

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

PRESENT:

Mr. Justice Arshad Hussin Khan.

Mr. Justice Dr. Syed Fiaz ul Hassan Shah.

Constitutional Petition No.D-3678 of 2016

[Kashif Ali Shoro and another Vs. Province of Sindh & others]

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Constitutional Petition No.D-40 of 2018

[Haji & others Vs. Federation of Pakistan & others]

Mr. Parkash Kumar, Advocate for petitioners.

Barrister Ghazi Khan Khalil, Advocate for respondent No.2 in C.P. No.D-3678 of 2016 along-with Waseem Qazi D.M I/C Legal Services, SSGCL R.O Hyderabad.

Mr. Bashir Ahmed Almani, Assistant Attorney General for Pakistan.

Mr. Allah Bachayo Soomro, Additional Advocate General, Sindh along-with Mr. Zain-ul-Abedin Memon, Deputy Commissioner, Hyderabad and Hataf Siyal, Assistant Commissioner Qasimabad.

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Date of hearing : **20.05.2025**

Date of decision : **20.05.2025.**

ORDER

Dr. Syed Fiaz ul Hassan Shah, J: The identical question of law and question of facts are involved in the above-mentioned petitions,

hence these petitions are being decided through this common Order.

2. The petitioners have challenged the Notification dated 27.06.2016 purportedly issued under section 4 of the Land Acquisition Act, 1894 by the Land Acquisition Officer of the Respondent No.2 and it has been published in the Gazette by Province of Sindh.

3. The petitioners in C.P. No.D-3678 of 2016 claim to be the owner of the following agriculture land:

S.#	Name of plaintiff / owner	Survey numbers	Area in acres
1	Kashif Ali Shoro	441/3; 442/3,4; 443/2; 444; 445; 446/,2,2A,3;3A;457/2,3; 458/1to4;459/1to5;460/3; 461/1,2; 464/1to4; 465/1to4;	104-12 ½
2	Zain-ul-Abedin	227/2,3; 287; 291/A,B; 292/A,B; 293	23-21
		Total:	127-33½

4. Similarly, the petitioners in C.P. No. D-40 of 2018 claim to be the owners of land bearing Survey Nos. 425/1A, 1B, 2A, 2B, 3A, 3B, and 2-33 acres from 425/4, 443/1A, 1-23½ from 443/2, and 0-17 acres from 447/4 total admeasuring 20-13½ acres situated in Deh Shah Bukhari Taluka Qasimabad District Hyderabad.

5. The petitioners prayed as under:

- “(i) The notification dated 27.06.2016 U/S 4 Annexure-E having been issued by respondent No.3 without lawful authority is of no legal effect.
- (ii) That the acts of respondent No.2 of forcibly entering in the land of petitioners putting pipes for laying RLNG 42” Dia pipe line are illegal,

void, malafide and violative of fundamental rights of petitioners.

(iii) That respondent No.2 is liable to compensate the petitioners for damaging the standing Kharif 2016 crops and from preventing the petitioners from raising Rabi 2017 crops.”

6. The Respondent No.2 /SSGCL (a company registered under the Companies Ordinance, 1984) controlled by the Federal Government. Being federal entity, the Respondent No.2 has issued the impugned Notification dated 27.06.2016 to acquire the lands in question for performance of certain official work of public benefits and for the uninterrupted services of natural Gas to the consumers / citizens of Pakistan. The Respondent No.2 through his self-appointed Land Acquisition Officer resume the possession of land in question on the strength of Notification dated 27.06.2016 purportedly issued under section 4 of the Land Acquisition Act, 1894 which is impugned before us.

7. On the other hand, the Deputy Commissioner, Hyderabad present in person has filed his statement which is taken on record subject to all just legal exceptions. He has stated that Respondent No.2 has issued Notification No.L&EM/LAC/267-284 of 2016 dated 23.06.2016 through it's Legal Officer and also published gazette of Province of Sindh on 27.06.2016. He further stated that the then Assistant Commissioner, Kashmore / Land Acquisition Officer has also issued Notification under section 4 in favour of Respondent No.2 / SSGCL is contrary to law as such powers governs with the Collector of District / Deputy Commissioner concerned and it cannot

be utilized by any other person including the Assistant Commissioner or Land Acquisition Office of the Respondent No.2/SSGCL.

