

appellants of appeal No. 31/2009/2003 and the order bearing No.481/PB dated 05.08.1982, vide which the mutations made in favour of plaintiffs on the basis of the said auction were ordered to be cancelled is illegal and therefore, ineffective upon the rights of plaintiffs Aziz Jan etc/ appellants in appeal No. 31/2009/2003.

c) What will be the status of the suit property in case both the suits/appeals fail?

12. The back ground of allotment in favour of Munshi is that Dafadar and Muhammad Yasin sons of Munshi and Shabbir, Ahmad son of Kamedan have instituted the suit seeking the declaration and in alternative its possession on the basis of allotment of the suit property to the Munshi, there predecessor in interest, which was allegedly made in his favour vide RL-II No.35, dated 28.12.1970. The plaintiffs appeared through attorney Hussain Bakhsh throughout the proceedings and have never appeared themselves in spite of repeated directions by the Court. From the record it is evident that Hussain Bakhsh, attorney appeared as PW4, and admitted that the said RL-II, was not confirmed by the concerned Assistant Commissioner/Deputy Settlement Commissioner. In case of nonconfirmation the said RL-II (ExPW2/2) could not get an authentic legal value. Simply the issuance of Robkar (Ex: PW2/1), which is itself very doubtful, can not be a sufficient proof for confirmation of the said RL-II. It is further observed from the record that the claim of the said Munshi was already exhausted through allotment in Mangulati and Mahi-Tibba. A sealed letter bearing No. DDOR 22, dated 03.01.2003, received from the Deputy district Officer Tehsil Ahmad Pur East in case titled Abdul Karim Vs Hussain Bakhsh etc, describes the satisfaction of units/claim of the said Munshi. Hence he was not entitle even for allotment of land in Dera Ismail Khan and this seems to be the reasons also for nonappearance of

*Munshi*

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Examiner

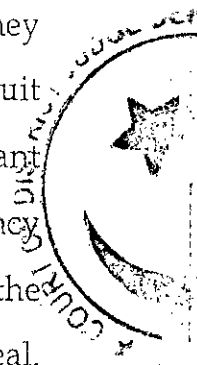
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the plaintiffs Dafadar, etc in the Trial Court. Hence, the plaintiff Munshi had not become legal owner of the suit land.

13. As far the claim of the plaintiff Abdul Karim etc are concerned they are simply the legal heirs of the General Attorney Hussain Bakhsh of the Munshi and was also not party to the suit and the contention of the learned counsel for the appellant Muhammad Aziz Jan etc, raising objections on their competency regarding arguing the case seems legal, as legal heirs of the deceased attorney for a deceased person can not prefer an appeal. As far their claim for having purchased the suit land from their own father Hussain Bakhsh is concerned the same is dealt with in a separate appeal bearing No. 30/ of 2009/2003, preferred against order of the learned Trial Court dated 04.06.2003, vide which 12(2) CPC petition of Mr. Muhammad Aziz Jan was accepted and a decree in favour of Abdul Karim etc was set-aside. So neither Munshi had become legal and rightful owner, nor Abdul Karim etc can claim the suit property on the basis of the claim of Munshi.

14. As far the suit of Muhammad Aziz Jan etc is concerned, they base their claim on an auction in pursuance of which certain mutations, the detail of which are mentioned in the heading of their plaint were attested. The suit property which was reportedly unallotted rural evacuee agricultural land was got through auction by the plaintiffs and thereafter certain complaints were made on the basis of which inquiries were conducted and it was found that the alleged open auction was not made according to law and rules and the earnest money was reportedly not deposited nor the remaining amount was deposited within the stipulated time. It was found in the inquiries that Aziz Jan was Steno with the Assistant Commissioner concerned, while Ahmad Jan was his brother. It was also found that a huge land was obtained through the said auction only on

*M. U. Chah*  
 Additional Director  
 Data Entry Unit



ADMITTED  
 Examiner  
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sale consideration of Rs.34000/-, and the plaintiff Aziz Jan etc were even lacking the basic qualification for such allotment through auction. Hence, the auction and the mutations in favour of plaintiff based on the said auction were reviewed and cancelled. Now the plaintiff Muhammad Aziz Jan etc has challenged the above mentioned order by means of which their auction and mutation in their favour were ordered to be cancelled.

15. It is in the evidence that that the suit property was obtained on a nominal rather below nominal price through a very mysterious auction. Appellant Ahmad Jan was reader of the Assistant Commissioner and the other was the reader's brother. Beside that they were lacking the required qualifications. It is further in the evidence that neither the earnest money nor the remaining amount was deposited in prescribed manner. It is further observed that two inquiries were held and the auction was found illegal and improper. The inquiries show that serious efforts were made to serve the appellants/plaintiffs to associate them with the inquiry proceedings but they successfully avoided the service. The order bearing No. 481/PB dated 05.08.1982, seems to have been passed by competent authority for good reasons. It is further observed that the impugned order, was issued by Deputy Commissioner/Addl: Settlement and Rehabilitation Commissioner, which post is a part of Revenue Hierarchy and if they were aggrieved of the said order the proper course for them was to challenge that in the Revenue Higher Forum, but they did not prefer any appeal/ revision in the proper forum. Such order of the Revenue Authority against which remedy in the Revenue Hierarchy is available can not be normally challenged in civil courts except through writ petition. So it is held that order, vide which auction proceedings and mutations made thereupon were ordered to be cancelled is

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District Judge-VII  
Faisalabad

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proper and validly passed by competent authority available to it under Land Revenue Act, 1967 and so the plaintiff Muhammad Aziz Jan etc can not be declared to be the rightful owner of the suit property.

16. In the light of what has been discussed above, both the suits i.e. suit filed by Abdul Karim etc and suit filed by Muhammad Aziz Jan etc failed and hence both the appeals are liable to be dismissed. In the circumstances a question arises as to who would be the owner or what would be the status of the suit property. For resolution of this point the Act XIV of Displaced Persons Laws (Repeal) Act, 1975, is to be resorted to. The relevant portion of section 3 of the said Act is reproduced below for ready reference:

*"(3). Transfer of property-(1) All properties, both urban and rural, including agricultural land, other than such properties attached to charitable, religious or educational trusts or institutions, whether occupied or unoccupied, which may be available for disposal immediately before the repeal of the aforesaid Acts and Regulations, or which may become available for disposal after such repeal as a result of a final order passed under sub-section (3) of section 2, shall stand transferred to the Provincial Government, on payment of such price as may be fixed by the Federal Government in consultation with the provincial government,.....)"*

17. So by operation of law the suit property stand transferred to and will vest in the provincial Govt. subject to payment of price to the Federal Govt. as mentioned in the afore said section. The contention of the learned counsel for appellant Muhammad Aziz Jan etc regarding ownership of the property and chances of embezzlement or misappropriation of the suit land, it is held that as the Provincial Govt. will become the owner



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and so it will be responsible for its proper management. However, for safeguarding the case property, which has become ultimately the ownership of society at large held through provincial Govt., I deem it proper to direct for sending a copy of the judgment to the Chief Secretary of NWFP for information and necessary action as per law/rules.

18. As a sequel to my above discussion, both the appeals fail and consequently dismissed. The suit property shall vest in the provincial Govt. which will be managed by it, under the relevant laws/ rules. Parties are left to bear their own costs.

ANNOUNCED:

25.11.2009

D.I.Khan.

*(Inamullah Khan)*

Add: District Judge-VII,  
Dera Ismail Khan.

CERTIFICATE

Certified that this judgment consists of Eleven pages, each page has been readover, checked, signed corrected with initials wherever necessary.

*(Inamullah Khan)*

Add: District Judge-VII,  
Dera Ismail Khan.

ATTESTED TO BE TRUE COPY

*(Signature)*  
District and Sessions Judge  
Dera Ismail Khan

27/3/17

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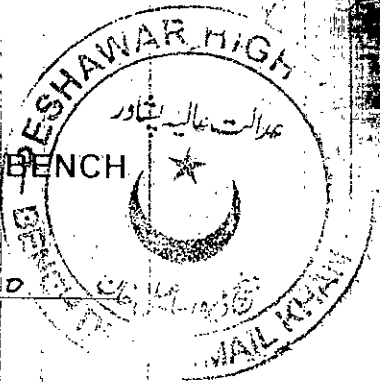
Application Received On	27-3-17
Date of Copying	
Date of Delivery	27-3-17
No. of Pages	14000
Project Code	701
Total Charge	21
Name of Customer	221
Shipping Delivery Date	27-3-17
Name of Examiner	

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27/3/17

Annexure - 0

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JUDGMENT SHEET  
IN THE PESHAWAR HIGH COURT, D.I. KHAN BENCH  
(Judicial Department)



C.R. No. 77 of 2010

JUDGMENT

Date of hearing 4-11-2013.

Appellant-petitioner Muhammad Aziz Jan by  
M/s Malik M. Basir + Malik M. Jahangir Awan Advocates

Respondent Govt. of NWFP (others) by Mr. Saadullah Shammi  
Mr. Saleemullah Khan Panjari Advocates para 11 to 13  
A.A.G.

ABDUL LATIF KHAN, J.- Through this single judgment, I propose to dispose of C.R.No.72/2010 and C.R.No.104/2010 as common question is involved in both the petitions.

2. Brief facts giving rise to the instant petitions are that initially Dafadar, Mohammad Yasin and Shabbir Ahmad filed a suit for declaration to the effect that the suit land measuring 592 kanals, detailed in the plaint, was allotted to the predecessor in interest of the plaintiffs vide RL-II No:35 dated 28.12.1970 which was illegally auctioned to one Ahmad Jan. They also sought perpetual injunction and in alternative, sought possession of the suit land. Mohammad Aziz Jan and others (petitioners in C.R.No.72/2010) also filed a suit against Government of NWFP etc and Dafadar for declaration to the effect that the order dated 05.8.1982 passed by Deputy

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Commissioner and Additional Settlement and Rehabilitation Commissioner, D.I.Khan vide which different mutations were recalled/cancelled was illegal, fictitious, without authority and liable to cancellation. They also challenged the allotment of suit property to Munshi and claimed that they were bonafide purchasers of the suit property through open auction and their rights were protected under section 41 of the Transfer of Property Act. They also sought rectification of the revenue record. Both the suits were consolidated and out of the divergent pleadings of the parties, the learned trial Court framed 18 consolidated issues including the relief. The parties produced their respective evidence which they wished to adduce. After hearing the arguments of learned counsel for the parties, the learned Civil Judge-III, D.I.Khan dismissed both the suits vide judgment and decree dated 09.6.2003.

3. Aggrieved of the judgment and decree dated 09.6.2003, two appeals were filed one by Mohammad Aziz Jan and others and the other by Abdul Karim and others. The learned Additional District Judge-VII, D.I.Khan vide judgment and decree dated 25.11.2009 dismissed both the appeals, hence the instant revision petitions.

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4. Malik Mohammad Bashir Advocate, learned counsel for petitioners in C.R.No.72/2010 contended that under scheme of the evacuee properties, the property which was not allotted to anyone has to be allotted in favour of the person in possession of the property as tenant-at-will. He contended that as the property was not allotted to anyone and the same was to be auctioned, the petitioners purchased the same in the auction proceedings, legally conducted by the department. He argued that the allotment in favour of petitioners through auction was cancelled vide order No.481 dated 05.8.1982, based upon inquiry report which was prepared illegally and without any authority. He argued that the mutation attested in favour of the petitioners was reviewed without any justification. He further contended that the appellate Court has observed that civil Court lacks the jurisdiction, but even then decided the case on merits, which is incorrect and argued that in fact the civil Court has got the jurisdiction to adjudicate the matter.

5. Mr. Salimullah Khan Ranazai, learned counsel for private respondents i.e. legal heirs of Dafadar and others contended that the petitioners, if aggrieved from the order of revenue hierarchy, remedy is available to them and there is also remedy against the orders passed by the settlement authorities and for this purpose too, the

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Shawar High Court  
Ali Khan Barchi

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forums are available, however, in no eventuality, civil Court was competent to hear the instant matter. It was contended that the legal heirs of Munshi have never attorned Hussain Bakhsh through general power of attorney and if any attorney was available on behalf of their father namely Munshi, since dead, the general power of attorney ceased to exist on his death and if any power of attorney is available on file, that is bogus one, as even the NICs mentioned on it are also not tallying with the NICs of the respondents. It was contended that Abdul Karim etc (petitioners in C.R.No.104/2010) happen to be the sons of Hussain Bakhsh and are not bonafide purchasers as they are father and son and they came to know about all these transactions here before this Court and moved an application for impleadment and the other side had no objection on their impleadment to the petitions.

