IN THE PESHAWAR HIGH COURT, PESHAWAR,
[Judicial Department].

Writ Petition No.5567-P/2019

Akhtar Ullah Khan Khattak son of Sultan Khan (late),
r/o village Manki Sharif, presently, 22 Station Road,
Nowshera Cantt. Nowshera.

Petitioner (s)

VERSUS

Collector Land Acquisition,
Nowshera and others.

Respondent (s)

For Petitioner (s) :-	M/S Muhammad Yasir Khattak & Gulzar Ahmad Khan, Advocates.
For Respondents :-	M/S Shomail Ahmad Butt, Advocate General and Aamir Javed, DAG & Nasir Mehmood, Advocate.
Date of hearing:	**02.06.2021**
Date of announcement:	_____

JUDGMENT

ROOH-UL-AMIN KHAN, J:-Through this common judgment, we propose to decide the instant writ petition, filed by Akhtar Ullah Khan Khattak and the connected **Writ Petitions No.5680-P, 5885-P of 2019, No.141-P and 1867-P of 2020**, filed by Ashfaq Ahmad, Muhammad Saeed Butt etc, Khurshid Anwar & others and Muhammad Yasir Khattak Advocate *(hereinafter to be referred as the petitioners)* against the Collector Land Acquisition, Nowshera and others *(hereinafter to be referred as the respondents),* as vires of one and the same de-notification No.868 dated 07.10.2019, have been challenged therein, which is reproduced below:-

"OFFICE OF THE DEPUTY COMMISSIONER/DISTRICT COLLECTOR NOWSHERA

DE-NOTIFICATION UNDER SECTION-48 OF THE KHYBER PAKHTUNKHWA LAND ACQUISITION(AMENDMENT) Act, 2019.

No.868/DC/LAB/NSR Dated 07.10.2019

Whereas, land measuring 3413 Acre 01 Kanal 11 Marlas was acquired for the purpose of AFV Range at Mouza Manki Sharif District Nowshera vide Award No.119-122/CLA/NSR dated 21.04.1999.

Whereas, rate enhancement @ Rs.12000/- per marla was directed by the Honourable Supreme Court of Pakistan which was accordingly communicated to Military Estate Officer, Peshawar Circle Peshawar for arrangement of funds so as compensation to be made to the land owners accordingly. The acquiring department is Military Estate Officer, Peshawar Circle Peshawar vide No.L-21/FFR/XIX dated 29.03.2019, conveyed that the Federal Government (Ministry of Finance) has regretted to provide the funds (Decretal amount/enhanced compensation), further requesting for de-notification and surrendering of land to the rightful owners acquired in seven (7) villages of Manki Sharif, Aman Garh, Nowshera Khurd, Spin Kanay, Pir Pai, Aza Khel Payan and Badrashi.

A meeting was also held on 30.07.2019 under the chairmanship of Senior Member Board of Revenue Khyber Pakhtunkhwa attended by Deputy Commissioner Nowshera. Deputy MEO Peshawar, Deputy Law Officer, Law Department Khyber Pakhtunkhwa and legal Adviser of HQ 11 Corps. The issue of enhance compensation and contempt of court proceedings in the court of Additional District Judge-V, Nowshera dated 01.07.2019 in case titling Mst. Bas Bibi & others Vs Collector Land Acquisition & others and Peshawar High Court Peshawar judgment dated 11.06.2019 in Writ Petition No.3082/2019 was discussed in detail. After getting input of Deputy Law Officer and after threadbare discussion the undersigned was directed to dispose off the acquired land in seven villages mentioned above in light of Sub Para (1)(2)(3) of Para 66 Land Revenue Circular No.54 communicated vide minutes of the meeting vide letter No.Rev.V/4/Peshawar/2019/26010-16 dated 02.08.2019.

