

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

**Before:  
Mr. Justice Muhammad Saleem Jessar  
Mr. Justice Omer Sial**

**C.P. No.D- 1410 of 2017**

Pir Abdul Latif Jan & others .....	Petitioners
Versus	
P.T.C.L. and others .....	Respondents

M/s. Noorul Haq Qureshi and Rasool Bux @ R.B. Solangi, advocates for the petitioners along with petitioners.

Mr. Altamash Faisal Arab, advocate for respondent No.1 along with Abdul Shaffaque, SBM, PTCL, Raja Arslan, Assistant Manager, Legal, PTCL and Rana Mehram Akram, Assistant Manager, Legal, PTCL.

Mr. Ashfaque Nabi Qazi, Assistant Attorney General for Pakistan.

Mr. Rafique Ahmed Dahri, Asst. A.G. Sindh along with Aftab Ali Bozdar, Assistant Commissioner, Tando Muhammad Khan.

Date of hearing : 16<sup>th</sup> March, 2022.

Date of Judgment : 06<sup>th</sup> April, 2022.

**JUDGMENT**

**Muhammad Saleem Jessar, J.-** The petitioners, through instant petition, have sought following prayers from this Court:-

- a. *“Direct the Respondent No. 1 to compensate the Petitioners for the excess area of 7200 Sq Ft. & pay such amount to the petitioners at the existing market price of the properties.*
- b. *Direct the Respondent No. 1 & 4 to pay the amount of RS:30.00 million as required by the section 6(1) of the Land Acquisition Act, 1894 & the Respondent No. 2 & 3 may be directed to initiate further proceedings under the provisions of Land Acquisition Act 1894 as soon the compliance of section 6*

*(1) is made to them & complete it within a stipulated time under intimation to this Honourable Court.*

- c. Direct the Respondent No. 1 to pay the rent/ lease money for having possession, enjoyment & business at the properties of the Petitioners since from 1964.*
- d. Direct the Respondent No. 1 to compensate the Petitioners for the area of 15360 Sq Ft. & pay such amount to the petitioners at the existing market price of the properties.*
- e. Cost of the Petition may be saddled upon the Respondents.*
- f. Award any other relief(s) which this Honorable Court deems fit, just and proper in favor of the petitioners.”*

2. The facts of the case, as narrated in the memo of petition, are that the Petitioners are owners of the immovable properties to their respective shares from old Revenue Survey Numbers 40 and 41 of Deh & Taluka Tando Muhammad Khan. These survey numbers, after converting into Sikni Land, were re-numbered as City Survey Numbers 1841/5, 1841/6, 1841/65, 1841/66, 1841/71, 1841/72 others. The above properties of the Petitioners are in illegal possession of the Respondent No. 1 since 1964, without any consent, lawful permission and wish of the Petitioners, to which the Petitioners resisted, but to no avail. For such reason, the Petitioners cannot get their right for the last 54 years. The Petitioners have made such complaints time to time before different forums, but the Respondent No. 1 is not ready to compensate the Petitioners with due course of law and it intends to remain in illegal and cost free possession of the properties of the Petitioners. On the application of the Petitioner No. 1, the Respondent No. 3 (Previously DDO Revenue & Land Acquisition Officer) had issued a 'Rubkari' to the Petitioner No.1, that though the Respondent No. 1 had acquired the properties of the Petitioners since from 1964 but after passing of such a long period, the Respondent No. 3 is not in position to pass any award of compensation under the provisions of Land Acquisition Laws. Petitioner No. 1 finding no other way moved an application to Honourable Supreme Court of Pakistan containing the detailed facts with the prayer that the Respondent No. 1 may be directed to compensate the Petitioners at the market value of the acquired properties and to pay rent for having possession since 1964 or

