

JUDGMENT
PESHAWAR HIGH COURT, PESHAWAR

[JUDICIAL DEPARTMENT]
Writ Petition No. 95-P/2020

<p style="text-align: center;">SNGPL PVT LTD Through General Manager and 3 Others <u>versus.</u> Government of Khyber Pakhtunkhwa through Chief Secretary and 4 others</p>

PRESENT	
For petitioner (s):	Mr. Asad Jan, Advocate.
For respondents	Mr. Fazal Maula, AAG and Mr. Sabahuddin Khattak, Advocate for respondent No.5.
Date of hearing:	<u>15. 10. 2025</u>

J U D G M E N T

MUHAMMAD NAEEM ANWAR, J.- The petitioner, Sui Northern Gas Pipelines Limited (SNGPL), a public limited company, established under the Companies Act, 1913 (now the Companies Act, 2017), required land for laying high-pressure gas transmission pipelines and allied installations in various localities of District Kohat, Khyber Pakhtunkhwa. The said land was accordingly acquired under the Land Acquisition Act, 1894 (“the Act”). After the announcement of the Award and taking possession of the acquired land, ownership vested in the Government under Section 16 of the Act. When the petitioner approached the concerned revenue authorities for attestation of mutation of the acquired property in its name, the respondents refused to attest the mutation unless SNGPL first deposited stamp duty, mutation fee, and local transfer taxes. In this regard, respondent No. 4 issued letter No. 541 dated 29.10.2018 to the Land Acquisition Collector, SNGPL, referring to Notification No. REV: V/4/Notification/12280-312 dated 27.02.2018, asserting that under Section 51 of the Act, stamp duty and fee are exempted only when a person claims or obtains a copy of the

Award, otherwise, all applicable taxes shall be paid by the acquiring department. Aggrieved by the above action, the petitioner invoked the constitutional jurisdiction of this Court under Article 199 of the Constitution, contending that under Sections 16 and 51 of the Act, property acquired through an Award vests absolutely in the acquiring authority free from all encumbrances, and no stamp duty or fee is chargeable on any Award or agreement made under the Act.

2. Upon notice, the respondents submitted their comments, stating that the petitioner, being a public limited company, is liable to pay all applicable taxes, including mutation fee under Section 46 of the Land Revenue Act, 1967, local government/TMA tax, and other federal or provincial levies imposed at the time of attestation of mutation in accordance with law.

3. Learned counsel for the petitioner argued that once the Award is announced and possession is taken, Section 16 of the Land Acquisition Act provides that the property vests absolutely in the acquiring authority; therefore, the demand for stamp duty or mutation fee is without lawful authority. It was submitted that refusal to attest the mutation amounts to obstruction in the implementation of a statutory Award. He further contended that the respondents' interpretation of Section 51 of the Act is misconceived, as it overlooks the statutory exemption granted to any Award or agreement made under the Act from payment of stamp duty and registration fee. Reliance was placed on a judgment of this Court dated 30.03.2016, annexed with the writ petition, wherein this Court, while following the judgment of the Lahore High Court in W.P. No. 18373/2012, allowed W.P. No. 1660-P/2014 and held that PESCO, being an instrumentality of the Federal Government, was entitled to exemption under Section 4 of the Property Tax Act read with Article 165 of the Constitution. Learned counsel further

contended that since the Federal Government holds a majority share in SNGPL, and as the discharge of sovereign functions through instrumentalities such as statutory corporations constitute a governmental function, the benefit of such exemption should equally extend to the petitioner company.