6. I have given my deep thought to the arguments of learned counsel for the parties and perused the record with their valuable assistance.

7. Perusal of the record reveals that suit No.544/1 was filed by Dafadar, Yasin and Shabbir Ahmad on 25.5.1982 to the effect that they are entitled for 592 kanals of land in mauza Mandhra, allotted to the predecessor in interest of plaintiffs vide RL-II No.35

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5. attested on 27.12.1970. They questioned the auction made by the Rehabilitation department as illegal and sought its cancellation.

8. Suit No.50/1 of 1982 was filed by Mohammad Aziz Jan and six others and Dafadar, Yasin etc sons of Munshi for declaration to the effect that order bearing No.481 dated, 05.8.1982 passed by the Deputy Commissioner/Additional Settlement Commissioner, D.J.Khan through which mutations were recalled/cancelled without any justification on the basis of a so-called inquiry submitted by AC/defendant No.5. Both the suits were consolidated. Issues were framed and evidence recorded and both the suits were dismissed by the trial Court, against which appeals were filed which met the same fate.

9. During the pendency of appeals, Mohammad Aziz Jan etc through their counsel Malik Mohammad Bashir moved an application before the appellate Court, challenging the authority of learned counsel for the Government as well as the learned counsel for legal heirs of Hussain Bakhsh. The application was partially rejected and to the extent of the authority of the counsel, it was adjourned to be heard alongwith the main appeal.

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Peshawar High Court  
D.J.Khan Bench

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10. The allotment originally made in respect of the suit property in favour of Munshi, his legal heirs Mohammad Yasin and Shabir Ahmad have instituted a suit. The plaintiffs appeared through Hussain Bakhsh throughout the proceedings and have never appeared in person. Hussain Bakhsh, their attorney, admitted that RL-II was not confirmed by the concerned Deputy Settlement Commissioner. RL-II (Ex.P.W.2/2), having not been confirmed, has no legal value on the basis of Robkar (Ex.P.W.1/1), simply no sanctity can be attached to the Robkar and even the Robkar is doubtful and cannot be sufficient proof for confirmation of RL-II. The claim of said Munshi has already been exhausted in Mangolati and Mahi Tibba. No evidence is available on file that Munshi was even entitled for allotment of land in D.I.Khan and his entitlement is not in accordance with law.

11. Abdul Karim, who happens to be the son of Hussain Bakhsh, general attorney of Munshi and was not party to the suit as the counsel for Aziz Jan etc has raised objection regarding their competency with regard to arguing the case as legal heirs of the deceased attorney, has no locus standi to file the appeal because they had no power of attorney to this effect. The claim of Abdul Karim that he has purchased the property from his own father is also doubtful. He cannot be considered as

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Attorney at Law

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bonafide purchaser, hence, Abdul Karim etc cannot claim the property on the basis of allotment in favour of Munshi. So far as Aziz Jan etc are concerned, they based their claim on auction, against which complaints received by the concerned quarter and inquiry was conducted which was found as illegal and against rules. Neither earnest money deposited nor remaining amount deposited within stipulated period. The said Aziz Jan was working as Steno to Assistant Commissioner while Ahmad Jan was his brother. Huge land was obtained through auction only on sale consideration of Rs.34,000/-. He was not entitled for auction as the matter pertains to scheme No.2, announced for the benefit of tenants-at-will land they were lacking that qualification of tenants-at-will and as such the auction was reviewed and the mutation attested on the basis of auction was also cancelled. Aziz Jan etc having questioned the cancellation of mutation before the revenue hierarchy nor have challenged the orders of the settlement authorities, before the competent forum. Both the forums were available to them, but had not availed the remedy and filed the suit in civil Court, without exhausting remedies available to them. As observed above, the property was obtained through nominal price. For attendance of Aziz Jan etc, serious efforts were made to associate them in the inquiry proceedings, but they avoided the service. The impugned order No.481 was

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Shawar High Court  
Khyber Pakhtunkhwa Bench

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made by the competent authority assigning reasons for that.

12. So far as the plea of bonafide purchase is concerned, the same is not available in respect of evacuee properties, as section 41 of the Transfer of Property Act is not attracted to the matters relating to the evacuee lands. The appellate Court has referred section 3 of the Displaced Persons Laws (Repeal) Act, 1975 and observed that the property shall stand transferred to the Provincial Government on payment of such price as has been fixed by the Federal Government in consultation with Provincial Government and has rightly observed that the Provincial Government will become the owner of the property and would be responsible for its proper management. Both the learned Courts below have rightly appraised the legal as well as factual position of the case and committed no illegality or material irregularity warranting interference by this Court in exercise of its revisional jurisdiction.

13. For the reasons mentioned above, both the petitions being bereft of any merit are hereby dismissed. No order as to costs.

Announced  
Dt. 04.11.2013.

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Assistant High Court

28/11/13

JUDGE

20/11/13

IN THE SUPREME COURT OF PAKISTAN  
(Original Jurisdiction)

Present:  
Mr. Justice Jawwad S. Khawaja  
Mr. Justice Sarmad Jalal Osmany

SUMMON UNDER ORDER XIV, RULE 4 (I)  
SUPREME COURT RULES, 1980

Civil Petition No. 820 of 2014

Muhammad Aziz Jan & others Petitioner (s)

Versus

Govt. of KPK & others Respondent(s)

For the petitioner(s): Nemo

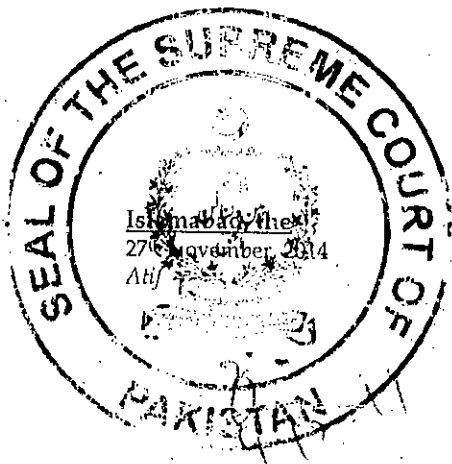
Respondent(s): Not represented

Date of hearing: 27.11.2014

ORDER

The case has been called but none has appeared. Earlier, the learned counsel for the petitioners, at his own request, had sought time to document the petition further. On 07.07.2014 he was given two weeks to do the needful but has not done so. In the circumstances the petition is dismissed for non-prosecution.

Sd/- Jawwad S. Khawaja, J  
Sd/- Sarmad Jalal Osmany, J



Certified to be True Copy  
*[Signature]*  
Supintendent  
Supreme Court of Pakistan  
Islamabad

GR No: \_\_\_\_\_ Civil/Criminal  
Date of Presentation: \_\_\_\_\_  
No. of Words: \_\_\_\_\_  
No. of Follies: \_\_\_\_\_  
Requisition Fee Rs: \_\_\_\_\_  
Copy Fee in: \_\_\_\_\_  
Court Fee stamps: \_\_\_\_\_  
Date of Completion of Copy: *21/5/15*  
Date of delivery of \_\_\_\_\_  
Compared by/ \_\_\_\_\_  
Received by: \_\_\_\_\_



ANNEXURE Q  
86

GOVERNMENT OF KHYBER PAKHTUNKHWA  
LAW, PARLIAMENTARY AFFAIRS AND  
HUMAN RIGHTS DEPARTMENT

No.SO(Lit)/LD/10-23(1)Rev/2017/9237-42  
Dated Peshawar the 14/03/2017

To

The Secretary to Govt. of Khyber Pakhtunkhwa,  
Revenue & Estate Department.

Subject:

CASE TITLED AS UJALA ANDALEEB VS GOVERNMENT OF  
KHYBER PAKHTUNKHWA AND OTHERS.

Dear Sir,

I am directed to refer to the subject noted above and to forward herewith a copy of Senior Government Pleader, D.I Khan letter No.279/SGP, dated 08-03-2017 alongwith its enclosures for your comments in order to proceed further in the matter, please.

Yours faithfully,

*Hidayatullah Mehsood*  
Hidayatullah Mehsood  
Advocate High Court  
District Bar, D.I. Khan

(ALAMZEB)  
SECTION OFFICER (Lit)

Endst: No.& Date Even.

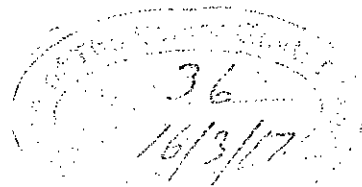
Copy forwarded to the:

1. Commissioner D.I Khan Division, D.I Khan.
2. Deputy Commissioner, D.I Khan alongwith its enclosures for similar necessary action, please.
3. Senior Government Pleader, D.I Khan with reference quoted above.
4. PS to Secretary Law Department Khyber Pakhtunkhwa.
5. PA to Deputy Solicitor Law Department.

*Seen forwarded to Farhat  
G.P*

*Hk*  
SECTION OFFICER (Lit)  
13-3-17

*Hk*  
58 G-P  
16-3-17





ANNEXURE R

89

Most Immediate  
Top Priority  
Court Matter

GOVERNMENT OF KHYBER PAKHTUNKHWA  
BOARD OF REVENUE  
REVENUE & ESTATE DEPARTMENT

No. SS24-27 /R&S/ C.P. No.820/2014  
Peshawar dated the 15 /03/2017

To:

The Deputy Commissioner,  
D.I. Khan.

SUBJECT CASE TITLED AS UJALA ANDALEEB VERSUS GOVERNMENT OF KHYBER PAKHTUNKHWA AND OTHERS

I am directed to refer to the subject noted above and to forward herewith a copy of letter No. SO(Lit.)/D/10-23(1)Rev/2017/9237-42/W/E. dated 14.03.2017 alongwith a copy of Senior Government Pleader, D.I. Khan letter No.279/SGP, dated 08.03.2017 received from the Section Officer (Litigation), Government of Khyber Pakhtunkhwa, Law Department addressed to this office and copy thereof endorsed to you with the request to furnish your own comments to this office for onward submission to the Law Department forthwith as desired.

*SP*  
Assistant Secretary (R&S)  
Board of Revenue, Peshawar

FOR DATE EVEN

Copy forwarded to -

1. The Section Officer (Litigation), Law Department for information with reference to the letter referred to above.
2. The Commissioner, D.I. Khan Division D.I. Khan.
3. The Senior Government Pleader, D.I. Khan.

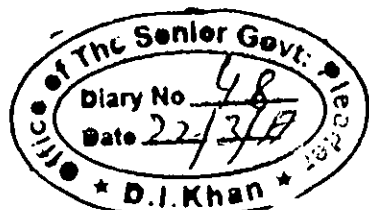
*Signature*  
Assistant Secretary (R&S)  
Board of Revenue, Peshawar

*Signature* 15/3/17

*Signature*  
Hid. *Signature* Mehsood  
Advocate in Court  
District Bar, D.I. Khan

*Signature*

58-G-17  
22-3-17





OFFICE OF THE SENIOR Government Pleader

Dera Ismail Khan

No. 279 /SGP

Dated the DIKhan 8 / 3 / 2017

Most Urgent Being Court Matter

To,

The Deputy Solicitor,  
Law PAs & HRs Department,  
Khyber Pakhtunkhwa, Peshawar.

Subject: CASE TITLED AS UJALA ANDALEEB VS KPK & OTHERS

Memo,

Reference this department letter No. SO (Lit)/LD10-23(1) Rev/2453-58WIE dated: 24/01/2017, coupled by minutes of the meeting submitted to the office of the undersigned for filing of an application U/Section 12(2) of the Code of Civil Procedure, 1908.

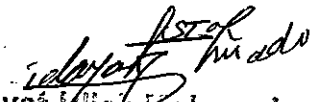
It is worth to mention here that the undersigned has gone through the minutes of the meeting and available record with due care and attention along with lengthy discussion among all the Government Pleaders posted at the station which clearly reveals some very strange and unbelievable facts regarding the mutations in question.

