

IN THE HIGH COURT OF SINDH HYDERABAD
CIRCUIT.

C.P. No. D—3678 of 2017.

DATE	ORDERS WITH SIGNATURE OF JUDGE
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11.09.2017.

Before:

Mr. Justice Muhammad Shafi Siddiqui.

Mr. Justice Abdul Malik Gaddi.

FOR KATCHA PESHI.

Mr. Jhamat Jethanand, Advocate for the petitioners.

Mr. Allah Bachayo Soomro, A.A.G. Sindh.

Mr. Fazal Hussain Jamali, Assistant Attorney General.

Mr. Asim Iqbal, Advocate for respondents No.2 and 3 along with Mr. Abbass Raza, DGM (Land), SSGC, Mr. Arif Latif C.M. (Legal) SSGC Karachi and Mr. Masood Anwer Siddiqui, D.M. (Legal) SSGC Hyderabad.

ORDER

MUHAMMAD SHAFI SIDDIQUI, J.- Being aggrieved of the Notification dated 27.06.2016 under section 4 of Land Acquisition Act 1894, annexure 'E' issued by respondent No.3 being without lawful authority, and respondent (SSGCL) being in unlawful occupation of the subject land in pursuance of the aforesaid notification, the petitioner filed this petition.

Brief facts are that petitioner claimed to be owner and in possession of agricultural land measuring 127-33 ½ acres in Deh Shah Bukhari Taluka Qassimabad, District Hyderabad. He claimed that he was raising cotton and rice crops etc at land in question and at the same time also stated that land at adjacent locality has the potential to fetch approximately twenty million per acre. The petitioner has, but without prejudice to the value, raised legal points touching the legality of gazette notification issued under section 4 of the Land Acquisition Act, 1894 and the action taken by the respondents by forcibly occupying the land in question in pursuance of the aforesaid notification.

That respondent No.2 is in process of laying 42” dia RLNG pipe on the land claimed to have been surveyed by their private contractor Yousuf Malik annexure ‘C/1’ & ‘C/2’ at page 41 to 59 i.e. Deputy General Manager of respondent No.2 vide its letter dated 2nd March 2016, and requested the Deputy Commissioner for issuance of the notification under section 4 of the Land Acquisition Act annexure ‘D’ at page 61 to 69. In view of such desire of respondent No.2, the Chief Secretary of the Government of Sindh issued a Notification dated 21.4.2016 assigning additional charge of post of Land Acquisition Collector for respondent No.2.

The impugned Notification was issued on 27.6.2016 under section 4 of the Land Acquisition Act annexure ‘E’ at page 71 to 73. That somewhere in August, 2016, the respondent No.2 brought the infrastructure including the required pipes of the specification as mentioned above through crane and dumped the material throughout the length of the petitioner’s land as claimed. Petitioner claimed that this act has not only destroyed the standing crops over an area of 100 acres but the permanent trees were also damaged. Thus on representation of petitioner and other Khatedars it claimed that Assistant Commissioner Qassimabad, required respondent No.2 to stop work and approach competent authority for acquisition vide their letters available as annexures ‘F/1’ to ‘F/3’ at page 75 to 79, but they paid no attention. Consequently the petitioner filed this petition and on 29.12.2016, notices were issued along with injunctive order for maintaining status quo.

On service of notices and summons the comments were filed along with an application under order 39 Rule 4. It is contended that the petition was filed with malafide intention and that material facts were suppressed. It is claimed by the respondent No.2 that the acquisition of the petitioner’s land was only to the extent of 2.24 acres on permanent and 2.24 acres on temporary basis and the market value was assessed to Rs.3 to 3.5 million per acre. He submits that this petition is essentially against the work of public importance and hence not maintainable and has further raised

disputed questions of facts. It is claimed that the brother of the petitioner is an influential person and is abusing the authority despite having remedies under section 5-A, 6, 17 and 18 of the Land Acquisition Act. It is contended by the respondents that under the directives of the concerned Ministry the respondent No.2 has plan to lay 42" X 338 Kms RLNG gas pipeline from Main Value Assembly (MVA) Malir to Repeater Station (RS) Nara District Khairpur to transmit 1.2 BCFD RLNG volume at the cost of Rs.48 billion obtained by respondent No.2 from commercial scheduled bank. It is further urged that the Commissioner did not issue the notification hence the notification by respondent No.3, after his appointment was legal. They have further contended that the since other Khatedars have accepted the payment therefore, the laying of pipeline at their respective lands were completed and only a distance of 1727 running meters including the land of the petitioner is left.