Accordingly the case was processed vide No.767/DCLAB/NSR dated 23.08.2019 for approval of de-notification by the competent authority i.e. Commissioner Peshawar Division Peshawar whereby the subject approval for de-notification of the land in question under section 48 of the Land Acquisition Act, 1984, was granted vide letter No.2-17/AR/Cost Estimate/2019/11768 dated 24.09.2019

Now, therefore, Deputy Commissioner/District Land Acquisition Collector Nowshera in light of minutes of the meeting vide letter No.Rev.V/4/Peshawar/2019/26010-16 dated 02.08.2019 and de-notification vide letter No.2-17/AR/Cost Estimate/2019/11768 dated 24.09.2019 by the competent authority under section-48 of the Land Acquisition Act, 1894 do hereby de-notify the above mentioned Award acquired for AFV Range at Mouza Manki Sharif District Nowshera Settlement Tehsildar Nowshera is hereby directed to dispose off the land in the very spirit of sub para (1)(2)(3) of Para-66 of the Land Revenue Circular No.54.

Deputy Commissioner
Nowshera.

2. Facts in brief forming the background of the writ petitions are that the Federal Government Ministry of Defence, acquired land measuring total 18680 Acres 01 Kanal and 19 marla in twelve (12) *mouzajat* of District Nowshera for the purpose of establishment of Artillery Range/AFV AFV Range through twelve separate Awards of even dated 21.04.1999. Out of the twelve *mauzajat*, the landowners of seven *mouzajat,* namely, *Nowshera Khurd, Manki Sharif, Pir Pai, Spen Kane, Azakhel Payan, Amangarh and Badrashi*, filed Reference Petition(s) under section 18(4) of the Land Acquisition Act, 1894, before the learned Referee Court, Nowshera, whereas, the land owners of the remaining five *mouzajat*, namely, *Palosi,*

Maharaji, Lakarai, Azakhel Bala and Khesrai, accepting the Awards did not file any reference. The learned Referee Court while accepting the Reference Petitions of the land owners of the seven *mouzajat* enhanced the compensation amount of the acquired land at different rates viz Rs.5000/-, Rs.5821/- and Rs.6000/-, against which the parties, filed appeals before this court. After hearing learned counsel for both the sides, this court dismissed the appeals filed by the Acquiring Department whereas accepted the appeals of the petitioners vide consolidated judgment dated 18.06.2015, as a result, the compensation amount was enhanced to Rs.12000/- per marla along with 6% simple interest and 25% compulsory acquisition charges. Being aggrieved from the judgment dated 18.06.2015, the respondents-Acquiring Department preferred appeals before the Hon'ble Supreme Court, which were dismissed vide judgment dated 15.02.2018 with slight modification in the judgment dated 18.06.2015 passed by this court that 25% compulsory acquisition charges were reduced to 15%.

3. For execution of the decree in their favour, the land owners/decree holders filed execution petitions before the learned District Court Nowshera where they were in the hope of getting fruit of the decree, when in the meantime, the respondents issued the impugned de-notification, hence, these writ petitions.

4. Initially, comments of the respondents were called, which were filed accordingly. In the comments, the respondents have admitted the entire facts of acquisition of the land of the

petitioners, however, asserted that under the Chairmanship of the Senior Member Board of Revenue Khyber Pakhtunkhwa the impugned de-notification was issued after approval by the competent Authority i.e. Commissioner Peshawar Division, Peshawar on the ground that the Federal Government (Ministry of Finance) due to financial implication regretted to provide the fund (decretal amount/enhanced compensation) to the petitioners.

