

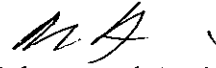
Service Appeal No. 361/2016

22.08.2017

Appellant in person present. Mr. Mukhtiar Ali, Assistant Secretary alongwith Mr. Farhaj Sikandar, District Attorney for the respondents present. Appellant requested for adjournment as his counsel is not available today. Adjourned. To come up for arguments on 24.10.2017 before D.B at Camp Court D.I.Khan.



(Ahmad Hassan)  
Member



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

**Order**

24.10.2017

Counsel for the appellant and Mr. Farhaj Sikandar, District Attorney alongwith Mr. Mukhtiar Ali, Assistant Secretary for respondents present. Arguments heard and record perused.

This appeal is also accepted as per detailed judgment of today placed on file in connected service appeal No. 360/2016 entitled "Qudratullah-vs- The Govt. of Khyber Pakhtunkhwa through Chief Secretary Civil Secretariat, Peshawar and 4 others". Parties are left to bear their own cost. File be consigned to the record room.

Announced:  
24.10.2017




(Muhammad Hamid Mughal)  
Member



(Ahmad Hassan)  
Member  
Camp court D.I.Khan

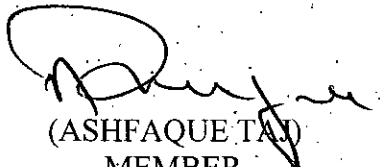
23.01.2017

Appellant in person and Mr. Muhammad Shafqat, Superintendent alongwith Mr. Farhaj Sikandar, Government Pleader for respondents present. Due to non-availability of D.B the appeal is adjourned to 21.02.2017 for same as before.

  
Reader

21.02.2017

Counsel for appellant and Mr. Muhammad Shafqat, Superintendent alongwith Mr. Farhaj Sikandar, Government Pleader for respondents present. Due to non-availability of D.B arguments could not be heard. To come up for arguments on 28.03.2017 before D:B at Camp Court D.I.Khan.

  
(ASHFAQUE TAJI)  
MEMBER  
Camp Court D.I.Khan

28.03.2017


Since tour is hereby cancelled, therefore, the case is adjourned for the same on 24.07.2017.

Reader

24.07.2017

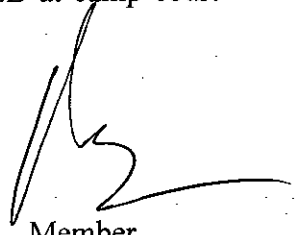
Counsel for the appellant Mr. Muhammad Ismail Alizai, Advocate present and submitted Wakalatnama on behalf of the appellant. The same is placed on record. Mr. Mukhtiar Ali, Assistant Secretary alongwith Mr. Farhaj Sikandar, District Attorney for the respondents also present. Learned counsel for the appellant requested for adjournment Adjourned. To come up arguments on 22.08.2017 before D.B at Camp Court D.I.Khan.

  
(Gul Zehra Khan)  
Member

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

30.08.2016

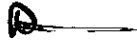
Appellant in person, M/S Mukhtiar Ali, Supdt and Muhammad Shafqat, Supdt alongwith Mr. Farhaj Sikandar, GP for respondents present. Written reply/comments submitted, copy of which is placed on file. Rejoinder in the mean time if any. To come up for arguments on 26.09.2016 before D.B at camp court D.I Khan.



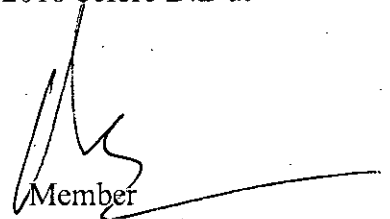
Member  
Camp court D.I. Khan

26.09.2016

Counsel for the appellant and Mr. Mukhtiar Ali, Superintendent alongwith Mr. Farhaj Sikander, Government Pleader for the respondents present. Today case was fixed for arguments but learned Government Pleader requested for adjournment due to non-availability of further record. Request accepted. To come up for arguments on 24.10.2016 before D.B at Camp Court D.I.Khan.



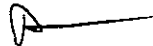
Member



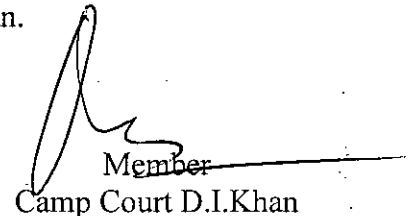
Member  
Camp Court D.I.Khan

24.10.2016

Counsel for the appellant and Mr. Mukhtiar Ali, Superintendent alongwith Mr. Farhaj Sikandar, Government Pleader for the respondents present. Representative of the respondent-department produce incomplete record. He is directed to produce the complete record alongwith all annexure positively on the next date. To come up for record and arguments on 23.01.2017 before D.B at Camp Court D.I.Khan.



Member



Member  
Camp Court D.I.Khan

14.4.2016

Counsel for the appellant present. Learned counsel for the appellant argued that the appellant was serving as patwari when subjected to enquiry on the grounds of not pursuing Civil Suit against the government in the Civil Court and dismissed from service vide impugned order dated 23.12.2015 where-against he preferred departmental appeal on 11.1.2016 which was rejected on 14.3.2016 and hence the instant service appeal on 04.04.2016.

That he was a party but never served and that he was a proforma defendant and not oblige to defend the case as a party.

Points urged need consideration. Admit. Subject to deposit of security and process fee within 10 days, notices be issued to the respondents for written reply/comments for 24.05.2016 before S.B at camp court, D.I.Khan.

21.5.16

Appellant Deposited  
Security & Process Fee

Chairman

24.05.2016



Appellant in person and Mr. Farkhaj Sikandar, GP for respondents present. Representative of the respondent are not present. Notices be issued to the respondents for submission of written reply. To come up for written reply on 30.08.2016 at camp court D.I. Khan.

Member  
Camp Court D.I.Khan

Form- A  
FORM OF ORDER SHEET

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

Case No. 361/2016

S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	04.04.2016	<p>The appeal of Mr. Sher Jan presented today by Mr. Muhammad Asghar Khan Kundi 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;"> REGISTRAR</p>
2	11-04-2016	<p>This case is entrusted to S. Bench for preliminary hearing to be put up thereon <u>14.4.16</u></p> <p style="text-align: right;"> CHAIRMAN</p>

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

In re:  
Service Appeal No. 361/2016

Sher Jan.....Appellant

**Versus**

Govt. of Khyber Pakhtunkhwa  
Through Chief Secretary & others.....Respondents

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5.	Copy of the order sheets	B	14-16
6.	Copy of the Statement of the appellant ad PW-1 & judgment dated 05.01.2008	C-D	17-21
7.	Copy of the Application U/S 12 (2) CPC	E	22-23
8.	Copy of the order dated 10.11.2014	F	24-25
9.	Copies the judgment dated 16.04.2015	G	26-27
10.	Copy of the Writ Petition	H	28-33
11.	Copy of the letter dated 24.08.2015	I	34-
12.	Copy of the enquiry report	J	35-38
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Appellant  
Through

*Asghar Khan*

Dated 31.03.2016

**Muhammad Asghar Khan Kundi**  
Advocate, Peshawar  
Cell No.0333-9127288

1

(1)

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

In re:  
Service Appeal No. 361 /2016

Sher Jan  
S/o Abdullah Jan  
R/o Ratta Kulachi  
Tehsil & District D.I.Khan City.....Appellant

K.W.P. Province  
Service Tribunal  
Diary No. 3213  
Dated 04-04-2016

**Versus**

1. Govt. of Khyber Pakhtunkhwa  
Through Chief Secretary,  
Civil Secretariat, Peshawar
2. Board of Revenue,  
Govt. of KPK, Peshawar  
Through its Secretary
3. Senior Member Board of Revenue,  
Civil Secretariat, Peshawar
4. Secretary Establishment  
Govt. of KPK, Peshawar  
Civil Secretariat, Peshawar
5. Deputy Commissioner/Collector  
Dera Ismail Khan.....Respondents

*Handwritten:*  
414/16

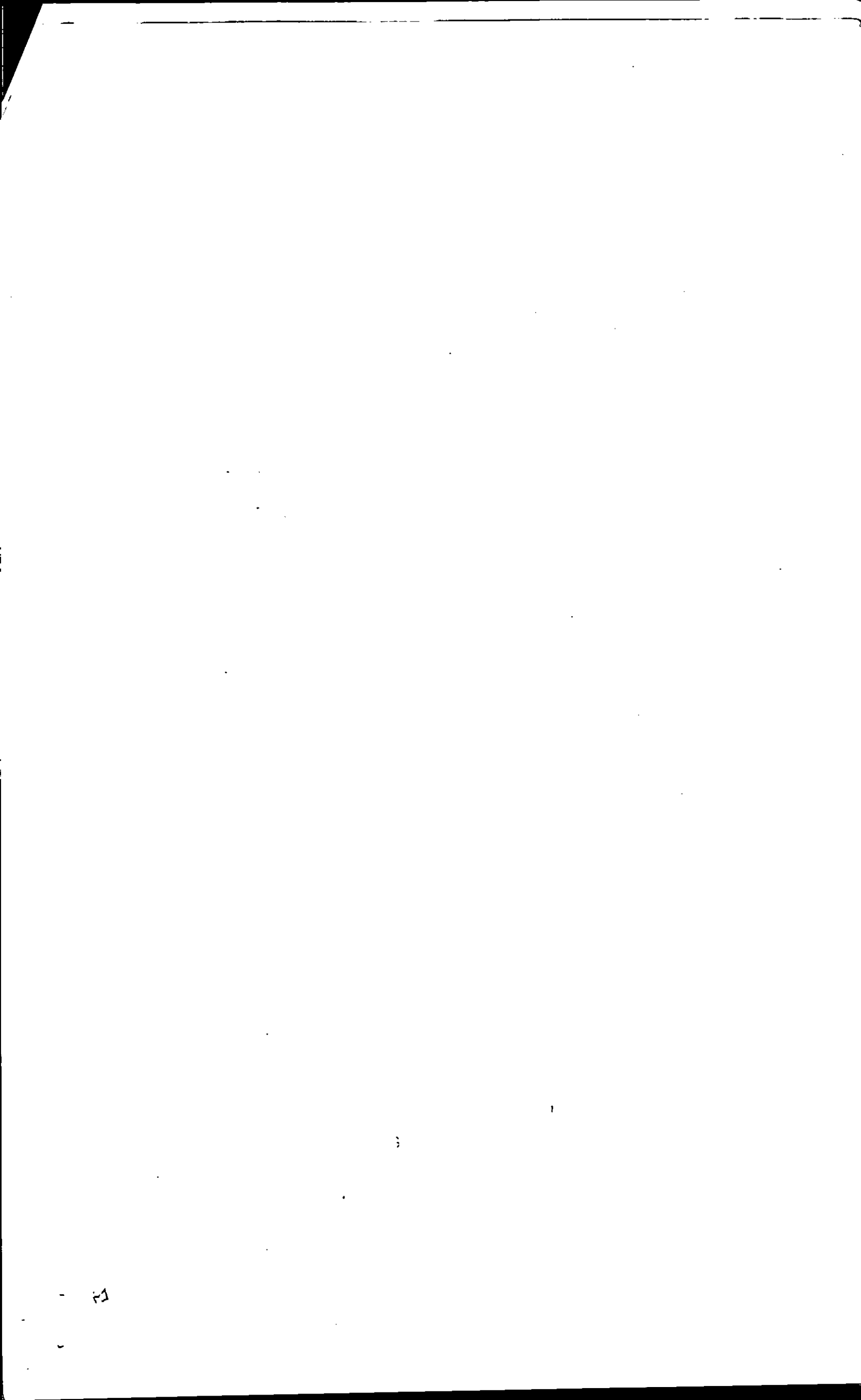
**APPEAL U/S 4 OF THE KHYBER  
PAKHTUNKHWA SERVICE TRIBUNAL ACT  
AGAINST THE ORDER DATED 23.12.2015  
OF THE RESPONDENT NO.3 WHEREBY THE  
APPELLANT HAS BEEN AWARDED MAJOR  
PENALTY OF DISMISSAL FROM SERVICE**

---

**Respectfully Sheweth:-**

1. That the appellant joined the Government Service as Patwari in 1989. During the entire service period, spreading over 27 years, the appellant performed his duties to the best of his abilities and the superior officers have always appreciated the appellant's good performance
2. That a Civil suit titled Nizam-ud-Din versus Provincial Government KPK and others was instituted in the Court of Civil Judge D.I. Khan in 2007. The appellant was nominated as proforma defendant No.4 in the subject suit. The prayer in the suit pertained to the declaration of title in respect of 16 Kanals Govt. land situated in Mouza Shorkot, Tehsil & District D.I.Khan. (Copy of the plaint is attached as annexure "A").
3. That the appellant was not served any notice from the Court of Civil Judge D.I.Khan in respect of the subject case. However, the order sheet dated 02.06.2007 incorrectly mention that the appellant (defendant No.4) has ben personally served. The appellant was therefore place exparte. (Copy of the order sheets is attached as annexure "B").





7. That the learned Additional District Judge D.I.Khan vide judgment dated 16.04.2015 dismissed the revision of the respondents as against the order dated 10.11.2014. (Copies of the judgment dated 16.04.2015 is annexure "G").
8. That the respondents have now preferred a writ petition No.857-D/2015 before the Hon'ble Peshawar High Court, D.I.Khan Bench. The said writ petition has been admitted to full hearing vide order dated 20.01.2016 and the same is subjudice. (Copy of the writ petition is annexure "H").
9. That the respondent No.3 initiated disciplinary proceedings as against the appellant vide letter dated 05.10.2015 on the allegation of willful absence before the court of Civil Judge D.I Khan in the subject case titled Nizam ud Din Versus Govt. of KPK & others. The respondent No.3 appointed Malik Mansoor Qaiser, Secretary Commissioner D.I Khan Division as Inquiry officer. (Copy of the letter dated 24.08.2015 is attached as annexure "I").