8. As per established statutory principles of the Land Acquisition Act, 1894, the competency to issue official notifications purportedly under section 4 or 6 is typically conferred upon the Collector of District explicitly designated by law. If a notification is not issued by the legally competent authority such as the Collector of the District in cases where the law mandates their involvement it may be challenged for jurisdictional overreach and procedural irregularity. The controversy in the present matter revolves around the authority of Respondent No.2 and its self-appointed Land Acquisition Officer who has issued the impugned notification.

9. It is a fundamental legal principle that official notifications must be issued by an authorized officer vested with the proper jurisdiction and competency under the Land Acquisition Act, 1894. Any notification issued by an unauthorized officer suffers from a legal defect, rendering it void and unenforceable. In the present matter, the Respondent No.2 / **SSGCL**, though acted and performed functions as the land acquiring agency, does not have the jurisdiction to independently act as the Land Acquisition Officer. The procedural authority remains with the District Collector, ensuring compliance with statutory requirements, fair compensation, and adherence to due process. Any unilateral action by an acquiring agency in assuming the role of the Land Acquisition Officer would constitute a legal irregularity and may lead to challenges regarding the legitimacy of the acquisition. The learned Counsel for the Respondent No.2 has not denied the position and he has requested

to appoint Deputy Commissioner / Collector of District to hold inquiry and pass award.

10. The petition was previously disposed of through an order dated **11.09.2017**, wherein the impugned **Notification was declared as non-gazetted**. Furthermore, the act of **Respondent No.2** was observed as **trespass on the land in question**, since neither the consent nor the permission of the petitioners was obtained, nor was the compensation amount settled mutually.

11. The said Order dated 11.09.2017 was impugned by the Respondent No.2 in Civil Petition No.616-K of 2017 before the Hon'ble Supreme Court of Pakistan and the Hon'ble Supreme Court of Pakistan vide Order dated 22.02.2018 has remanded the matter to this Court for deciding afresh.

12. The Constitution guarantees the fundamental rights of the citizens in Chapter 1 of Part II. Article 24 of the Constitution provides protection of property rights to every citizen, which reads as under:

“Article 24 of the Constitution of Pakistan, 1973.

(1) No person shall be deprived of his property save in accordance with law.

(2) No property shall be compulsorily acquired or taken possession of save for a public purpose, and save by the authority of law which provides for compensation therefore and either fixes the amount of compensation or specifies the principles on and the manner in which compensation is to be determined and given.

(3) Nothing in this Article shall affect the validity of—

- (a) any law permitting the compulsory acquisition or taking possession of any property for preventing danger to life, property or public health; or
- (b) any law permitting the taking over of any property which has been acquired by, or come into the possession of, any person by any unfair means, or in any manner, contrary to law; or
- (c) any law relating to the acquisition, administration or disposal of any property which is or is deemed to be enemy property or evacuee property under any law (not being property which has ceased to be evacuee property under any law); or
- (d) any law providing for the taking over of the management of any property by the State for a limited period, either in the public interest or in order to secure the proper management of the property, or for the benefit of its owner; or
- (e) any law providing for the acquisition of any class of property for the purpose of-
- (f) any existing law or any law made in pursuance of Article 253.
 - (i) providing education and medical aid to all or any specified class of citizens; or
 - (ii) providing housing and public facilities and services such as roads, water supply, sewerage, gas and electric power to all or any specified class of citizens; or

- (iii) providing maintenance to those who, on account of unemployment, sickness, infirmity or old age, are unable to maintain themselves; or
- (4) The adequacy or otherwise of any compensation provided for by any such law as is referred to in this Article, or determined in pursuance thereof, shall not be called in question in any court.”

13. Article 24 of the Constitution provides a **safeguard** for property rights, ensuring that no person shall be deprived of their property except in accordance with law. This fundamental protection serves as a cornerstone of individual ownership rights. Contemporaneously:

Under Sub-Article (2)

the **acquisition or possession** of any property is strictly limited to cases where (a) It serves a **public purpose**; and (2) It is carried out **under the authority of law**, which must provide for **fair compensation**. This clause prevents arbitrary deprivation of property, ensuring that acquisitions are lawful and justified.

Under Sub-Article (3)

While Article 24(1) guarantees protection of property rights, **Sub-Article (3)** introduces **specific exceptions** to the general rule. It grants

immunity to laws permitting compulsory acquisition or possession of property for certain designated purposes. However, since these exceptions **limit fundamental rights**, it must be strictly construed to prevent undue infringement of property protections.

