

IN THE SUPREME COURT OF PAKISTAN
(Appellate/Original/Review Jurisdiction)

Present

Justice Qazi Faez Isa, CJ
Justice Jamal Khan Mandokhail
Justice Naeem Akhtar Afghan

Constitution Petition No.9/2010, Criminal Original Petition No.7-K/2017, CMA No. 6206/2013, Criminal Original Petition No. 9-K/2021, CMA Nos. 441-K, 1083-K, 1112-k, 774-K/2017, CrI.MA No. 59-K/2018, CMA Nos. 1062-K, 1064-K/2021, 941-K/2020, 1114-K, 775-K, 698-K, 1000-K/2021, 74-K, 86-K, 711-K/2020, Civil Review Petition No. 57-K/2021, Criminal Original No. 8-K/2021, CMA No. 391-K/2020, CMA Nos. 424-K, 437-K, 438-K, 515-K/2021, CrI.MA No. 229-K/2018, CMA Nos. 621-K/2021, 167-K, 367-K, 177-K/2020, CMA Nos. 1004-K/2021, 770-K/2020, CrI.MA No. 52-K/2018, CMA Nos. 631-K/2019, 78-K, 523-K, 83-K, 512-K, 594-K/2020, 617-K, 889-K/2019, Civil Review Petition No. 28-K/2020, CMA Nos. 1087-K, 1095-K, 1129-K/2021, 940-K/2020, CrI.MA Nos. 121-K/2017, 38-K/2018, CMA Nos. 423-K/2019, 179-K/2020, CPLA No. 422-K/2020, CMA No. 767-K/2020, CPLA Nos. 92-K, 93-K/2020, Criminal Original Petition No. 19-K/2017, CrI.MA Nos. 124-K, 132-K/2017, 111-K, 243-K, 8-K, 19-K, 20-K, 72-K/2018, CMAs. No. 59-K, 349-K, 875-K, 933-K/2019, CM Appeal No. 139/2020, CMA Nos. 202-K, 281-K/2020, CrI.MA Nos. 32-K/2018, 1-K/2019, 34-K/2020, CMA Nos. 761-K, 808-K/2020, 782-K/2021, CPLA No. 599-K/2021, CMA Nos. 1014-K, 966-K, 1006-K, 1040-K, 971-K/2021, Criminal Original Petition No. 10-K/2021, CMA Nos. 1097-K, 1164-K/2021, CrI.MA Nos. 71-K, 95-K, 214-K/2018, 2-K/2019, CMA Nos. 521-K, 527-K/2019, 162-K, 193-K, 762-K/2020, 425-K/2019, Criminal Original Petition No. 5-K/2020, CMA Nos. 809-K, 82-K, 336-K/2020, Criminal Original Petition No. 1-K/2020, CMA Nos. 510-K/2021, 300-K, 414-K/2020, Report No. 7-K, 76-K/2021, CMA Nos. 1248-K, 1249-K, 1252-K, 1259-K, 1260-K, 1262-K/2021, 6-K, 12-K, 40-K, 83-K, 93-K, 94-K, 95-K/2022, Civil Review Petition No. 1-K/2022, CMA Nos. 27-K, 112-K, 126-K/2022, Civil Review Petition No. 4-K/2022, CM Appeal No. 18/2022, CMA Nos. 145-K, 141-K/2022, Criminal Original Petition No. 18-K/2021, Civil Review Petition Nos. 13-K, 11-K/2022, CM Appeal No. 26/2022, Civil Review Petition No. 23-K/2022, CMA Nos. 395-K, 403-K, 452-K/2022, Criminal Original Petition No. 10-K/2022, CMA No. 644-K/2022, CrI.MA No. 1-K/2022, CM Appeal No. 1-K/2022, Criminal Original Petition No. 11-K/2022, CMA No. 790-K/, 1085-K, 1108-K/2023, CM Appeal No. 2-K/2024 and CMA No. 293-K/2024.

Naimatullah Khan, Advocate, etc.

Petitioners

Versus

Federation of Pakistan, etc.

