

**IN THE SUPREME COURT OF PAKISTAN**  
(Appellate Jurisdiction)

**PRESENT:**

MR. JUSTICE SAYYED MAZAHAR ALI AKBAR NAQVI  
MR. JUSTICE MUHAMMAD ALI MAZHAR  
MR. JUSTICE SHAHID WAHEED

**CIVIL PETITION NO.3760 OF 2019**

(Appeal against the order dated 26.06.2019 passed by the Lahore High Court, Rawalpindi Bench in W.P. No.3111/2018)

*AND*

**CIVIL PETITION NO.3759 OF 2019**

(Appeal against the Order dated 26.06.2019 passed by the Lahore High Court, Rawalpindi Bench in W.P. No.341/2019)

Province of the Punjab through Deputy  
Commissioner/District Collector,  
Rawalpindi and another

...Petitioners  
(In both cases)

**VERSUS**

Muhammad Akram and others  
Muhammad Khalil Ahmad Abdullah and others

(In C.P. No.3760/2018)  
(In C.P. No.3759/2019)  
...Respondents

For the Petitioners: Malik Asif Taufique Awan, Addl. AG, Punjab  
(In both cases)

Mr. Mudassar Khalid Abbasi, ASC  
(In CMA No.10929/2019 in C.P. No. 3759/2019)

For Respondents: Nemo

Date of Hearing: 01.12.2022

**JUDGMENT**

**MUHAMMAD ALI MAZHAR, J.-** These Civil Petitions for leave to appeal are directed against the consolidated Order dated 26.06.2019 passed by the Lahore High Court, Rawalpindi Bench in W.P. No.3111/2018 and W.P. No.341/2019, whereby both the Writ Petitions filed by the respondents were disposed of with certain directions.

2. The short-lived facts of the case are that the Administrator, Islamabad Capital Territory ("**ICT**"), in exercise of powers conferred upon him by the President in pursuance of Article 2 of the Islamabad Capital Territory (Administration) Order, 1980 constituted 52 new revenue estates in Islamabad vide Notification No. 41/1/81-AFT dated 06.01.1981; the said Revenue Estates are located at the boundary of the Rawalpindi and Islamabad Districts. The Military Estate Officer, Rawalpindi Circle had required the land measuring 259 kanals and 03 marlas situated in Mouza Ojri Kalan *vide* notification published in the Punjab Gazette on

15.09.2014, however, pursuant to an Order passed by the Lahore High Court, Rawalpindi Bench, Rawalpindi on 09.12.2015 in Writ Petition No. 2258/2004, the area falling within the District Islamabad was de-notified vide Notification dated 01.08.2016. However on account of further proceedings, a Notification under Section 4 of the Land Acquisition Act, 1894 for acquisition of land situated in Mouza Ojri Kalan was issued on 19.12.2015 and Award was announced on 27.05.2017. The petitioner in the Writ Petition No.3111/2018 claimed the exclusive ownership of land previously bearing Khasra Nos. 775, 792, 781, 782, 783, 773 and now bearing Khasra Nos. 158, 157, 159, 165, 166 and 147 measuring 18 kanals, 01 marla and 5½ Sarsai, and asserted that the land situated in the revenue estate of Mouza Ojri Kalan, Main Murree Road, Tehsil and District Rawalpindi and Islamabad is prime commercial land and, according to him, he repeatedly requested the authorities to determine the compensation amount as per the market rate, but no action was taken on his request and the matter was continuously being delayed since 2002 due to which he became a rolling stone between two districts and the various departments of Rawalpindi and Islamabad, therefore, he prayed for resumption of land with the condition that if the acquiring agency is interested to acquire the land then they may negotiate the price of compensation keeping in mind the location, market value & potentiality. Whereas the petitioner in Writ Petition No.341/2019 asserted that the Collector of District Rawalpindi issued two notifications under Section 4 of the Land Acquisition Act, 1894 in respect of the land situated in Mauza Ojri Kalan and the land situated in Mauza Sohan Dehati, Rawalpindi, but there was some confusion between the Civil Administration of Rawalpindi and Islamabad regarding the boundaries of District Rawalpindi and Islamabad. However, the Land Acquisition Collector, Rawalpindi finalized the proceedings and announced the Award on 27.5.2017 for Mauza Sohan Dehati, District Rawalpindi, part of Ojri Camp, and thereafter a number of references have been filed against the said Award under Section 18 of the Land Acquisition Act, 1894. He also prayed to the High Court for derequisition/release of his land.

3. The learned Additional Advocate General, Punjab argued that the impugned Order passed by the learned High Court is against the law wherein many legal aspects were not taken into consideration. He further argued that, while passing the impugned Order, the learned High Court ignored a crucial point that the judgment passed in Writ Petition No.1235/2010 was regarding the collection of property tax levied by the

Excise & Taxation Department, and this Court in Civil Appeals No. 2464 to 2467 of 2016 held *vide* order dated 27.02.2017 that whether the territory in issue belongs to the Province of Punjab or the ICT is a question which, if disputed between the two Governments, is to be settled as per the provisions of Article 184(1) of the Constitution of the Islamic Republic of Pakistan, 1973 ("**Constitution**"). He further argued that the Settlement Operation for preparation of newly created Revenue Estates is under process and, till its completion, the boundaries of District Islamabad and Rawalpindi cannot be marked. It was further averred that the impugned order is based on misreading and non-reading of documents and other material available on record.