14. The principle of **narrow interpretation** applies here—there is **no scope** for reading into the provision anything that **abridges or undermines** property rights. Courts adopt a **restrictive approach**, ensuring that the exceptions do not lead to **arbitrary or excessive acquisition** beyond the intended constitutional framework. Reliance in this regard is placed on the case of *“Hamza Rasheed Khan and another v. Election Appellate Tribunal, Lahore High Court, Lahore”, (PLD 2024 SC 256)*.

15. On the other hand, in the case *“Kareem Nawaz and 4 others Vs. District Collector / Deputy Commissioner Multan and 14 others” (PLD 2023 Lahore 1)*, the legality of the **Notification under Section 4** of the Land Acquisition Act, 1894 was challenged on the grounds that it was signed by a Group Captain, Director Revenue Record, Air Headquarters, Islamabad, which was considered an **abdication of duty** by the District Collector. Similarly, the **Notification under Section 17(4)** of the Act was alleged to have been issued under a dictated exercise of authority, with its signatories being the Base Commander of PAF Base and the Military Estate Officer, Multan Circle. The judgment held that **possession** of the land could only be taken after the publication of notices under Section 9 of the Act. While the court examined the

scope of Section 17(4) in light of the case circumstances, the provision itself was not declared ultra vires. Additionally, once land is acquired for a **public purpose**, judicial review interference is seen as an obstacle to the lawful execution of the acquisition process.

16. The doctrine of **reading down** is an established principle in statutory interpretation. It is employed by courts to save a provision from invalidity when its literal meaning leads to (a) a **violation of fundamental rights** under the constitution or (b) a lack of **legislative competence**, rendering it unconstitutional. Instead of striking down the provision entirely, courts **narrow its scope** to ensure it aligns with constitutional mandates. This technique serves to uphold legislative intent while preventing laws from being deemed unconstitutional.

17. The **doctrine of reading down** is a well-established principle in statutory interpretation. It is applied by courts to **narrow the meaning** of a statutory provision to bring it in line with constitutional mandates, thereby preserving its validity. When applied to the **Land Acquisition Act, 1894**, this rule ensures that the acquisition of property is permissible only if it serves a “**public purpose**” or falls within the ambit of **sub-Article (3) of Article 24** of the Constitution. This provision protects individuals from the arbitrary deprivation of property and mandates compensation in cases of lawful acquisition. Reliance can be placed on the case reported as “**Commissioner Rawalpindi/Province of the Punjab and others vs. Naseer Ahmad and others**”, (2024 SCMR 1037), the relevant portion of the same is reproduced as follows:

“19. ... Landowners are entitled to the maximum possible benefit in the

circumstances of each case as such acquisition is not by way of mutual negotiations but under State power conferred on public functionaries. The interpretation and applicability of the provisions of the Act must, therefore, be in consonance with the spirit of Articles 23 and 24 of the Constitution and the object of the Act, which require properly and adequately compensating landowners whose lands are being acquired thereunder.”

18. This approach ensures that laws remain workable and enforceable while respecting constitutional boundaries. The Courts apply this rule only when necessary to prevent invalidation, not simply because a provision has harsh consequences. Reliance in this regard is placed on the case of ***“Messrs Elahi Cotton Mills Ltd. and others v. Federation of Pakistan through Secretary M/o Finance, Islamabad and 6 others”, (PLD 1997 SC 582); “Haroon-ur-Rasheed v. Lahore Development Authority and others”, (2016 SCMR 931); “Province of Sindh through Chief Secretary and others v. M.Q.M. through Deputy Convener and others”, (PLD 2014 SC 531) and “Syed Mushahid Shah and others v. Federal Investment Agency and others”, (2017 SCMR 1218).***

19. Upon careful examination of the impugned **Notification dated 27.06.2016**, it has been observed that the Notification was initially issued by Respondent No.2 through a self-appointed Land Acquisition Officer, raising concerns over the legitimacy of its issuance. However, the subsequent publication of the Notification in the Gazette of Sindh by the Province of Sindh introduces an element

of implied permission, which cannot be disregarded in evaluating its validity.

