

**JUDGMENT SHEET**

**IN THE LAHORE HIGH COURT AT LAHORE.**

**(JUDICIAL DEPARTMENT)**

**Writ Petition No.26529 of 2015.**

Bahria Town (Pvt.) Limited  
Vs.  
Government of Punjab etc

**JUDGMENT**

DATES OF HEARING: 13.6.2017, 20.6.2017, 21.6.2017,  
22.6.2017, 29.6.2017, 30.6.2017,  
3.7.2017, 7.7.2017, 10.7.2017,  
11.7.2017, 12.7.2017, 13.7.2017 &  
14.7.2017.

PETITIONERS BY: M/s Kh. Ahmad Tariq Rahim,  
Muhammad Azhar Siddique, Agha  
Abul Hassan Arif, Kh. Hassam Tariq  
Rahim, Abdullah Malik, S. Parveen  
Mughal, M. Rizwan Gujjar, Syed  
Shahbaz Shah, Shahzad Maqsood and  
Mafia Kousar, Advocates.

RESPONDENTS

Nos.1,2,5,7,9,10 & 12 BY: Ms. Samia Khalid, Additional  
Advocate General Punjab assisted by  
Syed Tassadaq Mustafa Naqvi,  
Advocate along with Abdullah Khan  
Sumbal, Commissioner Lahore  
Division, Suhail Khawaja, Director  
(Estate Management) LRRRA, Sh.  
Farooq Hussain, Deputy Director  
(Legal) LRRRA and Wajid Iqbal, Land  
Officer LRRRA.

RESPONDENTS

No.3 & 4 BY: M/s Ch. Mushtaq Ahmad Khan,  
Rizwan Mushtaq, Ahmad Awais,  
Ashfaq Qayyum Cheema, Syed  
Moazzam Ali Shah, Waheed Ahmad,  
Ali Ahmad, Moeen Ahmad, Rai Shahid  
Saleem Khan, Advocates.

RESPONDENT No.6, 8 BY: Mr. Salman Mansoor, Advocate.

RESPONDENT No.11 BY: M/s Muhammad Zakariya Sheikh, Deputy Attorney General for Pakistan and Mian Muhammad Ayyub, Assistant Attorney General for Pakistan.

**AMIN-UD-DIN KHAN, J.** Through this single judgment I intend to decide the above captioned writ petition as well as Writ Petitions Nos.1743 of 2016, 2449 of 2016, 2575 of 2016, 2580 of 2016, 2587 of 2016, 2590 of 2016, 22396 of 2017 and 26752 of 2017, as common question of fact and law are involved in all the writ petitions.

2. There was a dispute between the parties with regard to hearing of these petitions by this court on the ground that as per learned counsel for the petitioners, previously these petitions were being heard by the learned Full Bench of this court and as per the petitioners the petitions were sent for fixation before the learned Single Bench only to the extent of injunctive order and withdrawal of injunctive order, whereas the main cases were to be heard by the learned Single Bench after decision by the learned Full Bench of Writ Petition No.16109 of 2011, whereas as per the learned Additional Advocate General Punjab and learned counsels representing the respondents the cases though initially were ordered to be fixed before the learned single Bench for hearing of applications for grant of temporary injunction and vacation of injunctive order but subsequently the learned Full

Bench has clarified the position through the order dated 25.05.2017 passed in Writ Petition No.16109 of 2011 that the petitions in hand be heard by the learned Single Bench even before the decision of Writ Petition No.16109 of 2011 and the connected matter i.e. Writ Petition No.37232 of 2015. The relevant Para of the order dated 25.5.2017 is as under:-

“Learned Law Officer submits that there is an impression that this Court has stayed the proceedings before all the learned Single Benches hearing matters relating to land acquisition. It is clarified that this Bench is hearing the instant matter and the connected matter and interim relief has been granted only in these cases. Needless to say that stay granted in these cases will have no bearing on the proceedings of any land acquisition case pending before learned Single Benches of the court including the cases that were earlier being heard by the Full Bench.”

In these circumstances, there is no bar in hearing and deciding these petitions, therefore, same have been heard and are being decided by this court.

3. Through this writ petition the following prayer has been made:-

“In light of the foregoing facts and submissions, it is most humbly and respectfully prayed the instant Writ Petition may graciously be accepted and Section 4, 5, 5-A, 17 of LA Act, and LA Rules are ultra vires Article 9, 14, 23, 24, 10-A, 25, 38, 4 & 5 of the Constitution of Islamic Republic of Pakistan, 1973 or alternatively the above provisions may be read down by providing a right of fair trial and due process in view of Article 10-A whereby and no land can be acquired in violation of principle set-out in Article 24 of the Constitution of Islamic Republic of Pakistan, 1973.

