

JUDGMENT SHEET
IN THE LAHORE HIGH COURT, LAHORE
JUDICIAL DEPARTMENT
JUDGMENT

W.P.No.8177/2023

Lahore Development Authority VS. Chaudhary Hamayun Mahmood
through its Director General and another
and another

Date of hearing	20.05.2024
Petitioners by	Sahibzada Muzaffar Ali, Marwa Aslam, Sidra Azmat and Muhammad Ali, Advocates
Respondent No.1 by	Mr. Asad Manzoor Butt and Hafiz Muhammad Noman Zafar, Advocates

Ch. Muhammad Iqbal, J:- Through this constitutional petition, the petitioners/Lahore Development Authority has challenged the validity of order dated 16.11.2022 passed by the Commissioner, Lahore Division, Lahore who accepted the application of the respondent No.1 and de-notified the acquired land measuring 17 Kanal 02 Marla of Khasra No.635 & 636 situated at Moza Bhotian, Tehsil Raiwind, District Lahore.

2. Brief facts of the case are that the notification under Section 4 of the Land Acquisition Act, 1894 was issued on 28.04.2003 [gazetted on 29.04.2003] for acquisition of land for establishment of “LDA Avenue Housing Scheme” and thereafter notifications under Section 17(4) & 6 of the Act ibid bearing No.2385 & 2386 were issued on 04.07.2003 [gazetted on 08.07.2003] and accordingly award was announced on 24.10.2003. On 18.05.2022, respondent No.1 filed an application under Section 48 of the Land Acquisition Act, 1894 for de-

notification of the land measuring 17 Kanal 02 Marla comprising Khasra No.635 (08 Kanal 18 Marla) and Khasra No.636 (08 Kanal 04 Marla) situated at Moza Bhobtian Tehsil Raiwind, District Lahore. The said application was accepted vide order dated 16.11.2022 by the Commissioner, Lahore Division who de-notified the acquisition of the said land which resulted into filing of this petition.

3. Learned counsel for the petitioners submits that the suit land was acquired in the year 2003 against which the assessed amount of compensation was deposited with the Land Acquisition Collector. The master plan of the housing scheme had finally been drawn and substantial development work for the infrastructure of the scheme has been accomplished and possession of the khasra numbers have already been obtained by the petitioners upon which plots have been carved out and allotted to different persons, as such the impugned order has been passed without any reasoning therefore same is liable to be set aside.

4. Respondent No.1 filed reply to the writ petition and pleaded that possession of the land was not completely obtained by the Lahore Development Authority since acquiring of the land, thus the Commissioner was well within jurisdiction under Section 48 of the Land Acquisition Act, 1894 to de-acquire/de-notify the land. Learned counsel for the respondent No.1 has supported the impugned order and prayed for dismissal of instant petition.

5. I have heard learned counsels for the parties and have gone through the record.

6. Admittedly, petitioners/L.D.A acquired land of Moza Bhobtian Tehsil Raiwind, District Lahore for establishment of “LDA Avenue-I Housing Scheme” and notification under Section

4 of the Land Acquisition Act, 1894 was issued on 28.04.2003 [gazetted on 29.04.2003] in which Khasra Nos.635 & 636 of Moza Bhobtian Tehsil Raiwind District Lahore were included. Thereafter, notification under Section 17(4) and 6 of the Act ibid was issued on 04.07.2003 [gazetted on 08.07.2003] wherein khasra Nos.635 & 636 of the respondents' predecessor were duly mentioned. On 24.10.2003, Award No.6 of the acquired land was issued including the impugned Khasra Numbers and compensation was also deposited with the Land Acquisition Collector concerned. This shows that the land of Khasra Nos.635 & 636 was also acquired in accordance with law. After taking possession of Khasra Numbers 635 & 636 on 25.09.2003, the petitioner/L.D.A. carved out as many as 27 plots in the said khasra numbers. The detail whereof is as under:-

