

**been imposed upon the appellant and to reinstate him to his original post with all allowances and back benefits.”**

2. Brief facts of the case are that appellant joined police department as prosecuting Sub-Inspector on 22.04.1999 through Public Service Commission and successfully completed all the courses and passed all the exams with credit. The nomenclature of the appellant's post was changed from prosecuting Sub-Inspector to Assistant Public Prosecutor on 18.02.2002 and thus he served in the Prosecution Directorate under the Home and Tribal Affairs Department with no complaint from any quarter. He was again selected as Additional Government Pleader by qualifying the examination conducted by Khyber Pakhtunkhwa Public Service Commission on 29.09.2005 and was posted in law department. His post was upgraded from (BS-18) to (BS-19) and was posted as Senior Government Pleader (BS-19) and currently the nomenclature of the post was changed from that of Government Pleader to District Attorney and he is now serving in Law Department as District Attorney (BS-19) in District Tank. That while serving in the above capacity, he was served with charge sheet alongwith statement of allegations containing some false and frivolous allegation which was replied by the appellant. An inquiry committee was constituted and inquiry was conducted without giving him opportunity of self-defense or personal hearing. He was recommended for major penalty upon the conclusion of inquiry and was served with a show cause notice which was replied and without providing opportunity of personal hearing by the competent authority, he was awarded major

penalty of reduction to lower pay scale from (BS-19) to (BS-18) vide notification dated 22.01.2018. Feeling aggrieved he filed review petition which was partially accepted and punishment was modified/reduced into withholding of two annual increments for two years vide notification dated 07.06.2018. Feeling aggrieved from the said notification (final order) the instant service appeal was filed.

3. We have heard Abdullah Baloch, Advocate learned counsel for the appellant and Kabir Ullah Khattak, learned Additional Advocate General for respondents and have gone through the record and the proceedings of the case in minute particulars.

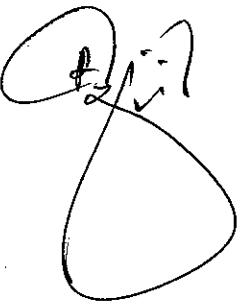
4. Abdullah Baloch Advocate, learned counsel for appellant submitted that the impugned order is against law, rules and facts on record and that the authority had passed the impugned order without proper perusal of record. He contended that the very constitution of the inquiry committee was illegal and in violation of the rules under which it was required to be constituted; and that the appellant had objected to the constitution of inquiry committee to the extent of one Mr. Shakeel Asghar, Ex-Deputy Solicitor, being not legally competent and being biased towards the appellant, therefore, entire proceedings conducted by a not very impartial committee has no legal footing and thus liable to be set aside and that the biased attitude is evident from the review petition preferred by the then Secretary Law; that enquiry committee admitted that the appellant had not caused any loss of a single penny to the government exchequer on one hand, while on the other hand the said committee held that the allegations

levelled against the appellant stood proved. He submitted that the appellant had rendered his opinion in the case in good faith and in the best interest of the government and in shape of request/information to review the order and that the department took action by calling comments from the concerned department in the light of review application. He submitted that the appellant was condemned unheard and no opportunity of personal hearing was afforded to him. Lastly, he submitted that the inquiry as well as the other proceedings were not carried out as per Efficiency & Discipline Rules 2011, hence on acceptance of the instant appeal the impugned order regarding penalty of withholding of two annual increments for two years may kindly be set aside and he may be reinstated to his original position with all back benefits.

5. Conversely, learned AAG submitted that the inquiry was conducted against the appellant in the light of observation passed in CMA No. 1606/2015 and that after fulfillment of all codal formalities, he was punished according to law. He submitted that the inquiry committee was impartial and had no bias whatsoever against the appellant, he therefore, requested for dismissal of the instant service appeal being frivolous and devoid of legal footing.

6. We have heard learned counsel for the parties and perused the record carefully. From the record it is evident that the disciplinary proceedings against the appellant were initiated on the charges of having been failed to file the relevant application under Section 12(2) of Civil Procedure Code in case of inquiry report pertaining to the issue of fresh robakar 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 & District D.I.Khan against which the Supreme Court of Pakistan took serious notice vide order dated 07.06.2017 and 22.03.2017. In this regard charge sheet and statement of allegations reveals that the matter was in respect of property measuring 244 Kanals and 16 Marlas. An inquiry committee was constituted comprising of Mr. Javed Anwar (PCS SG BS-20) Secretary Public Service Commission KP and Mr. Shakeel Asghar Deputy Solicitor, Law Department, inquiry report is also available on file which clearly shows that minutes of the scrutiny committee meeting held on 20.01.2017 indicated that the land in question was measuring 2480 Kanals and 8 Marlas which was allotted originally to Mr. Sadaqat Hussain S/o Ejaz Khan resident of Karachi through RL-II dated 18.03.1963 whereas the charge sheet/statement of allegations indicates the land to be measuring only 244 Kanal and 16 Marlas. The record supplied by Deputy Commissioner Office D.I.Khan indicates that the land in question measuring 2438 Kanals and 9 Marlas was originally allotted to Mr. Sadeeq Ul Hasan S/O of Ijaz Ali Khan. The competent authority failed to mention the correct area of disputed land in the charge sheet/statement of allegations. As per recommendation of the enquiry committee, mutation of the state land on the basis of false sale deeds on stamp papers with back date entries by the revenue staff needed to be further investigated by the government of Khyber Pakhtunkhwa to bring those involved in fraudulent business to book. Similarly the charge of misconduct against the appellant was reported to have been proved. Record further suggests that the Supreme Court of Pakistan found the provincial government of KP not following up the matter properly but particularly pointed out the incompetency of the government pleader and in pursuance an inquiry was conducted by an inquiry committee constituted for the purpose. The inquiry report in its recommendations



had clearly pointed out that the mutation cases of state land on the basis of false sale deeds on stamp papers with back date entries by the revenue staff need to be further investigated by the government of Khyber Pakhtunkhwa to bring those involved in fraudulent business to book. Report further reveals that the issue spread over district administration, the revenue department and law department, but record is silent as to whether any such action was taken by the government against the staff of district administration or revenue department and only the appellant was proceeded against and penalized which, however, was not appropriate. The inquiry report further reveals that the appellant had caused no loss to the government exchequer on one hand while on the other hand the said committee held him responsible just for non-filing of application U/S 12(2) of CPC. The respondents had taken the issue in a slipshod manner and directed only the appellant whereas other stakeholders were not touched. Contention of the appellant gains strength to the effect that major penalty of reduction to lower scale imposed upon the appellant was reduced to minor penalty of withholding of two increments upon his review petition submitted to the competent authority. Record further reveals that in the review petition the appellant was not afforded proper opportunity to defend his cause but looking into flaws committed in earlier proceedings, penalty was reduced.

7. We have observed that the opinion rendered by the appellant for not filing application in the said case was duly processed by the law department and sent to the revenue department for comments, hence, since the appellant had got no option except to wait for further orders of law department. He was not solely responsible for the alleged negligence occurred. The reservation of the appellant upon one of the inquiry officer was not taken into consideration which, however, was a valid observation as the inquiry officer in question was party to the case.

The proceedings were conducted in slipshod manner only to pacify the observations raised by the Supreme Court of Pakistan.

8. We are of the considered opinion that the appellant was not treated in accordance with law and he was kept deprived of his right to defend his cause and proceedings were conducted in slipshod and mechanical manner, which is evident from the record. It is not clear from the record that any opportunity of personal hearing was ever afforded to the appellant. It is otherwise a well settled legal proposition that regular inquiry is must before imposition of major penalty which includes provision of full opportunity of defence to be provided to the civil servant which however was not done in the case of appellant. Reliance is placed on 2009 PLC (CS) 650.

9. In view of the above, instant appeal is accepted as prayed for. The impugned order is set aside and the appellant is restored to his original position with all back benefits. File be consigned to record room.

ANNOUNCED

27.10.2022



(Kalim Arshad Khan)  
Chairman  
Camp Court D.I.Khan



(Rozina Rehman)  
Member (J)  
Camp Court D.I.Khan

27.10.2022

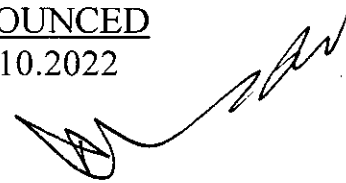
Appellant present through counsel.

Kabir Ullah Khattak learned Additional Advocate General for respondents present. Arguments heard. Record perused.

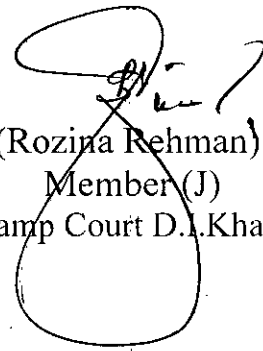
Vide our detailed judgment of today of this Tribunal placed on file, instant service appeal is accepted as prayed for. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED

27.10.2022



(Kalim Arshad Khan)  
Chairman  
Camp Court D.I.Khan



(Rozina Rehman)  
Member (J)  
Camp Court D.I.Khan

25.08.2022

Appellant in person present. Mr. Muhammad Adeel Butt, Additional Advocate General for the respondents present.

Learned Member (Judicial) Ms. Rozina Rehman is on leave, therefore, arguments could not be heard. Adjourned. To come up arguments on 12.10.2022 before the D.B.



(Salah-Ud-Din)  
Member (Judicial)

12<sup>th</sup> Oct, 2022

Appellant in person present. Mr. Muhammad Adeel Butt, Addl: AG alongwith Mr. Farhaj Sikandar, District Attorney for respondents present.

Appellant seeks adjournment on the ground that his counsel is not available today. Last opportunity granted to argue the case. This appeal pertain to D.I.Khan, therefore, let it be fixed for arguments on 27.10.2022 before D.B at camp Court D.I.Khan.



(Fareeha Paul)  
Member(Executive)




(Kalim Arshad Khan)  
Chairman



12.01.2022

Mr. Sajjad Ahmad Mehsood, Advocate present on behalf of Mr. Abdullah Baloch counsel for the appellant. Mr. Kabirullah Khattak, Addl. AG alongwith Mr. Farhaj Sikandar District Attorney for the respondents present.

Former made a request for adjournment as counsel for the appellant is not available today. Request for adjournment is accorded. To come up for arguments before the D.B on 14.04.2022.


  
(Atiq-ur-Rehman Wazir)  
Member(E)

  
Chairman

14.04.2022

Mr. Kamran Khan, Advocate as proxy for learned counsel for the appellant present. Mr. Farhaj Sikandar, District Attorney as representative alongwith Mr. Riaz Ahmed Painsakhel, Assistant Advocate General for the respondents present.

Proxy of learned counsel for the appellant requested for adjournment on the ground that learned counsel for the appellant is busy in the august Peshawar High Court, D.I.Khan Bench. Adjourned. To come up for arguments on 07.06.2022 before the D.B.

  
(Mian Muhammad)  
Member (E)

  
(Salah-ud-Din)  
Member (J)

7.6.22

*Proper D.B is an issue, therefore the case is adjourned to 25.8.22 for same.*



28.10.2021

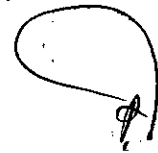
Appellant present through counsel.

Asif Masood Ali Shah learned Deputy District Attorney alongwith representative Farhaj Sikandar District Attorney for respondents present.

Learned counsel for appellant was ready for arguments but at the very outset learned Deputy District Attorney shows his inability as the appellant is District Attorney by designation and requested for hearing of arguments at Principal Seat Peshawar. In view of the request of learned Deputy District Attorney, this appeal is adjourned to 17.11.2021 for arguments, before D.B at Principal Seat Peshawar.



(Atiq ur Rehman Wazir)  
Member (E)  
Camp Court, D.I.Khan

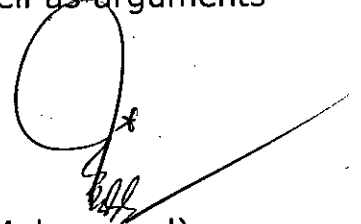


(Rozina Rehman)  
Member(J)  
Camp Court, D.I.Khan

17.11.2021

Appellant in person present. Mr. Farhaj Sikandar, District Attorney alongwith Mr. Muhammad Adeel Butt, Additional Advocate General for the respondents present.

The learned Member (Judicial) Mr. Salah-ud-Din is on leave, therefore, arguments could not be heard. Adjourned. To come up for rejoinder as well as arguments before the D.B on 12.01.2022.



(Mian Muhammad)  
Member (E)

S.A No. 867/2018

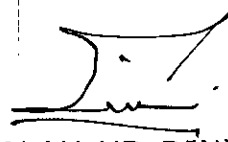
30.09.2021

Appellant in person present. Mr. Farhaj Sikandar, District Attorney alongwith Mr. Asif Masood Ali Shah, Deputy District Attorney for the respondents present.

Appellant submitted an application for adjournment on the ground that his counsel is unable to appear before the Tribunal today due to death of his nephew. Adjourned. To come up for arguments before the D.B on 29.10.2021 at Camp Court D.I.Khan.



(ATIQU-UR-REHMAN WAZIR)  
MEMBER (EXECUTIVE)  
CAMP COURT D.I.KHAN

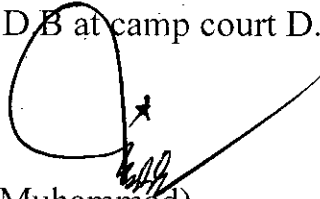


(SALAH-UD-DIN)  
MEMBER (JUDICIAL)  
CAMP COURT D.I.KHAN

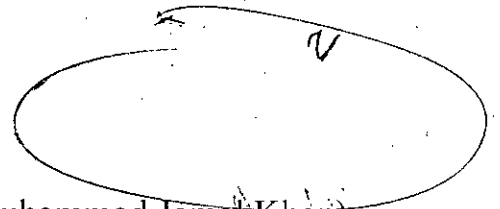
28.10.2020

None for the appellant present. Mr. Muhammad Jan, Deputy District Attorney for respondents is present.

Since the Members of the High Court as well as of the District Bar Association D.I.Khan are observing strike today, therefore, the case is adjourned to 21.12.2020 for arguments before D.B at camp court D.I.Khan.



(Mian Muhammad)  
Member(E)



(Muhammad Jamal Khan)  
Member(J)  
Camp Court D.I Khan

21.12.2020

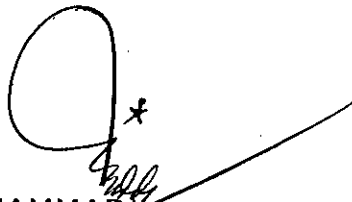
*Due to COVID 19, the case is adjourned to 25.3.2021 for the same.*



25.03.2021

Appellant present. Mr. Muhammad Rasheed, Deputy District Attorney for the respondents present.

Appellant requested for adjournment on the ground that his counsel is busy in the august High Court. Adjourned. To come up for arguments before D.B at Camp Court D.I.Khan on 22.06.2021.



(MIAN MUHAMMAD)  
MEMBER (EXECUTIVE)  
CAMP COURT D.I.KHAN



(SALAH-UD-DIN)  
MEMBER (JUDICIAL)  
CAMP COURT D.I.KHAN

*Due to COVID, 19 therefore to come up for the same on 30/9/21*



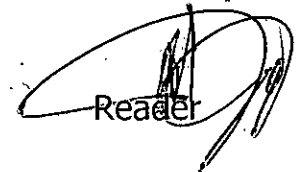
25/3/2020

Due to COVID-19 the case is adjourned. To come up for the same 21/4/2020 at Camp Court, D.I Khan

  
Reader

21/4/2020

Due to COVID-19 the case is adjourned. To come up for the same 23/9/2020 at Camp Court, D.I Khan


  
Reader

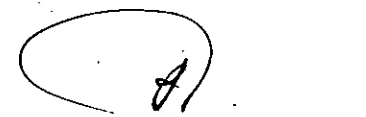
23.09.2020

Appellant in person present.

Mr. Muhammad Jan, learned Deputy District Attorney for respondents present.

Former requests for adjournment as his counsel is busy before the Hon'ble High Court. Adjourned. To come up for arguments on 28.10.2020 before D.B at Camp Court D.I Khan.


  
(Atiq-ur-Rehman Wazir)  
Member (E)  
Camp Court, D.I Khan


  
(Rozina Rehman)  
Member (J)  
Camp Court, D.I Khan

Service Appeal No. 867/2018

25.11.2019


Due to general strike of Khyber Pakhtunkhwa Bar Council, learned counsel for the appellant is not available today. Mr. Ziaullah, Deputy District Attorney for the respondents present. Case to come up for rejoinder and arguments on 27.01.2020 before D.B at Camp Court D.I.Khan.

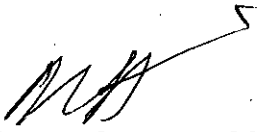
  
(Hussain Shah)  
Member  
Camp Court D.I.Khan

  
(M. Amin Khan Kundi)  
Member  
Camp Court D.I.Khan

27.01.2020

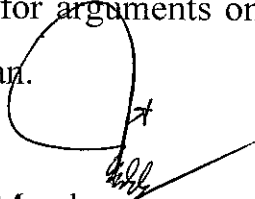
Due to strike of Khyber Pakhtunkhwa Bar Council, learned counsel for the appellant is not available today. Mr. Usman Ghani, District Attorney for the respondents present. Adjourned to 24.02.2020 for rejoinder and arguments before D.B at Camp Court D.I.Khan.

  
(Hussain Shah)  
Member  
Camp Court D.I.Khan

  
(M. Amin Khan Kundi)  
Member  
Camp Court D.I.Khan

24.02.2020

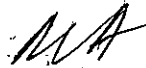
Counsel for the appellant present. Mr. Ziaullah, Deputy District Attorney for respondents present. Learned counsel for the appellant submitted rejoinder which is placed on file. Learned counsel for appellant seeks adjournment. Adjourned. To come up for arguments on 25.03.2020 before D.B at camp court D.I.Khan.

  
Member

Member  
Camp Court D.I.Khan

26.06.2019

Appellant in person and Mr. Farhaj Sikandar, District Attorney alongwith Mr. Muhammad Mustaq, Superintendent for the respondents present. Written reply on behalf of respondents not submitted. Representative of the department requested for further adjournment to file written reply. Last chance is granted. Adjourned to 27.08.2019 for written reply/comments before S.B at Camp Court D.I.Khan.

  
(Muhammad Amin Khan Kundi)  
Member  
Camp Court D.I.Khan

27.08.2019

Counsel for the appellant and Mr. Mushtaq, Superintendent alongwith Mr. Farhaj Sikandar, District Attorney for the respondents present. Representative of the department submitted written reply. Case to come up for rejoinder and arguments on 22.10.2019 before D.B at Camp Court D.I.Khan.

