



Service Appeal No. 393/2016

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

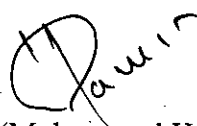
Order

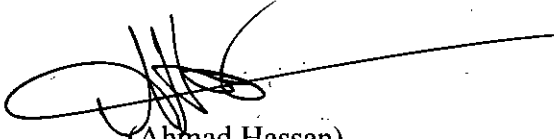
24.10.2017

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 TAJ)
MEMBER
Camp Court D.I.Khan

28.03.2017

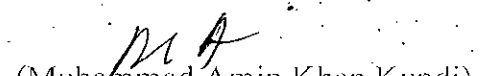
Since tour is hereby cancelled, therefore, the case is adjourned for the same on 24.07.2017.

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 Zeb 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 S.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

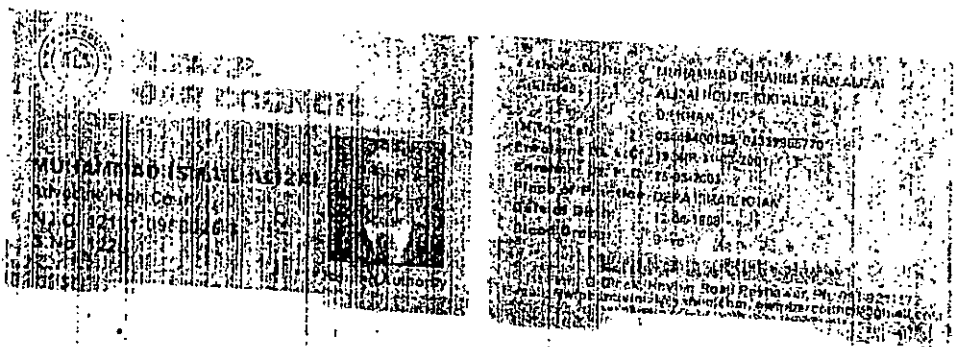
24.10.2016

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

VAKALATNAMA



BEFORE THE SERVICE TRIBUNAL, KHYBER PAKHTUNKHWA, PESHAWAR.

In Service Appeal Abdul Jalil vs Govt. of KPk etc
I/WE, Abdul Jalil, Appellant,

hereby appoint, Mr. Muhammad Ismail Alizai, Advocate High Court,
Farmanullah Kundi, Ahmad Shahbaz Alizai, Advocates High Court, DIKhan,
in the above mentioned matter / case and authorize him/them to do all or any of the following acts,
in my/our name and on my/our behalf, that is to say,

1. To appear, act and plead for me/us in the above mentioned case in this Court/ tribunal in which the same may be tried or heard or any other proceedings what so ever, ancillary thereto, including appeal, revision etc; on payment of fees separately for each court by me / us,
2. To sign, verify, file, present or withdraw all/any proceedings, petitions, appeals, cross objections and application for compromise or withdrawal, or for submission to arbitration of the said case or any other documents, as may be deemed necessary or advisable by him/them and to conduct prosecution or defense of the said case at all its stages,
3. To undertake execution proceedings, deposit, draw and receive money, cheques, cash and grant receipts thereof and to do all other acts and things which may be conferred to be done for the progress and in the course of prosecution of the said case,
4. To appoint and instruct any other Advocate/ legal practitioner authorizing him to exercise the power and authority conferred upon the advocate whenever he/they may think fit to do so and to sign Power of Attorney on our behalf,

I /we, the undersigned do hereby agree to ratify and confirm all acts done by the advocate or his authorized substitute in the matter as my /our own acts, as if done by me/us to intents and purposes, and I / we undertake that I /we or my/our duly authorized agent shall appear in the court on all hearings and will inform the advocate(s) for appearance when case is called and I/we the undersigned agree hereby not to hold the advocate(s) or his/their substitute responsible if the said case be proceeded ex-parte or dismissed in default of my/our absence from court when it is called for hearing and for the result of the said case, the adjournment costs whenever ordered by the court shall be of the advocate(s) which he/they may receive and retain himself/themselves. I/we the undersigned do hereby agree that in the event of the whole or part of the fees agreed by me/us to be paid to the advocate(s), if remain unpaid, he/they shall be entitled to withdraw from prosecution of the above said case until the same is paid and fee settled is only for the above said case and above court and I /we agree hereby that once fee is paid, I/we shall not be entitled for refund of the same in any case whatsoever.

IN WITNESS WHEREOF, I /we do hereby set my/our hand to these presents; the contents of which have been read / read over, explained fully and understood by me/us on this 12 Day of July 2017.

Accepted By:
Muhammad Ismail Alizai,
Advocate High Court.

Thumb Impression / Signature(s) of Executant(s)
[Signature]

14.4.2016

Counsel for the appellant present. Learned counsel for the appellant argued that the appellant was serving as Naib Tehsildar when subjected to enquiry on the allegations 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 12.04.2016.

That the appellant never authorized to appear in the civil court in connection of application u/s 12(2) CPC.

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.

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.Kh

Form- A
FORM OF ORDER SHEET

Court of _____

Case No. 393/2016

S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	12.04.2016	<p>The appeal of Mr. Abdul Jalil 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	14.4.16	<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. 393 /2016

Abdul Jalil.....Appellant

Versus

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

INDEX

S.No	Description of Documents	Annex	Pages
1.	Service Appeal		1-8
2.	Affidavit		9
3.	Addresses of parties		10
4.	Copy of the plaint	A	11- 15
5.	Copy of the order sheets and judgment dated 05.01.2008	B-C	16- 24
6.	Copy of the application U/S 12 (2) CPC	D	25- 28
7.	Copy of the Authority Letter	E	29-
8.	Copy of the Order Sheets	F	30- 38
9.	Copies of the judgment dated 16.04.2015	G	39- 40
10.	Copy of the writ petition	H	41- 46
11.	Copy of the statement of allegation	I	47
12.	Copy of the reply dated 26.10.2015	J	48
13.	Copy of the Enquiry Report	K	49-52
14.	Copy of Show Cause Notice dt.14.12.2015	L	53-
15.	Copy of the order dated 23.12.2015	M	54
16.	Copy of the Departmental appeal	N	55-62
17.	Copy of the letter dated 14.03.2016	O	63
18.	Wakalatnama		64.