otherwise may be directed to vacate the properties. The Director, HR, called report from the respondent No.2 and the matter proceeded for final disposal as per law. After notifying the HRC No.49552-S of 2011 before Hon'ble Supreme Court of Pakistan, the Respondent No. 2 invited the parties for initiating land acquisition proceedings afresh at the existing value of the properties and to compensate the Petitioners as per law. Respondent No. 1, being aggrieved by that order filed an appeal before the Additional Commissioner-1, Hyderabad Division, Hyderabad, who after hearing the parties at length passed an illegal order to the effect that he has divided the properties in possession of the Respondent No. 1 into two parts. In first part, he has alleged that in the years 1964 and 1974 the properties were acquired by the Respondent No. 1 but such compensation was not received by the Petitioners. At one hand, it is alleged that, such compensation was to be paid due to private negotiations between the Petitioners and the Respondent No. 1, on other hand, it is alleged in the Para No. 8 of the order that an award was passed by respondent No.3. Such record in original must be available with the office of the Respondent No. 3. The property discussed in the second part is that, which is in the possession of the Respondent No. 1, but same is in excess of the property discussed in the first part and for which no Land Acquisition Proceedings have been initiated since beginning, the Petitioners are entitled for its compensation. As per the orders of Additional Commissioner - Hyderabad Division, Hyderabad the demarcation and measurement was carried out at the spot in presence of the Parties and it comes in the picture that the Respondent No. 1 is in possession of an area of 22560 Sq. Ft. from the properties of the Petitioners and out of said area, an area of 7200 Sq. Ft. is in excess to the Respondent No. 1 without having any legal right. In fact the Petitioners are not compensated for a single inch either from the area of 15360 Sq. Ft. of already acquired land or from the area of 7200 Sq. Ft. in excess to that area. As per the section 6(1) of Land Acquisition Act, 1894, the acquiring agency has to pay the amount to be compensated to the acquiring agent in first instance and then the proceedings be initiated, for which applications were made to the Respondent No. 2. Several reminders were issued to the respondent No.2, Deputy Secretary (LU), Board of Revenue and also to the Respondent No.4, but till yet no step has been taken towards the

positive solution of the dispute. Respondent No. 1 deliberately and willfully wants to usurp the properties of the Petitioners, and dragged the innocent Petitioners for 54 years and yet has not given the right of the Petitioners to them. Respondent No. 2 in his letter addressed to the Respondent No. 4 has clearly stated that an amount of RS:30.00 million is required to be deposited with him, so that further proceedings may be initiated, but the Respondent No. 1 and 4 had not paid any heed to that. The Petitioners had given their lives and are passing the hard period of their age, Respondent No. 1 no doubt is a trespasser and had illegally occupied the properties of the Petitioners; in fact, it has no right over the properties of the Petitioners. In the circumstances fundamental rights of the Petitioners have been denied to them and are to be treated in accordance with law, which have seriously been infringed and he is hankering and hovering for justice and their all out efforts in this regard have proved voice in wilderness and hence finding no other efficacious and alternate remedy have approached this Court by filing instant Constitutional Petition.

3. Learned counsel for the petitioners filed written synopsis of his arguments and we feel it expedient to produce the same herein in *extenso* as under:

“That the crux of the petitioner's case is that the Petitioners owned property bearing old revenue survey numbers 40 and 41 (now city Surveyed). Out of these survey numbers land was occupied by the PTCL to the extent of area admeasuring about 22560 Sq. Ft. Against the area they are claiming their right through a lawful procedure of Land Acquisition Act 1894 but the Petitioners have never received a single penny on account of Compensation of their owned properties from PTCL. Though the PTCL through its parawise reply filed in the month of March 2020 had alleged in para No. 6 (Page No. 6 of parawise reply) that cheque of compensation was paid by them, but neither the amount of cheque is disclosed nor any other details are appended with the written reply. Surprisingly, when the counsel representing the PTCL is arguing his case on dated 16-03-2022, has frankly admitted that the Petitioners are not paid for any area under the possession of PTCL i.e.22560 Sq. Ft. in all. That there is material conflict between the written reply filed by the PTCL in the March 2020 & the written synopsis filed on 02-03-2022. By the first version, PTCL has admitted its occupation upon total area of 22560 Sq. Ft. out of the same they claimed that Petitioners are compensated for the 15360 Sq. Ft. area, whereas the area of 7200 Sq Ft requires fresh land acquisition proceedings, which were initiated in the year 2013, (Kind attention is invited to the para No. 12 of PTCL reply). In the second version through