  
(Muhammad Amin Khan Kundi)  
Member  
Camp Court D.I.Khan


22/10/2019

Since tour to D.I.Khan has been cancelled. To come for the same on 25/11/2019.

  
Reader

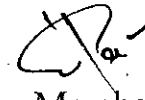
25.03.2019

Appellant in person present. Mr. Farhaj Sikandar, District Attorney for respondents present. Written reply not submitted. Requested for adjournment. Adjourned. Case to come up for written reply/comments on 24.04.2019 before S.B at camp court D.I.Khan.

  
Member  
Camp Court, D.I.Khan

24.04.2019

Appellant in person present. Written reply not submitted. Mushtaq Superintendent representative of the respondent department present and seeks time to furnish written reply/comments. Granted. To come up for written reply/comments on 26.06.2019 before S.B at Camp Court, D.I.Khan.

  
Member  
Camp Court, D.I.Khan.



18.12.2018

As per direction of the worthy Chairman Khyber Pakhtunkhwa Service Tribunal, D.I.Khan tour dated 18.12.2018 has been rescheduled and the case is re-fixed for 27.12.2018.

  
Reader

27.12.2018

Counsel for the appellant Mustafa Kamal present. Preliminary arguments heard. It was contended by the learned counsel for the appellant that the appellant is serving as District Attorney (BS-19). It was further contended major penalty of reduction to lower pay scale from BS-19 to BS-18 was imposed upon the appellant vide order dated 22.01.2018 on the allegations that he failed to file the relevant application U/S 12 (2) CPC in case of inquiry report pertaining to the issue of fresh robkar 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 against which Supreme Court of Pakistan took serious notice of non filing Court order dated 07.06.2017 and 23.03.2017. It was further contended that the appellant filed review petition which was decided and the impugned order dated 22.02.2018 was modified, the major penalty of reduction to the lower pay scale from BS-19 to BS-18 was converted into withholding of two annual increments for two years vide order dated 07.06.2018. Hence, the present service appeal on 02.07.2018. It was further contended that neither proper inquiry was conducted nor opportunity of hearing and defence was provided to the appellant, therefore, the impugned order is illegal and liable to be set-aside.

The contention raised by the learned counsel for the appellant need consideration. The appeal is admitted for regular hearing subject to all legal objections. The appellant is directed to deposit security and process fee within 10 days thereafter, notice be issued to the respondents for written reply/comments for 25.03.2019 before S.B at Camp Court D.I.Khan.

Appellant Deposited  
Security & Process Fee





(Muhammad Amin Khan Kundi)  
Member  
Camp Court D.I. Khan

Form- A  
FORM OF ORDER SHEET

Court of \_\_\_\_\_

Case No. 867/2018

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	09/07/2018	<p>The appeal of Mr. Mustafa Kamal resubmitted today by Mr. Abdullah Baloch Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p style="text-align: right;"><i>[Signature]</i> REGISTRAR 9/7/18</p>
2-	13.09.2018	<p>This case is entrusted to touring S. Bench at D.I.Khan for preliminary hearing to be put up there on <u>13-9-2018</u></p> <p style="text-align: right;"><i>[Signature]</i> MEMBER</p>
	22-10-18	<p>Neither appellant nor his counsel present. Notice be issued to appellant and his counsel for attendance and preliminary hearing for 22.10.2018 before S.B at Camp Court D.I.Khan.</p> <p style="text-align: right;"><i>[Signature]</i> (Muhammad Amin Khan Kundi) Member Camp Court D.I.Khan</p> <p><i>Case is hereby recalled, therefore the case is adjourned for the same on 19-12-18 at camp court D.I.Khan.</i></p> <p style="text-align: right;"><i>[Signature]</i></p>

The appeal of Mr. Mustafa Kamal son of Qutab Khan District Attorney Tank received today i.e. on 02.07.2018 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days.

- 1- Affidavit may be got attested by the Oath Commissioner.
- 2- Four more copies/sets of the appeal along with annexures i.e. complete in all respect may also be submitted with the appeal.

No. 1330 /S.T,

Dt. 03/07 /2018.

Mr. Abdullah Baloch Adv.  
Hogh Court D.I, Khan

*Resubmitted  
after compliance  
03/07/2018*

*[Signature]*  
REGISTRAR 3/7/18  
SERVICE TRIBUNAL  
KHYBER PAKHTUNKHWA  
PESHAWAR.

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

App: No 867 2018

Mustafa Kamal S/o Qutab Khan District Attorney Tank **APPELLANT**  
VERSUS

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

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**THROUGH COUNSEL**

Abdullah Baloch Advocate

*(Signature)*  
Fiadyat u llah Mahsud Advocate

2

D

**BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA**

**PESHAWAR.**

Khyber Pakhtunkhwa  
Service Tribunal

S.T.A No 867/2018

Dated    /06/2018 Diary No. 1108

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

Dated 02-7-2018  
(Appellant)

Versus

1. Government of Khyber Pakhtunkhwa through Chief Secretary Government of Khyber Pakhtunkhwa Peshawar.
2. Government of Khyber Pakhtunkhwa through Secretary Law Parliamentary Affairs & Human Rights Departments Peshawar.
3. Secretary Establishment Government of Khyber Pakhtunkhwa Peshawar.
4. Principal Secretary to Chief Minister Khyber Pakhtunkhwa Peshawar. ✓

(Respondents)

**SERVICE APPEAL** u/s 4 of the Khyber Pakhtunkhwa Service Tribunal Act 1974 against punishment imposed upon appellant of the kind "withholding two annual increments for two years" vide notification No 24177-85 dated 07-06-2018 by the Chief Secretary Peshawar and issued by the S.O (General) Law Departments Khyber Pakhtunkhwa Peshawar which is wrong illegal and ineffective upon the rights of appellant

**Prayer:-**

On acceptance of the instant appeal it is earnestly and very humbly requested to set aside the impugned order/notification No SO. (G)LD/1-19/2014/PF/24177-85 dated 07-06-2018 wherein punishment of "withholding two annual increments for two years" has been imposed upon the appellant and to re-instate /restore the appellant to original / former position/status with all allowances and back benefits and also to exonerate the appellant from the baseless, false, illegal and frivolous allegations.

**Respectfully Sheweth:-**

I, Mustafa Kamal District Attorney, Tank, (BS-19) has been aggrieved beyond measure over award of punishment of the kind "withholding two annual increments for two years" inflicted on me by the Chief Secretary Khyber Pakhtunkhwa Peshawar without observing due process of law and rules made there under.

**FACTS AND ASSUMPTION OF THE CASE**

Brief facts and assumption leading to my humble appeal are as under:-

1. That the appellant belongs to a respectable family and have a dignified and integrated status among the family, society, Bench, the Bar and colleagues.
2. That the appellant joined Police Department as Prosecuting Sub-Inspector on 22/04/1999 through Public Service Commission and

Filed to-day  
Registrar  
Re-submitted to-day  
Registrar

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- successfully completed all the courses and passed all the exams with credit.
3. That the nomenclature of the appellant's post was changed from Prosecuting Sub-Inspector to Assistant Public Prosecutor on 18/02/2002 and thus served in the Prosecution Directorate under Home and Tribal Affairs Department with no complaint from any quarter.
  4. That on 29/09/2005 the appellant was again selected as Additional Government Pleader, by qualifying the exam conducted by the KP Public Service Commission and was posted as Additional Government Pleader in Law Department, KPK.
  5. That based on his untiring services for the cause of department the appellant was promoted to the Post of Government Pleader, BS-18 on 31/12/2010.
  6. That on 09/08/2012 the post of the appellant was upgraded from BS-18 to BS-19 and the appellant was posted as Senior Government Pleader (BS-19) and currently the nomenclature of the post stands changed from that of Senior Government Pleader to District Attorney. The appellant is currently serving in Law Department as District Attorney (BS-19) in District Tank.
  7. That the appellant has served the Law Department as District Attorney, in various districts of the province i.e. Dera Ismail Khan, Lakki, Bannu and Tank with utter satisfaction of the high ups and with no complaint whatsoever except the present one although false, baseless and illegal and thus maintained a decent and outstanding status among the Government departments, Bench, Bar and colleagues.
  8. That the conduct, loyalty to Government cause, competency and courage exhibited by the appellant remained above board during the entire career. The appellant was rewarded and awarded numerous commendation certificates besides cash awards too.
  9. That the opinion rendered by the appellant, which provided for award of the impugned punishment, was purely in good faith and up to the best of my capability in the best interest of government. The previous Service record of the appellant reflects that during the entire career of 18 years of service there has been no complaint of even a very meager nature. The appellant was awarded A-I PERs throughout entire career. Hence, the sudden imposing of penalty upon the appellant will amount to virtual death of honor and has caused professional humiliation to the appellant among the colleagues, Bench, Bar and the department and extremely detrimental to the future career of the appellant.
  10. That while serving in the above capacity the appellant was served with a charge sheet along with statement of allegations containing some false and frivolous allegation which was replied by the appellant with solid proof and denying all the allegations. (copy of the charge sheet, statement of allegation and the reply are annexure A, B & C. The reply may kindly be considered an integral part of the appeal.
  11. That an inquiry committee was constituted whereby Mr Javid Anwar (PCS BS 20) and Mr Shakeel Asghar Deputy Solicitor (Bs 19)

M. Iqbal  
Lawyer

law department was nominated inquiry officer. That the appellant has objected the constitution of the inquiry committee to the extent of **Mr. Shakeel Asghar, Ex-Deputy Solicitor Law Department**, being not legally competent, and being interested officer (person) in the inquiry of the appellant. Therefore, the entire proceedings conducted by such biased person has no legal footing and thus liable to be reviewed and set aside. Objection petition is annexure D.

12. That a slipshod inquiry was conducted by the inquiry committee without giving the opportunity of self-defense or personal hearing to the appellant and recommended the appellant for major penalty. However, the appellant was never provided complete finding of the inquiry report.

13. That upon the conclusion of the inquiry the appellant was served with a show cause notice which was replied by the appellant and requested for personal hearing (copy of the Final show cause Notice and reply are annexure E,F)

14. That without providing opportunity of personal hearing by the competent authority the appellant was awarded major punishment of Reduction to lower pay scale from BPS- 19 to BPS- 18 vide impugn Notification No SO(G)/LD/1-9/2014/PF/2838-45 dated 22/01/2018 ,which was communicated vide diary No 09/12 PM dated 30/01/2018 (copy of the impugn Notification is annexed as G)

15. That feeling aggrieved of the said punishment the appellant submitted Review petition before the competent authority through proper channel. Review petition is annexure H.

16. That the Review petition was partially accepted by the competent authority and the punishment was modified/reduced "into withholding two annual increments, for two years,, vide notification No SO. (G)LD/1-19/2014/PF/24177-85 dated 07-06-2018 is annexure I

17. That feeling aggrieved from the impugn notification (being final order) the appellant submitted the instant appeal before the honorable Tribunal viza viz the following grounds.

*Copy of the order*

**GROUND FOR APPEAL**

1. That the impugned order is against the law, rules and facts on the record.
2. That the authority has passed the impugned order without proper perusal of the record and thus caused virtually condemned the appellant on misconceived premises.
3. That the very constitution of the inquiry committee assigned to probe the matter was illegal and in violation of the rule under which it was required to be constituted.
4. That the appellant had timely objected the constitution of the inquiry committee to the extent of **Mr. Shakeel Asghar, Ex-Deputy Solicitor, Law Department**, being not legally competent, and being biased towards appellant. Therefore, the entire proceedings conducted by a not very impartial committee has no legal footing and thus liable to be set aside.

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5. That the biased attitude of the above named inquiry officer is very much clear from the review petition preferred by the then Secretary Law, Mr. Muhammad Arifin, being the inquiry officer was assigned the task to submit the review petition in the august Supreme Court of Pakistan wherein material facts were concealed from the august Supreme Court of Pakistan.
6. That the inquiry committee has admitted that the appellant has not caused any loss of a single penny to the government exchequer on one hand while on the other hand the said committee held that the allegations levelled against the appellant stood proved which stance does not appeal to a prudent mind. Inquiry report is annexure J
7. That while dealing with the case providing basis for award of impugned punishment the appellant had rendered his opinion in the case in good faith and in the best interest of the government and in consonance with the judgments of the August Supreme Court of Pakistan, titled as **PLD 2013 SC 195** which would suffice to support the opinion as rendered by the appellant rather it was bounden duty of the appellant as per the above case law.
8. That the inquiry committee has also admitted the opinion of the appellant declaring that the mutations in question were entered through a robakar and forged sale deed but in spite of such crystal clear facts the appellant was made a scape goat without any fault whatsoever. Robakar and mutations are annexure as K,L,M.
9. That the inquiry committee had also suggested a through inquiry in the alleged mutations although various inquiries had been conducted and responsibilities had already been fixed against those who were involved but no action whatsoever has been taken against them till date yet instead, the petition was sacrificed for no wrong at all. On this score too, the impugned order is liable to be set aside.
10. That it is pertinent to mention here that the said mutations clearly reflect that these were entered on the basis of Robakar in the year 2009 and not through court decree and even robakar was not issued on court order. Therefore, the impugned order is nullity in the eye of law yet the true facts have been buried and the land grabbers were given an opportunity to get undue advantage.
11. That neither the Scrutiny Committee nor the Revenue Officers/officials ever bothered to honour the verdicts of the learned Civil Judge, learned Additional District Judge, Honourable High Court and the August Supreme Court of Pakistan who have given unanimous decisions on this subject matter (property measuring 2441 Kanals approximately) and thus falsely and illegally pretended to have given effect to the ex-parte decree of the learned civil Judge, in another case although the government was not party to the said case and even no direction were issue to Government for its execution. Judgment of Civil Judge, District Judge, High Court and of August Supreme Court are as annexure N,O,P,Q.

14/08/2013



- ( 53 )
12. That the opinion render was in shape of request/information to review the order and the department also took action by calling comments from the concerned department in light of the review application. Hence the appellant has got no option except to wait for further order when cognizance was taken by the Department. Letters are annexure R and S. Opinion is an annexure T.
  13. That the appellant has been condemned unheard as no opportunity of personal hearing has been provided by the competent authority. The competent authority cannot delegate power of personal hearing to any other official.
  14. That the appellant has not been provided right of fair trial as guaranteed by article 10-A of the Constitution of Islamic Republic of Pakistan 1973.
  15. That the appellant has been made escape goat as the real culprit has been set free without facing any proceedings hence the appellant has been subjected to discrimination.
  16. That the inquiry as well as other proceedings has not been carried out as per E & D Rules 2011 hence the impugn order is illegal
  17. That the impugned order is against FR 29 and only on this score too the order is liable to be set-aside.
  18. That the appellant rely upon on the record already attached with the previous replies rendered in consequence of departmental proceedings besides the grounds set up in this appeal and also request for raising additional grounds during course of arguments.
  19. That the instant appeal is within time and within the jurisdiction of this Honorable Tribunal.

**PRAYER:-**

On acceptance of the instant Review Petition it is earnestly and very humbly requested to very kindly set aside the impugned order/Notification No SO. (G)LD/1-19/2014/PF/24177-85 dated 07-06-2018 whereby penalty of "withholding two annual increments for two years" has been imposed upon the appellant and to re-instate/restore the appellant to his original / former position with all allowances , back benefits and rights and to exonerate the appellant from the baseless, false, illegal and frivolous allegations charged against the appellant.

Dated: 02 / 07 / 2018

APPELLANT

(MUSTAFA KAMAL)

DISTRICT ATTORNEY TANK

Through

M. Abdullah Baloch Advocate, D.I.Khan  
Hadyat u llah Mahsud Advocate D.I.Khan

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AFFIDAVIT

I, Mustafa Kamal S/o Qutab Khan District Attorney Tank do hereby solemnly affirm and declare on Oath that the contents of the accompanying service appeal are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Tribunal

IDENTIFIED BY:

DEPONENT

*Abdullah Baloch*  
Abdullah Baloch Advocate  
*Hadyat u llah Mahsud*  
Hadyat u llah Mahsud Advocate

*Mustafa Kamal*  
Mustafa Kamal  
02/07/18



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

S.T.A No \_\_\_\_\_

Dated \_\_\_/06/2018


**ADDRESSES OF PARTIES**

**APPELLANT**

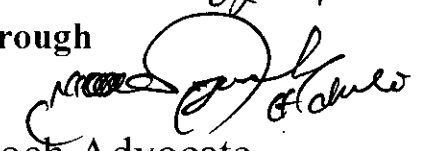
Mustafa Kamal S/o Qutab Khan District Attorney Tank.

**RESPONDENTS**

1. Government of Khyber Pakhtunkhwa through Chief Secretary Government of Khyber PakhtunKhwa Peshawar.
2. Government of Khyber Pakhtunkhwa through Secretary Law Parliamentary Affairs & Human Rights Departments Peshawar.
3. Secretary Establishment Department Government of Khyber Pakhtunkhwa Peshawar.
4. Principal Secretary to Chief Minister Khyber Pakhtunkhwa Peshawar.

  
02-07-18

Through

  
Abdullah Baloch Advocate

  
Hadyat u llah Mahsud Advocate



Registry  
C8

ANNEXURE A

GOVERNMENT OF KHYBER PAKHTUNKHWA LAW.  
PARLIAMENTARY AFFAIRS & HUMAN RIGHTS  
DEPARTMENT

No. SO (G)(LD)1-19/2014/PF/19835-39  
Dated Peshawar the 05.07.2017 W/E

To

1. Mr. Javed Anwar,  
(PCS SG BS-20) Secretary,  
Public Service Commission Khyber Pakhtunkhwa.
2. Mr. Shakeel Asghar,  
Deputy Solicitor Law Department.

Subject:- INQUIRY/DISCIPLINARY ACTION AGAINST MR. MUSTAFA KAMAL  
DISTRICT ATTORNEY DI KHAN (NOW AT TANK).

Dear Sir,

I am directed to refer to the subject and to state that the competent authority has been pleased to appoint the following enquiry committee to conduct an enquiry under Khyber Pakhtunkhwa Government Servants (E&D) Rules 2011 against Mr. Mustafa Kamal District Attorney D I Khan (now Tank).

- i. Mr. Javed Anwar,  
(PCS SG BS-20) Secretary,  
Public Service Commission Khyber Pakhtunkhwa.
- ii. Mr. Shakeel Asghar,  
Deputy Solicitor Law Department.

Copies of the Charge Sheet and statement of allegation against accused officer duly signed by the competent authority are enclosed herewith with the request to conduct the enquiry and submit report within the prescribed time as per rules please.

Encl. as above.

Deputy Secretary (Admn)

Copy forwarded to:-

- 3 ✓ Section officer (General) Govt. of Khyber Pakhtunkhwa Law department with the direction to attend the enquiry proceeding alongwith all relevant record when required by the enquiry committee.
4. A copy of charge sheet alongwith statement of allegation is forwarded to Mr. Mustafa Kamal District Attorney D I Khan (now Tank) with the direction to appear before the enquiry committee as and when called.
5. PS to Secretary Law.