Khasra No.635		
Sr. No.	Plot No.	Name of Allottee
1	685-L	Syed M. Imran
2	686-L	Abbad Ali Javaid
3	687-L	Fakhira Zia
4	688-L	Muhammad Kamil
5	689-L	M. Ahmad
6	690-L	Areeba Iqbal
7	691-L	Muhammad Fiaz
8	711-L	Azra Parveen
9	712-L	Saeed Ullah Khan
10	713-L	Khalid Zaman
11	710-A-L	-

12	714-L	Jamila Begum
13	715-L	M. Yaqoob

Khasra No.636

Sr. No.	Plot No.	Name of Allottee
1	74	Asfaa Birayat
2	745	Malik Zafar
3	746	M. Naeem Akhtar
4	747	Shahbaz Khan
5	478	Nuzhat Zubair
6	758	Saima Ashfaq
7	773	Kausar Wahid
8	797	Malik Aziz
9	796	Bashir Ahmad
10	798	Shakil Ahmed
11	799	M. Naseer Khan
12	796-A	Hafiz Muhammad Saleem
13	797-A	Malik Aziz Ahmed
14	798-A	Khalid Pervaiz

And above said plots of both Khasras number were allotted to different allottees who had paid the cost of land as well as development charges to the acquiring agency and after payment of consideration amount a tangible right / title had stood accrued in their favour and no hearing was afforded to the said lawful allottees by the Commissioner and nor their vested interest has

been safeguarded. Even no request was made by the acquiring agency for de-acquisition of the said acquired land. Further it is worth mentioning here that all the surrounding khasra numbers to khasra Nos. 635 & 636 were under litigation through W.P. No.16022/2003 filed by Dilawaz Iqbal etc. and ICA whereof but in the said litigation, the impugned khasra numbers were not sub judice but due to pendency of the above litigation the development work of the said housing scheme remained incomplete over the said Khasra numbers. Another lis was instituted by Dilawaz etc. by filing W.P. No.4504/2007 and against the decision of the writ petition an Intra Court Appeal No.806/2009 is still pending in this Court, thus the main hurdle in completion of the work was due to pendency of the above litigation.

7. The main controversy in this petition is that as to whether under the land acquisition enactment, the Commissioner has any jurisdiction to issue declaration regarding de-acquisition of an acquired land, suffice it to say that as per Section 48(1) of the Land Acquisition Act 1894, the government has the power to withdraw from acquisition of any land of whose possession has not been taken. For reference, Section 48(1) of the Land Acquisition Act, 1894 is reproduced as under:

“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 Government shall be at liberty to withdraw from the acquisition of any land of which possession has not been taken.

As expounded from the above provision, the Commissioner has no jurisdiction to exclude the acquired land under the Land Acquisition Act, 1894 rather it is only the Government who is shown competent to de-acquire the land. This Court while dealing with an alike matter regarding de-notification of the acquired land by an Executive District Officer (Revenue) has

elaborately discussed this issue in a judgment cited as *Muhammad Nawaz Vs. Government of Punjab, through Chief Secretary, Lahore and others (2017 MLD 1719)*. The relevant portion whereof is as under:

“9. It is an admitted fact that the land measuring 142-Kanals 13-Marlas of Village Wasu and measuring 451-Kanals 09-Marlas of Village Sohawa Bulani, Tehsil & District Mandi Baha-ud-Din was acquired for “Construction of State of the Art, District Headquarters Hospital and allied facilities, Mandi Baha-ud-Din near District Complex Mandi Baha-ud-Din. In this regard Award has already been announced on 04.06.2007 and thereafter a Mutation was duly sanctioned in favour of the Health Department. The respondent No.8 challenged the Notification under Section 4 of Land Acquisition Act,1894 through Writ Petition No.1782/2006 which was disposed of on 15.06.2006. The respondent No.8 withdrew his Reference under Section 18 of the Land Acquisition Act,1894 from the Court of Learned Senior Civil Judge Mandi Baha-ud-Din and filed the application in the office of Executive District Officer(Revenue) for de-notification of the acquired land measuring 142-Kanals 13-Marlas during the pendency of Intra Court Appeal and the acquired land has been de-notified by the then Executive District Officer (Revenue) Mandi Baha-ud-Din vide Order dated 14.09.2010.