their MA No.2713 of 2022 they are reluctant to initiate and acquisition proceedings and have shown their willingness to surrender the excess area in its possession to the Petitioner. (Kind attention is invited to paragraph No. 7 of MA No. 2713 of 2022). That the properties of the Petitioners are in illegal possession of the PTCL since from 1964, without any consent, lawful permission and wish of the petitioners, to which the petitioner resisted to their level best but they are nothing to the approach, status and high handedness of the Respondent No. 1, so for the reason the Petitioners cannot get their right for 58 years. That Petitioners have made such complaints time to time before the deputy commissioner, land acquisition officer & other forums but the PTCL is not ready to compensate the Petitioner with due course of law and it intends to remain in illegal & cost free possession of the properties of the Petitioners. On one application of the Petitioner No. 1 to The Respondent No. 3 (Previously DDO Revenue & Land Acquisition Officer) had issued a Rubkari to the Petitioner No. 1, that though the PTCL had acquired the properties of the Petitioners since from 1964 but after passing such a period the Respondent No. 3 is not in position to pass any award of compensation under the provisions of Land Acquisition Laws. (Kind attention is invited to the annexure C page No. 31 of Memo of Petition). That through the MA No. 2713 the counsel for the PTCL is repeatedly alleging that the Petitioners were not vigilant & they didn't claim any compensation till the year 2011 and at once they moved an application direct to Honourable Supreme Court. It may kindly be appreciated that, this was not the Petitioners who remain indolent, they were crying since 1964 but this occasion comes for the first time, when any application of the Petitioners was heard, resulting in that the Director, HRC, Honorable Supreme Court of Pakistan has been pleased to call report from the Respondent No. 2 and the matter of the Petitioners, was proceeded for final disposal as per law till the hearings before your lordships 02.03.2022 & 16.03.2022. The Application dated 16-02-202 contains all the details as to how the petitioners remained vigilant for their lawful right but unfortunately they were never heard before. (Kind attention is invited to annexure D & E of the memo of Petition, page No. 33 to 39). That after notifying the HRC NO: 49552-S of 2011 before Hon'ble Supreme Court of Pakistan, the Respondent No. 2 invited the parties for hearing had directed the Respondent NO: 3/L.A. O to initiate Land Acquisition Proceedings afresh with the existing market value of the properties and to compensate the Petitioners as per law. That the Respondent No. 1, being aggrieved by that order dated 03-06-2013, addressed to the LAO has filed an appeal before the Additional Commissioner-1, Hyderabad Division, Hyderabad, who after hearing the parties at length has passed an order to the effect that he has divided the properties in possession of the Respondent NO: 1 into Two parts. In first part he has alleged that in the year 1964 and 1974 the properties were acquired by the Respondent No. 1 but such compensation was not received by the Petitioners. At one hand it is alleged that, such compensation was to be paid due to private negotiations between the Petitioners and the Respondent No. 1, and, on other hand it is alleged in the Para NO: 8 of the order that an award was passed by Respondent NO: 3. (Kind attention is invited towards page NO: 41 to 51 of Memo of Petition). That Mr. DM Luhano, learned

