

ORDER SHEET
HIGH COURT OF SINDH, CIRCUIT COURT, MIRPURKHAS

C.P No.D-878 of 2024

[Faisal Masroor and others vs. Province of Sindh and others]

Present:

Justice Abdul Mobeen Lakho-J
Justice Arbab Ali Hakro-J

Petitioners by : Mr.Kanji Mal Meghwar, Advocate
a/w Faisal Masroor (Petitioner No.1)

Respondents by : Mr.Muhammad Sharif Solangi, Asst. A.G Sindh
a/w Humair Nisar, XEN, Provincial Highway,
Mirpurkhas and Muhammad Bux, O.S Deputy
Commissioner Office, Mirpurkhas

Mr.Muhammad Sabir Hussain, Assistant Attorney
General, Pakistan

Date of hearing : **10.9.2025**

ARBAB ALI HAKRO-J: Through this petition, the Petitioners seek a declaration that the acts of the Respondents in claiming their land¹, as falling within the road limits of the Hyderabad-Mirpurkhas Provincial Highway, without acquisition or compensation, are illegal, void, and contrary to law. The Petitioners further pray for compensation for the subject land allegedly consumed in the construction of the said highway.

2. In order to ascertain the factual position, reports were called from Respondent No.5 (Mukhtiarkar, Revenue) and Respondent No.9 (Executive Engineer, Provincial Highway), as well as the demarcation of the subject land was ordered. The Mukhtiarkar (Revenue), Taluka Hussain Bux Mari (Respondent No.5), submitted a report² confirming the Petitioners' ownership and mutation of the subject land. The joint demarcation report³ affirmed that the subject land falls within the Right of Way (RoW) of the Hyderabad-Mirpurkhas Provincial Highway.

¹ measuring 00-07½ Ghunta out of Survey No.567 (total 00-39 Ghunta), situated in Deh 108, Taluka Hussain Bux Mari, District Mirpurkhas

² Chronological Statement of Facts dated 05.9.2024

³ submitted by the Respondent No.3 (Deputy Commissioner, Mirpurkhas), in compliance of Order dated 23.4.2025

3. The Respondent No.9 submitted a report⁴, stating that sufficient government land exists for future expansion and that the Petitioners' land has remained unused since the road's inception. He further stated that compensation is not warranted under the prevailing statutory framework. However, Respondent No.9 made a significant concession: that the Petitioners may continue to use the subject land for cultivation purposes, and that no objection would be raised. He further clarified that if the Petitioners intend to construct any permanent structure, they must obtain prior consent/NOC from the Competent Authority under Section 8 of the Highway Ordinance, 1959 and Standing Order No.4 (Section-A) of the Revenue Department.

4. Heard. Perused the record. For a just resolution of the controversy, it is imperative to advert to Section 8, *ibid*, reproduced hereinbelow:

“Section 8 (1) As respects all highways which on or after the date of the coming into operation of this Ordinance are maintained by the Provincial Public Works Department or are provincial property maintained by local bodies, the following restrictions shall apply, that is to say, it shall not be lawful without the consent of the Highway Authority: -

- (a) to construct or layout any means of access to or from the highway,*
- (b) to erect any building upon land within two hundred and twenty feet from the middle of the highway.*
- (2) No restriction in force under the last precedings sub-section shall apply in relation to-*
 - (a) any building which is used or intended to be used mainly or exclusively for purposes relating to cultivation of land adjacent there-to, otherwise than as a dwelling house;*
 - (b) any works begun before the date of the coming into operation of this Ordinance or any works carried out in accordance with a permission granted by any competent authority before that date;*
 - (c) any highway in respect of which a building line has been determined in accordance with section 16.*

5. A bare reading of the above-quoted provision of Section 8 *ibid*, imposes two specific restrictions on land situated within two hundred and twenty feet from the middle of a highway maintained by the Provincial Public Works Department or local bodies: Clause (a): Prohibits construction or layout of any means of access to or from the highway without the consent of the Highway Authority. Clause (b): Prohibits erection of any building within

⁴ Clarification report dated 02.7.2025 & 06.8.2025, in compliance with Order dated 21.5.2025

the specified distance without such consent. These restrictions are regulatory in nature and are designed to preserve the safety, serviceability, and structural integrity of highways. They do not extinguish proprietary rights or authorise the State to appropriate private land without acquisition.

6. Section 8(2) carves out express exceptions to the above restrictions. Notably: Clause (a): Exempts buildings used or intended to be used mainly or exclusively for purposes relating to cultivation of adjacent land, other than as a dwelling house. Clause (b): Exempts works begun before the Ordinance was executed or carried out without prior permission. Clause (c): Exempts highways where a building line has been determined under Section 16.

7. The Petitioners' land, as per the record and Respondent No.9's own submission, subject land is presently lying vacant and is not being used for any structural purpose. The Respondents have not objected to its use for cultivation. Therefore, under Section 8(2)(a), the Petitioners' use of the land for cultivation is expressly exempt from the restrictions imposed under Section 8(1). The requirement to obtain consent/NOC arises only if the Petitioners intend to erect a building or construct access to the highway. Such regulatory oversight is constitutionally permissible and does not amount to deprivation of property.

8. Article 23 of the Constitution of Pakistan guarantees every citizen the right to acquire, hold, and dispose of property in any part of Pakistan, subject to reasonable restrictions imposed by law in the public interest. Likewise, Article 24(1) provides that no person shall be deprived of his property save in accordance with law. Clause (2) mandates that no property shall be compulsorily acquired or taken possession of save for a public purpose, by authority of law, and with provision for compensation.

9. The restrictions under Section 8(1), when read with the exemptions under Section 8(2), constitute a reasonable regulatory framework to safeguard public infrastructure. They do not violate Article 23, as they do not prohibit ownership or agricultural use. Likewise, the requirement to obtain NOC for construction does not amount to deprivation under Article 24. It is a procedural safeguard to ensure that any development near highways complies with safety and planning standards.

10. The Petitioners' right to use their land for agricultural purposes remains protected under Article 23. The Respondents' concession that no objection shall be raised to such use affirms that the land has not been formally acquired or vested in the State.

11. In view of the foregoing, we are of the considered view that:

- i. The Petitioners retain ownership and possessory rights over the subject land presently vacant and unused by the State.
- ii. The Petitioners may lawfully continue to use the subject land for agricultural purposes, as such use is expressly exempted under Section 8(2)(a) of the Highway Ordinance, 1959.
- iii. In case the Petitioners intend to construct any permanent structure or layout access to the highway, they shall be required to obtain prior consent/NOC from the Competent Authority, in accordance with Section 8(1) of the Highway Ordinance, 1959 and Standing Order No.4 (Section-A) of the Revenue Department.
- iv. The requirement of NOC is a constitutionally valid regulatory restriction and does not violate Articles 23 or 24 of the Constitution.
- v. No acquisition proceedings have been initiated, and this Court, in exercise of constitutional jurisdiction, cannot compel the executive to acquire the land or award compensation.

12. The Constitution does not countenance arbitrary deprivation of property. However, it permits reasonable regulation in the public interest. The Petitioners' grievance, while rooted in administrative ambiguity, does not warrant coercive directions under Article 199. Nonetheless, their right to use the land for agricultural purposes stands affirmed, and any intended construction must comply with statutory requirements.

13. The petition is **disposed of** in the terms stated above.

JUDGE

JUDGE

AHSAN K. ABRO