

PESHAWAR HIGH COURT, MINGORA BENCH (DAR-UL-QAZA), SWAT**FORM OF ORDER SHEET**

Court of

Case No..... Of.....

1	Date of Order or Proceedings	Order or other Proceedings with Signature of Judge and that of parties or counsel where necessary.
1	2	3
	24-05-2022	<p><u>W.P No. 990-M/2019</u></p> <p>Present: Mr. Hazrat Rehman, Advocate for the petitioners.</p> <p>Mr. Saeed Ahmad Asst:A.G for the respondents.</p> <p style="text-align: center;">*****</p> <p><u>MUHAMMAD IJAZ KHAN, J.-</u> Through the instant writ petition, petitioners have prayed as under:-</p> <p style="padding-left: 40px;">“On acceptance of instant writ petition, the impugned undated order of respondent No. 5 with the words “filed” alongwith the report of respondent No. 6 dated 22.08.2019 may kindly be declared as without lawful authority and of no legal effect. They be further directed to send the reference of petitioners to the Referee Court or provide an opportunity of hearing to the petitioners regarding the question of limitation, if any. Any other relief justifiable in favour of petitioners may also be graciously granted.”</p> <p>2. The nitty-gritty of the case of the petitioners is that they are owners of the property and respondent No. 4/Tehsildar Lal Qilla, Dir Lower called the petitioners to his office on 22.05.2019 and handed them over a cheque purportedly as compensation for the land which the respondents have compulsory acquired for construction of the Judicial Complex Lal Qilla at the back of petitioners. Petitioners though</p>

received the cheque as well as the money but under protest and simultaneously petitioners also applied to respondents No. 3 & 4 for providing them the copies of the Award as well as of قبضه الوصول, however they delayed supply of the same considerably and at last after hectic efforts, copy of the Award was provided to the petitioners on 03.08.2019 and on the third day i.e. on 06.08.2019, they filed a proper reference under section 18 of The Land Acquisition Act, 1894 to the respondent No. 3 for its onward transmission/sending to the District Judge/ Referee Judge. It is pertinent to mention here that the said reference is addressed to respondent No. 3 i.e. Deputy Commissioner/District Collector, Dir Lower at Balambat, however, respondent No. 3 instead of dealing with the same himself, he sent it to respondent No. 5 i.e. Additional Deputy Commissioner, Dir Lower at Balambat, who as per the record/PUC has further passed on the reference to respondent No. 6 i.e. Revenue Assistant, Dir Lower at Balambat and the latter has submitted his report to respondent No. 5 and then respondent No. 5 has required the respondent No. 6 to discuss it with him. It appears that after mutual correspondence between respondents No. 5 & 6, respondent No. 5 has recorded

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his order as **“filed”** without putting any date. The petitioners being aggrieved of the legal and lawful authority and order of respondent No. 5 have challenged the same before this Court through the instant writ petition.

3. When this case was taken up for hearing, notices were issued to the respondents No. 3 & 5 to file their para-wise comments, who have accordingly submitted.

4. Arguments of learned counsel for the petitioners as well as the learned Asst:A.G representing the respondents were heard and the record perused with their able assistance.

5. The main argument of learned counsel for the petitioners was that as per mandate of The Land Acquisition Act, 1894, it is only the **“Deputy Commissioner”** or **“any officer”** especially appointed by **“the Board of Revenue”** or the **“Commissioner”** to perform the functions of a **“Collector”** and as neither respondent No. 5 (Additional Deputy Commissioner, Dir Lower at Balambat) nor respondent No. 6 (Revenue Assistant Dir Lower at Balambat) have been appointed by the Board of Revenue or the Commissioner to perform the functions of the

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Collector, therefore dealing of their reference by respondents No. 5 & 6 and thereafter, filing of their reference by them is illegal, unlawful and *coram non judice*.

6. In response to the aforesaid objection, the learned Asst:A.G could not controvert on record that respondents No. 5 & 6 have ever been appointed by the Board of Revenue or by the Commissioner to act as a Collector or to act as a District Collector.

7. In order to thrash out this legal aspect of the instant case, it would be relevant to reproduce Sections 3(c) and 18(1) of The Act of 1894, which are reproduced as under:-

3. Definitions.—In this Act, unless there is something repugnant in the subject or context,—

- a)
- b)
- c) the expression "Collector" means the Collector of a district, and includes a Deputy Commissioner and any officer specifically appointed by the Provincial Government to perform the functions of a Collector under this Act;

Khyber Pakhtunkhwa Amendment: In section 3 for clause (c), the following shall be substituted namely:--

- c) the expression "Collector" means the Collector of a District and includes any officer specially appointed by the Board of Revenue or Commissioner to perform the functions of the Collector of (a) District Under this Act.