Respondents

Attendance:

in CMA No. 941-K/2020: in CMA No. 521-K/2019: in CP No. 9/2010:	Mr. Mukesh Kimar G. Karara, ASC Mr. Murtaza Ali, in-person Kh. Shamsul Islam, ASC Mr. Javed Kumbo, Additional Secretary, Finance
in CMA No. 177-K/2020:	Mr. Farhad Younus Memon, Intervenor In-person.
in CMA Nos. 1130-K and 1083-K/2021:	Mr. Abdul Basit Afridi, Advocate Mr. Asim Iqbal, ASC Mr. Farmanullah Khan, ASC Mr. Shabbir Ahmed Mr. Gul Khitab Mr. Muhammad Raees
in CrI.MA No. 20-K/2018: in CMA Nos. 767-K/2020 and 933-K/2019: in CMA No. 1004-K/2021:	Mr. Abdul Haleem Siddiqui Syed Dilshad Hussain Shah, Spl. Prosecutor, NAB
In CRP No. 57-K/2021, CrI.MA Nos. 132-K/2017, 72-K/2018, 1-K/2019, CMA Nos. 971-K and 510-K/2021:	Mr. Mazhar Ali B. Chohan, AOR
in CMA No. 1087-K/2021: in CMA No. 32-K/2018: in CMA Nos. 933-K/2019, 767-K, 367-K, 391-K/2020, CrI.OP No. 8-K, 10-K/2021, CMA No. 782-K/2021 and 452-K/2022:	Mr. M. Saleem Mangrio, ASC Mr. Shoa-un-Nabi, ASC Mr. Abida Parveen Channar, AOR
in CMA No. 438-K/2021: in CrI.OP No. 7-K/2017:	Mr. Obaidur Rehman, ASC Mr. Najamuddin Sehto, D.G., Malir Development Authority Mr. Muhammad Irfan Baig, Director Legal Affairs, MDA Mr. Zakir Hussain Khaskheli, ASC
in CrI.MA No. 132-K/2017 and 72-K/2018:	Mr. Zakir Hussain Khaskheli, ASC
in CMA No. 367-/2022: in CP No. 9/2010:	Syed Ashikue Raza, ASC Mr. M. Hasan Akbar, Advocate General, Sindh Syed Mohsin Hussain Shah, AAG
In CrI.MA Nos. 8-K, 16-K, 243-K/2018:	Syed Ashikue Raza, ASC
In CrI.OP No. 1-K/2020, CMA No. 82-K/2020:	Syed Mehmood Akhtar Naqvi
In CMA No. 1085-K/2023:	Ms. Nahid Naz, ASC/AOR

In CMA Nos. 521-K, 661-K/2019, 36-K/2022:	Mr. Murtaza Ali, in-person
In CMA No. 1087-K/2021:	Ch. Muhammad Iqbal, ASC
In CMA No. 1095-K/2021:	Mr. M. Imran Siraj, in-person
In CP No. 9/2010:	Mr. Zeeshan Zaman, Legal Officer, Pakistan Rangers, Sindh
In CP No. 9/2010:	Mr. Muhammad Nasir Khalily, D.S. Pak. Railway Mr. Imran Faisal, Dy. D.G. Pak. Railway Property and Land Rao Moinuddin, A.D.L.A. Raja Qasit Nawaz Khan, ASC Mr. Afsheen Amar, ASC
in CrI.OP No. 7-K/2017:	Mst. Sabiha Parveen, in-person
in CMA No. 770-K/2020 in CP No. 9/2010:	Mr. Waseem Shahid, Director Military Land Mr. Muhammad Hayat, Cantt. E.O. Mr. Muhammad Zubair, Cantt. E.O. Syed Irfan Haider, Cantt. E.O. Mr. Mansoor Alam Khan, M.E.O.
In CP No. 9/2010:	Syed Hasan Naqvi, Commissioner Karachi Mr. Khalid Maroof, A.C. Revenue
In CrI.OP No. 9-K/2021:	Syeda Maria Raza
In CP No. 9/2010:	Mr. M. Umer Riaz, ASC Lahore
In CMA No. 1108-K/2023:	Mr. Muhammad Afzal Awan, ASC
In CP No. 9/2010:	Mr. M. Yaqoob Khan, Curator Mr. Naveed Sandal Khan, Technical Officer, National Museum Pakistan.
In CMA No. 770-K/2021:	Mr. Amir Mughal, G.M. Mr. Shahab Sarki, ASC
In CP No. 9/2010:	Syed Salahuddin Ahmed, M.D./ CEO, KWSB
In CP No. 9/2010:	Syed Shujaat Hussain, D.G. KDA Mirza Sarfraz Ahmed, ASC Syed Shabihul Hassan, D.G, LDA
In CP No. 9/2010:	Mr. Zulifqar Gul Memon, Chief Transport and Communication,

M/o P.D. & Spl. Initiative, Islamabad
Mr. Zia-ul-Haq Makhdoom,
Additional Attorney-General for Pakistan.

In CMA No. 438-K/2021: Mr. Obaidur Rehman Khan, ASC
Mr. Faisal Siddiqui, ASC
(video link, Islamabad)

In CMA.1062-K/21,
CMA. 40-K/22 &
CMA. 93-K/22: Mr. Munir Ahmed Malik, Sr. ASC.
Mr. K. A. Wahab, AOR.

