

SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Bench-I:

Mr. Justice Umar Ata Bandial, CJ
Mr. Justice Syed Mansoor Ali Shah
Mrs. Justice Ayesha A. Malik

Civil Petitions No.1441 to 1449 of 2021.

*(Against the order of judgment of Lahore High Court, Rawalpindi Bench,
dated 02.02.2021, passed in W.P. No.2038/2020 & other connected matters)*

Commissioner, Rawalpindi/Province of the Punjab, etc. *(in all cases)*

..... **Petitioner(s)**

Versus

Naseer Ahmed, etc.(in CP 1441/2021)
Muhammad Bashir Kayani, etc.(in CP 1442/2021)
Raja Akmal Riaz Kayani, etc.(in CP 1443/2021)
Mst. Shafia Begum, etc.(in CP 1444/2021)
Muhammad Zulfiqar, etc.(in CP 1445/2021)
Qasim Ali, etc.(in CP 1446/2021)
Tahir Mehmood, etc.(in CP 1447/2021)
Abdul Malik, etc.(in CP 1448/2021)
Rab Nawaz, etc.(in CP 1449/2021)

.....**Respondent(s)**

For the petitioner(s):
(in all cases)

Barrister Qasim Chohan, Addl. A.G Pb.
Sh. Moeen-ud-Din, Chief Potohar
Sehar Ch. Law Officer, Irrigation.
Mumtaz Watoo, XEN Small Dam
Syed Farhat Abbas, SDO.

For respondent No.1 & 2:

Sardar Abdul Raziq Khan, ASC *(in CP-1441/21)*

For respondent No.2:

Mrs. Hifza Ibrar Bukhari, ASC. *(in CP-1444/21)*

For the respondents:

Mr. Khurram Masood, ASC. *(in CP-1446/21)*

For respondent No.1-9:

Mr. Atiq-ur-Rehman Kayani, ASC. *(in CP-1449/21)*

For the respondents:

Nemo (for all other respondents)

Assisted by:

Waqas Ali Mazhar, Research Officer, SCRC
and Muhammad Hassan Ali, Law Clerk.

Date of hearing:

15.02.2022

JUDGMENT

Syed Mansoor Ali Shah, J.- The petitioners seek leave to appeal against a consolidated judgment of the Lahore High Court, dated 02.2.2021 ("**impugned judgment**") whereby the High Court, while accepting the writ petitions of the respondents, has set aside the notifications issued in respect of the acquisition of land owned by the respondents and others.

2. Briefly, the facts of the case are that the Executive Engineer, Small Dams Division, Islamabad requested for acquisition of land in District Rawalpindi for the construction of the Dadhocha Dam (**"the Dam"**). A preliminary notification under Section 4(1) of the Land Acquisition Act of 1894 (**"Act"**) was issued on 02.11.2010, published in the official Gazette on 03.11.2010, for acquiring land measuring 7977-Kanals 10-Marlas in Tehsil Rawalpindi, District Rawalpindi (**"Preliminary Notification"**). After publication of the Preliminary Notification, the District Price Assessment Committee, Rawalpindi (**"DPAC"**), in its meeting held on 17.9.2011, approved the estimated cost of the land to be acquired by fixing the market value of the land to be between Rs.60,000/- to Rs.1,00,000/- per Kanal. For various reasons, no further steps were taken by the petitioners in relation to the acquisition up till the issuance of an addendum to the Preliminary Notification on 12.3.2020, published in the official Gazette on 13.3.2020, whereby the land to be acquired in Tehsil Rawalpindi was increased from 7977-Kanals 10-Marlas to 14720-Kanals 17-Marlas (**"Addendum Notification"**). A meeting of the DPAC was held again on 20.3.2020 to consider the price of the land and it approved the same valuation as had already been approved by the DPAC in 2011. Subsequently, a notification under Sections 17(4) and 6 of the Act was issued on 21.4.2020, published in the official Gazette on 24.4.2020, whereby urgency was invoked to expedite the process of acquisition of the land, and the provisions of Section 5 and 5-A of the Act were held not to be applicable (**"Urgency Notification"**).