The Chief Secretary has also filed a statement along with certain reports and documents which is part of record. Assistant Attorney General has also adopted the arguments of Mr. Asim Iqbal and the Mr. Soomro, Additional A.G. Sindh has adopted the arguments of Mr. Jhamat Jethanand and has relied upon PLD 2007 Karachi 330.

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

After hearing the counsels at length it seems that there are some material legal questions arising out of the mechanism of acquiring land in terms of Sections 3 to 17 of the Land Acquisition Act, 1894. The points require consideration are as under:-

- (1) Whether the notification under section 4 annexure 'E' is issued by competent authority and is legal and proper?
- (2) Whether the survey of petitioner's land annexure 'C/1' and 'C/2' is lawful.

(3) Whether the land acquisition proceedings are completed and respondent No.2 has authority to occupy and lay the pipeline over the land of the petitioner?

(4) Whether the respondent No.2 has damaged the petitioner's land and crop and is liable to receive compensation?

The impugned notification under section 4 of the Land Acquisition Act, 1894 read as under:-

THE LAND ACQUISITION COLLECTOR
SUI SOUTHERN GAS COMPANY LIMITED
Land & Estate Management Department

NOTIFICATION UNDER SECTION 4
OF THE LAND ACQUISITION ACT, 1894

No. L&EM/LAC/267-284 of 2016 Karachi dated 23rd June, 2016;

Whereas it appears to the Land Acquisition Collector, Sui Southern Gas Company Limited (SSGCL) Karachi that 20 feet wide strip of land is likely to be required to be taken by the Government at the public expenses for a construction of 42" Dia x 131 KM RLNG Pipeline Project in District Hyderabad to SSGCL's Headquarter-2, it is hereby notified that the land in the locality described below is likely to be required for the above purpose.

1. The Notification is made under the provisions of Section 4 of the Land Acquisition Act. 1894, to all whom, it may concern.
2. In exercise of the powers conferred by the aforesaid Section, the Land Acquisition Collector SSGCL Karachi is pleased to authorize the officers for the time being engaged in the undertaking with their servants and workmen to enter upon and survey any land in the locality and do all other acts required or permitted by that section.
3. Any person who has any objection to the acquisition of any land in the locality may, within thirty days of the publication of the Notification, file any objection in writing before the Land Acquisition Collector SSGCL Karachi.

Through this notification the Land Acquisition Collector SSGCL was pleased to authorize the officers for the time being engaged in the undertaking with their servants and workmen to enter upon and survey any land in the locality and do all other acts required or permitted by that section and the objections were also invited for its consideration by the Land Acquisition Collector SSGCL Karachi. When the notification is perused with section 4 of the Land Acquisition Act, it appears that it is the

“Collector of a District” who may cause to issue a gazette notification for any land in its locality if needed or likely to be needed for public purpose and thereafter it shall be lawful for any “officer either generally or specially authorized” by the Collector to do and perform act as required in terms of section 4 (2) of the Land Acquisition Act. Section 4 of Land Acquisition Act does not call or meant to for any objections for acquiring land in question. It is only the Collector of a District who may cause the issuance of the public notice for the land needed or likely to be needed for public purpose and not the specially appointed officer by the Board of Revenue. This is supported by the Section 38 of the Land Acquisition Act, whereby the Commissioner may authorize any officer of any company desiring to acquire land for its purpose to exercise the powers conferred by subsection (2) of section 4. In this regard a Notification was issued by Chief Secretary Sindh, for the appointment of Mr. Imtiaz Ahmed Mangi an officer of Ex-PCS (BS-17), Assistant Commissioner Kashmore, District Kashmore, at Kandhkot who was assigned additional charge of the post of Land Acquisition Collector for Sui Southern Gas Company Limited and Inter State Gas System. However, this notification doesn’t emphasize as to whether this Land Acquisition Collector is empowered in terms of Section 4(2) for the land situated beyond District Kashmore as well. The said Notification is available as annexure ‘R/3’ along with objections of respondent No.2. Even if it is meant for subject land it will trigger at 4(2) of Land Acquisition Act and once the notification is issued under section 4 (1) of ibid Act.