4. Heard the arguments. It would be expedient to reproduce the impugned order passed by the learned High Court for the ease of convenience as under:-

"At the very outset, learned counsel for the petitioner prays for deletion of respondents No.5 to 8 from the arrays of the parties. Learned Law Officers for Federation as well as Province of Punjab have no objection upon the same. Accordingly, respondents No.5 to 8 are deleted from the array of the respondents.

2. Learned counsel for the petitioner feels satisfied if a direction is given to the respondents to proceed in accordance with this Court's judgment dated 26.04.2016 passed in Writ Petitions No.988/2010, 5425/2010, 1448/2012 and 2056/2010 upheld by the Hon'ble Supreme Court of Pakistan *vide* order dated 27.02.2017 passed in Civil Appeals No.2464 to 2467 of 2016. Order accordingly. Respondent No.1 will initiate the matter afresh with Land Acquisition Collector, Rawalpindi regarding acquisition or de-acquiring of the land in question expeditiously, preferably within two months commencing from today. Disposed of".

5. Indeed, Muhammad Akram (Respondent No.1 in the present CPLA No.3760/2018) filed the Writ Petition No. 3111/2018 in the High Court against the Federation of Pakistan ("**FOP**"), while the Respondents No. 5 to 8 in his Writ Petition were the Deputy Commissioner/District Collector, Rawalpindi; Land Acquisition Collector/Assistant Commissioner (Saddar), Rawalpindi; Land Acquisition Collector, ICT, Islamabad and Deputy Commissioner, Islamabad. Whereas Muhammad Khalil (Respondent No.1 in the CPLA No.3759/2019) filed the Writ Petition No.341/2019 against the FOP, but in his petition also the Respondents No. 5 to 8 were the District Collector, Rawalpindi; Land Acquisition Collector, Rawalpindi; District Collector/Deputy Commissioner, ICT Islamabad, and Land Acquisition Collector, Islamabad. Both the petitions were fixed before the High Court on 26.06.2019 when the counsel for the petitioners were present, and besides them, the Additional Advocate General, Assistant Attorney General, Military Estate Officer, Rawalpindi and Assistant Commissioner (Saddar), Rawalpindi were also present. The first portion of the impugned Order depicts that the learned counsel for the petitioner prayed to the

High Court for the deletion of the Respondents No. 5 to 8 from the array of respondents. The Law Officers appearing for the FOP as well as for the Province of Punjab candidly conceded that they have no objection and, with their consent, the Respondents No. 5 to 8 were struck off/deleted from the array of respondents in both the Writ Petitions. It is somewhat strange that at the time of the hearing, the Law Officers raised no objection and by consent the names of Respondents No. 5 to 8 were deleted, but despite that the Province of Punjab has filed the present CPLA for impugning the Order dated 26.06.2019. No doubt under the exactitudes of Order I, Rule 10, CPC, the Court may strike off the parties at any stage of the proceedings, and if the petitioners before us were of the view that they were proper and necessary parties in the Writ Petitions, then they could not have conceded to the striking off of the Respondents No. 5 to 8 or, even if they were not satisfied, they could have immediately moved a Review application in the Court for reconsidering their impleadment if they were proper and necessary party in the proceedings and aggrieved by such Order, but no action was taken by them for the resurrection of the proceedings. The Court, in exercise of powers conferred under Order I, Rule 10, C.P.C may, at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the Court to be just, order that the name of any party improperly joined be struck out and add the party who ought to have been joined or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved. The object of the Rule is to bring on record all the persons who are parties to the dispute relating to the subject matter so that the dispute may be determined in their presence at the same time without any protraction, inconvenience and to avoid multiplicity of proceedings.

6. However, the latter portion of the impugned Order depicts that after the striking off the names of the Respondents No. 5 to 8 from both the Writ Petitions, the petitioner's counsel averred that the petitioners will be satisfied if the High Court directs the remaining respondents to initiate further action in accordance with the judgment dated 26.04.2016, passed in Writ Petitions No.988/2010, 5425/2010, 1448/2012 and 2056/2010. It was further avowed that the aforesaid judgments rendered by the High Court have been affirmed by this Court *vide* Order dated 27.02.2017 in Civil Appeals No.2464 to 2467 of 2016. We have noted that, while passing the impugned Order by the High Court, the Military Estate Officer, Rawalpindi, Mr. Shahid Iqbal, Assistant Commissioner