3. The respondents challenged the acquisition proceedings, the above notifications and the acts taken thereunder, by filing writ petitions. Meanwhile, the award was announced on 13.8.2020 (**"Award"**) on the basis of the same valuation of land as determined by the DPAC in 2011, and endorsed in 2020, thereby, concluding the acquisition proceedings after nearly 10 years. The writ petitions were allowed by the High Court through the impugned judgment and the notifications were set aside; however, the petitioners were set at liberty to initiate fresh proceedings for acquisition of the land for construction of the Dam by way of issuing a new notification under Section 4 of the Act. Hence, the petitioners have filed the present petitions seeking leave to appeal from the said impugned judgment.

4. The learned counsel for the petitioners has argued that preliminary notifications under Section 4 of the Act were issued in the year 2010 to acquire (i) land measuring 7977-Kanals 10-Marlas in Tehsil Rawalpindi, (ii) land measuring 170-Kanals 11-Marlas in Tehsil Kahuta and (iii) land measuring 10418-Kanals 05-Marlas in Tehsil Kallar Syedan, of District Rawalpindi; that the acquisition proceedings could not proceed further due to certain disputes as to the construction of the Dam at the proposed location; that after resolution of those disputes, land measuring 10418-Kanals 05-Marlas of Tehsil Kallar Syedan notified in 2010 was reduced to 1820-Kanals 15-Marlas and in lieu of the said land, through the Addendum Notification issued in 2020, acquisition of land in Tehsil Rawalpindi was increased from 7977-Kanals 10-Marlas to 14720-Kanals 17-Marlas for construction of the Dam; and that the value of the land was assessed according to the market value prevailing at the time of issuance of the Preliminary Notification as per Section 23 of the Act, and the Award was then passed after fulfilling all the legal formalities.

5. While explaining the delay in the proceedings, he has submitted that pursuant to the issuance of the Preliminary Notification, the Defence Housing Authority ("**DHA**") approached the Government of Punjab with a request to shift the site for the construction of the Dam about 06 kilometers upstream. The Government of Punjab constituted a Committee on 04.2.2011 to consider the request, which recommended the original site of the Dam. The Government of Punjab then constituted another Committee to give a fresh recommendation *vis-à-vis* the feasibility of the site for construction of the Dam, which also recommended the original site. The matter then ended up before this Court and was finally disposed of vide order dated 30.4.2019 passed in Civil Review Petition No. 742 of 2015, whereafter further steps under the Act were taken to conclude the acquisition proceedings as expeditiously as possible by invoking the urgency provisions of the Act.

6. On the other hand, the learned counsel for the respondents (landowners) has supported the impugned judgment. He has contended that after the issuance of the Preliminary Notification, the petitioners went into deep slumber and no further steps were taken for acquisition of the land; and that after a lapse of more than 09 years, instead of initiating fresh acquisition proceedings, the petitioners issued the

Addendum Notification in order to deprive the respondents and other landowners of fair compensation in view of the escalation in prices of the land during the said period, therefore, the High Court has rightly declared the notifications as redundant and illegal.

7. We have considered the respective contentions of the learned counsel for the parties and have examined the record of the case with their able assistance. It appears that the High Court has set aside the acquisition proceedings due to the inordinate delay in the issuance of the Addendum Notification. Therefore, the present case requires determination on the following questions:

(i) Whether the District Collector had the lawful authority to issue the Addendum Notification and if he had such authority, whether such authority has been exercised in a proper and legal manner under the law; and

(ii) What is the legal effect of the issuance of the Addendum Notification on the acquisition proceedings, particularly on the determination of compensation?

We shall take up and decide the above questions in *seriatim*.