In CMA.1064-K/21 &
CMA. 94-K40-K/22: Mr. Arshad M. Tayebaly, ASC.
Mr. K. A. Wahab, AOR.

In CMA No. 941-K/22: Mr. Khalid Javed, ASC.
Mr. Mukesh Kumar G. Karara, ASC.

In CMA No. 86-K/2020: Mr. Abid S. Zuberi, ASC.
Mirza Sarfaraz Ahmed, ASC.
Mr. K. A. Wahab, AOR.
Mr. Ghulam Rasool Mangi, AOR.

In CMA No. 437-K/21 &
CMA No. 300-K/20: Mr. Salahuddin Ahmed, ASC.

In CMA No. 1129-K/21: Mr. Muhammad Umar Lakhani, ASC.
Mr. Murtaza Wahab, Mayor Karachi.

In CMA No. 1014-K/21: Syed Haider Imam, ASC.

In CMA No. 1062-K/20: Ms. Razia Danish, ASC.

In C.R.P. No.23-K/22: Mr. Muhammad Hassan Akbar,
Advocate-General, Sindh.
Mr. Sibtain Mehmood,
Additional Advocate-General, Sindh.

Date of Hearing: 25.04.2024

ORDER

Affectees of Gujjar, Orangi and Mehmoodabad Nallahs:

1. The learned Advocate-General, Sindh ('**the AG**') states that the Government of Sindh stands by its commitment to allot 80 square yard plots to the affectees, and that 6,932 affectees had been identified. However, if any family whose house was demolished has not been included may submit their claim, with supporting documents

and photographs, if any, to the Commissioner's Focal Person, Ms. Zunaira Jalil, Additional Commissioner-II, Karachi. He further states that since the matter needs to be finalized all such claims should be filed within one month. Those who submit claims must be informed of the decision whether their claim has been accepted or rejected.

2. The learned AG further states that the amount for construction purpose was fixed at one million rupees for each house by the Government of Sindh which was sufficient compensation, but since it was objected to by some of the affectees the matter was referred to the Pakistan Engineering Council to calculate what would be appropriate, and Pakistan Engineering Council's calculation is awaited. The order dated 8 April 2024 passed by this Court stipulated compliance be made within two months' time and such period has not expired as yet.

3. Once the above exercise is completed the Government should allot plots and pay compensation to the affectees immediately, and maintain proper record, without the need for an order from this Court.

Affectees of Nasla Tower:

4. Mr. Shahab Sarki, learned counsel states that he has filed an application on behalf of the affectees of the building known as Nasla Tower, which was demolished pursuant to the order of this Court. He has referred to order dated 16 June 2021 (paragraph 7 at page 269) which also states that, '*owner of the tower shall refund price of all shops/residential units and other areas in any form to the registered owners within a period of three months from today.*' However, learned counsel states, that the order to refund lessees monies was not complied with by the owner of Nasla Tower, but adds that the owner has passed away. The possession of the said land on which stood Nasla Tower is with the Official Assignee of the High Court of Sindh. It is submitted that since the owner did not refund monies the said land on which the Nasla Tower stood be auctioned and the auction proceeds be distributed amongst the affectees as per their respective shares. Nasla Tower, we are informed, was constructed on land measuring 780 square yards, and its owner also owned the adjacent *amenity* plot measuring 240 square yards (noted in order dated 22 September 2021). The learned AG agrees with the proposal for the sale

of the plot measuring 780 square yards but states that the 240 square yard amenity plot should only be used as an *amenity* as permitted under the law.

5. **Notice** be issued to the Sindh Muslim Cooperative Housing Society ('**SMCHS**') where the land is situated. SMCHS is directed to provide the name and particulars of the owner(s) of the said land within one week whereupon the office shall issue notice(s) to them. The SMCHS shall also provide information regarding the said two plots, that is, 780 and 240 square yards and their permissible use. SMCHS's representative is directed to be in attendance on the next date of hearing.

6. The affectees of Nasla Tower should file proof of their booking/ownership and the amounts paid by them with the Official Assignee of the High Court of Sindh within one month. The Official Assignee shall have advertisements published which should mention a reserve price in at-least two prominent newspapers published from Karachi; one in English and the other in Urdu language, and sufficient time be granted for submission of bids. The advertisements should stipulate the permissible use of the 780 square yards plot the permissible built-up area, number of storeys and height, and to separately state the use for which the adjacent 240 square yards amenity plot can be put.

7. The Official Assignee may accept the highest bid or readvertise as per the normal practice and shall submit his report to this Court which should mention whether the sale amount would be sufficient to cover the amount to be refunded to the affectees, and if not propose a methodology for the distribution of such amount. The costs incurred by the Official Assignee shall be borne by the Government. Copy of this part of the order be sent to the Official Assignee of the High Court of Sindh, and to SMCHS. SMCHS to provide all information to and shall fully cooperate with the Official Assignee.