10. That the Inquiry Officer submitted his enquiry report wherein the appellant has been adjudged guilty and recommended for penalty as prescribed in Rule-4 of Efficiency and Discipline Rules-2011. (Copy of the enquiry report is attached as annexure "J").
11. That the respondent No.3 imposed the major penalty of dismissal from service upon the appellant vide order dated 23.12.2015. (Copy of the order dated 23.12.2015 is attached as annexure "K").
12. That the appellant submitted Departmental Appeal/representation against the order of dismissal to the respondent No.1 i.e. Chief Secretary Govt. of KPK on 11.01.2016. (Copy of the Departmental appeal is attached as annexure "L").
13. That the Departmental Appeal of the appellant has been declined and the decision to this effect was communicated to the appellant vide letter dated 14.03.2016. (Copy of the letter dated 14.03.2016 is attached as annexure "M").

14. That aggrieved of the same and finding no other alternate remedy, the appellant is constrained to approach this Honourable Tribunal on the following amongst other grounds:-

**GROUND S:-**

- A. That the impugned order of dismissal from service dated 23.12.2015 is against the law and facts on record: hence liable to be set aside.
- B. That the respondents as well as the enquiry officer failed to comply with the procedure of enquiry as provided in the Efficiency & Discipline Rules 2011; thereby causing grave miscarriage of justice.
- C. That the appellant has been wrongly penalized for an act for which he is not responsible. The appellant was never served with any notice from the court; as such the appellant is not responsible for the subject exparte decree dated 05.01.2008.
- D. That the inquiry officer failed to give any solid reason for the recommendation of penalty upon the appellant. The appellant was a proforma defendant and in fact in such like cases the Patwari Halqa is not even implicated. The

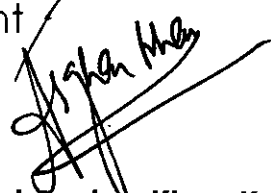
- H. That the Writ Petition No.857-D/2015 in the Peshawar High Court is subjudice and in case the same is allowed, the judgment/decreed dated 05.01.2008 will be recalled and resultantly the govt. land shall be reverted back. As such, the victimization of the appellant in haste speaks volume of the intense malafide on the part of the respondents.
- I. That the appellant seeks leave of this Honourable Tribunal to raise additional grounds at the time of arguments

It is, therefore, humbly prayed that on acceptance of this appeal, the impugned order of respondent No.3 dated 23.12.2015 imposing major penalty of dismissal from service may very graciously be set aside and the appellant be exonerated of the charges leveled against him, and as a consequential relief he may be reinstated in service.

Any other relief deemed appropriate but not specifically asked for may also be granted.

Through

  
Appellant



**Muhammad Asghar Khan Kundi**  
Advocate, Peshawar

Dated 31.03.2016

contesting defendants in such like cases were defendant no.1 to 3 as the Patwari Halqa is merely the custodian of revenue record. The inquiry officer failed to appreciate this vital aspect of the case.

- E. That as a matter of fact, the entire proceedings and facts of the case reveal that the appellant, being a petty revenue official has been made a scape good for the misdeeds of others. It appears that the then high officials of revenue Department D.I.Khan and the presiding officer of the court were in collusion with the plaintiff/decree holder.
- F. That the quantum of punishment i.e. dismissal from service, is much harsher than the gravity of allegations levelled against the appellant. This by itself shows the malafide on the part of the respondent No.3.
- G. That the professional incompetency/lethargy of the govt. pleader has never been highlighted by the respondent No.3 nor any action recommended as against him to the law department. The appellant has been made a scape goat for no fault on his part.

9

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

Service Appeal No. \_\_\_\_\_/2016

Sher Jan.....**Petitioner**

**VERSUS**

Govt. of Khyber Pakhtunkhwa  
Through Chief Secretary & others.....**Respondents**

**AFFIDAVIT**

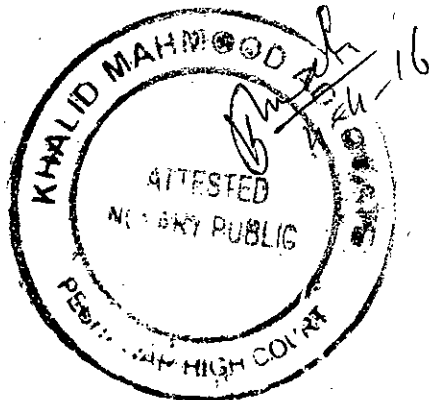
I, Sher Jan S/o Abdullah Jan R/o Ratta Kulachi, Tehsil & District D.I.Khan, do hereby solemnly affirm and declare on oath that the contents of the accompanying **Service Appeal** are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Court.

DEPONENT

CNIC No.:

Identified by:

**Muhammad Asghar Khan Kundi**  
Advocate, Peshawar



D

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

In re:  
Service Appeal No. \_\_\_\_\_/2016

Sher Jan.....Appellant

**Versus**

Govt. of Khyber Pakhtunkhwa  
Through Chief Secretary & others.....Respondents

**ADDRESSES OF PARTIES**

**PETITIONER:**

Sher Jan S/o Abdullah Jan  
R/o Ratta Kulachi Tehsil & District D.I.Khan City

**RESPONDENTS:**

1. Govt. of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat, Peshawar
2. Board of Revenue, Govt. of KPK, Peshawar through its Secretary
3. Senior Member Board of Revenue, Civil Secretariat, Peshawar
4. Secretary Establishment Govt. of KPK, Peshawar Civil Secretariat, Peshawar
5. Deputy Commissioner/Collector Dera Ismail Khan

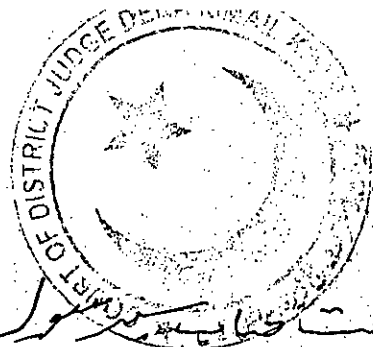
Appellant  
Through

  
**Muhammad Asghar Khan Kundi**  
Advocate, Peshawar

Dated 30.03.2016.



سید سکول و جی ایف ایف ایف  
19



Annex: A

ZNAIM ULLAH WAZIR  
Senior Civil Judge/Judl. Magistrate  
Dera Ismail Khan

بعدالت خطاب سید سکول جج صاحب ضلع ڈیرہ اسماعیل خان

دیوانی دعوئی نمبر

نفاذ الدین ولد محمد عثمان قوم محسود سکنہ

شورکوٹ ضلع ڈیرہ اسماعیل خان

بنام

پیر ادنیٰ گورنمنٹ سہولہ گورنمنٹ سکول پٹری وزارت نال  
سہولہ سجدت و

ڈسٹرکٹ ریونیو آفیسر اسماعیل خان

ریونیو آفیسر تحصیل ڈیرہ اسماعیل خان

دیواری حلقہ موقع شورکوٹ ڈیرہ اسماعیل خان

(مرد علیہ السلام)

دعویٰ استوار حق بدین قرار داد کہ اراخا عندرہ کھات

نمبر 82 کھتوں نمبرات 1227 س 1231 حصہ نمبرات 1211-1210

رقعہ تعدادی 5-16 واقع موقع شورکوٹ

دیوانی دعوئی نمبر 80/1  
12/12/11  
08

(2)  
(3)  
(4-08)

ATTESTED

ATTESTED  
23/11/11

فیضانِ دہلیہ (اسمعیل) خان مطلق جمعینہ سال ۵- 2004 زبیر کار

پر مدعی آباد امداد کاشت کار (غیر فلیکار) محبت نالفس

زاید از ۵ سال سے محدود آرہا ہے اسلئے مدعی اراخی مذکورہ

باہر بطور عطیہ کو جب بے زمین کاشت کار ہونے کے حقدار ہے اور

مدعی علیہم اراخی زبیریت بحق مدعی مانوٹا و بالینہ منتقل

کرنے کے پابند و مجاز ہیں اور کاغذات مال بحق مدعی قابل

درستی ہیں بعد حدود حکم استامعی دواخی و تاسیدی تمام

مدعی علیہم کو وہ مدعی سے جبراً قبضہ کاشت کار لینے سے

باز رہیں۔ اور اراخی مذکورہ بحق مدعی بطور عطیہ منتقل

دیوں اور ملکیت کا حقیق کاغذات مال کی درستی اراخی

زبیریت بحق مدعی منتقل را دیوں۔

ATTESTED مدعی حسب ذیل طرفین رسان ہے  
ضابطہ! ح

۱۔ زبیر مدعی اراخی مندرجہ عنوان بالا صفحہ کذا

۱۲۱۱ - ۱۲۱۵ رقبہ کھداری ۵ - ۱۶ موقع

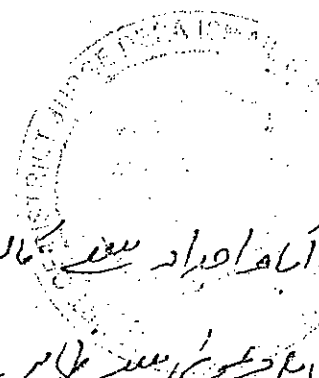
شہور کورٹ ڈیپوٹ اسمعیل خان علیہ زاید از حال میں

23

(7)

INAM ULLAH WAZIR  
Senior Civil Judge (Retd.) Magistrate  
Dera Ismail Khan

12/5/10



سال سے آباد اعداد سے مالکین کاشت کار حلے آرہا ہے جو کہ ایجنٹ  
 ریٹائرڈ نام و سوانی سے ظاہر ہے منیر برادر اراغی زیریت جو قتل  
 ازہلی بنجر اور غیر آباد کھی پر از پورہ خود سے زر کشتی خرید کرے  
 بنجر کاشت مافی۔ جنٹل کٹنگ لیونگ پورٹ ماری کھراؤں و غیرہ  
 کر کے اسکو حاصل کاشت بنایا ہے پر جنوری 2010ء میں  
 جنوری 2010ء کاشت سے توت موجود ہے

(2)

یہ کہ اراغی منیر کاشت کار مالکانہ بصورت آبادی مامور  
 بقا سرکار داخل عدوانہ رتہ حلہ آرہا ہے کہ سر اراغی منیر گورنمنٹ  
 پورٹ چانوں پر زمین کاشت کاران کو عطیہ دینے کی عجاز ہے  
 کہ قتل ازہلی منیر مامور نے کس بار و علیہم کو اسکا بھی آرہا ہے  
 کہ سر علیہم کعبہ مناروٹی کو لکھن دہالی مامور بھی آرہی ہے  
 کہ سر علیہم نے اسٹاک کاغذات علیہ عدتہ کو عملی جامہ

ATTESTED

پہلی پینا لیا جیدہ مسلسل اراغی زیریت پر عدلی مالکین  
 کاشت کار حلہ آرہا ہے۔ جسکی بابت کثیر تر 2726 لکھا

23/11/10

مذکورہ آراء مخالفین و مخالفہ کے مطابق عدالتی اراغی عدویہ  
مطوریہ طبعیہ کے ساتھ ساتھ -

3 - یہ کہ مدعا علیہم سے اس سے پہلے عدلیہ میں کسی بار دراصل کیا گیا  
کہ وہ عدلیہ میں نہ ہو تو عدلیہ میں جاسد نہیں ہوئے اور عدلیہ کو  
حقوق کو مد نظر رکھتے ہوئے منتقلی اراغی عدویہ مطوریہ طبعیہ  
بنام عدلیہ کو دیکھیں لیکن وہ الزامی ہیں کہ اگر ایسا نہ کیا گیا  
یا کسی دیگر کے نام عطیہ کے قبضہ از ان عدلیہ عدویہ کے کیا گیا  
تو عدلیہ کو نامعلوم عدلیہ اراغی عدویہ کے دیکھیں  
حقوق متاثر ہوئے اس لئے مدعا علیہم اراغی عدلیہ کو  
بنام عدلیہ منتقل کرنے سے باز رہیں اور بحق عدلیہ اراغی کو  
منتقل کرنے کا حکم دینا عین عین العفاف ہے جس طرح عدلیہ  
نیز دائر کرنے کا لغو نہ رہتا ہوگی ہے۔

4 - یہ کہ بنائے دعویٰ الحقا مشورہ کوٹ میں عدلیہ  
خیرہ اشغال خانہ مدعا علیہم کے عدلیہ میں ماہ قبل پیدا ہوا جو کہ  
عدلیہ اندر عیاد بحق ہے اور عدالت مشورہ اور کو اختیار  
کے ساتھ ہے۔  
23/11/10

ATTESTED

23/11/10



یہ کہ مالیت متقدرہ رقم سے اصل ہے (15)  
کورٹ میں مبلغ 500 روپے متقدرہ ہے جس پر کورٹ فریضہ ہے

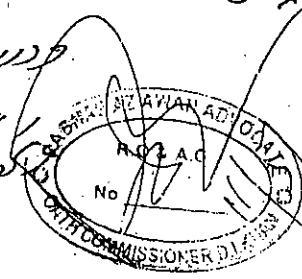
بذات اللہ ہے کہ درج  
استحقاق سے صدر حکم امتحان و فاضلہ تہذیبی  
تفصیلی برخواستہ مدظلہ العالیہم حسب الحرفہ عنان  
عرفی و عمومی ڈگری زبانیا جاد