Attended to be true copy.

*[Signature]*

*[Signature]*  
Hidaya  
Adv. Court  
District L. D. Khan

*[Signature]*  
Deputy Secretary (Admn)

CHARGE SHEET

I, Pervez Khattak, Chief Minister, Khyber Pakhtunkhwa, hereby charge you, Mr. Mustafa Kamal, District Attorney (BPS-19), while posted at D.I.Khan of Law, Parliamentary Affairs & Human Rights Department as follows:-

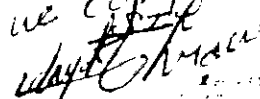
That you, while posted as Distt:Attorney (BPS-19) at D.I.Khan committed the following misconduct:-

- a). That vide Scrutiny Committee decision dated 20-01-2017 you were failed to file the relevant application U/S 12(2) CPC in case of inquiry report pertaining to the issue of fresh robkar 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 against which Supreme Court of Pakistan took serious notice of non filing vide Court order dated 07-06-2017 and 23-03-2017
2. By reason of the above, you appear to be guilty of misconduct under Rule-3 of Khyber Pakhtunkhwa Govt. Servants (E&D) Rules, 2011 and have rendered yourself liable to all or any of the penalties specified in Rule-4 of the rules ibid.
3. You are, therefore, required to submit your written defense within seven days of the receipt of this Charge Sheet to the inquiry officer.
4. Your written defense, if any, should reach the inquiry officer within the specified period, failing which it shall be presumed that you have no defense to put in and in that case an ex-parte action shall be taken against you.
5. Intimate whether you desire to be heard in person.
6. A statement of allegations is enclosed.

  
(PERVEZ KHATTAK)

Chief Minister, Khyber Pakhtunkhwa,

Mr. Mustafa Kamal,  
District Attorney  
District Tank

Attested to be  
True copy  
by 

DISCIPLINARY ACTION

ANNEXURE  
10 B

I, Pervez Khattak, Chief Minister, Khyber Pakhtunkhwa as competent authority am of the opinion that Mr. Mustafa Kamal District Attorney (BPS-19), D.I.Khan rendered himself to be proceeded against, as he has committed the following acts/omissions within the meaning of Rule-3 of the Khyber Pakhtunkhwa Govt. Servants (E&D) Rules, 2011.

STATEMENT OF ALLEGATION

That he, while posted as Distt. Attorney (BPS-19) at D.I.Khan committed the following misconduct:-

a). That vide Scrutiny Committee decision dated 20-01-2017 he had failed to file the relevant application U/S 12(2) CPC in case of inquiry report pertaining to the issue of fresh robar 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 against which Supreme Court of Pakistan took serious notice of non filing vide Court order dated 07-06-2017 and 23-03-2017.

2. For the purpose of inquiry against the said accused with reference to the above allegation, an Inquiry Officer/Inquiry Committee, consisting of the following, is constituted under rules 10(1)(a) of the ibid rules.

- i. Mr. Javid Anwar (Pcs Sg Bs-20)  
Secretary Public Service Commission KP
- ii. Mr. Shehad Asghar deputy solicitor,  
Law Dept

3. The Inquiry Officer/Inquiry Committee shall, in accordance with the provision of the ibid rules, provide reasonable opportunity of hearing to the accused, record its findings and make within thirty (30) days of the receipt of this order, recommendations as to punishment and other appropriate action against the accused.

4. The accused and a well conversant representative of the Department shall join the proceedings on the date, time and place fixed by the Inquiry Officer/Inquiry Committee.

Attested to be  
True copy

idday  
Advocate High Court  
District Bar, D.I.Khan

Mr. Mustafa Kamal,  
District Attorney  
District Tank

Pervez Khattak  
(PERVEZ KHATTAK)  
Chief Minister, Khyber Pakhtunkhwa,



No. 90-95/DA-TK

**OFFICE OF THE DISTRICT ATTORNEY,  
DISTRICT, TANK**

Dated the Tank 15 / 07 / 2017

ANNEXUR - C

**Subject: REPLY TO ACCUSATIONS/STATEMENT OF ALLEGATIONS/CHARGE SHEET ISSUED TO MR. MUSTAFA KAMAL, DISTRICT ATTORNEY, TANK ON 10/07/2017 AND RECEIVED ON 11/07/2017.**

Respected Sir,

In response to the accusation/allegation/Charge Sheet I most respectfully submit as under:-

1. That the undersigned being District Attorney is having unblemished Service Record and having qualified/passed the Public Service Commission exams twice and have not given any opportunity to the Law Department to complain against the undersigned through approximately 18 years of my Service and served the department to the best of my efforts and ability.
2. That the allegations levels against me are the result of a case titled as Ujala Andalib VS Central Government although legally pertaining to the property of Provincial Government and in which I have neither appeared nor defended the said case till the eventful day.
3. That similarly, the allegations are the result of the concealment of real facts by the Additional Deputy Commissioner, Dera Ismail Khan namely, **Mr. Umar Javid** from the august Supreme Court of Pakistan as is well cleared from the order of the august Supreme Court of Pakistan dated: 22/03/2017. Copy of the order is attached herewith as **Annexure-A**.
4. That it is also added that the Worthy Secretary Law Parliamentary Affairs & Human Rights Department, KP, Peshawar has not presented the true and correct/real facts in the august Supreme Court of Pakistan which resulted into the further remarks of the august Supreme Court of Pakistan vide order dated: 07/06/2017 in his review petition and thus concealed all the letters addressed to the Secretary Revenue and Estate Department and to the office of the undersigned. Copy of the review petition is attached herewith as **Annexure-B**.
5. That if for the sake of arguments submission of the application ibid is accepted for a while, then as per section 2(7) read with Order 27 Rule 8-B of the Code of Civil Procedure the undersigned has no authority to file an application under section 12 (2) of the Code of Civil Procedure, 1908 being illegal regarding the cases of Central Government. Order 27 Rule 8-B is reproduced as under:-

**Government and Government Pleader means respectively:-**

1. In relation to any suit by or against the Central Government or against a public officer in the service of that Government, the Central Government **and such pleader as that Government may appoint** whether generally or specially, for the purposes of this order,

*[Handwritten signature]*

*Attested to be  
True copy 5 pages*

*[Handwritten signature]*  
Hidayat Ullah Mehsood  
Advocate High Court  
District Bar, D.I. Khan

2. In relation to any suit by or against the Provincial Government or against a public officer in the service of the Province, **the Provincial Government and the Government Pleader**, or such other pleader as the Provincial Government may appoint, whether generally or specially, for the purposes of this order.
6. That the directions issued by the Law Parliamentary Affairs & Human Rights Department regarding filing of the above referred application is the sheer violation *the Provision of Part III titled as Civil Business chapter 13 of the Law Department Manual and Rules of Business.*
7. That the Law Department vide letter No. SO(Lit)/LD/10-23(1)Rev/2017/2453-58W/E dated: 24/01/2017 directed the Deputy Commissioner Dera Ismail Khan to approach the office of the Senior Government Pleader, Dera Ismail Khan for filing an application under section 12 (2) of the Code of Civil Procedure, 1908 against an ex-parte decree dated: 20/11/2008 of the learned civil judge, Dera Ismail Khan. Copies of the letter and minutes of the meeting are annexed herewith as **Annexure-C & D** respectively.
8. That in response to the above referred letter the undersigned have requested the Deputy Solicitor, Law Parliamentary Affairs & Human Rights Department vide this office letter No.279/SGP, dated: 08/03/2017 to review/reconsider the directions contained in the above referred letter with a request to intimate this office in case of further action, on the basis of the ground mentioned therein. The last Para of the letter is reproduced as under:-  
**"In the light of the above facts and circumstances, there exists no ground to file an application U/Section 12 (2) of the Code of Civil Procedure, 1908 for resolving the matter rather strong and bold actions required to be taken by the Revenue Department vested with, specifically in connection with the cancellation of the mutation in question, therefore, it is requested that the letter No. SO (Lit)/LD 10-23 (1) Rev/2435-58 W/E dated: 24/01/2017 for filing application under section 12 (2) of the Code of Civil Procedure, 1908 may please be reviewed and reconsidered with the intimation to this office, in the best interest of the Government"**. Copy of the letter is attached herewith as **Annexure-E**.
9. That thereafter, acting upon this office letter referred in the preceding Para, the Law PAs and HRs Department through vide letter No. SO(Lit/LD/10-23(1)Rev/2017/9237-42, dated: 14/03/2017 with a copy endorsed to this office and all concerned asked the Secretary to Govt. of Khyber Pakhtunkhwa, Revenue & Estate Department for the submission of his comments so as to proceed further in the matter. Copy of the letter is attached herewith as **Annexure-F**.
10. That consequent upon the letter *ibid*, the Assistant Secretary (R&S) Board of Revenue, Peshawar, through vide letter No. 5524-27/R&S/C.P. No.820/2014 dated: 15/03/2017 with a copy endorsed to this office asked the Deputy Commissioner, Dera Ismail Khan to furnish comments in order to proceed further in





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the matter. Copy of the letter is attached herewith as **Annexure-G.**

11. That prior to the case titled as Ujala Andaleeb VS Central Government a case titled as Muhammad Aziz Jan VS Government of KPK and Others were pending adjudication in the Court of Learned Additional District Judge, VII, Dera Ismail Khan and it is needless to mention here that the suit of the plaintiff in the case ibid had been dismissed by the court of learned Civil Judge, III, Dera Ismail Khan vide order dated: 09/06/2003. Copy of the judgment/Order is attached herewith as **Annexure-H.**
12. That during the pendency of the case titled as Muhammad Aziz and Others VS Govt. of KP and others Ujala Andalib filed a civil suit in the court of learned civil judge, IV, Dera Ismail Khan dated: 31/01/2008 on the same subject matter i.e. land (**which was also the subject matter of the case titled as Muhammad Aziz Jan and Others Vs Govt. of KP and others**) which was decreed ex-parte and in which the Government was not a party and the suit being between private parties wherein the Revenue Department rushed to impose a strange decree upon the department. Copy of the judgment is herewith attached as **Annexure-I.**
13. That the revenue officials being well aware of the above mentioned case were so much in a hurry that despite the enactment of **the Displaced Persons Laws (Repeal) Act, 1975** and clear ban on fresh allotment of the evacuee property issued a fresh Robakar in favour of a person who neither appeared before the trial court nor having any existence whatsoever and thus executed the ex-parte decree against the government for reasons best known to the revenue officials and that being in favor of the real judgment debtor/defendant as is well cleared from the mutations. Copies of the mutations are attached herewith as **Annexure-J.**
14. That even the revenue officers and officials did not bother to honor and comply with the judgment and order of the learned Additional District Judge, VII, Dera Ismail Khan vide order dated: 25/11/2009 wherein the property had been declared the sole ownership of the Provincial Government by virtue section 3 of the Act, ibid and wherein a copy of the judgment/order had been intimated to the Chief Secretary N.W.F.P (Now KP) for further necessary action as is much clear from the operation part of the judgment. Copy of the judgment/order is attached as **Annexure-K.**
15. That the judgment/order of the Additional District Judge, VII, Dera Ismail Khan had been upheld by the Honourable High Court Peshawar, Bench, Dera Ismail Khan vide order dated: 04/11/2013. Copy of the order/judgment is attached herewith as **Annexure-L.**
16. That thereafter the plaintiff/petitioner filed a petition in the August Supreme Court of Pakistan which was also dismissed by the August Supreme Court of Pakistan for non-prosecution vide order dated: 27/11/2014 followed by the dismissal of restoration application vide order dated: 13/03/2015. Copies of the orders are attached herewith as **Annexure-M & N** respectively.

*Ujala*  
*Andaleeb*

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17. That the allegations contained in the charge sheet and statement of allegations are totally false, illegal, frivolous, having no truth in the eyes of law and is the concealment of real facts of the case from the august Supreme Court of Pakistan by the persons representing the Government for the reasons best known to them.
18. That the very opening words of the Paragraph in the statement of allegations/charge sheet contains wordings regarding the inquiry in connection with the issuance of fresh Roabakar by the Deputy District Officer (R)/Deputy Settlement Commissioner, Dera Ismail Khan for attestation of mutation of land measuring 244-Kanals & 16-Marlas (**Which in facts measuring to 2441-Kanals & approximately 10-Marlas**) being the exclusive ownership of the Provincial Government after the determination of the same land from the court of learned Civil Judge, VII, Dera Ismail Khan up to the August Supreme Court of Pakistan.
19. That in Para II, of the Charge Sheet I have been charged with misconduct while as per the definition of the term misconduct under Rule 2 sub-rule (1) the acts/omissions (which are not acceptable) do not fall under the definition of misconduct.
20. **That it is also stated that I have objections within the parameters of Rule 10 (1) (a) of the Efficiency & Discipline Rules, 2011 upon the constitution of the Inquiry Committee to the extent of officer at Serial No.2 (ii) namely Mr. Shakeel Asghar, Deputy Solicitor Law Department, being the violation of the instant rule i.e. Rule 10 (1)(a) of the Efficiency & Discipline Rules, 2011, principles of natural justice, equity, law and rules for the time being in force and also being an interested party as well.**
21. That the undersigned have already filed objection petition to the Honourable Chief Minister Govt. of KP, Peshawar against the inquiry officer at Serial No. ii of the letter No. SO (G) (LD)1-19/2014/PF/19835-39 W/E dated: 05/07/2017. Copy is attached herewith as **Annexure- N-I**.
22. That when the Revenue Department was inquiring into the issuance of fresh Roabakar dated: 18/03/2009 regarding the illegal allotment of evacuee property as is clearly envisaged from the charge sheet/statement of allegations then how the undersigned was directed to file an application under section 12(2) of the Code of Civil Procedure, 1908 and although various inquiries are complete and responsibilities have been fixed but no action against the delinquent officers/officials have been taken till today rather making the undersigned a scapegoat. In this respect copy of the letter No. PB: 49 dated: 01/09/2015 is attached herewith as **Annexure-O** for ready reference and copy of the Roabakar upon which the opinion of legal advisor is endorsed dated: 18/03/2009 and against whom the reference is pending adjudication in the National Accountability Bureau is attached herewith as **Annexure- O-I**.
23. That as is well cleared from the issuance of Roabkar, the property of the Provincial Government and that despite of the clear directions/order of the Additional District Judge, VII, Dera Ismail



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Khan had been allotted through a Roabakar firstly to a person who had no existence at all namely Mr. Sadiq-Ul-Hassan (his legal heirs) and whose case had already been decided in the year 1971 by the competent authority, and then to Ujala Andalib (although there was no need to refer the ex-parte decree rather simple statement of the legal heirs of Sadiq-Ul-Hassan but it was due to the non-existence and being fictitious persons the legal heirs of Sadiq-Ul-Hassan were not available and thus violating the mandate of law regarding effecting/causing mutations. Copies of the mutations are attached herewith as **Annexure-P**.

24. That in the instant case various inquiries have been conducted regarding the issuance of fresh Rubakar by the Revenue Department and responsibilities of the Revenue officers and Revenue officials have been already fixed but no action has been taken against them till to date.
25. That if the application under section 12(2) of the Code of Civil Procedure, 1908 has been accepted then the property of the Provincial Government would not be returned to its formal status because the property had been already transferred by the Revenue Officers/Officials through the issuance of fresh Robakar as is well cleared from the mutations caused/effectuated in favour of the so-called legal heirs of so-called Sadiq-Ul-Hassan unless & until the said Roabakar and mutations are cancelled by the Revenue Department. Copies of the mutations are already attached.
26. That it is astonishing to note that the Revenue Department has already cancelled mutations No. 3656 & 3657 even instead of the presence of the **Banking Court Decree of property situated in village/Mouza Babar but in the instant case the Revenue Department is reluctant to cancel the mutations and that being due to ex-parte/no decree at all against the Revenue Department which is also included in the ten thousands Kanals (10,000) regarding which the august Supreme Court of Pakistan has taken suo moto action and the case is still pending.** Copies of the mutations are attached herewith as **Annexure-Q & R** respectively.
27. That the undersigned is not guilty of misconduct or any other act and omission but gave a dissenting opinion with the request to review/reconsider the directions contained in the letter referred above and that being in the light of the well known judgment of the august Supreme Court of Pakistan reported as **PLD 2013 SC 195** Paragraph No. 22 (iii) and in pursuance of the opinion of the undersigned addressed to the Deputy Solicitor, the Law Department was reviewing/reconsidering the directions as is envisaged from the letters referred above. Copy of the above reported judgment of the august Supreme Court of Pakistan is attached herewith as **Annexure-S**.
28. That in such like circumstance the undersigned was having no other option but to wait for further directions of the Law Department regarding filing of an application under section 12 (2) of the Code of Civil Procedure, 1908 which has neither been

issued nor conveyed to the undersigned till the eventful day. Therefore, the allegations contained in the charge sheet and statements of allegations are not justified and having no footings in the eyes of law rather even does not appeal to a prudent mind.

29. That the undersigned has also submitted a detailed report vide this office letter No. 335/SGP dated: 29/03/2017 to the Worthy Secretary Law Parliamentary Affairs and Human Rights Department Govt. of KP, Peshawar regarding the filing of an application under section 12(2) of the Code of Civil Procedure, 1908 and also regarding the order of the August Supreme Court of Pakistan dated: 22/03/2017. Copy of the report is attached herewith as **Annexure-T**.
30. That even after the submission of the report *ibid*, the Secretary Law Parliamentary Affairs & Human Rights Department filed a review petition against the order of the August Supreme Court of Pakistan dated: 22/03/2017 wherein all the correspondence which has took place among the Law Department, the Office of the undersigned and Revenue Department have been concealed for the reasons best known to him and just shifting of the burden although illegally and without any justification upon the undersigned. Copy of the review petition is already attached for ready reference.
31. That it is a famous principles of law **“that a man may lie but circumstances do not lie”**.
32. That the opinion so given by the undersigned was purely in good faith and up to the best of my capability, in the best interest of the Government. The previous Service record of the undersigned reflects that during the 18 years of Service there has been no complaint even of a very meager nature against the undersigned and was awarded A-I ACRs throughout my career.
33. That prior to my present place of posting the undersigned was working in the same capacity at various stations. During my tenure the undersigned have been conducted numerous cases on behalf of the Provincial Government and has been protected the rights of the government quite efficiently, diligently without any complaint from any quarter. In recognition of my services the undersigned have been awarded a number of commendations certificates in addition to cash awards.
34. That being innocent in the instant case and being falsely involved by overloading with the burden of others and being made a scapegoat for no reasons at all I definitely want to be heard in person for the rebuttal of the allegations leveled against me.
35. That the undersigned has also filed a petition in the august Supreme Court of Pakistan in connection with the orders dated: 22/03/2017 and 07/06/2017 so as to expunge the remarks against the undersigned.

