JUSTICE SAJJAD ALI SHAH
MR. JUSTICE MUNIB AKHTAR

(AFR)

Civil Petition No.2338-L & 2258-L of 2017

Against judgment dated 22.06.2017 of Lahore High Court, Lahore, passed in Civil Revision No.2937 of 2014.

Province of Punjab through DO(R)
Sheikhupura, etc

Petitioners *(in CP#2338-L/17)*

Javed Akbar & another

Petitioners *(in CP#2258-L/17)*

VERSUS

Javed Akbar & others

Respondents *(in CP#2338-L/17)*

Province of Punjab through DO(R)
Sheikhupura, etc

Respondents *(in CP#2258-L/17)*

For the Petitioner(s):

Mr. Qasim Ali Chauhan, Addl.AG, Pb
(in CP#2338-L/17)
Syed M. Kaleem A. Khurshid, Sr.ASC
(in CP#2258-L/17)

For the Respondent(s):

Mr. Qasim Ali Chauhan, Addl.AG, Pb
(in CP#2258-L/17)
Syed M. Kaleem A. Khurshid, Sr.ASC
(in CP#2338-L/17)

Date of Hearing:

19.11.2021

ORDER

IJAZ UL AHSAN, J-. Through this common judgment, we propose to decide CPLA No.2338-L of 2017 *(filed by Province of Punjab through District Officer (Revenue), Sheikhupura and others)* and CPLA No.2258-L of 2017 *(filed by Javed Akbar and another)*, both of which arise out of a judgment of the Lahore High Court, Lahore dated 22.06.2017 whereby a Civil Revision bearing

No.2937 of 2014 filed by the Province of Punjab was disposed of with certain directions.

2. For ease of reference, the Province of Punjab will be described as the petitioner and Javed Akbar and others will be referred to as the Respondents.

3. Briefly stated the facts necessary for disposal of these petitions are that the Respondents instituted a suit for declaration alongwith permanent injunction against the petitioners on the ground that they were owners in possession of the suit land which is situated at Lahore-Sheikhupura Road. It was alleged that front of the land of the Respondents is on Lahore-Sheikhupura Road and the land in question is of a commercial nature. The Respondents wanted to construct a market on the land in question and for the said purpose they had applied for issuance of an NOC before the competent authorities. The petitioners had started construction of Lahore-Faisalabad two ways road and intended to erect pillars and construct a wall in front of the land of the Respondents. Such wall, if constructed will not only block the view and exposure of the land of the Respondents but also cause hindrance in approaching the main road. It was claimed that if the petitioners were allowed to raise construction, the land of the Respondents would become valueless. The petitioners

contested the suit by filing written statement wherein it was stated that the land was owned by the Provincial Government which was acquired from the predecessors of the Respondents who had raised no objection at any stage. Therefore, the Respondents had no *locus standi* to file the suit. The Trial Court dismissed the suit vide judgment and decree dated 10.12.2011. However, the appeal filed by the Respondents against the said judgment and decree was allowed, vide judgment and decree dated 15.04.2014. The revision petition filed by the petitioners was disposed of with a direction that the petitioners shall provide a passage of 20ft to the Respondents excluding the passage of *Rajbah* for transportation and exposure. The petitioners are aggrieved of such direction. The Respondents in their CPLA have challenged the entire judgment of the High Court.

4. The learned Additional Advocate General, Punjab submits that the land on which pillars are being erected belongs to the Provincial Government and it was acquired by the Government for the purpose of dualization of Lahore – Sheikhpura Road and construction of a mechanical workshop which has since been constructed. The predecessors of the Respondents being dissatisfied with the assessment of the price made

by the Land Acquisition Collector initiated proceedings under Section 18 of the Land Acquisition Act, 1894 which went upto this Court and the matter was finalized and at no stage was any other relief claimed or sought. When the Respondents purchased the land in question, they were fully aware of its location and access and cannot now be heard to assert that the acquired land cannot be used for the purposes that it was acquired because it will reduce the commercial value of the property. He further maintains that the impression sought to be created by the Respondents is that the land abuts the Highway or is very close to it which is factually incorrect as is evident from the aerial view of the area, real time photographs of which have been placed on record alongwith other relevant information and data through CMA No.3773-L of 2018. He therefore maintains that the learned High Court erred in law and exceeded its jurisdiction by issuing a direction to the petitioners to provide a 20ft passage to the Respondents excluding the passage of *Rajbah* for access to the land of the Respondents. He further points out that there is already a passage available and other modes of access to the land of the Respondents and in fact the Respondents wish to construct a commercial plaza/market on the land and to obstruct the petitioners in fulfilling the purpose for which the land was acquired by the Government.