18. Reference to Court.—(1) Any person interested who has not accepted the award

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may, by written application to the "Collector", require that the matter be referred by the "Collector" for the determination of the Court, whether his objection be to measurement of the land, the amount of the compensation, the person to whom it is payable, or the apportionment of the compensation among the persons interested."

The aforesaid provisions of law are clear in its language and the same do not accept any other interpretation as advanced by learned counsel for the petitioners. Section 3 (c) manifestly shows that under The Act of 1894, the **Collector** would mean "the Collector of a District and any other person or officer too can act as a Collector, however if such person is specially appointed by the Board of Revenue or by the Commissioner to perform the functions of the Collector of a District under this Act" and as such it would be that "Collector" or "specially appointed person" who would be legally competent to entertain a reference from the land owner/objector filed under section 18 of The Act of 1894 and to proceed with the same and pass an appropriate order in accordance with the law. The language of The Act of 1894 is clear on the subject that no other person including the present respondents No. 5 & 6 could deal with a reference filed under section 18

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of The Act of 1894 and can pass an order as was done/passed by the respondent No. 5 in the case of present petitioners.

8. Another question which emerges from the facts of this case is that as to whether the Collector can delegate its authority to any other officer as was done by him by sending the reference of the petitioners to respondent No. 5 and who further passed on the same to respondent No. 6. A careful combined perusal of Section 3 (c) and Section 18 (1) of The Act of 1894 clearly manifest the true intent of the legislature. The authority of entertaining a reference filed under section 18 of The Act of 1894 has clearly been vested in the "Collector" alone and under section 3 (c), a "Collector" would mean the Collector of the District or any officer especially appointed either by the Board of Revenue or the Commissioner to perform the functions of a "Collector" but in no manner it confers any authority on the Collector to delegate its function to any other person/officer including respondent No. 5 or respondent No. 6 and as such the very entrustment of the reference by the respondent No. 3/Collector to respondent No. 5/Additional Deputy Commissioner, Dir Lower was beyond his authority

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and thus any such proceedings conducted and order passed by such delegatee would be of no legal effect and would be nothing but a futile exercise and wastage of public time. It is settled since long that a delegator could delegate its authority to the delegatee provided there is a provision of statutory delegation and as such in absence of such statutory backing, the authority would not be competent to delegate its function. In the case of Muhammad Ashraf Tiwana and others vs. Pakistan and others reported as 2013 SCMR 1159, the Hon'ble Apex Court has held that it is well settled in our jurisprudence that a discretionary authorization conferred on a person or body by statute, cannot be delegated. It has repeatedly been held by our Constitutional Courts that the exercise of such discretionary function is in the nature of entrustment and the statutory functionary who is entrusted with exercising his judgment, acts as a fiduciary. Apart from the fact that such fiduciary is obliged to exercise discretionary decision-making functions himself, it is also a necessary concomitant of such fiduciary performance of duties, that the same are exercised in good faith for furtherance of the objectives of the statute. It is further held in para-49 of the said

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judgment that here it is helpful to reemphasize the general principle of our law that all statutory authority is fiduciary in nature; **it is vested in the functionary or body specified in the statute and is therefore, as a rule non-delegable.** The maxim *delegatus non potest delegare* sums it up: the delegatee cannot further sub-delegate. A leading authority on administrative law, states that: "*It is a well-known principle of law that when a power has been confided to a person in circumstances indicating that trust is being placed in his individual judgment and discretion, he must exercise that power personally unless he has been expressly empowered to delegate it to another.*" Justice (R.) Fazal Karim, a former Judge of this Court and a leading legal scholar and academic summarizes the position thus: "*In deciding whether a person has the implied power to delegate, one has to consider the nature of duty and the character of the delegating person... [T]here are powers which, though administrative in nature, cannot normally be delegated.* Similarly, in the case of **Haji Ghulam Zamin and another vs. A. B. Khondkar and others** reported as **PLD 1965 Dacca 156**, it was held that **no power inherent in executive except that vested in it by law.** It may also be noted that where legislatures have expressly provided a provision of delegation of power

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in an authority, then such authority can competently delegate its function to the delegatee and such provision in a statute is called "**statutory delegation**".