The close scrutiny and comparison of the two sections i.e. section 4 and section 38 of the Land Acquisition Act would reveal that it shall be lawful only for the Collector of a District to cause issuance of such notification under section 4 and in case the acquisition of land is for the company then the Commissioner may authorize any officer of any company desiring to acquire land for its purpose to exercise powers conferred by subsection (2) of section 4 i.e. it shall only be lawful for any

officer either generally or specially authorized by the Collector in this behalf and for his servant and workman to enter upon and survey and take levels of the land in such locality and to do all other acts necessary to ascertain whether the land is adopted for such purpose, to set boundaries and to mark levels and by cutting trenches. Section 38 make specific reliance on subsection (2) of section 4 i.e. once a requirement is completed under section 4(1) the following mandate under subsection (2) of section 4 shall be followed by the authorized officer of any company in terms of section 38 in case it is specially appointed for acquiring land for the company. However, such specially appointed officer cannot assume charge or perform role as required under subsection (1) of section 4. The impugned notification under section 4(1) of the Land Acquisition Act was issued by Land Acquisition Collector SSGCL which is not the spirit of law.

Definition 3(c) defines only "Collector" i.e. wherever the word Collector is used it means Collector of District and includes officer specially appointed by BOD, but where "Collector of District" specifically written it carries its own meaning otherwise legislature could have used the word Collector in Section 4(1) of Land Acquisition Act as has been used in 4(2) of ibid Act.

Collector= Collector of District + Officer specially appointed.

Apart from this, mere issuance of notification under section 4 of the Land Acquisition Act, would not empower the officer concerned to enter upon the land for taking possession and for dumping their goods on the land unless following provisions are exhausted.

In terms of Section 5 of the Land Acquisition Act a Notification is required that particular land is needed for public purpose for company.

A notification in terms of Section 5 shall be published in the official gazette stating the district and other territorial division in which the land is situated, the purpose for which it is needed, its approximate area and situation, and where a plan has been made of the land, the place where such plan may be inspected, and the Collector shall cause public notice to

be given of the substance of the notification at convenient place on or near the land to be acquired. The notification is required to be issued not later than one year from the date of publication of the notification under section 4 and in case of failure, the acquisition proceedings shall be deemed to have come to an end.

In terms of Section 5-A any person interested in any land which has been notified under section 5 as being needed for a public purpose or for a Company may, within thirty days after issue of the notification, object to the acquisition of the land or of any land in the locality, as the case may be. The objections are to be made to the Collector in writing which shall be disposed of by the Collector after hearing and if required after making further inquiry. He may forward his report for the decision of the Commissioner along with record. In case the land is needed for a Company the Collector in terms of subsection (3) of section 5-A after making such inquiries as he deems necessary also make his recommendation to the Commissioner with regard to the area that in his opinion is reasonable for the purpose. The report under subsection (2) and representation under subsection (3) of Section 5-A shall be forwarded to the Commissioner within a period of ninety days from the date of publication of notification under section 5 and the Commissioner shall within ninety days of the receipt of such report or recommendation announce the decision.

In terms of Section 6 of the Land Acquisition Act a declaration of the intend position is required.

In terms of Section 7 after such declaration in terms of Section 6, the Collector may take order for acquisition of the land. Section 8 then made it lawful for the Collector to mark the land and causes it to be measured. The Collector shall then cause public notice in terms of Section 9 to be given at convenient places on or near the land to be taken stating that the Government intends to take possession of the land and that claims to compensation for all interests in such land may be made to him.

Section 11 & 12 pertains to the enquiry and issuance of "Award" whether or not the interested parties appeared before the Collector or not, of the true area and value of the land.

Section 16 would then be triggered which enable the Collector after making an Award under section 11 & 12 to take possession of the land which shall thereupon vest absolutely in the Government, free from all encumbrances.

This hierarchy and/or procedure could only be bypassed in terms of Section 17 of the Land Acquisition Act in case of urgency. Whenever the Commissioner so directs, the Collector, though no such award has been made, may, on the expiration of fifteen days from publication of notice mentioned in subsection (1) of Section 9, take possession of any land needed for public purposes or for a Company. Such land shall thereupon vest absolutely in the Government, free from all encumbrances. In terms of subsection (4) of Section 17 whereby in the opinion of the Commissioner the provision of subsection (1) or subsection (2) are applicable, the Commissioner may direct that the provisions of sections 5 and 5-A shall not apply, and if he so direct, declaration may be made under section 6 in respect of the land at any time after publication of the notification under subsection (1) of section 4.