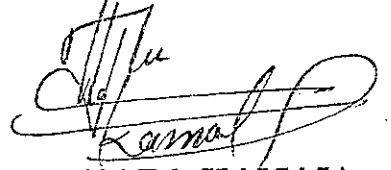
**PRAYER:-**

*Therefore, in the light of the above facts and circumstances it is most respectfully prayed that the undersigned may very kindly be*

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exonerated/absolved from the allegations being all the allegations are completely false, illegal and having no truth in the eyes of law, against the facts and thus baseless and the charge sheet/statement of allegations may very kindly be filed without any further proceedings please.

That my reply contains seven pages (07) and I have endorsed my signature on the side of each page along with **Annexure- A** to **Annexure- T** consisting of one hundred and six pages (106- pages)



(MUSTAFA KAMAL)  
DISTRICT ATTORNEY,  
DISTRICT TANK

*Hidayat Hussain Mehsood*  
Hidayat Hussain Mehsood  
Advocate Court  
District Bahawalpur Khan



**OFFICE OF THE DISTRICT ATTORNEY,  
DISTRICT, TANK**

No. \_\_\_\_\_/DA

Dated the Tank \_\_\_\_/\_\_\_\_/2017

To

**The Honourable Chief Minister,  
Government of Khyber Pakhtunkhwa,  
Peshawar.**

Through: Proper Channel.

Subject: INQUIRY/DISCIPLINARY ACTION AGAINST MR. MUSTAFA KAMAL,  
DISTRICT ATTORNEY, D.I.KHAN (NOW TANK).

OBJECTIONS ON INQUIRY OFFICER AT SERIAL No.2  
NAMELY, MR.SHAKEEL ASGHAR, DEPUTY SOLICITOR LAW  
DEPARTMENT.

Respected Sir,

Reference to the letter No.SO(G)(LD)1-19/2014/19835-39  
W/E dated: 05/07/2017 the undersigned submit the following  
objections to the extent of inquiry officer being part of the inquiry  
committee at Serial No.(ii) of the above referred letter namely,  
**Mr. Shakeel Asghar, Deputy Solicitor, Law PAs & HRs**  
Department, KP, Peshawar as under:-

1. That the inquiry committee has been constituted under Rule 10(1) (a) of the Khyber Pakhtunkhwa Efficiency & Discipline Rules, 2011.
2. That the rule ibid runs as under:-  
**“Procedure to be followed by competent authority where inquiry is necessary.** (1) If the competent authority decides that it is necessary to hold an inquiry officer against the accused under rule 5, it shall pass an order of inquiry in writing, which shall include:-  
(a) Appointment of an inquiry officer or any inquiry committee, provided that the inquiry officer or the inquiry committee, as the case may be, shall be of a rank senior to the accused and where two or more accused are proceeded against jointly, the inquiry officer or the convener of the inquiry committee shall be of a rank senior to the senior most accused.
3. That appointment of **Mr. Shakeel Asghar, Deputy Solicitor, Law Department** is by itself clear violation of the rule ibid, being the accused/undersigned and Mr. Shakeel Asghar are of the same rank.
4. That as the directions regarding filing of an application under section 12 (2) of the Code of Civil Procedure, 1908 has been issued by the Deputy Solicitor, Law Department, therefore, his appointment as an inquiry officer is against the principles of natural justice, equity, Laws and rules for the time being in force.
5. That the undersigned has no confidence in the Deputy Solicitor, Law Department namely, **Mr. Shakeel Asghar**, because of the principles of bias.
6. That the Deputy Solicitor, Law Department is a party to the whole proceedings and he would never deviate from his own stance, although he has never approached to the relevant record and facts of

Attested  
to be True copy  
Hidayat Ullah Mehsood  
Advocate High Court  
District Bar, D.I. Khan

the case rather would stress on the legality of his own opinion although not legal.

Therefore, in the lights of the above facts and circumstance, it is most respectfully prayed, that any other impartial officer instead of **Mr. Shakeel Asghar, Deputy Solicitor**, Law Department may please be appointed outside the Law Department to conduct the inquiry in the best interest of justice in accordance with law and rules for the time being in force.

(MUSTAFA KAMAL)  
DISTRICT ATTORNEY,  
DISTRICT TANK

No. 84-89 /DA-TR

Dated the Tank 15/07/2017

**Copy forwarded for information to:-**

1. The PS to Secretary Law PAs & HRs, Deptt: KP, Peshawar.
2. The Deputy Secretary Administration, Law Deptt: KP, Peshawar.
3. The Secretary Public Service Commission, KP, Peshawar.
4. The Deputy Solicitor, Law PAs & HRs Deptt: KP, Peshawar.

  
(MUSTAFA KAMAL)  
DISTRICT ATTORNEY,  
DISTRICT TANK

Through Pes

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

NO. SO (G)(LD) 1-19/2014/PF/26408-11  
Dated Peshawar the Sep, 25, 2017

To

Mr. Mustafa Kamal,  
District Attorney Tank.

Subject: **SHOW CAUSE NOTICE.**

I am directed to refer to the subject noted above and to enclose herewith a copy of show cause Notice containing the tentative Major penalty of **REMOVAL FROM SERVICE** along with inquiry report conducted by inquiry committee comprising Mr. Javed Anwar (PCS-SG-20) Secretary, Public Service Commission, Khyber Pakhtunkhwa and Mr. Shakeel Asghar (BS-19) Deputy Solicitor Law Department.

You are directed to submit your reply, if any within seven (07) days or not more than fifteen (15) days of the delivery of this letter, otherwise, it will be presumed that you have nothing to put in your defense and ex-parte action will follow.

You are further directed to intimate whether you desire to be heard in person or otherwise.

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

(Momin Khan)  
Section Officer (General)

**Endst. No. & Date Even:**

Copy is forwarded to:-

1. PS to Secretary Law Department.
2. P.S to Secretary Establishment Peshawar.
3. Master file.

*Momin Khan*  
Section Officer (General)

*Te*



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**SHOW CAUSE NOTICE**

I, Pervez Khattak, Chief Minister, Khyber Pakhtunkhwa as competent authority, under the Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011, do hereby serve you, Mr. Mustafa Kamal, Ex District Attorney D.I.Khan (Now District Attorney Tank) as follows:

- (i) That consequent upon the completion of inquiry conducted against you by the Inquiry Committee and you were given opportunity of hearing as required under the rules.
- (ii) On going through the findings/recommendations of the Inquiry Committee, the material on record and other connected papers including your defence before the Inquiry Officer/Committee

2. I am satisfied that you have committed the following acts/omissions specified in rule 3 of the said rules:

- (a) ceased to be efficient
- (b) guilty of misconduct

3. As a result thereof, I, as competent authority, have tentatively decided to impose upon you the following penalty under rule 4 of the said rules.

- (iii) Removal from Service
- (iv) \_\_\_\_\_

4. You are, therefore, required to show cause as to why the aforesaid penalty should not be imposed upon you and also intimate whether you desire to be heard in person.

5. If no reply to this notice is received within seven days or not more than fifteen days of its delivery, it shall be presumed that you have no defence to put in and in that case an ex-parte action shall be taken against you.

6. A copy of the findings of the inquiry committee is enclosed.

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

*Pervez Khattak*  
 (PERVEZ KHATTAK)  
 CHIEF MINISTER, KHYBER PAKHTUNKHWA/  
 COMPETENT AUTHORITY

**Mr. Mustafa Kamal**  
**Ex-District Attorney D.I.Khan**  
**Now District Attorney Tank**

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ANNEXURE-F



**OFFICE OF THE DISTRICT ATTORNEY,**  
**DISTRICT TANK.**

No. \_\_\_\_\_/DA

Dated the Tank \_\_\_\_/\_\_\_\_/2017

To,

**The Worthy Secretary,  
Law Parliamentary Affairs & HRs Department,  
Khyber Pakhtunkhwa, Peshawar.**

**Subject: Reply to Show Cause Notice Vide Letter No. SO (G)  
(LD) 1-19/2014/PF/26408-11 W/E dated: 25/09/2017.**

Respected Sir,

Enclosed please find herewith reply of the undersigned in connection with the subject captioned above for further necessary action please.

(DISTRICT ATTORNEY)  
DISTRICT TANK

Dated the Tank 25/10/2017

No. 101-104 /DA

**Copy Forwarded for Information to:-**

1. The Section Officer General, Law Department, KP, Peshawar.
2. The PS to Secretary Establishment, KP, Peshawar.
3. office file.

(DISTRICT ATTORNEY)  
DISTRICT TANK

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



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**OFFICE OF THE DISTRICT ATTORNEY,**  
**DISTRICT, TANK**

No. 101-104/DA

Dated the Tank 25/10/2017

**Subject: REPLY TO SHOW CAUSE NOTICE VIDE LETTER NO.SO (G)**  
**(LD) 1-19/2014/PF/26408-11 W/E DATED: 25/09/2017.**

Respected Sir,

In response to the show cause notice I **Mr. Mustafa Kamal (District Attorney, Tank)** most respectfully submit as under:-

1. That the undersigned being District Attorney is having unblemished Service Record and having qualified/passed the Public Service Commission exams twice and have not given any opportunity to the Law Department to complain against the undersigned through approximately 18 years of my Service and served the department to the best of my efforts and ability.
2. That the inquiry has been conducted by the inquiry committee through its respected members although the undersigned has objected over the very constitution of the committee in respect of its one member namely **Shakeel Asghar (the then Deputy Solicitor, Law Department)** being he was legally not authorized to conduct the inquiry against me as it is the violation of the rule under which the committee has been constituted. In spite of the objections already mentioned clearly in Para No. 20 of the reply submitted in connection with statement of allegations/charge sheet in very clear terms. On this sole ground, the inquiry proceedings is nullity in the eyes of law.
3. That the Law Department vide its letter No. SO (Lit)/LD/10-23 (1) Rev/2017/2453-58 W/E dated: 24/01/2017 and copy endorsed to the office of the undersigned, coupled by the minutes of the meeting of the scrutiny committee, directed the office of the Deputy Commissioner, D.I.Khan to approach the office of the undersigned for submission of application under section 12 (2) CPC. In response to the letter ibid, the undersigned through this office letter requested the Law Department to review the decision whereon the law department asked the Revenue Department to submit comments and a copy endorsed to the office of the undersigned. Therefore, the undersigned was having no other option but to wait for further directions of the Law Department. On this ground too, the undersigned have been made a scapegoat without any act/omission although illegally and against the established rules and principles of natural justice.
4. That the instant inquiry is the result of misstatement of the then Additional Deputy Commissioner, D.I.Khan namely **Umar Javid** in the August Supreme Court of Pakistan and thus he concealed the material facts and official record and thus not properly informed the August Supreme Court of Pakistan. In the subsequent proceedings despite of the wrong/false statement of the then Additional Deputy Commissioner, D.I.Khan the case was not

*Mustafa Kamal*

*Umar Javid*  
Umar Javid  
Advocate  
District Bar, D. the ar

properly pursued and unfortunately the undersigned was blamed without any fault on my part illegally and for the purpose of ulterior motives and for the burial of all the inquiries conducted in connection with the loss of the property in question.

5. That the Inquiry Committee despite of the objections made in Para No.20 of the reply (already submitted) conducted the inquiry and has not mentioned anywhere in the entire proceedings this glaring fact. On this score as well, the entire proceedings has no weight in the eyes of law and specifically the KP Efficiency & Discipline Rules, 2011.
6. That the Inquiry Committee deviated from the record and mentioned in the inquiry report that the undersigned has not attached the relevant judgments of the August Supreme Court of Pakistan and courts subordinate thereto, although the Committee admitted all the annexures in its certificate i.e. Annexures with the reply of the undersigned consisting of one hundred and six (106) pages. The Inquiry Committee instead of the availability of judgments skipped the same and thus blamed the undersigned without no reason whatsoever. The judgments are very much clear and if reference is made to the same the entire game of those who are involved would come to day light.
7. That this office letter dated: 14/03/2017 has never been made part of the record which is the very base of the instant inquiry and remarks of the August Supreme Court of Pakistan but just mentioned in the inquiry proceedings that the undersigned has not filed the said petition because the Government was not party to the said suit (Although the suit was filed under section 24 of the Specific Relief Act and as per section 43 of the Act, ibid, the decree is not binding upon any person who is not party to a suit). Although, the undersigned has mentioned various grounds therein with the request to review the decision.
8. That the Inquiry Officer namely, Shakeel Asghar (the then Deputy Solicitor, Law Department) has recorded **once again the statement of Rehabilitation Assistant, namely, Athar Wasim**, in the absence of the undersigned and the undersigned has not been given any information and chance to cross-examine the said witness. The record provided during the statement by the said witness has been wrongly interpreted by the Inquiry Committee because of the fact, that there is no direction from any court, regarding the issuance of Robakar. The said order of the court is very much clear and is only for the disposal of the case being the Decree Holder stated before the court, that Patwari has already effected/ caused mutation in his favor, therefore, he does not want to pursue the execution petition.
9. That the Inquiry Committee has mentioned delay on the part of the undersigned on the one hand and on the other hand admitted the delay as justified, by the undersigned. There is no delay on the part of the undersigned as the undersigned has immediately returned the letter of the Deputy Commissioner in original with the directions to provide complete attested record for the filing of the application under section 12 (2) CPC, 1908 and deputation of a well conversant officer but of no avail. Although, the inquiry committee



(25)

has skipped the letter and showed the ignorance of the revenue department/ Deputy Commissioner office in this regard. The Inquiry Committee must have asked the record keeper/Dispatcher/Receiver of the Deputy Commissioner office to make known the letter ibid but never bother to do so and thus the undersigned was blamed without any justification.

10. That on one side, the Inquiry Committee suggested for the investigation/Inquiry of the case in order to bring to justice all those who are responsible for the loss of the said property while on the other hand declared the undersigned guilty which is beyond the prudent mind and does not appeal to a prudent mind.

11. That the Inquiry Committee has admitted the issuance of Robakar in the year 2009 (although with wrong interpretation of the court order mentioned ibid) but the Scrutiny Committee of which the Inquiry Officer namely, Shakeel Asghar is a member has issued direction for filing of an application under section 12(2) CPC, 1908 instead of knowing the fact, that limitation period against the Revenue Department/Deputy Commissioner office would be counted legally from the date on which the Roabakar has been issued. On this score as well, when the inquiry officer namely, Shakeel Asghar (and Being the member of Scrutiny Committee as well) was well known with the law of limitation issued direction for filing an application under section 12 (2) CPC, 1908. Thus the entire proceedings are nullity in the eyes of law besides the stance of the undersigned has been clearly admitted by the inquiry committee.

12. That the Scrutiny Committee of the Law Department has not even bothered to scrutinize the record of the case properly and with due care and caution as is well envisaged from the admissions made by the Inquiry Committee in its report (as the Scrutiny Committee mentioned only 244 Kanals while in another place 2438 Kanals 9 Marlas) while in fact, the property which has been transferred is 2441 Kanals and 10 Marlas which the Inquiry Committee came to know from the reply of the undersigned and the statement of Patwari Concerned during inquiry proceedings and before that the scrutiny committee was unaware at all from the actual record. Therefore, the undersigned has brought the true facts in the notice of the competent authority and that specifically in the light the judgment of the August Supreme Court of Pakistan reported as **PLD 2013 SC 195** which is already attached for ready reference and thus committed no illegal act or omission whatsoever.

13. That the Inquiry Committee has declared that as per the Evacuee Property and Displaced Persons Law Repeal Act, 1975, all evacuee property stands transferred to the Provincial Government but Neither the Scrutiny Committee took any notice nor the Revenue Department bothered to comply with the directions issued to the Government by the learned court i.e. the Court of Civil Judge to the August Supreme Court of Pakistan wherein the subject matter of the instant case has been declared the property of the Provincial Government with the directions to take necessary action. Even the Law Department and Revenue Department did not bother

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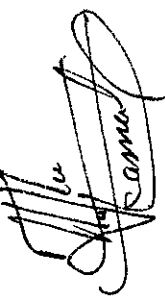
to have issued any directions to the Revenue Department to transfer the evacuee property in the name of the Provincial Government which is well cleared form the mutation mentioned in the inquiry report and all the existing revenue record of the district Dera Ismail Khan. Furthermore, the Law Department till the year 2014 was in practice of appointment of legal advisors for these sort of cases pertaining to the Central Government which is a clear proof that the revenue department do not want to transfer the evacuee property in the name of the Provincial Government besides its allotment instead of the ban as per the Act, *ibid*. This glaring fact is further very much clear from the opinion of the Legal Advisor available on the Robakar.

14. That the Patwari concerned while recording statement before the Inquiry Committee clearly admitted that the property in question has been effected/mutated through the issuance of Robakar and not a court decree. While the Rehabilitation Assistant stated in his additional statement recorded by inquiry officer on 17/08/2017 that the Robakar has been issued on the court decree. If for the sake of arguments this stance is accepted (although totally wrong and false) then why the decree has not been challenged in the year 2009? This whole story clearly depicts the ulterior motives of the Revenue Department and the illegality caused by them for the reasons best known to them and till date no action whatever has been taken against those who have already been declared responsible in various inquiries rather the undersigned was sacrificed for no valid reasons at all.

15. That the Inquiry Committee has admitted in the inquiry report that the undersigned has not caused any loss to the government exchequer but the committee declared that the allegations against the undersigned stand proved. This stance of the inquiry committee is illegal and unjustified completely. The undersigned has not caused any loss to the government exchequer rather safeguarded the interest of the government by bringing the true picture of the entire game to the notice of the competent authority timely of which the scrutiny committee has not taken any notice. In such like facts and circumstances when there is no loss to the government exchequer due to the undersigned and then declaring the guilt of the undersigned under rule 4 of the Efficiency and Discipline Rules, 2011 does not appeal to a man of conscience.

16. That the Inquiry Officer namely, Shakeel Asghar, (the then Deputy Solicitor, Law Department) (being Member of the Scrutiny Committee) tried his best to shift the whole burden over the shoulders of the undersigned without any justification being he was interested party and was trying his best to save his own skin at the cost of the undersigned and thus concealed the real picture from the notice of the competent authority despite of the objections made by the undersigned regarding his membership of the Inquiry Committee. The inquiry Report clearly envisage his contradictory remarks.