It would not be out of place to make reference to the report of Office Assistant Rehabilitation, Deputy Commissioner, Office, Dera Ismail Khan dated: 07/11/2016 wherein it is clearly pointed out by the then inquiry officer i.e. Assistant Commissioner Tank, that the land in question although initially was allotted to Mr. Saddiq-Ul-Hassan s/o Ijaz Ali Khan by the then Chairman Allotment Committee and the issuance of Robakar by the then Assistant Commissioner, D.I.Khan/Deputy Settlement Commissioner, D.I.Khan vide letter No.355/DSC(L) dated: 03/05/1971 but the same was not incorporated in the revenue record.

Later on, the said property was subjected to auction proceedings as per the report while the said auction proceedings and all mutations when reviewed by the authorities concerned were cancelled being without any legal authority whatsoever.

Likewise, the decree in question has been issued by the learned Civil Judge-IV, Dera Ismail Khan dated: 20/11/2008 wherein during the court proceedings the entire record both from Rehabilitation Office and Patwari office, was presented and exhibited regarding the property of Central Government without any intimation to the quarter concerned regarding the snatching of such precious land by land grabbers.

It is also astonishing to note, that the report also states the issuance of fresh Rubakar vide letter No. 16/Rehab: dated: 31/03/2009 by the then DDO (Revenue)/Deputy Settlement Commissioner, D.I.Khan which is a sheer violation of the **Displaced Person Laws (Repealed) Act, 1975** and depicts the whole story behind the usurpation of such a precious state land. Copy of the report ibid is attached as **Annexure-A**.

  
Hidayatullah Haidoor  
Advocate, Court  
District Bar, D.I.Khan

It is also important to bring into your notice, that the report of the Deputy Commissioner, D.I.Khan clearly reveals that the issue is just passed from one quarter to another without any action whatsoever since the attestation of mutation in question.

Similarly, it is of great concern, that the attorney for the decree holder Syed Mumtaz Ali is not a hidden character from the revenue authorities concerned as he has already filed various suits which is pending adjudication coupled by the cancellation of recent mutations by Deputy Commissioner, D.I.Khan. Copy attached as **Annexure-B**.

It would also important, to make reference to the minutes of the meeting mentioned *ibid*, wherein questions regarding cancellation of the said mutation and filing of an application under section 12(2) CPC were raised. The first question is quite clear from the cancellation of earlier mutations mentioned in the report *ibid* as well as the letter mentioned in the Para *supra* wherefrom it is clear that the Revenue Department has vast power under the Land Revenue Act, 1967 to cancel any mutation any time if found illegal, false or bogus at any stage.

So on, addressing the second question i.e. filing of an application under section 12 (2) CPC is not justified on any ground whatsoever for the following reasons:-

1. The Government is not party to the suit, and the suit is only between private parties, therefore, the decree has no binding effect upon the rights of the government as is envisaged from the very definition of the term "decree".  
**Section 2 (2)-CPC, 1908.**
2. Neither the Government was the judgment debtor as per the contents of the decree nor there any directions to the revenue authorities to cause the mutation of the said property in favour of the decree holder but they skipped the entries in the revenue record for the reasons best known to them.
3. The Revenue Authorities got the knowledge about the passing of the decree, from the bottom to the top, followed by its unjustified and illegal execution by causing the said mutations as is well cleared from the report mentioned in the third paragraph. Therefore, filing of such an application would not serve any purpose but the confirmation of non-binding decree upon the government being the same is clearly hit by the law of limitation.
4. That as per various rulings of the Superior Courts, the decree has no binding effect against any person who is not party to a suit and in the instant neither the Government nor any of its functionaries are parties.
5. The August Supreme Court of Pakistan has taken suo moto action in connection with squandering a large track of land including the land in the case in hand and yet the same is pending adjudication. Therefore, in such like circumstances filing of an application under section 12(2) CPC is not justified.

It is further added that, the August Supreme Court of Pakistan in a case titled as "**Muhammad Aziz Jan and Others VS Government of KPK and Other**" in order dated: 03/03/2016 attended by the SMBR and Umar Javed ADC, D.I.Khan in person was having a serious concern which is reproduced for ready reference as under:-

*Asst. Secy*  
*Muhammad Javed ADC*  
 Advt. Secy  
 District Bar, D.I.Khan



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**SUBJECT: INQUIRY/ DISCIPLINARY ACTION UNDER KHYBER  
PAKHTUNKHWA GOVERNMENT SERVANTS (E&D) RULES, 2011  
AGAINST MR. MUSTAFA KAMAL, DISTRICT ATTORNEY,  
D.I.KHAN, NOW POSTED AT TANK:**

Conducted by

the Inquiry Committee comprising

Mr. Shakeel Asghar,  
Deputy Solicitor (BS-19),  
Law & Human Rights Department,  
Khyber Pakhtunkhwa, Peshawar.

JAVED-ANWAR  
Secretary PSC (BS-20),  
Khyber Pakhtunkhwa, Peshawar.

*Hidayat Ullah Memon*  
Hidayat Ullah Memon  
Advocate High Court  
District Bar, D.I. Khan

Khyber Pakhtunkhwa Public Service Commission  
2-Fort Road, (Near Governor House), Peshawar Cantt.  
Telephone: 9212962

No. Sy. PSC, KP/ Inquiry/ Mustafa Kamal/2017  
Dated: 23<sup>rd</sup> August, 2017

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**C E R T I F I C A T E**

**SUBJECT: ENQUIRY/ DISCIPLINARY ACTION UNDER KHYBER  
PAKHTUNKHWA GOVERNMENT SERVANTS (E&D) RULES, 2011  
AGAINST MR. MUSTAFA KAMAL, DISTRICT ATTORNEY,  
D.I.KHAN, NOW POSTED AT TANK:-----**

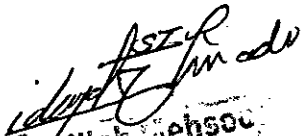
It is hereby to certify that the Inquiry Report submitted by the following two member Inquiry Committee assigned vide Law , Parliamentary Affairs & Human Rights Department letter No. SO(G)LD/1-19/2014/PF/19835-39; Dated 05/07/2017 on the captioned subject consists of Eight (8) Pages along-with Annexures comprising 49 Pages. It is further to certify that reply by the accused officer namely Mr. Mustafa Kamal, District Attorney includes Annexures comprising 106 pages which are placed in separate cover.



Mr. Shakeel Asghar,  
Deputy Solicitor (BS-19),  
Law & Human Rights Department,  
Khyber Pakhtunkhwa, Peshawar.



JAVED-ANWAR  
Secretary PSC (BS-20),  
Khyber Pakhtunkhwa, Peshawar.



Dayal Mehsod  
Advocate  
District Bar, D.I. Khan

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SUBJECT: ENQUIRY / DISCIPLINARY ACTION UNDER KHYBER PAKHTUNKHWA GOVERNMENT SERVANTS (E&D) RULES, 2011 AGAINST MR. MUSTAFA KAMAL DISTRICT ATTORNEY, DIKHAN NOW AT TANK:

A. Introduction:

1. The instant Inquiry was assigned to the two-member Inquiry Committee by the competent authority (Chief Minister, Khyber Pakhtunkhwa) as intimated vide Govt. of Khyber Pakhtunkhwa, Law, Parliamentary Affairs & Human Rights Department Letter No. SO(G)LD/1-19/2014/PF/19835-39; Dated 05/07/2017 (Annex-I).

B. Background:

2. Background of the inquiry is that on 20/01/2017, a meeting of the Scrutiny Committee was held in the Office of Secretary Law Department under his Chairmanship to determine the fitness or otherwise of filing appeal at the proper forum in a case related to mutation of land at Garra Jamal, Tehsil & District D.I.Khan. The aforesaid meeting was attended inter alia by the Additional Advocate General, Khyber Pakhtunkhwa. It was explained in the meeting by the Representative of Revenue Department/ Deputy Commissioner, D.I.Khan that a piece of land measuring 2480 Kanals and 8 marlas was allotted to "Mr. Sadaqat Hussain S/O Ijaz Khan" resident of Karachi through RL-II dated 18-03-1963 but the same was not incorporated in the revenue record and thereafter while issuing robkar on 03-05-1971, the same was also not incorporated in the revenue record. Later on, the said land was auctioned to Mr. Aziz Jan and on complaint of sitting tenants of the land, an inquiry was conducted in the matter which found that mutation was fake, false, & bogus. Hence Deputy Commissioner reviewed all the mutations belonging to the said land against which one Mst. Andaleeb filed a civil suit against the legal heirs of "Mr. Sadaqat Hussain" and got a decree on 20-11-2008 which was an ex-parte decree. The aforesaid case was also referred to the Law Department earlier for soliciting opinion regarding inquiry report pertaining to issue of fresh robkar by Deputy District Officer (R) /Deputy Settlement Commissioner, D.I.Khan for attestation of mutation of land whether the R& E Department can cancel the mutation attested on the basis of Court judgment wherein the Revenue & Estate Department/ Deputy Commissioner office, D.I.Khan was not made party to the Lis (suit) and the case was forwarded to the Scrutiny Committee of Law Department to decide whether it was a fit case for filing application under section 12(2) CPC or otherwise. The case was examined by the Scrutiny Committee and it was decided in unequivocal terms that Revenue Department/ Deputy Commissioner Office D.I.Khan may file application U/S 12(2) CPC before the proper forum with assistance of Senior Govt. Pleader, D.I.Khan. The Scrutiny Committee on 20/01/2017, directed the representative of Deputy Commissioner office, D.I.Khan to approach the Senior Govt. Pleader D.I.Khan along-with original record of the case for filing the requisite application under section 12(2) CPC under intimation to all concerned. (Annex-II). On 25/01/2017, the Revenue & Estate Department (BOR) vide its letter No: 1747-50/R&S/Enq./EP/D.I.Khan; Dated 25/01/2017 addressed to Deputy Commissioner/ Additional Settlement Commissioner, D.I.Khan with a copy to Senior Govt. Pleader, D.I.Khan communicated the decision of Scrutiny Committee with the request to file requisite application in the Court U/S 12(2) CPC forthwith.

The Deputy Commissioner, D.I. Khan vide memo: No. 557/DC(AG-IV); Dated 03/02/2017 also asked the Senior Government Pleader, D.I.Khan to file application under section 12(2) CPC enclosing the relevant documents including Board of Revenue letter No. 1747-50/R&S/Enq:/EP/DIKhan dated 25-01-2017 along-with minutes of Law Department's Scrutiny Committee Dated 20-01-2017 advising the D.C, D.I.Khan to file application U/S 12(2) CPC. The Senior Govt. Pleader, D.I.Khan however, was reluctant to do so on the plea that Govt. was not a party to the Lis (Law suit).

3. On 22.03.2017, the August Supreme Court of Pakistan in presence of Mr. Waqar Ahmad Khan, Additional A.G. /KP and Mr. Umar Javed, Addl. D.C, D.I.Khan on Court notice while hearing CMA 4670/2015, CMA 3385/2016 as well as CMA 1606 of 2015 in C.P. 820 of 2014, i.e. "Report with regard to squandering a very large tract of land measuring 10,000 Kanals in D.I.Khan (Annex-III) observed as under:

"This matter is under consideration of the Court in respect of approximately 10,000 Kanals of land in D.I.Khan. Unfortunately, the Provincial Govt. is not following up the matter properly, even the learned Addl. AG KP states that on the strength of the opinion the senior Govt. Pleader did not file the application under section 12(2) CPC on the grounds, inter alia, that Govt. was not party to the proceedings which opinion according to learned Addl. AG KP is flawed. The opinion rendered shows the incompetency of the Senior Pleader of the Government of KP, Law Department is important department in case such department is headed by incompetent persons, no security to protect valuable interest and property of the State or an individual can be ensured. In view of the matter, we refrain from commenting any further on the competency of the said Senior Government Pleader and expect that Government of KP shall ensure the department is headed by seasoned, competent and experienced law officer who may be appointed on merits rather than on political exigency. We would expect that immediately some competent officers may be appointed as Senior Government Pleader, D.I.Khan to protect rights and interests not only of the State but of the citizens as well. The report be filed within ten days. Re-list thereafter."

Thus in view of the above observations, Govt. of Khyber Pakhtunkhwa transferred Mr. Mustafa Kamal, Senior Government Pleader, D.I.Khan and posted him as Senior Govt. Pleader, Tank.