Through

Appellant

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

Dated 12.04.2016

BEFORE THE SERVICE TRIBUNAL, KHYBER PAKHTUNKHWA,
PESHAWAR

In re:

Service Appeal No. 393 /2016

M.W.P. Province
Service Tribunal
Diary No. 365
Date 12-4-2016

Abdul Jalil

S/o Abdul Latif

R/o Mohallah Ship Shah

Tehsil & District D.I. Khan City.....Appellant

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

**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**

[Handwritten signature]
12/4/16

Respectfully Sheweth:-

1. That the appellant joined the Government Service as Patwari in 1983. The appellant was promoted as Naib Tehsildar in 2007. During the entire service period, spreading over 33 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 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 defendants No.1 to 4 initially attended the learned Court of Civil Judge; however later on they absented and accordingly they were placed exparte. The learned court thereafter conducted exparte proceedings. Finally, vide judgment dated 5.01.2008 an exparte decree was passed in favour of the plaintiff as against the defendants with the direction to allot the subject land to the plaintiff. (Copy of the order

sheets and judgment dated 05.01.2008 are attached as annexure "B & C").

4. That the respondents did not challenge the said decree in the appellate court. However, the respondents preferred an application u/s 12 (2) CPC before the court of Civil Judge, D.I.Khan on 09.07.2013 for recall/cancellation of the decree dated 05.01.2008. (Copy of the application U/S 12 (2) CPC is annexure "D").
5. That Mr. Kiramat Ullah Khan, Tehsildar D.I.Khan was authorized to file and pursue the subject application u/s 12 (2) CPC. (Copy of the authority letter is attached as annexure "E").
6. That the application u/s 12 (2) CPC was rejected by the learned Civil Judge D.I.Khan vide order dated 10.11.2014 (Copy of the order sheets is attached as annexure "F").
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 on the allegation of willful absence before the court of Civil Judge-VII, D.I Khan in the application u/s 12 (2) CPC submitted by the Additional Commissioner D.I.Khan for the cancellation recall of an exparte order and decree in Civil suit titled Nizam ud Din Versus Govt. of Khyber Pakhtunkhwa . The respondent No.3 appointed Malik Mansoor Qaiser, Secretary Commissioner D.I Khan Division as Inquiry officer. (Copy of the statement of allegation dated nil is attached as annexure "I").
10. That the appellant submitted his reply to the statement of allegations s denying the same in toto. (Copy of the reply dated 26.10.2015 is attached as annexure "J").

5

11. 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 "K").
12. That the respondent NO.3 issued show cause notice dated 14.12.2015 to the appellant. (Copy of Show Cause Notice dated 14.12.2015 is attached as annexure "L").
13. 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 "M").
14. 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 "N").
15. 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 "O").

16. 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:-

GRUNDS:-

- 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 directed or authorized to pursue the application u/s 12 (2) CPC; as such the appellant is not responsible for the dismissal of the said application on 10.11.2014.
- D. That the inquiry officer failed to give any solid reason for the recommendation of penalty upon the appellant. The appellant is a total alien to the subject case of Nizam ud

Din...Versus...Provincial Govt. and was never associated with this case in any capacity.

- 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/decreed 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. Functionaries (defendants) and Govt. pleader has never been highlighted by the respondent No.3 nor any action taken/recommended as against them. The appellant has been made a scape goat for no fault on his part.
- 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

(3)

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, and is an attempt to cover the misdeeds of others.

- 1. 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, with all back benefits.

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

Appellant

Through

Muhammad Asghar Khan Kundi
Advocate, Peshawar

Dated 12.04.2016

NB: Two connected Service Appeals No: 360/2016 and 361/2016 are fixed for hearing on 14.4.2016. This appeal, being connected, may kindly be clubbed with the same.

Advocate

BEFORE THE SERVICE TRIBUNAL, KHYBER PAKHTUNKHWA,
PESHAWAR

In re:
Service Appeal No. _____/2016

Abdul Jalil.....**Appellant**

Versus

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

AFFIDAVIT

I, Abdul Jalil S/o Abdul Latif R/o Mohallah Ship Shah,
D.I.Khan City, 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.

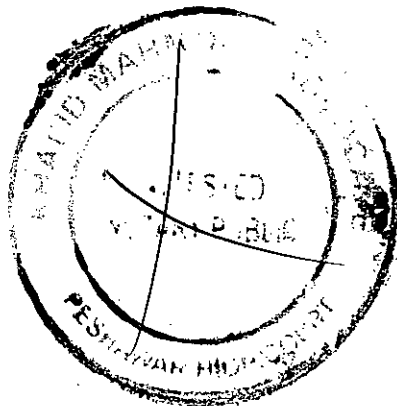
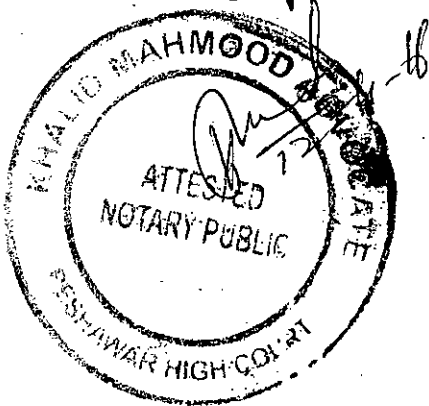
Identified by:

Asghar Khan

CNIC No.