As an example, Section 18 (g) of The National Accountability Ordinance, 1999 could be best quoted, under which the Chairman NAB has been entrusted with power to authorize any officer, who shall as delegatee of the Chairman could appraise the material placed before him during the inquiry or investigation and if he decides to proceed further, he shall refer the matter to a Court. Under The Capital Development Authority Ordinance, 1960, collection of fees is statutory function of the authority itself. A contract was given by the authority (CDA) to a Contractor to collect the fees on behalf of CDA. The issue when landed before the Islamabad High Court in a case titled **Shell Pakistan Limited (PLD 2015 Islamabad 36)**, where it was held that the Capital Development Authority has not delegated its statutory functions to the Contractor, the Contractor has merely assigned the duty of collecting the fees on behalf of the authority without delegating any discretionary powers like taking any coercive measures on his own against the defaulting licensees and it was held that such assignment did not run counter to

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the principle of *delegatus non potest delegare* (one to whom power is delegated cannot himself further delegate that power).

9. To sum-up, it is concluded that where a statute has authorized an authority to perform a function himself without any power of delegation of its function, then such authority has to perform the function as entrustee and could not delegate to any other person, however, when such power of delegation has been bestowed upon it, then such authority could delegate its function. It is worth mentioning that under The Land Acquisition Act, 1894, no such power of delegation has been conferred upon the Collector to delegate its function to any other person, therefore, the entrustment of the reference of the petitioners by the Collector, Dir Lower to Additional Deputy Commissioner, Dir Lower is held to be beyond his power.

10. Some what identical issue as the case of the present petitioners came in the case of **Federation of Pakistan through Ministry of Defence and 2 others vs. Muhammad Khan and another** reported as **PLD 1991 Supreme Court (AJ&K) 33**, where the proceedings initiated by the Revenue Assistant as

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Acquisition Collector were declared to be *coram non judice* on the same analogy as in the present case. Similarly, in the case of **Mayapati and another vs. The State of Haryana and others** reported as **AIR 1973 Punjab and Haryana 356**, the Shri Jagbir Singh being a General Assistant had acted as a Deputy Commissioner in a land acquisition process and as such the same was found against the spirit of the law.

11. It is also settled law that when the language of the statute is clear, then plain and ordinary meaning is to be given and the same is to be read as it appears on the face of it. In the case of **Government of Khyber Pakhtunkhwa through Secretary Public Health Engineering, Peshawar and others vs. Abdul Manan and others** reported as **2021 SCMR 1871**, the Hon'ble Apex Court has held that **when the intent of the legislature is manifestly clear from the wording of the statute, the rules of interpretation require that such law be interpreted as it is by assigning the ordinary English language and usage to the words used, unless it causes grave injustice which may be irremediable or leads to absurd situations which could not have been intended by the legislature. Only then, the Court may see the mischief which the**

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legislature sought to remedy and interpret the law in a manner that meets the intent of the legislature.

We are therefore of the view that the conclusion to this effect reached by the High Court is quite erroneous and unsustainable in law.

12. In view of the aforesaid discussion, we hold and declare as under:-

- i. That an authority/public functionary could delegate its function to any other person/officer if the statute under which it is performing function, do provide for delegation of such power and conversely in absence of such statutory delegation, the authority/public functionary shall not be competent to delegate its function/power;
- ii. That under The Land Acquisition Act, 1894, a reference filed by the land owner/objector has to be dealt with by the Collector itself or by an officer who is appointed by the Board of Revenue or Commissioner to act as Collector of a district but under no circumstances, the Collector could entrust a reference to any other person/officer to deal with it as his delegatee.
- iii. That in view of the above findings, respondent No. 3/Collector, Dir Lower was not legally authorized to delegate its function to respondent No. 5/Additional Deputy Commissioner, Dir Lower to deal with the reference of petitioners, as under The Land Acquisition Act, 1894, he has not been bestowed upon with such power of delegation of its function to any other person/officer;
- iv. That in view of the aforesaid findings, all the proceedings conducted and order passed by respondent No. 5 as delegatee of respondent No. 3 are declared as illegal, unlawful and thus ineffective upon the rights of petitioners

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and consequently, it is held that the reference filed by the petitioners shall be deemed pending before respondent No. 3/Collector, Dir Lower, who shall after hearing the petitioners will proceed with the same and shall pass an appropriate order in accordance with law.

13. Petitioners are directed to appear before respondent No. 3/Collector, Dir Lower on 13.06.2022.

Announced
Dt: 24.05.2022



JUDGE



JUDGE

Office
06/06/2022
Xhdul Sabook

(D.B)

HON'BLE MR. JUSTICE MUHAMMAD NAEEM ANWAR
HON'BLE MR. JUSTICE MUHAMMAD IJAZ KHAN