10. Under Section 48 of the Land Acquisition Act, 1894 only Government has an exclusive jurisdiction to withdraw the acquisition process and Executive District Officer (Revenue) is not stand anywhere. Section 48 is as under:-

Completion of acquisition not compulsory, but compensation to be awarded when not completed:- (1) Except in the case provided for in Section 36, the Government shall be at liberty to withdraw from the acquisition of any land of which possession has not been taken.

11. Under Section 48 Ibid, the Government is at liberty to withdraw acquisition proceedings of any land on which possession has not been taken whereas there is no intention of the Government to withdraw the acquisition proceedings is on record. The Government acquired the land in question for the welfare of the public at large/for construction of a Hospital. The Executive District Officer (Revenue) passed the impugned Order without obtaining any permission or instructions from the Government, as such, the impugned Order is a classic example of misuse of official power, as such, it is illegal, without lawful authority. Reliance is placed on the cases reported as *National Police Foundation Co-operative Housing Society Ltd Versus Board of Revenue, Government of Punjab, Lahore and 2 others (PLD 1984 Lahore 191) Fida Hussain and 2 others Versus Province of Punjab through Secretary, Settlement, Board of Revenue Punjab Lahore and 4 others, (2002 CLC 790)*.

.....

16. In latest Judgment of the Hon'ble Supreme Court of Pakistan titled as *Province of Punjab through A.D Fisheries Sialkot Versus Rana Abdul Hameed and others (2014 SCMR 1187)* it was held that no Court/forum with the Revenue hierarchy can set aside the acquisition of land or the order which have been passed including Notification under Section 4 & 17 of the Land Acquisition Act, 1894 which is as under:-

The revenue forums in nutshell have proceeded to decide the case by holding that the land acquired should be returned to respondent Rana Abdul Hameed etc. It is quite clear that the revenue hierarchy does not figure anywhere in land acquisition proceedings. No Court/forum within the revenue hierarchy can, therefore, set aside the acquisition of land or the orders which have been passed including notifications under Section 4 and 17 of the Land Acquisition Act pursuant to which title in the land stood transferred to the Fisheries Department of the Province.

Considering the above, we are clear that the orders including the impugned judgment proceeded on the erroneous premise, that the revenue forums had jurisdiction in the matter. Learned counsel representing the respondents acknowledged that the Revenue forums had no jurisdiction to interfere in land acquisition proceedings, or to direct the Government to return the acquired land to the respondents. The orders of the Revenue authorities, therefore, being without jurisdiction, are set aside. This petition, as a consequence, is converted into appeal and the same is accordingly allowed. It is stated, however, that compensation for the acquired land has not yet been paid to the respondents land owners. The said respondents subject to law, may avail whatever remedies are available to them under the law because the learned Law Officer states that the compensation awarded by the LAC was deposited with the Collector in 1976.

17. Muhammad Khalid Nazir, the then Executive District Officer (Revenue), was not competent to de-notify the acquired land. According to the Award and other relevant record it is crystal clear that the land has been delivered to the Health Department, which is still intact. The Health Department filed comments in this Writ Petition and prayed that the impugned De-Notification No.550-A dated 14.09.2010 may kindly be declared illegal, malafide, without lawful authority and of no legal effect. It means that the Health Department never surrendered the acquired land and it is required to be Health Department for the construction of hospital. The Acquired land could not be de-notified. The Mutation has already been duly sanctioned in favour of the Health Department. During process of de-notification, the Department never summoned, nor heard any person, all the process was kept in secret and the impugned order was also not endorsed to the acquiring Department.”

Further, the Hon'ble Supreme Court of Pakistan in a recent pronouncement titled as *Government of Pakistan through*

Secretary Ministry of Defence Rawalpindi and another Vs. Akhtar Ullah Khan Khattak and others (PLD 2024 SC 218) has held that once possession of acquired land has been taken, that land could not be de-notified. Relevant portion of the judgment (*supra*) is reproduced as under:

“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.”

8. Here in the lis in hand, the entire compensation amount under the award has been deposited and possession of the acquired land has been obtained by the acquiring agency /L.D.A who has carved out plots over it and also allotted the said plots to different persons, as such the Commissioner, Lahore Division, Lahore was denuded from any jurisdiction to de-notify the said acquired land.