Asghar Khan
DEPONENT

Muhammad Asghar Khan Kundi
Advocate High Court



BEFORE THE SERVICE TRIBUNAL, KHYBER PAKHTUNKHWA,
PESHAWAR

In re:
Service Appeal No. _____/2016

Abdul Jalil.....**Appellant**

Versus

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

ADDRESSES OF PARTIES

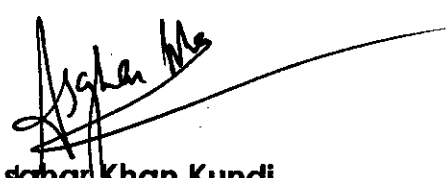
PETITIONER:

Abdul Jalil S/o Abdul Latif R/o Mohallah Ship Shah
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 12.04.2016

Annex 'A'



INAMULLAH WAZIR
Senior Civil Judge/Judl. Magistrate
Dera Ismail Khan

سپریم کورٹ کے فیصلے کے مطابق

(6)

بہت محترم صاحب سپریم کورٹ کے فیصلے کے مطابق

درج ذیل ناموں پر

نفاذ الدین ولد محمد عثمان قوم محمد سکنہ

شورکوٹ ضلع ڈیرہ اسماعیل خان

نبا

پر ادیشنل ڈسٹریکٹ جج صاحب کے فیصلے کے مطابق

ڈسٹریکٹ جج صاحب نے فیصلہ دیا ہے کہ

ڈسٹریکٹ جج صاحب نے فیصلہ دیا ہے کہ

ڈسٹریکٹ جج صاحب نے فیصلہ دیا ہے کہ

(مدر علیہم)

دعویٰ استحقاق بدین قرار داد کہ اراضی مندرجہ کلمات

82 گھنٹوں کلمات 1227 س 1231 خندہ خزانہ 1211-1210

تصدیق کے لیے 16 واقعہ مورخہ شورکوٹ

ATTESTED
10/11/18

Handwritten notes on the left margin, including 'Dera Ismail Khan' and '1211-1210'.

Handwritten notes on the bottom left margin.

فصلی ڈیپو اسماعیل خان لطیفی جمعہ کی سال 5 - 2005 ڈیرہ کار

پیر مدنی آباد اجراء کاشتکار (مغیر و فلیکار) محبت و نفس

زائد از 5 ہا سال سے محدود آ رہا ہے اسلئے مدنی اراغی مذکورہ

باک بطور مطہر بودہ زمین کاشتکار ہونے کے حقدار ہے لہذا

مدنی علیہم اراغی زیر بحث بحق مدنی قانوناً و بالحق منتقل

کرنے کے پابند و حجاز ہیں اور کاغذات مال بحق مدنی قابل

درستی ہیں بعد صدور حکم امتناعی دواغی و تائیدی نام

مدنی علیہم کہ وہ مدنی سے جبراً قبضہ کاشتکار لینے سے

باز رہیں۔ اور اراغی مذکورہ بحق مدنی بطور مطہر منتقل

دیوں لہذا ملکیت کا حقیق کاغذات مال کی درستی اراغی

زیر بحث بحق مدنی منتقل را دیوں۔

مدنی حسب ذیل طرفین رساں ہے

خبر علی!

1۔ پیر مدنی اراغی مندرجہ عنوان بالا حقدار کاشت

1211 - 1210 رقبہ کھداسی 5 - کا موقع

شہر ڈیرہ اسماعیل خان علیہ ذائد از چالیس





ENAM ULLAH HAZIR
Senior Civil Judge (Retd.) Magistrate
District Faisalabad
12/5/19

(7)

ہاں سے آبا و اجداد سے مالکین کاشت مار چلے آ رہا ہے جو کہ ایوانوں
کی کارڈنگ میں دعویٰ سے ظاہر ہے مزید برآں اراضی زیر بحث جو قبل
انہیں بنجر اور طغیر آباد تھی پھر از نگرہ خود سے زر کثیر خرید کر
میں بہت گامی۔ جنہیں کشتیں کیونکہ بوش مارا گیا ہے اور طغیر
کر کے اسکو قائل کاشت بنایا ہے۔ جنہوں نے بعد میں باغیچہ اور
جنہوں نے زر کثیر کاشت ہے بقوت موجود ہے۔

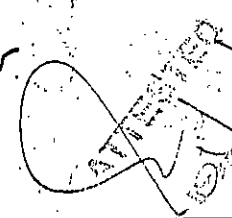
یہ کہ اراضی عند طویہ کا حق مالکانہ بصورت آبادی معاہدگی
حق سرفار داخل خزانہ کرتے چلے آ رہا ہے اور سر اوٹیشن گورنمنٹ
پرورٹ جمانوں پر زمین کا منتقاران کو عطیہ دینے کی عوازا ہے
اور قبل ان میں مندرجہ نامی نے کس بار در ملک علیہم کو اسد کا بھی ارفعا ہے
اور مندرجہ علیہم کے مندرجہ نامی کو بعض زمین دہالی حکومتی چلی آ رہی ہے
کسین مندرجہ علیہم نے اس وقت کاغذات عطیہ عدتہ کو عملی جامہ
پہنیں بنایا گیا جبکہ مسلسل اراضی زیر بحث پر مندرجہ نامی
کاشت مار چلے آ رہا ہے۔ جسکی بابت لسٹ نمبر 2726 لگانے

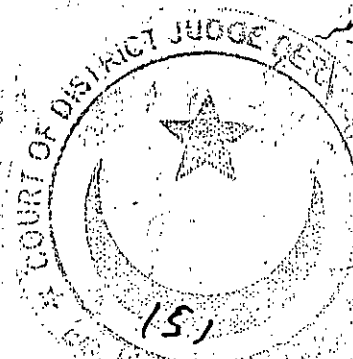
Handwritten signature and date.

ذیبدین خان خانونا و غناطہ کے مطابق عدلیہ اراغی مدظلہ العالیہ
مدظلہ العالیہ کیسے کا مفاد اراغی

یہ کہ مدظلہ العالیہ سے اس سلسلہ میں جس بار رابطہ کیا گیا
کہ وہ مرتب کردہ تجویز کو عملی جامہ پہنانے ہوئے اور عدلیہ کے
حقوق کو مد نظر رکھتے ہوئے منتقل اراغی مدظلہ العالیہ مدظلہ العالیہ
بنام عدلیہ کراچی میں لیکن وہ انکاری ہیں کہ اگر البیانہ کیا گیا
یا کسی دیگر کے نام عظیمہ کے قیدہ از ان عدلیہ عدلیہ فعل کیا گیا
تو من عدلیہ کو نام قابل تصدیق لفظان ہوگا اور عدلیہ کے سپرینہ
حقوق متاثر ہوئے اسلئے مدظلہ العالیہ اراغی زبردستی کو
بنام دیگر ان منتقل کرنے سے باز رہیں اور جو عدلیہ اراغی کو
منتقل کرنے کا حکم دینا عین فرس الصاف ہے یہیں وہ دیکھیں
پیدا اگر کرنے کا لغو و برباد ہو گیا ہے۔