تصدیقاً علیہم دیکھو علیہم خان  
نظام الدین  
باعتبار صلاح بیان کیا کہ حقہ بہ حقہ  
دعویٰ درست ہے  
بیان حلف

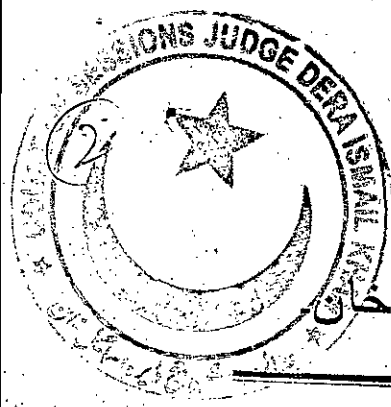
**ATTESTED**

حلف بیان کیا کہ قبل ازین مدعا  
نہ دعویٰ دائر نہیں کیا لغو نہ لغو صحیح  
درست ہے اور وہی دلیل ہے کہ  
کفایہ

نظام الدین



**ATTESTED**  
Examiners



Annex B

(14)

تاریخ وار خلاصہ احکام  
نظام اسرار بنام  
بعدالت جناب سینئر سول جج صاحب، ڈیرہ اسماعیل خان

نمبر شمارہ تاریخ حکم  
خلاصہ حکم

دعویٰ ہذا وکالتاً دائر شد۔ سپرد عدالت جناب  
سول جج صاحب الآ ڈیرہ اسماعیل خان کیا  
جاتا ہے۔ مدعی اوکیل مدعی عدالت موصوف  
میں 12-5-07 پیش ہو۔

OS --- 01

12-5-07

**INAM ULLAH WAZIR**  
Senior Civil Judge/Judicial Magistrate  
Dera Ismail Khan

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دعویٰ ہذا کے بعد عدالت جناب سول جج صاحب ڈیرہ سے  
موصول شد کہ عدالت پرنال میں

0 --- 2  
12/5/07

**Adam Khan Solomon Khe**  
Civil Judge VII / Judicial Magistrate  
Dera Ismail Khan

صداقت

پرنال قلعہ - دعویٰ ہذا کے بعد عدالت میں  
عدالت دعویٰ - فرد پندر، پھر دست درکار، پھر دست دست و ہزارت  
صد دست و ہزارت وکالت نام بحق ملک کیا پھر اعوان  
اور دست پندر اور لفظ جیوں -

لہذا جو پیش کرتا ہے

12/5/07

ATTESTED

Examiner

15/03/16

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وکیل مدعی صاحبہ انوار احمد دھون کو درست لکھنا ہے۔  
دونوں جہر متعلقہ ہو کر من بتقیہ بنیم در عا علیہ صوفی 18/5/07

Adam Khan Sulaiman Khel  
Civil Judge VII / Judicial Magistrate  
Dera Ismail Khan

0-4  
18/5/07  
✓

وکیل مدعی صاحبہ عدلیہ بیرو کی نقل اصلاح ہو چکی ہے اور  
انتظامی لکچر صاحب عدلیہ بیرو پیش ہو کر شامل میں مندرجہ  
معا علیہ بیرو 4/1/1989 میں جاری ہو گیا ہے۔ گزشتہ  
سین سال قبل واپس ہوا۔ اور عدلیہ بیرو کی ورثہ  
تعلق رکھتا ہے۔ ایسے دعوے کو پیدائش کی حالت میں کہ وہ  
مدرسیہ بیرو رجسٹرڈ AD کارڈ ہے (داخل کرے۔  
بعد اوقات خصوصاً AD کارڈ کے بارے میں کافی  
معا علیہ بیرو صوفی 6/2/1989 کے پیش ہے

Adam Khan Sulaiman Khel  
Civil Judge VII / Judicial Magistrate  
Dera Ismail Khan

0-5  
2/6/07  
✓

وکیل مدعی بزرگ ایف ڈی صاحبہ عدلیہ بیرو کے کجا جانب سے  
انتظامی لکچر پیش ہو کر شامل میں مندرجہ معا علیہ بیرو 4  
حکم پورا کی نقل اصلاح ہوئی حالت میں لکچر  
کلیف مندرجہ - عدلیہ بیرو کا رجسٹرڈ AD کارڈ  
دلیل نہ مندرجہ دعوے کو پیدائش کی حالت میں کہ وہ  
مدرسیہ بیرو رجسٹرڈ AD کارڈ ہے (داخل کرے۔  
بعد اوقات خصوصاً AD کارڈ کے بارے میں کافی

Adam Khan Sulaiman Khel  
Civil Judge VII / Judicial Magistrate  
Dera Ismail Khan

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15/07/16

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15/03/16  
Examiner

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21/7/07

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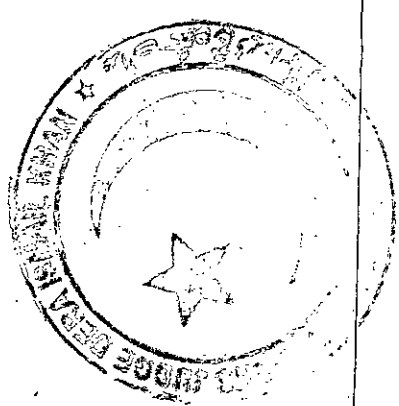
Adam Khan Suleman Khel  
Civil Judge VII / Judicial Magistrate  
Dera Ismail Khan

Adam Khan Suleman Khel  
Civil Judge VII / Judicial Magistrate  
Dera Ismail Khan

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Adam Khan Suleman Khel  
Civil Judge VII / Judicial Magistrate  
Dera Ismail Khan



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24/6/17

(15)



(3)



در حال حاضر سید گویا و فقیر علیہ و گویا و سید گویا  
 علیہ جو کہ پڑھان دیکر اس کے بعد گویا کی رہی ہوگی  
 لہذا گویا کی علیہ کو P.N. دیگا۔ کل پڑھان پڑھان ہو کر  
 منتظر 28/9/07 کو پیش ہو

9  
 06/9/07

Adam Khan Suleman Khel  
 Civil Judge VII / Judicial Magistrate  
 Dera Ismail Khan

در حال حاضر سید گویا و فقیر علیہ کی علیہ سے درخواست  
 ایذا دہی ملے اور اس کے بعد وہ عموماً خود سے ایذا دہی ہو کر  
 سید گویا کو پڑھان علیہ سے ایذا دہی پڑھان پڑھان ہو کر  
 منتظر 28/9/07 کو پیش ہو

10  
 28/9/07  
 ✓

Adam Khan Suleman Khel  
 Civil Judge VII / Judicial Magistrate  
 Dera Ismail Khan

در حال حاضر سید گویا کی علیہ گویا کی علیہ گویا کی علیہ  
 بیان پورے P.N. 2 کی علیہ گویا کی علیہ گویا کی علیہ  
 علیہ گویا کی علیہ گویا کی علیہ گویا کی علیہ  
 علیہ گویا کی علیہ گویا کی علیہ گویا کی علیہ  
 منتظر 28/9/07 کو پیش ہو

11  
 10/11/07  
 ✓

Adam Khan Suleman Khel  
 Civil Judge VII / Judicial Magistrate  
 Dera Ismail Khan

ATTESTED  
 Examined  
 15/03/16

15/03/16  
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[Signature]

(P-1-0)

Plaintiff along with his  
counsel present. Plaintiff himself recorded  
his statement as PW-04. PW-05 Zanoor-Uddin  
present and recorded his statement. Patwardi  
Halqa Irrigation be summoned for plaintiff

07-12-2007  
07-12-2007

[Signature]

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Adam Khan Suleman Khel  
Civil Judge VII / Judicial Magistrate  
Dera Ismail Khan

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02/11/07

Adam Khan Suleman Khel  
Civil Judge VII / Judicial Magistrate  
Dera Ismail Khan

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(16)

13/03/16  
EXHIBIT  
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Adam Khan Suleman Khel  
Civil Judge VII / Judicial Magistrate  
Dera Ismail Khan

1st. No. 15  
05 of  
18/12/07

Adam Khan Suleman Khel  
Civil Judge VII / Judicial Magistrate  
Dera Ismail Khan

16  
18/12/07

Adam Khan Suleman Khel  
Civil Judge VII / Judicial Magistrate  
Dera Ismail Khan

05-15  
10-8-07

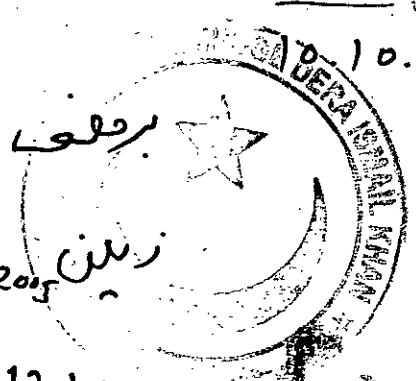
Adam Khan Suleman Khel  
Civil Judge VII / Judicial Magistrate  
Dera Ismail Khan

ex-parte evidence on 10/01/07

Continue Order... Dated: 07-2-2007

Appendix C

بیان ازان شیرجان بٹوادر حلقہ شورکوٹ ڈیڑھ اسمبلی قان



برقعہ بیان کیا کہ میں نے اسل میرا تیار کردہ ریکورڈ قراران

زیلین 2005-06 کھانہ 832 منہ ضرورتات 11 12 و

1215 رقبہ اعدادی 5-16 ویکہ یہاں سے شامل قن ہے

اور اسل 1995 سے 1999 تک ضرورتات

ضرورت رکارڈوں فریف سال 1999 تا ربع 1995

یہاں تیار کردہ شامل قن ہے اور اسل 1995 سے مزید رکارڈ

آئندہ پیشی پیشی رکارڈ (بیان ہادی کے)

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ضرورت ترمیم

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Examine 15/03/16

گذشتہ سے پیشتر

(12)

18

بیان اذان شریعتی پٹوار حلقہ شورکوٹا

24.10.07

میں اپنے ہمراہ زیر کار جھنڈا 2004-05 اور ان لپیا ہوں

اور اس نظر شدہ رڈ اور س فریٹ 1997 تا ربع

2007 تک ہوا لپیا ہوں عند صبح پہلا کانڈا کی

رہے تا بعد کانڈا نظام دینی صدر دار حیدر آباد



اور علوبان حکومت صادر ہے جو کہ بالترتیب

3 || 11/10/07 و 4 || 11/10/07 ہیں۔ نیا امانت

کتاب بڑھو 1211 و 1210 مقصد سو یہ ہیں اور

کسی کو تا حال الا نہیں ہوئے ہیں۔

XXXXX ندارد  
بوسہ بیگم  
موسلم لیگ VIII ص 15

24-10-07

Examined  
15/10/07  
Examiner

Annex 'D'

IN THE COURT OF ADAM KHAN SULEMAN KHAN,  
CIVIL JUDGE-VII/JM, DERA ISMAIL KHAN.

(19)

Suit No. 80/1 of 2007.

NIZAM\_UDIN .....(Plaintiff)

V/S

Govt of NWFP Etc .....(Defendants)

Date of institution of the suit .....12/05/2007.

Date of Decision of the Suit .....05/01/2008.

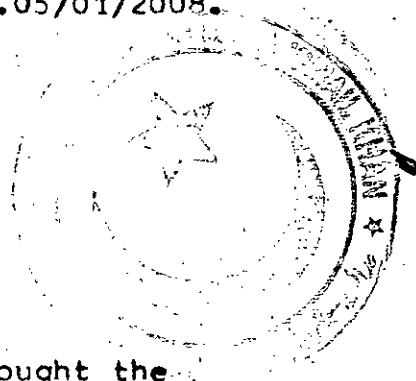
SUIT FOR DECLARATION.

EX-PARTE JUDGMENT

The plaintiff has brought the present suit for declaration to the effect that land measuring 16-K situated in Moza Shorkote, DIKhan vide Khata No. 832 Khatooni No.s 1227, 1231, Khasra No.s 1211-1210 are being used in cultivation of plaintiff according to Jamabandi year as "Ghair Dakhal Kar" farmer for more than 40 years and according to the Policy of Board of Revenue/Land Commission Office plaintiff is entitled for the Award through Provincial Government according to letter No.2726.

That plaintiff has used to deposit the ownership share to Provincial Government and according to law he is entitled as Land Lord Cultivator for Award. Defendants were asked time and again to do the same but they refused. Hence the present suit.

Defendants were summoned amongst whom only defendant No.01 appeared and submitted his authority letter on 21/06/2007, thereafter, he remained also absent and all the defendants were placed ex-parte



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Adam Khan Suleman Khan  
Civil Judge VII, Dera Ismail Khan  
25/05/2008

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Examiner  
15/03/16

Plaintiff was directed to submit list of witnesses and also deposit diet money of OWS which he did. He produced (06) PWS in support of his version as EX-parte evidence.

20

PW-01 Sher Jan (Patwari Halca) Moza Shore Kote recorded his statement and produced Register Haqdaran Zamin of year 2004/05, Khata No. 832 Khasra Nos 1211, 1210 land measuring 16-K, the copy of which is EXPW1/1. The Khasra Girdawari Kharif of year 1999 to Rabee 1995, the copy of which is EXPW1/2. He brought Jama-Bandi of year 2004/05, the copy of Khasra Girdawari Kharif 1997 to Rabee 2007, the respective copies are EXPW1/3, EXPW1/4. In all these documents endorsed the name of plaintiff Nizam Din as cultivator while Govt of NWFP is entered as owner and Khasras Nos 1211, 1210 has not allotted to any person yet.