counsel for the PTCL, during proceedings of above appeal had admitted that the Petitioners had not received the amount and has been making continuous applications for payment of compensation mount and lastly a complaint was forwarded to Honourable Supreme Court of Pakistan (Kind attention is invited to the page No: 43 of Memo of Petition, page NO: 2 of Order Dated 20-08-2014, line NO: 8 form top). PTCL is now returned from this fact & alleged that the Petitioners were indolent for their claim. That the property discussed in the second part of the order dated 20-04-2014 is that, which is in the possession of the PTCL but same is in excess of the property discussed in the first part and for which no any Land Acquisition Proceedings has been initiated since beginning, the Petitioners are entitled for its compensation. That as per the orders of Additional Commissioner-I Hyderabad Division, Hyderabad, the demarcation and measurement was carried out in presence of the Parties and it comes in the picture that the PTCL is in possession of an area of 22560 Sq Ft from the properties of petitioner and out of said area, an area of 7200 Sq. Ft. is in excess to the PTCL without having any legal right. Since the Petitioners are not compensated for a single inch either from the area of 15360 Sq Ft of already acquired or from the area of 7200 Sq. Ft. in excess to that area. The Petitioners had never been compensated for their properties at all. That as per the section 6 (1) of Land Acquisition Act 1894 the acquiring agency has to pay the amount to be compensated to land owners in first instance and only then the proceedings can be initiated for land acquisition, for which the Applications were made to the Respondent No. 2, and several reminders were issued to the Deputy Secretary (LU), Board of Revenue so also to the Respondent No. 4 but yet no funds have been placed by the PTCL. That PTCL deliberately and willfully wants to usurp the properties of the Petitioner and dragged them for 58 years and yet has not given the right of the Petitioners to them. Respondent No. 2 in his letter addressed to the Respondent No. 4 has clearly stated that an amount of RS: 30.00 million is required to be deposited with him so that further proceedings may be initiated but the PTCL had not paid any heed to that. (Kind attention is invited to the page NO: 53 & 55 of the Memo of Petition) That the Petitioners had given their lives and are passing hard period of their age, PTCL no doubt is a trespasser and had illegally occupied the properties of the Petitioners; in fact it has no right over the properties of the Petitioners. Same may kindly be ordered to be vacated with appropriate orders of compensation and rent.”

4. Learned counsel for respondent No.1 gave a brief resume about the respondent No.1 and its creation as well as its assets and liabilities by referring to Pakistan Telecommunication Act, 1991 (“**the Act of 1991**”) as well as Pakistan Telecommunication (Re-organization) Act, 1996 (“**the Act of 1996**”) and more specifically section 35 of the Act of 1996 to argue that when the land of the petitioner was allegedly acquired in the year 1964 or even in 1974, PTCL was not in existence.

He submitted that after promulgation of the above two Acts i.e. Act of 1991 and Act of 1996, the Federal Government, in exercise of powers conferred under section 35 of the Act of 1996, issued a statutory notification being SRO 115(I)/96 dated 7<sup>th</sup> February, 1996, whereby all the assets were transferred from the Corporation to PTCL. This SRO was further amended by another SRO being No.430(I)/2004 dated June 7, 2004, whereby para 16 was added to earlier SRO No.115(I)/96 which reads as under:

“Subject to the of provision of sub-section (5) and (9) of section 35 of Pakistan Telecommunication (Re-organization) Act, 1996 (Act XVII of 1996), the land assets transferred from Post & Telegraph Department (P&T), Telephone & Telegraph Department (T&T), Pakistan Telecommunication Corporation (PTC) and the land assets whose titles are in the name of Federal or Provincial Government, or any other state or private organization or private individuals, acquired or purchased by or allotted, donated or gifted to the erstwhile P&T, T&T and PTC and which now vest in the Pakistan Telecommunication Company Limited (PTCL) (as specified in schedule IV), shall be free from any charge, burden, hypothecation or encumbrances and no stamp duty or transfer charges shall be payable under any law in relation to the transfer or vesting of the property of the PTCL. Any property which is not included in schedule IV but vest in PTCL shall be treated in like manner as described herein above;”

5. Learned counsel for respondent No.1 also submitted that land at Tando Muhammad Khan from Survey Nos. 40 and 41 of Deh and Taluka was acquired in the year 1964 for the purpose of construction of Telephone Exchange, Tando Muhammad Khan. Thereafter, additional land measuring 4560 sq. ft. was acquired in the year 1974 for extension of the building of respondent No.1. Per learned counsel, on both the above occasion, land was acquired in accordance with the provisions of Land Acquisition Act, 1894. Learned counsel for respondent No.1 also raised objection as to the maintainability of the instant petition as, relying on the case reported as **Dilawar Hussain v. Government of Sindh** (PLD 2016 SC 514), as, according to the learned counsel, the same was hit by laches as the land owners kept silent and slept over their rights for over 14 (fourteen) years without any explanation.

6. From the perusal of the respective pleadings / arguments of the parties, it transpires that it is an admitted fact that the land of the petitioner was acquired somewhere in the years 1964 and 1974. It has also come on record that notification under section 4 of the Land

Acquisition Act was issued followed by declaration under section 6 of the above Act and after fulfilling all the requirements of the law, Award was once pronounced in the year 1964 and then the second award was pronounced in the year 1974. The respondent No.1 has also stated in its reply that proceedings for the additional land were initiated in the year 2013 and the amount in respect thereof was also deposited with respondent No.4. However, it has not been shown that the petitioners were paid their compensation.