یہ کہ بنائے دیکھو بالحق شہور کوٹ ٹھیکہ و قلعہ
خیرہ اسماعیل خان مدظلہ العالیہ طرہ عدلیہ ایک ماہ قبل پیدا ہوا ہوئے
جو عدلیہ اندر عبادت میں عمل ہو گا البتہ حضور انور کو اختیار کیا
بھی حاصل ہے۔





~~MAMUDDIN NAZIR~~
Magistrate
Rawalpindi

یہ کہ مالیت مقودہ کفر عن اذیتا علیہا و

اورٹ منیں مبلغ 500 روپے قدر ہے جو پورے فریضہ میں ہے

بند اللہ علیہ کفر ڈری

استحقاقاً و عدداً صدر حکم امتناعی و طوعاً و تکرہاً

مقامی احمدی مدعی علیہم حسب لکرائے عمران

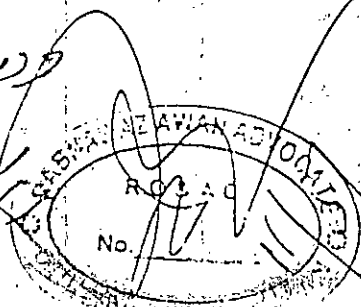
مردنی و عسائی ڈگری فرمایا جاوے

تصدیقاً لقا کڈوہ علیہ خان
نظام الدین
Zamin
باعتبار علیہ بیان کیا کہ حقہ بہ حقہ
دعویٰ درست ہے

بیان حلف

بجولف بیان کیا کہ قبل ازین مدعی
نے دعویٰ دائر نہیں کیا لفظ لفظ صحیح
درست ہے اور دعویٰ اور لکڑی نہیں

نظام الدین
Zamin



Examined
01



B
16

تاریخ و ارجحاً احکام
نظام اسرین بنام

بعدالت جناب سینئر سول جج صاحب، ڈیرہ اسماعیل خان۔

نمبر شمار و تاریخ حکم
خلاصہ حکم

OS --- 01
12.5.07

دعویٰ ہذا و کالتاً دائر شد۔ سپرد عدالت جناب
سول جج صاحب الآی ڈیرہ اسماعیل خان کیا
جاتا ہے۔ مدعی اوکیل مدعی عدالت موصوف
میں 12.5.07 پیش دہو۔

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

دعویٰ ہذا بعدالت جناب سول جج صاحب ڈیرہ سے
موصول شد۔ بعد از پیمائش میں

2
12/5/07

Adam Khan Salaman Khe
Civil Judge VII / Judicial Magistrate
Dera Ismail Khan

صداقتاً

پیمائش کے بعد۔ دعویٰ ہذا کے متعلق دیکھ کر عدالت نے
عدالت میں دعویٰ۔ فرد پندرہ، مہرست درکار مہرست محنت و مہرست
عدالت میں مہرست و کالتاً تاکہ مہرست کے ساتھ
ادویٰ کے ساتھ پندرہ کے ساتھ
لینڈ انویسٹمنٹ کے ساتھ

Handwritten notes and signatures on the right margin, including dates like 05/01/08 and 2007.

ATTESTED
Examiner
15/07/16

12/5/07

17

0-3
12/5/07
✓

وکیل مدعی صمد احمد اور صاحب دعویٰ کو درست تسلیم کرنا ہے۔
دونوں جہتوں پر متعلقہ جہتوں کے متعلق بنی و مدعی صمد احمد کو صرف 18/5/07

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

0-4
18/5/07
✓

وکیل مدعی صمد احمد اور صاحب دعویٰ کی نقل اصلاح ہو چکی ہے اور
انتظامی لکڑی کی جانب سے عدلیہ بنی و مدعی صمد احمد کو صرف 18/5/07
مدعی صمد احمد کو صرف 18/5/07
سمن بداعتیل واپس ہوا۔ اور مدعی صمد احمد کی ورس
تعلق رکھتا ہے۔ ایسے مدعی کو ہدایت کی جاتی ہے کہ وہ
اندر سیدہ راجہ کی 100 کارڈ سے واضح کرے۔
بعد ازاں جسٹس کی 100 کارڈ سے واضح کرے۔
مدعی صمد احمد کو صرف 18/5/07

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

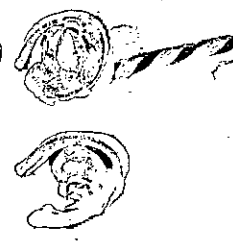
0-5
2/6/07
✓

وکیل مدعی بندہ ایچ طاہر۔ مدعی صمد احمد کی جانب سے
انتظامی لکڑی کی جانب سے عدلیہ بنی و مدعی صمد احمد کو صرف 18/5/07
حکم پورا کی نقل اصلاح ہوئی طرفہ ہے لہذا
کلورٹ بنی و مدعی صمد احمد کی 100 کارڈ
واپس نہ بنی و مدعی صمد احمد کو ہدایت کی جاتی ہے کہ وہ
سیدہ راجہ کی 100 کارڈ سے واضح کرے۔
مدعی صمد احمد کو صرف 18/5/07

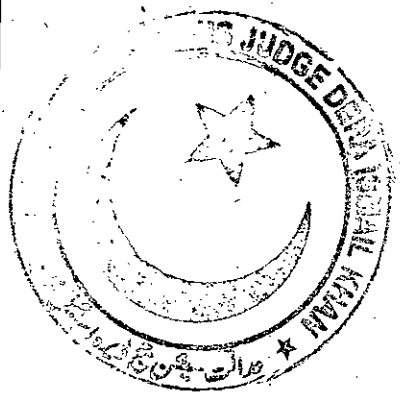
Adam Khan Sulaiman Khel
Civil Judge VII / Judicial Magistrate
Dera Ismail Khan

ATTESTED
EXAMINER
15/03/16

18



0-6
24/6/7



درخواست مدعا علیہ عیناً کی جانب سے اتفاقاً
لکھنے میں ہو کر پیش کی گئی تھی۔ حالانکہ مدعا علیہ
تعمین شدہ۔

