

IN SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

MR. JUSTICE UMAR ATA BANDIAL, HCJ
MR. JUSTICE IJAZ UL AHSAN
MR. JUSTICE JAMAL KHAN MANDOKHAIL

C.M.A.7139/2019 in Const.P.2/2011, C.R.P.494/2019 in Const.P.2/2011, C.M.A.7894/2019 in C.R.P.NIL/2019 in Const.P.2/2011, C.M.A.7897/2019 in C.R.P.NIL/2019 in Const.P.2/2011, C.M.A.8322/2019 in C.M.A.7897/2019, C.M.A.8251/2019 in C.R.P.NIL/2019 in Const.P.2/2011, C.M.A.11484/2021 IN C.M.A.7139/2019 IN Const.P.2/2011, C.M.A.13353/2021 IN C.M.A.7139/2019 IN Const.P.2/2011, C.M.A.865/2022 IN C.M.A.7139/2019 IN Const.P.2/2011, C.P.1233-L/2015, C.P.665-L/2020, C.P.38-P/2019, C.P.39-P/2019, C.P.41-P/2019, C.P.190/2019, C.P.208-Q/2022, C.M.A.1124-K/2021 in C.R.P.Nill-K/2021 in C.M.A.277-K/2021 in C.R.P.Nill-K/2021 in C.M.A.898-K/2021, C.M.A.1110-K/2021, C.M.A.541-K/2020, C.M.A.630-K/2020, C.M.A.898-K/2020, C.P.420-K/2022.

MATTER REGARDING IMPLEMENTATION OF THE ORDER OF THIS COURT DATED 28.6.2019 In C.M.A.7139/2019 in Const.P.2/2011

Mainland Husnain Pakistan Limited v. Ishaq Khan Khakwani and others In C.R.P.494/2019 in Const.P.2/2011

Hassan Naseem v. Ishaq Khan Khakwani and others In C.M.A.7894/2019 in C.R.P.NIL/2019 in Const.P.2/2011

Lt. General(R) Saeed uz Zafar & others v. Ishaq Khan Khakwani and others In C.M.A.7897/2019 in C.R.P.NIL/2019 in Const.P.2/2011

Lt. General (R) Saeed uz Zafar & others v. Ishaq Khan Khakwani and others In C.M.A.8322/2019 in C.M.A.7897/2019

Waqar Yazdani Butt & others v. Ishaq Khan Khakwani and others In C.M.A.8251/2019 in C.R.P.NIL/2019 in Const.P.2/2011

Letter of A.F. Ferguson & Co v. In C.M.A.11484/2021 IN C.M.A.7139/2019 IN Const.P.2/2011

MATTER REGARDING IMPLEMENTATION OF THE ORDER OF THIS COURT DATED 28.6.2019 v. In C.M.A.13353/2021 IN C.M.A.7139/2019 IN Const.P.2/2011

MATTER REGARDING IMPLEMENTATION OF THE ORDER OF THIS COURT DATED 28.6.2019 v. In C.M.A.865/2022 IN C.M.A.7139/2019 IN Const.P.2/2011

Syed Muhammad Munfarid Rizvi v. Federation of Pakistan through Secretary/Chairman Ministry of Railways Government of Pakistan Islamabad, etc In C.P.1233-L/2015

