

P L D 2024 Supreme Court 218

Present: Munib Akhtar, Shahid Waheed and Musarrat Hilali, JJ

C.A. No. 538 of 2022

**GOVERNMENT OF PAKISTAN through Secretary Ministry of Defence
Rawalpindi**

and another---Appellants

Versus

AKHTAR ULLAH KHAN KHATTAK and others---Respondents

(Against the order dated 10.06.2021 passed by the Peshawar High Court,
Peshawar in W.P No. 5567-P of 2019).

C. M.A. No. 9963 of 2021 in C.A. No. 538 of 2022 (Stay Application)

**GOVERNMENT OF PAKISTAN through Secretary Ministry of Defence
Rawalpindi and another---Appellants**

Versus

AKHTAR ULLAH KHAN KHATTAK and others---Respondents

C.A. No. 539 of 2022

**GOVERNMENT OF PAKISTAN through Secretary Ministry of Defence
Rawalpindi and another---Appellants**

Versus

ASHFAQ AHMAD and others---Respondents

(Against the order dated 10.06.2021 passed by the Peshawar High Court,
Peshawar in W.P. No. 5680- P/2019).

C.A. No. 540 of 2022

**GOVERNMENT OF PAKISTAN through Secretary Ministry of Defence
Rawalpindi and another---Appellants**

Versus

MUHAMMAD SAEED BUTT and others---Respondents

(Against the order dated 10.06.2021 passed by the Peshawar High Court,
Peshawar in W.P. No.5885- P of 2019).

C.A. No. 541 of 2022

GOVERNMENT OF PAKISTAN through Secretary Ministry of Defence

Rawalpindi

and another---Appellants

Versus

KHURSHID ANWAR and others---Respondents

(Against the order dated 10.06.2021 passed by the Peshawar High Court, Peshawar in W.P. No. 141-P of 2020).

C.A. No. 542 of 2022

**GOVERNMENT OF PAKISTAN through Secretary Ministry of Defence
Rawalpindi**

and another---Appellants

Versus

MUHAMMAD YASIR KHATTAK and others---Respondents

(Against the order dated 10.06.2021 passed by the Peshawar High Court, Peshawar in W.P No.1867-P of 2020).

C.A. No. 799 of 2022

**GOVERNMENT OF PAKISTAN through Secretary Ministry of Defence
Rawalpindi and another---Appellants**

Versus

Mst. DILSHAD BEGUM and others---Respondents

(Against the order dated 22.01.2019 passed by the Peshawar High Court, Peshawar in W.P. No.191-P of 2017).

C. M.A. No. 3083 of 2019 in C.A. No. 799 of 2022 (Stay Application)

**GOVERNMENT OF PAKISTAN through Secretary Ministry of Defence
Rawalpindi and another---Appellants**

Versus

Mst. DILSHAD BEGUM and others---Respondents

C.A. No. 2025 of 2022

**GOVERNMENT OF PAKISTAN through Secretary Ministry of Defence
Rawalpindi and another---Appellants**

Versus

MUHAMMAD YASIR KHATTAK and others---Respondents

(Against the order dated 22.01.2019 passed by the Peshawar High Court,

Peshawar in W.P. No. 869-P of 2019).

C.P. No. 396-P of 2021

DEPUTY COMMISSIONER, NOWSHERA and others---Appellants

Versus

AKHTAR ULLAH KHAN KHATTAK and others---Respondents

(Against the order dated 10.06.2021 passed by the Peshawar High Court, Peshawar in W.P No.5567-P of 2019).

C.M.A. No. 667-P of 2021 in C.P. No. 396-P of 2021

(Stay Application)

DEPUTY COMMISSIONER, NOWSHERA and others---Appellants

Versus

AKHTAR ULLAH KHAN KHATTAK and others---Respondents

C.P. No. 397-P of 2021

DEPUTY COMMISSIONER, NOWSHERA and others---Appellants

Versus

ASHFAQ AHMAD and others---Respondents

(Against the order dated 10.06.2021 passed by the Peshawar High Court, Peshawar in W.P. No.5680-P of 2019).

