

**IN THE SUPREME COURT OF PAKISTAN**  
(Appellate Jurisdiction)

**PRESENT:**

Mr. Justice Umar Ata Bandial  
Mr. Justice Qazi Muhammad Amin Ahmed  
Mr. Justice Sayyed Mazahar Ali Akbar Naqvi

CIVIL PETITIONs NOs.467 & 468 OF 2021 &  
CIVIL PETITIONs NOs.80-Q & 81-Q OF 2021

*(Against the order dated 16.12.2020 passed by the High Court of Balochistan at Quetta in C.P No.766, 811 of 2020)*

D.H.A. Quetta

... Petitioner(s)

Versus

Quetta Residencia Housing Scheme,  
Quetta and others

... Respondent(s)

For the Petitioner(s):

Mr. M. Makhdoom Ali Khan, Sr.ASC  
(in C.P.467,468/2021)  
Mr. Arbab M. Tahir, A.G. Balochistan  
Mr. M. Ayaz Swati,  
Addl. A.G. Balochistan

For the Respondent(s):

Mr. Naeem  
(Representative of Quetta Residencia)

On Court's notice:

Ch. Aamir Rehman,  
Addl. A.G. for Pakistan

Date of hearing:

16.03.2021.

## ORDER

**Umar Ata Bandial, J.** Submits that the impugned judgment dated 16.12.2020, wrongly presumes the Land Acquisition Act, 1894 (**'LAA 1894'**) to be a Federal law and holds Section 6(b)(1) of the Defence Housing Authority Quetta Act, 2015 (**'Act'**) which allows the petitioner to acquire land in accordance with the LAA, 1894, to be violative of Article 142 of the Constitution of the Islamic Republic of Pakistan, 1973 (**'Constitution'**). In fact both the Act and the LAA, 1894 are provincial laws and there is no

encroachment by the Act into the Federal Legislative field. The impugned judgment also strikes down Section 6(b)(14) and Section 14(b) of the Act as these impose restrictions on owning and holding land that are violative of Articles 23 & 24 of the Constitution. This finding holds that restrictions with respect to a 'Specified Area' in the Act apply to land that is intended to be purchased, procured, acquired or leased by the petitioner. In other words, the restrictions govern such land in which the DHA has no legal interest as owner or lessee. On the other hand, Section 3(q) of the Act defines 'Specified Area' to mean land that is already purchased, acquired, leased or procured by the petitioner. The constraints placed on a Specified Area in terms of the Act relate only to such land in which the petitioner has a legal interest and not to land that belongs to a third party. Therefore, the impugned judgment has taken an erroneous view of law on this point.

2. On Court's query, as to the purpose and effect of the constraints envisaged in the Act for land falling in a Specified Area, learned counsel for the petitioner has referred to Section 6(b)(14) and Section 14(b) of the Act. These provisions restrain a local authority or a private person from starting its own development scheme in a Specified Area without a NOC issued by the petitioner. This requirement is meant to ensure harmony between the development schemes prepared for land in a Specified Area by the petitioner on the one hand and by a local authority/private person on the other hand. In any event, he reiterates that this condition is imposed on land (in a Specified Area) which belongs to the petitioner.

3. Learned counsel has finally submitted that the writ petition filed by respondent No.1 in C.P. No.468/2021 was in fact sought to be withdrawn by the respondent (writ petitioner) but permission to do so was declined by the learned High Court. That a writ petition is maintainable before a learned High Court under Article 199 of the Constitution at the instance of an aggrieved party. After the aggrieved petitioner party seeks withdrawal of his writ petition then any further proceedings therein are in the nature of suo motu proceedings. Relies upon **Dr. Imran Khattak and another versus Ms. Sofia Waqar Khattak, PSO to Chief Justice and others** (2014 SCMR 122) and **Raja Muhammad Nadeem versus The State and another** (PLD 2020 SC 282) to add that a High Court lacks jurisdiction to hold suo motu proceedings. Finally submits that the controversy decided by the learned High Court is academic in nature because no notification declaring a Specified Area has yet been notified under the Act.

4. The concerns expressed about the Act by the learned High Court may not have been precisely formulated, however, these do invite caution. How can an acquiring agency conduct acquisition proceedings for itself without indulging in conflict of interest? Also such a power is lacking in the sister organizations of the petitioner established in other urban areas of the country. In order to examine, *inter alia*, the aforesaid question and the validity of the points raised by the learned counsel, we grant leave to appeal.

5. In the meanwhile, the petitioner may develop its schemes in accordance with the provisions of the Act whilst ensuring that the petitioner exercises no power in relation to land that is outside the

scope of a Specified Area as defined in Section 3(q) of the Act. Furthermore, the petitioner, whilst exercising powers under Section 6(b) and Section 14 of the Act shall adopt a cooperative approach in consulting with the concerned local authorities or provincial government for formulating its development schemes. The impugned judgment shall remain in abeyance for the exercise of powers to the above extent by the petitioner/authority.

Judge

Judge

Judge

Islamabad, the  
16<sup>th</sup> March, 2021  
*Azmat + Irshad Hussain /\**

**NOT APPROVED FOR REPORTING.**