

ORDER SHEET

LAHORE HIGH COURT, MULTAN BENCH

MULTAN

(JUDICIAL DEPARTMENT)

W.P. No. 1355/2024

Syed Ali Raza Rizvi and 33 others **Versus** Commissioner, D.G. Khan and
10 others.

S.No. of order/ Proceeding	Date of order/ Proceeding	Order with signature of Judge and that of parties or counsel, where necessary.
	11.03.2024	M/s Muhammad Aurengzaib Khan, Rana Asif Saeed and Syed Tajamal Hussain Bukhari, Advocates for petitioners. Mrs. Samina Mehmood Rana, A.A.G. Malik Sohail Ashiq, Advocate for respondents. Ms. Maria Rafique, Chief Law Officer, NTDC. Mian Nazar Muhammad Arain, Advocate for WAPDA. Mr. Irshad Hussain, Tehsildar, Muzaffargarh. Mr. Muhammad Waseem Shiekh, Land Acquisition Collector.

This and connected constitutional petitions bearing
W.P. No. 1358/2024 & 2337/2024, *inter alia*, assails land
acquisition process, initiated pursuant to the decision of
Federal Government for the development of 600 -
Megawatt Peak Capacity Soler PV Project, in District
Kot Addu / Muzaffargarh, Punjab – detailed description
of the land is found in documents attached and in
particular the Notification(s)-cum-Corrigendum(s). Land
was to be acquired for NTDC; the Company tasked with
the assignment of implementation of the project. Energy
security, environmental protection, affordability of
electricity and sustainable development were the
hallmark features of the project, which objectives
indicate the public good and utility intended.

Notifications under section 4 of the Land Acquisition Act 1894 (“the Act, 1894”) were issued on 06.01.2023 (published in Gazette on 11.01.2023) and 23.01.2023 (published on 13.02.2023), whereafter corrigendum(s) were accordingly issued on 24.02.2023 and published. Officers were authorized to enter upon and survey the land. Estimated cost, assessed to the tune of Rs.929,985,245/- by District Price Assessment Committee was approved in meeting conducted on 28.02.2023, which was deposited by the Company on 18.05.2023. Notification under section 17(4) read with section 6 of Act, 1894 was issued on 12.07.2023. Board of Revenue in its meeting on 15.09.2023, chaired by Senior Member, approved the rates and cost. Notices under section 9 of Act, 1894 were issued on 01.01.2024, followed by notices under section 10 of the Act, 1894. This is when the challenge was thrown to the acquisition proceedings, in particular to Notification under sections 4 and 17(4) & 6 of Act, 1894 by invoking constitutional jurisdiction.

2. Notices were issued on the premise that Notification under section 17(4) & 6 of the Act, 1894 was issued by Commissioner Rawalpindi and not by the Commissioner concerned, and an additional point argued was alleged violation of section 230 of the Elections Act, 2017 (“the Act, 2017”). Report and para-wise comments were filed on 27.02.2024.

3. Submissions made are largely directed against procedural defects, misuse of authority and lack of application of mind by the persons tasked with the duties under the law. It is alleged that Notification, under section 17(4) & 6 of the Act, 1894, was issued by the Commissioner Rawalpindi, who was not competent to determine urgency involved for taking possession. It is alleged that in derogation of the procedure provided no opportunities were extended for filing objections under section 5-A of the Act, 1894. It is argued that no application of mind is demonstrated from the text of the Notification under section 17(4) of the Act, 1894. Pleaded that notices under section 9 of the Act, 1894 were not issued prior to the Notification under section 17(4) of the Act, 1894. It is further pleaded that agricultural land is being acquired to the detriment of the owners / occupiers. It is submitted that Punjab Caretaker Government lacked authority to implement and enforce the codal and procedural requirements under the law. Places reliance on decision reported as "Kareem Nawaz and 4 others Vs. District Collector / Deputy Commissioner Multan and 14 others" (PLD 2023 Lahore 1).

4. Conversely, learned counsel appearing for the Company - NTDC - submits that possession of the land, pursuant to Notification under section 17(4) of the Act, 1894, was not acquired till date despite issuance of

notices under sections 9 & 10 of the Act, 1894 – it is not disputed that notices were issued in January 2024.

Submits that purpose of issuing notices under section 9 of the Act, 1894 was conveyance of information to the public about the intent to take possession. Adds that process required under section 10 of the Act, 1894 had commenced. Submits that Notification, under section 17(4) read with section 6 of the Act, 1894, was issued by the Commissioner D.G Khan, signed by him and other officers, which was issued after fulfilling requisite conditionalities. Adds that mentioning of the Commissioner Rawalpindi, in paragraph 3 of said Notification was typographical mistake, which is evidently inferable from perusal of complete text of Notification under reference. Adds that corrigendum will be issued accordingly to rectify mistake. Learned counsel for the respondents relied upon decisions, reported as “Muhammad Ashiq and another Vs. Water and Manpower Development Authority, Lahore through Chairman, WAPDA House and another” (**PLD 2008 Supreme Court 335**), “Muhammad Afzal Bhatti and 17 others Vs. Province of Punjab through Collector, Rawalpindi and 4 others” (**1997 SCMR 296**), “Jan Meah Vs. Deputy Secretary to Government of East Pakistan, Revenue (Requisition) Department, DACCA and others” (**PLD 1965 Dacca 36**), “Muhammad Shafi and 8 others Vs. Multan Development Authority, Multan through Director General, Multan and 7 others” (**2010 YLR 1161**), “Makhdoom Ahmad Ghauns Vs.