C.M.A. No. 668-P of 2021 in C.P. No. 397-P of 2021

(Stay Application)

DEPUTY COMMISSIONER, NOWSHERA and others---Appellants

Versus

ASHFAQ AHMAD and others---Respondents

C.P. No. 398-P of 2021

DEPUTY COMMISSIONER, NOWSHERA and others---Appellants

Versus

MUHAMMAD SAEED BUTT and others---Respondents

(Against the order dated 10.06.2021 passed by the Peshawar High Court,

Peshawar in W.P. No. 5885-P of 2019).

C.M.A. No. 669-P of 2021 in C.P. No. 398-P of 2021
(Stay Application)

DEPUTY COMMISSIONER, NOWSHERA and others---Appellants

Versus

MUHAMMAD SAEED BUTT and others---Respondents

C.P. No. 399-P of 2021

DEPUTY COMMISSIONER, NOWSHERA and others---Appellants

Versus

KHURSHID ANWAR and others---Respondents

(Against the order dated 10.06.2021 passed by the Peshawar High Court, Peshawar in W.P. No. 141-P of 2020).

C.M.A. No. 670-P of 2021 in C.P. No. 399-P of 2021
(Stay Application)

DEPUTY COMMISSIONER, NOWSHERA and others---Appellants

Versus

KHURSHID ANWAR and others---Respondents

C.P. No. 400-P of 2021

DEPUTY COMMISSIONER, NOWSHERA and others---Appellants

Versus

MUHAMMAD YASIR KHATTAK (ADVOCATE) and others---Respondents

(Against the order dated 10.06.2021 passed by the Peshawar High Court, Peshawar in W.P. No. 1867-P of 2020).

C. M.A.671-P of 2021 in C.P. No. 400-P of 2021

(Stay Application)

DEPUTY COMMISSIONER, NOWSHERA and others---Appellants

Versus

MUHAMMAD YASIR KHATTAK (ADVOCATE) and others---Respondents

C.P. No. 4517 of 2019

GOVERNMENT OF PAKISTAN through Secretary Ministry of Defence

Islamabad and another---Appellants

Versus

SHAH SAUD and others---Respondents

(Against the order dated 24.09.2019 passed by the Peshawar High Court, Peshawar in W.P. No. 1163-P of 2019).

C.A. No. 538 of 2022, C.M.A. No. 9963 of 2021 in C.A. No. 538 of 2022, C.A. No. 539 of 2022, C.A. No. 540 of 2022, C.A. No. 541 of 2022, C.A. No. 542 of 2022, C.A. No. 799 of 2022, C.M.A. No. 3083 of 2019 in C.A. No. 799 of 2022, C.A. No. 2025 of 2022, C.P. No. 396-P of 2021, C.M.A. No. 667-P of 2021 in C.P. No. 396-P of 2021, C.P. No. 397-P of 2021, C.M.A. No. 668-P of 2021 in C.P. No. 397-P of 2021, C.P. No. 398-P of 2021, C.M.A. No. 669-P of 2021 in C.P. No. 398-P of 2021, C.P. No. 399-P of 2021, C.M.A. No. 670-P/ 2021 in C.P. No. 399-P of 2021, C.P. No. 400-P of 2021, C.M.A. No. 671-P of 2021 in C.P. No. 400-P of 2021 and C.P. No. 4517 of 2019, decided on 14th December, 2023.

