JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P. No.4514 of 2019
Zamurad Khan and others
Versus
Capital Development Authority and others

Dates of Hearing:	30.11.2023 and 17.04.2024.
Petitioners by:	Barrister Talha Ilyas Sheikh.
Respondents by:	M/s Amir Latif Gill, Rizwan Ahmad and Sobeen Fahim, Advocates for respondent No.1 / CDA. Mr. Khurram Mahmood Qureshi, Advocate for respondent No.3.

MIANGUL HASSAN AURANGZEB, J:- Through the instant writ petition, the petitioners question the land acquisition proceedings pursuant to directive No.204, dated 16.01.1986 issued by respondent No.1, Capital Development Authority (**"CDA"**).

2. Learned counsel for the petitioners submitted that the petitioners were owners of 02 *kanals* and 02 *marlas* of land in *khasra* No.1419, *Mouza* Seham, Tehsil and District Rawalpindi; that in the year 1986, the said land was acquired pursuant to CDA's directive No.204 dated 16.01.1986; that the petitioners were totally unaware of the said directive or the award for the acquisition of the said land; that at no material stage have the petitioners been paid any compensation for the acquisition of the said land; that at all material times the petitioners have remained in possession of the said land; that the acquisition of land pursuant to CDA's said directive No.204 dated 16.01.1986 was set-aside by the Hon'ble Lahore High Court vide judgment reported as *PLD 2001 Lahore 379*; and that since the land in question does not fall within the territorial limits of the Islamabad Capital Territory (**"ICT"**), CDA had no jurisdiction to acquire the same. Learned counsel for the petitioners prayed for the writ petition to be allowed in terms of the relief sought therein.

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3. On the other hand, learned counsel for CDA submitted that since ICT was carved out of District Rawalpindi, therefore the revenue record with respect to the land acquired by CDA remains with the revenue authorities of Rawalpindi; that it is only cases where the entire revenue estate is acquired by the CDA that its record is then shifted to CDA; that the petitioners had the alternative remedy of filing an appeal against the land acquisition award under Section 56 of the Capital Development Authority Ordinance, 1960 (**"the CDA Ordinance"**); that in the said Ordinance, land acquisition is dealt with under Section 22 thereof, whereas the declaration of the capital site has been made in Section 3; that the Survey of Pakistan is the competent authority under the Surveying and Mapping Act, 2014 to determine whether the land in question falls within the territorial limits of CDA or District Rawalpindi; that the said land had been acquired by the CDA but compensation has till date not been paid to the land owners due to multiple reasons, including litigation initiated by the affectees; that the petitioners have no right to challenge the award for land acquisition since the ownership of acquired land vests in the CDA the moment the award is issued; that the vesting of the ownership of the acquired land in CDA is not contingent on the payment of compensation; and that another Bench of this Court vide judgment dated 29.11.2019 passed in writ petition No.2267/2009 disposed of the said writ petition by directing the petitioner in the said case to approach the competent Court for voicing his grievances regarding the acquisition of his land in m*ouza* Seham which was said to have been acquired by CDA. Learned counsel for the CDA prayed for the writ petition to be dismissed.

4. I have heard the contentions of the learned counsel for the contesting parties and have perused the record with their able assistance.

5. The register *haqdaran zameen* for *khasra* No.1419 for the period 1984-1985, when the acquisition of land is said to have

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taken place, shows the petitioners' predecessors as owners in cultivating possession of 02 *kanals* and 02 *marlas* in the said *khasra*. The mutation of inheritance was sanctioned on 16.07.2001, according to which the present petitioners are owners of the said land.

6. On 16.01.1986, the Chairman, CDA had issued directive No.204 for the acquisition of land in *mouzas* Seham and Notha, including the land in dispute. Pursuant to the said directive, an award for the acquisition of land was issued on 29.01.1986. The rate at which compensation was to be paid was also mentioned in the said award.