In the interest of justice, equity and fair play and to enforce the Article 10-A of the Constitution of Islamic Republic of Pakistan, 1973, the Impugned Notification for the purposes of acquiring the land in Bahria Town, Lahore

is illegal, ultra vires the Constitution of Islamic Republic of Pakistan, 1973 especially Article 9, 14, 23, 24, 10-A, 25, 38, 4 & 5 of the Constitution of Islamic Republic of Pakistan, 1973, hence the Impugned Notification may very kindly be set-aside.

As the LRR Authority of Government of Punjab or LDA has an alternate site which is less expensive and will not disturb the property rights of individuals, so direction may very kindly be made to construct the Lahore Ring Road on the above site and if so desired this Honourable Court has the authority and jurisdiction in view of Section 75 read with Order XXVI to constitute an independent commission to safeguard the rights of citizen.

Any other relief which this Honorable Court may deem fit and appropriate in the circumstance of the case may also be allowed.”

4. As noted in the prayer of instant writ petition, the vires of the Provisions mentioned supra of the Land Acquisition Act, 1894 (in the latter part it will be noted as “Act” for brevity) claiming to be in contradiction with specific Articles of the Constitution of Islamic Republic of Pakistan, 1973 (in the latter part of the judgment the Constitution of Islamic Republic of Pakistan, 1973 will be noted as “**Constitution**”) , have been challenged with the prayer that same be read down whereas an alternate prayer is for striking down the Notifications of acquisition against the petitioners and a prayer that the respondent Authority be directed to construct the disputed portion of Ring Road on the alternate site as proposed by the petitioners. It will not be out of place to mention here that in some of the writ petitions the process of acquisition has been

challenged. In Writ Petition No.22396 of 2017 Award has been challenged.

5. At this stage, it is important to note that I have heard the lengthy arguments advanced by the learned counsel for the parties. During the arguments valuable assistance has been provided to the court to conclude this matter in detail by submitting the case law supporting the point raised before this court as well as quotations from the Jurists point of view as well as the interpretation of the law by the various courts and the Jurists. I will specially appreciate the assistance rendered by Khawaja Ahmad Tariq Rahim Advocate as well as Ms. Samia Khalid, Additional Advocate General Punjab except an event that once Khawaja Ahmad Tariq Rahim Advocate shouted upon the learned Additional Advocate General Punjab. I believe that it is the duty of the court to provide smooth atmosphere to the learned counsel for the rival parties and do not allow any of the counsel to transgress as the incident was at the spur of moment, before the intervention of the court, the matter ended. At this stage I appreciate the tolerance of the learned Additional Advocate General Punjab, otherwise than this event all the proceedings ended smoothly. As very exhaustive arguments, spread upon more than 13 dates of hearing consecutively in the last set of hearing, were heard. I believe some arguments may not be very relevant and need not be noted and discussed while deciding matter in issue in order to avoid unnecessary details of

the arguments. Therefore, I will discuss the relevant arguments relating to the point in issue while discussing the matter in issue. Learned counsel for the petitioner Imran Sheikh Chand adopted the arguments of learned counsels for the instant writ petition.

6. The matter relates to acquisition of land for **Lahore Ring Road Project Southern Loop SL-3 Tehsil Raiwind District Lahore** through Notifications issued u/s 4 of the Act on 17.06.2008, where-after some Addendum and Corrigendum were also issued in the year 2011 and 2013-14. The matter in issue relates to construction of part of the Ring Road Project i.e. Southern Loop total consisting upon 31 kilometer. It was bifurcated in three parts i.e. SL-1, SL-2 and SL-3. As per the record most of Southern Loop i.e. 22.5 kilometer has been constructed and completed and only an area i.e. 8.5 kilometer, which connects two parts of this Loop i.e. from SL-2 Interchange at Raiwind Road to Maraka Interchange at Multan Road, could not be completed due to the pendency of these petitions and on various time the injunctive order issued by this court in favour of various petitioners. Actually the constructed area of Bahria Town containing the residential plots as well as commercial plots comes to linear length of 1.5 kilometer in patches only. As per the break up land acquired Mouza wise provided by the learned Additional Advocate General Punjab as well as Acquiring Agency is as follows:-

**Area owned by Bahria Town Lahore acquired for Lahore  
Ring Road Project Southern Loop SL-3 Tehsil Raiwind  
District Lahore**