(a) Land Acquisition Act (I of 1894)---

---Ss. 4, 16, 17& 48---General Clauses Act (X of 1897), S. 21---Acquisition of land, withdrawal from---Power of the Commissioner to withdraw from acquisition of any land---Scope---Power of the Commissioner to withdraw from the acquisition of any land is unfettered till possession has been taken---As such, the Land Acquisition Act, 1894, contemplates that once possession has been taken, acquisition is complete, and the Commissioner can no longer exercise the power to withdraw---Possession must be actual possession of the land, as all interests in the land are sought to be acquired; there can be no question of taking "notional" or "symbolical" possession, nor would possession merely on paper be enough--- Possession ought to be either under Section 16 or 17 of the Land Acquisition Act, 1897---It is implicit that after possession has been taken, the land is vested in the Government, and the notifications issued prior to it cannot be cancelled under Section 21 of the General Clauses Act, 1897.

Messrs Dewan Salman Fiber Ltd. and others v. Government of NWFP through Secretary Revenue Department Peshawar and others PLD 2004 SC 441; Government of Pakistan through Secretary, Ministry of Defence, Rawalpindi and another v. Farzand Begum and others 2022 SCMR 1383; Lt. Governor of Himachal Pradesh and another v. Sri Avinash Sharma AIR 1970 SC 1576 and B.N Bhagde v. M.D. Bhagwat AIR 1975 SC 1767 ref.

(b) Land Acquisition Act (I of 1894)---

---Ss. 4, 11 & 48---Acquisition of land, withdrawal from---Acquiring department after taking possession seeking to withdraw from the acquisition on the ground that the department did not have the funds to make payment---Legality---As a result of the award, the possession of the land was obtained from the landowners, which was confirmed by the record of rights for the year 1999, which reflected the acquiring department as the owner of the land---Land had been absolutely vested with the acquiring department of the Government since 1999---Since the

appellants/petitioners had taken possession of the land in pursuance of the award under Section 11 of the Land Acquisition Act, 1894, the acquisition had become past and closed, denuding the Commissioner of the right to withdraw, rescind, recall or amend any notification regarding the acquisition---Therefore, he could not rely on Section 48 merely because the acquiring department had no funds to pay for the compensation---Land Acquisition Act, 1894, did not allow such grounds of withdrawal from the acquisition of land once possession was obtained---Landowners could not be left in a quandary; they could not be expected to wait indefinitely, as the Government had acquired their valuable right to the immovable property---If the Government or its acquiring department did not have the funds, it should have made up its mind quickly and that too before taking possession and told the landowners where they stood--Land acquisition process started in 1977 and was delayed due to ineptitude and negligence of the appellants/petitioners---Since then, the landowners had been struggling to get their legitimate rights---Impugned notification under Section 48(1) of the Act by which the acquisition was withdrawn could not be held to be bona fide; rather, it was invalid, illegal and without jurisdiction and would be construed as a clever ploy on the part of the appellants/petitioners to deceive the landowners---High Court had rightly set-aside the impugned notification - Matters were disposed of accordingly.

For the Appellant(s)/
Applicant(s)/Petitioner(s)

Malik Javed Iqbal Wains, Addl. A.G.P., Saad Rasool, Advocate (in C.M.A. No. 9420 of 2023).

Ms. Ammara Ammar, MEO.

Arif Mehmood, Survey Officer, MEO.

For the Respondent(s)

Muhammad Yasir Khattak, Advocate Supreme Court.

Sh. Mahmood Ahmad, Advocate-on-Record.

Muhammad Saad Butt, Advocate in person.

Ashfaq Ahmad, in person.

For Government of KPK

Zahid Yousaf Qureshi, Advocate-on-Record.

Date of hearing: 7th November, 2023.

JUDGMENT

SHAHID WAHEED, J.---These are land acquisition matters comprising two batches. The first batch is by the Deputy Commissioner, Nowshera, et cetera and includes CPLAs Nos.396-P to 400-P of 2021. The second batch is from the acquiring department et cetera and contains C.As. Nos.538 to 542, 799, 2025 of 2022 and No.4517 of 2019. Both sets of cases are against the judgment dated 10th

of June, 2021, of the Peshawar High Court made by it in the exercise of its constitutional jurisdiction. They are, therefore, proposed to be decided jointly.