مسل برائے جواب دہوں سے تقرر ہو کر 4/7/7
صفحہ 2 میں ہے۔

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

درخواست نمبر 7 کے خلاف۔ منجانب مدعا علیہ کوئی استدعا
لینا مدعا علیہ کو خلاف تدبیر کا رد عمل میں نہ لیا گیا۔
مدعا علیہ کو رد کیا گیا ہے۔ کہ رنڈر (7) یوم میں نہ تو وہاں سے ہرج
دوڑ کرے۔ لہذا وہاں سے نہ ہی طلبیدہ کو وہاں جا رہا ہو کہ
مسل برائے ثبوت تدبیر سے مستثنیٰ 7/7 21 کو پیش ہو۔

0-7
04/7/07
✓

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

مدعا علیہ خواہ پوری مدعا علیہ کو رد کیا جائے۔ لیکن جو
ٹیکسٹ وال و گلا کے ساتھ ساتھ جی ایف کے ساتھ ساتھ
کارروائی میں ہو سکتی ہے۔ لہذا وہاں سے نہ ہی مدعا علیہ کو
پہرے ثبوت تدبیر سے مستثنیٰ 9/7 26 کو پیش ہو۔

0-8
21/7/07

ATTESTED
Examiner
15/03/16

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

19

در عمل مکمل وکیل سعید گورہ پٹواریا عدالت گورہ پٹواریا کیس
عدالت گورہ پٹواریا عدالت گورہ پٹواریا کیس
لنڈا گورہ پٹواریا عدالت گورہ پٹواریا کیس
مقرر 28/9/07 کو پیش ہو

9
06/9/07

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

در عمل مکمل وکیل سعید گورہ پٹواریا عدالت گورہ پٹواریا کیس
لنڈا گورہ پٹواریا عدالت گورہ پٹواریا کیس
مقرر 28/9/07 کو پیش ہو

10
28/9/07

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

در عمل مکمل وکیل سعید گورہ پٹواریا عدالت گورہ پٹواریا کیس
عدالت گورہ پٹواریا عدالت گورہ پٹواریا کیس
لنڈا گورہ پٹواریا عدالت گورہ پٹواریا کیس
مقرر 28/9/07 کو پیش ہو

11
10/11/07

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

ATTESTED
13/03/16

29



در عدالت وکیل 05/10/07 کو 05 پتوار علیہ 05 لکھتہ بیان الہ آباد
PW. 1 مقرر کنندہ تھا۔ جبکہ کو 05 پتوار صحتی طرف
عدالت نورستہ پتوار علی حوالہ شد۔ پتوار علی پتوار علی
منع دستگیر طلبیدہ کو بیان الہ آباد پتوار علی پتوار علی پتوار علی
پتوار علی 02/11/07 کو پیش ہو

24/10/07



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

در عدالت وکیل 05/10/07 کو 05 پتوار علیہ لکھتہ بیان الہ آباد
PW. 3 مقرر کنندہ تھا۔ لکھتہ بیان الہ آباد
کو 05 پتوار علیہ پتوار علی پتوار علی پتوار علی پتوار علی
پتوار علی پتوار علی پتوار علی پتوار علی پتوار علی
09/11/07 کو پیش ہو

13

02/11/07

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

صاحب عدالت صاحب عدالت۔ انصاف جلسہ صحتی پتوار علی
عام پتوار علی لکھتہ بیان الہ آباد پتوار علی پتوار علی
پتوار علی پتوار علی پتوار علی پتوار علی پتوار علی
09/11/07 کو پیش ہو

نور علی پتوار
09/11/07

07-12-2007

Plaintiff along with his
counsel present. Plaintiff himself recorded
his statement as PW-04. PW-05 Zahoor-Udin
present and recorded his statement. Patwari
Halqa Irrigation be summoned for plaintiff

ATTESTED

15/11/07

(P-T-0)

21

Continue Order Dated: 07-12-2007.

ex-parte evidence on 10/12/07

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

مدعی غیر حاضر بنواری ایمری گیشن خان آج
دفعہ 15-08
10-12-07
دفعہ 15-08
10-12-07
درجہ شہادت فلکینہ بنہ نونہ نونہ مدعی جاری
جو بنواری کو 22 دیا گیا مثل ہر ایک بلور
شہادت مدعی کو 12/12/07 کو پیش ہو
نہ اندر مدعی کو 12/12/07 کو پیش ہو

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

16-08-07
مدعی غیر حاضر بنواری ایمری گیشن خان آج
دفعہ 16-08-07
18-12-07
درجہ شہادت فلکینہ بنہ نونہ نونہ مدعی جاری
جو بنواری کو 22 دیا گیا مثل ہر ایک بلور
شہادت مدعی کو 12/12/07 کو پیش ہو
نہ اندر مدعی کو 12/12/07 کو پیش ہو

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

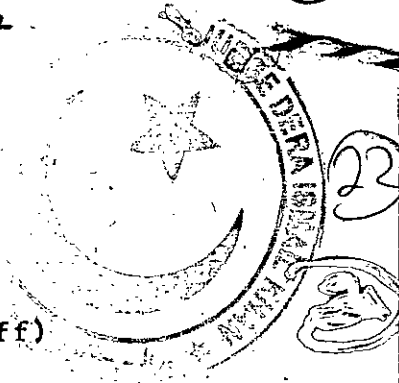
17-08-07
مدعی غیر حاضر بنواری ایمری گیشن خان آج
دفعہ 17-08-07
18/12/07
درجہ شہادت فلکینہ بنہ نونہ نونہ مدعی جاری
جو بنواری کو 22 دیا گیا مثل ہر ایک بلور
شہادت مدعی کو 12/12/07 کو پیش ہو
نہ اندر مدعی کو 12/12/07 کو پیش ہو

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

15/03/16
Examiner

Annex C

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



Suit No. 80/1 of 2007.

NIZAM_UDIN(Plaintiff)

V/S

Govt of NWFP Etc(Defendants)

Date of institution of the suit12/05/2007.

Date of Decision of the Suit05/01/2008.