Chairman, Town / Municipal Committee, Qadipur Rawn, Multan and 3 others” (1993 MLD 1987).

5. Matter heard. Record perused.
6. Before dilating upon the issues agitated, it is appropriate to reproduce statement in writing submitted by Land Acquisition Collector, who is present in person. Statement is taken on record as “**Mark-A**”, text whereof is reproduced, for ease of reference,

Statement

I, Muhammad Waseem Shiekh, son of Muhammad Rafiq, having CNIC No: 33202-1606360-3, Land Acquisition Collector EHV-I, NTDC, Lahore, do hereby make a statement before Honorable Lahore High Court, Multan Bench, Multan, in W.P. No: 1355/24, 1358/24, 2337/24, that I will make sure that a Corrigendum be issued to Notification under section 17(4) & 6 Published in official gazette on 19-07-2023, to rectify the typographical mistake in 3rd paragraph of aforesaid Notification where in "Commissioner Rawalpindi" has been mentioned mistakenly instead of "Commissioner Dera Ghazi Khan".

Through the Corrigendum "Commissioner Rawalpindi" will be edited and it will be read as "Commissioner Dera Ghazi khan".

-Sd-
*Muhammad Waseem Shiekh
 Land Acquisition Collector EHV-I, NTDC, Lahore.*

7. There is no cavil that project in question qualifies test of acquisition of land for Public Purpose. Project in question is for the greater good of the citizens / public, which are facing super-cycle of inflation and enduring high cost of living – spiraling cost of electricity largely contributes to the miseries of common man. No occasion arises to question the legitimacy of the Notification under section 4 of the Act, 1894, wherefrom it is clear that Federal Government proposed project of electrification by tapping Solar energy, which identified NTDC for this purpose and tasked it to proceed to take land for the purpose of installation of solar panels – land is acquired

for NTDC, "the Company". Objection worth considering is the effect of issuance of notices under section 9 of the Act, 1894 after the expression of urgency was conveyed and materialized in shape of the Notification under section 17(4) of the Act, 1894. It is appropriate to reproduce section 17 of the Act, 1894, which reads as,

17. Special power 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 thereupon 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 Department of 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.

(2) Whenever, owing to any sudden change in the channel of any navigable river or other unforeseen emergency, it becomes necessary for any Railway Administration to acquire the immediate possession of any land for the maintenance of their traffic or for the purpose of making thereon a river-side or *ghat* station, or of providing convenient connection with or access to any such station, or whenever owing to a similar emergency it becomes necessary for the Commissioner to acquire the immediate possession of any land for the purposes of maintaining traffic over a public road, the Collector may, immediately after the publication of the notice mentioned in sub-section (1) and with the previous sanction of the Commissioner, enter upon and take possession of such land, which shall thereupon vest absolutely in the Government free from all encumbrances:

Provided that the Collector shall not take possession of any building or part of a building under this sub-section without giving to the occupier thereof at least forty-eight hours' notice of his intention so to do, or such longer notice as may be reasonably sufficient to enable such occupier to remove his movable property from such building without unnecessary inconvenience.

(3) In every case under either of the preceding sub-sections the Collector shall at the time of taking possession offer to the persons interested compensation for the standing crops and trees (if any) on such land and for any other damage sustained by them caused by such sudden dispossession and not excepted in section 24; and, in case such offer is not accepted, the value of such crops and trees and the amount

of such other damage shall be allowed for in awarding compensation for the land under the provisions herein contained.

(4) In cases where in the opinion of the Commissioner, the provisions of sub-section (1) or sub-section (2) are applicable, the Commissioner may direct that the provisions of sections 5 and 5-A shall not apply, and, if he does so direct, a declaration may be made under section 6 in respect of the land at any time after the publication of the notification under sub-section (1) of section 4.