2. The question raised in these cases is out of the ordinary. The appellants/petitioners want to withdraw proceedings for the acquisition of lands initiated by them under the Land Acquisition Act, 1894, but the landowners insist that the appellants/petitioners should be directed to go ahead with the acquisition and pay them compensation. The cause of this anomalous state of affairs will come to the fore upon relating its factual backdrop.

3. The land in dispute before us is located in different mouzajat of Nowshera District and is measured to be 3413 acres, 1 kanal and 11 marlas. The possession of this land was first obtained by the Ministry of Defence in 1955 on lease for an artillery range; subsequently, it was intended to be acquired under the Land Acquisition Act, 1894, and as such, on 13th of May, 1977, a notification under Section 4 was issued, and then, the proceedings under it lasted 22 long years for the determination of the award which was announced on 21st of April, 1999. This ushered in another round of trials and tribulations for the landowners, which ensued in protracted litigation for the adequate determination of the acquired land. This culminated in the Supreme Court's judgment dated 15th of February, 2018, by which the compensation was determined at Rs.12,000/- per marla with 6% simple interest and 15% compulsory acquisition charges. Even so, the landowners were pushed to Court to get the compensation amount. They applied to the District Court for execution of the decree. Here, after exhausting all possible tactics to procrastinate the matter, permission was sought to return the land to their owners on the ground that the acquiring department (the appellants) had no funds to make payment. This request was declined by the executing Court by its order dated 6th of May, 2019, which the High Court upheld. Facing this tight corner, the appellants/petitioners jointly decided to take out their last arrow from the quiver, and they issued the notification, dated 7th of October, 2019, to withdraw from the acquisition. This

led the landowners to invoke the constitutional jurisdiction of the High Court for an order in the nature of a writ of certiorari for quashing the said notification. This petition was granted by the judgment of the High Court dated 10th of June, 2021, which is now under our review.

4. To resolve whether, based on the facts and in the circumstances stated above, the appellants/petitioners were competent to withdraw from the acquisition of the

land, it would be profitable to refer to the notification from which this question arises. This notification is to the following effect:

OFFICE OF THE DEPUTY COMMISSIONER/DISTRICT
COLLECTOR NOWSHERA

DE-NOTIFICATION UNDER SECTION-48 OF THE KHYBER
PAKHTUNKHWA LAND ACQUISITION (AMENDMENT) ACT, 2019
No.868/DC/LAB/NSR Dated 07.10.2019

Whereas, land measuring 3413 Acre 01 Kanal 11 Marla was acquired for the purpose of AFV Range at Mouza Manki Sharif District Nowshera vide award No. 119-122/CLA/NSR dated 21.04.1999.

Whereas, rate enhancement @ Rs 12000/- per Marla was directed by the Honourable Supreme Court of Pakistan which was accordingly communicated to Military Estate Officer, Peshawar Circle Peshawar for arrangement of funds so as compensation be made the land owners accordingly. The acquiring department i.e. Military Estate Officer, Peshawar Circle Peshawar vide No.L21/FFR/XIX dated 29.03.2019 conveyed that the Federal Government (Ministry of Defence) has regretted to provide the funds (Decretal amount/enhanced compensation) further requesting for de-notification and surrendering of land to the rightful owners acquired in seven (7) villages of Manki Sharif, Aman Garh, Nowshera Khurd, Spin Kanay, Pir Pai, Aza Khel Payan and Badrashi.