5. The learned counsel for the Respondents on the other hand has argued that in case the petitioners undertake construction according to their proposed plan, the exposure and frontage of the land of the Respondents will be closed and the Respondents would have no access to the main road despite the fact that the land is commercial in nature. He maintains that the petitioners may be directed to provide a passage like the passage granted to petrol pumps situated on main road. He further maintains that the Appellate Court had correctly appraised the evidence and rightly decreed the suit of the Respondents.

6. We have heard the learned Additional Advocate General, Punjab appearing for the petitioners as well as the learned counsel for the Respondents and gone through the record with their assistance. There is no denial of the fact that the land whereupon the petitioners are constructing pillars and erecting a wall is owned by the Provincial Government having acquired the same from the predecessors of the Respondents. Such predecessors had challenged the assessment of price made by the Land Acquisition Collector upto this Court and the matter stood concluded. It is significant to note that at no stage was any other relief sought. The Respondents were aware of the modes of access to their

land which have not in any manner been blocked by the petitioners. There is also no denial of the fact that the land on which the Provincial Government proposes to erect pillars and / or construct a wall belongs to the Provincial Government and was specifically acquired for the dualization of Lahore - Sheikhupura Road and providing ancillary services including a mechanical workshop. Just by reason of fact that the Respondents have decided to construct a commercial building/plaza/market on their land does not create any additional rights in their favour which may have been asserted in the specific facts and circumstances of this case.

7. It appears from the record that before the lower *fora* a stance was taken by the Respondents that there was apparently a passage from their land to the main road passing through the land acquired by the petitioners which was allegedly being blocked. Ex.P/2 and Ex.P/3 are *Aks Shajrah Parcha* of the land in issue. Perusal of the same reveals that the land of the petitioners abuts the road which is not disputed. The revenue documents do not show any passage passing through the land of the petitioners to the land of the Respondents. The Respondents never produced any document or evidence to show that any such passage

ever existed. The Respondents also never produced any document to show that any such passage existed or was kept intact at the time of acquisition of land by the petitioners. Further, no evidence was produced showing that any objection was taken at any stage with reference to the passage. Therefore, the existence of any passage claimed by the Respondents was never established. Further, no easement right was ever claimed by the Respondents in the contents of the plaint. Under the law, the Courts can issue declarations relating to existing rights and cannot create fresh/new rights in favour of the either party.

8. The learned counsel for the Respondents has laid much emphasis on the blockage of view of any construction that may be undertaken on the land of the Respondents in future. We find that the land in question is agricultural in nature and no commercial building/shopping plaza or offices, etc exist on the same. When no such commercial activity is being undertaken on the land of the Respondents, there is no ground for them to raise an objection relating to blockage of view of the same. Further, we are not convinced that in the facts and circumstances of the case, the owner of the land abutting the road can be stopped from utilizing it in a manner for which it was specifically acquired and how

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and under what law can a Court carve out a passage in the land of another person specially when no right of easement is claimed or asserted. The Respondents in our view failed to discharge the onus of proving the fact that the passage of the Respondents' land was being closed by raising pillars and a wall on the land acquired by the petitioners and that such construction was being illegally done and with malafides to block access to the land of the Respondents.

9. Further, we have carefully examined the real time photographs of the area and other related documents filed through CMA No.3773-L of 2018 and find that the land of the Respondents is at a considerable distance from the main road, the Highway Mechanical Workshop already exists on the side of the road and by no definition of the term does the land of the Respondents abuts the road. There is a substantial distance between the land of the Respondents and the boundary of the land of the petitioners where pillars have been installed and a boundary wall is being constructed. Further, there is a passage besides the canal through which the land of the Respondents can be accessed. Consequent on the claim that such passage belongs to the Irrigation Department which may not allow such passage to be used, we have specifically asked the

learned counsel for the Respondents if any such permission has been sought or denied. He has submitted that according to his instructions no such permission has been sought. We therefore find that the learned High Court misread the material available on record and assumed not only that the land belonging to the petitioners abutted the road but that no access to such land was available. Such conclusion is not supported either by the record or the photographs which have been placed on record and examined by us in an enlarged form in Court while hearing this matter.

10. Therefore, we are of the view that the learned High Court exceeded its jurisdiction in issuing a direction that the petitioners shall provide a 20ft passage to the Respondents excluding the passage of *Rajbah* for transportation and exposure to the main road. Such a direction is neither supported by law nor does it fall within the jurisdiction of the High Court as a revisional Court. As such, we find that the impugned judgment of the High Court dated 22.06.2017 to the extent of the direction in question is not sustainable and is accordingly set aside. Consequently, CPLA No.2338-L of 2017 is converted into an appeal and allowed.

11. As a result, for the same reasons as enumerated above, CPLA No.2258-L of 2017 is found to

be without merit. It is accordingly dismissed. Leave to appeal is refused.

ISLAMABAD.

19.11.2021

ZR/ *

'Not Approved For Reporting'