

Stereo. H C J D A-38.
JUDGMENT SHEET
IN THE LAHORE HIGH COURT, LAHORE.
JUDICIAL DEPARTMENT

ICA No.26642 of 2023

M/s MAG Apartments Private Limited

Versus

Lahore Development Authority & another

JUDGMENT

Date of hearing: 18.11.2024.

Appellant by: Mr. Muhammad Khalil Rana, Advocate.

Respondents by: Ms. Samia Khalid, Additional Advocate General.

Ch. Waseem Arif, Advocate (LDA).

MUHAMMAD SAJID MEHMOOD SETHI, J.- Through instant appeal, appellant has called into question judgment dated 11.11.2022, passed by learned Single Bench, whereby constitutional petition, filed by respondent-LDA, challenging respondent No.2's order dated 13.03.2020, de-notifying land measuring 04-Kanal comprising Khasra No.11349, situated in Mauza Niaz Baig, Tehsil City, District Lahore from the land acquired by respondent-LDA for establishment of Muhammad Ali Johar Town Scheme, was allowed.

2. Brief facts of the case are that process for acquiring land for a Housing Scheme known as Muhammad Ali Johar Town was initiated by the respondent-LDA under Section 13(2) of the Lahore Development Act, 1975, which was followed by a Gazette Notification dated 28.08.1980. On 06.11.1980, a notification under Section 4(1) of the Punjab Acquisition of Land (Housing) Act, 1973 (“**the Act of 1973**”), gazetted on 10.11.1980, was issued for the information of general public whereby land in dispute was also acquired for establishment of aforesaid Housing Scheme including

Khasra No.11349. On 05.01.1981, a notification under Section 13 of the Act of 1973 for the acquisition of land including Khasra No.11349 was issued after issuance of public notice under Section 6(1) of the Act of 1973 *ibid*, which was gazetted on 05.02.1981. Appellant filed an application on 17.06.2019 for correction of Revenue record of Khasra No.11349 of Mauza Niaz Baig, Lahore to respondent No.2, who accepted the application vide impugned order dated 13.03.2020 and excluded the land measuring 04-Kanal comprising Khasra No.11349 situated in Mauza Niaz Baig, Tehsil City, District Lahore from the acquired land for the above Housing Scheme. Learned Single Judge, after hearing arguments of learned counsel for the parties, vide judgment dated 11.11.2022 proceeded to allow LDA's constitutional petition and set aside Commissioner's order dated 13.03.2020. Hence, instant appeal.

3. Learned counsel for appellant while referring to Section 19 of the Act of 1973 (*pari materia* to Section 48(1) of the Land Acquisition Act 1894) submits that respondent-LDA has no jurisdiction to exclude the land as the Act of 1973 has been repealed by the Punjab Acquisition of Land (Housing) (Repeal) Act, 1985 ("**the Repeal Act of 1985**"). He adds that Section 3 of the Repeal Act of 1985 provides that in case, the proceedings have commenced under the Act of 1973, same shall continue notwithstanding the repeal and such proceedings shall be completed under the provisions of said Act and the rules made thereunder. He adds that the first proviso of Section 3 provides that in case an award has not been made under Section 7 of the Act *ibid* at the time of commencement of this Act, compensation in such a case shall be assessed, awarded and paid under the provisions of the Land Acquisition Act, 1894 ("**the Act of 1894**"). He argues that Section 48-A of the Act of 1894, inserted in law by the Punjab Town Improvement Act, 1922, provides that where the award has not been made within one year after the publication of the declaration of Section 6, the owner would be entitled to the damages in

consequence of the delay and in turn, reading Section 48-A & 48 together would mean that mere issuance of notification under Sections 4 & 6 of the Act of 1894 in itself would not vest the property in Government / Agency. He maintains that in this case, notification under Section 13 of the Act of 1973 was issued on 05.02.1981 commanding that respondent-LDA required possession of the land immediately within 24-hours of the publication of notice, therefore, respondent-LDA was authorized to enter upon the land and take possession, however, neither possession was taken nor compensation was paid, even otherwise, acquisition cannot be undertaken in the manner detrimental to the owner's right. He states that it is mandated by the Constitution of the Islamic Republic of Pakistan, 1973 and detailed in Section 23 that the land owner gets the best market value since the compensation is a basic right which means that the land owner does not lose any financial advantage that it has on account of proprietary rights, whereas it has been around 42-years by now that admittedly no compensation was paid. In the end, he has relied upon Government of Pakistan through Secretary Ministry of Defence Rawalpindi and another v. Akhtar Ullah Khan Khattak and others (PLD 2024 Supreme Court 218) and Liaqat Ali v. District Collector, Gujrat and 4 others (2022 MLD 1195).

