

**IN THE HIGH COURT OF SINDH HYDERABAD CIRCUIT**

BEFORE:

Mr. Justice Muhammad Shafi Siddiqui

Mr. Justice Muhammad Faisal Kamal Alam

(1)

C.P. No. D-1905 of 2011

Hyderabad Municipal Corporation

Versus

Province of Sindh & others

(2)

C.P. No. D-1932 of 2011

M/s Sindh Goods Transport Owners Association & another

Versus

Province of Sindh & others

(3)

C.P. No. D-1269 of 2016

Hyderabad Municipal Corporation

Versus

Abdul Samad Khan & others

Date of Hearing: 12.02.2020

Petitioners: Through Mr. Muhammad Humayoon Khan  
Advocate.

Respondent No.8 in CP No.D-1905 of 2011 and  
respondent No.3 in CP  
No.D-1269 of 2016: Through Mr. Naimatullah  
Soomro  
Advocate.

Respondent No.9 in CP No.D-1905 of 2011: Through Mr. Muhammad Saleem Hashmi  
Qureshi Advocate.

Official Respondents: Through Mr. Allah Bachayo Soomro,  
Assistant Advocate General.

**J U D G M E N T**

**Muhammad Shafi Siddiqui, J.**- Petitioner/Hyderabad Municipal Corporation through its director has challenged order dated 17.10.2011 passed by respondent No.4 Executive District Officer Revenue Hyderabad whereby Award dated 27.05.1993 in respect of Survey No.165 having an

area of 3-01 Acre was cancelled. Petitioner claimed that since no efficacious remedy was available, he filed this petition to impugned aforesaid order.

2. Instant three petitions are based on common facts and/or points and hence are being decided through this common judgment and for the sake of convenience, facts narrated in CP No.D-1905 of 2011 are taken into consideration for deciding the matters.

3. Brief facts are that a piece of land admeasuring 21-02 acres was acquired, comprising of many survey numbers including the one involved in this petition i.e. Survey No.165 of which 03-01 acre, form part of the acquired land. The land was acquired by Hyderabad Municipal Corporation for purposes of truck stand in the year 1978. The Award was passed on 27.05.1993. The notification under section 4 as well as Sections 6 and 17 of the Land Acquisition Act, 1894 was issued on 25.05.1978 and 31.08.1978 respectively.

4. Originally, the Assistant Commissioner/Land Acquisition Officer City passed an Award on 28.02.1981 for the compensation of land in question under Land Acquisition Act, 1894. Being dissatisfied and aggrieved of the Award insofar as compensation is concerned, the owner, as claimed to be/respondent No.8, filed C.P. No.D-250 of 1981 before this Court. The alleged owner was successful in the petition inasmuch as he succeeded in obtaining a declaration that the Award to the extent it dealt with determination of market value of Survey Nos.160 and 165 of Deh Gujjo, Taluka City Hyderabad, was unlawful and fresh Award was ordered to be passed under Land Acquisition Act, 1894 for the purposes of Survey No.160 and 165. The order was passed on 05.05.1983.

5. It is argued that in pursuance of above order, a fresh Award was passed under section 11 of the Land Acquisition Act, 1894 on 27.05.1993

according to which an amount of Rs.17,94,629.48 was awarded while treating the land as Sakni (non-agricultural) in respect of Survey No.165 measuring 03-01 Acres situated at Deh Gujjo, City Hyderabad. This Award is being claimed to have been acted upon and not liable to be set aside vide impugned order dated 17.10.2011 and is now challenged in these proceedings.

6. It is claimed by petitioner that de-acquisition order was passed in respect of aforesaid survey number and it was an *exparte* order without hearing the petitioner. It is contended that it was a fictitious application of respondent No.8 and the government is likely to sustain huge losses. It is contended that in terms of Section 12 of Land Acquisition Act, 1894, the Award once passed becomes conclusive and final and it cannot be altered by Land Acquisition Officer or revenue authorities. It is further contended that land acquisition proceedings in respect of Survey No.165 completed long time back in pursuance of orders of High Court vide order dated 05.05.1983 and the possession was taken over on 27.02.1979 by the acquiring agency. Counsel submits that under section 48 of Land Acquisition Act, 1894, the withdrawal of proceedings (Award) could only be considered when possession was not handed over/delivered to the acquiring agency and only the government/acquiring agency is competent to make reference to the competent authority, which facts are not available in the instance case.

7. It is lastly contended that the Award is a judgment and decree and hence revenue officer has no power to set aside the Award and could only be set aside in appeal under the law/Land Acquisition Act, 1894.