7. The acquisition of land in *khasra* No.260/1 in *mouza* Seham pursuant to the said directive No.204, dated 16.01.1986 was assailed by Kohinoor Textile Mills Ltd. through writ petition No.61/1986 before the Hon'ble Lahore High Court. The primary ground taken in the said writ petition was that the said land was located within the territorial jurisdiction of Rawalpindi and was therefore outside the ambit of the CDA. Vide judgment dated 15.05.2001, the said writ petition was allowed and consequently, the award dated 29.01.1986 to the extent of the acquisition of *khasra* No.260/1 was declared to be without lawful consequence. It ought to be borne in mind that in the said case, the position taken by the CDA was that the said *khasra* was not included in the Schedule to the Capital of the Republic (Determination of Area) Ordinance, 1963. In the instant case, however, the position taken by CDA is that *khasra* No.1419 in *mouza* Seham is within the territorial limits of ICT, and that the acquisition carried out by CDA does not suffer from any legal infirmity.

8. This Court, in exercise of its Constitutional jurisdiction, cannot embark on an exercise to determine as to whether the petitioners' land acquired through award dated 29.01.1986 falls within the territorial limits of District Rawalpindi or is within the jurisdiction of CDA. The documents on the record are not sufficient for this Court to come to a definitive finding on this

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question. The petitioners could have made the determination of this question easier by impleading the Surveyor General of Pakistan as a respondent in the instant petition. This, the petitioners did not do. It appears that the Hon'ble Supreme Court of Pakistan had passed orders in suo moto case No.5/2016 and Human Rights Case No.1004/2018 directing the Surveyor General of Pakistan to determine and demarcate the exact boundaries of the ICT by associating the officers of the Cantonment Board, Rawalpindi and the office of the Chief Commissioner, Islamabad. It is not known that as a result of this exercise, the 02 *kanals* and 02 *marlas* of land in *khasra* No.1419, *Mouza* Seham would fall within the territorial limits of the Rawalpindi Cantonment Board or the CDA. This disputed question of fact cannot be resolved within the Constitutional jurisdiction of this Court.

9. I will proceed further by assuming that the said land falls within the territorial limits of CDA. Regarding the CDA's stance that upon the issuance of the award dated 29.01.1986, the land with respect to which the award was issued would vest in the CDA regardless of whether compensation is paid to the land owners or not is bereft of substance inasmuch as it is in violative of the Constitutional mandate of right to property. Article 24(2) of the Constitution provides that 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 therefor and either fixes the amount of compensation or specifies the principles on and the manner in which compensation is to be determined and given. To say that the compensation determined given the value of land in 1986 would be paid to the land owners as and when the acquiring authority deems appropriate, is not just exploitative but inequitable.

10. Since CDA, in its written comments, has admitted that no compensation has been paid to the petitioners or their predecessors at any stage after 29.01.1986, CDA's claim over the ownership of 02 *kanals* and 02 *marlas* of land (which as per the

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revenue record, still vests in the petitioners) on the basis of the award issued 38 years ago is without any substance. CDA cannot expect to get away by paying to the petitioners compensation other than the compensation payable to them under the law. Section 32A of the CDA Ordinance, 1960 provides that when the amount of the compensation determined under Sections 29 and 30 of the said Ordinance is not paid or deposited with the Deputy Commissioner on or before taking possession of the land under acquisition the Deputy Commissioner shall in addition to such compensation pay additional compensation computed at the rate of 8 per centum per annum on such compensation from the time of so taking the possession until it has been so paid or deposited.

11. Does it appeal to reason if one was to say that I will take over your land today and determine its compensation at the rate prevailing today but pay you this very amount 38 years later. This would amount to nothing less than exploitation which is prohibited in any civilized society especially a society which is governed by a Constitution such as ours.

12. Since it is the petitioners' stance that they came to know about the award dated 29.01.1986 only recently, they are at liberty to file the appeal against the same and along with such appeal an application for condonation of delay can be filed. In such an appeal, the petitioners can also take an objection regarding the jurisdiction of the CDA to acquire their land and / or adequacy of compensation.

13. Petition stands disposed of in the above terms.

(MIANGUL HASSAN AURANGZEB)
JUDGE

ANNOUNCED IN AN OPEN COURT ON 18.04.2024.

(JUDGE)

*Ahtesham**

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