

IN THE FEDERAL SHARIAT COURT
(ORIGINAL JURISDICTION)

Present :

MR.JUSTICE AFTAB HUSSAIN, CHIEF JUSTICE.
MR.JUSTICE ALI HUSSAIN QAZILBASH.
MR.JUSTICE ZAHOORUL HAQ.
MR.JUSTICE CH.MUHAMMAD SIDDIQ.
MR.JUSTICE MAULANA MALIK GHULAM ALI.

SHARIAT PETITION NO.1/K OF 1981.

Mohsan A. Rahman and another.Petitioner.

Versus

Federal Government andRespondents.
Government of Sind.

For the petitioner: Nemo.

For the Federal Government: Mr.M. Bilal, Advocate.
Mr. Riazul Hasan Gilani,
Advocate.

For the Govt. of Sind. Mr. Saeed A. Sheikh,
Advocate General, Sind.

Date of hearing: 20th April, 1982.

Date of decision: 28th July, 1982.

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JUDGMENT:

AFTAB HUSSAIN, CHIEF JUSTICE:

The petitioner has challenged by this Shariat Petition provisions of Sections 4-16, 31-37 and 52-54 of the Land Acquisition Act and Sections 38-45 of the Karachi Development Authority Order, 1957(President's Order No.V of 1957).

2. The petitioner's case is that a part of his land in Korangi was first acquired quite some-time ago. Thereafter a notification was issued on 11th December, 1964 for the acquisition of the rest of the land on which objections were filed by him on 28th December, 1966 but nothing was heard about their decision. Without following the procedure laid down in the Law, the possession of the land was taken by the Karachi Development Authority and upto this time no compensation has been paid.

3. The petitioner was given various opportunities to make out a case and for this purpose the matter was fixed at Karachi where a learned Advocate appeared on his behalf and the case was admitted to a regular hearing. It was, however, ordered that the matter shall be heard by the Full Court and for this reason it shall be heard at Islamabad. The petitioner ~~had~~ applied for hearing the case at Karachi but this application was dismissed as it was already settled during the hearing at Karachi that it will have to be heard at Islamabad. However, with his application he sent supplementary written arguments.

4. Generally the objections of the petitioner on the acquisition of his area are vague and do not attract the Injunctions of the

Holy Quran or the Sunnah. The objections which are clear are the following:-

- i) that the provisions are bad in that they are meant to deprive the land owners of their inherent right to sell their lands at their own free will, choice and at the competitive rates prevailing in the open market.
- ii) they are repugnant in so far as they provide for "interest" on compensation, ^{which} ~~and~~ usury is banned in Islam.
- iii) they are repugnant since the Injunctions contained in the Holy Quran and Sunnah require liberal assessment of the value of the land in accordance with the prevailing market value.
- iv) they are bad since the Quran and the Sunnah require specification for the purpose for which the land is required, fixation of the exact area and particulars of the land to be acquired, issuance of atleast three Notices of acquisition on the land owner concerned, proper enquiry to decide whether the land is surplus to the requirements of the land owner, and it is not the only means of livelihood and maintenance of the family, the acquisition of a particular land shall not create any impression of discrimination on the land owner, the acquisition proceedings should be dropped if the owner does not respond to the Notice or refuses to sell the land and that the compensation should be assessed and paid before entry upon the land.

5. On the one hand it is urged in the petition that there should be different notices in regard to acquisition, on the other hand exception has been taken to the provisions of Land Acquisition Act which provide for such notices and notifications on the ground that they complicate the matter and on account of these provisions the assessment is never in accordance with the prevailing market rates.

6. The main questions, therefore, which are raised are two fold. Firstly there can be no acquisition without the permission of the owner and secondly that the compensation should be liberally fixed and paid before entry upon the land.

7. The first question was considered in the case of Muhammad Amin -Vs- The Federation of Pakistan, PLD 1981 FSC 23, and it was held that it is open to the Government to acquire lands of others without the consent of the owners for public purpose. But the general rule is that its market value should be paid to the owner. To this may be added a passage from "Alamwal Wa Nazariat ul Aqd fil fiqh Islami by Doctor Muhammad Yousaf Moosa P.202":-

"The ownership of a person cannot be disturbed by forceexcept;
i) when it is in the public interest like (construction of) roads, bridges or for using it as or for expansion of mosques etc. in all or any of such cases the ownership of the properties will be taken for public welfare and the owner will be paid its price even though he is not willing(to part with the properties)"

Same opinion is given by Dr. Abdul Razzaq Sinhauri in Masadir ul Haq fil fiqhul Islami, Vol.II,P.194-195.

8. This is in a way conceded in para 21 of the Petition where it is said that there are examples and precedents of the Holy Prophet as well as the rightful Caliphs of acquisition but it is urged that acquisition was restricted strictly for defence purposes and for new settlements or for expansion of growing towns and cities, though as seen above the validity of acquisition depends upon its being in public interest.

9. In the present case the acquisition is by the Karachi Development Authority which is a Corporation set up by Presidential Order No.V of 1957 inter-alia to cope with the expansion of Karachi and for that purpose to prepare certain schemes and to implement them. Section 29 provides that the improvement schemes may provide for the development of land for housing or re-housing, clearance or improvement of congested areas, construction of houses, flats and other kinds of residential premises and of industrial, commercial and other buildings for community facilities, such as slaughter-houses, vocational training centres, the closing, alteration or demolition of any dwelling or portion thereof unfit for human habitation, construction and alteration of streets etc, levelling, paving, metalling, flagging, channeling, sewerage and draining of the streets so constructed or altered and the provision therein for lighting and sanitary facilities, sanitation and conservancy for the area comprised in the scheme, drainage and sewerage for the improvement of any ill-drained or insanitary locality etc. etc.