A meeting was also held on 30.07.2019 under the Chairmanship of Senior Member Board of Revenue Khyber Pakhtunkhwa attended by Deputy Commissioner Nowshera, Deputy MEO Peshawar, Deputy Law Officer, Law Department Khyber Pakhtunkhwa and Legal Advisor of HQ 11 Corps. The issue of enhance compensation and contempt of court proceedings in the court of Additional District Judge-V Nowshera dated 01.07.2019 in case titling Mst. Bas Bibi and others v. Collector Land Acquisition and others and Peshawar High Court Peshawar Judgment dated 11.06.2019 in Writ Petition No.3082/2019 was discussed in detail. After getting input of Deputy Law Officer and after threadbare discussion the undersigned was directed to dispose off the acquired in seven villages mentioned above in light of Sub-Para (1)(2)(3) of Para-66 Land Revenue Circular No.54 communicated vide minutes of the meeting vide letter No.Rev.V/4/Peshawar/2019/26010-16 dated 02.08.2019.

Accordingly the case was processed vide No.767/DC/LAB/NSR dated 23.08.2019 for approval of de-notification by the competent authority i.e. Commissioner Peshawar Division Peshawar whereby the subject approval for de-notification of the land in question under Section-48 of the Land Acquisition Act, 1894 was granted vide letter No.2-17/AR/Cost Estimate/2019/ 11768 dated 24.09.2019.

Now, therefore, I Deputy Commissioner/District Land Acquisition Collector Nowshera in light of minutes of the meeting vide letter No.Rev.V/4 /Peshawar /2019/26010-16 dated 02.08.2019 and de-notification vide letter

No. 2-17/AR/Cost Estimate/2019/ 11768 dated 24.09.2019 by the competent authority under Section-48 of the Land Acquisition Act, 1894 do hereby denotify the above mentioned Award acquired for AFV Range at Mouza Manki Sharif District Nowshera. Settlement Tehsildar Nowshera is hereby directed to dispose off the land in the very spirit of sub-para (1)(2)(3) of para-66 of Land Revenue Circular No.54.

Deputy Commissioner
Nowshera

5. It is conspicuous that the power to issue the said notification is derived from Section 48 of the Land Acquisition Act of 1894. This begs the question as to whether this power was available to the appellants/petitioners in the circumstances. The answer requires a dissection of Section 48, which reads as follows:

48. Completion of acquisition not compulsory, but compensation to be awarded when not completed---(1) Except in the case, provided for in Section 36, the Commissioner shall be at liberty to withdraw from the acquisition of any land of which possession has not been taken.
- (2) Whenever the Commissioner withdraws from any such acquisition, the Collector shall determine the amount of compensation due for the damage suffered by the owner in consequence of the notice or of any proceedings thereunder, and shall pay such amount to the person interested, together with all costs reasonably incurred by him in the prosecution of the proceedings under this Act relating to the said land.
- (3) The provisions of Part III of this Act shall apply, so far as may be, to the determination of the compensation payable under this section.

6. A bare reference to subsection (1) of Section 48 will show that the Commissioner in the Province of Khyber Pakhtunkhwa is at liberty to withdraw from the acquisition of any land "of which possession has not been taken." Whenever any such withdrawal is made, the landowner is entitled to compensation for any damage he suffers, to be determined per subsection (2) of Section 48. Thus, on a plain

reading, the power of the Commissioner to withdraw from the acquisition of any land is unfettered till possession has been taken. As such, the Land Acquisition Act, 1894, contemplates that once possession has been taken, acquisition is complete, and the Commissioner can no longer exercise the power to withdraw.¹ It is implicit that after possession has been taken, the land is vested in the Government, and the notifications issued prior to it cannot be cancelled under Section 21 of the General Clauses Act.²

7. It is important to note here that neither the Government nor the Commissioner or the acquiring department can, as a person interested, require the reference of an award to the Court under Section 18(1). So far as they are concerned, the award is final. Wherefore, the legislature has provided in the form of Section 48(1) a provision for the benefit of the acquiring department to rethink whether it wants to

proceed with the acquisition or withdraw from it where the terms of the award differ materially from those of the preliminary estimate, or where there is ground for supposing that the Court, on a reference under Section 18 of the Land Acquisition Act, 1894, would adjudicate in compensation a sum materially larger than that calculated in the preliminary estimate.³ But this power to draw back from the acquisition ought to be taken before taking possession of the land.