5. We have heard the arguments of learned counsel for the parties and perused the record with their valuable assistance.

6. It appears from record that land of the petitioners was acquired by the Federal Government Ministry of Defence for the purpose of establishment of Artillery Range known as AFV Rang way back in the year 1999, vide Award dated 21.04.1999. The petitioners-landowners after litigating up to Hon'ble apex court, succeeded in getting the compensation amount of the acquired land enhanced at the rate of Rs.12,000/- per marla with 6% simple interest and 15% compulsory acquisition charges vide judgment dated 15.02.2018, passed by the Hon'ble Supreme Court. To get fruit of the decree, the petitioners filed execution petitions before the learned District Court Nowshera which was dilly-delayed on different pretext and ultimately, to keep themselves away from implementation of judgment of the august apex court or to avoid payment of compensation to the landowners-petitioners, the respondents filed applications for return of the acquired land to the petitioners on the ground that due to financial crisis, the acquiring department is unable to pay

the compensation. Their applications were dismissed by the learned Executing Court with the direction to the District Collector to prepare/issue voucher in favour of the decree holders-landowners only to the extent of principal amount as per their respective shares subject to furnishing indemnity bonds equivalent to their respective shares with two indemnifiers in the like amount to the satisfaction of the Executing Court vide order(s) dated 06.05.2019, against which the respondents-acquiring department filed **Writ petitions No.3078-P, 3079-P, 3080-P and 3082-P of 2019,** before this Court, but the same were dismissed in limine through a consolidated order/judgment dated 11.06.2019, which for the sake of convenience and ready reference is reproduced below:-

> "The main thrust of the arguments of learned counsel for the petitioners-judgment debtors was that due to insufficient amount, the acquiring department-judgment debtors approached the Federal Government for arrangement of decretral amount but the latter has refused due to financial crises and directed the judgment debtors to approach the proper forum for de-notification/return of the acquired land to the land owners. In this backdrop, the acquiring department/judgment debtors filed applications before the Executing Court qua return of the acquired land and the Collector for de-notification, but the learned executing Court without adverting to the agonies of the judgment debtors dismissed the applications of the petitioners. According to learned counsel when the acquiring department is unable to pay the decretal amount it was proper and in the interest of justice to return the acquired land to the land owners, hence, requested for setting aside of the impugned order(s).
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> We are not in consonance with the arguments of learned counsel for the petitioners as the land hand been

> compulsorily acquired from ownership and occupation of the respondents-land owners way back in the year 1999. The matter of compensation of the acquired land has been finalized by the Hon'ble Supreme Court of Pakistan while dismissing the appeals of the acquiring department vide judgment dated 15.02.2018. Since then, the respondents-landowners are running from pillar to post to get the compensation amount of the acquired land. The petitioners at this belated stage when much water has flown under the bridge came forward with a new version to return the land to the land owners, which version by no stretch of imagination can be justified. Besides, job of the Executing Court is to execute the decree in its letter and spirit and it cannot go a single inch beyond the decree. The learned Executing Court is vested with no power to pass any such order which is beyond the decree.
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> For what has been discussed above, the learned Executing Court while following the law on the subject and knowing its jurisdiction has rightly dismissed the applications of the petitioners to which no exception can be taken. Resultantly, this and the connected writ petitions being meritless are hereby dismissed in limine."

7. After about four months of passing of the judgment *(supra)*, the respondents instead of complying with the judgment, issued the impugned de-notification dated 07.10.2019. The superstructure of the impugned de-notification is based upon section 48 of the Land Acquisition Act, 1894 (Act No.I of 1894) read with sub-para (1)(3) of para-66 of the North-West Frontier Province Revenue Circular No.54.

8. Record suggests that the acquired land of the petitioners was in possession of the respondents since 1955, on the basis of lease for the same purpose as mentioned in the award. Subsequently, Notification under section 4 of the LA Act 1894

was issued by the District Collector Acquisition Peshawar vide No.1148 dated 13.05.1977, followed by notification under section 5 of the LA Act 1894 on 07.11.1977 and finally the award was announced on 21.04.1999. Since, 1955 till date i.e. a long period of about 66 years, the acquired land remained in possession of the respondents-acquiring department, but till date the petitioners landowners have not received its compensation and ultimately, the impugned de-notification within the meaning of section 48 of the Land Acquisition Act, 1894 has been issued. To understand the mandate and import of section 48 (ibid), the same is reproduced below:-