17. That the undersigned is not guilty of misconduct or any other act and omission but gave a dissenting opinion with the request to review/reconsider the directions contained in the letter referred



above and that being in the light of the well-known judgment of the august Supreme Court of Pakistan reported as **PLD 2013 SC 195** Paragraph No. 22 (iii) and in pursuance of the opinion of the undersigned addressed to the Deputy Solicitor, the Law Department was reviewing/reconsidering the directions as is envisaged from the letters referred above. The Inquiry committee thus skipped and not complied with the judgment of the August Supreme Court mentioned *ibid* in the words "**The decision of the Scrutiny Committee meeting held on 20/01/2017 in Law Department being the highest forum at Provincial Government level, needed immediate implementation to safeguard State interest and retrieve sate land out of land grabbers mafia without any argumentation, taking exceptions, reservations, raising objections or jumping to any other hostile or parallel conclusion**". The undersigned has only requested to review the decision of the scrutiny committee on the grounds mentioned in the letter mentioned *ibid* .

18. That the Inquiry Officer, namely Shakeel Asghar (the then Deputy Solicitor, Law Department has played the role of Prosecutor (although objections have been made by the undersigned) and thus he has quietly succeeded in his ulterior motives and saved his own skin by shifting burden over the shoulders of undersigned.
19. That the earlier reply submitted by the undersigned in response to the statement of allegations (SOA) may be considered part and parcel of the instant reply.
20. That being innocent in the instant case and being falsely involved by overloading with the burden of others and being made a scapegoat for no reasons at all **I definitely want to be heard in person** for the rebuttal of the allegations made in the report leveled against me.

**PRAYER:-**

*Therefore, in the light of the above facts and circumstances it is most respectfully prayed that the undersigned may very kindly be exonerated/absolved from the allegations being all the allegations are completely false, illegal and having no truth in the eyes of law, against the facts and thus baseless and the instant show cause notice may very kindly be filed without any further proceedings please.*

**Note: The Relevant record is already attached with the previous reply.**

**(MUSTAFA KAMAL)  
DISTRICT ATTORNEY  
DISTRICT TANK**

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

Dated Peshawar the 22-01-2018

NOTIFICATION

NO.SO(G)/LD/1-19/2014/PF/3855 WHEREAS Mr. Mustafa Kamal (BS-19) District Attorney Tank was proceeded against under the Khyber Pakhtunkhwa Govt: Servants (Efficiency & Discipline) Rules, 2011.

2. AND WHEREAS, Mr. Javid Anwar, (PCS SG BS-20), Secretary Public Service Commission Khyber Pakhtunkhwa and Mr. Shakeel Asghar, Deputy Solicitor Law Department were appointed enquiry officers to conduct inquiry against the accused officer.

3. AND WHEREAS, the Inquiry officers after having examined the charges, evidence on record and explanation of the accused officer has submitted the report.

4. AND WHEREAS, the competent authority afforded the opportunity of personal hearing to the accused officer on 06-12-2017.

5. NOW, THEREFORE, the Competent Authority, after having considered the charges, evidence on record, the explanation of the accused officer and defense offered by the accused officer during personal hearing and exercising his powers under Rule-14 of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 has been pleased to impose major penalty of "reduction to the lower pay scale from BS-19 to BS-18" upon Mr. Mustafa Kamal District Attorney Tank with immediate effect".

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

SECRETARY  
Govt: of Khyber Pakhtunkhwa,  
Law, Parliamentary Affairs and Human  
Rights Department

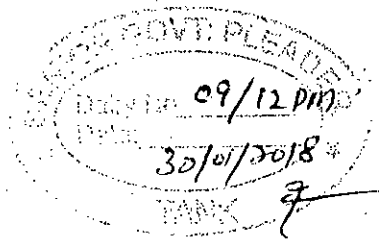
Copy forwarded to the: -

- 1- Principal Secretary to Chief Minister Khyber Pakhtunkhwa Peshawar.
- 2- District Attorney Tank.
- 3- District Accounts Officer Tank.
- 4- PS to Chief Secretary Khyber Pakhtunkhwa, Peshawar.
- 5- PS to Secretary Establishment Department Khyber Pakhtunkhwa.
- 6- PS to Secretary Law Department Khyber Pakhtunkhwa.
- 7- Officer concerned.
- 8- The Manager, Govt Printing Press, Peshawar.
- 9- Master file.

Seen

*Hidayat Ullah Mehsood*  
District Attorney  
Dist: Tank  
30/01/18

*Mohammad Yasin*  
(Mohammad Yasin)  
Section Officer (General)





29



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

Dated: Peshawar the 22.01.2018

**Notification:**

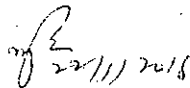
No. SO(G)/LD/1-19/2014/PF: / 935-54 The Competent Authority is pleased to authorized Mr. Mustafa Kamal (BS-18) to continue working as District Attorney Tank in his own pay scale with immediate effect till further order in public interest.

Secretary to Govt: of Khyber Pakhtunkhwa  
Law, Parliamentary Affairs & Human Rights  
Department

**Ends: No. & Date Even:**

Copy Forwarded to:

1. The District Attorney Tank.
2. The District Accounts Officer, Tank.
3. The PS to Secretary Law Department.
4. Officer concerned.
5. Master file.

  
(Muhammad Yasin)  
Section Officer (General)

District Attorney  
District Tank

10/12 PM  
30/01/18  
g.

Receipt  
Diary No - 2804 dt: 16-2-18 of (30)  
Law Dept. Office Receipt



OFFICE OF THE District Attorney

Tank

No. 25 /DA

12 / 02 / 2018

To,


The Worthy Secretary, Law Parliamentary Affairs & Human Rights Department  
Khyber Pakhtunkhwa, Peshawar.

Subject:

REVIEW PETITION AGAINST THE IMPOSITION OF PUNISHMENT OF THE KIND  
"REDUCTION TO THE LOWER PAY SCALE FROM BS-19 TO BS-18" IMPOSED VIDE  
NOTIFICATION NO. SO (G)/LD 1-19/2014/PF/2838-45 DATED: 22:01:2018,  
RECEIVED VIDE DIARY NO. 09/12 PM DATED: 30/01/2018, BY THE COMPETENT  
AUTHORITY, THE SECRETARY LAW, LAW DEPARTMENT, KPK.

Respected Sir,

Please enclosed find here with the subject captioned review petition of the undersigned for onward submission to the competent authority and further necessary action please.

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

  
MUSTAFA KAMAL 12/2/18

(DISTRICT ATTORNEY TANK)

To,

The Appellate Authority,  
The Worthy Chief Minister,  
Khyber Pakhtunkhwa, Peshawar.

31

Through: Proper Channel.

Subject: REVIEW PETITION AGAINST THE IMPOSITION OF PUNISHMENT OF THE KIND "REDUCTION TO THE LOWER PAY SCALE FROM BS-19 TO BS-18" IMPOSED VIDE NOTIFICATION NO. SO(G)/LD/1-19/2014/PF/2838-45 DATED: 22:01:2018, RECEIVED VIDE DIARY NO. 09/12 PM DATED: 30/01/2018, BY THE COMPETENT AUTHORITY, THE SECRETARY LAW, LAW DEPARTMENT, KPK.

Memo of representation:

Respected Sir,

I, Mustafa Kamal District Attorney, Tank, (BS-19) has been aggrieved beyond measure over award of punishment of the kind Reduction to lower pay scale form BS-19 to BS-18 inflicted on me by the Secretary Law Department, without observing due process of law and rules made thereunder.

**FACTS AND ASSUMPTION OF THE CASE**

Brief facts and assumption leading to my humble review petition are as under:-

1. That the petitioner belongs to a respectable family and have a dignified and integrated status among the family, society, Bench, the Bar and colleagues.
2. That the petitioner joined Police Department as Prosecuting Sub-Inspector on 22/04/1999 through Public Service Commission and successfully completed all the courses and passed all the exams with credit.
3. That the nomenclature of the petitioner's post was changed from Prosecuting Sub-Inspector to Assistant Public Prosecutor on 18/02/2002 and thus served in the Prosecution Directorate under Home and Tribal Affairs Department with no complaint from any quarter.
4. That on 29/09/2005 the petitioner was again selected as Additional Government Pleader, by qualifying the exam conducted by the KP Public Service Commission and was posted as Additional Government Pleader in Law Department,
5. That based on his untiring services for the cause of department the petitioner was promoted to the Post of Government Pleader, BS-18 on 31/12/2010.
6. That on 09/08/2012 the post of the petitioner was upgraded from BS-18 to BS-19 and the petitioner was posted as Senior Government Pleader (BS-19) and currently the nomenclature of the post stands changed from that of Senior Government Pleader to District Attorney. The petitioner is currently serving

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

- in Law Department as District Attorney (BS-19) in District Tank although presently in BS-18 consequent to the implementation of the impugned order.
7. That the petitioner has served the Law Department as District Attorney, in various districts of the province i.e. Dera Ismail Khan, Lakki, Bannu and Tank with utter satisfaction of the high ups and with no complaint whatsoever except the present one although false, baseless and illegal and thus maintained a decent and outstanding status among the Government departments, Bench, Bar and colleagues.
  8. That the conduct, loyalty to Government cause, competency and courage exhibited by the petitioner remained above board during the entire career. The petitioner was rewarded and awarded numerous commendation certificates besides cash awards too.
  9. That the opinion rendered by the petitioner, which provided for award of the impugned punishment, was purely in good faith and up to the best of my capability in the best interest of government. The previous Service record of the petitioner reflects that during the entire career of 18 years of service there has been no complaint of even a very meager nature against him and the petitioner was awarded A-I PERs throughout entire career. Hence, the sudden imposing of major penalty upon the petitioner will amount to virtual death of honor and has caused professional humiliation to the petitioner among the colleagues, Bench, Bar and the department and extremely detrimental to the future career of the petitioner.
  10. That while serving in the above capacity the petitioner was served with a charge sheet along with statement of allegations containing some false and frivolous allegation which was replied by the appellant with solid proof and denying all the allegations. (copy of the charge sheet, statement of allegation and the reply are annexure A, B & C) The reply may kindly be considered an integral part of the appeal.
  11. That an inquiry committee was constituted whereby Mr Javid ANWAR (PCS BS 20) and Mr Shakeel asghar Deputy solicitor (Bs 19) law department was nominated inquiry officer. That the petitioner has objected the constitution of the inquiry committee to the extent of **Mr. ShakeelAsghar, ex-Deputy Solicitor Law Department**, being not legally competent, and being interested officer (person) in the inquiry of the petitioner. Therefore, the entire proceedings conducted by such biased person has no legal footing and thus liable to be reviewed and set aside.
  12. That a slipshod inquiry was conducted by the inquiry committee without giving the opportunity of self-defense or personal hearing to the petitioner and recommended the petitioner for major penalty. However, the petitioner was never provided the finding of the inquiry report.

- 13. That upon the conclusion of the inquiry the petitioner was served with a show cause notice which was replied by the petitioner and requested for personal hearing .(copy of the Final show cause Notice and reply are D,E)
- 14. That without providing opportunity of personal hearing by the competent authority the petitioner was awarded punishment of 'Reduction to lower pay scale from Bs 19 to Bs 18 vide impugn Notification No SO(G)/LD/1-9/2014/PF/2838-45 dated 22/01/2018 , which was communicated vide diary No 09/12 PM dated 30/01/2018 (copy of the impugn Notification is annexed as F)
- 15. That feeling aggrieved from the impugn Notification the petitioner now filling the instant petition on the following grounds.

**GROUND FOR THE REVIEW PETITION**

- 1. That the impugned order is against the law, rules and facts on the record.
- 2. That the Secretary Law has passed the impugned order without proper perusal of the record and thus caused virtually condemned the petitioner on misconceived premises.
- 3. That the very constitution of the inquiry committee assigned to probe the matter was illegal and in violation of the rule under which it was required to be constituted.
- 4. That the petitioner had timely objected the constitution of the inquiry committee to the extent of **Mr. Shakeel Asghar, ex-Deputy Solicitor, Law Department**, being not legally competent, and being biased towards petitioner. Therefore, the entire proceedings conducted by a not very impartial committee has no legal footing and thus liable to be reviewed and set aside.
- 5. That the biased attitude of the above named inquiry officer is very much clear from the review petition preferred by the then Secretary Law, Mr. Muhammad Arifin, being the inquiry officer was assigned the task to submit the review petition in the august Supreme Court of Pakistan wherein material facts were concealed from the august Supreme Court of Pakistan.
- 6. That the inquiry committee has admitted that the petitioner has not caused any loss of a single penny to the government exchequer on one hand while on the other hand the said committee held that the allegations levelled against the petitioner stood proved which stance does not appeal to a prudent mind.
- 7. That while dealing with the case providing basis for award of impugned punishment the petitioner had rendered his opinion in the case in good faith and in the best interest of the government and in consonance with the judgments of the August Supreme Court of Pakistan, titled as **PLD 2013 SC 195** which would suffice to support the opinion as rendered by the petitioner rather it was bounden duty of the petitioner as per the above case law.

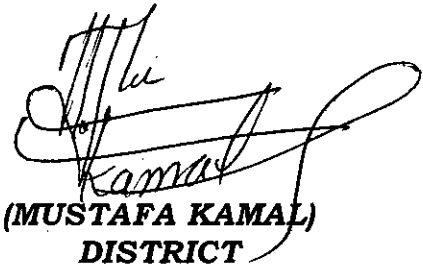
8. That the inquiry committee has also admitted the opinion of the petitioner declaring that the mutations in question were entered through a robakar and forged sale deed but in spite of such crystal clear facts the petitioner was made a scape goat without any fault whatsoever.
9. That the inquiry committee had also suggested a through inquiry in the alleged mutations although various inquiries had been conducted and responsibilities had already been fixed against those who were involved but no action whatsoever has been taken against them till date yet instead, the petition was sacrificed for no wrong at all. On this score too, the impugned order is liable to be set aside.
10. That it is pertinent to mention here that the questioned mutations clearly reflect that these were entered on the basis of Robakar in the year 2009 and not through court decree. Therefore, the impugned order is nullity in the eye of law yet the true facts have been buried and the land grabbers were given an opportunity to get undue advantage.
11. That neither the Scrutiny Committee nor the Revenue Officers/officials ever bothered to honour the verdicts of the learned Civil Judge, learned Additional District Judge, Honourable High Court and the August Supreme Court of Pakistan who have given unanimous decisions on this subject matter (property measuring 2441 Kanals approximately) and thus falsely and illegally pretended to have given effect to the ex-parte decree of the learned civil Judge, in another case although the government was not party to the said case and even no direction were issue to Government for its execution.
12. That the opinion render was in shape of request/information to review the order and the department also took action by calling comments from the concerned department in light of the review application. Hence the petitioner has got no option except to wait for further order when cognizance was taken.
13. That the petitioner has been condemned unheard as no opportunity of personal hearing has been provided by the competent authority further the competent authority cannot delegate power of personal hearing to any other official.
14. That the petitioner has not been provided right of fair trial as guaranteed by article 10-A of the Constitution of Islamic Republic of Pakistan 1973.
15. That the petitioner has been made escape goat as the real culprit has been set free without facing any proceedings hence the petitioner has been subjected to discrimination.
16. That the inquiry as well as other proceedings has not been carried out as per E & D Rules 2011 hence the impugn order is illegal
17. That the impugn order is against FR 29 as no specific period has been provided in the impugn order and only on this score too the impugn order is liable to be set-aside.

18. That the petitioners rely upon on the record already attached with the previous replies rendered in consequence of departmental proceedings besides the grounds set up in this petition.

**PRAYER:-**

On acceptance of the instant Review Petition it is earnestly and very humbly requested of your good self to very kindly set aside the impugned order/Notification No. **SO(G)/LD/1-19/2014/PF/2838-45** dated: 22/01/2018 whereby major penalty of "Reduction to lower Pay Scale from BS-19 to BS-18" has been imposed upon the petitioner and to re-instate/restore the petitioner to his original / former position with all allowances and back benefits and to exonerate the petitioner from the baseless, false, illegal and frivolous allegations charged against the petitioner.

Dated: 12 / 02 / 2018



**(MUSTAFA KAMAL)  
DISTRICT  
ATTORNEY  
DISTRICT TANK**

Through

ANNEXURE - I

36



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

Dated Peshawar the 07.06.2018

NOTIFICATION

NO.SO(G)/LD/1-19/2014/PF/ 24177-85 WHEREAS Mr. Mustafa Kamal District Attorney BS-19 Tank was proceeded against under the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011; and

2. WHEREAS, an inquiry committee was constituted wherein Mr. Javed Anwar, (PCS SG BS-20), Secretary Public Service Commission Khyber Pakhtunkhwa and Mr. Shakeel Asghar, Deputy Solicitor Law Department were appointed as enquiry officers to conduct inquiry against the accused officer; and

3. WHEREAS, the Inquiry committee after having examined the charges, evidence on record and explanation of the accused officer submitted report; and

4. WHEREAS, the competent authority accorded the opportunity of personal hearing to the accused officer; and

5. WHEREAS, the Competent Authority, after having considered the charges, evidence on record, the explanation of the accused officer and defense offered by the accused officer during personal hearing and exercising his powers under Rule-14 of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 was pleased to impose penalty of "Reduction to lower scale (BS-18)" upon Mr. Mustafa Kamal District Attorney Tank with immediate effect, which was notified vide notification of even number dated 22-01-2018; and

6. WHEREAS, Mr. Mustafa Kamal District Attorney (BS-18) Tank submitted review petition under Rules 17 of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011; and

7. THEREFORE, The Competent Authority after having considered the review petition of the officer and exercising his power under Rule-17(2)(b) of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011, has been pleased to reduce penalty of "Reduction to the lower pay scale from BS-19 to BS18" in to withholding of two annual increments for two years.

Chief Secretary  
Khyber Pakhtunkhwa,

Hidayat Ullah Mehsood  
Advocate High Court  
District Bannu

Copy forwarded to the:-

- 1- Principal Secretary to Chief Minister Khyber Pakhtunkhwa Peshawar.
- 2- District Attorney Tank.
- 3- District Accounts Officer Tank.
- 4- PS to Chief Secretary Khyber Pakhtunkhwa, Peshawar.
- 5- PS to Secretary Establishment Department Khyber Pakhtunkhwa.
- 6- PS to Secretary Law Department Khyber Pakhtunkhwa.
- 7- Officer concerned.
- 8- The Manager, Govt Printing Press, Peshawar.
- 9- Master file.

