

IN THE SUPREME COURT OF PAKISTAN  
(APPELLATE JURISDICTION)

**PRESENT:**

MR. JUSTICE UMAR ATA BANDIAL  
MR. JUSTICE SAJJAD ALI SHAH  
MR. JUSTICE SAYYED MAZAHAR ALI AKBAR NAQVI

**CIVIL PETITION NO. 279-P OF 2015**

(On appeal against the judgment dated 31.03.2015  
passed by the Peshawar High Court, Peshawar in  
Writ Petition No. 615-P/2015)

Government of Khyber Pakhtunkhwa through Chief Secretary etc  
... Petitioners

**VERSUS**

Muhammad Khurshid  
... Respondent

For the Petitioners: Mr. Qasim Wadood, Addl. A.G.  
Mr. Khial Roze, Inspector

For the Respondent (1): Mr. Imtiaz Ahmed, ASC  
Mr. Mehmood A. Sheikh, AOR

For Respondents (2-4): Nemo

Date of Hearing: 14.12.2020

**JUDGMENT**

**SAYYED MAZAHAR ALI AKBAR NAQVI, J.-** Through this petition, the petitioner called in question the *vires* of the impugned order dated 31.03.2015 passed by the Peshawar High Court, Peshawar, whereby the Writ Petition filed by the respondent No.1 was allowed.

2. Briefly stated the facts of the matter are that for the construction of Police Station Saro Shah, Tehsil Takht Bai, District Mardan, in the first instance land belonging to Agricultural and Livestock Department was acquired vide notification dated 06.04.2010. However, an objection was raised by the Agricultural

& Livestock Department that the land is being used for public purpose, hence, on the basis of said consideration, the notification dated 06.04.2014 was withdrawn on 06.06.2014. Thereafter, another property owned by respondent Nos. 2 to 4 was acquired vide notification dated 09.09.2014 but subsequently, the same was also de-notified on 10.11.2014 for the reasons best known to the petitioner. Ultimately, the land belonging to respondent No. 1 measuring 23 kanal 5 marla bearing Khasra No. 492 situated at Mouza Narri, Tehsil Takht Bai, District Mardan was notified under Section 4 of the Land Acquisition Act, 1894. The respondent No. 1 being aggrieved by the notification issued by the Collector filed constitution petition before the Peshawar High Court, Peshawar. The learned High Court vide judgment dated 31.03.2015 allowed the constitution petition and the notification for acquiring the land of the respondent along with de-notification dated 10.11.2014 were set aside and the earlier notification dated 09.09.2014, whereby the land of respondent No. 2 to 4 was acquired, was restored. Hence, this petition seeking leave to appeal.

3. Learned Additional Advocate General *inter alia* contended that the impugned judgment suffers from material illegality and the same is factually incorrect; that the learned High Court has not properly exercised its jurisdiction under Article 199 of the Constitution; that the land was acquired for public purpose and the same cannot be declared as tainted with *mala fide*; that the High Court has passed observations against the persons, who were not even party to the proceedings and that the impugned judgment is liable to set aside.

4. Learned counsel for the respondent No. 1, on the other hand, defended the impugned judgment. He contended that the notification of acquisition of land of the respondent is *mala fide* / arbitrary; that no reason was given for de-notifying the earlier notification for acquisition of land and the same was declared that it was issued due to the influence of an ex-Parliamentarian; that the respondent's livelihood exclusively depends upon the proceeds from the land, which was acquired vide notification dated 10.11.2014; that one Saeed Wahab had himself offered his land but his request was not considered.

5. We have heard learned counsel for the petitioner and respondent No. 1 at some length and have gone through the case file.

6. The learned High Court while allowing the writ petition filed by the respondent has mainly relied upon the element of *mala fides* on the part of the acquiring department. The main stay of the learned High Court was that due to the influence of a ex-Parliamentarian, the earlier notification dated 09.09.2014 was de-notified on 10.11.2014 and the land belonging to respondent No. 1 was notified. We have minutely perused the entire record. The aspect of *mala fide* as made basis for accepting the constitution petition is squarely missing in the proceedings prior to filing of the constitution petition before the High Court. We could not find any material to substantiate the said aspect, which was made basis being the solitary consideration by the learned High Court while allowing the constitution petition. We are afraid to note that the element of alleged *mala fide* on the part of acquiring authority is also without any legal foundation. According to Preamble of the

Land Acquisition Act, 1894, it was enacted *"to amend the law for the acquisition of land for public purposes and for Companies."*

Section 4 of the said Act, reads as follows:-

*"4. (1) Whenever it appears to the Collector of the District that land in any locality is needed or is likely to be needed for any public purpose or for a Company, a notification to that effect shall be published in the official Gazette, and the Collector shall cause public notice of the substance of such notification to be given at convenient places in the said locality.*

*(2) Thereupon it shall be lawful for any officer, either generally or specially authorized by [the Collector of the District] in this behalf, and for his servants and workmen....."*

7. The plain reading of the Preamble and the aforesaid Section clearly shows that the acquiring authority is fully competent to issue notification if the land is being acquired for public purpose. However, it is true that if mere said selection of land is based on extraneous considerations or undue influence then it may be objected by the affected owner. In this respect, the impugned judgment is inadequate in providing/disclosing this aspect of alleged *mala fide* against the petitioner department. The learned High Court restored the notification dated 09.09.2014 whereby land of the respondent Nos. 2 to 4 was ordered to be acquired without issuing any notice to them. Any proceeding arising out of the equity cannot be decided without providing opportunity of hearing. The learned High Court ought to have followed the principle of *audi alteram partem* and due process, which are basis of administration of justice, specially when any

order, if passed, might affect the rights of the entity not party to the proceedings. The respondent Nos. 2 to 4 have already moved an application under Section 12(2) CPC before the Peshawar High Court, which according to respondent's counsel is still pending adjudication.

7. For what has been discussed above, we convert this petition into appeal, allow it, set aside the impugned judgment and remand the case back to the learned High Court for a decision afresh after affording opportunity of hearing to all concerned strictly in accordance with law.

JUDGE

JUDGE

JUDGE

Islamabad, the  
14<sup>th</sup> of December, 2020  
Approved For Reporting  
**Khurram**