PW-02 Akhter Hussain Record Lifter District Judge, DIKhan produced original civil suit No. 272/1 titled "Muhammad Aslam Vs Govt of NWFP" the copies of concerned record are exhibited as EXPW2/1 to EXPW2/6.

PW-03 Hadayat Hussain Assistant Land Record DOR Branch, DIKhan brought original letter No. 2726/CC dated 24/11/2000 Issued by Secretary Board of Revenue/Land Commissioner, which bears land reforms allotment agrarian policy, the copy of which is EXPW3/1 consisted of 05 pages. According to this policy the plaintiff is entitled for allotment of impugned land.

Adam K...  
Civil Judge...  
District...  
D.I. Khan

PW-04 plaintiff himself recorded his statement in support of his version as per heading of plaint. PW-05 Zahoor-udin fully corroborated the version of plaintiff.

PW-06 Sajjad Hussain Patwari Irrigation M za Shore Kote produced the payment of Govt share (Abiyana) of impugned land bearing Khasra Nos 1210, 1211, from Kharif 2002 to Rabee 2007, in which the plaintiff paid regularly (Abiyana) to the Govt. The copies of receipts are EXPW6/1 to EXPW6/2.

After close of ex-parte evidence of

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5/03/16




plaintiff, I heard the case at length and gone through the record.

21

The available record shows that plaintiff used the impugned land for cultivation and entry in the revenue record, the plaintiff has been entered as "Ghair Dakhel Kar" while receipts of payment of Abiyana is also on the name of plaintiff not any other person, which fully corroborated the version of plaintiff as per caption of plaint. Further more plaintiff also produced the copies of another civil suit of same nature and an ex-parte decree has been awarded in favour of plaintiff of above suit.

As nothing in rebuttal and plaintiff is entitled for allotment of impugned land as per Govt Policy, fully corroborated the record produced by plaintiff on file, There is no other option only to accept the claim of plaintiff. Therefore, an ex-parte decree is awarded in favour of plaintiff and against the defendants. Defendants are directed to allot the impugned land in the name of plaintiff. No order as to cost.


Announced  
05/01/2008.

  
Adam Khan (Suleman Khel)  
Civil Judge VII / Judicial Magistrate  
(Adam Khan Suleman Khel)  
Civil Judge-VII/JM, DIKhan.

CERTIFICATE

It is certified that this judgment consists of 03 pages. Each page has been read-over, corrected and signed by me wherever necessary.

Dated:- 05/01/2008  
Dera Ismail Khan.

  
Adam Khan (Suleman Khel)  
Civil Judge VII / Judicial Magistrate  
(Adam Khan Suleman Khel)  
Dera Ismail Khan  
Civil Judge-VII/JM, DIKhan.

TO BE TRIED COPY

  
District and Sessions Judge  
Dera Ismail Khan

15/03/16





لوہہ صادر ہو *with out Jurisdiction* و حال کرت

بذریعہ فراد و *Misrepresentation*

خواب عالی اس لندن حسب ذیل میں رساں ہیں

(1) برکہ اراچی مندرجہ عرانی دعویٰ مقدمہ 80% کے اصل حال کان صوبائی حکومت  
بذریعہ لندن تھی۔

(2) برکہ مدعی / رسول الیہ نے بذریعہ فراد و *Misrepresentation*  
ایک مقدمہ ڈائریکٹریٹ ڈگری حاصل کی لیکن مقدمہ مذکورہ میں نہ تو کلر ڈگریہ ڈیپلن خان  
کو اور نہ ہی لینڈ کمیشن کو فریق مقدمہ گردانا گیا حالانکہ از روئے قانون دونوں  
اسی ضروری فریق مقدمہ تھے جنہے لغیر ڈگری صادر نہیں ہو سکتی تھی

(3) برکہ عدالت حضور کو مقدمہ عمری 80% مندرجہ عنوان درخواست ہذا کی سماعت کا  
زمرہ دفعہ 26 لینڈ رکارڈز اختیار سماعت ہی نہ تھا اور نہ ہی مدعی نے قبل از ڈگری  
دعویٰ لینڈ کمیشن کو رجوع کیا تھا بدین وجہ حکم و فیصلہ و ڈگری جوہر ہونے بلحاظ اختیار  
قابل منسوخ ہیں۔

(4) برکہ لینڈ رکارڈز فرلاؤ میں لغیر زمین صارفین کو گورنمنٹ کی ملکتی اراچی عطیہ کے طور  
پر الاٹ کی جا سکتی ہے لیکن مدعی / رسول الیہ نے نہ تو زمین ہاری / کسان تھا  
اور نہ ہی لینڈ کمیشن فریق مقدمہ تھا جبکہ مدعی اسائل گروڈ می شخص ہے جس نے

لینڈ کمیشن کو فریق مقدمہ بنائے لغیر ڈگری بذریعہ فراد و *Misrepresentation* قابل

TESTED  
Examined



23

Correct law (5) برکہ فاضل عدالت دیوانی برحالت میں مقدم میں کے استعمال کی پابندی ملکی و غیر ملکی اعلیٰ عدالتیں قرار دے چکی ہیں کہ

Judge must wear all the laws of Country on the sleeve of his robe.

لیکن فاضل عدالت نے نہ تو اختیار سماعت کا سوال اٹھایا اور نہ ہی لینڈ کمیشن کے فریق مقدم نہ ہونے کی طرف توجہ دی اور بلا اختیار طور پر ڈگری صادر کر دی جو کہ قابل منسوخ ہے۔ عدالت نے اس سہرے اصول کو نظر انداز کر دیا کہ

Justice .... According to law is the duty of Court, which can neither be abdicated in favour of whims or ignorance of litigants or their lawyers nor it be avoided or evaded on the pretext that a question of law going to the roots of the case was not raised promptly.

دہ برکہ فاضل عدالت نے یکطرفہ کاروائی ہونے کی بنا پر مقدمہ کی طرف توجہ نہ دی اور جب گفتہ بالا بلا اختیار طور پر ڈگری صادر کر دی جو کہ فاضل عدالت سے نذر لود فرادہ Misrepresentation حاصل کی گئی۔

(7) برکہ رسول الیہ کو برصند کیا اور کہلوا یا گیا کہ وہ نذر لود فرادہ حاصل شدہ اراقی و ڈگری کو منسوخ کرادے لیکن وہ نہیں مانتا اسلئے ضرورت ڈگری درخواست ہذا لائق ہوئی

(8) برکہ ڈگری مقدمہ برکی نسبت سائلان کو برصندے چینی نمبری 8520 Rev: IV/DIKhan/LT جوڑم 18-4-2013

ATTACHED 11/16

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09-7-17  
M. A. KHAN  
CIVIL JUDGE VII  
D. Khan

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16

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TEHSILDAR  
Dera Ismail Khan

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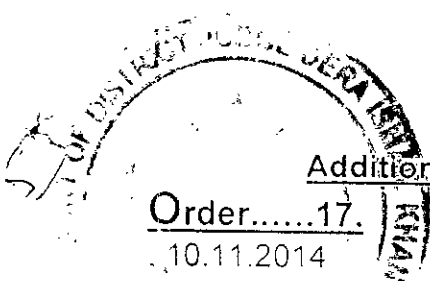
26/6/13

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Additional Deputy Commissioner Vs Nizam ud Din

Order.....17.

10.11.2014

ADARSH  
24

None present on behalf of petitioners. Respondent No.1 present. Through this order the fate of 12(2) CPC petition filed by petitioners Additional Deputy Commissioner/Collector DIKhan and 2 others, seeking cancellation/setting aside the ex-parte decree dated 05.01.2008 passed in favour of respondent No.1 Nizam ud Din in the suit No.80/1 of 2007 titled as "Nizam ud Din Vs Provincial Govt etc", will be decided

Brief facts are that respondent No.1/plaintiff filed a suit against Provincial Government and 3 others seeking declaration to the effect that land measuring 16 Kanals situated in Moza Shorekot, DIKhan Khasra No.1211, 1210 are in his possession/cultivation as "Ghair Dakhilkar" for more than 40 years and according to the government policy plaintiff is entitled to its ownership as per letter of the provincial government No.2726 dated 24.11.2000.

That suit of plaintiff/present respondent No.1 was decreed ex-parte vide judgment and decree of the court dated 05.01.2008. Petitioners who were defendants in the suit of plaintiff/respondent No.1 filed the present application under Section 12(2) CPC challenging the ex-parte decree on the grounds of fraud, misrepresentation and want of jurisdiction. The 12(2) application of petitioners was resisted by respondent No.1 by filing his replication. Arguments of learned counsel for both the parties heard.

Learned counsel for the petitioners argued that respondent/plaintiff obtained the ex-parte decree dated 05.01.2008 on the basis of fraud and misrepresentation because neither the collector DIKhan nor land commissioner who were necessary parties were made parties to the suit. Similarly, the decree was passed by the court without having jurisdiction in the matter as per Section 26 of the Land Reforms Act because respondent/plaintiff did not contact the Land Commissioner prior to filing of the suit. Learned counsel further argued that the court did not give its proper attention to the case and passed an ex-parte decree dated 05.01.2008 without having jurisdiction and application of proper law. That petitioners were not in the knowledge of the decree they got the knowledge of the same vide letter No Rev: IV/DIKhan/LT 8520 dated 18.04.2013

Handwritten notes in Urdu: 10/11/2014, 06/11/2014, 10/11/2014, 06/11/2014

Handwritten signature and stamp: 10-11-14, CIVIL JUDGE VII, D. I. KHAN

Handwritten signature and stamp: 225, CIVIL JUDGE VII

Handwritten signature and date: 15/03/16

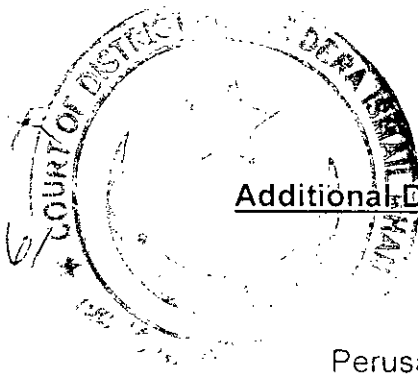
and thus filed the present petition which is well within time from the date of knowledge. He prayed that application may kindly be accepted and the ex-parte decree in favour of respondent No.1 dated 05.01.2008 be set aside.

On the other hand, learned counsel for the respondent No.1 argued that the court correctly passed the decree in favour of respondent. Neither any fraud was committed nor any misrepresentation was made by the respondent No.1 because the present petitioners were made parties to the suit who were properly served with summons of the court, appeared through their representative but later on remained absent. The court correctly exercised its powers having jurisdiction in the matter, and in the light of policy of the provincial government passed the decree in favour of respondent No.1. Counsel for the respondent further argued that the present application is badly time barred and the story of the date of knowledge presented by petitioners is false and fictitious because they were fully aware since the filing of the suit in which they appeared through their representatives. Moreover, previously 2 petitions under Section 12(2) CPC were filed against the decree, in which the present petitioners were parties as respondents. In those petitions too present petitioners appeared before the court and did not object the decree. He prayed that the application be dismissed with cost.

Perusal of record shows that in his suit respondent No.1 impleaded the collector and the provincial government through secretary as parties to his suit, so the contention of petitioners that collector and land commissioner were not impleaded or that decree was obtained on misrepresentation seems baseless. So far as the question of fraud is concerned, record shows that respondent No.1 put all the relevant facts before the court and claimed his right of ownership over the suit property on the basis of possession under the land Reforms Act of 1977 and in the right of the letter No.2726/LC dated 24.11.2000 issued by the secretary Board of Revenue to the Deputy Land Commissioner DIKhan. The suit of the respondent No.1 was for declaration of his right, over which the civil court had the jurisdiction to decide. Similarly Section 26 of the land Reforms Act as contended in the petition do not oust the jurisdiction of the civil court.

*Spall*  
10-11-14  
Civil Judge VI  
D.I.Khan

ATTESTED  
Examiner 15/03/16



Additional Deputy Commissioner etc Vs Nizam ud Din etc.

Contd: Or; # 17 Dated 10.11.2014.

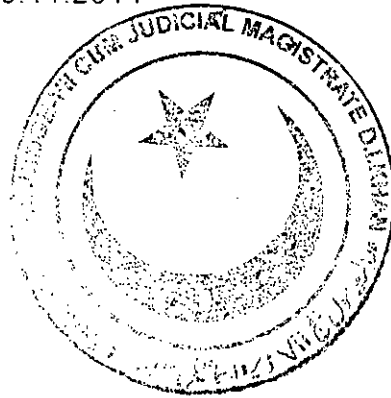
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Perusal of the petition further shows that it is clearly time barred as the same is filed after almost five and a half years from the date of the decree. The stance of the petitioners that the 12(2) petition is within time as they got the knowledge of the decree vide letter No. Rev: IV/DIKhan/LT 8520 dated 18.04.2013. This stance of the petitioners is baseless and have no force in it because the record clearly shows that petitioners were fully aware of the suit of respondent/plaintiff since the first day. They were served with summons and they also attended the court through their representatives who filed authority letter which are placed on file. But later on due to their absence were proceeded ex-parte.

In the light of what has been discussed above this court is of the view that present 12(2) petition is not maintainable and time barred also. Hence, dismissed.