10. It is clear from these provisions that undoubtedly this is for a public purpose for which the Karachi Development Authority frames this scheme and acquires land and Section 28 rightly provides

that all schemes framed under this order and operated by the Authority or by an organisation sponsored by the Authority shall be deemed to be schemes for a public purpose.

11. It is admitted that the land of the petitioner has been acquired for the purpose of Scheme No.28 of the Karachi Development Authority which obviously is for expansion of the growing Cosmopolitan city of Karachi. This clinches the matter.

12. Some objections have been raised about the land being acquired for the purpose of a company. This objection is not valid in view of the fact that Karachi Development Authority is a Corporation which has been set up for the purpose of looking after the development of Karachi and providing for different amenities including amenity of accommodation to the inhabitants thereof. It is not a company in that sense in which the objection is raised. However, the acquisition for the purpose of company may also be for a public purpose as setting up of industries in the country is obviously a public purpose.

13. The Land Acquisition Act provides for various Notices, The first Notice is by notification under Section 4 issued when it appears to the Provincial Government that land in a locality is needed or likely to be needed for any public purpose. Thereafter any officer of the Government can enter upon the land in order to ascertain whether the land is adapted for such purpose. Any person interested in the land is entitled under Section 5-A to raise objection against the proposals which have to be decided. Another notice is provided in Section 6 that a declaration shall be made that any particular land is needed for a public purpose or

for a company. After that the Collector on receiving a direction for taking order of the acquisition of land cause the land to be marked out. Thereafter a notice under Section 9 shall have to be issued 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. Under Section 11 the Collector shall proceed to enquire into the objections filed after the issuance of Notice under Section 9 and shall make an award inter-alia of the compensation which in his opinion should be allowed and of the apportionment of the said compensation among all the persons known or believed to be interested in the land. This award is no doubt subject to the right of the aggrieved party who does not accept it to approach the Court for fixing the correct compensation. After the award the Collector is entitled to take possession of the land under Section 16 which shall vest absolutely thereafter in the Government. These provisions are, however, subject to Section 17 which in case of urgency permits the taking of possession of the land on the expiration of 15 days from the publication of the notice under Section 9 even though the award has not been made. Section 31-34 deal with the payment of compensation and sub-section 1 of Section 31 provides for the payment of the compensation soon after the making of the award. Section 35-37 deal with temporary occupation of land required inter-alia for a public purpose for a period not exceeding three years from the commencement of the occupation. Section 52-53 and 54 deal with certain procedural matters including the extent of applicability of the Code of Civil Procedure and a provision of an appeal.

14. The acquisition of land for a public purpose even in Islam is permitted. All these different provisions advance the interest of the owner of the land ~~also~~. For example without a notice under Section 4, no officer of the Government is allowed to enter the land sought to be acquired. It gives opportunity to the owners and persons interested to raise objections to the acquisition even before the ~~start~~ of acquisition proceedings which commence with the declaration under Section 6. The assessment of compensation generally precedes the taking of possession except in case of urgency- An objection is taken to the award of interest on compensation but that is a matter on which we have no jurisdiction. All other provisions e.g. provisions about notices look after the interest of the owner of the property also. They cannot be said to be repugnant to the Holy Quran and the Sunnah. Even the petition does not show how the provisions of the Act and the Order are in any way repugnant to the Holy Quran and the Sunnah.

15. The objection that in Islam, payment of compensation should precede the taking over of possession is true to the extent that the jurists have given these opinions in the interest of the owners but if the compensation is paid later, there is nothing in the Holy Quran or the Sunnah to which that procedure may be said to be repugnant. There may be cases of urgency when assessment of the compensation may not be possible. The expediency and the public interest for acquisition cannot be sacrificed to such a rule which is not in the nature of a Quranic Law.

16. While hearing the arguments from the Advocate General, Sind and the counsel for the

Federal Government, we were disposed to consider whether the provision of Section 23(1)(i) is not repugnant to the Holy Quran or the Sunnah, This clause provides that the market value of the land shall be determined as on the date of the publication of the notification under Section 4(1). As regards Karachi Development Authority, Article 45 of Presidential Order No.V of 1957 provides for issuance of a notice which according to Article 2 of the Schedule thereof is the equivalent of Section 4(1) of the Land Acquisition Act. The first clause of Section 23(1) of the Act is thus to be read as laying down that the market value of the land shall be determined as at the date of first publication of the notice under Section 45 of the Karachi Development Authority Order, 1957.

17. The question was whether the determination of the market value of a date when the Government has not even started the proceedings for acquisition (which as stated above start after notification under Section 6 of the Act) is not repugnant to the Holy Quran and the Sunnah. However, we find that we are not called upon to render a judgment on this part since Section 23(1) is not challenged. We cannot interfere with the said Section without issuing a notice to the Government concerned for exercise of suo moto jurisdiction under Article 203-D of the Constitution.

18. We dismiss this petition. However, we may clarify that it will be open to the petitioner to file another petition on the above point if he is so advised.

Affat Khan
Chief Justice.

M. Nave Moud
S/A
28/7

Waxa - 2001
J-I. J-II.
M. Jiddiq
J-III. J-IV.

M. Khalil, J.W. *Announced*
Surfome parties. *Affat Khan*
20-7-82