Pakistan Railways through its Chairman, Pakistan Railways, Islamabad, etc. v. Ghulam Sarwar	In C.P.665-L/2020
Syed Azhar Ali Shah v. Govt of Pakistan through Ministry of Railway, Pakistan & others	In C.P.38-P/2019
Mohsin Zafar v. Govt of Pakistan through Ministry of Railway, Pakistan & others	In C.P.39-P/2019
Mansoor Rehman v. Govt of Pakistan through Ministry of Railway, Pakistan & others	In C.P.41-P/2019
Mansoor Rehman v. Government of Pakistan thr. M/o Railways, Pakistan & others	C.P.190/2019
Ghulam Nabi v. Pakistan Railways Employees Cooperative Society(PRECHS) Quetta and others	C.P.208-Q/2022
Federation of Pakistan through Secretary/Chairman Railways v. M/s. Karachi Town Builders (Regarding encroachment over Pakistan Railway Land & revival of KCR) (Tejori Heights/Tower)	In C.M.A.1124-K/2021 in C.R.P.NIII-K/2021 in C.M.A.277-K/2021 in C.R.P.NIII-K/2021 in C.M.A.898-K/2021
Application on behalf of Divisional Superintendent thr. Deputy Director Railways against M/s Labaik CNG Station Hyderabad & others v. (Matter regarding encroachment over Railway's Land at Hyderabad)	In C.M.A.1110-K/2021
Muhammad Ahmed Khan & others v. Federation of Pakistan & others (Matter regarding Pakistan railway employees co-operative Housing Society)	In C.M.A.541-K/2020
Pakistan Railway Employees Co-operative Housing Society Limited. v. Federation of Pakistan & others. (The matter pertains to encroachment over Railway Land on account of Railway Co-operative Housing Society)	In C.M.A.630-K/2020
Pakistan Railways through Divisional Superintendent v. Federation of Pakistan & others (Regarding Encroachment over Pakistan Railway Land & Revival of KCR)	C.M.A.898-K/2020
Doctor Moinuddin v. Federation of Pakistan through Chairman Pakistan Railways & others	C.P.420-K/2022

Applicant(s)/Petitioner(s)
Respondent(s)

IN ATTENDANCE:

Mr. Rashdeen Nawaz Kasuri, Addl. AG
Ch. Aamir Rehman. Addl. AG
Barrister Zafrullah Khan, ASC
Mr. Sattar Awan, Spl. Prosecutor
Iffat Farooq, DG Audit Railways
Mr. Kashif Farooq, AO
Mr. Zafar Zaman, Sec. Railways
Mr. Salman Sadiq Sh. CEO
Mr. Arshad Salam Khattak, Sec. Railways
Mr. Javed Mehmood Pasha, ASC
Raja Qasit Nawaz Khan, ASC *(Via video link from Karachi)*
Mr. M. Ramzan (MHPL) (V.L. Lah.)
Mr. Pervaiz Qureshi (MHPL)
Mr. Khurram Akbar Khan (AF Ferguson)
Mr. Salman Kazmi, LA (Railways)
Imran Shaukat, Royal Palm Golf & Country Club
Mr. Munir A. Malik, ASC *(Via video link from Karachi)*
Mr. Qasim Mirjat, AOR
Ch. Muhammad Hussain, ASC
Mr. Faisal Siddiqui, ASC
Mr. Ghulam Nabi, In person *(Via video link from Quetta)*
Zulfiqar Memon, Dy. Chief Planning

Date of Hearing 26.01.2023

ORDER

UMAR ATA BANDIAL, CJ,-.

**C.M.A.1124-K/2021 in C.R.P.Nill-K/2021 in C.M.A.277-K/2021 in
C.R.P.Nill-K/2021 in C.M.A.898-K/2021:**

The learned Additional Attorney General for Pakistan and Barrister Zafarullah Khan, ASC have assisted the Court on the business plan submitted pursuant to our last order dated 09.01.2023. The point of importance that has been emphasized

before us is that the Railways Organisation in Pakistan owns and controls 169,128 acres of land, out of which 126,426 acres are being utilized for its operational purposes, 16,742 acres are earmarked for future expansion, 9,985 acres have been identified to be under un-authorized possession of the encroachers. Out of the remaining 10,750 acres has been leased out for a number of purposes which generate some revenue for the Railways Organization. It appears that there is an area of some 6,000 acres of land that is under the ownership and control of the Railways Organization but is not described in the business plan. The submission before us today is that such a huge tract of land requires management and protection from encroachment apart from utilization of its potential for generating revenue for the benefit of the Organization and hence the State. Ambitious targets have been disclosed for the commercialization of such land with which we are not concerned presently for that we have no expertise to judge or determine the viability of such proposals. However, it is clear to us that without change in the nature of the land, its use for different purposes without causing harm to the land or the public interest, utilization can be made and revenue be generated for the benefit of the Railways Organization and hence the exchequer. Insofar as the developmental proposals are concerned, the Railways Organization must have legal backing for undertaking such ventures in a form that is authorized by law. As far as the utilization of the land without change of its nature is concerned, we are informed that two orders were passed by this Court. One such order was passed on 04.01.2019 in Crl.O.P.120/2016