File be consigned to the record room of the Hon'ble District & Sessions Judge, DIKhan after its necessary completion and compilation.

Announced.  
10.11.2014



  
10.11.14  
(Mohammad Aaqib)  
Civil Judge-VII, DIKhan  
**Civil Judge VII**  
D.I.Khan

TESTED TO BE TRUE COPY

  
District And Sessions Judge  
Dera Ismail Kha

15/03/16

15/03/16

3388

Application Received On 15.3.16

Date of Copying 15.3.16

Date of Delivery 20.3.16

No of Words 107

Copying Charges 107

Urgent Charges

Total Charges

Name of Copiest

Copying Delivery Date 15.3.16

Name of Examining Officer



In the Court of  
KASHIF NADEEM, ADDITIONAL DISTRICT JUDGE-IV,  
DERA ISMAIL KHAN.  
C.R No. 03 of 2015.

Preferred on ..... 11.02.2015  
Decided on ..... 16.04.2015

Additional Deputy Commissioner/Collector, D.I.Khan  
and two others. (Petitioners)

VERSUS

Nizam-Ud-Din and two others (Respondents)

JUDGMENT

This is a Civil Revision filed against order Dated 10.11.2014 of the learned Civil Judge-VII, D.I.Khan, whereby the application of the petitioner under Section 12(2) CPC was dismissed being not maintainable.

2. As per brief facts of the case an application under Section 12(2) CPC was filed by the present petitioners against the respondents to the effect that a decree obtained in suit No. 80/1 instituted 12.05.2007 decided 05.06.2008 titled "Nizam-Ud-Din Vs NWFP" has been obtained on fraud and misrepresentation. The said application was dismissed by the learned Trial Court vide orders Dated 10.11.2014 being not maintainable and also being time barred.

3. Against the said impugned order the instant revision petition has been filed on 11.10.2015. Representative for the petitioner appeared whereas the Government Pleader had partially argued the instant revision petition but later requested for adjournment and did not appear today.

ADDL. DISTRICT JUDGE  
Dera Ismail Khan

17-04-15

ATTEST

TESTED

Examiner 28/10/15


Handwritten notes on the left margin: "AD-IV" and "17/04/2015".

Amex B  
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4. A bare perusal of the petition would reveal that the impugned order is of 10.11.2014 whereas the time period provided for the revision petition is 90 days which in the instant case expired on 08.02.2015 but the revision on hand has been filed, on 11.02.2015 making it time barred per-se. In the instant case an application for condonation of delay has been attached with the revision petition but the same shows discrepancies as to non-mentioning of dates. No plausible reason has been given in the application for condonation of delay although the petitioner's were the applicants in the proceedings under Section 12(2) CPC before the learned Trial Court. Besides, the above, only copy of application and impugned order have been annexed with the petition and no copies of pleadings, other documents etc are available on the file.

5. For all the reasons mentioned above the instant civil revision petition is not maintainable, therefore, the same is dismissed *In Limine*. File be consigned to the record room after its completion and compilation.

ANNOUNCED.  
16.04.2015


  
**KASHIF NADEEM**  
Additional District Judge-IV  
Dera Ismail Khan  
Dera Ismail Khan

CERTIFICATE

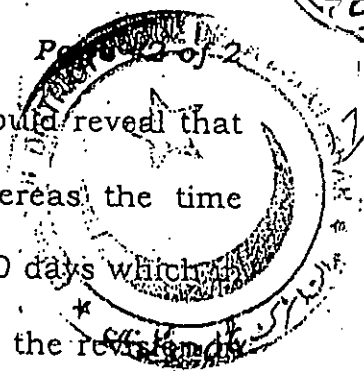
Certified that this judgment of mine consisting of 02 pages, each of which has been read, signed and corrected by me wherever necessary.

**ATTESTED TO BE TRUE COPY**

  
District and Sessions Judge  
Dera Ismail Khan

  
**KASHIF NADEEM**  
Additional District Judge-IV  
Dera Ismail Khan

**ATTESTED**



27

BEFORE THE HONOURABLE PESHAWAR HIGH COURT BENCH

DERA ISMAIL KHAN,

Writ Petition No. 857 /2015

The Government of Khyber Pakhtun and Other  
Versus

1. Nizam Uddin and others

24/11/15

AM 2015

H  
②

S No.	INDEX Particular	Annexure PP
1.	Memo of Writ Petition alongwith affidavit	
2.	Memo of Addresses	
3.	Copy of impugned Judgement/ Order dated 16/04/2015 of the ADJ-IV- DIKhan.	I
4.	Copy of revision petition No.03/15 dated 11/02/2015	II
5.	Copy of impugned Judgement/ order dated 10/11/2014 Of Civil Judge-VII DIKhan:	III
6.	Copy of misc, application 06/1427 dated 09/07/2013	IV
7.	Copy of Judgement order dated 05/01/2008 of CJ-vii DIKhan	
8.	Copy of plaintiff dated 12/05/2007 of case 80/1 of 2007	VI
9.	Copy of Scheme of 1973-74	VII
10.	Copy of fars of 2004-05, 2008-09 of Govt: land.	VIII
11.	Copy of fars of land of Nizamuddin	IX
12.	Copy of Aks Shajra of Govt: land	X
13.	Stamp of Rs.500/-	
14.	Vakalat Nama	

**ATTESTED**



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BEFORE THE HONOURABLE PESHAWAR HIGH COURT BENCH  
DERA ISMAIL KHAN.

Writ Petition No. \_\_\_\_\_ /2015

1. The Government of Khyber Pakhtun Khwa through the Collector/DORE, Dera Ismail Khan & -
2. The Deputy Commissioner/District Officer Revenue & Estate Cum Deputy Land Commissioner, Dera Ismail Khan.....(Petitioners)

Versus

1. Nizam Uddin S/o Mohammad Usman Caste Mahsood R/o Shorkot, Tehsil & Distt Dera Ismail Khan.
2. The Additional District Judge IV, Dera Ismail Khan,
3. The Civil Judge VII Dera Ismail Khan..... (Respondents)

(Note. The other Land Reforms or Revenue Authorities are not even proper parties.)

Writ Petition under Article 199 (I) of the Constitution of Pakistan, 1973... for

- .....1. Declaring the order dated 16/04/2015 of the Respondent No 2 (Revising Court) passed as misconceived under Section 115 CPC and of no binding effects upon the rights of the Petitioners for pursuing their cause of grievance against the order dated 10/11/2014 of the Respondent No3 as trier Judge of the Misc; Application No 06/12(2) CPC dated 09/07/2013. And for . . . .
- .....2. Declaring the order dated 10/11/2014 of the Respondent No 3 as without lawful authority and of no binding effect upon the rights of the Defendants (Petitioners) in CS. No 80/01 dated 12/05/2007 decided on 05/01/2008 on the Sworn Averments of Plaintiff to pursue their legitimate cause of grievance against Ex-Parte Decree dated 05/01/2008 passed in fraudulent proceeding of the said suit No.80/1 of 2007 of the respondent No.1 and as consequent thereto, for: . . . .
- .....3. Declaring the decree and judgement dated 05/01/2008 of Civil Judge-VII, <sup>D.I. Khan</sup> (then Adam Khan Sulemankhel) as null and void, founded on fraud, misrepresentation and legal want of jurisdiction against claim over public property of the Petitioner No. 1 (then as defended No. 1) when it was "road" since 1904-05 and for any other appropriate action against any public functionary for doling out public precious property to Waziristan based non Right holder Respondent No. 1 (Plightiff of CS No. 80 /1) decided unjustly on 05-01-2008.

The Petitioners severally and jointly ; amongst other grounds ; respectfully submit as follows:-

1. The khasra Nos 1210(11K-16M) and 1211 (4K-4M) as per long standing entries before the 3<sup>rd</sup> regular settlement of 1973-74 of village Shorkot are owned by the Petitioners (copy of the <sup>Scheme</sup> Misc. haqiat 1965-66 is enclosed alongwith copies of periodical records of <sup>73-74</sup> 1973-74, 2004-05 and 2008-09)

Senior Member

**ATTESTED**

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- and the Respondent No. 1 (Plaintiff) was not the recognised Tenant until even before the 2008 or before Kharifs of the years 1971 or 1976.
2. The Respondent No.1 instituted CS No. 80/1 on 12-05-2007 and non-official government agent avoided vigorous pursuit of the defence of the Petitioners and the said agent avoided reference to the fact that the public property is not of the status of resumed land under MLR No. 115 or land reforms Act II of 1977 and the plaintiff (Nizam Ud Din) had no priority-qualification under any Regulation, Rule or subordinate enactments. Copy of plaint dated 12-05-2007 is enclosed alongwith copy of order sheets from 12-05-2007 till 05-01-2008 are enclosed.
  3. The Plaintiff (Nizam Ud Din) is unrecognised tenant since there was no will of the Petitioners, is not permitted to urge adverse possession after 31-08-1991 or 18-10-1995 (the assented date of Act II of 1995) and no proper issue was framed qua the status of public property and the anomalous and lopsided suit was unilaterally decreed as prayed for, when the government is not bound for dubious acts of omission of its private agent.
  4. The subordinate revenue staff in compliance of the said impugned decree attested mutation and the latest impugned periodical record of 2012-13 depicted the Plaintiff (Respondent No. 1) as impugned owner copy of the said fard is enclosed though Plaintiff was not a landless owner or small land owner when he owns garden, bungalow and filling station along side the Banu Dera Ismail Khan Road copy of Khata No of the Plaintiff's property for 2004-05 with aks Shajra are enclosed.
  5. The impugned decree dated 05-01-2008 being absolute nullity in law is void ab-initio and the Jamabandi of 2012-2013 provides fresh cause of action for legitimate grievances after June, 2013 and having obtained believable information of the fraudulent decree instituted misc, civil application No. 06/12(2) CPC on 09-07-2013 before the trier-Judge, Dera Ismail Khan which was dismissed on 10-11-2014 by Learned Civil Judge-VII (M. Aqib), Dera Ismail Khan copies of the application

**ATTESTED**

Senior Member

dated 09-07-2013 by Mr. Sajid Nawaz Saddozai Advocate, Dera Ismail Khan and impugned decision dated 10-11-2014 are enclosed.

6. The said application of 09-07-2013 was dismissed on 10-11-2014 against ~~the~~ Revision Petition No. 03 was instituted which was dismissed on hyper-technical ground when the prestigious judgement of full Bench of Seven Judges of the Supreme Court Namely "Mrs. Binori Versus Gulam Jillani" of 2010/2011 is in field and forceful. Copy of Revision Petition of the Petitioners along impugned judgment/order dated 16-04-2015 are enclosed. The impugned decisions/ orders dated 16-04-2015 and 10-11-2014 have caused genuine grievance to the Petitioner No. 1 and its recognised assignee agent petitions No. 2 hence the instant Writ Petition which is competent on all fours.

GROUNDS

- a) The plaintiff (respondent No. 1) and his predecessor <sup>in occupation</sup> namely M. Raheem S/o Ramzan had never remained tenant since there is no proof of Batai (Sharah Malkana) and the plaint was thus misconceived and fraud-annexed (copy is enclosed).
- b) There was no justification for adverse possession and no express claim in this regard was brought forth.
- c) The public property of previous Khasra Nos 753, 755, 761 of "ROAD" cannot be converted to surrendered area resumed land and the legal want of jurisdiction and the want of priority-qualification of Grant under Terms and Conditions of Grant Rule 1979 (though such claim is not admitted) or other repealed Act goes to the roots of the dispute and impugned decree is thus non-sustainable ab-initio.
- d) The non-framing of issue qua the status of the public property in miscellaneous application dated 09-07-2013 is serious irregularity in the exercise of jurisdiction and proceeding are thus tainted with malice-in-

Senior Member

ATTESTED

fact and malice-in-law when the "Road" abandoned did not lose its proprietary status i.e Govt property since 1904-1905.


- e) That non relevant oral evidence of the Plaintiff has been unduly endorsed and the relevant long standing recorded evidence has been excluded from consideration which speaks of the lack of the understanding of the real matter in-issue and the illegalities inhering fraud, misrepresentation and want of Jurisdiction of the trier judge (Adam Khan Sulemankhel) float on the surface of the record and objection petition under section 12(2)CPC is maintainable after revisional revenue record of 2012-13 (last date june 30, 2013).
- f) The revision petition under the command of case law of Mst Binori Versus Ghulam Jillani (PLJ) 2011-SC has been made unenforceable which is an illegality in the exercise of the jurisdiction.

PRAYER

It is, therefore, most humbly prayed that on acceptance of the Writ Petition, the decree of the Civil Judge-VII dated 05/01/2008 in Civil Suit No 80/1 dated 15-05-2007 may be set-aside devoid of legal footings and due to its demerits and exiguous evidence.

Dated: \_\_\_/08/2015

Your Humble Petitioner

  
DEPUTY COMMISSIONER/COLLECTOR/  
DEPUTY LAND COMMISSIONER,  
DERA ISMAIL KHAN.

**ACCEPTED**

FORM OF ORDER SHEET

Order or other proceedings with signature of Judge(s)

Date of order or proceedings

20/01/2016

W.P. No. 857-D/2015

Present:- Addl. A.C. for the petitioner

\*\*\*

The learned A.A.C. contends that

decree has been obtained by the respondents by

deploying fraudulent means and fraud has been

committed on the Court as the suit land was never

resumed for land reforms; moreover, in such like

controversy, jurisdiction of Civil Court was

barred under Section 26 of the Land Reforms

Regulation, 1972, but the Courts below had not

advised to this vital aspect of the case, therefore,

judgments of both the Courts below are not

sustainable in the eye of law. Points raised, need

consideration. Admit. Notice and record.