4. On 07/06/2017, the August Supreme Court of Pakistan in Civil Review Petition No.124 of 2017 observed as under:

"Learned Additional Advocate General, KP was unable to show to us as to how the Government became aggrieved of the order under review instead of correcting the working of a department as noted in the order under review. The Government seems to be adamant in its conduct, which has been reflected in many of the previous orders passed by this court where Government land have been allowed to be misappropriated. The review petition filed by the Government of KPK is absolutely not maintainable, the same is therefore, dismissed. Whereas in CMA No. 1606/2015, the Supreme Court of Pakistan observed as under:

"Let the Advocate General, KPK appear in the court and explain as to how the Senior Government Pleader Mustafa Kamal against whom serious observations were made in order dated 22.03.2017 has merely been transferred and posted in the same position at Tank. Adjourned to be fixed after two weeks."

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Thus the instant inquiry was initiated against accused officer Mustafa Kamal, the then Senior Government Pleader, D.I.Khan now posted at Tank and Charge Sheet/ SOA was accordingly served on the accused in the aforesaid backdrop.

C. Proceedings:

5. After assignment of the instant inquiry by the competent authority, it was considered appropriate to initiate the proceedings & conduct the inquiry in the office of Deputy Solicitor/ Co-Inquiry Officer from the Law & Human Rights Department namely: Mr. Shakeel Asghar (BS-19) as he was well aware of the facts and nitty gritty of the case. The accused Officer was accordingly asked to appear before the Inquiry Committee on 17/07/2017 and submit his reply to the Charge Sheet/ SOA along-with supporting material (if any) in his defence. The accused officer wanted to be heard in person in addition to written statement /reply submitted. His statement along-with cross-examination was also recorded. The accused officer also requestd to be allowed to produce defence witnesses. The reply submitted by the accused officer is placed at Annex-IV. He also informed that he has already filed an appeal/CMA before the Supreme Court of Pakistan against the initiation of departmental inquiry as per remarks in judgements dated 22/03/2017 and 07/06/2017. The accused officer was provided an opportunity to produce defence witnesses (if any) in his support on 27/07/2017. Meanwhile, the Deputy Commissioner, D.I.Khan Office was requested to depute a representative well conversant with facts of the case along-with original record to help in early finalization of the inquiry. However, the accused officer could not produce defence witnesses on 27/07/2017 and no one from Deputy Commissioner Office, D.I.Khan attended to join the inquiry proceedings. The accused officer thus, requested for further time to produce defence witnesses in the instant case and permission for submission of additional statement in his defence in the interest of transparent dispensation of justice. The aforesaid requests by the accused officer led to delay in timely finalization of the Inquiry within stipulated time. The case was thus adjourned for 07/08/2017 with a letter addressed to D.C, D.I.Khan with copy to Secretary Board of Revenue informing that the case was fixed for formal hearing on 27/07/2017. However, Representative of D.C Office D.I.Khan well conversant with facts of the case and relevant supporting record did not join the inquiry proceedings which was noted with concern and dismay resulting in unnecessary delay in early finalization of the inquiry. A request was made to depute a well conversant representative along-with record to join the inquiry proceedings in the office of Deputy Solicitor, Law Department, Peshawar on 07/08/2017 at 11a.m.

6. On 07/08/2017, Mr. Athar Waseem, Clerk Rehabilitation, Deputy Commissioner Office D.I. Khan and Patwari Halqa Kurai (Mahal)/ Mauza Garrah Jamal, namely: Mr.Nasrullah attended the inquiry proceedings as representatives of D.C Office D.I.Khan (Annex-V) whereas Mr. Farhaj Sikandar joined as defence witness of the accused officer Mr. Mustafa Kamal. The D.C Office representative Mr. Athar Waseem, RC, informed the Inquiry Committee that he assumed charge as Rehabilitation Clerk on 22/02/2017 and has thus no knowledge of the previous case history.



He stated that as per record of D.C office D.I.Khan, the total area involved in the case is 2438 Kanal and 9 marlas and that he provided the relevant record to Mr. Farhaj Sikandar, present District Attorney, D.I.Khan for filing of requisite 12(2) CPC application as per direction of the Govt. of Khyber Pakhtunkhwa, Law & Human Rights Department. He explained that a period of 30 days was spent in provision of relevant old record to District Attorney as the record related to the instant Lis (law suit) was old and difficult to arrange in one go. He indicated that it came to knowledge of D.C Office, D.I.Khan that Supreme Court of Pakistan had already taken suo moto notice of the land in question.

7. The incumbent District Attorney, D.I. Khan namely: Mr. Farhaj Sikandar who appeared as defence witness of the accused officer, stated through his recorded statement that after transfer of Mr. Mustafa Kamal, he submitted application under section 12(2) CPC before the Court of Civil Judge-IV, D.I.Khan as per directions of the then Secretary Law Dept., which is sub-judice. The defence witness Mr. Farhaj Sikandar however, stated that he did not know the exact position-whether dissenting opinion forwarded & signed by the accused officer, the then District Attorney, D.I.Khan namely: Mr. Mustafa Kamal was based on consensus opinion or otherwise. When asked whether he had brought a copy of the application filed under section 12(2) CPC, he acknowledged/expressed his failure to bring the same. He indicated that he has been having consultative meetings in the office as well as with the Deputy Commissioner Office, D.I.Khan to retrieve the State land from the hands of Land Grabbers (Annex-VI).

8. The Representative of the DC Office D.I.Khan could not produce original record related to the origin of the instant case. When asked, he showed a photo copy of land sale-deed on stamped Paper issued from Karachi (Sindh Province) which showed date of issue of the stamp paper as 1985 whereas the date & signature of legal heirs of Mr. Sadiq-ul- Hassan S/O Ijaz Ali Khan resident of Karachi reflected a date prior to the issuance of Stamp Paper i.e. 1971 which clearly indicated that the sale-deed was fake and false. The root cause of cheating the Revenue staff through production of false sale-deed on stamp paper and non-verification of such documents and closing eyes on part of the Revenue Staff could not be known whether the Revenue staff are so gullible or are also in collusion with such elements of land mafia at times and they deliberately get cheated or otherwise, was the real question which could not be answered/ascertained. The discussion on the issue however, indicated and reflected the fact as to how long the hands of land mafia lords are, to manipulate affairs in their favour when the Revenue Officers also play in their hands and accept false papers as genuine closing their eyes and don't even cancel the Robkars issued on the basis of fake sale-deeds etc. The representative of DC, D.I.Khan office expressed his ignorance about availability of the letter bearing remarks of the accused officer dated 04/02/2017 returning the letter from DC, D.I.Khan Dated 03/02/2017, in original, with the request to provide attested copies of record to file application under section 12(2) CPC. The claim of the accused officer could not be corroborated by the record of DC Office, D.I. Khan that delay was caused due to non- provision of attested old record of the case to file application under Section 12(2) CPC. Thus, any such claim of the accused officer was void.

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9. The accused officer reiterated his stance regarding reservation to the Scrutiny Committee decision of Law Department asking to review the decision of filing application u/s 12(2) CPC.

He, in response to Law Department's letter No. SO(Lit)/LD/10-23(1) Rev/2017; dated 24/1/2017, responded on 14/03/2017. He claimed that according to him, "since no court decree was involved in the instant Lis, therefore, there was no need of filing application under section 12(2) CPC".

He, like the Chieftain of the "Titanic" blamed the iceberg and emphasized that: i) Deputy Commissioner, D.I.Khan was required to cancel the RobKar / mutation based on false sale-deed as per past practice. ii) Attested record for filing application U/S 12(2) CPC was not provided in time. iii) He justified the delay in filing 12(2) CPC application by arguing that he was still waiting for reply to his letter dated 14/03/2017 addressed to Secretary Law. According to the accused officer, transfer of land on the basis of fake sale-deed on stamp paper in favour of Mst. Ujala Andaleeb showing signature of so called "legal heirs of Sadiqul- Hassan" was a big lie, floating on the surface. According to the accused officer, no result or tangible benefit to Govt. from filing application U/S 12(2) CPC is expected to take place until & unless the Robkar is cancelled by the D.C, D.I.Khan and land is transferred back to State. Which, he claimed, the D.C, D.I.Khan was reluctant to do. He emphasized that it was a clear fraud case and needed to be sent to NAB for investigation. Mst. Ujala Andaleeb has sold this land to several people, about 24 in number. Suo Moto notice was taken by the Supreme Court of Pakistan regarding 10,000 Kanal land. Other land stands retrieved to the State but the instant land measuring about 2441 Kanals, 10 marlas was held by big guns and elite land-mafia. The accused officer pin-pointed that DC, D.I.Khan favoured these mafia members/ land grabbing people somehow and did not cancel the wrong mutation based on fake sale-deed. The accused emphasized that in Aziz Jan case, copies were sent to SMBR/ Chief Secretary etc. wherein responsibilities were fixed on Revenue Staff but no action has so far been taken against them. According to the accused officer, the Session Court, High Court etc. have already dismissed the case appeal in Aziz Jan case to take the land transferred through fake sale-deeds & wrong mutations back into Govt. possession. The accused officer levelled allegation that the ADC informed the Supreme Court of Pakistan that Senior Govt. Pleader is not filing application under 12(2) CPC. Which was not correct as attested copies of all old record related to 1980s and before were not produced by the D.C Office staff leading to delay in filing of application.

10. The accused officer was of the view that his conscience was very clear and he was not involved in any corruption at all. He emphasized that the land grabbers themselves wished and desired that application under 12(2) CPC be filed by the Senior Govt. Pleader as Supreme Court orders were already in the field directing to reverse transfer of all the 10,000 Kanals State-land back to State possession which included the instant land as well. He argued that the Addl. Commissioner did not explain the case in its proper context & perspective to the Supreme Court without any reference towards previous decision of Supreme Court of Pakistan in suo moto case. The accused officer pointed that land-mafia in D.I.Khan is very strong and he was being made a scape-goat.

11. The view point of the accused officer was mainly based on 2/3 points which at times kept on changing when analyzed deeper through further questions from him to reach the ultimate truth: i) He was initially of the view that there was no need of filing application U/S 12 (2) CPC as filing such application gives undue advantage and leeway to land-grabbers and not to the Govt. He was instead in favour of cancellation of Robkar by the D.C ii) The Supreme Court had already given verdict in the suo- moto case to reverse the State land from land grabbers back to the State and filing application U/S 12(2) CPC was in fact, a negation of earlier verdict of the Supreme Court of Pakistan and delaying implementation thereof. ( However, no judgement was produced in his defence by the accused). iii) The Law is very clear that the Revenue Officer can cancel mutation at any stage if he feels that something wrong & bogus has been committed at any level. The sale-deed of Mst. Ujala Andaleeb in the instant case was fake, false & bogus.

12. In order to rule out the possibility of any error or omission in reaching the correct decision/ conclusion and fixing responsibility based on facts and not relying on any hearsay, Technical Member of the Inquiry Committee namely Mr. Shakeel Asghar visited D.I.Khan on 17.08.2017 to ascertain the fact regarding mutation of land whether through Robkar or through Court decree and recorded statement of Mr. Athar Waseem, R.C, DC Office, D.I.Khan (Annex-VII) whereby it was confirmed that in the aftermath of Execution Proceedings as per decision of the Civil Court, fresh Robkar was issued on 30/03/2009 bearing Endorsement Number 16/Rev and on the basis thereof, mutations were attested and land transferred. The foregoing, factual and legal position of the case can also be ascertained vide Court order sheet No. 18 dated 4/01/2011 (Annex-VIII).

D. Findings:

13. i) The land measuring 244 Kanals and 16 Marlas as mentioned in the Charge Sheet/ SOA is a mistake. According to the recorded statement of representative of Deputy Commissioner office, D.I.Khan namely: Mr. Athar Waseem, R.C, the total area involved in the instant Lis is 2438 Kanal and 9 marlas. (Annex-V).

ii) According to recorded statement of Mr. Nasrullah, Patwari Mauza Garrah Jamal, Tehsil and District, D.I.Khan, the total area of land is 2441 Kanals and 10 Marlas. The said land was mutated from Central Govt. in favour of Mst. Sabiha Fatima through Robkar dated 30-03-2009. He confirmed that mutation No. 1319 consisting 2441 Kanal and 10 Marlas land is registered upon through RobKar. (Annex-V).

iii) The minutes of the Scrutiny Committee meeting held on 20/01/2017 (Annex-II) indicate that the land in question is measuring 2480 Kanals and 8 marlas which was allotted originally to "Mr. Sadaqat Hussain S/O Ijaz Khan" resident of Karachi through RL-II, dated 18/03/1963. Whereas the Charge Sheet/SOA indicates the land to be measuring only 244 Kanals and 16 marlas. And the record supplied by Deputy Commissioner Office, D.I.Khan indicates that the land in question, 2438 Kanal and 9 marlas was originally allotted to "Mr. Sadiqul-Hassan (read as Sadeeq-ul-Hassan) S/O Ijaz Ali Khan".