9. Even otherwise, notification under Section 4 of the Act ibid of land in question was issued on 28.04.2003, notification 17(4) and 6 of the Act ibid was issued on 04.07.2003 whereas award was issued on 24.10.2003 but the respondent No.1 purchased the land falling in Khasra Nos.635 & 636 through registered sale deed No.50915 dated 03.10.2011 in Moza Bhabatian and mutation No.664 was incorporated in the revenue record, whereas at the time of entering into sale transaction ex-owner/ vendor was not holding any title of the land as after acquisition, title of the land vested free from all encumbrances in favour of the petitioner/ LDA whereafter no sale transaction of the said land could be made by ex-owner and even if any transaction of sale was made by ex-owner after issuance of

notifications and award whereof, that transaction could not convey any right or title in favour of the subsequent purchaser. The issuance of notifications under Land Acquisition Act, 1894 was a caution for public to stay away from entering into any sale/purchase transaction subsequent to the issuance of the notification and if any alienation is made then it would be at the risk and cost of the said vendee. This Court has elaborately discussed this issue in its judgment titled as *Wali Rehman Vs The Additional Commissioner (Revenue) Gujranwala Division & 7 Others (2022 CLC 106)*, the relevant portion whereof is reproduced as under:

“5. The object of Notification under Section 4 of the Act is to disclose the intention and need of the Govt. and also to give notice to public at large that land subject matter of Notification is required for public purposes. The Notification under the above provision is merely an introductory measure, tentative in nature and furnishes the foundation of carrying out the subsequent proceedings of acquisition as well as it is amounting to a cautioning the public that any transaction/alienation made subsequent to the issuance of notification would be at the risk and cost of the respective parties as held by this Court in a judgment cited as *Messrs Eden Developers (Pvt.) Limited Vs. Government of the Punjab and others (PLD 2017 Lahore 442)*. Further the said Notification empowers the officer concerned to carry on preliminary investigation in order to reach the final conclusion whether said land is required for the public purpose or otherwise. Through Notification under Section 4 of the Act ibid only the primary tentative intention of the Government is expressed and it could not be considered as conclusive / ultimate decision of the government rather it is a precautionary notice/warning to the public at large. Reliance is also placed on a case cited as *Sardar Dildar Ahmad Cheema Vs. Board of Revenue, Punjab through Member (Revenue) and others (PLD 2013 Lahore 565)* wherein it is held as under:-

“11. It is settled principle of law that purpose of issuance of Notification under Section 4 of the Act of 1894 is to give a notice to the public at large that land subject matter of the notification is required for a public purpose, and it further means that there will be “an impediment to any one to encumber the land acquired thereunder”, this mean any encumbrance

created after the gazette notification, all encumbrances will be void against the State.....”

6. The issuance of notification under Section 6 of Act ibid is a conclusive declaration that the land is needed for public purpose and the object of the Section 17 of the Act ibid is to allow an authority to proceed with the matter without waiting completion of other formalities. Once possession of the land is taken under Section 17 of the Act ibid, whereafter the title of the land for all intents and purposes vests free from all encumbrances in the name of the government and the ownership of the previous proprietor by operation of law stand ceased / extinguished whereafter the land owner was stripped off from the legal authority / right to make any transaction of the said acquire land and any person who purchases the acquired land during or after the acquisition proceedings is debarred to challenge the acquisition proceedings and if any sale/alienation of the land so acquired is executed that would be void and non-existence in the eyes of law. Reliance in this regard is placed on a recent case law rendered by the Supreme Court of India cited as *Shiv Kumar and Ors. Vs. Union of India (UOI) and Ors.* (**AIR 2019 SC 5374**) the relevant portion whereof is reproduced as under:

6. First, we advert to the legal position concerning the purchases made on 5.7.2001, made after notification under Section 4 had been issued under the Act of 1894. Law is well settled in this regard by a catena of decisions of this Court that an incumbent, who has purchased the land after section 4 notification, has no right to question the acquisition.