*[Handwritten signature]*

JUDGE

*[Handwritten signature]*

~~ATTENDED~~

*[Handwritten notes]*

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*[Handwritten signature]*



Annex - I

GOVERNMENT OF KHYBER PAKHTUNKHWA  
BOARD OF REVENUE  
REVENUE & ESTATE DEPARTMENT

No. Estt;I/PF/Ghulam Qasim/  
Peshawar dated the 25/10/2015.

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To

Mr. Malik Mansoor Qaiser,  
Secretary to Commissioner,  
D.I Khan Division.

SUBJECT: DISCIPLINARY ACTION AGAINST REVENUE OFFICIALS OF DISTRICT DIKHAN.

In continuation of this office letter No. No. Estt;I/PF/Ghulam Qasim/19184, dated 24.08.2015 and to enclose charge sheets and statement of allegation against the following officials in the instant case please.

1. Mr. Abdul Jalil Ex-Kanungo Circle, DIKhan now Naib Tehsildar, DIKhan.
2. Mr. Sher Jan Patwari Halqa Shor Kot, DIKhan.

*Rozal*

*[Signature]*  
Secretary -- I

No Estt;I/PF/Ghulam Qasim/ 21204

Copy alongwith Charge Sheets and Statement of Allegations forwarded to Deputy Commissioner, D.I Khan with the request to serve the same upon the accused officials and direct the officials to submit their written reply to Enquiry Officer within 7 days positively.

Encl. (a-a)

*[Signature]*  
Secretary -- I

8868/DC  
08-10-2015

*Supdt  
urgent*

*DK  
Factive PB:*

*9/10/15*

*DC DK  
7-10-15*

*4309  
12/11/15*

*put up draft*

**ATTESTED**

*13/10*

ENQUIRY REPORT

Background

Brief facts of the case are that one Mr. Nizam-ud-Din S/O Muhammad Usman R/O Moza Shorkot DIKhan filed an application in the court of learned Civil Judge-VII DIKhan claiming the ownership rights of state land measuring 16 Kanals in Khasra 1210 & 1211 of Moza Shorkot on the plea that he was in possession of the said land since long being a "Kashtkar" and land may be allotted to him under Land Reforms Rules. The court issued summons to the Respondents namely the Secretary Board of Revenue, District Officer Revenue / Collector DIKhan, Revenue Officer / Tehsildar DIKhan and Patwari Halqa. The Respondents 1, 2 and 3 authorized District Revenue Accountant, Naib Tehsildar Irrigation Nullah Gomal and Girdawar Circle DIKhan respectively to defend the case on their behalf. The authorized officials appeared before the court on 02.06.2007 except Patwari Halqa, who was proceeded against ex-parte by the court. On next hearing i.e. 21.06.2007 the authorized officials appeared before the court however they failed to attend the court on next date of hearing on 04.07.2007, hence the court ordered ex-parte proceedings against all the respondents. No one approached the court for cancellation of ex-parte decree and proceedings continued with ultimate decree in favour of the Plaintiff on 05.01.2008.

In the meanwhile the Board of Revenue placed the land in question (i.e. 16 Kanals in Moza Shorkot) on the schedule of Pak Navy which was subsequently allotted to certain Navy officials however it could not be incorporated in revenue record in the presence of court decree. The issue was brought into the notice of the then Senior Member Board of Revenue through a report by Patwari Halqa, Girdawar Circle, Revenue Officer concerned and District Officer Revenue / Collector DIKhan. **(Flag-A)** The then Senior Member Board of Revenue passed the remarks "DOR DIKhan for withdrawal from Schedule". The District Officer Revenue / Collector DIKhan forwarded the same to Revenue staff with the remarks "for compliance of SMBR orders please". Consequently the Revenue Officer / Tehsildar DIKhan attested the mutation in favour of Plaintiff Nizam-ud-Din on the basis of court decree.

Pakistan Navy approached the Board of Revenue and agitated against the attestation of mutation in favour of the Plaintiff. The Board of Revenue issued directions that disciplinary proceedings may be initiated against the officials responsible for ex-parte decree and application u/s 12(2) CPC may be moved against the decree. The Commissioner DIKhan Division appointed Assistant Commissioner Kulachi as Inquiry Officer to conduct a Fact Finding Inquiry.

Assistant Commissioner Kulachi furnished his findings which were forwarded to the Board of Revenue. The Competent Authority ordered an Inquiry under Efficiency & Disciplinary Rules-2011 and appointed the undersigned as Inquiry Officer.

Page 1 | 4

**ATTESTED**

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Annex J



Proceedings

The Competent Authority served Charge Sheets and Statements of Allegations upon the following officials and directed them to submit written replies to the Inquiry Officer.

1. Mr. Ghulam Qasim the then DRA now Special Tehsildar Irrigation DIKhan as authorized representative of Secretary Board of Revenue.
2. Mr. Qudratullah the then Naib Tehsildar Irrigation Nullah Gomal now Tehsildar Hangu as authorized representative of District Officer Revenue / Collector DIKhan
3. Mr. Karamatullah Tehsildar DIKhan
4. Mr. Abdul Jalil, the then Girdawa Circle DIKhan now Naib Tehsildar Daraban DIKhan
5. Mr. Sher Jan the then Patwari Halqa Shor Kot now Patwari Halqa Kirri Khaisor Kacha.

The accused submitted their written replies to the undersigned as per following detail:-

The accused Mr. Ghulam Qasim stated that he was posted as DRA in the year 2007, however due to heavy load of work, he requested the then District Officer Revenue DIKhan to authorize any other officer to attend the court cases where authorities were issued in favour of DRA. He submitted his written request to District Officer Revenue DIKhan which is placed on file (Flag-B). He further stated that he did never receive any Authority Letter from Board of Revenue nor did he appear before the court. (Statement at Flag-C)

Mr. Qudratullah, the accused, stated that he was posted as Naib Tehsildar Irrigation Nullah Gomal DIKhan in 2007 and received Authority Letter (Flag-D) from District Officer Revenue DIKhan to represent him in the subject case. He appeared before the court on 02.06.2007 and later on he was directed to represent the Board of Revenue as well (instead of DRA) which he did and appeared before the court on 21.06.2007 as representative of both the District Officer Revenue and Board of Revenue. He stated that he obtained the copies of plaint and submitted it to Government Pleader to prepare reply for submission before the court on next date of hearing on 04.07.2007. In the meanwhile he was directed by the officers to move to Hathala Tehsil Kulachi to monitor flood situation. According to him, he remained stationed at Hathala for two months and was unaware of the happenings regarding the subject case whether the Government Pleader prepared reply and submitted to the court or not. He was unable to present any record regarding flood duty or handing over the case to Government Pleader. (Statement at Flag-E)

Mr. Karamatullah stated that in compliance with the directions of high-ups, an application under 12/2 CPC was submitted before the court of learned Civil Judge-VII

Page 2/4

**ATTESTED**

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DIKhan and he being authorized officer on behalf of Additional Deputy Commissioner and Additional Assistant Commissioner (Revenue) DIKhan (**Flag-F**) attended the court proceedings on 09.07.2013, 31.07.2013 and 20.09.2013 however later on he was transferred and handed over the charge to his successor. According to him his two successors, namely Mr. Shah Nawaz and Abdur Rehman Shah also attended the court proceedings. In favour of his claim he submitted copies of order sheets of the court and charge report which are placed on file at **Flag-G** and **H** respectively. Statement at **Flag-I**

Mr. Abdul Jalil, Naib Tehsildar Daraban DIKhan stated that he was posted as Girdawar Circle DIKhan in 2007 and was authorized by Tehsildar DIKhan (**Flag-I**) to attend the court of Civil Judge VII DIKhan on his behalf in the subject case. According to him he attended the court on 02.06.2007 and 21.06.2007, however could not attend on next date of hearing and later on he was transferred and posted as Kanungo Rod Kohi. He stated that he has always performed his duties during entire service with great responsibility therefore he didn't remain absent from the court deliberately but was assigned other duties by the then District Officer Revenue (DOR) and Tehsildar DIKhan. He requested that he may be exonerated from the charges. He was unable to furnish any documentary proof in support of his contention. (Statement at **Flag-K**)

Mr. Sher Jan Patwari Halqa Kirri Khaisor Kacha, the then Patwari Shor Kot stated that he attended the court of Civil Judge VII on first hearing but could not attend the court later on due to other official engagements and court cases, hence was proceeded against ex-parte. He further stated that he was not authorized by any officer to defend the case on his behalf and Patwari Halqa was a proforma defendant who was supposed to present revenue record in the court which he did. The responsibility of defending the case was on the shoulders of defendants 1, 2 and 3 i.e. Secretary Board of Revenue, District Officer Revenue and Revenue Officer Circle. He requested for exonerated from the charges. (Statement at **Flag-L**)

**Findings:**

The perusal of statements of the accused and available record has led to the following:-

As per available record, the Authority Letter was issued in favour of DRA by District Officer Revenue (**Flag-M**) to attend the court on behalf of Board of Revenue in the case titled Nizam-ud-Din Versus Government of Khyber Pakhtunkhwa however no record of its receipt on behalf of DRA was available. The request of Mr. Ghulam Qasim, the then DRA is placed on file **Flag-B** according to which he asked DOR to absolve him from pursuing court cases due to heavy load of work which was accepted as per marking on the said letter. On the other hand Mr. Qudratullah the then Naib Tehsildar Irrigation Nullah Gomal DIKhan has himself accepted that he was directed by the officers to represent the Board of Revenue as well in place of DRA which

**ATTESTED**

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he did & appeared before the court on 21.06.2007 but later on could not attend due to emergency flood duty. On the face of statement of Mr. Qudratullah, Mr. Ghulam Qasim does not seem to be guilty of negligence.

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2. Mr. Qudratullah, the then Naib Tehsildar Irrigation Nullah Gomal now Tehsildar Hangu has confessed the charges that he was authorized by District Officer Revenue DIKhan to defend the case. He has also accepted that he represented the Board of Revenue before the court instead of DRA on 21.06.2007 but later on could not attend the proceedings on 04.07.2007 due to flood duty, however, he was unable to prove his contention through record, hence he has been found guilty of negligence and misconduct.
  3. Mr. Karamatullah submitted the copies of order sheets of the court **Flag-G** and final order of the court on application U/S 12(2) CPC. **Flag-N** The perusal of the order sheets and final order reveals that application U/S 12(2) CPC was pursued by him and his successors however the court dismissed the application on merit, hence Mr. Karamatullah does not seem to be guilty of negligence.
  4. Mr. Abdul Jalil, Naib Tehsildar Daraban the then Girdawar Circle DIKhan accepted that he was authorized by Tehsildar DIKhan to defend the case but he failed to attend the court after two hearings therefore charges against him stand proved.
  5. Mr. Sher Jan Patwari admitted that he failed to attend the court after one hearing due to which he was proceeded against ex-parte, therefore charges against him stand proved.

#### Recommendations

1. The charges against Mr. Ghulam Qasim the then DRA now Special Tehsildar Irrigation DIKhan have not been proved because Mr. Qudratullah the then Naib Tehsildar Nullah Gomal has confessed in his statement that he represented Board of Revenue before the court on 21.06.2007, hence charges against Mr. Ghulam Qasim may be dropped.
2. The charges against Mr. Qudratullah stand proved, therefore it is recommended that one of the penalties as prescribed in Rule 4 of Efficiency and Disciplinary Rules 2011 may be imposed upon him.
3. Mr. Karamatullah was not found guilty of the charges, therefore he may be exonerated.
4. Mr. Abdul Jalil, Naib Tehsildar Daraban the then Girdawar Circle DIKhan has been found guilty of negligence and misconduct therefore imposition of one of the penalties as prescribed in Rule 4 of Efficiency and Disciplinary Rules 2011 is recommended.
5. Mr. Sher Jan, Patwari has been found guilty of negligence and misconduct, therefore it is recommended that one of the penalties as prescribed in Rule 4 of the Efficiency and Disciplinary rules 2011 may be imposed upon him.

25/11/2015  
Enquiry Officer/  
Secretary to Commissioner  
DIKhan Division DIKhan

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ATTESTED

he did & appeared before the court on 21.06.2007 but later on could not attend due to emergency flood duty. On the face of statement of Mr. Qudratullah, Mr. Ghulam Qasim does not seem to be guilty of negligence.

2. Mr. Qudratullah, the then Naib Tehsildar Irrigation Nullah Gomal now Tehsildar Hangu has confessed the charges that he was authorized by District Officer Revenue DIKhan to defend the case. He has also accepted that he represented the Board of Revenue before the court instead of DRA on 21.06.2007 but later on could not attend the proceedings on 04.07.2007 due to flood duty, however, he was unable to prove his contention through record, hence he has been found guilty of negligence and misconduct.
3. Mr. Karamatullah submitted the copies of order sheets of the court **Flag-G** and final order of the court on application U/S 12(2) CPC. **Flag-N** The perusal of the order sheets and final order reveals that application U/S 12(2) CPC was pursued by him and his successors however the court dismissed the application on merit, hence Mr. Karamatullah does not seem to be guilty of negligence.
4. Mr. Abdul Jalil, Naib Tehsildar Daraban the then Girdawar Circle DIKhan accepted that he was authorized by Tehsildar DIKhan to defend the case but he failed to attend the court after two hearings therefore charges against him stand proved.
5. Mr. Sher Jan Patwari admitted that he failed to attend the court after one hearing due to which he was proceeded against ex-parte, therefore charges against him stand proved.