Sr. No.	Village	Area Acquired			Area of B.T		
		K	M	Sft.	K	M	Sft.
1	Tarogil	973	13	176	136	0	187
2	Tukra Alam Shah	282	0	32	19	7	41
3	Rakh Sh. Da Kot	7	2	175	6	4	200
4	Ram Kot	171	17	201	152	8	51
5	Maqdam Singh Wala	111	18	13	34	7	175
6	Rakh Sultan Key	53	8	13	47	16	163
7A	Maraka A-Class	687	10	123	6	4	62
7B	Maraka B-Class				98	16	126
8	Chak 62 Jivan Mal	71	7	135	0	0	0
9	Khudpur	677	18	105	0	0	0
10	Bhulai Gill	61	17	13	0	0	0
<b>Total</b>		<b>3098</b>	<b>14</b>	<b>86</b>	<b>501</b>	<b>6</b>	<b>105</b>

The total area acquired for Lahore Ring Road Project Southern Loop SL-3 Tehsil Raiwind District Lahore is **3098-Kanals 14-Marlas and 86 square foot**, whereas the area belonging to Bahria Town is **501-Kanals, 6-Marlas and 105 square foot**.

7. The written reply and rejoinder in the main petition was also filed. Even both the parties have produced the site plans as well as photographs of the area taken from the Google Map on various point of time.

8. As vires of law have been challenged, therefore, in the light of Order XXVII-A of the CPC notice was issued to the Advocate General Punjab on 20.01.2016 and again to the Attorney General for Pakistan and Advocate General Punjab on

13.06.2017, which were accepted by Mr. Muhammad Zakariya Sheikh, Deputy Attorney General for Pakistan on behalf of Attorney General for Pakistan and Ms. Samia Khalid, Additional Advocate General Punjab on behalf of the Advocate General Punjab.

9. I have noticed that C.M.No.4001 of 2016 was filed on 04.10.2016 with the prayer that the respondents be directed to provide the information, documents and material etc, whereas C.M.No.4002 of 2016 is for dispensation. Further C.M.Nos.1 and 2 of 2017 have been filed on 10.07.2017 with the prayer that the respondents be directed to provide the documents. As the reply and parawise comments as well as rejoinder were filed along with many documents, therefore, it is not necessary for the court to order the respondents to provide the documents. Hence, all these applications stand disposed of as such.

C.M.No.3 of 2017 was also filed on 10.07.2017 with the prayer for appointment of Local Commission and submitting report with regard to the alternate routes. As the matter agitated before this court through the jurisdiction vested in this court under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, therefore, the court cannot go into the factual controversy and also cannot create evidence for the benefit of any of the parties and further it is the prerogative of the court, in case of need, to get information or local investigation for the assistance of the court. In the instant case the court does not feel



any necessity for appointment of Local Commission to get information about the alternate routes. Therefore, C.M.No.3 of 2017 also stands disposed of as such.

Besides, C.M. No.1 of 2016 for grant of stay, C.M.No.3 of 2016 for vacation of stay, C.M.No.7 of 2016 for recalling of order dated 6.6.2016, C.M.No.9 of 2016 for grant of stay and C.M.No.232 of 2016 for grant of stay being formal in nature stand disposed of.

10. First I will take into consideration the arguments advanced by the learned counsel for the parties with regard to the claim of petitioners that Section 4, 5, 5-A, 17 of Land Acquisition Act and Land Acquisition Rules being ultra vires to the Articles 9, 14, 23, 24, 10-A, 25, 38, 4 & 5 of the Constitution of Islamic Republic of Pakistan, 1973. While attacking the Sub Section 4 of Section 17 of the Act it has been argued by the learned counsel for the petitioners that this being part of confiscatory legislation, therefore limitation on the powers of eminent domain is necessary.

11. The main crux of the arguments advanced by the learned counsel for the petitioners was on the point that after insertion of Article 10-A in the Constitution of Islamic Republic of Pakistan, 1973 these Provisions i.e. Sections 4, 5, 5-A and 17 of the “Act” cannot remain in the statute. As per the argument of learned counsel for the petitioners these Sections of the Act are not only contradictory with the right of fair trial of the petitioners

provided under Article 10-A of the Constitution but also said sections are in contradiction with Article 23 and 24 of the Constitution.

12. On the other hand, learned Additional Advocate General Punjab as well as learned Assistant Attorney General for Pakistan and learned counsels for the respondents have vehemently opposed the arguments of learned counsel for the petitioners on the ground that there is nothing in contradiction with the Constitution in the Provisions of Land Acquisition Act.