(Saddar, Rawalpindi), Zahid Khan, as well as the Assistant Attorney General were present in Court and the learned High Court directed the Respondent No.1 (FOP through Secretary Ministry of Defence) to initiate the matter afresh with the Land Acquisition Collector, Rawalpindi with regard to the acquisition or de-acquisition of the land in question within two months. Neither the FOP has challenged this Order, nor the petitioners before the High Court; rather both CPLAs have been moved by the Province of Punjab through its District Collector, Rawalpindi who had never raised any objection when their names were initially being struck off from the array of the respondents in both the Writ Petitions. No doubt in the W.P No. 1235/2010, whereby the connected W.P. Nos.988/2010, 5425/2010, 1448/2012 and 2056/2010 were disposed of through a consolidated judgment by the Learned Lahore High Court, Rawalpindi Bench on 26.04.2016, the core issue was related to the collection of property tax by the Excise Department, Government of Punjab, Rawalpindi on the sole ground that the properties of the said petitioners fall within the limits of ICT in view of the Letter No.41/1/81-AFT dated 06.01.1981. The learned High Court by means of consolidated judgment held in all Writ Petitions that the subject area does not fall within the Territory of District Islamabad, rather it falls within the territorial limits of District Rawalpindi, hence the Excise & Taxation Department, Rawalpindi has rightly created the demand of property tax from the said petitioners.

7. It is somewhat translucent from the controversy raised in the High Court by means of Writ Petitions No.3111/2018 and 341/2019 that there were some crucial issues related to boundaries/territorial limits between the Province of Punjab and ICT and, while adverting to this controversy, the learned High Court relied on the Order of this Court in Civil Appeals No.2464 to 2467 of 2016. According to the exactitudes of Article 184 of the Constitution, this Court, to the exclusion of every other Court, has original jurisdiction in any dispute between any two or more Governments and may pronounce declaratory judgments only. The explanation attached to this Article accentuates that the term "Governments" means the Federal Government and the Provincial Governments. The aforesaid Order of this Court demonstrates that the submission made during the course of the hearing with regard to the dispute about Ojri Kalan being part of the territory of the Province of Punjab or ICT was on account of certain legislative background. This Court held that neither the Federal Government, nor any of its concerned departments has agitated the matter and, while recalling or withdrawing

the leave granting order and dismissing the petitions, this Court in clear terms held that whether the territory in issue belongs to the Province of Punjab or the Islamabad Capital Territory, is a question which, if disputed between the two Governments, is to be settled as per the provisions of Article 184(1) of the Constitution. The Order of this Court dated 27.2.2017, passed in Civil Appeal No.2464 to 2467/2016 is reproduced as under:-

"After hearing the learned counsel for the parties and the learned Law Officers we find that according to a report dated 11.01.2010 demarcation was conducted jointly by Rasib Hussain plaintiff through Sohaib Bilal; Excise & Taxation through Niaz Muhammad Bhatti, ETO Rawalpindi, defendant; Javed Akhtar Patwari Mauza Ojri Kalan Tehsil & District Rawalpindi; Naseer Ahmed Olak Tehsildar CDA, Islamabad; Malik Muhammad Iqbal, Naib Tehsildar, Islamabad; Shehzad Razak Patwari, Tehsil & District Islamabad; Syed Yasir Arafat, Girdor, CDA, Islamabad; Muhammad Khurshid, Patwari, CDA; Ibrar Asif Asstt. Excise & Taxation Officer, Rawalpindi; Sh. Muhammad Azam and Raja Muhammad Aslam, Inspectors Excise & Taxation, Rawalpindi; wherein it has been mentioned that the presently relevant property falling within *Khasra* Nos.727 to 737 in *Mauza* Ojri Kalan is situated within the territory of the Province of Punjab. Obviously, such report, *prima facie*, would determine the tax liability of the appellants. The submission that there is a dispute about Ojri Kalan being part of the territory of the Province of Punjab or Islamabad Capital Territory on account of certain legislative background by itself does not make it a part of ICT, when the Federal Government or any of its concerned department has not agitated the matter before the Court of competent jurisdiction. We do not find any merit in this petition, in which the leave granting order was procured on the basis of reasons which are seemingly not relevant for determination of the true issue in this case, which for the purposes of this petition *prima facie* stands settled on account of the joint report mentioned above. Resultantly, the leave granting order dated 11.11.2016 is accordingly withdrawn and the petitions are dismissed. However, whether the territory in issue belongs to the Province of Punjab or the Islamabad Capital Territory, is a question which, if disputed between the two Governments, is to be settled as per the provisions of Article 184(1) of the Constitution of the Islamic Republic of Pakistan, 1973. The appellants in these cases have no *locus standi* in this context".

8. Keeping in view the controversy involved in the matter of acquisition, we are of view that the directions issued by the High Court to FOP to initiate the matter afresh with the Land Acquisition Collector, Rawalpindi regarding acquisition or de-acquiring of the land in question do not suffer from any illegality, perversity or impropriety. Consequently, both the Civil Petitions along with C.M.A No.10929/2019 are dismissed and leave is refused.

Judge

Judge

Judge