20. Without delving into the intricacies of the dispute and to abstain ourselves to declare invalidity of the notification impugned before us, and in accordance with the consensus reached by the parties involved, it is deemed appropriate to issue directions to the Commissioner, Hyderabad Division and the Deputy Commissioner/District Collector, Hyderabad, to proceed with the passing of an **Award** regarding the land in question in accordance with the Land Acquisition Act, 1894. This approach facilitates a structured resolution while ensuring that the acquisition process aligns with legal principles which would secure the rights of all concerned parties which may include the fixation, accumulation of compensation and distribution to parties entitle to it. The issuance of the Award by the Collector of District / Deputy Commissioner Hyderabad will help formalize the settlement and mitigate any lingering concerns regarding procedural validity as has been agitated by the petitioners before us.

21. We are not persuaded to grant the petitioners' request for damages, as the **quantum or determination** of such a claim involves disputed questions of fact that cannot be effectively adjudicated under the **writ jurisdiction** prescribed by Article 199 of the Constitution of Pakistan, 1973 for which the petitioners are at liberty to approach the appropriate forum for its determination and recovery, if they desire so. Reliance can be placed on case of ***“Special Secretary-II(Law & Order), Home depts. vs. Fayyaz Dawar”***, (Civil Petition No.3750 OF 2020) wherein it has been held that:

“8. It is a well settled exposition of law that disputed questions of facts cannot be entertained and adjudicated in the writ jurisdiction. The learned High Court in the impugned judgment itself observed that it cannot practically assess the amount of damage but, despite that, the petition was allowed in disregard of a crucial facet that in the constitutional jurisdiction, the High Court cannot go into miniature and diminutive details which could only be resolved by adducing evidence by the parties vice versa. The extraordinary jurisdiction under Article 199 of the Constitution is envisioned predominantly for affording an express remedy where the unlawfulness and impropriety of the action of an executive or other governmental authority could be substantiated without any convoluted inquiry. The expression “adequate remedy” signifies an effectual, accessible, advantageous and expeditious remedy. In the case in hand, the remedy of filing civil suit was an appropriate and alternate remedy as *remedium juris* which was more convenient, beneficial and effective. The object of proceedings under Article 199 of the Constitution is the enforcement of a right and not the establishment of a legal right and, therefore, the right of the incumbent concerned which he seeks to enforce must not only be clear and complete but *simpliciter* and there must be an actual infringement of the right. (Ref: *Asadullah Mangi and other vs. Pakistan International Airline Corporation* (2005 SCMR 445). The High Court has no jurisdiction to resolve the disputed question of fact in constitutional jurisdiction. Ref: *Col. Shah Sadiq vs. Muhammad Ashiq and others* (2006 SCMR 276). In the case of *Fida Hussain & another vs. Mst. Saiqa & others* (2011 SCMR

1990), this Court keeping in mind the plethora of dictums laid down by the superior Courts recapped that the High Court cannot resolve the disputed question of facts in exercise of constitutional jurisdiction under Article 199 of the Constitution. Whereas in the case of Dr. Sher Afgan Khan Niazi Vs. Ali S. Habib & others (2011 SCMR 1813), this Court intensely conversed the prerequisite and touchstone of jurisdiction conferred upon the High Courts under Article 199 of the Constitution. Whereas in the case of Dr. Sher Afgan Khan Niazi Vs. Ali S. Habib & others (2011 SCMR 1813), this Court intensely conversed the prerequisite and touchstone of jurisdiction conferred upon the High Courts under Article 199 of the Constitution and held that the question of adequate or alternate remedy has been discussed time and again by this Court and it is well settled by now that the words "adequate remedy" connote an efficacious, convenient, beneficial, effective and speedy remedy. It should be equally inexpensive and expeditious. To effectively bar the jurisdiction of the High Court under this Article the remedy available under the law must be able to accomplish the same purpose which is sought to be achieved through a petition under Art. 199."

22. The intention of these normal course provisions of ibid Act, 1894 can be dispensed with the normal procedure and its provision, in case emergency and to proceed to take possession immediately as has been done in the present case. The only thing left would be to give appropriate compensation to the petitioners. Consequently, we direct the Commissioner, Hyderabad Division and the Deputy Commissioner/Collector, District Hyderabad to take necessary steps

and pass an Award in respect of land in question within 60 days hereof and place the compliance report with the Additional Registrar of this Court for our perusal in chamber.

23. With these observations, both the constitutional petitions stand disposed of. Office is directed to communicate this Order to the Commissioner, Hyderabad Division and Deputy Commissioner, Hyderabad for expeditious compliance.

JUDGE

JUDGE

Muhammad Danish