Authority to issue the Addendum Notification and its exercise

8. The Act neither provides for nor prohibits issuance of an addendum to a notification already issued under Section 4 of the Act. However, as per Section 20 of the Punjab General Clauses Act 1956 ("**1956 Act**"); where a power to issue a notification is conferred under an Act, then that power includes a power, exercisable in the like manner and subject to the like sanctions and conditions (if any), to add to, amend, vary or rescind any such notification so issued. A similar provision is also contained in Section 21 of the [Federal] General Clauses Act 1897. Therefore, in the absence of any provision in the Act that either expressly or by necessary implication prohibits the issuance of an addendum to a notification issued under Section 4, the District Collector is found to have the lawful authority, by virtue of Section 20 of the 1956 Act, to issue an addendum to the notification issued under Section 4 of the Act, as in the instant case, provided it was issued in the like manner and subject to the like sanctions and conditions under Section 4 of the Act.

9. Section 4 of the Act does not provide for any time limit for issuance of a notification under the said provision and stipulates that

'whenever' it appears to the Collector that land in a locality is needed or likely needed for public purpose or for a company, a notification to that effect shall be published in the official Gazette. The term 'whenever' denotes that a notification under Section 4 of the Act in the first instance will be issued whenever the land is needed or likely to be needed for a public purpose or a company and therefore, complete discretion is extended to the Collector with regards to when it is required whereupon the notification shall be issued. However, the same connotation cannot be extended to the said term when an addendum or corrigendum is issued by the Collector, by exercising powers under Section 20 of the 1956 Act, in relation to the said notification. Such an interpretation would amount to conferring unlimited and unfettered powers to the Government to finalize/conclude the acquisition proceedings which would result in uncertainty as to whether the land would be acquired or not and therefore, would be against the spirit of Article 23 of the Constitution¹ that provides for the fundamental right of citizens to acquire, hold and dispose of property. Therefore, for the purpose of issuing any such notification to add to, amend or vary a notification already issued under Section 4 of the Act, it is necessary to interpret the term 'whenever' appearing in Section 4, being a condition stipulated under the said provision while exercising the powers conferred under Section 20 of the 1956 Act.

10. It is settled law that when a statute is silent about limitation, a reasonable time limit is to be supplied by the Courts.² In *Mehraj*³ this Court interpreted the phrase 'at any time' appearing in Section 5 of the Act to mean 'within a reasonable time' and even though reasonable time was not definitively dealt with by providing a time limit, it was held that it would be determined according to the facts and circumstances of the case. Notably, the issuance of a notification under Section 5, after a notification under Section 4 is issued, is continuation of the acquisition proceedings, similarly, an addendum or a corrigendum to the notification under Section 4 of the Act is also furtherance of the acquisition proceedings. The term 'whenever'⁴ appearing in Section 4 of the Act is

¹ The Constitution of the Islamic Republic of Pakistan, 1973.

² Federal Land Commission v. Habib Ahmed, PLD 2011 SC 842; Commissioner Inland Revenue v. Yasmeen Bano, 2020 SCMR 1120.

³ M/s Mehraj Flour Mills v. Provincial Government, 2001 SCMR 1806.

⁴ Defined as "at any or every time that; if ever; no matter when" – Chambers 21st Century Dictionary, pg. 1616 (Robinson et al., 2007); "at whatever time" – Words and Phrases, pg. 77-78 (Permanent Edition).

also synonymous to 'at any time' appearing under Section 5. Therefore, the same interpretation is to be extended to 'whenever' appearing in Section 4 of the Act when an addendum or corrigendum is issued in relation thereto.⁵ Hence, where any notification is issued to amend, vary or add to the earlier notification issued under Section 4 of the Act, the same is to be issued within a reasonable time which shall be determined according to the specific facts and circumstances of the case.

11. However, it must be noted that an addendum or corrigendum to a notification under Section 4 cannot be issued after a notification under Section 5 or Section 17(4) of the Act has been issued pursuant to the said notification under Section 4, though fresh acquisition proceedings can be initiated by issuing a fresh notification under Section 4 of the Act if some more land is needed or likely to be needed later for the same purpose. This is because the next step after the issuance of a notification under Section 4 in an acquisition proceeding, as shall be explained later herein, is either to issue a notification under Section 5 in the ordinary acquisition process or to issue a notification under Section 17(4) for urgent acquisition of the land. After the issuance of a notification either under Section 5 or under Section 17(4), the same acquisition proceeding cannot revert to the initial stage of issuing a preliminary notification under Section 4 of the Act. An addendum or corrigendum to a notification under Section 4 can thus only be issued before the next step in the acquisition process is undertaken i.e. before the issuance of a notification under Section 5 or under Section 17(4) of the Act.