13. I have thoroughly examined the arguments as well as the provisions of the Land Acquisition Act and the Articles of Constitution. I am unable to understand that how after insertion of Article 10-A of the Constitution the said provisions of the Act cannot remain in the statute. No doubt the right of fair trial and due process has been provided under Article 10-A of the Constitution. The fair trial and due process is a right of every citizen. Needless to mention that even in any Act this right has not been provided, same can be read in the "Act" under the interpretation given by the superior courts. I am unable to understand that when the right of fair trial has been given to any person and all due process under Article 10-A of the Constitution, how it can be said that now sections 4, 5, 5-A and 17 of the Act have become in contradiction with the Constitution, as upon the proprietary rights reasonable restriction can be imposed by law in the public interest. Here, it will be

appropriate to note that learned counsels for the petitioners frankly admitted the purpose of acquisition to be a Public Purpose. They stated that they will not challenge the purpose of acquisition to be a public purpose. When it is so, imposition of reasonable restriction upon the acquisition and holding of the property is constitutional. Even at the time of hearing the arguments upon this point time and again learned counsels for the petitioners were informed that actually their arguments relate to the wrong application of the provisions of Act or non-fulfillment of the requirement of the provisions of the Act in process of acquisition of the land and not about the provisions of Act being in contradiction with the Constitution. Though the learned counsels for the petitioners argued that their arguments are two fold. First, all the provisions of Act are in contradiction with the Constitution and secondly, they have the case that even the provisions of the Act have not been correctly applied at the time of acquisition of land. The part of arguments with regard to non-application of provisions of Act correctly at the time of acquisition will be discussed in the latter part of the judgment while dilating upon the point of defective acquisition raised by the learned counsels for the petitioners.

14. I have also heard the learned Deputy Attorney General and Assistant Attorney General for Pakistan who argued that no provision of the Act is in contradiction with any provision of the Constitution.

15. I have given thorough consideration to the arguments of the adversaries with regard to striking down the provisions of the Act being in contradiction with the Constitution of Islamic Republic of Pakistan, 1973. I have taken light from the celebrated judgment of august Supreme Court of Pakistan reported as “THE FEDERATION OF PAKISTAN THROUGH THE SECRETARY, ESTABLISHMENT DIVISION, GOVERNMENT OF PAKISTAN RAWALPINDI versus SAEED HAMAD KHAN AND OTHERS” (PLD 1974 Supreme Court 151). I quote the principles of interpretation annunciated through this judgment, which are as under:-

- (i) The Constitution is a fundamental or organic or supreme law standing on a somewhat higher position than the other laws of the country.
- (ii) The Constitution is the source from which all government power emanates and it defines its scope and ambit so that each functionary should act within his respective sphere.
- (iii) The Courts are creatures of the Constitution; they derive their powers and jurisdictions from the Constitution and must confine themselves within the limits set by the Constitution.
- (iv) Under a Constitution prescribing a system where there is a trichotomy of sovereign powers the judicial power must from the very nature of things be vested in the judiciary.
- (v) Thus the judiciary does claim and has always claimed that it has the right to interpret the Constitution and to say as to what a particular provision of the Constitution means or does not mean even if it is a provision seeking to oust its own jurisdiction.

- (vi) In the latter case an ouster of jurisdiction is not to be readily inferred, because, the consistent rule is that provisions seeking to oust the jurisdiction of superior Courts, even by a constitutional provision, are to be construed strictly with a pronounced leaning against ouster.
- (vii) It is not, however, the function of the judiciary to legislate or to question the wisdom of the law-giver if the law has been competently made without transgressing the limitations of the Constitution. If a law has been competently made the judiciary cannot refuse to enforce it even if the result be to nullify its own decisions.
- (viii) The law-giver has also every right to change, amend or clarify the law if the judiciary has found that the language used conveys an intent different from that which was sought to be conveyed by the law-giver.
- (ix) The Constitution has to be construed like any other document reading it as a whole and giving to every part thereof a meaning consistent with the other provisions of the Constitution.
- (x) As far as possible each provision of the Constitution should be construed so as to harmonize with all the others.”

16. I am afraid that learned counsels for the petitioners failed to establish their point of declaration of reading down the provisions of the Act on the ground that the same being against in contradiction with the Constitution, as none of the provisions of the Act mentioned supra are in contradiction with the Constitution, in my view, when the reasonable restriction can be imposed by law in the public interest under Article 23 of the Constitution upon the acquisition and holding of the property by any person. When the public purpose of the Act is not in dispute, the provisions of acquisition of land cannot be said to be in

contradiction with the Constitution. Reliance can be placed upon the judgment of august Supreme Court reported as “MUHAMMAD ASHIQ and another versus WATER AND MANPOWER DEVELOPMENT AUTHORITY, LAHORE through Chairman, WAPDA House and another” (PLD 2008 Supreme Court 335) as well as the judgment by the august Supreme Court of Pakistan dated 25.04.2014 rendered in C.P.Nos.400 & 401 of 2014 (Anjuman Mutasareen Garments City Sheikhpura & others versus Government of the Punjab through Chief Secretary, Civil Secretariat Lahore and others).