11. The view point of the accused officer was mainly based on 2/3 points which at times kept on changing when analyzed deeper through further questions from him to reach the ultimate truth: i) He was initially of the view that there was no need of filing application U/S 12 (2) CPC as filing such application gives undue advantage and leeway to land-grabbers and not to the Govt. He was instead in favour of cancellation of Robkar by the D.C ii) The Supreme Court had already given verdict in the suo- moto case to reverse the State land from land grabbers back to the State and filing application U/S 12(2) CPC was in fact, a negation of earlier verdict of the Supreme Court of Pakistan and delaying implementation thereof. ( However, no judgement was produced in his defence by the accused). iii) The Law is very clear that the Revenue Officer can cancel mutation at any stage if he feels that something wrong & bogus has been committed at any level. The sale-deed of Mst. Ujala Andaleeb in the instant case was fake, false & bogus.

12. In order to rule out the possibility of any error or omission in reaching the correct decision/ conclusion and fixing responsibility based on facts and not relying on any hearsay, Technical Member of the Inquiry Committee namely Mr. Shakeel Asghar visited D.I.Khan on 17.08.2017 to ascertain the fact regarding mutation of land whether through Robkar or through Court decree and recorded statement of Mr. Athar Waseem, R.C, DC Office, D.I.Khan (Annex-VII) whereby it was confirmed that in the aftermath of Execution Proceedings as per decision of the Civil Court, fresh Robkar was issued on 30/03/2009 bearing Endorsement Number 16/Rev and on the basis thereof, mutations were attested and land transferred. The foregoing, factual and legal position of the case can also be ascertained vide Court order sheet No. 18 dated 4/01/2011 (Annex-VIII).

Findings:

13. i) The land measuring 244 Kanals and 16 Marlas as mentioned in the Charge Sheet/ SOA is a mistake. According to the recorded statement of representative of Deputy Commissioner office, D.I.Khan namely: Mr. Athar Waseem, R.C, the total area involved in the instant Lis is 2438 Kanal and 9 marlas. (Annex-V).

ii) According to recorded statement of Mr. Nasrullah, Patwari Mauza Garrah Jamal, Tehsil and District, D.I.Khan, the total area of land is 2441 Kanals and 10 Marlas. The said land was mutated from Central Govt. in favour of Mst. Sabiha Fatima through Robkar dated 30-03-2009. He confirmed that mutation No. 1319 consisting 2441 Kanal and 10 Marlas land is registered upon through RobKar. (Annex-V).

iii) The minutes of the Scrutiny Committee meeting held on 20/01/2017 (Annex-II) indicate that the land in question is measuring 2480 Kanals and 8 marlas which was allotted originally to "Mr. Sadaqat Hussain S/O Ijaz Khan" resident of Karachi through RL-II, dated 18/03/1963. Whereas the Charge Sheet/SOA indicates the land to be measuring only 244 Kanals and 16 marlas. And the record supplied by Deputy Commissioner Office, D.I.Khan indicates that the land in question, 2438 Kanal and 9 marlas was originally allotted to "Mr. Sadiqul-Hassan (read as Sadeeq-ul-Hassan) S/O Ijaz Ali Khan".

The reasons advanced by the accused officer in his defence were considered but not found plausible, rational and logical as no documentary proof or Supreme Court decision was produced by him in his support or defence as claimed by the accused officer. His reply transpires dilly dallying/ whiling away time on his part.

**Recommendations:**

- 15. i) The mutation cases of state land on the basis of false sale-deeds on stamp papers with back dated entries by the revenue staff need to be further investigated, by the Govt. of Khyber Pakhtunkhwa to bring those involved in the fraudulent business to book.
- ii) The charge of misconduct under Rule-3 of the Khyber Pakhtunkhwa Govt. Servants (E& D) Rules, 2011 against Mr. Mustafa Kamal, District Attorney (BS-19) Tank, the then District Attorney D.I. Khan stands proved. It is recommended that in the light of E&A Department Circular No. SORI(S&GAD)1-16/79(B), Dated 26<sup>th</sup> November, 1983 (Annex-X), the case may be placed before the competent authority for decision as deemed appropriate

Mr. Shakeel Asghar,  
Deputy Solicitor (BS-19),  
Law & Human Rights Department,  
Khyber Pakhtunkhwa, Peshawar.

JAVED-ANWAR 23/08/17  
Secretary PSC (BS-20),  
Khyber Pakhtunkhwa, Peshawar.

Adalat-e-Khyber Pakhtunkhwa  
Court  
Peshawar

ANNEXURE U

GOVERNMENT OF KHYBER PAKHTUNKHWA  
BOARD OF REVENUE  
REVENUE & ESTATE DEPARTMENT

SUBJECT:

INQUIRY REPORT PERTAINING TO THE ISSUE OF FRESH ROBKHAR BY DEPUTY DISTRICT OFFICER (R) / DEPUTY SETTLEMENT COMMISSIONER D.I.KHAN FOR ATTESTATION OF MUTATION OF LAND MEASURING 2441 KANALS & 16 MARLAS IN GARRA JAMAL TEHSIL AND DISTRICT D.I.KHAN.

The inquiry in hand regarding the issue of circumstances leading to issue of fresh Robkar, issued by the then Deputy District Officer (R) / Deputy Settlement Commissioner D.I.Khan in the year-2009 and lacunae / irregularities in attestation of mutation of 2441 Kanals, 16 Marlas land in Garra Jamal Tehsil and District D.I.Khan, was entrusted to the undersigned by the Member Board of Revenue / Chief Settlement Commissioner, Khyber Pakhtunkhwa vide Notification No. 28238-43/R&S/Inquiry/Evacuee property/DIK dated 23.11.2016.

BRIEF HISTORY.

Vide KL-11 dated 18.03.1963 (Annexure-A), a piece of land measuring 2480 Kanals and 08 Marlas, situated in revenue estate Garra Jamal, Tehsil and District D.I.Khan, was allotted to Mr. Saddiqul Hassan S/O Ijaz Ali Khan Cast Pathan R/O Karachi by the Chairman Allotment Committee and the then Assistant Commissioner / Deputy Settlement Commissioner D.I.Khan issued Robkar vide No. 355/DLC(L) dated 03.05.1971 (Annexure-B) but the same was not incorporated in Revenue record. Later on, the above mentioned land was auctioned to Mr. Aziz Jan etc. but on the complaints of setting tenants, an inquiry was ordered by the then Commissioner D.I.Khan and the then AC Tank was entrusted the inquiry and the inquiry officer found the proceedings of mutation as fake, false and illegal. Hence on the basis of inquiry report, the then Deputy Commissioner D.I.Khan reviewed all the mutations already attested, conveyed vide letter No. 481/PB dated 05.08.1982 to the revenue officer and as such all mutations including Garra Jamal were cancelled by revenue staff.

One Ujala Andaleeb D/O Syed Shamim Ali Casto Syed R/O House No. C/2129 Rehmania Street, D.I.Khan, city instituted a civil suit (Annexure-C) against legal heirs of Mr. Siddiq-ul-Hassan S/O Ijaz Ali Khan Cast Pathan in the court of learned Civil Judge-IV D.I.Khan claiming thereby the ownership rights of land measuring (2480 Kanals and 08 Marlas), situated in Garra Jamal previously allotted to Siddiq-ul-Hassan.

Ujala Andaleeb the decree holder deposited the fee Bahaliyat vide Challan No. 4 dated 19.03.2009 (Annexure-D) and produced the same before DDOR/DSC D.I.Khan. The DDOR directed Tehsildar D.I.Khan for further process but he refused to receive it and directed the decree holder to produce fresh Robkar.

The decree holder approached the then Senior Member, Board of Revenue, Khyber Pakhtunkhwa and the then SMBR endorsed his direction on the said application "issue fresh Robkar" (Annexure-E). In compliance with the order of the then SMBR, the DSC/DDOR, D.I.Khan issued fresh Robkar vide No. 16/Rehb dated 31.03.2009

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(Annexure-F) whereby a piece of land measuring 2441 Kanals and 06 Marlas was allotted to the heirs of Siddiq-ul-Hassan S/O Ijaz Ali Khan.

On the basis of that Robkar, mutation No. 1319 was attested on 06.04.2009 (Annexure-G) in Garra Jamal in favour of legal heirs of Siddiq-ul-Hassan namely Mst. Subaya Fatima (Widow), Iqbal Ali Khan and Ibrar-ul-Hassan (sons). Later on, they sold the said land to other person. It is worth mentioning here that on application of the said decree holder the then Deputy Secretary Board of Revenue has recorded his remarks as "please consider the request under the rule and prevalent policies / instructions issued on the subject and marked the original application to the DOR / Additional Settlement Commissioner D.I.Khan." The DOR/Additional Commissioner D.I.Khan forwarded the same to Board of Revenue along-with report of legal advisor (Annexure-H). Thereafter the then Assistant Secretary (R&S) Board of Revenue replied to Deputy Settlement Commissioner "to proceed further in the matter keeping in view the relevant record, Fard Jama Bandi, physical-possession, confirmation against the subject evacuee land which is being considered for allotment by you strictly under the repealed / prevalent rules and observing all codal formalities."

#### PROCEEDINGS:

All concerned were summoned to the office of the Additional Deputy Commissioner D.I.Khan except the Ex: Tehsildar, D.I.Khan whose statement was recorded in Peshawar.

#### STATEMENT OF MR. RIAZ MUHAMMAD S/O GUL MUHAMMAD, CASTE BALOCH, EX: DEPUTY DISTRICT OFFICER (REVENUE) / DEPUTY SETTLEMENT COMMISSIONER D.I.KHAN.

He submitted a written statement wherein he stated that during his tenure as Deputy Settlement Commissioner D.I.Khan in 2008, the case of Mst. Andaleeb was submitted to him which was based on the decree of Civil Court and the order to "issue a fresh Robkar" on the application of Mst. Andaleeb by the then SMBR. The case was also discussed with legal advisor and as such fresh Robkar was issued accordingly. Further stated that as a lower category officials he was duty bound to obey the orders of the high ups (Competent Authority), order of the Civil Court and opinion of the legal Advisor. In view of the above, requested that being innocent, be exonerated from inquiry proceedings because he had acted upon the order of the SMBR/Chief Settlement Commissioner. He has been retired from service in 2011 as District Collector Karak hence requested for justice in soft treatment (Annexure-I).

#### STATEMENT OF KIRAMATULLAH KHAN TEHSILDAR D.I.KHAN.

He submitted a written statement wherein he stated that he is serving as Tehsildar D.I.Khan since 16.01.2016. The mutation No. 1319 attested on 06.04.2009 was perused by him which has been attested by the then Tehsildar D.I.Khan namely Qaiser Naz (Annexure-J).

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**STATEMENT OF MR. GHULAM HUSSAIN SENIOR CLERK (RTD) OFFICE OF D.C. KHAN.**

He stated in his written statement that he remained in the office of Deputy Settlement Commissioner D.I.Khan from 2001 to 2010 and during the period he performed his duty in accordance with rules. As far as the said case is concerned, there were legal complications, like in the said case Government was not a party to the suit and as such Deputy District Officer (R) / Deputy Settlement Commissioner, high-ups and legal advisor should pay heed to it and no appeal was lodged against it and the then SMBR ordered for issue of fresh Robkar and on the basis of which the whole story reached to its conclusion and the land was transferred by the concerned Tehsildar (Annexure-K).

**STATEMENT OF ABDUR RAHIM OFFICE ASSISTANT SETTLEMENT & REHABILITATION OFFICE OF D.C D.I.KHAN.**

He stated in his written statement that he is producing RL-II register regarding Garra Jamal Tehsil and District D.I.Khan wherein against S.No. 8, the name of Siddiq-ul-Hassan is present and produced copy of the same and stated the same to be correct and also produced Robkar issued on 30.07.2009 vide letter No. 16/PB (Annexure-L).