**Recommendations**

1. The charges against Mr. Ghulam Qasim, the then DRA now Special Tehsildar Irrigation, DIKhan have not been proved because Mr. Qudratullah, the then Naib Tehsildar Nullah Gomal has confessed in his statement that he represented Board of Revenue before the court on 21.06.2007, hence charges against Mr. Ghulam Qasim may be dropped.
2. The charges against Mr. Qudratullah stand proved, therefore it is recommended that one of the penalties as prescribed in Rule 4 of Efficiency and Disciplinary Rules 2011 may be imposed upon him.
3. Mr. Karamatullah was not found guilty of the charges, therefore he may be exonerated.
4. Mr. Abdul Jalil, Naib Tehsildar Daraban the then Girdawar Circle DIKhan has been found guilty of negligence and misconduct therefore imposition of one of the penalties as prescribed in Rule 4 of Efficiency and Disciplinary Rules 2011 is recommended.
5. Mr. Sher Jan, Patwari has been found guilty of negligence and misconduct therefore it is recommended that one of the penalties as prescribed in Rule-4 of the Efficiency and Disciplinary rules 2011 may be imposed upon him.

  
Enquiry Officer,  
Secretary to Commissioner  
DIKhan Division DIKhan

Page 4/4

**ATTESTED**

AD No. 'K'  
(39)

GOVERNMENT OF KHYBER PAKHTUNKHWA  
BOARD OF REVENUE  
REVENUE & ESTATE DEPARTMENT

Dated Peshawar the 23/12/2015.

NOTIFICATION

No. Estt: I/PF/ G. Qasim/ \_\_\_\_\_, WHEREAS; Mr. Sher Jan, Patwari DIKhan was proceeded against under the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011, for the charges, mentioned in the Charge Sheet & statement of allegations.

AND WHEREAS; Malik Mansoor Qaiser, Secretary to Commissioner DIKhan Division DIKhan was appointed as Inquiry Officer to probe charges leveled against the said official and submit findings and recommendations.

AND WHEREAS the Inquiry Officer after having examined the charges, evidence produced before him and statement of accused official, submitted his report whereby the charges against the accused official stands proved.

AND THEREFORE I, Muhammad Humayun Khan, Senior Member, Board of Revenue after having examined the charges, evidence produced, statement of accused official, findings of Inquiry Officer and after personal hearing of the accused official concur with the findings and recommendations of the Inquiry Officer.

NOW THEREFORE I as Competent Authority in exercise of powers conferred by Rule-4 (b) (ii) of the Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011 impose major penalty of dismissal from service upon Mr. Sher Jan, Patwari DIKhan District with immediate effect.

Sd/-  
Senior Member

No. Estt: I/PF/ G. Qasim / 28780-84

Copy forwarded to the:-

1. Commissioner, DIKhan Division DIKhan.
2. Deputy Commissioner, DIKhan.
3. District Accounts Officer DIKhan.
4. Official concerned.
5. Personal File.

**ATTESTED**

Secretary - I

Annex 2

40

Registered.

To,

The Chief Secretary,  
Govt: of KPK  
Civil Secretariat, Peshawar.

Subject:-

Departmental Appeal against Impugned Order  
Dated 23.12.2015 Warranting Dismissal from  
Service.

Please find enclosed herewith Memo: of  
Departmental Appeal dated 28.1.2016, which is under Appeal Rules,  
1986 for further necessary action at your end at your earliest  
convenience.

Your's Truly,



Sher Jan s/o Abdullah  
caste Gandapur r/o Ratta Kulachi,  
DIKhan.

Dated \_\_\_\_\_

0348 1197815  
03449409009

~~ATTESTED~~



BEFORE THE WORTHY CHIEF SECRETARY, GOVT. OF KPK PESHAWAR.

Service Appeal No. \_\_\_\_\_/2016.

Appellant:- Sher Jan, Patwari(D.I.Khan).

Index.

S.No.	Particulars of documents.	Pages.
1-	Memo: of Appeal/	1—5
2-	Copy of Impugned Order dt:23.12.2015.	6
3-	Copy of Show Cause Notice dated 14.12.2015.	7
4-	Copy of Inquiry Report dt: 5.11.2015.	8—11
5-	Copy of Charge Sheet dt: 5.10.2015.	12—13
6-	Copy of Reply from Appellant.	14
7-	Copy of Order Sheet of CJ-VII, DIKhan dt:4.7.2007 in S.Suit No.80/1 w.e.f.12.5.2007 to 5.1.2008.	15—21
8-	Copy of decree sheet of CS No.272 of 11.10.2005 decided on 6.1.2006.	22—24
9-	Copy of Statement of Land Reform Clerk dated 23.12.2005 in CS No.80/1 of 2007.	25
10-	Copy of Daily Diary dated 4.12.2007	26—27
11.	Copy of Mutation No.6353 dated 27.9.2010.	8

Dated.

Appellant.

**ATTESTED**

*msj*

BEFORE THE GOVERNMENT OF KHYBER PAKHTOONKHAWA.

(42)

Through:-

The Worthy Chief Secretary, Government of  
Khyber Pakhtoonkhawa, Civil Secretariat, Peshawar.

Departmental Service Representation under S.22 of  
the Civil Servants Act (XVIII) 1973, read with Civil  
Servants Appeal Rules, 1986, against Order of the  
Senior Member Board of Revenue dated 23.12.2015.

First Service Appeal routed through the:-

The Secretary Revenue & Estate Department-Cum-Senior  
Member Board of Revenue K.P.P., Peshawar. The Order was  
Communicated on 04-01-2016.

Appellant:- Sher Jan..... Patwari.

The Appellant; amongst other grounds, respectfully  
submits. as follows:-

~~ATTESTED~~

PART-A.

1-

The Appellant during May, 2007 till January, 2008 was  
posted as Patwari Halqa of Shorkot Estate and  
Patwari Halqa has no jural roll in litigations against  
Government or Estate Department under Order 27 of Civil  
Procedure Code (V) 1908 or the Law Manual (Instructions for  
Management of legal Affairs) and is and was a non-entity  
and was a misjoinder in the Panel of Defendants of the  
Civil Suit No.80/1 dated 12.5.2007 decided lopsidedly by  
the Trier Judge Mr. Adam Khan Suleman Khel of South Waziristan  
Agency when Nizam Din Suitor too is bonafide resident of  
South Waziristan.

9/1/16  
S. J. Patwari

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- 2- There is no note in regard to subject matter Jurisdiction of the lis in the proceedings of 12.5.2007 (Copy is enclosed) which shows indifference of the "Trier Judge" alongwith preconceived-nation-bias of the Judge, through the Plaint/ or suit was subject to "Return" to the Plaintiff on the very day of its institution under Rule 10 of Order 7 C.P.C.
- 3- The Tehsildar Defendant No.3 through his Authority Letter (instead of Approaching the Government Pleader) nominated by Designation Girdawar Circle, D.I.Khan which was not the requirement of procedural Law and the Appellant being field Official could not enter appearance on 2.6.2007 and from the very start, there was haste from Judge against the course of Business of his Court when in other cases, adjournments upto one month were the usual routine under Rule(1) of Order-8 CPC and such haste is noteworthy- Rule I of Order 8 CPC was ignored.
- 4- The Patwari Halqa was thus placed exparte on 2.6.2007 within 20 days of the Institution of the suit.
- 5- The Civil Suit No.80/1 of 12.5.2007 was proceeded exparte in violation of Rule 3 of Order 17 CPC by the said Mr. Adam Khan Suleman Khel Civil Judge-VII, DIKhan and exparte decree was passed on 5.1.2008 in utter haste; and the Appellant was transferred from Shorkot w.e.f. 04.12.2007.
- 6- The Appellant was transferred from Shorkot Halqa on 04.12.2007 and the Decree dated 5.1.2008 was not executed or satisfied during his tenure, which fact is Noteable.

W/2007-2

ATTESTED

(45)

- 7- The Appellant was Charge Sheeted for deliberate absence on 2.6.2007 alongwith failure of not informing the District Superior Officials(But the Collector, Govt; and Tehsildar were properly served(Copy of the Court Order Sheet is enclosed).
- 8- The Appellant had thus no vicarious liabilities for the acts of the omission of Tehsildar namely Ghazi Nawaz and Collector namely Khan Bakhsh Marwat and Senior Member Board of Revenue(\_\_\_\_\_ ) who were in definite knowledge of the non-maintainable Suits and Patwari Halqa is not the Authorised Agent of the Government and those Officers have been unduly absolved of their obligations.
- 9- The Charge Sheet was answered on time and the Inquiry Officer did not adopt the procedure as envisaged in Rule-5 to 14 of the E & D Rules, 2011 and the Check List of 1985 under E & D Rules, 1973 and submitted exparte Inquiry Report without making any reference to the illegal subornative of the Trier, Judge in the case.
- 10- Patwari Halqa is only witness of Record and the Trier Judge remained quite unconcerned by ignoring to get himself Apprised of the entries of ( *من حق* ) 1966-1968 and the exparte decree is without jurisdiction.
- 11- The Show Cause Notice dated 14.12.2015 has the repetition of the Charge Sheet; and no adquete bout of time was allowed for written Reply and in haste the personal hearing was done on 18.12.2015 at Peshawar and the impugned Order of Dismissal was passed on 23.12.2015(Copy is enclosed).

*Handwritten signature/initials*

**ATTESTED**

45

12- The entire proceedings had been conducted in haste and the Appellant has been punished in a harsh manner, against the "Rule of Proportionality" of the Guilt" as alleged when Patwari Halqa is a nonentity under O.27 CPC read with instructions of Law Manual and the "Principal facilitator i.e. Trier Judge Mr. Adam Khan Suleman Khel had gone unpunished when his award of decree is fraudulent and without jurisdiction and a complaint against him is the Warrant of the Law since Provincial Government is the Competent Authority for all Provincial Government Servants.

The Inquiry Officer adopted the Rule of hit & run in the case.

13- The Mutation No.6353 was entered on 21.6.2010 in pursuance of decree and the Verifying Girdawar Circle \_\_\_\_\_ did not take heed of the fact to make mention in his report that the land is not the Surrendered land under Land Reforms and clerk of Land Reforms too erred in his statement terming the land as surrendered and such Omission was also made by Ikramullah Tehsildar, D.I. Khan while attesting Mutation in favour of Nizam Din and the Board of Revenue under S.177 has peremptory powers to correct any error in the Mutation and the Board of Revenue too had not discharged its obligation.

ATTESTED

14- Another case of similar nature vide Civil Suit No.272/1 dated 11.10.2005 of Civil Judge-I, DI Khan titled Muhammad Aslam etc V/S Govt: of NWFP & others was also fraudulently for Khasra No.1270,1275(15 Kanals 10 Marlas) proceeded and decreed and had been executed in Govt: record but no official / Officers were vibrated and the \_\_\_\_\_ properly had been expropriated in favour of Muhammad Aslam, Decree Holder, and the Collector of 2005-2006 and Tehsildar of early 2006 had remained unfaithful too and that case had been buried without further proceedings.

Copies of the Decree Sheet of the Civil Suit No.272/1 dated 11.10.2005 decreed on 6.1.2016 within 85 days exparte and Ahmad Balkh on 23.12.2005 in that case Statement

*[Handwritten signature]*

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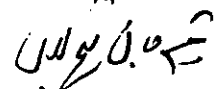
of PW-I and PW-2 dated 23.12.2005 for the said Civil Suit are enclosed.

15-

The Appellant also wishes to be heard in person to explain further qua the proceedings of Writ Petition No.857 dated 22.12.2015 from the Additional Deputy Commissioner, DIKhan.

It is therefore PRAYED that the impugned Order dated 23.12.2015 of dismissal from Service of the Appellant may kindly be set aside and the Appellant may be re-instated in his incumbency of Tehsildar BPS-09 with all back benefits.

Your Humble Appellant

  
(Sher Jan)

Ex-

S/O Abdullah Jan Gandapur  
R/O Ratta Kulachi Zari Farm  
Cell phone No.03481197815  
03449409009

Dated: \_\_\_\_\_

03481197815

  
**ATTESTED**

Annexo 'M'

GOVERNMENT OF KHYBER PAKHTUNKHWA  
BOARD OF REVENUE  
REVENUE & ESTATE DEPARTMENT

(47)

No. Estt:I/ Sher Jan/ 8523  
Peshawar dated the 4 /03/2016

To

Mr. Sher Jan,  
Ex- Patwari  
R/O P.O Rata Kalachi Zarai Form Rata Kalachi DIKhan.




SUBJECT: DEPARTMENTAL APPEAL AGAINST THE IMPUGNED ORDER DATED  
11.01.2016.

I am directed to refer to your Departmental appeal dated 11.01.2016 on the subject and to say that your Departmental appeal has been examined by the Appellate Authority and filed.