4. Contrarily, learned Law Officer duly assisted by learned Legal Advisor for respondent-LDA defends the impugned judgment by contending that appellant has failed to pinpoint any illegality or legal infirmity therein, thus, no interference is warranted.

5. Arguments heard. Available record perused.

6. Record shows that respondent-LDA, by way of filing constitutional petition, challenged Commissioner's order dated 13.03.2020 whereby appellant's petition was allowed and land in question was de-notified and subject acquired land was excluded from the land acquired by the respondent-LDA for the purpose of establishment of Muhammad Ali Johar Town Scheme. Learned

Single Judge while relying upon various esteemed judgments of the Hon’ble Superior Courts in general and judgment of this Court reported as *Wali Rehman v. The Additional Commissioner (Revenue) Gujranwala Division & 7 others (2022 CLC 106)* in particular, concluded as under:-

“9. From the above, it is established that the Commissioner, Lahore Division, Lahore did not consider the law applicable on the case and the dictum laid down by the Hon’ble Supreme Court of Pakistan as well as that of this Court and passed the impugned order which suffers from patent illegality, irregularity and without jurisdiction, as such, the same deserves reversal.

10. Resultantly, this writ petition is **allowed** and order dated 13.03.2020 passed by the Commissioner, Lahore Division, Lahore is hereby set aside being passed without jurisdiction.”

7. The question for our determination is whether the power to issue the notification de-notifying the land was available with respondent No.2 in terms of Section 48 of the Act of 1894. For facility of reference, Section 48 *ibid* is reproduced hereunder:-

“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.”

8. A bare reference to subsection (1) of Section 48 will show that the Commissioner 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 Act

of 1894, contemplates that once possession has been taken, acquisition is complete, and the Commissioner can no longer exercise the power to withdraw. 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.

9. 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. 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."

10. Since the respondent-LDA had neither taken possession of the land nor award was announced under Section 11 of the Act of 1894, the acquisition had not become past and closed, which may denude the Commissioner of the right to withdraw, rescind, recall or amend any notification regarding the acquisition. The Act of 1894, does not permit to withdraw a land from the acquisition process once possession is obtained, however, scenario is different in this case. The landowners could not be left in a quandary. It is apparent from record that respondent-LDA issued notification under Section 13(2) of the LDA Act, 1975 on 28.08.1980 as well as under Sections 4, 6(1) & 13 of the Act of 1973 for acquisition of the said land for the purpose of Muhammad Ali Johar Town Housing Scheme, however, 04-Kanal land out of Khasra No.11349, whereof appellant claims to be owner, was neither acquired by respondent-LDA nor he or his predecessor-in-interest received any compensation for such

acquisition. However, the land in question is included in notification dated 06.11.1980 issued under Section 4 and notification No.269 dated 05.01.1981 issued under Section 13 of the Act of 1894. Whereas there is no denying to the fact that award of said Khasra was not announced and proceedings to acquire its possession were initiated to the extent of 01-Kanal 15-Marla only, which does not include appellant's land. A party cannot be expected to wait indefinitely, as the Government acquires its 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 decades ago, however, the landowners have been struggling to get their legitimate rights. Based on these facts, no law can condone the indolence of the respondent-LDA. Therefore, the Commissioner, Lahore Division, Lahore / respondent No.2 was justified to de-notify appellant's land measuring 04-Kanal comprising Khasra No.11349, taking into account the conduct of respondent-LDA. Reliance is placed upon Government of Pakistan through Secretary Ministry of Defence Rawalpindi and another v. Akhtar Ullah Khan Khattak and others (PLD 2024 Supreme Court 218).

11. In view of the above, instant appeal is **allowed**. Consequently, impugned judgment dated 11.11.2022 is set aside.

(Rasaal Hasan Syed)
Judge

(Muhammad Sajid Mehmood Sethi)
Judge

Approved for Reporting

Judge