12. Coming to the instant case, in the normal course of acquisition such an inordinate delay in issuing the Addendum Notification, as has occurred in the present case, could not have been sustained. However, in the instant case, after the Preliminary Notification was issued and the request for shifting the Dam to an alternate location was rejected, the matter then ended up before this Court and was finally disposed of vide order dated 30.4.2019 passed in Civil Review Petition No. 742 of 2015 with the outcome that the Dam will be built on the original site. In these circumstances, the acquisition proceedings could not have continued while the matter was under adjudication and there

⁵ See Anwar Ali Sahto v. FOP, 2002 PLC (CS) 526; Phoenix Security v. Pir Muhammad, 2020 SCMR 132; Khyber Zaman v. Governor, State Bank, 2005 SCMR 235.

was uncertainty as to the site of the Dam. The Addendum Notification was then subsequently issued after the matter was conclusively disposed of by this Court. No further steps in the acquisition proceedings had been taken between the issuance of the Preliminary Notification and the issuance of the Addendum Notification, therefore, the matter was still in the initial preliminary notification stage under Section 4 of the Act. If the next step in the acquisition proceedings, through the issuance of a notification under Section 5 or Section 17(4), had been taken after the issuance of the Preliminary Notification, then the Addendum Notification to the Preliminary Notification under Section 4 of the Act could not have been issued or sustained. This is because once steps are taken to advance the acquisition proceedings to the next stage, they cannot be reverted to the previous stage, though fresh acquisition proceedings can be initiated by issuing a fresh notification under Section 4 of the Act if more land is needed or likely to be needed for the same purpose later, as stated above. Therefore, in the said circumstances, the Addendum Notification was issued within a reasonable time and cannot be set aside being based on malafide. The Collector is, therefore, found to have exercised his legal authority to issue the Addendum Notification to the Preliminary Notification in a proper and legal manner under the law, in the circumstances of the case. Invoking urgency through the subsequent Urgency Notification is also found to be a reasonable decision in view of the delay already occurred due to the prolonged litigation regarding the location of the Dam and the urgent need of building dams in Pakistan.

The legal effect of issuance of an addendum notification on the acquisition proceedings

13. Moving on to the second question, we are of the view that in order to ascertain the legal effect of the Addendum Notification on the subsequent acquisition proceedings, particularly on the determination of compensation, it is necessary to understand the significance of the notification under Section 4 of the Act in terms of the land notified thereunder. Section 4 of the Act provides for the initiation of the acquisition process through publication of a preliminary notification in the official Gazette, notifying the land that is needed or likely to be needed for any public purpose or for a company. Thereafter, either of two routes (normal or urgent) leading up to a declaration under Section 6 can be adopted, which, as per Section 6(3), is conclusive evidence that the land is needed for a public purpose, or for a company, and the

Commissioner can then acquire the land in the manner provided thereafter in the Act.

14. Firstly, after a certain land in a locality is notified through a notification under Section 4 of the Act, following the normal route the Commissioner issues a notification under Section 5 specifying the particular land of that locality to be acquired as included in the locality already notified under Section 4. Thereafter, under Section 5-A, any persons interested in that land can file objections to its acquisition before the Collector within 30 days after the issuance of the notification under Section 5. Under sub-section (2) of Section 5-A, the Collector is to provide an opportunity of hearing to any such objector and after making such further inquiry, if any, as he thinks necessary, he is to submit the case for decision of the Commissioner, together with the record of the proceedings held by him and a report containing his recommendations on the objections. When the Commissioner is satisfied, after considering the report, if any, made by the Collector under sub-section (2) of Section 5-A, that any land is needed for a public purpose, or for a company, he makes a declaration to this effect under Section 6 of the Act, which declaration is then published in the official Gazette. Notably, Section 6(4) of the Act also stipulates that where the area of the land in the said declaration is less than the area of land previously notified under Section 4, then such previous notification, so far as it relates to the excess area, shall be deemed to have been superseded by the said declaration. Thus, a notification under Section 5 can only be issued in relation to the land that has been previously notified under Section 4, and it also appears that a final declaration under Section 6 can also be issued only with regards to the land that has been previously notified under Section 4 of the Act.