7. We are mindful of the fact that in view of the authoritative pronouncement by the Hon'ble Supreme Court in the case of **Dilawar Hussain v. Government of Sindh** (PLD 2016 SC 514), this Court cannot entertain any proceedings in respect of the land acquired in the year 1964 and 1974 as the same would be hit by laches. Under Article 189 of the Constitution of Islamic Republic of Pakistan, all the Courts in the Country are bound to follow the dictum laid down by the Hon'ble Supreme Court. However, it seems that the Human Rights Cell of the Hon'ble Supreme Court of Pakistan itself entertained the application of the petitioner and directed the concerned authorities to look into the matter. Accordingly, Additional Deputy Commissioner-I, Tando Muhammad Khan, vide his letter dated 03.06.2013 addressed to Assistant Commissioner / Land Acquisition Officer, Tando Muhammad Khan issued the following direction:

“In the result, I, refer the matter to the Assistant Commissioner, T.M. Khan for initiation of the Land Acquisition proceedings afresh which will no doubt provide payment to the owners in accordance with the existing market rate of the land. Relevant R&P in Pages (182) is sent herewith for prompt action, under intimation to this office.”

8. It seems that respondent No.1, feeling aggrieved by the above directions, challenged the above letter, treating it as an order, by filing an appeal under section 161 of the Sindh Land Revenue Act, 1967. The said appeal was heard by Additional Commissioner-I, Hyderabad Division, which was decided in the following manner vide order dated 20.08.2014:

“In view of the above foregoing, it appears that land was acquired by PTCL in the year 1964 and 1974 from S.No.40 and S. No.41 through



private negotiations and utilized by the PTCL. According to the respondent, there still remains some area in excess out of S.No.40 and 41 in possession of PTCL for which compensation have not been paid to the respondent as per his due share, since the acquisition cannot be re-initiated for the same piece of land, therefore passing of any award for the used and acquired land simply does not arise, as far as excess area as claimed by the respondent is concerned, if any, necessary proceedings may be initiated in accordance with the provision of Land Acquisition Act, 1894.

The excess area, which, if proved, after carrying out fresh demarcation of the involved S.Nos, under direct supervision of the Land Acquisition Officer, the property of Pir Abdul Latif Jan Sarhandi S/o. Pir Muhammad Umer Jan Sarhandi, and others in excess of already acquired area, in possession with PTCL authority for which neither land acquisition proceedings were initiated nor any award under section 11 of the Land Acquisition Act, was passed by Land Acquisition Officer, the necessary acquisition proceedings under Land Acquisition Act, 1894, may be initiated so that the respondent No.1 whose shared area other than already acquired, if after determination found to be in excess and in possession of PTCL should get the compensation only to the extent of excess area which is to be ascertained by the Assistant Commissioner and the Land Acquisition Officer, after carrying out demarcation and also verifying and scrutinizing the record of rights to know the actual record position of the Khatedars in accordance with Land Acquisition Act 1894 and the instructions, guide lines and pronouncements of the Superior Courts incorporated in the Land Acquisition Act, (1 of 1894) published with the permission of Government of Sindh in November, 2013 AD, and all other available relevant authorities and pronouncement of Superior Courts to meet the end of justice.”

9. Apart from above, in the comments of respondent No.3, the following relevant comments have been made:

(in reply to para 3)

“Admitted that the land is owned by the petitioner, further submitted that as per order of Additional Commissioner-I, Hydeabad Division, Hyderabad, an area of 15360 Sq. Ft. for which award was passed already and there remaining 7200 Sq. Ft. after re-measurement for which **land acquisition proceedings are required.**”

(in reply to para 10)

“It is not correct. The factual facts are that the Additional Commissioner-I Hyderabad Division, Hyderabad has passed order dated 20.8.2014, in which directed that the PTCL in the year 1964 and 1974, land acquired from S# 40 and 41 and utilized the same by PTCL. He has further ordered that excess area claimed by the petitioner if any, necessary proceeding may be initiated under Land Acquisition Act, 1894.”