> **"Completion of Acquisition not compulsory, but compensation to be awarded when not completed:-** (1) Except in the case provided for in section 36, the Commissioner shall be at liberty to withdraw from the acquisition of any land **of which possession has not been taken.**
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> (2) Whenever the Commissioner withdraws from any such acquisition, the Collector shall determine the amount of compensation due for 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.
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> (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." **(underlines and bold are our for emphasis).**

9. Section 48 reproduced above, no doubt, empowers the Government to unilaterally withdraw from the acquisition of any land, but this power is not absolute rather subject to the condition

that such powers can only be exercised when possession of the land has not been taken by the Government or acquiring department of the Government. It cannot be ignored that scheme of the Land Acquisition Act 1894, provides a complete and exhaustive mechanism for compulsory acquisition of any land required for public purpose. The Act has acknowledged certain rights of the land owners, like, after issuance of the notification under section 4 of the Act, the owners have the right to file objection under section 5-A of the Act, merit of which and need for exclusion of the land from acquisition, are considered by the Land Acquisition Collector and then declaration under section 6 of the Act is notified. Again, notice under section 9 of the Act, is to be given to all the owners or persons interested, showing intention of the Government about taking possession of the land. The Land Acquisition Collector having applied its mind to all facets of the acquisition, then finally makes an award. In the above scheme of the Act, the owners are neither vested with any right to refuse or damage the required property nor at any stage can demand for return or de-notification of the land in their favour. The provisions of section 48 of the Act are intended to vest powers in the Land Acquisition Collector to withdraw from acquisition of the land of which possession has not yet been taken. After taking possession, the Land Acquisition Collector, becomes functus officio in the matter of acquisition and any action taken thereafter would amount to departure and deviation from the scheme of the Act. Section 48 provides a method for

brining the acquisition proceedings to an end prior to dispossession of the land owners from their properties. Whenever the Land Acquisition Collector, intends to exercise powers of withdrawal from any acquisition, he shall determine the amount of compensation due for the damage suffered by the land owners in consequence of the notice or of any proceedings thereunder and shall pay such amount to the person(s) interested together with all costs reasonably incurred by in the prosecution of the proceedings under the Act, relating to the acquired land. Bare reading of section 48 of the Act will make it abundantly clear that the Land Acquisition Collector has no authority and power to withdraw from acquisition after taking possession of the land. In other words, the powers granted to the Land Acquisition Collector under section 48 of the Act, shall come to an end on taking the possession of the land. In the instant case, there is no cavil to the fact that possession of the land remained with the respondents, firstly, on lease since 1955 and, secondly, it was taken in consequence of the award announced in the year 1999. On the issue of compensation, the parties have litigated up to the Hon'ble Supreme Court where it was finally decided vide judgment dated 15.02.2018, and Rs.12,000/- per marla was determined and fixed as compensation of the acquired land, payable to the petitioners-landowners along with 6% interest by the respondents. The factum of possession of the land being with the respondents is never disputed. Besides, during the course of arguments, it was never contended before us that possession in

pursuance of the acquisition proceedings was not handed over to the respondents-acquiring department, rather during proceedings in the Reference before the Referee Court, factum of taking possession of the land is admitted by the respondents-acquiring department. This fact alone is sufficient to hold that section 48 of the Act of 1894, under the circumstances, could not be attracted. Besides, withdrawal of Government from acquisition under section 48 entails automatic rescission of all previous notifications which, of course, is not the case of the respondents that all the previous notifications in this regard have become ineffective. In this regard reliance can be placed on the judgment of the august apex court in case titled, **"Messrs Dewan Salman Fiber Ltd and others vs Government of NWFP through Secretary, Revenue Department, Peshawar and others" (PLD 2004 Supreme Court 441),** relevant part of which is reproduced below:-

> "Section 48 of the Act empowers the Government to withdraw from the acquisition of any land. This power is, however, not absolute, but subject to the condition that possession of the land has not been taken. It is significant to note that in these cases the possession of the land was taken by the Government and therafter it was transferred to the appellants. In fact, the factum of possession of land in question being with the appellants is never disputed. On the contrary, the record reveals that the Deputy Commissioner/Land Acquisition Collector vide letter dated 13.11.1997, had directed the General Manager of the appellants to remove any impediment, property, structure, etc from the

> surplus area and assist the Revenue Staff in demarcation and handing over the possession to the original owners. Besides, during the course of arguments, it was never contended before us that possession in pursuance of the acquisition proceedings was not handed over to the appellants. This fact alone is sufficient to hold that section 48 of the Act, under the circumstances, was not attracted."