8. Learned counsel appearing for respondent No.9, who claims to have purchased the land and having interest therein, has denied the facts inasmuch as possession of the land is concerned. Respondent No.9

was impleaded in terms of order dated 01.12.2015. He, however, to set the facts in consonance with the proceedings, submitted that the original Award of 28.02.1981 was set aside by an order of this Court on 05.05.1983 in C.P. No.D-250 of 1981 and the impugned Award was passed on 27.05.1993 and despite this Award no amount of compensation was deposited, which is an intentional and deliberate attempt to frustrate the Award. The petitioner instead of complying with the Award, filed C.P. No.D-347 of 1993, which was dismissed on 16.09.1997. The land after excluding the said Survey No.165 was demarcated i.e. 17.26 acres, excluding Survey No.160 and 165 through Director Settlement Land Record Hyderabad. Thus, the claim of possession of Survey No.165 was a misleading fact on the part of petitioners.

9. The Hyderabad Municipal Corporation through its Administrator filed Reference No.1 of 2015 under sections 31 and 32 of Land Acquisition Act, 1894, which was transferred to V-Additional District Judge Hyderabad where respondent No.9 was also impleaded having developed interest in the property. In view of objections to the Reference filed by respondent No.9, the Reference was dismissed and is now impugned in connected CP No.D-1269 of 2016, which itself is sufficient proof that possession of the subject land was never handed over to the petitioner. The subject land was acquired by respondent No.9 through registered sale deed on 19.03.2011. The petitioner never complied with the Award of 27.05.1993 in respect of land bearing Survey No.165. Thus learned counsel for respondent No.9/private respondent submitted that it is a case of deliberate non-payment of the amount of compensation and the interest thereon in terms of referred provisions of Land Acquisition Act, 1894 and provisions that relates to interest under Land Acquisition would not serve the situation which exists here.

10. Learned Assistant Advocate General while adopting the arguments advanced on behalf of private respondent has supported the case of private respondents and prayed for dismissal of the petition.

11. We have heard the learned counsel and perused the material available on record.

12. There is no dispute to this proposition that the original Award of 28.02.1981 was set aside in CP No.D-250 of 1981 vide order dated 05.05.1983 and in compliance therefore a second Award was passed in the year 1993. Since then the petitioner is making deliberate attempt to avoid payment of compensation in lieu thereof. After setting aside of the first Award to the extent of the subject survey number, the rest of the land was demarcated, which measured around 17.26 Acres, the possession was resumed by the land acquisition agency i.e. petitioner. There was no justification either to have possession of the disputed land or continue to be in possession of the said land for which no Award was passed and the earlier one since set aside. Even the demarcation of the land was in respect of other survey numbers, excluding the subject land/survey number which was never handed over to the petitioner. The said Award was also challenged in CP No.D-347 of 1993 with a declaration that the Award of 1993 (**second Award**) being in violation of the mandatory provisions of law. However, the petition was dismissed in limine on 16.09.1997. Even the Assistant Commissioner/Land Acquisition Officer confirmed that the possession of the subject land i.e. Survey No.165 was never handed over to the petitioner. We do not have any evidence and/or document in support of contention that possession of subject land was handed over to acquiring agency.

13. The Executive District Officer Revenue in fact was performing dual functions including the one under Land Acquisition Act and Standing

Order referred. Thus, there was no case of misuse of authority or jurisdiction.

14. The possession was/is enjoyed by the land owner/private respondent. It could not have been handed over to the petitioner in view of status quo order in CP No.D-250 of 1981. The impugned order was passed on the Standing Order of the revenue department No.12 Subsection 31 regarding land acquisition that when the land is no more required by any of the government department for the purposes it was acquired, it should be relinquished by the department. Standing Order 12 (subsection 31) provides that if the land was not required for the purpose it was acquired, it should be relinquished and should be offered to the original occupant/owner on payment of compensation received by them and in case of their refusal to have it back on the said terms, it should be considered as a government property in the record.