[Emphasis supplied]

8. Upon perusal of sub-section (1) of section 17 of the Act, 1894 it transpires that the Commissioner was assigned the lead role and upon Commissioner's directions, the collector was competent to take possession of the land after passing of fifteen days, from the publication of the notice under section 9(1) of the Act, 1894. Notwithstanding the fact that notice under section 9 of Act, 1894 was issued after Notification under section 17(4) of the Act, 1894, no infringement of the statutory command was evidently committed. Possession could be taken after fifteen days of the notice under section 9(1) of the Act, 1894, objective whereof was to inform the intent to take possession of land, indicated in the Notification under section 4 of the Act, 1894. Evidently, Notification, under section 17(4) of the Act, 1894, was issued on 12.07.2023, possession is still with the landowners / occupiers, who, by now, have had sufficient notice of the intent and cognizance of the urgency expressed for taking possession. Condition imposed in terms of proviso to sub-section (1) of section 17 of the Act, 1894 was also met. Estimated price and rates were approved by the

District Price Committee and Board of Revenue. Company had deposited the estimated cost of acquisition of land determined accordingly before the issuance of Notification, under section 17(4) of the Act, 1894. It is evident from the record that acquisition process is progressing at reasonable pace, which manifest real intent of the law. Land Acquisition collector stated that corrigendum would be issued to the Notification section 17(4) of the Act, 1894. Notices under sections 9(1) and 10 of the Act, 1894 were issued in January 2024 – obviously fifteen days had passed since then, hence, restriction on taking possession, under section 17(1) of the Act, 1894, was done away with. Requirement of the proviso to section 6 of the Act, 1894 was also met, as the estimated cost of acquisition of the land was deposited before issuance of composite Notification under section 17(4), read with section 6, of the Act, 1894, by the Commissioner Dera Ghazi Khan, who acted in accordance with the statutory discretion extended – Notification in question starts with the sentence that 'Whereas it appears to the Commissioner Dera Ghazi Khan'. The Notification was signed by the Commissioner, with other signatories, which, *inter alia*, included the District Collector, Land Acquisition Collector and the Engineer. This lends credence to the argument regarding typographical mistake in mentioning Commissioner Rawalpindi, once, in the Notification. It is

not for this court to review or assess that what was the urgency to take possession, which assessment has to be made by the Commissioner. In fact, the opinion expressed by the Commissioner and assessment of element urgency for the purposes of taking possession of the land call for showing deference. Nothing is alleged that how composite Notification under section 17(4) and section 6 of the Act, 1894 had prejudiced the petitioners. And upon issuance of Notification under reference, section 5 and 5-A of the Act, 1894 had no application. There is no occasion, in the circumstances of the case, to undermine the concept of *Eminent domain* and jurisprudence developed vis-à-vis “the Taking clause”, which acknowledges the right to fair and just compensation against the acquisition of land for public purpose. Nothing is pleaded with regard to alleged denial of compensation, and right to disagree to the quantum of compensation determined or to seek enhancement thereof is neither prejudiced nor denied. Hence, no cause is apparently available to invoke judicial review jurisdiction.

9. Much emphasis is laid on the ratio of the decision in the case of KAREEM NAWAZ (supra), which is examined and found that said judgment was issued in the context of peculiar facts, which is not the case here. Some distinguishing features between the facts of these petitions and facts indicated in the judgment relied, need

recapitulation. In referred case Notification under section 4 of the Act, 1894 was issued on 22.07.2020 and Notification under sections 17(4) & 6 of the Act, 1894 was issued on 28.02.2022 – after two years, and in that context cause of urgency was interpreted. Conversely, in instant case Notification under section 4 of the Act was issued in January 2023 and Notification, allowing taking of possession was issued in July 2023. In referred case legality of Notification under section 4 of the Act, 1894 was questioned on the premise that Notification was signed by Group Captain, Director Revenue Record, Air Headquarters, Islamabad – this was termed as abdication of duty by District Collector. Another distinguishing feature was that second Notification under section 17(4) of the Act, 1894 was allegedly issued under dictated exercise of powers – signatories of the Notification were Base Commander PAF base & Military Estate Officer, Multan Circle. In said judgement, it was observed that possession can only be taken after publication of the notices under section 9 of the Act, 1894. And in the case at hand, notices were issued in January 2024 and taking of possession has still not commenced. Judgment referred had discussed scope of section 17(4) of the Act, 1894 in the context of circumstances involved therein; but the provision of law was not declared *ultra vires*. Once land is required for public purpose, interference by exercising judicial review jurisdiction tantamount to throw spanner

in the works. Petitioners had the opportunity to file objections after the Notices under sections 9 and 10 of the Act, 1894 issued but their ambition was to knock-down the purpose of acquisition, which purpose has to fail. No significant procedural defect, misuse or abdication of authority and illegality in exercise of powers is established – no question of violation of section 230 of the Act 2017 arises when Notification under section 4 and Notification under section 17(4) of the Act, 1894 were issued before assumption of control by Caretaker Government at Federal level. Land is acquired for the Company, which is tasked to undertake a project having benefits and advantages for the public.

10. Instant petition along with connected petitions are hereby dismissed. This order will not prejudice exercise of rights, available to the petitioners under the provisions of Act, 1894.

(Asim Hafeez)
Judge

M. Nadeem

Approved for reporting.

Judge