4. Conversely, learned Additional Advocate General and counsel for respondent No. 5 contended that the petitioner, being a company as defined in section 3(e) of the Act, is not exempted from provincial taxation. Reference was made to the letter of the Parliamentary Affairs and Human Rights Department No. OP-15/(109)/LD/08.9/59 dated 13.09.2008, clarifying that autonomous or corporate entities established by the Federal/Provincial Law are not exempt from taxation under the Federal or provincial taxes. They also relied upon section 42 and Part-III of the Third Schedule to the Khyber Pakhtunkhwa Local Government Act, 2013 and the Local Councils (Tax on Transfer of Immovable Property) Rules, 1997, contending that tax on transfer of immovable property is chargeable regardless of the mode of transfer, whether by sale, gift, exchange, or acquisition. Further reliance was placed upon Rule 37(2) of the Khyber Pakhtunkhwa Land Acquisition Rules, 2020, which provides that only the Award or its copy is exempted from stamp duty, whereas all other provincial duties and fees remain payable by the acquiring department or company. It was also pointed out that the earlier judgment dated 30.03.2016 in W.P. No. 1660-P/2014 relied upon by the petitioner was set aside by the august Supreme Court in Civil Appeal, as the case of Central Board of Revenue, Islamabad and another v. WAPDA and another (PLD 2014 SC 766) was not considered. Upon remand, the said writ petition was dismissed by this Court vide judgment dated 22.07.2020; hence, the earlier decision is no longer in the field.

5. Heard at length and record of the case has gone through.

6. It is admitted that the petitioner, being a public limited company, incorporated under the Companies Act, required land for laying high-pressure gas pipelines which, after fulfilling the codal formalities, has acquired under the Land Acquisition Act. The Award was duly announced and possession taken over by the acquiring authority. When the petitioner (acquiring agency) approached the respondents for attestation of mutation, they, through letter No. 541 dated 29.10.2018, demanded payment of 2% stamp duty, 2% TMA tax, and mutation fee. Hence, the core question before this Court is *whether property acquired under the provisions of Land Acquisition Act, 1894, in favour of a company, is liable to payment of stamp duty, mutation fee, or local taxes at the time of attestation of mutation?*⁹

7. The petitioner contends that under Section 16 of the Act, when possession of the acquired land is taken, it vests absolutely in the acquiring authority free from all encumbrances. For proper appreciation, Section 16 is reproduced below:-

Section 16 – Vesting of land in Government

“When the Collector has made an award under section 11 and has taken possession of the land, such land shall thereupon vest absolutely in the Government, free from all encumbrances.”

The above provision makes it obvious that upon completion of two essential steps (a) the making of an Award under Section 11, and (b) taking possession of the acquired land, ownership vests absolutely in the Government, free from all encumbrances. The phrase “shall vest absolutely” denotes complete transfer of proprietary rights, extinguishing all previous private ownership. Vesting occurs by operation of law and does not require any registered instrument or conveyance. Even when land is acquired for a company,

ownership first vests in the Government; only, thereafter, is it transferred to the company under Sections 41 and 42 of the Act, read with the Land Acquisition (Companies) Rules, 1963. The Supreme Court in the case Government of Pakistan v. Akhtar Ullah Khan and others (PLD 2024 SC 218) held that possession under Section 16 is taken after making the Award, while under Section 17(1) possession may precede the Award; however, in both cases vesting occurs only after possession is taken. Similarly, in Haji Muhammad Haroon and others v. Abdul Ghaffar and others (PLD 2005 Karachi 302), it was observed that once possession is taken, the land vests in the Government absolutely and without limitation.

8. Ordinarily, instruments such as sale deeds or conveyances attract stamp duty under the Stamp Act, 1899. Section 51 of the Land Acquisition Act, however, provides a statutory exemption for Awards and agreements made under the Act. For clarity, Section 51 and Rule 37 of the Khyber Pakhtunkhwa Land Acquisition Rules, 2020, are reproduced:

Section 51 - Exemption from stamp duty and fee for copies.

“No award or agreement made under this Act shall be chargeable with stamp duty, and no person claiming under any such award or agreement shall be liable to pay any fee for a copy of the same.”

Rule 37 of the Khyber Pakhtunkhwa Land Acquisition Rules, 2020

“No award under the Act shall be chargeable with stamp duty in terms of section 51 of the Act. A person who claims under such award or agreement shall also be exempted from payment of any kind of fee levied on obtaining a copy of such award or agreement

(2) notwithstanding anything contained in sub-rule (1), no acquiring department or company, whether public or private, shall be exempted from any other provincial taxes, fees, and duties except the one mentioned in this rule.”