**STATEMENT OF QAISER NAZ EX: TEHSILDAR D.I.KHAN.**

In his written statement, he stated that he perused record wherein DDO(R)/DSC D.I.Khan had issued Robkar regarding transfer of land on 30.03.2009 of Garra Jamal for an area measuring 2438 Kanal and 09 Marlas vide RL-II No. 8. During posting as Tehsildar D.I.Khan, the same was attested by him in compliance with the order. Later on, he was asked to appear in person and he appeared in person. In reply to a question that "when mutation was presented before him for attestation on the basis of decree wherein settlement office was not made a party to suit so you should refer the matter to the Competent Authority for seeking remedy in proper Court of Law against the decision of the court" replied that the said mutations were attested on the basis of Robkar issued by the DDOR/DSC and know nothing about any decree of a court (Annexure-M).

**FINDINGS.**

From perusal of the record in the office of the Chief Settlement Commissioner, as well as in the office of the Settlement and Rehabilitation office D.I.Khan, it reveals that since the judgment debtor was not recorded as the owner of the disputed land and the land was recorded in the name of the Central Government in the revenue record till the day when the ex-parte decree was passed by the learned Civil Judge-IV D.I.Khan on 20.11.2008 against the legal heirs of Siddiq-ul-Hassan. The DDO(R)/DSC issued fresh Robkar in compliance with the ex-parte decree of court wherein Settlement and Rehabilitation were not a party while in the entry in the revenue record were still exist in the name of Central Government, so instead of seeking relief from the proper forum for defending the valuable rights of the Government, facilitated the persons (decree holder). Moreover, it is another question that neither any authority



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cost which was in arrears since 03.05.1971. This authority was not exist after the passing of and displaced person laws (repeal) Act-1975 as well as after the auction of the same when PIU (Produce Index Unit) cost was not deposited as directed on 03.05.1971. Since the cost of land was already fixed at Rs. 10/- PIU or Rs. 3/- per square foot, therefore the cost of Rs. 11/- per Kanal was not acceptable the low deposit of cost of land vitiates the entire proceedings. Since the beneficiary had not deposited the fixed price of the land, he was legally not entitled to get the land.

The order of the then SMBR dated 27.03.2009 regarding the issuance of fresh Robkar means that the office should issue a fresh Robkar about the transfer of the disputed land to the beneficiary. It is worth mentioning here that the MBR-I is exercising the power of Chief Settlement Commissioner not SMBR. Moreover, the Government Employees are not bound to follow an illegal order and as such the Deputy District Officer (R) /Deputy Settlement Commissioner is responsible for the wrong doing and can not absolve himself of his fault. As per entries of RL-II register of Garra Jamal (D.I.Khan) the land measuring 2480 Kanals and 08 Marlas was allotted to Siddiq-ul-Hassan claimant against his PIU on 18.03.1969, therefore it was not necessary to issue a fresh Robkar after the late deposit of the cost of the land. The Deputy District Officer (R) /Deputy Settlement Commissioner was not required to issue a fresh Robkar after the deposit of the cost of the land and at the late stage. Moreover the then Tehsildar D.I.Khan did not raise any question nor reported the matter for application under the relevant section of law for setting aside ex-parte decree which shows that all were united to facilitate the other party against the interest of the Government.

**RECOMMENDATIONS.**

1. The then SMBR Mr. Ahsanullah (now retired) is responsible for direction to issue fresh Robkar instead of referring it to MBR-I/Chief Settlement Commissioner for doing the needful action.
2. The then Deputy District Officer (R) /Deputy Settlement Commissioner namely Muhammad Riaz Ahmad (now retired) is responsible for issuance of fresh Robkar and as such he committed the offence of compliance of illegal order of his superiors.
3. The then Deputy District Officer (R) /Deputy Settlement Commissioner and the then Tehsildar D.I.Khan (now retired) are responsible for not reporting the matter to high ups for knocking the door of the Court of Law against the ex-parte-decree which resulted loss to the Government and giving benefits to the beneficiary against the interest of the Government.
4. A comprehensive case may be prepared to be taken up with the Law Department for taking legal action to protect the valuable rights of the Government.

Submitted please.

*Hidayatullah*  
**Hidayatullah Mehsood**  
 Advocate Court  
 District Bar, D.I.Khan

*Fakhrul Zaman*  
**Fakhrul Zaman**  
 Secretary-I, Board of Revenue  
 Revenue & Estate Department  
 Khyber Pakhtunkhwa

# ابتدائی اطلاعی رپورٹ

ابتدائی اطلاع نسبت جرم قابل دست اندازی پولیس رپورٹ شدہ زیر دفعہ ۱۵۳، مجموعہ ضابطہ فوجداری

کوثر

ضلع ڈی اے

کے اے

57

تاریخ وقت وقوعہ سال 2007 مئی 20

(81)

چارجی کی 26 2/18	چارجی 26 2/18	وقت 18 2/59	وقت 18 2/59
مقامی پورن گرافیکس (پرائیویٹ) لمیٹڈ	مقامی پورن گرافیکس (پرائیویٹ) لمیٹڈ	دعوتی صاحبہ	دعوتی صاحبہ
471-468-420-419	471-468-420-419	مقامی پورن گرافیکس (پرائیویٹ) لمیٹڈ	مقامی پورن گرافیکس (پرائیویٹ) لمیٹڈ
مقامی پورن گرافیکس (پرائیویٹ) لمیٹڈ	مقامی پورن گرافیکس (پرائیویٹ) لمیٹڈ	دعوتی صاحبہ	دعوتی صاحبہ
دعوتی صاحبہ	دعوتی صاحبہ	دعوتی صاحبہ	دعوتی صاحبہ
دعوتی صاحبہ	دعوتی صاحبہ	دعوتی صاحبہ	دعوتی صاحبہ

**ابتدائی اطلاع نیچے درج کرو**

میں نے اطلاع دی کہ میرا بھائی صاحب نے اپنے ایک دوست کو اپنے گھر پر بلوا کر کے ایک ایسی فلم دکھانے کے لئے بلوایا تھا جس میں ایک عورت اپنے بھائی کے ساتھ جنسی تعلق رکھ رہی تھی۔

میں نے اپنے بھائی صاحب کو یہ اطلاع دی کہ میں نے اس فلم کو دیکھا ہے اور میں نے اس کے بارے میں ایک رپورٹ دی ہے۔

میں نے اپنے بھائی صاحب کو یہ بھی اطلاع دی کہ میں نے اس فلم کو دیکھا ہے اور میں نے اس کے بارے میں ایک رپورٹ دی ہے۔

میں نے اپنے بھائی صاحب کو یہ بھی اطلاع دی کہ میں نے اس فلم کو دیکھا ہے اور میں نے اس کے بارے میں ایک رپورٹ دی ہے۔

میں نے اپنے بھائی صاحب کو یہ بھی اطلاع دی کہ میں نے اس فلم کو دیکھا ہے اور میں نے اس کے بارے میں ایک رپورٹ دی ہے۔

میں نے اپنے بھائی صاحب کو یہ بھی اطلاع دی کہ میں نے اس فلم کو دیکھا ہے اور میں نے اس کے بارے میں ایک رپورٹ دی ہے۔

Attested to be True  
copy of F.I.R  
*[Signature]*

ANNEXURE - W

(206)

In the Court of  
Syed Arif Shah, Additional Sessions Judge-I,  
Dera Ismail Khan

BBA No.55/IV of 2018  
Riaz Muhammad versus State, etc.

AND

BBA No.59/IV of 2018  
Qaiser Naz versus State, etc.

Consolidated Order

10.02.2018

Accused/petitioners Riaz Muhammad and Qaiser Naz on ad-interim pre-arrest bail along with their learned counsel and APP for the State present. Complainant along with counsel also present.

Through this single order two pre-arrest bail petitions i.e. the instant pre-arrest bail petition bearing No.55 of 2018 titled as "Riaz Muhammad Vs State etc" and bearing No.59/IV of 2018 titled as "Qaiser Naz Vs State etc" are to be disposed of jointly being outcome of the same FIR.

Accused/petitioners named above in their respective pre-arrest bail petitions, seek confirmation of their ad-interim pre-arrest bail in case FIR No.81 dated 26.01.2018 under section 419/420/468/471 PPC of P.S Cantt:, D.I.Khan.

Arguments heard and record perused.

At the very outset, the complainant appeared and submitted compromise affidavit and stated at the bar that through the intervention of elders of locality, she has patched

Hidayatullah  
Advocate  
District Bar, D.I.Khan

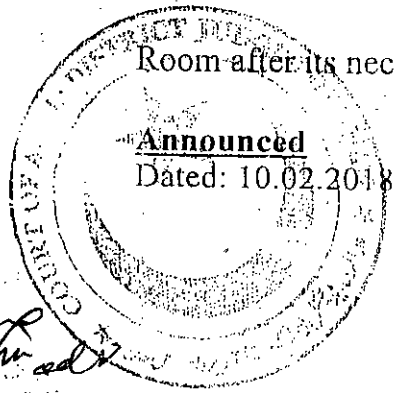
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up the matter with the accused/petitioners and has pardoned them in the name of Almighty Allah as her grievances have been redressed. She has no objection on confirmation of pre-arrest bail of the accused/petitioners and subsequently on their acquittal at trial stage. In support whereof, her statement of recorded wherein compromise affidavit is Ex PA, while, photocopy of CNIC of the complainant is Ex PB. The complainant is duly identified by her husband namely Syed Mumtaz Ali.

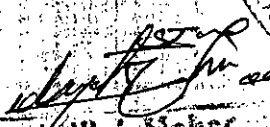
Though the offences with which the accused/petitioners have been charged are not compoundable but facts of compromise being considered as redeeming feature of the instant case, thus, the same is allowed in the attending circumstances and ad-interim pre-arrest bail already granted to the accused/petitioners is confirmed on existing bail bonds.

Copy of this order be placed on police file.

Requisitioned record be returned to the quarter concerned, while, file of this court be consigned to Record Room after its necessary completion.



  
(Syed Arif Shah)  
Additional Sessions Judge-I,  
Dera Ismail Khan

  
Hidayatullah Mehsoob  
Advocate  
District Bar, Dera Ismail Khan



HIDAYAT ULLAH

Advocate  
bc-09-1223  
Date of issue: December 2017  
Valid upto: December 2020



وکالت نامہ

8

کوٹ  
فیس

Acting Secretary  
KP Bar Council

بعدالت جناب سر وسیم ایمل

منجانب ایملانٹ (مصطفیٰ ماک)

نام گورنمنٹ آف ہینرٹونکوٹہ دہریہ

دعویٰ یا جرم

سر وسیم ایمل

تفصیل دعویٰ یا جرم

باعث تحریر آنکہ

مقدمہ مندرجہ بالا عنوان میں اپنی طرف واسطے بیرونی وجوہات برائے پیشی یا تصفیہ مقدمہ