15. The urgent route is adopted through the issuance of a notification under Section 17(4) of the Act. Under this Section, the Commissioner can dispense with the applicability of the provisions of Sections 5 and 5-A if he is of the opinion that the land is urgently required and can make a final declaration under Section 6 at any time after the publication of the notification under Section 4. This also makes it apparent that where a notification under Section 17(4) is issued, it shall be with regards to the land already notified under Section 4, after which a formal declaration can be issued under Section 6 of the Act at any time.

16. In view of the above, it is evident that the acquisition process cannot be initiated, formalized and then concluded unless a notification under Section 4 of the Act notifying the complete and final land to be acquired is issued. Hence, it follows that the date of the notification issued under Section 4 will not necessarily be the date of the first notification issued under the said provision, instead, it will be whenever the complete and final land is notified. In instances where addendums or corrigenda to a notification under Section 4 are issued, the indicator of the finality of the land notified would be when, after the issuance of an addendum or corrigendum, the public functionaries move forward with the acquisition proceedings by either issuing a notification under Section 5 or under Section 17(4) of the Act. Therefore, the date of the last addendum or corrigendum issued in relation to the notification under Section 4 of the Act before any step is taken to advance the acquisition proceedings to the next stage, is deemed to be the date of the notification under Section 4 of the Act for the purposes of the acquisition proceedings under the Act. This is because the complete land under the said provision becomes finally notified through the addendum or corrigendum and, after this, the state functionaries take the next step in the acquisition proceedings.

17. In the instant case, the Collector issued the Addendum Notification to the Preliminary Notification by adding land to be acquired in addition to the land already notified under the latter notification, thereby, notifying the complete and final land that is needed or likely to be needed for the construction of the Dam. Thereafter, the next step in the process of acquisition was undertaken through the issuance of the Urgency Notification under Section 17(4) of the Act. No further steps to take the acquisition proceedings to the next stage had been taken after the issuance of the Preliminary Notification and before the issuance of the Addendum Notification. Therefore, the Addendum Notification did not have the effect of reverting the acquisition proceedings to the previous stage, in which case, the Addendum Notification could not have been sustained and fresh acquisition proceedings through the issuance of a fresh preliminary notification under Section 4 of the Act would have had to be initiated to acquire the land added through the Addendum Notification. Hence, in the present case, with the issuance of the Addendum Notification, the notification issued under Section 4 became final and complete in terms of the land notified thereunder. Therefore, the date of issuance of the Addendum Notification shall be taken as the

date on which the notification under Section 4 of the Act is deemed to have been issued.

18. Consequently, the issuance of an addendum notification would also affect the date of the publication of the notification under Section 4 that is referred to in Section 23(1) of the Act. The provisions of Section 23(1) of the Act prescribe that in determining the amount of compensation to be awarded for the land acquired, the market value of the acquired land at the date of the publication of the notification under Section 4 shall be taken into consideration. Since a notification under Section 4 becomes complete on the date when the complete and final land is notified thereunder, it is the date of the publication of the addendum or the corrigendum, or the last addendum or corrigendum if there are more than one, by virtue of which the complete land is finally notified, that is to be taken as the date of the publication of the notification under Section 4 referred to in Section 23(1) of the Act for the purposes of considering the market value of the acquired land while determining compensation.