17. Now comes the process of acquisition. No doubt notifications under section 4 of the Act were issued on 17.06.2008 and the notifications under section 17 (4) of the Act were issued and published in the official gazette on 19.12.2015. There is a long delay in between these notifications. Mainly the petitions are by Bahria Town and the other writ petitioners are the transferees of property from Bahria Town except Imran Sheikh Chand, petitioner of Writ Petition No.2449 of 2016. The question involved in this part of the controversy is with regard to applying the emergency/urgency provision of the Land Acquisition Act provided under section 17 (4) of the Act. The case of the petitioners that when the notification under section 4 of the Act was issued in the year 2008, why after seven years ignoring the regular procedure for acquisition the emergency/urgency provisions were invoked. Both the parties

have vehemently, with full force pressed their point while referring the law laid down upon the subject declared by the superior courts in their favour and prayed in accordance with their stance.

18. So far as the delay in process after issuance of notification under section 4 of the Act is concerned, as per learned Additional Advocate General Punjab the compensation of land has been awarded at the time of issuance of notification under section 6 of the Act and not on the price one year before the issuance of notification under section 4 of the Act, therefore, no prejudice can be claimed by the land owners.

19. As noted in the start of the judgment that the project i.e. **Lahore Ring Road Project Southern Loop SL-3 Tehsil Raiwind District Lahore** consists upon 31 kilometers. Due to the financial constraints as well as physical implementation of the plan it was obvious that stepwise plan be implemented being a big project and actually as per the admitted facts, for implementation of the disputed part of the project as well as some other Loops the Government was not having sufficient funds, therefore, the Government decided to complete the project through joint venture by inviting the private parties and admittedly the petitioner-Bahria Town also participated in the bidding process as well as in the negotiation for construction of disputed part of the Loop as partner with the Government of

Punjab. Paragraph No.9 of the writ petition is very relevant,  
which is reproduced as under:-

“That the Govt. of Punjab had issued notification u/s 4 of the Land Acquisition Act, 1894 on January 9<sup>th</sup> 2008 and at the same time invoked the provision of Section 17(4) of the Land Acquisition Act 1894 to the land proposed to be acquired for the Ring Road. A copy of the said notifications are enclosed as **Annexure-P/5**. On the representation of Bahria Town the matter was under consideration for a number of years and it was only in Aug, 2015 that the Govt. of the Punjab as reported in the national press decided that the alternate route of Hudiarra Drain stands dropped and the old route passing through the various housing societies including that of Bahria Town be implemented. A copy of the said report is annexed as **Annexure-P/6**.”

Therefore, it cannot be said from any stretch of imagination that issuance of notification under section 4 of the Act as well as further process was not in the knowledge of Bahria Town, as I have noted that all other writ petitioners are Bahria Town or the transferees from Bahria Town except Imran Sheikh Chand, petitioner of Writ Petition No.2449 of 2016.

20. The argument of learned counsels for the petitioners that no restriction was imposed upon the transfer or construction of the building upon the disputed land as in most of the legislated provisions of law it is provided for instance under the NAB Ordinance, therefore, state that construction and development of Housing Scheme by Bahria Town renders the notification issued under section 4 of the Act in violation and therefore the subsequent notifications are also not valid. I do not agree with the learned counsels for the petitioners, as issuance of



notification under section 4 of the Act when it is proved on the record that same was in the knowledge of Bahria Town, furthermore when a notification issued in the official gazette has a presumption to notice to all, the land become under the charge of acquisition and thereafter in accordance with section 4 of the Act when the acquisition is completed, the transfer of acquired land in favour of the Government is free from all encumbrance and charges. When Bahria Town also applied for acquisition of land for its own Housing Scheme the land which was adjacent to the area in dispute and notification No.LAC/618-2014 was also got issued on 04.12.2014, which was got published on 05.12.2014 in the official gazette with regard to the land measuring 800-kanals. Even the assessed market price was also deposited through Challan No.32 on 15.1.2015 amounting to Rs.1,12,28,12,500/-. Subsequently the land was got de-notified through the notification dated 29.1.2016 published on 01.02.2016 bearing No.LAC/618-2014/719. The notification is relating to Mouza Bhalai Gill, Maraka, Taro Gill, Muqadam Singh Wala, Rakh Sheikh Da Kot, Ram Kot, Rakh Sultan Kay and Tukra Alam shah. Even the deposited amount was subsequently withdrawn by the Bahria Town. This notification relates to the same area about share in the same Khasra Numbers or adjacent Khasra Numbers which are in dispute. Through these petitions this fact confirms that the issuance of notification under section 4 of the Act in dispute were in the knowledge of Bahria