The provisions of Section 51 of the Land Acquisition Act provide a statutory exemption from the payment of stamp duty and copying fee in respect of any award or agreement

made under the Act. The legislative intent underlying this provision is to facilitate and expedite the process of land acquisition for public purposes by relieving both the acquiring authority and the affected persons from the fiscal burdens associated with the registration and stamping of acquisition documents. The phrase “no award or agreement made under this Act shall be chargeable with stamp duty” means that any award or agreement made by the Land Acquisition Collector under the Act, such as the award determining compensation for the acquired land or an agreement between the landowner and the acquiring authority (whether governmental or corporate) regarding such compensation, shall not be subject to payment of stamp duty. In other words, no stamp duty is payable on the award or the agreement itself. The expression “no award or agreement made under this Act” encompasses all awards passed by the Collector under Section 11 of the Act as well as any agreements executed between the landowners and the acquiring authority in consonance with its provisions. The words “shall be chargeable” are mandatory in nature, signifying an absolute prohibition against the imposition of stamp duty. Likewise, the latter part of the section exempts all persons claiming any right or interest under such award or agreement from the payment of any copying fee.

9. A combined reading of Sections 16 and 51 of the Act makes it clear that once the land is acquired, ownership automatically vests in the acquiring authority under Section 16 (after the award is announced and possession is taken). This transfer occurs by operation of law and not by virtue of any sale deed or conveyance deed. Therefore, no stamp duty is chargeable on the award or on the transfer resulting from it. The mutation is merely a recording of the change in ownership in the revenue record; it does not constitute a sale or transfer requiring execution of any new instrument.

Accordingly, the levy of 2% stamp duty at the time of mutation is not chargeable, as Section 51 clearly exempts the award or agreement from stamp duty. It is very much settled that mutations are prepared for fiscal purposes and to maintain the record of rights up-to-date. Reference may be made to the case of *Raza Quli Khan and others V. Mahmud Jan and others* (2017 YLR 199-Peshawar). The revenue record is maintained for fiscal purposes as held in the case of *Mst. Tajrian v. Zarshaid Khan and another* (2016 YLR 1883). Mutation following acquisition is not an independent transaction but merely a consequential act that records the change of ownership in official records. The vesting of property occurs by operation of law under Section 16 of the Land Acquisition Act, rather than through any voluntary conveyance. Therefore, the imposition of a 2% stamp duty at the stage of mutation is without lawful authority and lacks legal foundation. Once ownership of land vests in the government or an acquiring body, pursuant to an award under the Land Acquisition Act, no stamp duty can be levied on such vesting, however, with respect to other provincial taxes, fees, or duties, Rule 37 of the Rules, 2020 clarifies that acquiring departments or companies, whether public or private, are not exempt from the payment of any other provincial levies, except the stamp duty applicable to the award itself.

10. Part VII of the Land Acquisition Act, 1894, together with the Land Acquisition (Companies) Rules, 1963, governs the acquisition of land for companies. In such cases, the Government first acquires the land in its own name and executes an agreement under Section 41, setting out the terms, conditions, and compensation. Thereafter, the land is transferred to the company under Section 42. Consequently, ownership initially vests in the Government and subsequently passes to the company. This transfer from the Government

to the company constitutes a distinct conveyance, attracting the usual fiscal incidents such as mutation fee and local transfer tax, unless expressly exempted by law.

11. To properly appreciate the controversy, it is essential to understand that the revenue collected under the Stamp Act, 1899 ("the Act") is known as stamp duty. Stamp duty is an indirect tax levied on documents executed between individuals or institutions that carry legal significance. It becomes payable when such documents are of an official nature and are capable of being produced as evidence before a competent authority. In essence, any written instrument evidencing an agreement or transaction between parties is generally chargeable with stamp duty. The primary object of stamp duty is to ensure that certain written instruments attain legal validity and an officially recognized status. Payment of the prescribed duty formally authenticates contracts, agreements, conveyances, and other instruments, thereby securing their recognition by the State. Once duly stamped, a document acquires official legitimacy, enabling its admissibility in evidence and enhancing its enforceability in commercial and public dealings. Under the Act of 1899, stamp duty is imposed on conveyances of property and other transactions effected through written instruments. Section 17 of the Act mandates that all instruments chargeable with duty and executed by any person in Pakistan shall be duly stamped before or at the time of execution. Section 2 (14) defines an instrument as every document by which any right or liability is, or purports to be, created, transferred, limited, extended, extinguished, or recorded, and includes any instrument executed in electronic form. Likewise, Section 2 (6) defines the term chargeable to mean, in relation to an instrument executed after the commencement of the Act, any instrument chargeable under this Act, and in relation to an earlier instrument, one chargeable under the law in force in