(Mohammad Yasin)  
Section Officer (General)

Kamal  
25/06/18

40/12/00PM  
22/6/2018



روایکار ہذا کے لئے درج ذیل کی تفصیلات فراہم کی گئی ہیں۔

مسترد صورتوں کے بارے میں تفصیلات درج ذیل ہیں۔  
 مسترد صورتوں کی تفصیلات درج ذیل ہیں۔  
 لیڈ ڈسٹرکٹ بار کے بارے میں تفصیلات درج ذیل ہیں۔

نمبر	تفصیلات	نمبر	تفصیلات
153-17	214	39-11	173
58-	132/183	135-9	197
14-1	70	30-13	63
47-1	95	25-9	120
56-5	92	11-6	188
39-18	260	01-11	368
73-10	274	138-1	262
511-13	279	44-1	91
58-5	280	17-7	77
5-13	305	69-7	189/190
19-14	66		1356/1371
45-9	87	6-16	199
35-	87	54-11	275
27-9	368	72-10	282
15-5	121	2-	458
6-13	137	109-0	111
13-8	466	126-7	100
1-9	465	222-13	272
2-14	456	121-4	271
2-18	455	81-1	276
20-4	70		
20-1	82/82		
0-14	84		
17-17	127-11		
20-	85		
5-8	171		
26-9	172		
20-3	94		

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

2441-16  
 355/DSC(1)  
 3-5-71

جناب عالی! ہر سے حکم نمبر 6-3/1737 برقی نمبر 1737 درجہ 4 جاری کردہ  
 منجانب اسٹینٹ منسٹری R & S کوڈ آف ریلوے سرورسز R.L.T.II کو پیش  
 نمبر 2480-8 کے ملاحظہ کیا گیا ہے۔ میر نمبر 18-3/69 کو رقمہ تعدادی 2480-8  
 بنام صدیق الحسن دایمی زعلی خان الارب کر کے جسٹسین الارب ٹیڈی نے میر پر یہ قصورانی الارب منکر  
 کے نام جاری کر دیا گیا اسی طرح اسے بی بی کے حوالہ سے ثابت ہوا کہ روڈ کار میں برے  
 نمبر 355/DS نمبر 3 قبل از 1975 کے رجسٹرڈ ہے۔ اس کا پتہ ہے لیکن  
 عدم اوفال نہیں کیا گیا ہے۔ رقمہ الارب 2480 بنام الارب ٹیڈی تبدیلی ملکیت منتقل نہیں ہوئی  
 کی بنا پر یہ عرض ہے فقط ان رقم 18-3/69

سہ ماہ بروز مندرجہ بالا کیس کے عمل سے متعلق

18/3/09  
 18/3/09

As the Robkar has since been  
 issued and case of allotment regarding  
 allotment is pending for payment of deposit  
 of legal fee is pending and as much necessary  
 legal proceedings may please be carried out  
 in the light of Revenue Dept/ legal procedure  
 accordingly etc.

Tehsil Land Dir/Rc

DSC/DJORD/R  
 18/3/2009

نام ملک و اجوال	نام ملک و اجوال	نام ملک و اجوال	نام ملک و اجوال	نام ملک و اجوال	نام ملک و اجوال	نام ملک و اجوال	نام ملک و اجوال	نام ملک و اجوال	نام ملک و اجوال
1319	167	کلے 2551 =	کلے 2551 =	حماة اہلبہرہ فاطمہ بیوہ	حماة اہلبہرہ فاطمہ بیوہ	کلے 2551 =	کلے 2551 =	حماة اہلبہرہ فاطمہ بیوہ	حماة اہلبہرہ فاطمہ بیوہ
		سندل گورنمنٹ	سندل گورنمنٹ	اقبال علی - البرار الحسن	اقبال علی - البرار الحسن	کلے 2551 =	کلے 2551 =	اقبال علی - البرار الحسن	اقبال علی - البرار الحسن
		پاکستان 792	پاکستان 792	جہ دربد 28 دلبران	جہ دربد 28 دلبران	کلے 2551 =	کلے 2551 =	جہ دربد 28 دلبران	جہ دربد 28 دلبران
		6/4/09	6/4/09	محمد امین الحسن قاسم بیٹھان	محمد امین الحسن قاسم بیٹھان	کلے 2551 =	کلے 2551 =	محمد امین الحسن قاسم بیٹھان	محمد امین الحسن قاسم بیٹھان
				سندل گورنمنٹ 27 ماڈل کالونی	سندل گورنمنٹ 27 ماڈل کالونی	کلے 2551 =	کلے 2551 =	سندل گورنمنٹ 27 ماڈل کالونی	سندل گورنمنٹ 27 ماڈل کالونی
				سعود آباد کراچی	سعود آباد کراچی	کلے 2551 =	کلے 2551 =	سعود آباد کراچی	سعود آباد کراچی
				792 =	792 =	کلے 2551 =	کلے 2551 =	792 =	792 =
				کلے 9402 =	کلے 9402 =	کلے 2551 =	کلے 2551 =	کلے 9402 =	کلے 9402 =
				حماة اہلبہرہ فاطمہ بیوہ	حماة اہلبہرہ فاطمہ بیوہ	کلے 2551 =	کلے 2551 =	حماة اہلبہرہ فاطمہ بیوہ	حماة اہلبہرہ فاطمہ بیوہ
				عظیمہ فذولان	عظیمہ فذولان	کلے 2551 =	کلے 2551 =	عظیمہ فذولان	عظیمہ فذولان
				5402	5402	کلے 2551 =	کلے 2551 =	5402	5402
				170	170	کلے 2551 =	کلے 2551 =	170	170
				سندل گورنمنٹ	سندل گورنمنٹ	کلے 2551 =	کلے 2551 =	سندل گورنمنٹ	سندل گورنمنٹ
				5402	5402	کلے 2551 =	کلے 2551 =	5402	5402

ANNEXURE - K

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9/04/09

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15	14	13	12	11	10	9	8	7	6	5	4	3	2	1
قانونگوئے	رپورٹ پیٹواری	فیس داخل خارج	شہرین نقل معینہ زمین	معاملہ ولگان	تقسیم زمین	نمبر نام کھیت ورقہ	نام مالک و احوال	نام کھانہ جمعیدی سابق	ماملہ ولگان	تقسیم زمین	نمبر نام کھیت ورقہ	نام کاشت کار و احوال	نام مالک و احوال	نام کھانہ جمعیدی سابق
						148-15	5942	172	148-15	148-15	148-15	192	5942	172
						30-15	1226	127-12	148-15	148-15	148-15	192	5942	172
						77-17	6262	127-12	148-15	148-15	148-15	192	5942	172
						26-8	1056	127-12	148-15	148-15	148-15	192	5942	172
						25-9	1018	127-12	148-15	148-15	148-15	192	5942	172
						32-7	647	127-12	148-15	148-15	148-15	192	5942	172
						11-11	220	127-12	148-15	148-15	148-15	192	5942	172
						11-11	647	127-12	148-15	148-15	148-15	192	5942	172

Hidayat  
A  
D

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نام کھادی جمعیدی سابق	180	181	182	183
نام طرف یا چاہ				
نام مالک و احوال	1014 شیل ٹورنمنٹ 862	6656 شیل ٹورنمنٹ 5506	1988 شیل ٹورنمنٹ 1642	553 شیل ٹورنمنٹ 346
نام کاشت کار	ہزار	ہزار	ہزار	ہزار
مکان و احوال	25-7	168-18	49-14	27-15
نمبر نام کھیت و رقبہ و تقسیم زمین	1014	1014	110	92
معاملہ و لگان	25-7	168-18	49-14	27-15
نام کھادی جمعیدی سابق				
نام مالک و احوال	1014 سہا لہیر خاصہ بیروہ	6656 سہا لہیر خاصہ بیروہ 5506 مڈروان	1988 سہا لہیر خاصہ بیروہ مڈروان 1642	553 سہا لہیر خاصہ بیروہ مڈروان 346
نام کاشت کار	ہزار	ہزار	ہزار	ہزار
مکان و احوال	25-7	168-18	49-14	27-15
نمبر نام کھیت و رقبہ و تقسیم زمین	1014	1014	110	92
معاملہ و لگان	25-7	168-18	49-14	27-15
شہدین و نقل و مددیہ				
فیس داخل خازنہ				
رپورٹ پٹوار و تصدیق گروڈا قانونگو				

Aszal  
Jai Lal Mehsou  
Advocate High Court  
District Bar, D.I. K.

41

نام کھانتہ جمعیدی سابق	نام طرف یا چاہ	نام مالک و احوال	نام کاشت کار	نمبر نام کھیت ورقہ	تقسیم زمین	معاملہ دلوگان	نمبر نام کھیت ورقہ	تقسیم زمین	معاملہ دلوگان	فیس داخل خارج	رپورٹ پٹواری	و تصدیق گروا اور قانونگوئے
	1319 مذکور	6774 = سندل ٹورنمنٹ مذکور	189	189 190 191 192 193	169-7	9-16 54-11 126-7 72-10 2-9 109-0 222-13 121-4 81-1	189 190 191 192 193	169-7 2774 =	6774 =			
نام کھانتہ جمعیدی سابق		6774 = سندل ٹورنمنٹ مذکور جو لائن لے 1189 سندل ٹورنمنٹ مذکور		189 190 191 192 193	169-7	9-16 54-11 126-7 72-10 2-9 109-0 222-13 121-4 81-1	189 190 191 192 193	169-7 2774 =	6774 =			

H. J. Khan  
 District Bar, D.I. Khan  
 1893



۱۵ ۱۴ ۱۳ ۱۲ ۱۱ ۱۰ ۹ ۸ ۷ ۶ ۵ ۴ ۳ ۲ ۱  
 راجہ رانجیت سنگھ مورخ میر عبد الستار صاحب ۹۷۲ تحصیل ۹۷۲ مورخ جبار مورخ رانجیت سنگھ مورخ

۱۵	۱۴	۱۳	۱۲	۱۱	۱۰	۹	۸	۷	۶	۵	۴	۳	۲	۱
رپورٹ پٹواری و تصدیق گرداور قانونگوئے	فہم داخل خارج	شہادت نقل معینہ زمین	معاملہ ولگان	نمبر نام کھیت ورقہ تقسیم زمین	نام کاشت کار واحوال	نام مالک و احوال	نام کھتہ جمعہ دی سابق	معاملہ ولگان	نمبر نام کھیت ورقہ (تقسیم زمین)	نام کاشت کار واحوال	نام مالک و احوال	نام طرف یا چاہ	نام کھتہ جمعہ دی سابق	
		سید علی		۲۸-۱۰۲ ۸۵	سماۃ لہنہہ فاطمہ بیوہ انور	سماۃ لہنہہ فاطمہ بیوہ انور		۲۸-۱۰۲ ۸۵	۲۸-۱۰۲ ۸۵	۲۸-۱۰۲ ۸۵	سید علی		۳۶۰ ۱۳۱۹	
		سید علی		۵-۸ ۱۲۱ ۱۲۱	ذبیحہ بیوہ مولانا	ذبیحہ بیوہ مولانا		۵-۸ ۱۲۱ ۱۲۱	۵-۸ ۱۲۱ ۱۲۱	۵-۸ ۱۲۱ ۱۲۱	ذبیحہ بیوہ مولانا		ذبیحہ بیوہ مولانا	
		ذبیحہ بیوہ مولانا		۲۹-۱۱ ۱۲۱ ۱۲۱				۲۹-۱۱ ۱۲۱ ۱۲۱	۲۹-۱۱ ۱۲۱ ۱۲۱	۲۹-۱۱ ۱۲۱ ۱۲۱				
		ذبیحہ بیوہ مولانا		۳۰-۳ ۱۱۲ ۹۲				۳۰-۳ ۱۱۲ ۹۲	۳۰-۳ ۱۱۲ ۹۲	۳۰-۳ ۱۱۲ ۹۲				
				علم ۱۸۳۲-۶ ۲۲				علم ۱۸۳۲-۶ ۲۲	علم ۱۸۳۲-۶ ۲۲	علم ۱۸۳۲-۶ ۲۲				
				علم حنفیہ ۱۸۳۲-۶ ۲۲				علم حنفیہ ۱۸۳۲-۶ ۲۲	علم حنفیہ ۱۸۳۲-۶ ۲۲	علم حنفیہ ۱۸۳۲-۶ ۲۲				
				۱۸۳۱-۱۱				۱۸۳۱-۱۱	۱۸۳۱-۱۱	۱۸۳۱-۱۱				
				۲۹۹۱-۱۰				۲۹۹۱-۱۰	۲۹۹۱-۱۰	۲۹۹۱-۱۰				

کے مورخین نے تصدیق کی ہے  
 (مورخ جبار مورخ رانجیت سنگھ مورخ)



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ANEXURE

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Wajid Ali Khan Mehsood  
Advocate High Court,  
District Dera G.D. Khan

تعداد 93 درجہ اولیٰٰں 15 11 12 13 14 15

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رجسٹر انتقالات موضع بہرہ بھرتہ تحصیل شجاع ضلع کوٹلہ ورنق نمبر 92

1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
نام کھانہ جمعہ کی سابق	نام طرف یا جاہ	نام کاشت کار	نمبر نام بحیثیت رقبہ و تقسیم زمین	معاملہ و لگان	نام کھانہ جمعہ کی سابق	نام مالک و احوال	نام کاشت کار و احوال	نمبر نام بحیثیت رقبہ و تقسیم زمین	معاملہ و لگان	نمبر نام بحیثیت رقبہ و تقسیم زمین	معاملہ و لگان	نمبر نام بحیثیت رقبہ و تقسیم زمین	معاملہ و لگان	نمبر نام بحیثیت رقبہ و تقسیم زمین
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نام کھانہ جمعہ کی سابق	نام طرف یا جاہ	نام کاشت کار و احوال	نمبر نام بحیثیت رقبہ و تقسیم زمین	معاملہ و لگان	نام کھانہ جمعہ کی سابق	نام مالک و احوال	نام کاشت کار و احوال	نمبر نام بحیثیت رقبہ و تقسیم زمین	معاملہ و لگان	نمبر نام بحیثیت رقبہ و تقسیم زمین	معاملہ و لگان	نمبر نام بحیثیت رقبہ و تقسیم زمین	معاملہ و لگان	نمبر نام بحیثیت رقبہ و تقسیم زمین
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اندراج جمعہ کی گذشتہ یا آخری انتقال جس کی ترمیم مطلوب ہے

اندراج جمعہ کی جانب کیا جاوے

نمبر نام بحیثیت رقبہ و تقسیم زمین

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ANNEXURE M 451

IN THE COURT OF MUHAMMAD ARIF KHAN, CIVIL JUDGE III, at DERA ISMAIL KHAN.

Suit No. 544/1 of 1982.  
Suit No. 50/1 of 1982.

Dafadar etc Versus Govt: of NWFP etc.  
Aziz Jan etc Versus Govt: of NWFP etc.

Date of institution ..... 25.5.1982  
21.9.1982

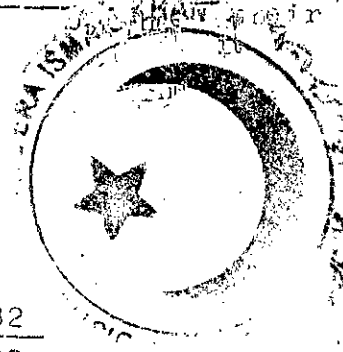
Date of decision ..... 09.06.2003

SUIT FOR DECLARATION.

JUDGMENT:

The first suit was instituted on 25.5.1982 while the other suit titled Muhammad Aziz Jan V/S Govt: of NWFP was instituted on 21.9.1982. The parties made their appearance, both the suits were consolidated on 9.1.1988 vide order sheet No.50 in suit No.56 titled Dafadar Versus Govt: of NWFP of 1986. The facts in brief of both the cases are as follows:-

The plaintiff Dafadar etc are seeking a declaratory suit to the effect that the suit land situated at Moza Mandara measuring 592 Kanals, the detail of which has been given in the title of the plaint, was allotted to the predecessor in interest of the plaintiffs Dafadar etc vide RL-II No.35 dated 28.12.1970. The plaintiffs claimed to be the lawful owners and in possession of the suit

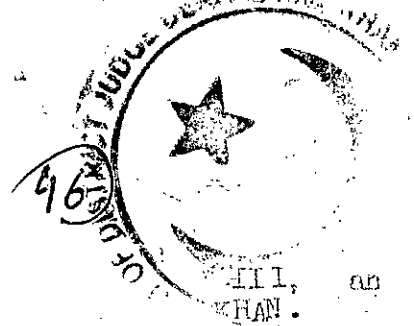


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MUHAMMAD ARIF KHAN  
Civil Judge III/Du of, Magisterate  
Dera Ismail Khan

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Examiner 21/3/17



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land, which was allegedly auctioned by the Rehabilitation Department to defendant No. 1.

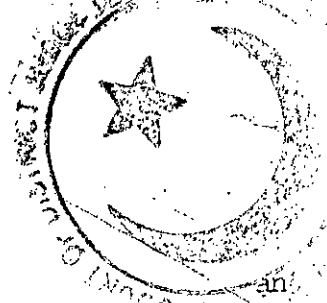
It was alleged that the said auction was illegal, void and ineffective upon the rights of the plaintiffs. The plaintiffs requested to cancel the said auction as defendant No. 8 has got no concern with the suit land through the alleged auction. The plaintiffs are seeking declaration ~~with~~ alongwith perpetual injunction against the defendants, in alternative they are seeking possession of the suit land against the defendants.

The consolidated suit No. 17/1 of 1982 in which the amended plaint was submitted on 22.2.1986 vide order sheet No. 38 dated 22.2.1986 and the plaintiffs Aziz Jan etc are seeking declaration to the effect that the order passed by defendant No. 4 bearing No. 481/PB dt: 5.8.1982 vide which different mutations mentioned in the title of the suit were recalled.

The plaintiffs alleged that the said letter i.e 481/PB dt: 5.8.1982 was forged, fictitious and without authority of the concerned officer and liable to cancellation. The plaintiff also challenged the allotment of 592 kanals.

  
MOHAMMAD ARIF KHAN  
Civil Judge III/Judl. Magistrate  
Dera Ismail Khan

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land to defendant No. 11 to 13 and the enquiry report submitted by defendant No. 5 in this regard. The plaintiffs claimed that they are the bona fide purchaser through an open auction and their rights have been safe-guarded under section 41 of the Transfer of Property Act. The revenue record challenged by them are liable to be corrected. The plaintiffs are also seeking perpetual injunction in their main suit. Following consolidated issues were framed in both the cases:-

CONSOLIDATED ISSUES.

1. Whether the plaintiffs have a cause of action & locus standi ?
2. Whether the suit is competent in its present form?
3. Whether the suit is bad on account of mis-joinder of necessary parties and multifariousness of causes of action ?
4. Whether the suit is bad for non-joinder of necessary parties ?
5. Whether the suit is within time ?
6. Whether the plaintiffs are estopped to sue ?
7. Whether this Court has got jurisdiction to try the present suit?
8. Whether the suit is properly valued for the purpose of Court fee ?
9. Whether the suit land was allotted to Munshi S/o Bahadar, the predecessor-in-interest of the plaintiffs, vide R.L.II. No. 35 dated 28.12.1970 and as such the plaintiffs are owners in possession of the suit land and the defendants have got no concern with it and the auction of it in favour of Ahmad Jan deidt is illegal, void and ineffectual against the rights of the plaintiffs ?
10. Whether the amended plaint of Mohammad Aziz Jan etc, is not in accordance with the permission granted for the purpose of amendment and new points have been introduced in the same, if so, its effect ?