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

Handwritten notes on the left margin:
02
CF-VII
05/01/08
10/50
80/1
2007
Adam Khan Suleman Khil
Civil Judge VII / Dera Ismail Khan

ATTESTED

Examined

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.

PW-01 Sher Jan (Patwari Halca) Moza Shor 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 No.s 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 Reform 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.

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 No.s 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



23

Handwritten signature and stamp: Adam Khan, District Judge, DIKhan, dated 15/03/16.

ATTESTED

Examiner


15/03/16

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

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.

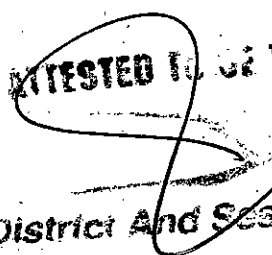

Adam Khan
Civil Judge VII / Judicial Magistrate
(Adam Khan, Dera Ismail Khan)
Civil Judge-VII/JM, DIKhan.

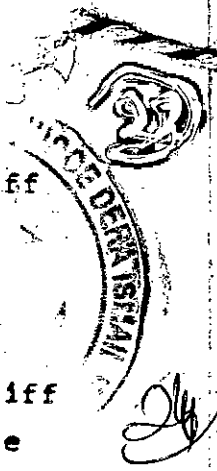
CERTIFICATE

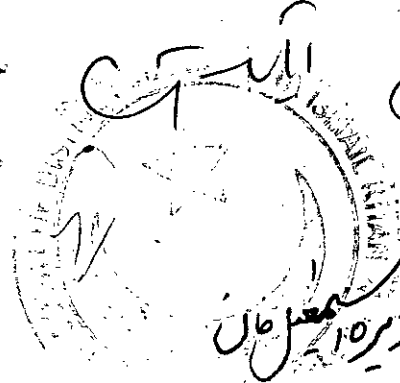
It is certified that this judgment consists of 03 pages. Each page has been read-over, corrected and signed by me wherever necessary.

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


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


TESTED TO BE TRUE COPY
17/03/16
District And Sessions Judge
Dera Ismail Khan





امین رزرو اسٹ (22/06/06)

Annex 'D'
28

لواء خباب سول پنج صاحب VII تحصیل و ضلع ڈیرہ اسماعیل خان

- 1 ایڈیشن ڈیپٹی کمشنر با اختیار کلکٹر ڈیرہ اسماعیل خان
- 2 ایڈیشن اسٹنٹ کمشنر رونیو اسٹنٹ کلکٹر گریڈ آ ڈیرہ اسماعیل خان
- 3 رونیو آنسیر تحصیل ڈیرہ اسماعیل خان

..... سٹنٹ

نام

- 1 نظام الدین ولد محمد عثمان قوم محمود سکنہ شورکوٹ ڈیرہ اسماعیل خان
..... اصل سول ایڈ
- 2 پرائیٹ گورنمنٹ چیئر مین خٹو نخواہ نڈر لوی سکرٹری وزارت مال
چیئر مین خٹو نخواہ شپار
- 3 پٹواری ضلع موضع شورکوٹ ڈیرہ اسماعیل خان
..... ترقی سول ایڈ

درخواست زیر دفعہ 12 (2) ضابطہ دیوانی سوخ و set aside

فرمانے جانے ڈگری بمقدیم غیری 80% رجوعہ 12/5/07 منفعہ 05/08

مصدرہ سول پنج صاحب VII ڈیرہ اسماعیل خان لواء خباب سول پنج صاحب

ATTESTED
Examiner
15/03/16

0
09-7-73
mm

26

بوجہ صادر ہو *without jurisdiction* و حال برن

بذریعہ فراڈ و *Misrepresentation*

خواب عالی اس سائلین حسب ذیل عرض رساں ہیں

(1) کہہ اگر اراچی مندرجہ عرفی دعویٰ مقدمہ 80% کے اصل مالکان صوبائی حکومت بذریعہ سائلین تھی۔

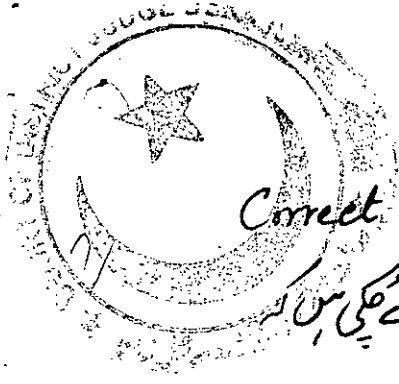
(2) کہہ مدعی / رسول الیہ نے بذریعہ فراڈ و *Misrepresentation* ایک مقدمہ دائر کر کے ڈگری حاصل کی لیکن مقدمہ مذکور میں نہ تو کلر ڈگری کے سہیل خان کو اور نہ ہی لینڈ کمیشن کو فریق مقدمہ گردانا گیا حالانکہ از روئے قانون دونوں ہی ضروری فریق مقدمہ تھے جبکہ بغیر ڈگری صادر نہیں ہو سکتی تھی

(3) کہہ عدالت حضور کو مقدمہ نمبری 80% مندرجہ عنوان درخواست ہذا کی سماعت کا زیر دفعہ 26 لینڈ ریگولیشن 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 ڈگری بوجہ ہونے بلا اختیار قابل منسوخی ہیں۔

(4) کہہ لینڈ ریگولیشن میں بغیر زمین صارفین کو گورنمنٹ کی ملکی 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 اس سائل کو درپہ شخص ہے جس نے

لینڈ کمیشن کو فریق مقدمہ بنائے بغیر ڈگری بذریعہ فراڈ و *Misrepresentation* قابل

ATTENDED
Examiners
15/03/16



27

(5) برکہ فاضل عدالت دیوانی برصالت میں مقدمہ میں Correct law 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

ٹکیشن کے فریق مقدمہ نہ ہونے کی طرف توجیہ دی اور بلا اختیار طور پر ڈگری صادر کردی 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.