صداقے اللہ مسعود / محمد عبداللہ بلوچ ایملانٹ

کو حسب ذیل شرائط پر وکیل مقرر کیا ہے کہ میں پیشی پر خود یا ہذا بذریعہ رو برد عدالت حاضر ہوتا رہوں گا اور ہر وقت پکارے جانے مقدمہ وکیل صاحب  
یا موصوف کو اطلاع دے کر حاضر عدالت کروں گا اگر پیشی پر مظہر حاضر نہ ہو اور مقدمہ میری غیر حاضری کی وجہ سے کسی طرز میرے خلاف ہو گیا تو صاحب  
موصوف اس کے کسی طرح ذمہ دار نہ ہوں گے نیز وکیل صاحب موصوف صدر مقام پکھری کے علاوہ یا پکھری کے اوقات سے پہلے یا پیچھے یا بروز تعطیل  
بیرونی کرنے کے ذمہ دار نہ ہوں گے اور مقدمہ صدر پکھری کے علاوہ اور جگہ سماعت ہونے یا بروز تعطیل یا پکھری کے اوقات کے آگے یا پیچھے پیش ہونے  
پر مظہر کوئی نقصان پہنچے تو اس کے ذمہ دار یا اسکے واسطے کسی معاوضہ کے ادا کرنے یا محنت نہ واپس کرنے کے بھی صاحب موصوف ذمہ دار نہ ہوں گے مجھ  
کو کل ساختہ پر داخستہ صاحب موصوف مثل کردہ ذات خود منظور قبول ہو گا اور صاحب موصوف کو عرض دعویٰ یا جواب دعویٰ یا درخواست اجراء اسمائے ذگری  
نظر ثانی اپیل گمرانی و ہر قسم درخواست ہر قسم کے بیان دینے اور پر تاشی یا راضی نامہ و فیصلہ برحق کرنے اقبال دعویٰ کا بھی اختیار ہو گا اور بصورت مقرر ہونے  
تاریخ پیشی مقدمہ مقرر بیرون از پکھری صدر بیرونی مقدمہ مقرر نظر ثانی اپیل و گمرانی و برآمدگی مقدمہ یا منسوخی ذگری یک طرفہ یا درخواست حکم استثنائی یا ترقی  
یا گرفتاری قبل از فیصلہ اجراء ذگری بھی صاحب موصوف کو بشرط ادا سنگی علیحدہ مختصمیری کا اختیار ہو گا اور تمام ساختہ پر داخستہ صاحب موصوف مثل کردہ  
از خود منظور و قبول ہو گا اور بصورت ضرورت صاحب موصوف کو یہ بھی اختیار ہو کہ مقدمہ مقررہ یا اس کے کسی جزو کی کاروائی یا بصورت درخواست نظر ثانی  
اپیل گمرانی یا دیگر معاملہ مقدمہ مذکورہ کسی دوسرے وکیل یا بیرسٹر کو اپنے بجائے یا اپنے ہمراہ مقرر کریں اور ایسے بشرط قانون کو بھی ہر امر میں وہی اور ویسے  
اختیارات حاصل ہوں گے جیسے صاحب موصوف کو حاصل ہیں اور دوران مقدمہ میں جو کچھ ہر جانب اجراء پڑے گا وہ صاحب موصوف کا حق ہو گا مگر  
صاحب موصوف کو پوری فیس تاریخ پیشی سے پہلے ادا نہ کروں گا تو صاحب موصوف کو پورا اختیار ہو گا کہ مقدمہ کی پروی نہ کریں اور ایسی صورت  
میں میرا کوئی مطالبہ کسی قسم کا صاحب موصوف کے برخلاف نہیں ہوگا

لہذا وکالت نامہ لکھ دیا ہے تاکہ سند رہے

مورخہ \_\_\_\_\_ ماہ \_\_\_\_\_

مضمون وکالت نامہ سن لیا ہے اور اچھی طرح سمجھ لیا ہے اور منظور ہے

مصطفیٰ ماک — ایملانٹ

Accepted  
Hidayat Ullah  
Advocate  
District Bar Council

The  
Kamal  
Appellant

حسن کاہر مسٹر اندرون پن زراریٹ باطنی ڈیرہ اسماعیل خان

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.**

**Service Appeal No.867/2018.**

Mr. Mustafa Kamal.....Appellant.

**VERSUS**

Government of Khyber Pakhtunkhwa through Chief Secretary & Others

.....Respondents.

**JOINT PARAWISE COMMENTS ON BEHALF OF RESPONDENTS NO.1-4.**

**Respectfully Sheweth.**

**PRELIMINARY OBJECTIONS:**

1. That the Appeal is not maintainable and is incompetent.
2. That the Appellant is estopped due to his own conduct.
3. That the Appellant has got no cause of action and locus standi.
4. That the Appellant has not come to the Tribunal with clean hands.
5. That the Appeal is bad for mis-joinder and non-joinder for necessary parties.
6. That the Appellant has concealed the material facts from Hon'ble Tribunal.
7. That the Hon'ble Service Tribunal has no jurisdiction to entertain the instant Appeal.

**ON FACTS:**

1. No Comments.
2. Pertains to the record hence, no comments.
3. Pertains to the record hence, no comments.
4. Pertains to the record hence, no comments.
5. Pertains to the record hence, no comments.
6. Pertains to the record hence, no comments.
7. Pertains to the record hence, no comments.
8. Pertains to the record hence, no comments.
9. In reply of Para-9, it is submitted that the inquiry was conducted against the appellant in the light of the observation passed in CMA No.1606/2015 by the Apex Court of Pakistan wherein the Apex Court directed the Advocate General, Khyber Pakhtunkhwa to explain as to how the Senior Government Pleader Mustafa Kamal against whom serious observations were made in order dated 22-03-2017 has merely been transferred and posted in the same position at Tank. Penalty was imposed after fulfilling all the codal formalities.

9/12/2017  
MKN

10. Para-10 is correct to the extent that the appellant was served with charge sheet. The remaining para is incorrect. Furthermore charge sheet alongwith statement of allegations was based on sound reasons.
11. Para-11 is correct upto the extent of continuation of Inquiry Committee. The remaining Para is incorrect, hence denied.
12. Para-12 is incorrect, hence, denied. All the legal and codal formalities had been fulfilled in conducting the inquiry including giving opportunity of self defence and personal hearing to the appellant.
13. Para-13 pertains to the record.
14. Para-14 is incorrect, hence denied. In response, it is submitted that penalty was awarded to the appellant after fulfilling all the legal and codal formalities.
15. Para-15 relates to the record.
16. Para-16 relates to the record.
17. No Comments.

**GROUND:**

1. Para-1 is incorrect. The order has been passed after completing all codal formalities.
2. Para-2 is incorrect. . Detail reply has been given in above paras.
3. Para-3 is incorrect. Hence, denied. Detail reply has been given in facts.
4. Para-4 is incorrect. Hence, denied. In response it is submitted that the Inquiry Committee was impartial including Mr. Shakeel Asghar, Ex-Deputy Solicitor Law Department and had no biased whatsoever against the appellant.
5. Para-5 is incorrect, hence, denied. The detail reply has been given in above paras.
6. In response to para-6, it is submitted that allegations levelled against the appellant has been proved.
7. In response to Para-7 it is submitted that the inquiry against the appellant was initiated on the observations of the Apex Court of Pakistan.
8. In response to Para-8, it is submitted that the allegations levelled against the appellant were proved by the Inquiry Committee and the appellant has not been made escape goat.
9. Para-9 is incorrect, hence, denied. The detail reply has been given in the above paras.
10. Para-10 is incorrect, hence, denied. As replied above.
11. Para-11 is incorrect, hence, denied. As replied above.
12. Para-12 pertains to the record.
13. Para-13 is incorrect, hence, denied. The detail reply has been given in above paras.

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MKN

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE**  
**TRIBUNAL.**

Service Appeal No. 867/2018

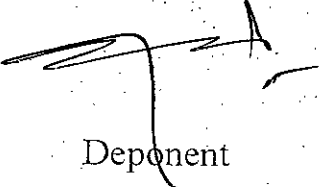
Mustafa Kamal..... Appellant.

Versus

Government of Khyber Pakhtunkhwa through Chief Secretary and  
others..... Respondents.

**AFFIDAVIT**

I, Mr. Muhammad Ismail Superintendent (Lit) Directorate General of Law and Human Rights, Khyber Pakhtunkhwa, do hereby solemnly affirm and declare on oath that contents of Parawise Comments on behalf of Respondents No. 1-4 are true to the best of my knowledge and belief that nothing has been concealed from this Hon'ble Tribunal.

  
Deponent

NIC No. 17301-0876331-9  
Cell# 03459782603



**BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA**  
**PESHAWAR.**

**Service Appeal No.867/2018**

**Mustafa Kamal S/o Qutab Khan District Attorney Tank.**

**(Appellant)**

**Versus**

**1. Government of Khyber Pakhtunkhwa through Chief Secretary Government  
of Khyber PakhtunKhwa Peshawar.**

**(Respondent)**

Rejoinder on behalf of appellant ~~of~~ reply of respondent.

**Respectfully sheweth.**

Reply to preliminary objection.

1. That contents of Para no 1 to the extent of maintainability is incorrect hence denied. This honorable tribunal has got vast power to entertain the instant appeal.
2. That contents of Para no 2 is incorrect hence denied.
3. That contents of Para no 3 is incorrect hence denied in fact the punishment illegally awarded accrue strong and prima facie case and locus standie.
4. That contents of Para no 4 is incorrect hence denied.
5. That contents of Para no 5 is incorrect hence denied.
6. That contents of Para no 6 is incorrect hence denied. All material fact is floating on the surface of case file.
7. That contents of Para no 7 is incorrect hence denied.

**On Facts**

1). That Para No 1 to 8 needs no comments.

9) That contents of Para No 9 <sup>of reply</sup> on facts are totally wrong incorrect hence strongly denied.

The purpose of inquiry was to unearth the real facts and grounds reality. Instead of bringing the real facts and materials to the open, they bent upon to drag the appellant and conceal the real facts and situation as a result the appellant was make escape goat for no fault. The partial inquiry submitted by the inquiry officers is nothing but to shift their fault on the shoulder of appellant. If the inquiry was conducted impartially ~~on~~ in a legal

manner would save the appellant from being humiliation for ~~the~~ about 3 years resulted in tremendous mental torture to the appellant. It is further added that the biased inquiry officer was objected well on time through oral and written objection but instead of separation from inquiry he bent upon to paved the way for imposing penalty to the appellant and submitted and impartial and biased report. It is also added that in the resent/latest inquiry in 2020 the said mutations were canceled as per opinion given by the appellant three year ago.

10). That Para No 10 of the Para wise comments to the extent of charge sheet is wrong and incorrect hence denied.

11) That contents of Para No 11 need no reply.

12). That contents of Para No 12 is incorrect hence denied, detailed answer with regard to inquiry officer has already been given in the fore mentioned Para.

13). That Para No 13 needs no reply.

14). That Para No 14 needs no reply.

15). That Para No 15 needs no reply.

16). That Para No 16 needs no reply.

17). No comments.

### Grounds.

1. That contents of Para No. 1<sup>of comments</sup> on grounds is incorrect hence denied.

2. That Para No 2 is incorrect hence denied.

3. That Para No 3 is incorrect hence denied.

4. That Para No 4 is incorrect hence denied.

5. The contents of Para No 5 are incorrect hence denied.

6. The contents of Para No.6 are incorrect hence denied.
7. The contents of Para No.7 are incorrect denied. The observation of apex court is for impartial inquiry, so as to brought the real fact to the open but instead of doing so the respondent conceal the real facts.
8. The contents of Para No 8 are incorrect hence denied. The inquiry officer Mr. Shakil Asghar was an interested party hence objections were raised on his appointment but turndown.
9. The contents of Para No 9 are incorrect denied.
10. The contents of Para No 10 are incorrect denied.
11. The contents of Para No 11 are incorrect denied.
12. No comments.
13. The contents of Para No 13 are incorrect denied.
14. The contents of Para No 14 are incorrect denied.
15. The contents of Para No 15 are incorrect denied.
16. The contents of Para No 16 are incorrect denied.
17. The contents of Para No 17 are incorrect denied.
18. No comments.
19. The contents of Para No 19 are incorrect hence denied. The honorable service tribunal has got vast power and jurisdiction to entertain the instant appeal.

**Prayer.**

In the light of above submission it is most graciously submitted that.

1. The prayer of respondent may graciously be dismissed.

2. The subject captioned petition/appeal may please be allowed and accepted.

3. Any other relief deemed fair and equitable may also be granted.

Appellant

Mustafa Kamal through counsel

- Mustafa Kamal*  
*24/02/2020*
- 1578*  
*iclay*
- (1) Abdullah Baloch Advocate
  - (2) Haditullah Masood Advocate

**BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA**  
**PESHAWAR.**

**Service Appeal No.867/2018**

**Mustafa Kamal S/o Qutab Khan District Attorney Tank.**

(Appellant)

**Versus**

**1. Government of Khyber Pakhtunkhwa through Chief Secretary Government of Khyber Pakhtunkhwa Peshawar.**

(Respondent)

Rejoinder on behalf of appellant of reply of respondent.

**Respectfully sheweth.**

Reply to preliminary objection.