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MORAMMAD ANIF KHAN  
 Civil Judge III/Judl. Magistrate 16  
 Dera Ismail Khan

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11. Whether the suit property was allotted to Mohammad Aziz, an etc, on the basis of their highest bid in open auction and the subsequent cancellation of suit property from their names and its re-allotment is wrong, illegal, if so, what effect ?
12. Whether suit property stand already allotted and Mohammad Jan has managed its auction collusively by taking benefit of his post and also no payment was made by Mohammad Aziz Jan etc, for the suit property under auction and the allotment on the basis of said mutation was rightly cancelled as a result of enquiry etc, if so, its effect ?
13. Whether enquiry conducted by Mohammad Amin Khattak A.C, was impartial, in accordance with the rules keeping in view the principles of equity and justice.
14. Whether no confirmation/allotment of any land in favour of Munshi Claimant could be ordered after 30.6.74 according to settlement scheme No.II of 1976 and the documents reg: claim of Munshi received in Rehab: Office D.I.Khan are not genuine, if so, its effect ?
15. Whether orders of the defendants reg: cancellation of the mutations, mentioned in D. C. DIKhan's letter No.481/PB dt: 5.8.82, passed by the defendants on the basis of enquiry conducted by Mohammad Amin Khattak A.C, were in accordance with law, rules and the procedure provided for the purpose and were within their legal competency for the purpose, if not, its effect ?
16. Whether these cancellation orders of the mutation were against the law, rules and procedure provided for the purpose and were beyond jurisdiction of the deftds: and are not binding upon M. Aziz etc, if so, its effect ?
17. Which of the parties is entitled to the decree as prayed for
18. Relief.

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During the course of proceedings the

August High Court cited both the cases in the list of target cases and directions were made to the Court to expeditiously dispose of the cases, hence mostly day to day hearing was conducted. The parties submitted evidence in support of their respective contention and after the close of evidence the arguments of both the counsel as well as parties heard. My issues-wise finding upon these issues is as

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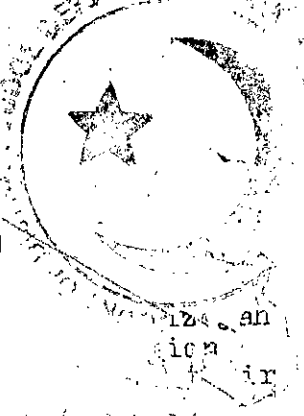
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Under:

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MOHAMMAD ARIF RIZAN  
Vil. Judge District Magistrate  
Dera Ismail Khan

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Issue No. 1, 9, & 11 These issues are interrelated and hence discussed jointly.

In the first suit titled Dafadar Versus Govt: of NWFP the plaintiffs namely Dafadar, Muhammed Yaseen or Shabir Ahmad did not appear in person. They appeared through Hussain Bakhsh the alleged attorney. In RL-II cases mostly the plaintiffs do not appear and it is the important point which creates malafide on the part of the plaintiffs. In the connected 12(2) CPC application the counsel for Aziz Jan submitted death certificate of Yaseen (Plaintiff No. 2 in the present suit) and his date of death was 24.11.1984 vide his death certificate Ex. AW. 7/2 ( in the 12(2) CPC application). According to the counsel for the plaintiffs, plaintiff No. 1 & 3 are alive but they never appeared in the present case.

The attorney for the plaintiff namely Hussain Bakhsh died during the course of proceeding but neither the list of legal heirs of the deceased Muhammad Yaseen was submitted nor any other power of attorney was submitted after the death of Hussain Bakhsh.

The counsel for the plaintiffs regularly appeared with a person namely Muhammad Ramzan S/o Hussain Bakhsh who never drew the attention of the Court towards these major lacunae nor submitted any fresh

power of attorney or the list of legal heirs of

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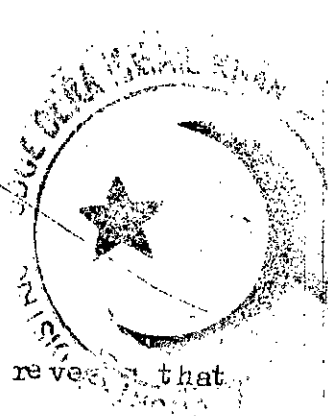
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MUHAMMAD ARIF KHAN  
Civil Judge, Magistrate  
Lower Grade Khan

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deceased Muhammad Yaseen. The record reveals that my predecessor on 4.3.2000 vide order sheet No.162 directed the counsel for the plaintiffs to produce the plaintiff in person and on 27.3.2000 last opportunity was given vide order sheet No.163 to produce the plaintiffs alongwith original power of attorney. The plaintiffs avoided the mendatory direction of the Court and in order to divert the attention of the Court an application for making certain persons as necessary party in the suit was submitted on 19.4.2000, in the light of that order the case was fixed for the personal appearance of plaintiffs/their legal heirs alongwith original record including the power of attorney, RL-II etc. on 4.6.2000 while rejecting the application for adding Abdul Karim etc as necessary party in the column of defendants another opportunity was also given vide order sheet No.206 dt:5.6.2003 to produce the plaintiffs/their legal heirs in person inspite of that the plaintiffs or their legal heirs did not appear before the Court, neither the original nor Power of Attorney,/concerned RL-II produced before the Court and thus the plaintiffs failed to appear

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MOHAMMAD ARIF KHAN  
Civil Judge (J) Dera Ismail Khan  
Dera Ismail Khan

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Examiner

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before the Court in person nor their legal heirs appeared. Moreover, the concerned RL-II or the special power of attorney was not produced before the Court.

The record further reveals that the statement of Hussain Bakhsh recorded as PW.4 on different dates and he himself admitted that the said RL-II regarding 592 Kanals Shumara No. 35 was not confirmed by the concerned Assistant Commissioner/Deputy Settlement Commissioner. The photocopy of RL-II Ex.PW.2/2 reveals that the proposal was made by the concerned NTR on 28.12.1970 and 01.01.1977 but the deed Ex.PW.2/3 was not confirmed by the concerned Assistant Settlement Commissioner. So this deed has got no value in the eyes of law. Likewise the Robkar Ex.PW.2/1 does not mentioned the Shumara No. or concerned RL-II. Moreover the name of Patwari Muhammad Ramzan is written at the end of concerned Robkar and the signature was made by some other person namely Ghulam Sarmad and this document itself has lost its value in the eyes of law. So far the claim No. 8988 is concerned, 1415 units allotted on this claim. According to Ex.PW.2/D-49, 269 units were allotted in Mangolati while remaining 1146 units were transferred in Mahi-Tibba and proper

MOHAMMAD ARIF KHAN  
Civil Judge (Magistrate)  
Dera Ismail Khan

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allotment was made in Mahi-Tibba . Thus the claim of Munshi regarding 14 15 units was satisfied in Mangolati as well as Mahi-Tibba. Munshi S/o Bahadar had no remaining units in his claim, so Munshi or his legal heirs never appeared at DIKhan in the proceeding of their suit rather the alleged attorney deceased Hussain Bakhsh pursued his case with his ulterior motives. The fee Bahaliyat was also not deposited on the concerned RL-II Bz.PW.2/2. During the course of his chief examination the attorney Hussain Bakhsh made an offer, that the plaintiffs are ready to purchase the suit land at a price of four times bigger than that paid by defendant No.1 to the estate, meaning thereby that the plaintiffs are not sure about their alleged ownership of the suit land.

In these circumstances in suit titled Dafedar V/S Govt: of NWFP, the plaintiffs have got no cause of action or locus standi. All the issues decided accordingly.

So far as the other suit titled Aziz Jan V/S Govt: of NWFP is concerned the disposal of the unallotted evacuee land is governed by scheme-II framed under the Evacuee property and Displaced Persons Law (Repeal) Act, 1975, sub-Para 1 of Para-2 of Chapter-III of the said

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MUHAMMAD ARIFF KHAN  
 Civil Judge (Magistrate)  
 Dera Ismail Khan

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Scheme expressly lays down that in the first place and unallotted Rural Evacuee Agricultural Land shall be offered to the landless tenants who have been in actually cultivating possession thereof upto the extent of subsistence holding. In this case plaintiffs, the transferees are not the sitting tenants at all. According to Section 7 (VIII) of the said law the plaintiffs failed to deposit the 1/4th as an earnest money in cash with the concerned Assistant Commissioner. Nor the plaintiffs have deposited 25 % amount of the auction money within 3 days with the concerned Assistant Commissioner, the remaining 75 % amount was not deposited within 15 days as required under Paras 8, 9, 10, and 11 of Chapter VII of the scheme. In fact the plaintiffs were not qualified persons at all. Aziz Jan the general Attorney for the plaintiff was a steno/typist with the then Assistant Commissioner BIKhan who misused his status as a Govt. servant. Under Section 164 (2) of the West Pakistan Land Revenue Act 1967 the Collector has got vast Revisional powers and call for the record of any case pending before or dispose of by any subordinate Revenue Officer. In the present suit the unlawful orders

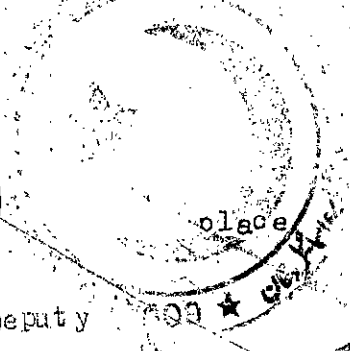
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MOHAMMAD ARIEF KHAN  
Civil Judge Magistrate, Magistrate  
Dera Isman Khan

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passed by the then Assistant Commissioner/Deputy  
Settlement Commissioner were recalled as evident from the  
face of this orders. The basic auction was  
illegal and unlawful and the plaintiffs failed  
to comply <sup>with</sup> the requirements of auction, therefore,  
issues are decided against the plaintiffs.

Issue No.2

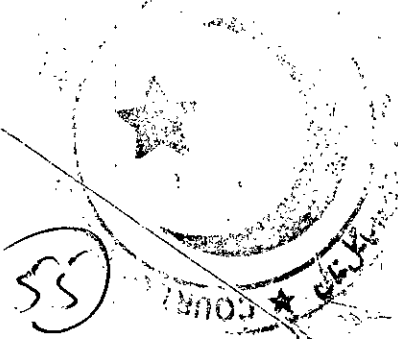
Both the suits of the plaintiffs are not  
competant in its present shape as the first suit  
Dafadar V/S Govt:of NWFP is based upon false,  
fictitious and bogus RL-III. Neither the plaintiffs  
appeared in person nor produced original record  
before the Court, inspite of the clear directions  
of the Court nor Munshi the basic owner/claimant  
of the suit land was lawful owner/allottee, his  
claim is based on fabrication. The sealed letter  
No.DIOR 22 dt:3.1.2003 received from the Deputy  
District Officer, Tehsil Ahmad Poor East in case  
titled Abdul Karim V/S Hussain Bakhsh is self  
speaking. The units to the claimant namely Munshi  
S/o Bahadar have been satisfied in Moza Mangloti  
and Mahi Tibba and the said Munshi had no remaining  
units, therefore, his claim at DIKhan is itself  
forged one. So far as the auction in the consoli-  
dated case is concerned the Govt: has got the  
powers to recall any unlawful and any illegal

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MOHAMMAD ARIF KHAN  
Civil Judge, District Magistrate  
Dera Ismail Khan



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auction order and when gross irregularity committed by the concerned officer and two enquiries were conducted against those orders and in both enquiries it was recommended that auctions in favour of plaintiffs were illegal and unlawful, therefore, in the light of those enquiry reports as well as the entire evidence produced before the Court, both the suits are incompetent in their present form.

Issue No. 3 & 4

Issue No. 3 & 4 are discussed jointly. In the suit titled Dafadar V/S Govt. of NWFP the plaintiffs failed to cite Muhammad Aziz Jan, Muhammad Saeed Jan, Mst: Malook Zadi, Jan Mubarak Sultan, Haji Ghulam Qasim (deceased) the plaintiffs No. 1 to 6 in the case of Muhammad Aziz Jan V/s Govt. of NWFP, while in the connected case Muhammad defendant No. 5/ Amin Khatak was only an enquiry officer having no concern with the grant of education but he was cited as defendant No. 5.

The enquiries Ex.PW.2/D30 and Ex.PW.2/31 were conducted by Muhammad Amin Khatak the then Asstt. Commissioner Tank while another enquiry report which is Ex.PW.2/D-65 conducted by Mst: Khalida Yousof the then Deputy Secretary-I. The first enquiry officer was cited as necessary party by

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MOHAMMAD ARIF KHAN  
Civil Judge (T) & Magistrate  
Dera Ismail Khan

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plaintiff Aziz Jan in his case but the second enquiry officer was not cited as necessary party by the said plaintiff in his plaint. Hence both the suits are bad on account of mis-joinder of necessary parties and non-joinder of necessary parties. The plaintiff Aziz Jan not only challenged the cancellation of auction through letter No.481/PB dt:5.8.1982 but in one and the single suit he is seeking relief against Munshi S/o Bahadar defendant No.11 to 13 regarding Shumara No.35 RL-II of Moza Mahdra. At the same time he <sup>is</sup> seeking security under Section 41 of the Transfer of Property Act alongwith perpetual injunction etc in his plaint which is in real sense the multifariousness of causes of action. Both the issues are decided against the plaintiff.

Issue No.5

This issue was not pressed at the bar hence decided in favour of plaintiffs.

Issue No.6

The plaintiffs in both the suits did not come to the Court with clean hands. The malafide of Dafadar has been discussed in detail in the above issues, his original RL-II was forged, fictitious, having no force in the eyes of law.

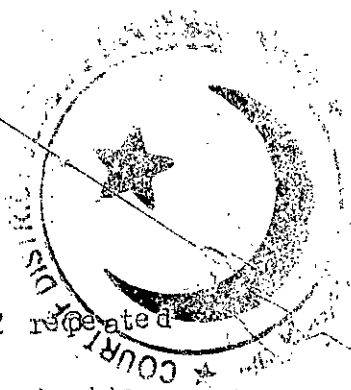
The plaintiffs themselves did not appear before the Court in person nor produced the original

MUHAMMAD ARIEF KHAN  
 Civil Judge (Magisterial)  
 Dera Ismail Khan

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record before the Court inspite of repeated opportunities given to him. While in the connected case the malafide of Aziz Jan can not be ignored from the fact that he was not a bonafide bidder in the bidding proceeding. He failed to ~~deposit~~ deposit the earnest money as well as 25 % of the remaining amount well within time. The auction was conducted on 13.9.1977 and Ahmad Jan deposited the entire amount on 1.3.1978 through Challan Ex.PW.2/14 in clear violation of bid proceedings. Likewise on 25.12.1976 the plaintiffs purchased the suit land at Moza Handan and deposited only Rs.570/- on 4.1.1977. Moreover the remaining amount was also deposited in clear violation of the bid proceeding having complete malafide on the part of the plaintiffs. In these circumstances both the plaintiffs are estopped to sue by their own conduct and malafide.

Issue No.7 & 8

Both these issues are not pressed at the bar hence decided in favour of the plaintiffs.

Issue No.10.

In the case titled Aziz Jan V/S Govt: of NWFP Order-sheet No.34 dt:16.1.1986 reveals that the plaintiff was admitted to

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submit an amended plaint on the application of Hussain Bakhsh etc for citing them as necessary party in the column of defendants. The plaintiffs Aziz Jan etc were bound to restrict their amended plaint only to the contents of their said application. The plaintiffs in violation of the Court order dt:16.1.1981 submitted the amended plaint on 22.2.1986 vide order sheet No. 38, in clear violation/ of the permission granted ~~XXXXX~~ to them by the Court. The plaintiff narrated new facts in his amended plaint and thus clearly violated the orders of the Court. Legally the plaintiffs were bound to submit separate suit for <sup>their</sup> each and every fact but they relied upon the single amended plaint which is against the law. Issue is decided against the plaintiffs.

Issue No. 12

Issue No. 12 has been partly discussed above. Basically Aziz Jan was not qualified for the auction proceeding. He was not/landless tenant. His basic qualification was against the law, Scheme III framed under the evacuee property and Displaced persons Law (Repeal) Act, 1975. Sub-Para- 1 of Para-2 of Chapter-II of the said scheme. Basically Munshi S/o Bahadar was the alleged allottee

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MUHAMMAD ARIEF KHAN  
Civil Judge III/Judl. Magistrate  
Dera Ismail Khan



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at that time and the property was already allotted to him though his allotment was later on found illegal, but at that time when the auction was made the suit land was not legally available for auction and Aziz Jan malafide managed his auction collusively by taking benefits of his posts. Two enquiries were conducted in <sup>this</sup> regard. Both the enquiries were decided against the plaintiffs and it was found that the entire auction proceeding was based on fraud and collusion. Aziz Jan (plaintiff) failed to pay the earnest money and its remaining instalment well within time as per the conditions of the alleged auction. Defendant No.4 has rightly cancelled the auction in the light of letter No.481/PB dated 5.8.1982, as well as in the light of two enquiries conducted by two responsible officers. Issue is decided against the plaintiffs.

Issue No. 13

The enquiry conducted by defendant No.5 and was impartial/in accordance with the rules. Keeping in view the principle of equity and justice the worthy enquiry officer summoned all the concerned persons to appear before him. ~~XXXXXXXXXXXXXXXXXX~~ The summons issued to ~~the~~ plaintiff No.3 Ahmad Jan Ex.PW.2/D-10 was duly signed by the enquiry officer. The report received on the back of the same is

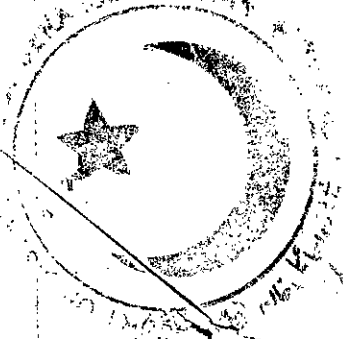
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MOHAMMAD ARIEF KHAN  
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astonishing. Aziz Jan was basically the Steno-  
 Typist of the then Assistant Commissioner DI Khan  
 and Ahmad Jan was his brother. The report of  
 Lumberdar namely Khuda-Bakhsh of Mohalla Nizam  
 Khan is eye opener as per the arguments of  
 the learned opposite counsel. This Khuda-Bakhsh  
 was a petition writer and his table was adjacent  
 to the Court of the then Assistant Commissioner  
 where he used to write deeds of the litigants.  
 It is natural that Aziz Jan and Ahmad Jan  
 were known to him, as he was neighbour of Aziz Jan  
 and Ahmad Jan in Mohallah Nizam Khan. The said  
 Lumberdar gave his report dt: 2.12.1979 that  
 in his  
 there was no Ahmad Jan in Mohalla. The malafide  
 of the plaintiffs namely Aziz Jan and Ahmad Jan  
 can not be ignored during the course of proceeding  
 of enquiry they were reluctant to face the  
 enquiry which was under process against them.  
 They intentionally avoided to appear before the  
 enquiry officer, and prima facie there was nothing  
 in defence with them to safeguard themselves against  
 the enquiry which was under process against them.  
 The enquiry officer had to proceed with the enquiry  
 and he examined all the witnesses appeared before  
 him, which were duly cross-examined and all the  
 revenue record perused by the enquiry officer.