Tejori Heights:

8. The learned Dr. Raana Khan has referred to order dated 29 October 2021 (page 374 of the order sheet) and states that the

applicants had booked an apartment in the project known as Tejori Heights. However, since Tejori Heights was being constructed on land owned by the Railways the construction was ordered to be demolished under the supervision of the Commissioner, Karachi and it was so demolished. She further states that pursuant to the same order it was undertaken by the learned Mr. Raza Rabbani who represented the owners of the project, that those who had booked units in Tejori Heights will be compensated within a period of three months, but this was not done. Instead a review petition has been filed by the learned Mr. Raza Rabbani, which has not been numbered, and an application for adjournment has been submitted on his behalf. The learned Messrs Mian Raza Rabbani, Salim Saleem Ansari and Abid S. Zuberi had represented the owners of Tejori Heights project, and though Mr. Ansari nor Mr. Zuberi are present they cannot recollect the names of the owners of the project known as Tejori Heights. In view of the request for adjournment we are adjourning this case, but to save time the office should issue **notice** of the review petition to Pakistan Railways. The learned Mr. Raza Rabbani should attend to the maintainability of the review petition having agreed to pay compensation. He should also submit details of those who had made bookings in Tejori Heights, the amount received from them and whether the said amount was refunded to them. Copy of this order be sent to the learned Mr. Raza Rabbani who shall submit a concise statement attending to the queries, including disclosing the identity of the owners of project known as Tejori Heights.

Encroachments:

9. Whilst encroachments by citizens are demolished it is unfortunately noted that encroachments on public roads and pavements are made by those paid out of the public exchequer. Occupants of properties also assume that the pavement running in front of their property is theirs, to do with it as they please. Generators are also installed thereon. Pavements are for the use of the public; access thereto and use thereof cannot be prevented or restricted. Everyone, including the provincial and Federal governments, and all those under them must abide by the law and cannot encroach upon public roads and pavements nor can block them which may stop or

restrict public use thereof. Citizens must not be inconvenienced. Those paid out of the public exchequer serve the people, and not vice versa. The misplaced exceptionalism negates the Constitution and the rule of law.

10. The learned Additional Attorney-General for Pakistan and the learned Advocate General for Sindh state that sometimes barriers are placed to protect the building and those within the premises from terrorist attacks. We are mindful of security concerns and the same can be met by placing the barriers within the premises. Unfortunately, over the years an anti-people mentality has developed where those paid out of the public exchequer assume that the garden or open space within their premises should be preserved. Therefore, all are directed, including all provincial and the Federal Governments, to clear public roads and pavements of all encroachments within three days, failing which the same should be demolished/removed by the relevant authority and the cost incurred thereon shall be recovered from those who encroached thereon. With regard to buildings in official use the amount shall be recovered from the pay of the senior most officer in occupation of the property/building in front of which runs the pavement on which barriers or other restrictions preventing public use thereof are placed. The learned Additional Attorney-General for Pakistan, the learned Advocate General, Sindh and the counsel for the KMC shall submit their respective compliance reports.

11. The operation of this order, directing the removal of encroachments from public roads and pavements, is applicable throughout Pakistan. Therefore, copies of this part of the order be sent to the Attorney-General for Pakistan and to all Advocates General for onward transmission to all the Ministries and Departments under their respective domains. The government shall place advertisements in newspapers informing the public of this order and Pakistan Electronic Media Regulatory Authority ('**PEMRA**') to direct their licensees to announce it as a free public service message in accordance with the stipulated terms of their licenses. Copy of this order be sent to PEMRA for information and compliance.

Containers:

12. Shipping containers are brought to close roads and pavements to stop protestors from proceeding but then are left by the roadside and on pavements. After serving the purpose for which the containers were brought they must be removed from roads and pavements. Roads and pavements are for the use of the public and cannot be allowed to be permanently obstructed in this manner.

Trees:

13. The effect of scorching heat in the summer months and pollution inhaled by pedestrians can be offset by taking care of existing trees, replacing dead ones and planting new ones on pavements. Unfortunately, this is not done. Trees are also invaluable in removing pollutants and producing oxygen, and are effective against climate change. And, if pavements are lined with trees it will undoubtedly encourage more people to use them. The local governments are in dereliction of this duty towards the public. Therefore, all local governments should immediately carry out a survey and proceed to plant trees on pavements and to take care of them.

Chief Justice

Judge

Judge

Karachi:
25.04.2024
(M. Tauseef)

Approved for Reporting