(in reply to para 13)

“The Additional Commissioner-I, Hyderabad in his order dated 20.8.2014 has indicated that the land acquired by PTCL in year 1964 and 1974 by private negotiation and only compensation for excess area have not been paid.”

10. In para-5 of the Parawise Reply filed by the respondent No.1, it is stated that Notice under section 12(2) of the Land Acquisition Act was issued and served upon the petitioners whereby the petitioners were directed by the Land Acquisition Officer / Assistant Commissioner, Tando Muhammad Khan that only 1200 sq. yards out of R.S. No. 40 have been acquired for which the petitioner were awarded Rs.60.42 as amount of compensation but the petitioners did not appear before the Land Acquisition Officer for collecting the awarded amount of compensation. In our opinion, this refusal by the petitioners should have been treated as an application under section 18 of the Land Acquisition Act and therefore, the Land Acquisition Officer was required to refer the matter to the referee court for determination. It seems that all the discrepancies in this case have cropped up due to non-referral of the matter to the referee court. There is nothing on record to show and prove that any amount of compensation was ever paid to the petitioners in respect of the land acquired for PTCL. Once the petitioners refused to collect their compensation amount in respect of the acquired land, the Collector should have deemed the same to be refusal of the petitioners to accept the award and consequently it was incumbent upon the Collector to have referred the dispute to the referee court for a decision on merits. It was not appropriate for the Collector to sit over the award or keep it under his table without trying to culminate the matter to its logical conclusion. Once the matter was referred to the referee court the matter would have been thrashed and reached its logical conclusion. Then the matter would have attained finality.

11. Now, as per the averments of the opposing parties, it is an admitted position that the acquired land is already in use of the PTCL / respondent No.1, however, the petitioners vehemently deny having received any compensation for the land acquired by the Land Acquisition Officer and we have also noted that there is no proof on record to show that any compensation was ever paid to the petitioners in respect of the acquired land which without any doubt belonged to them.

12. The result of the above discussion is that we are of the considered opinion that the first award passed by the Collector was not accepted by the petitioners, therefore, it was incumbent upon the Collector to have sent the reference to the referee court for decision of the issues, instead he kept it under his table and therefore, the petitioners were not compensated. Hence, the Collector is directed to submit the reference to the referee court within 15 days time positively. Since the matter is very old, therefore, the referee court is directed to ensure that a decision on the reference is made as soon as possible but not later than six months from the date of receipt of the reference. In the meanwhile, the respondent No.1 is directed to deposit Rs.50 million with the referee court within two months from the date of receipt of a copy of this judgment.

13. So far as the excess land in possession of the respondent No.1 is concerned, as is evident from the report furnished by Assistant Commissioner, the collector is directed to initiate fresh proceedings in terms of the provisions of the Land Acquisition Act by issuing a notification u/s 4 and then a declaration under section 6 of the Land Acquisition Act and then proceed in accordance with the law and to announce the award in respect of excess land being occupied by the PTCL strictly within the terms of the dictum laid down by this Court in the case of LAND ACQUISITION COLLECTOR/ OFFICER PAK-ARAB REFINERY LTD. (PARCO), SHIKARPUR and another Vs. YASEEN KHAN and another (P L D 2008 Karachi 297) and to include all the heads of accounts as mentioned in the various provisions of Land Acquisition Act and discussed in the above judgment. However, interim order dated 02.3.2022 shall remain in field till the Land Acquisition Collector may make compliance of afore-said directions. Once the Land

Acquisition Collector submits reference under Section 18 of the Act before Referee Court and fresh land acquisition proceedings are initiated in respect of excessive-cum-remaining land/area of the petitioners being used and occupied by the respondents/PTCL, the Land Acquisition Collector shall submit such report before this Court through Additional Registrar.

14. Before parting with the judgment we would like to issue a caution that the referee court should decide the reference strictly in accordance with law and without being influenced by any of our observations made hereinabove in this judgment.

15. Accordingly, this petition is allowed in the above terms with no order as to costs.

Hyderabad, 6<sup>th</sup> April, 2022.

Judge

Judge