8. It is now to be seen what kind of possession, in the scheme of the Land Acquisition Act of 1894, constitutes the terminus point for Section 48. In our view, it must be actual possession of the land, as all interests in the land are sought to be acquired. There can be no question of taking "notional" or "symbolical" possession, nor would possession merely on paper be enough.⁴ It ought to be either under Section 16 or 17 of the Act. Section 16 reads as follows:

16. Power to take possession---When the Collector has made an award under Section 11, he may, subject to the provision of Section 31, take possession of the land, which shall there-upon vest absolutely in the Government free from all encumbrances.

Section 16 applies when the ordinary procedure for acquisition is adopted. In cases of urgency, a special procedure regarding the acquisition and taking of possession has been prescribed under Section 17. Section 17(1) of the Act reads as follows:

17. Special powers in cases of urgency---(1) In cases of urgency, whenever the Commissioner so directs the Collector, though no such award has been made, may, on the expiration of fifteen days from publication of the notice mentioned in sub-section (1) of Section 9, take possession of any land needed

for public purposes or for a Company. Such land shall there-upon vest absolutely in the Government free from all encumbrances:

Provided that the Commissioner shall not issue any direction to the Collector under this sub-section unless the Provincial Government, the Federal Government, the local authority, or Company as the case may be, for which the land is being acquired, has first deposited the estimated cost of acquisition of such land as determined by the Collector of the district, keeping in view the provisions of Sections 23 and 24.

A mere comparison of Sections 16 and 17 will show that, under Section 16, possession can be taken only after an award has been made under Section 11, whereas in the exercise of powers under Section 17(1), possession can be taken on the expiry of 15 days from publication of notice mentioned in Section 9(1), although no award has been made. Vesting, however, under both sections is to take place only after such possession has been taken.

9. There is no denying that as a result of the award, the possession of the land was obtained from the landowners. This is also confirmed by the record of rights for the year 1999, which reflects the acquiring department as the owner of the land.

Therefore, it is clear that the land has been absolutely vested with the acquiring department of the Government since 1999.

10. In the position of law stated above, since the appellants/ petitioners had taken possession of the land in pursuance of the award under Section 11 of the Land Acquisition Act, 1894, the acquisition had become past and closed, denuding the Commissioner of the right to withdraw, rescind, recall or amend any notification regarding the acquisition. Therefore, he could not rely on Section 48 merely because the acquiring department had no funds to pay for the compensation. The Land Acquisition Act, 1894, dehors such grounds of withdrawal from the acquisition of land once possession is obtained. The landowners could not be left in a quandary. They could not be expected to wait indefinitely, as the Government had acquired their valuable right to the immovable property. If the Government or its acquiring department did not have the funds, it should have made up its mind quickly and that too before taking possession and told the landowners where they stood. The land acquisition process started in 1977 and was delayed due to ineptitude and negligence of the appellants/petitioners. Since then, the landowners have been struggling to get their legitimate rights. Based on these facts, no law can condone the indolence of the appellants/petitioners and approve the action for withdrawal of the land acquisition. In any case, at this point, the notification, dated 7th of October, 2019, under Section 48 cannot be held to be bona fide; rather, it would be construed as a clever ploy on the part of the appellants/petitioners to deceive the landowners. It does not behove the Government to treat its citizens like this.

11. Considering all the facts and circumstances of the case, it has to be held that the notification, dated 7th of October, 2019, under Section 48(1) of the Land Acquisition Act, 1894, was invalid, illegal and without jurisdiction, and the High Court rightly set it aside. Therefore, there is no merit in these cases. They are dismissed accordingly. All pending applications are also disposed of.

MWA/G-14/SC Order accordingly.