Assistant Secretary (Estt)

**ATTESTED**

10 روپے

45778

ایڈووکیٹ/دستخط: \_\_\_\_\_  
 بار کونسل اہلکار ایسوسی ایشن پشاور  
 رابطہ نمبر: \_\_\_\_\_

پشاور بار ایسوسی ایشن، خیبر پختونخواہ

*[Handwritten Signature]*

بعدالت جناب:

	<p>دعویٰ: _____          علت نمبر: _____          مورثہ: _____          جرم: _____          تھانہ: _____</p>
<p><b>بامث تحریر آگے</b></p>	

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی کاروائی متعلقہ

آن مقام *[Handwritten Signature]* کو وکیل مقرر کر کے اقرار کیا جاتا ہے کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا، نیز وکیل صاحب کو راضی نامہ کرنے و تقرر کجالت و فیصلہ برعلت دینے جواب دعویٰ اقبال دعویٰ اور درخواست از ہر قسم کی تصدیق زریں ہند دستخط کرنے کا اختیار ہوگا، نیز ہر صورت عدم پیروی یا تاخیر کی تکلیف یا اہتیل کی برآمدگی اور منسوخی، نیز دائر کرنے اہتیل نگرانی و نظریاتی و پیروی کرنے کا مختار ہوگا اور ہر صورت ضرورت مقدمہ مذکورہ کے کل یا جزوی کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار ہوگا اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ اختیارات حاصل ہوں گے اور ان کا سامنے ہر ذمہ منظور و قبول ہوگا دوران مقدمہ میں جو خرچہ ہر جانب التوائے مقدمہ کے نسبت سے ہوگا وہ وکیل موصوف و متول کے کار خوار ہوگا کوئی تاریخ پیشی مقام دورہ یا حد سے باہر ہو تو وکیل صاحب پابند نہ ہوں گے کہ لکچر ذوی ہر مذکورہ کریں، لہذا وکالت نامہ لکھ دیا تاکہ مندر ہے۔

المرقوم: *[Handwritten Signature]*

العید \_\_\_\_\_ واہ شد \_\_\_\_\_ العید \_\_\_\_\_

مقام *[Handwritten Signature]* کے لئے منظور ہے۔

*[Handwritten Signature]*  
 (Sher Jan)

Accepted  
*[Handwritten Signature]*



**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL.**

Service Appeal No. 361 of 2016

Mr. Sher Jan

(Appellant).

Versus

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

**Parawise comments on behalf of Respondent No. 5.**

**Respectfully sheweth.**

**ON FACTS:**

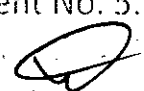
1. Pertains to record.
2. The Appellant was, while posted as Patwari Halqa Shor Kot was a proforma respondent in the case title "Nizam-ud-Din versus Government of Khyber Pakhtunkhwa, pending before the court of learned Civil Judge-VII/Judicial Magistrate, D.I.Khan. The Appellant did not appear before the court, hence ex-Parte proceedings were ordered by the learned Court. Due to the negligence of Appellant a valuable piece of Government land was decreed in favour of one Nizam-ud-Din.
3. It pertains to court's record.
4. Correct to the extent due to the negligence of Appellant as well as the Revenue Officers authorized by the respondents, ex-Parte proceedings were ordered and a valuable piece of Government land was decreed in favour of one Nizam-ud-Din.
5. Incorrect, The ex-Parte order of the learned court was challenged by submitting an application u/s 12 (2) CPC which was rejected. Later-on;



an Appeal was lodged before the court of learned Additional District & Sessions Judge-IV, D.I.Khan which was also rejected. Now, the case is pending before the Hon'ble Peshawar High Court Bench D.I.Khan.

6. As stated above in Para 5.
7. As stated above in Para 5.
8. As stated above in Para 5.
9. Does not relate to respondent No. 5.
10. Does not relate to respondent No. 5..
11. Does not relate to respondent No. 5.
12. Does not relate to respondent No. 5.
13. Does not relate to Respondent No. 5.
14. Due to negligence in performance of their duties, a piece of Government land was decreed in favour of one Nizam-ud-Din, therefore, it is requested that the instant Appeal may please be filed.

**ON GROPUNDS.**

- A. Does not relate to Respondent No. 5.
  - B. Does not relate to Respondent No. 5.
  - C. Does not relate to Respondent No. 5.
  - D. Does not relate to Respondent No. 5.
- 

- E. Incorrect.
- F. Does not relate to Respondent No. 5.
- G. Does not relate to respondent No. 5.
- H. Correct to the extent that the Writ Petition is pending before the Hon'ble Peshawar High Court Bench D.I.Khan.
- I. Due to negligence in performance of their duties, a piece of Government land was decreed in favour of one Nizam-ud-Din. It is requested that the instant Appeal may please be dismissed.

  
DEPUTY COMMISSIONER,  
DERA ISMAIL KHAN  
(Respondent No.5)

*Vetted*  
*Jackey*  
Govt: Pleader  
KPK Services Tribunal  
Camp Court D.I.Khan



OFFICE OF THE  
DEPUTY COMMISSIONER  
DERA ISMAIL KHAN  
Phone #: 0966-9280116 / Fax #: 0966-9280110

AUTHORITY LETTER.

Superintendent. Deputy Commissioner's Office, D.I.Khan is hereby authorized to attend the learned KPK Services tribunal on behalf of the undersigned in the following cases on 30/08/2016 and onward each dates of hearing and submit Para-wise comments on behalf of undersigned (Respondent No.5).

1. Service Appeal No.360/2016 Qudaratullah versus Government of KPK through Chief Secretary, KPK and others.
2. Service Appeal No. 393/2016 Abdul Jalil versus Government of KPK through Chief Secretary, KPK and others.
3. Service Appeal No. 361/2016 Sher Jan versus Government of KPK through Chief Secretary, KPK and others.

  
Deputy Commissioner,  
Dera Ismail Khan

No. 510 SK Dated D.I.Khan the 29/08/2016

Copy to the:-

- 1 Superintendent Deputy Commissioner's Office D.I.Khan for compliance
- 2 Reader. court of learned KPK Services tribunal camp at D.I.Khan.

  
Deputy Commissioner,  
Dera Ismail Khan

Service Appeal No. 361/2016.

Sher Jan Ex-Patwari District D.I Khan.

**VERSUS**

Government of Khyber Pakhtunkhwa through Chief Secretary and others

**JOINT PARAWISE COMMENTS ON BEHALF OF RESPONDENTS.**

**PRELIMINARY OBJECTIONS.**

1. The Appellant has got no cause of action.
2. That the appeal is bad for mis-joinder and non-joinder of necessary parties.
3. That the Appellant has been estopped by his own conduct to file the appeal.
4. That appeal is time barred.
5. That the appeal is not maintainable in its present form.

**ON FACTS.**

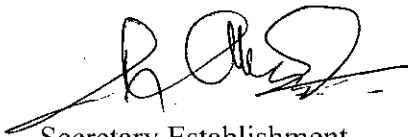
1. Pertain to record.
2. Pertains to record.
3. Incorrect. The appellant was given letter of authority to appear before the Court and defend the case on behalf of Government, but he did not properly pursue the case in Civil Court, resultantly the Civil Court passed an ex-parte decree and a valuable 16 kanal state land, was allowed to a private individual.
4. As in Para-3 above.
5. Correct to the extent that respondent filed application Under Section 12 (2) before the court, but the same was also dismissed due to non-pursuation by the appellant.
6. As in Para-5 above.
7. Correct to the extent that the Revision was also dismissed due to non-pursuation and negligence on the part of appellant.
8. Pertains to record.
9. Correct to the extent that enquiry was conducted by Secretary to Commissioner D.I Khan.
10. Correct.

11. Correct to the extent that penalty was imposed on the basis of recommendation of Inquiry Officer.
12. Correct. The Departmental appeal of the appellant has been dismissed by the appellate authority.
13. As in Para-12 above.
14. The appeal of the appellant is not maintainable.

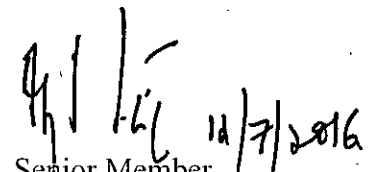
**GROUND.**

- A. Incorrect. The dismissal order of the appellant has been issued according to law/rules.
- B. Incorrect. All the proceeding have been carried out according to Government of Khyber Pakhtunkhwa (Efficiency and Discipline) Rules, 2011.
- C. Incorrect. Penalty was imposed upon the appellant on the basis of recommendation of Inquiry Officer.
- D. Incorrect. The appellant was equally responsible being party to the case and authority holder of Deputy Commissioner D.I Khan.
- E. As in Para-D above.
- F. Incorrect. The penalty was imposed upon the appellant by the Competent Authority in light of recommendation of the Inquiry Officer.
- G. Incorrect. There was no need to refer the case to Law Department.
- H. Incorrect. As the case of Private individual was decreed ex-parte against the Government due to negligence on the part appellant therefore, the penalty was rightly imposed upon the appellant.
- I. The respondent will also seek permission to advance additional grounds at the time of argument.

It is therefore requested that the appeal having no weight may be dismissed with cost.



Secretary Establishment  
(Respondent No.4)



Senior Member  
(Respondent No.1,2 &3)

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

In Re:  
Service Appeal No. \_\_\_\_\_/2016

Sher Jan.....**Versus**.....Govt. of KPK etc.

**REJOINDER ON BEHALF OF THE**  
**RESPONDENTS**

**Respectfully Sheweth:**

The appellant submits as follow

1. That the appellant has never been served with a notice to attend the Court.
2. That the appellant was never the contenting party in the subject case.
3. That the appellant has been penalized/made a scape goat for the fault of others.

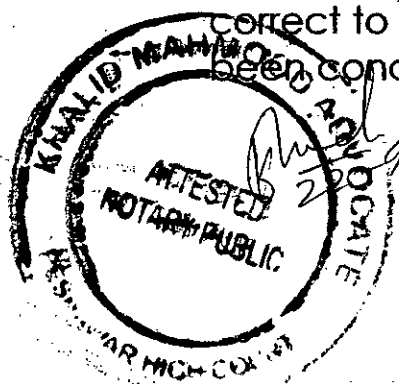
It is, therefore, humbly prayed that keeping in view the contents of the rejoinder and appeal the subject appeal may very graciously be allowed with back benefits.

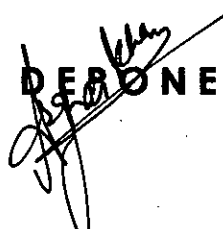
Appellant  
Through

  
**Muhammad Asghar Khan Kundi**  
Advocate, Peshawar

**AFFIDAVIT**

As per instruction of my client, do hereby solemnly affirm and declare on oath that the contents of the **Rejoinder** are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Court.



**DEPONENT**  


BEFORE THE SERVICE TRIBUNAL, KHYBER PAKHTUNKHWA  
PESHAWAR

In Re: \_\_\_\_\_  
Service Appeal No. \_\_\_\_\_/2016

Shri Jan.....Versus.....Govt. of KPK etc.

REJOINDER ON BEHALF OF THE  
RESPONDENTS

Respectfully Sheweth:

The appellant submits as follows

1. That the appellant has never been served with a notice to attend the Court.
2. That the appellant was never the contending party in the subject case.
3. That the appellant has been penalized/made a scape goat for the fault of others.

It is, therefore, humbly prayed that keeping in view the contents of the rejoinder and appeal the subject appeal may very graciously be allowed with back benefits.

Appellant

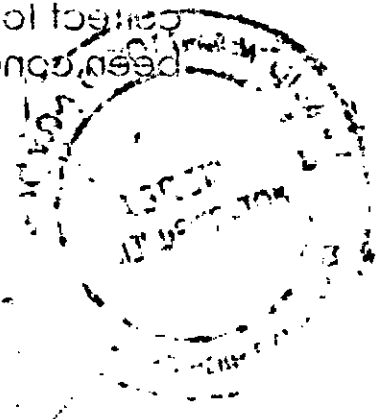
Through

Munammad Asghar Khan Kundji  
Advocate, Peshawar

AFFIDAVIT

As per instruction of my client, do hereby solemnly affirm and declare on oath that the contents of the rejoinder are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Court.

RESPONDENT





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

In Re:  
Service Appeal No. \_\_\_\_\_/2016

Sher Jan.....**Versus**.....Govt. of KPK etc.

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**RESPONDENTS**

**Respectfully Sheweth:**

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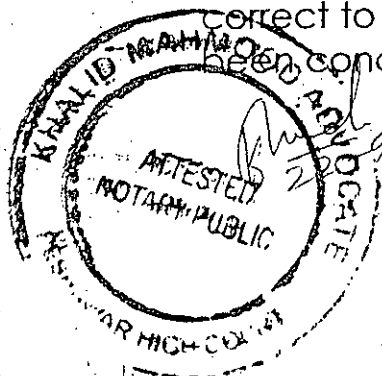
Appellant  
Through

**Muhammad Asghar Khan Kundi**  
Advocate, Peshawar

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**DEPONENT**



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**PESHAWAR**

In Re:  
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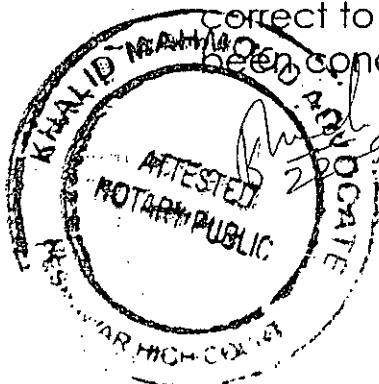
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**DEPONENT**

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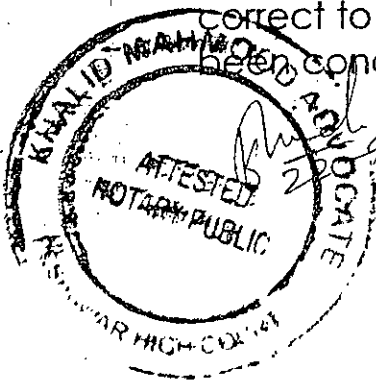
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**DEPONENT**