(6) برکہ فاضل عدالت نے یکطرفہ کاروائی ہونے کی بنا پر مقدمہ کی طرف خود توجیہ نہ دی اور جب گفتہ بالا بلا اختیار طور پر ڈگری صادر کردی جو کہ فاضل عدالت سے نذر لوٹراڈ و Misrepresentation حاصل کی گئی۔

(7) برکہ رسول الیہ کو برہنہ کیا اور گہلوا یا گیا کہ وہ نذر لوٹ فراد حاصل شدہ اراچی و ڈگری کو منسوخ کرادے لیکن وہ نہیں مانتا اسلئے ضرورت دائری درخواست ہذا لائق ہوئی

(8) برکہ ڈگری مقدمہ کی نسبت سائل کو برہنہ چھی غبری Rev: 17/DIKhan/LT 8520 جو رقم 18-4-2013 علم ہوا جو کہ درخواست ہذا از علم ڈگری مقدمہ اندر صادر ہے

01/07/13
D. Khan

15/03/16
ATTESTED

20

(۹) برکہ بنائے درخواست تمام ڈیرہ اسمیل خان از علم نوزم 19-4/2013 سے و نوزم 5-1/08
 از اجراء ڈگری منظومہ و حرماً الکوار رسول الیہ اے ایک ہفتہ قبل سے پیدا ہوا
 جو کہ درخواست ہذا اندر عیاد و اندر حدود اختیار سماعت عدالت حضور الوری ہے۔

(۱۰) برکہ بلا اختیار طور پر جاری حکم و بندر لہ فراد حاصل کی گئی ڈگری کی نسبت قانون عیاد
 کا اطلاق نہ ہے کیونکہ حکم مذکور void order کی تعریف میں آتا ہے۔

(۱۱) برکہ مالیت درخواست بفرض اختیار سماعت و لمراء ادائیگی کورٹ میں مبلغ 500 روپے
 حتمی ہے جس پر لوہہ درخواست ہونے پندرہ روپے کی ٹکٹ چسپال ہے جبکہ از روئے
 قانون پانچ صد روپے کے اسٹامپ جوڈیشل بھی لگے ہے۔

لذا استدعا ہے کہ منظوری درخواست ہذا ڈگری مقدمہ 80% رجولہ 12-5/07

منفقہ 5-1/08 بعنوان نظام الدین نیام صوبہ سرحد منسوخ و Setaside زیر دفعہ
 12 (2) ضابطہ دیوانی فرمائی جاوے فقط المرقم 26-6/13

ایڈیشنل ڈپٹی کمشنر راولپنڈی

ایڈیشنل ڈپٹی کمشنر ساہیوال

[Signature]

[Signature]

Additional Commissioner
 Revenue, D. I. Khan

لقد حق تمام ڈیرہ اسمیل خان تیار بخ 26-6/13
 علما بیان کیا کہ مندرجات مالد کا حکم علم و لغتین
 میرے درخت و عیم ہیں اور کوئی امر لوشیہ
 نہیں رکھا گیا

بزرگ نسل انوار
 Ghid Nawaz

رونیو آفیسر ساہیوال

TEHSILDAR
 Dera Ismail Khan

ایڈیشنل ڈپٹی کمشنر

ایڈیشنل ڈپٹی کمشنر

Additional Commissioner
 Revenue, D. I. Khan

علما بیان کیا کہ مندرجات مالد کا حکم علم و لغتین
 درست و صحیح ہیں اور کوئی امر لوشیہ نہیں رکھا گیا
 OATH COMMISSIONER

ایڈیشنل ڈپٹی کمشنر

ایڈیشنل ڈپٹی کمشنر

Additional Commissioner
 Revenue, D. I. Khan

Examiner
 TEHSILDAR
 Dera Ismail Khan

**OFFICE OF THE ADDITIONAL DEPUTY COMMISSIONER
/COLLECTOR, D.I.KHAN**

AUTHORITY LETTER

Mr. Karamatullah Khan, Tehsildar, D.I.Khan is hereby authorized to file an ^{application} Appeal in case titled "Additional Deputy Commissioner, D.I.Khan/Collector, D.I.Khan etc: versus Nizamud Din etc: before the court of Learned Civil Judge ~~at~~ D.I.Khan and also to pursue the case on each date of hearing on behalf of undersigned.

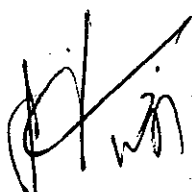

Additional Assistant Commissioner,
(Revenue) D.I.Khan.


Additional Deputy Commissioner/
Collector, D.I.Khan


No. 531-32 /SK Dated D.I.Khan the 1/7 /2013.

Copy to the:-

1. Court of Learned Civil Judge **VII**, D.I.Khan
2. Deputy Secretary-II, Board of Revenue, Khyber Pakhtunkhwa Peshawar w/r to his letter No.REV-IV/DIKHan/LT/8519 dated 18/04/2013.
3. Tehsildar, D.I.Khan for compliance please.


Additional Deputy Commissioner/
Collector, D.I.Khan

ATTESTED


01/7/2013



فارم نمبر ۱۲۹

تاریخ وار خلاصہ احکام

مقام ڈیرہ اسماعیل خان

بعدالت

عنوان اپیل یا مقدمہ دیوانی

Handwritten notes and stamps in the top right corner, including the number 30 and some illegible signatures.

۲ خلاصہ حکم	۱ نمبر شمار و تاریخ حکم
----------------	----------------------------

درخواست (۱۲) وکالتاً دائر شد۔ درجہ اولیٰ
 سے۔ نوٹس سے۔ سول جج سے 30/7/2013
 سزا دی۔ سزا دی۔ سزا دی۔ سزا دی۔

0-01
09-7-13

Handwritten notes in the right margin of the first entry.

TANVEER USMAN
Civil Judge VII
D.I. Khan

سول جج سے درخواست دائر شد۔ تاریخ سے 30/7/2013
 سزا دی۔ سزا دی۔ سزا دی۔ سزا دی۔

0-02
31-7-13

Handwritten notes in the right margin of the second entry.

سول جج سے درخواست دائر شد۔ تاریخ سے 20/9/2013
 سزا دی۔ سزا دی۔ سزا دی۔ سزا دی۔

0-03
20-9-13

Vertical handwritten notes and stamps in the right margin of the third entry.