Neither section 5 to 12 of the Land Acquisition Act, were followed nor these provisions were bypassed in terms of section 17. Admittedly, after issuance of notification no steps have been taken and the possession of the land in the absence of such steps being taken would constitute trespass of the land.

It is a procedural defect which was not adhered to however, this may not curtail the rights of the respondents from proceeding further denovo in case they so desire and in case in the opinion of Commissioner a case of urgency is made out in case they opt to exhaust such remedy. However, the question of the issuance of notification under section 4 of the Land Acquisition Act, it is to be adhered strictly as required in terms of

section 4 and 38 of the Land Acquisition Act. Therefore, any further steps in pursuance of notification dated 27.06.2016 may again collapse since it is the Land Acquisition Collector of Sui Southern Gas company Limited causing issuance of notification for the land likely to be needed for the Company which is the mandate of Collector of a District and the role of the specially appointed officer by Collector would commence in terms of subsection (2) or section 4 and not before.

As to the maintainability of petition, an aggrieved person is entitled to maintain writ petition for the curtailment of his fundamental rights which in this case is established as his land was taken away and trespassed and secondly the jurisdiction that vest with the Collector of district which was not exercised by him.

In the case of **DILSHAD and 2 others v. SENIOR SUPERINTENDENT OF POLICE** reported in PLD 2007 Karachi 330 the land acquisition proceedings were challenged on the of the rejection and non issuance of requisite notification which was held to be maintainable and not hit by provisions of section 18 of the Land Acquisition Act.

In the case of **Syed QAISER HUSSAIN v. L.M.C.** reported in 1994 CLC 1471, the learned Division Bench in somehow identical facts observed as under:-

5. *No evidence was produced on record that after issuance of initial notification under section 4 of the Land Acquisition Act, any declaration was made as required under section 6 of the said Act and any notice was issued as required by section 9 thereof and the Collector made any award determining the compensation to be awarded to the appellants i.e. the owners of the land and that the possession was taken over thereafter under section 16 of the said Act, as such, the trial Court acted on absolutely erroneous assumption as by mere issuance of notification under section 4 of the Act, the process of acquisition of land permanently had been completed and the appellants were divested of their rights of*

ownership in the land and the respondent for whom the land was acquired had become its owner and could retain the possession thereof, as such., Since the Collector did not deliver any award regarding compensation to be paid to the owner, therefore, there was no question of making any reference through the Collector to the Civil Court at the instance of the owner of the land, as such, the view taken by the trial Court that the jurisdiction of the Civil Court in the matter was barred has no merits. The deposit of any amount by the respondent with the Commissioner before issuance of notification under section 4 of the Land Acquisition Act, could not in any manner be considered to be the compensation determined under the said Act for payment to the owner of the land which as observed above was to be determined by the Collector through an award. The said deposit also did not detract from the ownership rights of the appellants regarding the land in dispute.

6. *Under section 16 of the Land Acquisition Act, the ownership of the land was to vest in the respondent only after the possession of the same had been formally taken over after the announcement of the award by the Collector or if the possession of the same had been formally taken over under section 17 of the said Act. Since neither any award was delivered by the Collector nor possession of the land formally was taken over either under section 16 or 17 of the said Act, therefore, notification under section 4 did not have the effect of the extinguishment of the ownership rights of the appellants nor did it have the effect of creating rights in favour of the respondent nor a right to possess the same, as such, the appellants had a right to maintain the suit for the recovery of the possession of the land so long as he was the owner and also to claim compensation for use and occupation of the same till such time the possession of the same was taken over formally as observed above under the said provisions of the Act.*

The survey on the petitioner's land was conducted somewhere in March 2016, when even the impugned notification under section 4 of the Land Acquisition Act was not gazetted. Such exercise was not only futile but also amounts to trespassing the land of the petitioner and a petition would be maintainable on such counts.

In so far as the question of compensation is concerned we are afraid we cannot entertain such question as to the quantum in this writ jurisdiction which involve disputed questions of facts and if at all the petitioner is entitled to compensation, to what extent. Hence it cannot be ascertained under Article 199 of the Constitution of Islamic Republic of Pakistan. In case petitioner opts to avail any remedy for the recovery of such compensation, they may approach any relevant forum/court to avail such remedy and the forum/court may not be influenced by the rejection of such claim in the instant proceedings which shall be entertained and adjudicated on its own strength and merit.

These are the reasons for the short order announced on 11.09.2017.

Judge

Judge

A.