19. Depriving a person of his/her property through acquisition by virtue of Article 24 of the Constitution is an exception to the fundamental right of every citizen to acquire, hold and dispose of property, as guaranteed under Article 23. By virtue of Article 24, the Constitution provides for a balance between the citizen's right to rehabilitate or resettle or acquire alternate land and the State's power of eminent domain, as it stipulates that along with such acquisition being only for a public purpose, it can only be undertaken under an authority of law that provides for compensation, which in this instance is the Act. The right to compensation under an authority of law has a Constitutional underpinning that is the protection given to the right to own property.⁶ The main object of the Act, therefore, is to provide complete indemnity to the landowners and no property can be acquired without proper and adequate compensation⁷ so that the opportunity to rehabilitate or resettle or acquire alternate land is not lost. Landowners are entitled to the maximum possible benefit in the circumstances of each case as such acquisition is not by way of mutual negotiations but under State power conferred on public functionaries.⁸ The interpretation and applicability of the provisions of the Act must, therefore, be in consonance with the

⁶ Federal Government v. Mst. Zakia Begum, 2023 SCP 57.

⁷ See Land Acquisition Collector v. Iqbal Begum, PLD 2010 SC 719.

⁸ Nisar Ahmad v. Collector, Land Acquisition, PLD 2005 SC 25.

spirit of Articles 23 and 24 of the Constitution and the object of the Act, which require properly and adequately compensating landowners whose lands are being acquired thereunder.

20. Therefore, where a notification under Section 4 of the Act is subsequently amended, varied or added to through an addendum or corrigendum, the date of the publication of the initial notification under Section 4 cannot be taken as the material date for the purposes of considering the market value of the land for determining compensation under Section 23(1) of the Act. Such an interpretation would not only be against the Constitutional mandate by upsetting the balance the Constitution seeks to maintain through adequately and properly compensating the owners of the land that is being acquired, it would also be against the object of the Act to that effect. Instead, in such circumstances, the date of publication of the subsequent addendum or corrigendum, finally notifying the complete land under Section 4 of the Act, must be considered to determine the market value of the land for the purposes of compensation. As such, in the present case, the assessment of the market value of the land by the DPAC as on the date of the publication of the Preliminary Notification instead of the date of the publication of the Addendum Notification, cannot be sustained. The Award, having been announced on the basis of this legally wrong assessment, therefore, also becomes redundant and unsustainable.

Conclusion

21. In view of the above answers to the two questions of law, we find that though the Preliminary Notification, the Addendum Notification and the Urgency Notification were validly issued in the present case, the Award was not passed in accordance with law. We are cognizant of the legal position that interference on the matter of determination of fair compensation is not ordinarily warranted under the judicial review jurisdiction of the High Court under Article 199 of the Constitution and such matter is best decided by a civil court in its reference jurisdiction under Section 18 of the Act after recording the respective evidence of the parties. However, where the acquisition authorities under the Act have misdirected themselves on a point of law, which does not require any factual determination, the High Court must intervene to correct the legal error and set the course of law right. In the present case, it is an admitted position that the assessment of the market value of the acquired land was made by the DPAC as per the date of the Preliminary

Notification instead of the date of the Addendum Notification, which was a clear legal error. The Award was made passed on the basis of the said legally wrong assessment, and thus suffered from the same legal error. The Award is thus found to have been passed without lawful authority and of no legal effect in terms of Article 199(1)(a)(ii) of the Constitution.

22. Therefore, we convert these petitions into appeals and partly allow the same by holding that the Preliminary Notification, the Addendum Notification and the Urgency Notification were validly issued and shall remain operative. However, the Award is set aside with the direction to the petitioners to determine the compensation of the acquired land afresh, treating the date of the publication of the Addendum Notification as the date of the publication of the notification under Section 4 referred to in Section 23(1) of the Act, for assessing the market value of the acquired land. It goes without saying that while determining compensation and announcing the award afresh, other matters/factors prescribed under the law for determining the compensation, including the potential value of the land and the escalation in prices of the land from the date of the publication of the Addendum Notification to the date of announcing the new award, shall also be considered and taken into account.

Chief Justice

Judge

Announced.
Islamabad,
11th September, 2023.

Judge

Judge

Approved for reporting
Sadaqat