Similarly, this Court while dilating upon the mandate of section 48 of the Act of 1894, and placing reliance on the judgment in case titled, "Fida Hussain Vs Province of Punjab (2002 CLC 790), in case titled, **"Muhammad Sultan Khan vs Deputy Director Workds" (2015 CLC 1353)** has ruled as under:-

> "A plain reading of section 48 of the Act would reflect that this is the only section of law permitting the Government to withdraw but only when no possession has been obtained. In the instant case not only possession was obtained but road has been constructed and the land is of no use to the petitioners.
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> In essence, the provisions of section 48(1) of the Act empower the Government regarding unilaterally withdrawal from the acquisition of any land of which possession has not been taken. The Government can exercise this power without seeking consent of the landowner and without any sanction or approval from any authority under the Act or from any court. The sole liability with which the court be saddled is the case of withdrawal from any such acquisition is the payment of compensation determined by the consequences of the notice or of any proceedings thereunder and the payment of costs reasonably by person interested in prosecution of the proceedings under the Land Acquisition Act, 1894.
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> Since in the year 2004 the possession of the land has been obtained by the respondents when first notification under section 4 of the Act was issued, till date, therefore, we have no hesitation in holding that the impugned order/de-notifying notification dated

> 31.08.2005 of respondent No.3 was not only passed in contravention of the express provision of section 48 of the Act but it also suffered from mala fides".

10. In light of the judgments (*supra*), we are firm in our view to hold that section 48 of the Act of 1894, in the peculiar facts and circumstances discussed above, particularly, when possession of the acquired land has obtained, could not be attracted by the respondents for de-notification.

11. At this juncture, we also deem it appropriate to mention here that during execution proceedings, the acquiring department-respondents showing their inability to pay the compensation amount submitted applications for return of the acquired land, but the same were dismissed and their appeals against the orders of the Executing Court were also turned down by this court vide judgment dated 11.06.2019, however, in defiance of court order, the impugned de-notification has been issued by the respondents despite the fact that they were well aware of the judgment of this court as well as the Hon'ble Supreme Court. Such a conduct of the respondents is the worst example of flouting the judgments of higher and superior court as well as speaks volumes about the bigotry of the respondents.

12. Coming to another limb of arguments of the worthy Advocate General and the Deputy Advocate General to the effect that under para-66 (1)(2) & (3) of the North-West Frontier Province (*Khyber Pakhtunkhwa*) Revenue Circular No.54, which provides a proper mechanism for compulsory acquisition of the

land and its disposal in case such land is no longer required, the respondents have rightly issued the impugned de-notification. To meet the arguments of learned counsel for the respondents, we would like to reproduced Para-66 (1)(2) & (3) *ibid*, below:-

> **"66.** When agricultural or pastoral land has been permanently acquired for public purposes by any department of Government, and is no longer required for such purposes, the disposal of it shall be guided by the following considerations:-
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> (2) Agricultural or pastoral land should ordinarily in the first instance be offered to the original owners, or their heirs, at the price of acquisition, unless there has been any material alteration in the value of the land since acquisition. To justify the demand of an enhanced price at restoration there must have been an improvement in the quality of the land. The fact that land un-irrigated when required, can at restoration be watered from a canal, is not an improvement of this nature.
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> (2) If surrendered at the price of acquisition is refused by the original owners or their heirs or if it is obviously inequitable either to them or to Government, the market value of the land should be ascertained and the plot to be surrendered should be offered at the market price to:-
>
> (a) the original owners or their heirs,
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> (b) the owners or occupiers of adjoining lands;
>
> (c) to others.
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> (3) In the case of plots which from their size or shape are practically of no value to anyone but the owners of the adjoining fields, the option of purchasing at the market value should be given to them. The mere fact that an outsider is prepared to outbid them should not deter the Deputy Commissioner from accepting any fair offer which they may make."