6(a). In U.P. Jal Nigam, Lucknow through its Chairman & Anr. v. Kalra Properties (P) Ltd., Lucknow & Ors. (1996) 3 SCC 124 it was observed :

3. ...That apart, since M/s. Kalra Properties, the respondent had purchased the land after the notification under Section 4(1) was published, its sale is void against the State, and it acquired no right, title, or interest in the land. Consequently, it is settled law that it cannot challenge the validity of the notification or the regularity in taking possession of the land before the publication of the declaration under Section 6 was published."

6(b). In Sneh Prabha (Smt.) & Ors. v. State of U.P. & Anr. (1996) 7 SCC 426 it has been laid down that subsequent purchaser cannot take advantage of land policy. It was observed:

"5. Though at first blush, we were inclined to agree with the appellant but on a deeper probe, we find that the appellant is not entitled to the benefit of the Land Policy. It is settled law that

any person who purchases land after the publication of the notification under Section 4(1), does so at his/her peril. The object of publication of the notification under Section 4(1) is notice to everyone that the land is needed or is likely to be needed for a public purpose, and the acquisition proceedings point out an impediment to anyone to encumber the land acquired thereunder. It authorizes the designated officer to enter upon the land to do preliminaries, etc. Therefore, any alienation of land after the publication of the notification under Section 4(1) does not bind the Government or the beneficiary under the acquisition. On taking possession of the land, all rights, titles, and interests in land stand vested in the State, under Section 16 of the Act, free from all encumbrances, and thereby, absolute title in the land is acquired thereunder. If any subsequent purchaser acquires land, his/her only right would be subject to the provisions of the Act and/ or to receive compensation for the land. In a recent judgment, this Court in Union of India v. Shri Shivkumar Bhargava and Ors. [1995] 1 SCR 354 considered the controversy and held that a person who purchases land subsequent to the notification is not entitled to an alternative site. It is seen that the Land Policy expressly conferred that right only on that person whose land was acquired. In other words, the person must be the owner of the land on the date on which notification under Section 4(1) was published. By necessary implication, the subsequent purchaser was elbowed out from the policy and became disentitled to the benefit of the Land Policy."

6(c). In Meera Sahni v. Lieutenant Governor of Delhi & Ors. (2008) 9 SCC 177, the Court had relied upon the decision described above and observed thus:

"21. In view of the aforesaid decisions, it is by now well-settled law that under the Land Acquisition Act, the subsequent purchaser cannot challenge the acquisition proceedings and that he would be only entitled to get the compensation."

6(d). In V. Chandrasekaran & Anr. v. Administrative Officer & Ors. (2012) 12 SCC 133, the Court has considered various decisions and opined that the purchaser after Section 4 notification could not challenge land acquisition on any ground whatsoever. The Court observed:

"15. The issue of maintainability of the writ petitions by the person who purchases the land subsequent to a notification being issued under Section 4 of the Act has been considered by this Court time and again. In Leela Ram v. Union of India AIR 1975 SC 2112, this Court held that anyone who deals with the land subsequent to a Section 4 notification being issued, does so, at his own peril. In Sneh Prabha v. State of Uttar Pradesh AIR 1996 SC 540, this Court held that a Section 4 notification gives a notice to the public at large that the land in respect to which it has been issued, is needed for a public purpose, and it further points out that there will be "an impediment to anyone to encumber the land acquired thereunder." The alienation after that does not bind the State or the beneficiary under the acquisition. The purchaser is entitled only to receive compensation. While deciding the said case, reliance was placed on an earlier judgment of this Court in Union of India v. Shiv Kumar Bhargava and Ors. (1995) 2 SCC 427.