15. The relevant paragraphs of the Standing Order are reproduced for convenience:-

***17. Special powers in cases of urgency : (1) In cases of urgency, whenever the Provincial Government so directs, Collector, though no such award has been made, may, on the expiration of fifteen days from the publication of the notice mentioned in Section 9, sub-section (1), take possession of any waste or arable land needed for public purposes or for a Company. Such land shall thereupon vest absolutely in the Government free from all encumbrances.***

***(2) Whenever, owing to any sudden change in the channel of any navigable river or other unforeseen emergency, it becomes necessary for any Railway Administration to acquire the immediate possession of any land for the maintenance of their traffic or for the purpose of making thereon a riverside or ghat station, or of providing convenient connection with or access to any such station, the Collector may, immediately after the publication of the notice mentioned in sub-section (1) and with the previous sanction of the Provincial Government enter upon and take possession of such land, which shall thereupon vest absolutely in the Government free from all encumbrances:***

*Provided that the Collector shall not take possession of any building or part of a building under this sub-section without giving to the occupier thereof at least forty-eight hours' notice of his intention so to do, or such longer notice as may be reasonably sufficient to enable such occupier to remove his movable property from such building without unnecessary inconvenience.*

*(3) In every case under either of the preceding sub-sections the Collector shall at the time of taking possession offer to the persons interested compensation for the standing crops and trees (if any) on such land and for any other damage sustained by them caused by such sudden dispossession and not excepted in Section 24; and, in case such offer is not accepted, the value of such crops and trees and the amount of such other damage shall be allowed for in awarding compensation for the land under the provisions herein contained.*

*(4) In the case of any land to which, in the opinion of the Provincial Government, the provisions of sub-section (1) or sub-sec. (2) are applicable, the 61 [Provincial Government] may direct that the provisions of Section 5-A shall not apply, and, if it does so direct, a declaration may be made under Section 6 in respect of the land at any time after the publication of the notification under Section 4, sub-section (1).*

### **Relevant clauses of Standing Order 12**

6. *If the land is required under the "urgency" clause of section 17 of the Land Acquisition Act, a draft notification under section 6 should be forwarded to Government simultaneously with a draft notification under section 4 of the Act for publication in the Sindh Government Gazette. The publication of such notification dispenses with the necessity of hearing any objection against the proposed acquisition of land. In discriminate application of the "urgency" clause is to be discouraged. It should be allowed only when some real urgency exists e.g., danger of recurrence of flood due to want to repairs to a bund, immediate diversion of road for public safety, construction of a bridge or buildings for immediate project works etc.*

7. *The report of the Acquisition Officer should invariably show whether any gardens or buildings are affected. It should be carefully noted that the "urgency" clause does not apply to gardens and buildings. In fact the expressions "land" used in section 17 Land Acquisition Act does not include orchards, home stead or lands laid out in permanent crops.*

29. *After payment of the compensation the Land Acquisition Officer should take possession of the land, if not already taken under the “urgency” clause, and hand it over to the representative of the acquiring party and obtain a report for it.*

*It should be noted that there is no legal bar to taking possession of the land after declaration of the award and before payment of compensation, but this procedure involves the payment of interest.*

30. —

31. *If the land was used for the purpose for which it was acquired, it should be brought on Government khata and sold as Na-kabuli Government land. If it was not so used, it should be offered to the original occupants on payment of the compensation received by them ; and in case of their refusal to have it back on the said terms, it should be brought on Government khata.*

16. There was no question of receiving compensation back from the land owner as the compensation was never paid by the land acquiring agency. The proceedings of acquiring land could only be ended once the compensation is deposited and the possession was taken over by the acquiring agency. Thus, this would be in severe violation of Articles 23 and 24 of Constitution of Islamic Republic of Pakistan, 1973, depriving the land owner not only from enjoying the property but also from its compensation. Thus, there is no justification that he (the owner/private respondent) may be granted interest now after almost three decades of litigation when the value of the property multiplied several hundred folds, as against the compensation, the value of which was determined three decades before and grant of interests under Land Acquisition Act, under the circumstances has no justification.

17. In the second connected petition bearing No.1932 of 2011 even the same facts and grounds were pleaded by Sindh Goods Transport Owners Association, which has independently filed this petition. The said Private Association cannot have an independent interest and cannot have a case better than Hyderabad Municipal Corporation for whose

interest the land was allegedly considered for acquisition. Thus, petitions challenging the order dated 17.10.2011 merits no consideration.

18. As far as third connected petition i.e. C.P. No.D-1269 of 2016 is concerned, as the Additional District Judge was justified in returning the amount allegedly deposited by petitioner on 22.09.2015 and the earlier order that concerns with the deposit of such amount which was rightly recalled by Additional District Judge while hearing Reference No.1 of 2015.

19. In view of above all three petitions are dismissed having no merit along with pending applications.

Above are reasons of our short order dated 12.02.2020.

Dated:

**Judge**

**Judge**