Town and the other writ petitioners came into picture later on who are transferees from Bahria Town. While considering the issuance of notification under section 17 (4) of the Act, in these circumstances of this case, when purpose of acquisition has not been challenged which is a Public Purpose for construction of part of the Ring Road and admittedly except the part in dispute the construction of other parts of Southern Loop of Ring Road SL-3 is near to completion, therefore, in the instant case it cannot be said that the issuance of notification under section 17 (4) of the Act has prejudiced the petitioners as the land in dispute is 501-kanals 6-marlas 105-square foot, whereas the total land acquired for the said project is 3098-kanals 14-marlas and 86-square foot. The share of land of petitioners comes to less than 1/6<sup>th</sup>. The other 14 Housing Societies, whose land became under the process of acquisition for the construction of said loop, have not challenged the process of acquisition and even most of the Societies have settled the matter through negotiation with the acquiring agency. In these circumstances, when most of the Societies or the land owners have consented to the acquisition, the issuance of notification under section 17 (4) of the Act in my view was beneficial for the owners. When a party does not dispute the acquisition of land for Public Purpose, no other valid objection remains with the party that normal procedure for acquisition be adopted, except the delay in process of acquisition. In the matter in hand, the purpose of acquisition has

not been disputed. The fact that two poles with which the disputed part of Ring Road is to be connected have already been constructed, therefore, there is no chance of change of site even and further the Government cannot be alleged the malafide in the light of law laid down by the august Supreme Court of Pakistan in the judgment reported as “MUHAMMAD ASHIQ and another versus WATER AND MANPOWER DEVELOPMENT AUTHORITY, LAHORE through Chairman, WAPDA House and another” (PLD 2008 Supreme Court 335). I quote Paragraph 8 as under:-

“We have found from the above noted para that the land was being acquired by the Government at the public expenses. Secondly, the land was being required for public purpose, namely, for the construction of WAPDA offices and official residential colony. This aim and purpose was again reiterated and declaration to that effect was also got published by the Provincial Government under section 6 of the Land Acquisition Act 1894. According to subsection (3) of section 6 of Land Acquisition Act, 1894, the said declaration has got the presumption of conclusive evidence of the fact that the land was acquired for the public purpose. After the publication of this declaration, the presumption was to be rebutted by the present petitioners through sound material and cogent evidence. Mere plea that the land of Seth Abid and his relative was not acquired although it was situated within the area surrounded by the area to be acquired, could not lead to this conclusion that the land was not being acquired for the public purpose or the acquisition was based on mala fides. The explicit words of acquisition of land in dispute, by the Government at the public expense in the Notification under section 4 of the Land Acquisition Act, 1894 are sufficient to hold that the land was being acquired by the Government for the purpose of construction of WAPDA offices and residential colony. The Government was to decide as to which land was suitable for its purpose. Therefore, no mala fides could be attributed to the Government merely on this plea. The plethora of judgments have found place in the judgments of the

learned Division Bench as well as the learned Single Judge in Chamber of the Lahore High Court, Lahore, which need not be repeated in this judgment.”

and “THE FEDERATION OF PAKISTAN THROUGH THE SECRETARY, ESTABLISHMENT DIVISION, GOVERNMENT OF PAKISTAN RAWALPINDI versus SAEED HAMAD KHAN AND OTHERS” (PLD 1974

**Supreme Court 151)**. I quote Paragraph 2 from Page No.170 for

ready reference:-

“Mala fides is one of the most difficult things to prove and the onus is entirely upon the person alleging mala fides to establish it, because, there is, to start with, a presumption of regularity with regard to all official acts, and until that presumption is rebutted, the action cannot be challenged merely upon a vague allegation of mala fides. As has been pointed out by this Court in the case of the Government of West Pakistan v. Begum Agha Abdul Karim Shorish Kashmiri (1), mala fides must be pleaded with particularity, and once one kind of mala fides is alleged, no one should be allowed to adduce proof of any other kind of mala fides nor should any enquiry be launched upon merely on the basis of vague and indefinite allegations, nor should the person alleging mala fides be allowed a roving enquiry into the files of the Government for the purposes of fishing out some kind of a case.”