18. In view of the above, the law on the issue can be summarized to the effect that a person who purchases land subsequent to the issuance of a Section 4 notification with respect to it, is not competent to challenge the validity of the acquisition proceedings on any ground whatsoever, for the reason that the sale deed executed in his favour does not confer upon him, any title and at the most he can claim compensation on the basis of his vendor's title. (emphasis supplied)

6(e). In Rajasthan State Industrial Development and Investment Corpn. v. Subhash Sindhi Cooperative Housing Society, Jaipur & Ors. (2013) 5 SCC 427, it is laid down:

13. There can be no quarrel with respect to the settled legal proposition that a purchaser, subsequent to the issuance of a Section 4 Notification in respect of the land, cannot challenge the acquisition proceedings, and can only claim compensation as the sale transaction in such a situation is Void qua the Government. Any such encumbrance created by the owner, or any transfer of the land in question that is made after the issuance of such a notification would be deemed to be void and would not be binding on the Government. (Vide: Gian Chand v. Gopala and Ors. (1995) 2 SCC 528; Yadu Nandan Garg v. State of Rajasthan and Ors.

AIR 1996 SC 520; Jaipur Development Authority v. Mahavir Housing Coop. Society, Jaipur, and Ors. (1996) 11 SCC 229; Secretary, Jaipur Development Authority, Jaipur v. Daulat Mal Jain and Ors. (1997) 1 SCC 35; Meera Sahni v. Lieutenant Governor of Delhi and Ors. (2008) 9 SCC 177; Har Narain (Dead) by L.Rs. v. Mam Chand (Dead) by L.Rs. and Ors. (2010) 13 SCC 128; and V. Chandrasekaran and Anr. v. The Administrative Officer and Ors. JT 2012 (9) SC 260)."

(emphasis supplied)

6(f). A Three-Judge Bench in Rajasthan Housing Board v. New Pink City Nirman Sahkari Samiti Ltd. & Anr., (2015) 7 SCC 601, in the context of section 4 as well as section 42 of the Rajasthan Tenancy Act which also prohibited the transactions from being entered into with SC/ST persons, has observed:

33. The other decision relied upon by the Society is V. Chandrasekaran and Anr. v. Administrative Officer and Ors. 2012 (12) SCC 133] wherein this Court laid down thus:

17. In Ajay Kishan Singhal v. Union of India: AIR 1996 SC 2677; Mahavir and Anr. v. Rural Institute, Amravati and Anr. (1995) 5 SCC 335; Gian Chand v. Gopala and Ors. (1995) 2 SCC 528; and Meera Sahni v. Lieutenant Governor of Delhi and Ors. (2008) 9 SCC 177, this Court categorically held that a person who purchases land after the publication of a Section 4 notification with respect to it, is not entitled to challenge the proceedings for the reason, that his title is void and he can at best claim compensation on the basis of vendor's title. In view of this, the sale of land after issuance of a Section 4 notification is void, and the purchaser cannot challenge the acquisition proceedings. (See also: Tika Ram v. the State of U.P. (2009) 10 SCC 689).

18. In view of the above, the law on the issue can be summarized to the effect that a person who purchases land subsequent to the issuance of a Section 4 notification with respect to it, is not competent to challenge the validity of the acquisition proceedings on any ground whatsoever, for the reason that the sale deed executed in his favour does not confer upon him, any title and

at the most he can claim compensation on the basis of his vendor's title.

34. Reliance has been placed on Dossibai Nanabhoy Jeejeebhoy v. P.M. Bharucha 1958 (60) Bom.LR 1208] so as to contend that the 'person interested' in the land under Section 9 of the Land Acquisition Act would include a person who claims interest in compensation to be paid on account of acquisition of land ad the interest contemplated Under Section 9 is not restricted to legal or proprietary estate or interest in the land but such interest as will sustain a claim to apportionment, is the owner of the land. In our opinion, the decision is of no avail. The instant transaction being void as per Section 42 of the Rajasthan Tenancy Act, and the property was inalienable to non-SC. Obviously, the logical corollary has to be taken that no right in apportionment to compensation can be claimed by the Society."