Pakistan at the time of its execution. However, Section 51 of the Land Acquisition Act, 1894, specifically grants a statutory exemption from the payment of stamp duty and copying fees in respect of awards and agreements made under that Act. This exemption is confined strictly to such statutory awards and agreements and does not extend to mutation fees, registration charges, or transfer taxes imposed under any other law.

12. The petitioner's contention that SNGPL, being a public limited company with majority shareholding of the Federal Government, is exempt from all provincial taxes is misconceived. Although the company performs a national public utility function, it nevertheless remains a distinct juristic entity incorporated under company law, possessing a separate legal personality and independent financial liability. While the award itself is exempt from stamp duty, the subsequent mutation in the company's name constitutes a separate administrative act governed by provincial fiscal laws, including Section 46 of the Land Revenue Act, 1967, which empowers the Board of Revenue to prescribe fees for entries made in land records.

13. The argument advanced on the basis of Article 165 of the Constitution is equally untenable. Learned counsel for the petitioner placed reliance on the judgment of this Court dated 30.03.2016 passed in W.P. No. 1660-P/2014; however, that judgment was challenged before the Hon'ble Supreme Court, which allowed the appeal and remanded the matter to this Court for a fresh decision. Upon remand, this Court, vide judgment dated 22.07.2020, dismissed the writ petition. It is a well-settled principle that corporations, companies, or institutions engaged in trade or business are liable to pay taxes on their income or transactions, irrespective of government ownership or control. The Hon'ble Supreme Court, in Province of N.W.F.P. v. Pakistan

Telecommunication Corporation (PLD 2005 SC 670), categorically held that a public limited company, even if majority-owned by the Government, remains a distinct juristic entity and is not immune from taxation. The Court further ruled that lifting the corporate veil for the purpose of claiming tax exemption is impermissible. Similar views were expressed in KDA v. Central Board of Revenue (2005 PTD 2131) and Central Board of Revenue v. WAPDA (2014 PTD 1861).

14. In view of the foregoing discussion, it is concluded that under Section 16 of the Land Acquisition Act, ownership of the acquired land vests in the Government, free from all encumbrances. Pursuant to Sections 41 and 42, the Government thereafter transfers such land to the acquiring company in accordance with an executed and duly published agreement. The exemption under Section 51 is confined exclusively to the award or agreement itself and does not extend to exempting the acquiring company from other provincial or local taxes. The petitioner company, being a distinct corporate entity, cannot claim the fiscal immunity available to the Government under Article 165 of the Constitution. Accordingly, the respondents' refusal to attest the mutation without payment of mutation fee and applicable local taxes is lawful and within their jurisdiction.

15. After considering the submissions advanced by the learned counsel for the parties and the learned Additional Advocate General, and upon examination of the relevant provisions of the Land Acquisition Act, 1894, the Stamp Act, 1899, and the Land Revenue Act, 1967, it is held that the petitioner company is not liable to the levy of stamp duty. However, the company is required to pay mutation fee and local taxes at the rates prevailing at the time of the issuance of the award, in accordance with the principle laid down in Naseer Ahmad Awan v. Sub-Registrar, Nishter Town,

Lahore and another (2007 PTD 1922), i.e., the amount notified for the year in which the award under the Land Acquisition Act, 1894 was made. The exemption from stamp duty on the award or agreement itself shall, however, remain protected under Section 51 of the Land Acquisition Act, 1894. This petition is, therefore, disposed of in the above terms.

Announced
15.10.2025.

M Zafra CS

J U D G E

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DB (Hon'ble Mr. Justice Muhammad Naeem Anwar &
Hon'ble Ms. Justice Farah Jamshed)