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MOHAMMAD ARIF KHAN  
Civil Judge III/ndi, Magistrate  
Dera Ismail Khan

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The plaintiff Ahmad Jan etc can not defend themselves on the mere pretext that they were not given any <sup>once</sup> opportunity for appear before the enquiry Officer. As their mala fide intention was involved and they intentionally avoided their appearance before the enquiry Officer.

The issue is decided against ~~XXX~~ Ahmad Jan etc and in favour of defendants/defendant No.5.

Issue No. 14

This issue has been discussed above in detail. Basically the claim of Munshi was forged, fictitious and based on fraudulent assertion. The allotment of Munshi was already made in two different Mozas namely Mangolati and Mahi Tibba in District Ahmad Pur East. There was no remaining claim of Munshi at all. So far as the allotment of any land in favour of Munshi is concerned it is evident from the evacuee Property and Displaced Persons Law (Repeal) Act, 1975 that allotments of evacuee lands stood ben since 1976. The issue is decided against the plaintiffs Dafadar etc.

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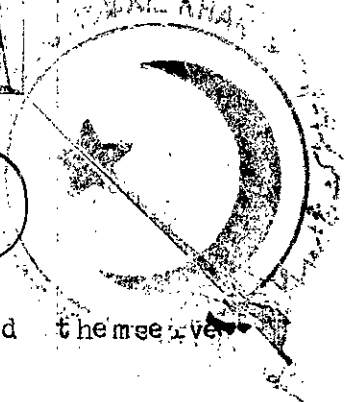
Issue No. 15

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So far as this issue is concerned, basically the order of defendants regarding cancellation of the mutation of Aziz Jan, Ahmad Jan etc are concerned, vide letter No 481/PB dt:5.8.1982 passed by the then Deputy

MOHA AHMAD ARIF KHAN  
Civil Judge III/Adl. Magistrate  
Dera Ismail Khan

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The plaintiff Ahmad Jan etc can not defend themselves on the mere pretext that they were not given any opportunity for appear<sup>once</sup> before the enquiry officer. As their malefide intention was involved and they intentionally avoided their appearance before the enquiry officer.

The issue is decided against ~~the~~ Ahmad Jan etc and in favour of defendants/defendant No.5.

Issue No. 14

This issue has been discussed above in detail. Basically the claim of Munshi was forged, fictitious and based on fraudulent consent. The allotment of Munshi was already made in two different Mozas namely Mangolati and Mahi-Tibba in District Ahmad Pur East. There was no remaining claim of Munshi at all. So far as the allotment of any land in favour of Munshi is concerned it is evident from the evacuee Property and Displaced Persons Law (Repeal) Act, 1975 that allotments of evacuee lands stood ban since 1976. The issue is decided against the plaintiffs Dafadar etc.

Issue No. 15

So far as this issue is concerned, basically the order of defendants regarding cancellation of the mutation of Aziz Jan, Ahmad Jan etc are concerned, vide letter No 481/PE dt:5.8.1982 passed by the then Deputy

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MOHAMMAD ARIEF KHAN  
Civil Judge III/2nd Magistrate  
Dera Ismail Khan

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Commissioner, Dikhan to conduct enquiry in the matter. The enquiry officer was absolutely a competent person and he impartially conducted the enquiry. The enquiry reports Ex.PW.1/30 and Ex.PW.1/31 are absolutely according to the law and the concerned rules and the procedure provided for the purpose. The issue is decided against Ahmad Jan etc.

Issue No. 16

The cancellation orders of the mutations were neither against the law, rules or the procedure provided for the purpose. These orders were fully under the jurisdiction and passed by the lawfull authority. The enquiry was conducted in an impartial manner, even, a prudent man may admit the contents of enquiry as correct for the reason that as per the evacuee property and displaced persons Law (Repeal), Act-1975. The Ahmed Jan etc were not qualifying for the bid. The scheme was absolutely introduced for those agriculturists who were in possession of the evacuee land and without any ownership of any agriculture land. Moreover, Aziz Jant etc further violated the rules prescribed for bidding. As the so called auction was made on 12.9.1977, A ziz Jan etc neither

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deposited the earnest money nor the 25% amount prescribed as second condition, even the sum of Rs. 34,000/- was deposited on 1.3.1978 after a period of 5 months and 18 days. That too notices issued by the D.S.C on 29.12.1979, when

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It is interesting to note that the land measuring 3136 Kanals 06 marlas at Moza Mandara was auctioned in a sum of Rs. 34,000/- meaning thereby <sup>that</sup> Aziz Jan etc obtained the land at Rs. 10.85 per Kanal and this sole ground is

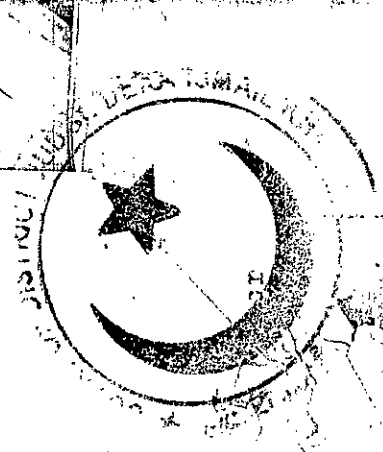
sufficient to set aside the alleged auction granted to Aziz Jan etc. It is an eye opener that the defendant namely Aziz Jan etc how misused his status as a Govt: Servant. The suit land remained <sup>in</sup> the possession of the defendant since 1977 and they are cultivating the entire land since 1977 and Million of Rupees have been earned by the defendant Aziz Jan etc, No. one enquired about the produce of these huge lands that in which capacity Aziz Jan etc cultivating the land for their own purpose/benefit. Moreover, it is also a settled principle of law that no illegal act can be regularized on the basis of mere technicalities. The

*alleged* auction was itself illegal, How can the Court can declare it to be legal on the mere ground of technicalities. The issue is decided against Aziz Jan defendant etc.

Issue No. 17

The plaintiffs in both the suits

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failed to prove their contentions beyond the shadow of doubt hence none of the plaintiffs is entitled to the decree as prayed for.  
Relief.

The plaintiffs failed to prove their contentions beyond the shadow of doubt, clear malafide exists on the part of the plaintiffs which is discussed in detail in the above issues hence both the suits are dismissed with cost. File be consigned to Record Room after its completion.

Announced.  
D.I. Khan

Dt: \_\_\_\_\_

(Muhammad Arif Khan),  
Civil Judge - III,  
Dera Ismail Khan.

Certificate.

Certified that this judgement consists of 20 pages. Each page has been read over, corrected, signed by me wherever necessary.



(Muhammad Arif Khan),  
Civil Judge - III,  
Dera Ismail Khan.  
MOHAMMAD ARIF KHAN  
Civil Judge III/District Magistrate  
Dera Ismail Khan

ATTESTED TO BY \_\_\_\_\_

District And Sessions Judge  
Dera Ismail Khan

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Annexure 33N

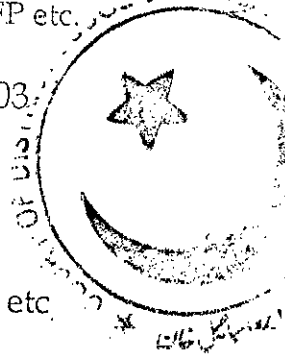
**IN THE COURT OF INAMULLAH KHAN.**  
**ADDL: DISTRICT JUDGE-VII, D.I.KHAN.**

04  
In-AD  
02/09/03  
31/2009

RCA31/XIII of 2009/2003  
Muhammad Aziz Jan etc  
(Appellants) Versus Govt. of NWFP etc.  
(Respondents)  
Date of institution.....02.09.2003

RCA 32/XIII of 2009/2003  
Abdul Karim etc  
(Appellants) Versus Govt. NWFP etc  
(Respondents)  
Date of institution.....15.09.2003

Date of decision of both appeals .....25.11.2009



**JUDGMENT**

1. Through the instant single consolidated judgment, I intend to dispose of two appeals, RCA No. 31/2009, titled Muhammad Aziz Jan Vs Govt. NWFP etc and RCA No.32, titled Abdul Kareem Vs Govt. of NWFP etc, as both the appeals have arisen out of a single consolidated judgment of learned Civil Judged-III, dated 09.06.2003, now impugned before this Court.

Brief facts of the cases are as under.

2. Initially Suit No. 544/1 was instituted by Dafadar and Muhammad Yasin sons of Munshi and Shabbir Ahmad son of Kamedan on 25.05.1982. They have sought declaration to the effect that the suit land measuring 592 kanal situated at Moza Mandhra, the proper description and detail of which have been mentioned in the plaint, was allotted to the predecessor in interest of the plaintiffs, vide RL-II No.35 dated 28.12.1970. The plaintiffs claimed to be legal owner in possession of the suit land, which was allegedly illegally auctioned by the Rehabilitation

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In-AD



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Department to one Ahmad Jan s/o Faizullah Khan herein respondent No.8. The plaintiffs were aggrieved by the said auction which, according to them, was illegal, void and so ineffective upon the rights of defendants. The plaintiff seeks cancellation of the said auction with the plea that the defendant No.8 has got no concerned whatsoever with the suit land through the alleged auction. The plaintiffs have also sought perpetual injunction along with declaration and in alternative, they sought possession of the suit land against defendants.

3. Suit No.50/1 of 1982, was instituted by Muhammad Aziz Jan and six others against Govt. of NWFP etc and Dafadar and Yasin sons of Munshi etc. The plaintiffs in this suit have sought declaration to the effect that the order bearing No.481/BP, dated 05.08.1982, passed by defendant No.4, Deputy Commissioner and Addl: Settlement and rehabilitation commissioner DIKhan, vide which different mutations, the detail of which are mentioned in the plaint were recalled/cancelled is illegal, factitious, without authority and liable to cancellation. They have also challenged the allotment of the suit property to Munshi, the predecessor in interest of Dafadar etc. (defendants 11 to 13); they have also challenged the inquiry report submitted by defendant No.5 in this regard. The plaintiffs claimed that they were the bona fide purchasers of the suit land through open auction and hence their rights are protected under section 41 of the Transfer of Property Act. They have sought the correctness of the Revenue Record. The plaintiffs have also sought perpetual injunction along with declaration against the defendants.

4. Both the suits were consolidated and order of consolidation in both the suits were made on 09.01.1988, by the learned Trial Court, and as suit No.544/1 was instituted earlier and so proceedings were conducted in that suit, while suit No.50/1 was connected/consolidated with it.

*[Signature]*  
 Additional Judge-VII  
 Dera Ismail Khan.

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5. The learned Civil Judge-III/Trial Court framed the following consolidated issues.

ISSUES.

1. Whether the plaintiffs have a cause of action and locus standi?
2. Whether the suit is competent in its present form?
3. Whether the suit is bad on account of misjoinder of necessary parties and multifariousness of causes of action?
4. Whether the suit is bad for non-joinder of necessary parties?
5. Whether the suit is within time?
6. Whether the plaintiffs are estopped to sue?
7. Whether this Court has got jurisdiction to try the present suit?
8. Whether the suit is properly valued for the purpose of Court fee?
9. Whether the suit land was allotted to Munshi s/o Bahadar, the predecessor-in-interest of the plaintiffs, vide R.L.II No.35, dated 28.12.1970 and as such the plaintiffs are owners in possession of the suit land and the defendants have got no concern with it and the auction of it in favour of Ahmad Jan defendant is illegal, void and ineffective against the rights of the plaintiffs?
10. Whether the amended plaint of Mohammad Aziz Jan etc, is not in accordance with the permission granted for



D. M. Akbar  
 JUDGE CIVIL III  
 COURT OF DISTRICT JUDGE  
 LAHORE

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the purpose of amendment and new points have been introduced in the same, if so, its effect?

11. Whether the suit property was allotted to Muhammad Aziz Jan etc, on the basis of their highest bid in open auction and the subsequent cancellation of suit property from their names and its re-allotment is wrong, illegal, if so, its effect?
12. Whether suit property stand already allotted and Muhammad Jan has managed its auction collusively by taking benefit of his post and also no payment was made by Muhammad Aziz Jan etc, for the suit property under auction and the allotment on the basis of said mutation was rightly cancelled as a result of enquiry etc, if so, its effect?
13. Whether enquiry conducted by Muhammad Amin Khattak A.C, was impartial, in accordance with the rules keeping in view the principles of equity and justice?
14. Whether no confirmation/ allotment of any land in favour of Munshi Claimant could be ordered after 30.06.1974, according to settlement Scheme No.II of 1976 and the documents regarding claim of Munshi received in Rehab. Office DIKhan are not genuine, if so, its effect?
15. Whether orders of the defendants reg: cancellation of the Mutations, mentioned in D.C DIKhan's letter No.481/PB dated 05.08.1982, passed by the defendants on the basis of enquiry conducted by Muhammad Amin Khattak AC, were in accordance with law, rules and the

*M. L. Khan*  
 M. L. Khan  
 M. L. Khan

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procedure provided for the purpose and were within their legal competency for the purpose, if not, its effect?

16. Whether these cancellation orders of the mutation were against the law, rules and procedure provided for the purpose and were beyond jurisdiction of the defendants and are not binding upon M. Aziz etc, if so, its effect?

17. Which of the parties is entitled to the decree as prayed for?

18. Relief.

6. Both the parties were directed to submit the list of witnesses and produce evidence and consequently both the parties produced their evidences in support of their respective claims. The learned Trial court heard the arguments of learned counsel for the parties and dismissed both the suits, vide impugned consolidated judgment and decree dated 09.06.2003.

7. Feeling aggrieved with the above mentioned judgment, both the parties have preferred their separate appeals, mentioned in Para No.1.

8. I heard the arguments of the learned counsel for the parties and scrutinized the record with their valuable assistance.

9. During the pendency of appeals, Muhammad Aziz Jan etc submitted an application through their counsel, Malik Muhammad Bashir, challenging the authority of learned counsel for the Govt. as well as the learned counsel for legal heirs of Hussain Bakhsh. Alongwith the arguments on main appeals, arguments of both sides were also heard on this Misc: Application, which was submitted on 30.09.2009. Before going to dispose of the main appeals, I intend to dispose of the instant Misc: Application in the proceeding Paras.

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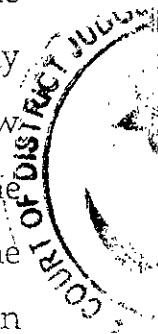
27/3/17

Malik Muhammad Bashir  
Advocate

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10. The objection on the Wakalatnama of the learned counsel for Govt. defendants is that the Department of Rehabilitation was abolished in 1975; hence the appearance of counsel on their behalf is without authority. The contention does not seem correct, as with the abolishment of a department, the Govt. is not abolished and litigations on behalf of any department of the provincial Govt. is regulated by the law department and law department has duly issued the appointment order of Mr. Sajid Nawaz, Advocate, to defend the Govt. Moreover, the Rehabilitation Authority has been given in the penal of respondents by the appellant/petitioner themselves, and hence in my humble view this contention is without force. The next contention raised in the instant Misc: Application is that the learned counsel for the legal heirs of Hussain Bakhsh can not argue the case as they are not parties to the appeal and with the death of original person, namely, Munshi as well as of the original attorney Hussain Bakhsh, the legal heirs of Hussain Bakhsh have no concerned whatsoever with the property. This objection is to be discussed in the main appeal.



*Munshi*  
 Official Director  
 Dera Ismail Khan

11. As far as the main appeals are concerned, I heard the learned counsel for all the parties and observed that the following points need determination.

a) *Whether Munshi ( now dead) had become legal owner of the suit property on the basis of alleged allotment, vide R.L-II, No.35, dated 28.12.1970 and hence the appellants of appeal No. 32 of 2009/2003, namely Abdul Karim etc are rightly claiming the suit property through the said Munshi, as he was their predecessor in interest?*

---Or---

b) *Whether the suit property was rightly and correctly auctioned in favour of plaintiffs Muhammad Aziz Jan etc,*

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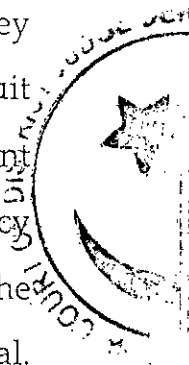
the plaintiffs Dafadar, etc in the Trial Court. Hence, the plaintiff Munshi had not become legal owner of the suit land.

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

*Munshi*

Additional Director  
Datta Ismail Khan



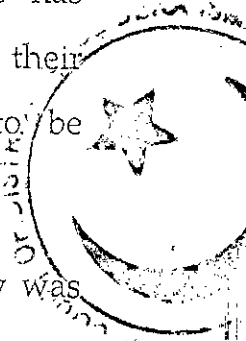
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sale consideration of Rs.34000/-, and the plaintiff Aziz Jan etc were even lacking the basic qualification for such allotment through auction. Hence, the auction and the mutations in favour of plaintiff based on the said auction were reviewed and cancelled. 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.

*[Handwritten signature]*

Chief Judge-VI  
Faisal Khan



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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



*Muhammad Aziz Khan*

Examined  
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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.

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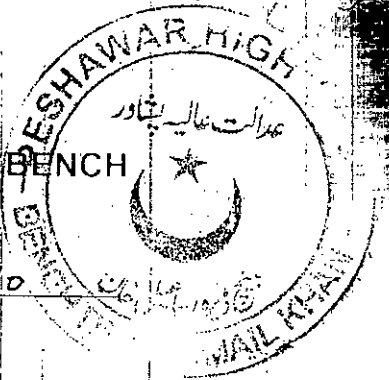
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District and Sessions Judge  
Dera Ismail Khan

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Annexure - 0

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



C.R. No. 72 of 2010

JUDGMENT

Date of hearing 4-11-2013.

Appellant-petitioner Muhammad Aziz Jan (by deputy through L.A.S.)  
Miss Malik M. Basir & Malik M. Jahangir Ausani Advocates

Respondent Govt. of NWFP & others (by Mr. Saadullah Shamsi  
Mr. Saleemullah Khan Panjgani Advocate A.A.G. para 11 to 13)

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.4811 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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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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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. 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.

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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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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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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 prother. 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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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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