6(g). In *M. Venkatesh & Ors. v. Commissioner, Bangalore Development Authority, etc.* (2015) 17 SCC 1, a three Judge Bench has opined:

"16. That brings us to the question of whether Prabhaudas Patel and other respondents in SLP (C) No.12016 of 2013 were entitled to any relief from the Court. These respondents claim to have purchased the suit property in terms of a sale deed dated 22-8-1990, i.e., long after the issuance of the preliminary Notification published in July 1984. The legal position about the validity of any such sale, post-issuance of preliminary notification, is fairly well settled by a long line of the decisions of this Court. The sale in such cases is void and non-est in the eye of the law giving to the vendee the limited right to claim compensation and no more. Reference may in this regard be made to the decision of this Court in *U.P. Jal Nigam v. Kalra Properties (P) Ltd*, wherein this Court said: (SCC pp. 126-27, para 3)

"3. ... It is settled law that after the notification under Section 4(1) is published in the gazette, any encumbrance created by the owner does not bind the Government, and the purchaser does not acquire any title to the property. In this case, Notification under Section 4(1) was published on 24-3-1973; possession of the land admittedly was taken on 5-7-1973, and the pumping station house was constructed. No doubt, declaration under Section 6 was published later on 8-7-1973. Admittedly power under Section 17(4) was exercised dispensing

with the inquiry under Section 5-A and on service of the notice under Section 9 possession was taken, since urgency was acute viz. pumping station house was to be constructed to drain out floodwater. Consequently, the land stood vested in the State under Section 17(2) free from all encumbrances. It is further settled law that once possession is taken, by operation of Section 17(2), the land vests in the State free from all encumbrances unless a notification under Section 48(1) is published in the gazette withdrawing from the acquisition. Section 11-A, as amended by Act 68 of 1984, therefore, does not apply, and the acquisition does not lapse. The notification under Section 4(1) and the declaration under Section 6, therefore, remain valid. There is no other provision under the Act to have the acquired land divested, unless, as stated earlier, notification under Section 48(1) was published, and the possession is surrendered pursuant thereto. That apart, since M/s Kalra Properties, the respondent had purchased the land after the notification under Section 4(1) was published, its sale is void against the State, and 10 it acquired no right, title, or interest in the land. Consequently, it is settled law that it cannot challenge the validity of the notification or the regularity in taking possession of the land before the publication of the declaration under Section 6 was published.

7. It has been laid down that the purchasers on any ground whatsoever cannot question proceedings for taking possession. A purchaser after Section 4 notification does not acquire any right in the land as the sale is ab initio void and has no right to claim land under the Policy.”
 (emphasis supplied)"

10. As regard the claim of the respondent No.1 who asserted to be bona fide subsequent purchaser of the property in question and has protection of Section 41 of Transfer of Property Act, 1882, suffice it to say that admittedly, the respondent No.1 is a subsequent purchaser of the property which had already been acquired in the year 2003 and title of the said land had been vested in favour of the petitioner and thereafter the vendors / ex-

owner had no right or title to alienate the same, thus the sale transaction in favour of the respondent was void in nature as the vendor was not holding any title of the land in question and the subsequent vendee has to soar and sink with his vendor and he is debarred to claim any better title than that of his vendor. Reliance can be placed on the cases titled as *Muhammad Yamin and others Vs. Settlement Commissioner and others (1976 SCMR 489)*, *Province of the Punjab through Collector, Sheikhupura & Others Vs. Syed Ghazanfar Ali Shah & Others (2017 SCMR 172)* and *Abdul Hamid Vs. M.B.R. and others (1994 CLC 1160)*.

11. Furthermore, the award was announced on 24.10.2003 whereas the respondent No.1 filed application under Section 48 of the Act ibid before the Commissioner, Lahore Division, Lahore on 18.05.2022 i.e. after lapse of about 18 years and no convincing reason has been expounded for such an inordinate delay, thus the application for de-acquisition was hopelessly barred by laches.

12. Nutshell of the above discussion is that the Commissioner, Lahore Division, Lahore while passing the impugned order, did not consider the law applicable on the case as well as the dictum laid down by the Hon'ble Supreme Court of Pakistan as well as that of this Court, thus the impugned order suffers from patent illegality, irregularity and without jurisdiction as such the same deserves reversal.

13. Resultantly, this writ petition is **allowed** and order dated 16.11.2022 passed by the Commissioner, Lahore Division, Lahore is hereby set aside.

**(Ch. Muhammad Iqbal)
Judge**

Approved for reporting.

Judge