21. On the other hand, malafide on the part of Bahria Town is visible from the scrutiny of the record when in the year 2014 Bahria Town itself applied for acquisition of land for establishing new sectors i.e. Phases-D, E and F and subsequently applied for de-notification of issuance of notification under section 4 of the Act and Bahria Town managed the purpose of property through private negotiation from the owners of

property, till 2014 Bahria Town was not the owner of property. Admittedly notification under section 4 of the Act was issued in the year 2008. The fact that the matter remains in some litigation which delayed further process of acquisition. Therefore, in the circumstances of this case it cannot be said that the process of acquisition through invoking the urgency provisions of section 17 (4) of the Act was against the law. Reliance can be placed upon the judgment of august Supreme Court of Pakistan reported as “Suo Motu Case No.13 of 2007” (PLD 2009 Supreme Court 217), judgment of this court passed on 18.02.2014 in **ICA No.84/2014** (Anjuman Mutasareen Garments City Sheikhpura & others versus Government of the Punjab through Chief Secretary, Civil Secretariat Lahore and others) and the judgment of Hon’ble Supreme Court passed on 25.04.2014 in **C.P.Nos.400 & 401 of 2014** (Anjuman Mutasareen Garments City Sheikhpura & others versus Government of the Punjab through Chief Secretary, Civil Secretariat Lahore and others).

22. So far as the objections of petitioners that the Commissioner was wearing two caps, one as Chairman of Ring Road Authority and the other as Commissioner of Lahore Division issuing notification as such under the Land Acquisition Act were defective. Suffice to note that no prejudice has been pointed out, therefore, it makes no difference when both the capacities of Commissioner have been given under the statute. The fact that Bahria Town acquired the land after issuance of

notification under section 4 of the Act and prepared a Housing Scheme is in clear violation of the Punjab Private Housing Scheme and Land Subdivision Rules, 2010 in the light of “Sardar DILDAR AHMAD CHEEMA versus BOARD OF REVENUE, PUNJAB through Member (Revenue) and others” (PLD 2013 Lahore 565). Even from the land owned by Bahria Town most of the land in dispute comes under the roads as well as under the other public amenities which become the ownership of Lahore Development Authority under the law being the utility plots, the residential as well as commercial plots transferred to the private persons by Bahria Town, some of whom are also petitioners in the connected writ petitions can be the aggrieved persons but Bahria Town cannot be the aggrieved party in the above acquisition process when Bahria Town has transferred the plots to the various persons and the ownership in utility plots of Bahria Town Phases D, E, and F etc become with Lahore Development Authority and if knowingly Bahria Town has transferred the plots to the private persons whose residential houses came upon the area which is part of notification of acquisition, though they have a right of compensation of the land as well as the structure but if they further feel that they have been defrauded, that is Bahria Town, which is responsible for that. In these circumstances, I am clear in my mind that no illegality has been committed in case in hand while setting in motion the emergency/urgency of provisions of Land Acquisition Act.

23. Through Writ Petitions Nos.22396 of 2017 and 26752 of 2017 the petitioners have challenged the issuance of award on the ground that it has been issued in violation of the court order when injunctive order was in the field. I have also noted that corrigendum and addendum issued in the year 2011 to 2014 are to be presumed the part of the original notification issued under section 4 of the Act for the purposes of intention of acquisition, whereas for the purpose of determination of compensation their original date can be considered, otherwise for all other purposes they are to be considered from the date of issuance of notification u/s 4 of the Act because section 4 relates to the proposed acquisition. I agree with the argument of learned Additional Advocate General Punjab that transferees of Bahria Town have not stated that their land comes under which Khasra Numbers and Khewat Numbers. They have stated the plot numbers and have acquired the plots from Bahria Town and they have not produced the connecting revenue record to show the actual site of their plots. Therefore, in the light of “ASDULLAH MANGI and others versus PAKISTAN INTERNATIONAL AIRLINES CORPORATION and others” (2005 PLC (C.S)

**771)**, the relevant part of which is as under:-

“There is no cavil with the proposition that the right which is the foundation of an application under Article 199 is a personal and individual right. The legal right may be a statutory right or a right recognized by the law. A person can be said to be aggrieved only when a person is denied a legal right by someone who has a legal duty to perform relating to the right. There must not only be a right but a

justiciable right in existence, to give jurisdiction to the High Court in the matter. Unless whatever right, personal or otherwise, on which the application is based is established, no order can be issued under Art.199.”

the writ petition is not competent on the ground of declaration of establishment of their right. The established right can be implemented through the writ petition. Even the complete notifications issued under section 17 (4) of the Act were not appended.

