

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT:

MR. JUSTICE IJAZ UL AHSAN

MRS. JUSTICE AYESHA A. MALIK

(A.F.R.)

Civil Petitions No.5796, 5797 of 2021
and CMA No.11796 of 2021.

*(On appeal against the judgment dated 23.09.2021 passed
by the EFA Nos.21 and 26 of 2021)*

Government of Pakistan through Secretary,
Ministry of Defence, Rawalpindi and another.

...Petitioner(s)
(in all cases)

Versus

Farzand Begum and others.

...Respondent(s)
(in all cases)

For the Petitioner(s):

Mr. Sajid Ilyas Bhatti, Addl. AGP.
Mr. Ajmal Raza Bhatti, ASC.
Raja Abdul Ghafoor, AOR.
(in both cases)

For Respdts.#1-8:

Mr. Mudassar Khalid Abbasi,
ASC.
(in both cases)

Date of Hearing:

09.02.2022. (J.R.)

ORDER

IJAZ UL AHSAN, J.- This single order shall decide

CPLA No.5796 of 2021 and CPLA No.5797 of 2021 as they
arise out of the same impugned judgment and involve
common questions of law and fact.

2. The petitioners seek leave to appeal against a
judgment of the Lahore High Court, Rawalpindi Bench,
Rawalpindi dated 23.09.2021 whereby EFA Nos.21 and 26 of
2021 filed by the Petitioners were dismissed.

3. Brief facts necessary for disposal of these petitions are that land measuring 30 kanals bearing Khasra No.1200 situated in Village Saeelah, District Jhelum was initially requisitioned by the Ministry of Defence in the year 1950. Subsequently, such land was acquired through the process of acquisition under the Land Acquisition Act, 1894 and compensation was awarded at the rate of Rs.120,000/- per marla vide Award dated 07.09.2016. The Respondents were dissatisfied with the Award and challenged the same by way of References which were accepted by the Senior Civil Judge/Referee Court, Jhelum vide judgment and decree dated 06.03.2018 holding that the Respondents were entitled to receive Rs.480,000/- per marla as compensation alongwith 15% acquisition charges. The petitioners challenged the said judgment and decree through Regular First Appeals which were dismissed. Such dismissal was challenged before this Court through Civil Appeal No.2077 of 2019 which was dismissed vide judgment dated 20.02.2020.

4. The Respondents thereafter initiated execution proceedings during which the petitioners filed an application seeking suspension of the process of execution on the ground that they had taken steps to get the property de-notified and returned to the owners. In support of their stance that the property could be de-notified reliance was placed on Section 48 of the Land Acquisition Act, 1894 (**"the Act"**). However, neither the Executing Court nor the High Court agreed with the stance taken by the petitioners that the property could be

de-notified and the amount of compensation awarded by the Referee Court which was upheld upto this Court was not payable if the property was de-notified.

5. The learned Additional Attorney General for Pakistan has argued that the lower *fora* have overlooked the fact that the land had been acquired for a public purpose but due to non-availability of funds occupation of the said land by the Military had been abandoned. He maintains that in terms of Section 48 of the Act the Government is at liberty to withdraw from any acquisition that has taken place. He maintains that the de-notification of the land would essentially mean that the property would be restored to its original owners who would be at liberty to dispose it of at its market value hence no prejudice or financial loss is likely to be caused to the Respondents.

6. On the other hand, learned counsel for the Respondents has defended the impugned judgment. He maintains that the provisions of Section 48 of the Act have correctly been appreciated and interpreted by the High Court, the process of acquisition stands completed, possession has since long been with the petitioners and the petitioners are under an obligation to pay compensation in terms of the judgment and decree of the Executing Court which has been upheld upto this Court.

7. We have heard the learned counsel for the parties and gone through the record. The core controversy between

the parties revolves around the correct interpretation of Section 48 of the Act which for ease of reference is reproduced below:

"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 Executive District Officer (Revenue)] shall be at liberty to withdraw from the acquisition of any land of which possession has not been taken.

(2) Whenever the Executive District Officer (Revenue)] withdraws from any such acquisition, the Collector shall determine the amount of compensation due for the damage suffered by the owner in consequence of the notice or of any proceedings thereunder, and shall pay such amount to the person interested, together with all costs reasonably incurred by him in the prosecution of the Proceedings under this Act relating to the said land.

(3) The provisions of Part III of this Act shall apply, so far as may be, to the determination of the compensation payable under this section."

A bare perusal of the Section makes it manifestly clear that although the Government has the power to withdraw from acquisition of any property, such power is not absolute and is circumscribed by an important prerequisite namely, "possession has not been taken by the Government or the acquiring Department". Further, the powers under Section 48 of the Act can be exercised only where the execution proceedings in terms of the Land Acquisition Act, 1894 have not been completed. In the instant case, there is no denial of the fact that not only the acquisition proceedings have been completed, the Award has been announced, the

rate of compensation was challenged by the Respondents before a Referee Court which revised the amount of compensation and such enhanced compensation was not only upheld by the High Court but also by this Court.

8. Further, it has not been denied that possession has since long been with the acquiring Department. We are therefore of the view that acquisition proceedings for all practical purposes have been completed together with transfer of possession. As such, the power of the Government to withdraw from the acquisition of the property is no longer available and it cannot at this stage be allowed to retrace its steps to undo the entire process which has been going on for years on end.

9. The argument of the learned Law Officer that no prejudice or monetary loss is likely to be suffered by the Respondents who can still sale the property in the open market is not sufficient to alter the legal position as encapsulated in Section 48 of the Act and any deviation from the same on the basis of admitted facts would amount to departure and deviation from the letter of law for extraneous considerations which is neither advisable nor permissible under the law. The learned Addl.AGP has not been able to convince us that there is any error, defect or flaw legal or jurisdictional in the impugned judgment of the High Court that may furnish basis, justification or ground for grant of leave to appeal in this matter. Consequently, we do not find

any merit in these petitions. The same are accordingly dismissed. Leave to appeal is refused.

Announced in open Court at Islamabad on 16.05.2022.

~~'Not Approved For Reporting'~~
ZR/ *