13. Perusal of Para-66(1)(2)(3) (ibid), reveals that it provides a proper mechanism regarding return of agricultural or pastoral land permanently acquired for public purposes by the

Government when the same is no longer required for such purpose, however, it does not speak about de-notification of the acquired land. It only speaks about agricultural and pastoral land which is not the case herein. Similarly, how such land is to be disposed off in different situations, has been categorically mentioned in sub-para 3 of Para 66, according to which, firstly, such land is to be offered to the original owners or their heirs then to the owners or occupiers of the adjoining land; and finally to others, that too, in a situation when the compensation has already been paid to the land owners in lieu of acquisition. In simple words, before invoking the provisions of Para-66 (ibid), the acquiring department after payment of compensation to the land owners from whom the property had been compulsorily acquired shall become the owner of the land and in case the acquired land is no longer required, the acquiring department can invoke the provision of Para-66 (ibid), but after payment of compensation amount determined by the court as provided in para-26 and 27 of the Circular (ibid). If the respondents are relying on para-66 of the Circular (ibid) then they are not allowed to do pick and choose. In case, the petitioners-landowners are not ready to accept return of the acquired land, then the respondents may proceed in accordance with sub-para 3 of Para.66 (ibid), but only, after payment of compensation to the land owners/petitioners first. Above all, the land acquired for the purpose has already been utilized. In case of **Messrs Dewan SalmanFiber Ltd and others (supra) PLD 2004 Supreme Court 441**, identical controversy

came up before the Hon'ble Supreme Court which was dealt with as under:-

> "Para.66 of the revenue Circular No.54 is also not attracted. It speaks about agricultural pastoral land, which has been permanently acquired for such purpose by any department of the Government and is no longer required for that purpose. In these cases, the land acquired for the purpose has been utilized as such."

14. For the reasons discussed above coupled with the law on the subject as well as the law laid down by the worthy apex court and this court in the judgments (supra), we have no hesitation to conclude that the provisions of section 48 of the Land Acquisition Act, 1894, have wrongly been attracted and the impugned de-notification has been issued without lawful authority. The impugned de-notification has no legal backing except that the acquiring department is not able to meet and pay the compensation amount to the landowners due to financial crises, that too, after a long period of more than 65 years. Similarly, Para-66 (1)(2)(3) if provides a mechanism for return of the acquired land then at the same time, it speaks about such return when the acquired land is no longer required for the purpose for which it was acquired and the department has paid the compensation amount to the land owners. A look over the impugned de-notification would reveal that not a single word has been uttered therein to the effect that the acquired land is no longer required for the acquiring department for the purpose for which it had been acquired rather only reason for the return urged

is the financial implications of the acquiring department. On this score too, the impugned de-notification does not meet the requirements of para-66(1)(2)and (3) of the North West Frontier Province (Khyber Pakhtunkhwa) Revenue Circular No.54.

15. In view of the above, this and the connected writ petitions are allowed. The impugned de-notification bearing No.868 dated 07.10.2019, being against the law on the subject as well as in utter violation of judgments of the Hon'ble Supreme Court and Court, is not only contemptuous but is void ab initio, hence, is hereby struck down. The respondents-Acquiring Department, shall pay the compensation amount to the petitioners-land owners as determined and fixed by the Hon'ble Supreme Court in its verdict dated 15.02.2018.

Announced:

M.Siraj Afridi PS

Senior Puisne Judge

JUDGE

DB of Mr. Justice Rooh ul Amin Khan Hon'ble Senior Puisne Judge;
And Hon'ble Mr. Justice Muhammad Nasir Mehfooz