24. The argument of learned Additional Advocate General Punjab that most of the land previously belonging to Bahria Town is situated in Mouza Tarogil but neither the notification issued u/s 17(4) of the Act with regard to Mouza Tarogil has been mentioned specifically in the petition nor has been challenged and further the same has not been appended with the petition, therefore the petitioners cannot claim that notification u/s 17(4) of the Act with regard to Mouza Tarogil was also in issue, has a weight.

25. In accordance with the prevalent custom in the Housing Societies the land under the roads and utility plots stands transferred in the name of development authority i.e. L.D.A. etc and the remaining land, which is converted into residential plots as well as commercial one, normally remains in the name of Society in the revenue record and they issue the allotment letters and for the purpose of compensation they usually issue NOC to their allottee and in view of that NOC the



compensation is paid to the person holding NOC, therefore, right to receive compensation is shifted to the allottees and the Housing Society has nothing to do with the compensation.

26. So far as challenging the issuance of Award through Writ Petitions Nos.22396 of 2017 and 26752 of 2017 is concerned, the main basis for challenging the issuance of Award by the petitioners that operation of notifications issued under section 17 (4) of the Act was suspended to the extent of petitioner. I have heard both the parties on this point. On 10.05.2016 the following order was passed:-

**“C.M.No.3/2016.** This is an application for vacation of stay granted by this Court on 20.01.2016.

2. We have already reserved the judgment in connected matters bearing W.P.Nos.16109/2011 and 37232/2015 and had directed vide order dated 22.02.2016 that the instant case be fixed before Single Bench after the release of judgment by this Full Bench.

3. As judgment of the Full Bench is still awaited and applicant pleads urgency in the matter, access to justice cannot be denied to the petitioner, therefore, office is directed to fix this petition along with instant stay application before Single Bench after seeking permission from the Hon’ble Chief Justice and the interim relief granted by this bench will not stand in its way.

4. Our order dated 02.02.2016 is, therefore, modified accordingly. Let this matter be fixed before any appropriate Single Bench on 12.05.2016 after seeking permission from the Hon’ble Chief Justice.”

On 03.08.2016 in the interim order this court made the observations with regard to the position, whereas it was stated by the learned counsel for the petitioners that against the order dated

10.05.2016 a review petition has been filed before the learned Full Bench, same has not so far been decided and suspension of order under review was prayed before the learned Full Bench by the learned counsel for the petitioners. In these circumstances, the stance taken by the learned Additional Advocate General Punjab that for abundant caution in the award it was noted that it will not be effective against the petitioners but subsequently on 03.08.2016 supplementary award was issued which is applicable on the petitioners. When the award was issued after passing the order dated 20.01.2016, there is no defect in issuance of award by the respondents. As it is the rule of equity that a person who seeks equity, must do equity and must come to the court with clean hands. In these writ petitions the petitioners have not come to this court with clean hands in the circumstances noted supra. Therefore, they are not entitled to any discretionary relief from this court under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973. Reliance can be placed upon the judgments of august Supreme Court reported as “MUHAMMAD MAQSOOD SABIR ANSARI versus DISTRICT RETURNING OFFICER, KASUR and others” (PLD 2009 Supreme Court 28) and “Mohtarma BENA ZIR BHUTTO and another versus PRESIDENT OF PAKISTAN and others” (PLD 1998 Supreme Court 388). In this view of the matter, when the petitioners have a right to resort to the remedy available under the law against the issuance of Award by filing a reference before the competent

forum, therefore, in the above circumstances all the writ petitions are not competent. Admittedly the disputed question of fact cannot be resolved while exercising jurisdiction under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973. Reliance can be placed upon “Dr. SHER AFGAN KHAN NIAZI versus ALI S. HABIB and others” (2011 S C M R 1813) and further to determine the suitability of the land it is the prerogative of the acquiring agency. Light can be taken from the judgment reported as “MUHAMMAD SHAFI and 8 others versus MUTAN DEVELOPMENT AUTHORITY, MULTAN through Director-General, Multan and 7 others” (2010 YLR 1161). It is the exclusive domain of Government to determine the priority of project. Light can be taken from the judgment of august Supreme Court reported as “WATAN PARTY and another versus FEDERATION OF PAKISTAN and others” (PLD 2013 Supreme Court 167).

27. In view of what has been discussed above, all the writ petitions being not maintainable stand **dismissed** with no order as to costs.

**(Amin-ud-Din Khan)**  
**Judge**

Qurban\*

**Approved for Reporting**

**Judge**