(Pakistan Railways through Secy/Chairperson Railways v. Capt. (R) Zahid Saeed & others), allowing the land in the occupation and control of Pakistan Railways to be leased for a period not more than five years and subject to any determination of title to such land in favour of the Federation or the Province. Subsequently, in view of the proceedings taken up at Karachi in respect of urban land in the occupation and control of the Railways Authority, there is an order passed by this Court dated 14.06.2021 in CMAs No.277-K and 278/2021 IN CRP No.Nill-K/2021 IN CMA No.898-K/2020 in Const.P.09/2010 reported as *Naimatullah Khan Advocate and others v. Federation of Pakistan and others* (2022 SCMR 105). That order directs "that *no Railways' land shall be sold by the Pakistan Railways or transferred, leased or allowed to be occupied by any person and shall be used only for Railways' operation purposes*". It is the latter order by which the Railways Organization is aggrieved because it put an end to the use of open Railways land *inter alia* to protect the same from encroachers and unauthorized occupants. In addition, there is potential for such land to generate revenue for the Railways Organization which is beneficial for lessening the burden on the exchequer. Barrister Zafarullah Khan, learned ASC has submitted that insofar as the more developed schemes or proposals for utilization of Railways land is concerned, the Ministry should, in the first place, frame a policy for approval of the Cabinet and thereafter to frame laws whether rules or statutes with the approval of Parliament to support any schemes envisaging the development of land sites by the Railways Organization on its own or in collaboration with

interested entrepreneurs. Having heard the learned Addl. Attorney General and the learned counsel for the Railways Organization, we consider that protection of Railways' land against encroachers and its utilization without changing the nature of the land are beneficial acts which do not harm any existing or claimed interest therein. Such utilization would generate revenue for the Railways Organization and would also clear up the area where such unutilized land may be put to use by third party interests without regard to the environment or generation of local employment. During discussion it emerges that another aspect of land utilization in the public interest is for public works initiated by the Railways Organization or by other Government bodies. Such utilization by a Government body for public use and benefit is a purpose that is supported by the law. Accordingly, in addition to the grant of leases up to five years as envisaged in our order dated 04.01.2019, for the purpose of utilization of land without changing the nature thereof, it would be beneficial also if such land that is required for public purpose is allowed to be used by the Railways Organization on such terms as it deems fit and proper. With respect to the remaining uses that is disclosed in the latter business plan, the Railways Organization should approach the Federal Government and, if necessary, the Parliament for authorizing the same pursuant to a lawful regulatory regime.

2. A number of connected matters have been fixed for hearing which our order does not touch presently. The learned Addl. Attorney General shall prepare a list of these cases and

propose the manner in which the same should be heard by the Court.

Civil Petition No.208-Q/2022:

3. Notice.

Royal Palm Golf & Country Club, Lahore:

4. Learned counsel for Pakistan Railways, assisted by experts from M/s A.F. Ferguson & Co., informed us that the technical evaluation report has been prepared and submitted to the Railways Authorities. This is subject to comment by the latter. In any event, the evaluation, once approved, will result in prequalification of bidders followed by a grievance procedure and thereafter the opening of the financial bids of prequalified bidders. It is stated that the entire process would conclude by the end of February, 2023. Insofar as the auditing exercise of the accounts is concerned, the same is in progress and we are informed that the entire audit period during which the Club was in the control of the MHPL shall be completed by the end of March, 2023.

5. Learned Addl. Attorney General informs that Rupees 95 million were to be recovered by the Railways Organization from Mr. Asif Shah and Mr. Muhammad Shahrukh Khan. Out of that amount Rs.10.318 million has been deposited while the balance amount is due.

6. Time had been granted to the said persons to file a reply which has not been done. Let the same be done which would

also reflect their plea taken in respect of claim of Rs.95 million by the Railways organization.

Relist, in the middle of March, 2023.

Chief Justice

Judge

Islamabad
26.1.2023
Sarfraz */

Judge