1. That contents of Para no 1 to the extent of maintainability is incorrect hence denied. This honorable tribunal has got vast power to entertain the instant appeal.
2. That contents of Para no 2 is incorrect hence denied.
3. That contents of Para no 3 is incorrect hence denied in fact the punishment illegally awarded accrue strong and prima facie case and locus standie.
4. That contents of Para no 4 is incorrect hence denied.
5. That contents of Para no 5 is incorrect hence denied.
6. That contents of Para no 6 is incorrect hence denied. All material fact is floating on the surface of case file.
7. That contents of Para no 7 is incorrect hence denied.

**On Facts**

1). That Para No 1 to 8 needs no comments.

9) That contents of Para No 9 <sup>reply to comments</sup> on facts are totally wrong incorrect hence strongly denied.

The purpose of inquiry was to unearth the real facts and grounds reality. Instead of bringing the real facts and materials to the open, they bent upon to drag the appellant and conceal the real facts and situation as a result the appellant was make escape goat for no fault. The partial inquiry submitted by the inquiry officers is nothing but to shift their fault on the shoulder of appellant. If the inquiry was conducted impartially ~~and~~ in a legal

3 manner would save the appellant from being humiliation for ~~the~~ about 3 years resulted in tremendous mental torture to the appellant. It is further added that the biased inquiry officer was objected well on time through oral and written objection but instead of separation from inquiry he bent upon to paved the way for imposing penalty to the appellant and submitted and impartial and biased report. It is also added that in the resent/latest inquiry in 2020 the said mutations were canceled as per opinion given by the appellant three year ago.

10). That Para No 10 of the Para wise comments to the extent of charge sheet is wrong and incorrect hence denied.

11) That contents of Para No 11 need no reply.

12). That contents of Para No 12 is incorrect hence denied, detailed answer with regard to inquiry officer has already been given in the fore mentioned Para.

13). That Para No 13 needs no reply.

14). That Para No 14 needs no reply.

15). That Para No 15 needs no reply.

16). That Para No 16 needs no reply.

17). No comments.

**Grounds.**

1. That contents of Para No 1 <sup>of comments</sup> on grounds is incorrect hence denied.
2. That Para No 2 is incorrect hence denied.
3. That Para No 3 is incorrect hence denied.
4. That Para No 4 is incorrect hence denied.
5. The contents of Para No 5 are incorrect hence denied.

6. The contents of Para No 6 are incorrect hence denied.

7. The contents of Para No 7 are incorrect denied. The observation of apex court is for impartial inquiry, so as to brought the real fact to the open but instead of doing so the respondent conceal the real facts.

8. The contents of Para No 8 are incorrect hence denied. The inquiry officer Mr. Shakil Asghar was an interested party hence objections were raised on his appointment but turndown.

9. The contents of Para No 9 are incorrect denied.

10. The contents of Para No 10 are incorrect denied.

11. The contents of Para No 11 are incorrect denied.

12. No comments.

13. The contents of Para No 13 are incorrect denied.

14. The contents of Para No 14 are incorrect denied.

15. The contents of Para No 15 are incorrect denied.

16. The contents of Para No 16 are incorrect denied.

17. The contents of Para No 17 are incorrect denied.

18. No comments.

19. The contents of Para No 19 are incorrect hence denied. The honorable service tribunal has got vast power and jurisdiction to entertain the instant appeal.

**Prayer.**

In the light of above submission it is most graciously submitted that.

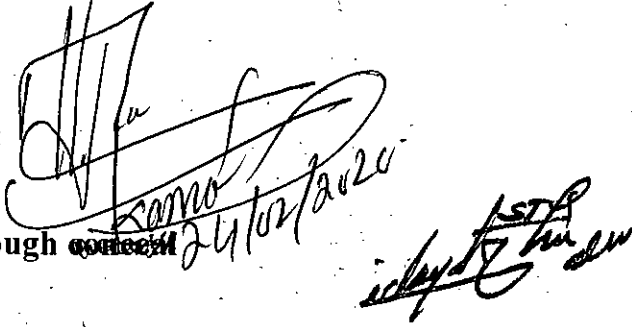
1. The prayer of respondent may graciously be dismissed.

2. The subject captioned petition/appeal may please be allowed and accepted.

3. Any other relief deemed fair and equitable may also be granted.

Appellant

Mustafa Kamal through counsel



Handwritten signatures and dates: *Mustafa Kamal*, *24/10/2020*, *ABDULLAH BALOCH*, *HADITH ULLAH MASOOD*

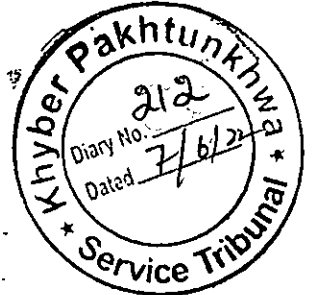
- (1) Abdullah Baloch Advocate
- (2) Hadith u llah Masood Advocate.



**Before The Chairman Khyber Pkhtunkhawa Service  
Tribunal Peshawar**

**Mustafa Kamal VS Law Department (Appeal No.867/18)**

**Subject: Transfer of Case to D.I. Khan**



Respected Sir,

Applicant humbly Submit, as under:

1. That the subject captioned case is pending adjudication before the honorable member service tribunal (J) for today.
2. That due to complete strike throughout the province the case is adjourned and next date of hearing is fixed for 25/08/2022
3. That the applicant belongs to D.I. Khan and the counsel too residing at D.I. Khan. As a result I have to face much hardship beside pecuniary losses at Peshawar.

It is most gratuitously requested to transfer the case at Khyber Pkhtunkhawa Service Tribunal camp court/ tribunal D.I. Khan

*Notice to the  
other side for  
arguments in this  
application for  
the date already  
fixed*

Mustaf Kamal  
District Attorney  
Date: 07/06/2022

*13/08/22*

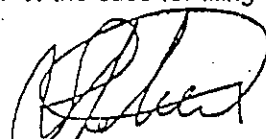
INQUIRY REPORT PERTAINING TO THE ISSUE OF FRESH ROB KAR BY DEPUTY DISTRICT OFFICER (R) / DEPUTY SETTLEMENT COMMISSIONER D.I KHAN FOR ATTESTATION OF MUTATION OF LAND MEASURING 244 KANALS AND 16 MARLAS IN GARRA JAMAL TEHSIL AND DISTRICT D.I KHAN.

A meeting of the Scrutiny Committee was held on 20-01-2017 at 14:00 hours in the office of Secretary Law Department under the Chairmanship of Secretary Law Department being Convener of the Committee in order to determine the fitness of the subject case for filing of appeal in the upper forum. Additional Advocate General (Mr. Rab Nawaz Khan) was also present during the meeting being representative of Advocate General Khyber Pakhtunkhwa. List of participants is annexed.

2. Meeting started with the recitation of few verses from the Holy Quran. The Convener welcomed the participants and started the proceedings of the meeting by inviting the representative of Revenue Department / Deputy Commissioner D.I Khan to apprise the Committee about the background of the case which he did accordingly while stating that a piece of land measuring 2480 kanals and 8 marlas was allotted to Mr. Sadaqat Hussain S/o Ijaz Khan residence of Karachi through RL-II dated 18-03-1963 but the same was not incorporated in the revenue record and thereafter while issuing robkar on 03-05-1971 but the same was also not incorporated in the revenue record and later on the subject land was auctioned to Mr. Aziz Jan and on complaint of sitting tenants of the land an inquiry was conducted in the matter who found that mutation was fake, bogus hence the Deputy Commissioner reviewed all the mutations belonged to the subject land against which one Mst. Andaleeb filed a civil suit against the legal heirs of Mr. Sadaqat Hussain and got a decree on 20-11-2008 which was an ex-parte decree.

The subject case was also referred to the Law Department for soliciting opinion regarding issue of inquiry report pertaining to the issue of fresh robkar by Deputy District Office (R) / Deputy settlement Commissioner, D.I Khan for attestation of mutation of land and whether the (R&E) Department can cancel the mutation attested on the basis of Court judgment wherein the Revenue & Estate Department / Deputy Commissioner office D.I Khan was not made party to the lis and the opinion section forwarded the case to the Scrutiny Committee in the Law Department to may decide whether it is a fit case for filing of 12(2)CPC application or otherwise and after examining the same while placing before the Scrutiny Committee it was decided that Revenue Department / Deputy Commissioner Office D.I Khan may file 12(2) CPC application before the proper forum with the assistance of Senior Govt. Pleader D.I Khan.

3. The representative of Deputy Commissioner office D.I Khan was directed to approach the office of Senior Govt. Pleader D.I Khan alongwith original record of the case for filing of requisite application under intimation to all concerned.

  
(Shakeel Asghar)  
Deputy Solicitor

**FAX**  
**Most Immediate**  
**Top Priority**

GOVERNMENT OF KHYBER PAKHTUNKHWA  
BOARD OF REVENUE  
REVENUE & ESTATE DEPARTMENT

No. 1247-80 /R&S/Enq./EP/D.I.Khan  
Peshawar dated the 25 701/2017.

To

The Deputy Commissioner/  
Additional Settlement Commissioner,  
D.I. Khan.

**SUBJECT** INQUIRY REPORT PERTAINING TO THE ISSUE OF FRESH ROB KAR BY DEPUTY DISTRICT OFFICER (R) / DEPUTY SETTLEMENT COMMISSIONER, D.I.KHAN FOR ATTESTATION OF MUTATION OF LAND MEASURING 2441 KANALS AND 16 MARLAS IN GARRA JAMAL TEHSIL AND DISTRICT D.I.KHAN.

I am directed to refer to the subject noted above and to forward herewith a copy of letter No. SO(Lit)LD/10-23(1)Rev/2017/2453-85, dated 24/01/2017 alongwith minutes of the meeting held on 20.01.2017 under the Chairmanship of Secretary, Law Department received from Section Officer (Lit), Government of Khyber Pakhtunkhwa Law, Parliamentary Affairs and Human Rights Department with the request to approach the office of Senior Government Pleader, D.I. Khan alongwith original record of the case for filing of requisite application in the Court U/S 12 (2) CPC forthwith.

This may be treated as "most Urgent".

Assistant Secretary (R&S)  
Board of Revenue, Khyber Pakhtunkhwa

NO & DATE EVEN

Copy forwarded to: -

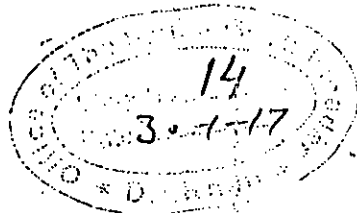
1. The Advocate General, Khyber Pakhtunkhwa, Peshawar for information.
2. The Senior Government Pleader, D.I. Khan for information.
3. The Section Officer (Lit), Law Department for information with reference to his letter referred to above.

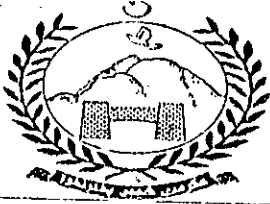
*Same be put to record*

*[Signature]*  
S.G.P.

3: -1-17.

*[Signature]*  
Assistant Secretary (R&S)  
Board of Revenue, Khyber Pakhtunkhwa





GOVERNMENT OF KHYBER PAKHTUNKHWA  
LAW, PARLIAMENTARY AFFAIRS AND  
HUMAN RIGHTS DEPARTMENT

No.SO(Lit)/LD/10-23(1)Rev/2017/9237-42  
Dated Peshawar the 14/03/2017

To

The Secretary to Govt. of Khyber Pakhtunkhwa,  
Revenue & Estate Department.

Subject: CASE TITLED AS UJALA ANDALEEB VS GOVERNMENT OF  
KHYBER PAKHTUNKHWA AND OTHERS.

Dear Sir,

I am directed to refer to the subject noted above and to forward herewith a copy of Senior Government Pleader, D.I Khan letter No.279/SGP, dated 08-03-2017 alongwith its enclosures for your comments in order to proceed further in the matter, please.

Yours faithfully,

(ALAMZEB)  
SECTION OFFICER (Lit)

Endst: No. & Date Even.

Copy forwarded to the:

1. Commissioner D.I Khan Division, D.I Khan.
2. Deputy Commissioner, D.I Khan alongwith its enclosures for similar necessary action, please.
3. Senior Government Pleader, D.I Khan with reference quoted above.
4. PS to Secretary Law Department Khyber Pakhtunkhwa.
5. PA to Deputy Solicitor Law Department.

Seen forwarded to Farhat  
BP

SECTION OFFICER (Lit)  
13-3-17

58-0-17  
16-3-17

36

14/3/17