TANVEER USMAN
Civil Judge VII
D.I. Khan

طائفہ سزا دی۔ سزا دی۔ سزا دی۔ سزا دی۔
 سول جج سے درخواست دائر شد۔ تاریخ سے 10/11/2013
 سزا دی۔ سزا دی۔ سزا دی۔ سزا دی۔

TANVEER USMAN
Civil Judge VII
D.I. Khan

ATTESTED
Signature

Vertical handwritten notes in the left margin of the page.

3/11

1

0-04
11-10-13

عائشہ صاحبہ کی شادی ہزار کے ساتھ ہو چکی ہے۔
میں نے اس کے بارے میں جاننے کے لیے اس کے
بہنو بھائیوں سے پوچھا ہے۔ وہ بتا رہے ہیں کہ
اس کی شادی ہزار کے ساتھ ہو چکی ہے۔
اس کے بارے میں میں نے جاننے کے لیے اس کے
بہنو بھائیوں سے پوچھا ہے۔ وہ بتا رہے ہیں کہ
اس کی شادی ہزار کے ساتھ ہو چکی ہے۔

Handwritten notes on the right margin.

TANVEER USMAN
Civil Judge VII
D.I. Khan

0-05
05-11-13

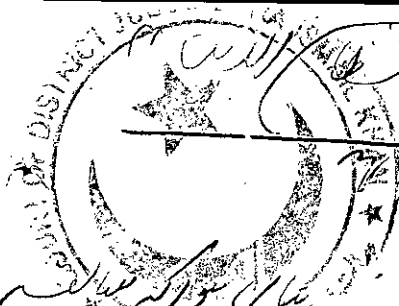
End: No 13031-13141
04/2013
میں نے اس کے بارے میں جاننے کے لیے اس کے
بہنو بھائیوں سے پوچھا ہے۔ وہ بتا رہے ہیں کہ
اس کی شادی ہزار کے ساتھ ہو چکی ہے۔
اس کے بارے میں میں نے جاننے کے لیے اس کے
بہنو بھائیوں سے پوچھا ہے۔ وہ بتا رہے ہیں کہ
اس کی شادی ہزار کے ساتھ ہو چکی ہے۔

TANVEER USMAN
Civil Judge VII
D.I. Khan

NR
28-11-13

Handwritten text at the bottom of the page.

15/02/16



شہر فیروز ڈیپو پولیس ڈسٹرکٹ جج ڈی. اے. خان

32

مطلبہ سلطان عبدالرحمان شاہ خٹکدار لاہور - سال 2003ء
مطلبہ شاہ نواز خٹکدار قریب پوٹھوہ - اور انڈین سٹی
پٹرولنگ اسٹیشن کرونک - مول علی بیگم 03 سال
نولیس بیگم مول علی بیگم 2 بوجہ سابقہ نوٹ ایڈ
کارڈ میں پوٹھوہ، نواز عبدالرحمن بیگم مول علی
میرت، 2 سے 23/12/2013 کے کارڈ میں -

0-06
10-12-13

10.12.13
Civil Judge VII
D.I. Khan

مطلبہ سلطان عبدالرحمن بیگم مول علی بیگم لاہور
نولیس والیس شاہ - ایک من اولیس بیگم مول علی
میرت 02 والیس مول علی شاہ - نواز عبدالرحمن بیگم مول علی
میرت، 2 سے 23/12/2014 کے کارڈ میں -

0-07
23-12-13

Mohammed Aaqib
Civil Judge-VII, D.I. Khan.

مطلبہ سلطان عبدالرحمن بیگم مول علی بیگم لاہور
پوٹھوہ پادریہ کے مول علی بیگم میراہ شہاوردین رائے شہزادہ - لاہور
نولیس بیگم مول علی بیگم پوٹھوہ پادریہ کے مول علی بیگم میراہ شہزادہ
کارڈ میں پوٹھوہ - نواز عبدالرحمن بیگم مول علی بیگم میراہ شہزادہ
نواز شہزادہ نولیس مول علی بیگم پوٹھوہ پادریہ کے مول علی بیگم
میرت، 2 سے 20/2/2014 کے کارڈ میں

0-08
23-1-2014

Mohammed Aaqib
Civil Judge-VII, D.I. Khan.

ATTACHED
15/03/16

33

0-9
20/2/14

نمائندہ سائینس حصہ۔ سوال علم برز 3 حصہ۔ سوال علم
برز 2 حصہ کن ہیں۔ نمائندہ سائینس برز در حصہ پبل سوال علم
برز اہل حصہ سائنس کا حصہ۔ کہا نمائندہ سائینس کو مستحق سے
پر اہل ہونی، کہ دندہ سید بوج حصہ پبل سوال علم برز اہل حصہ
پر اہل تو کس نیم سوال علم برز 2 حصہ $\frac{3}{14}$ 25 $\frac{3}{14}$ $\frac{3}{14}$

20-2-14

Mohammad Aaqib
Civil: Judge-VII, D.I.Khan

0-10
25-3-14

نمائندہ سائینس عبور کس حصہ۔ سوال علم برز 1 حاضر فرد پبل و کمال نام
سوال علم برز اہل حصہ در سید سوال علم برز 2 داخل سید سوال علم
سوال علم برز 2 برز 14-4-12 کو کس جاری ہو

20-3-14

Mohammad Aaqib
Civil: Judge-VII, D.I.Khan

0-10
12/4/14

نمائندہ سائینس حصہ۔ سوال علم برز 3 حصہ سوال علم
برز 2 حصہ کن ہیں۔ کس و دین سائنس و کس کارٹی جو اہل
جو کس کس تو کس نیم سوال علم برز 2 حصہ $\frac{5}{14}$ $\frac{5}{14}$ $\frac{5}{14}$

جاری ہو

Mohammad Aaqib
Civil: Judge-VII, D.I.Khan

0-11
5/5/14

نمائندہ سائینس حصہ سوال علم برز 3 حصہ سوال علم
برز 2 حصہ کن ہیں۔ نمائندہ سائینس کو کس ہوا۔ کہ دندہ سید بوج
اظہار لقا حصہ AD کا 3 داخل حصہ۔ کہ اہل سوال علم
سوال علم برز 2 برز سید حصہ $\frac{5}{14}$ 29 $\frac{5}{14}$ $\frac{5}{14}$

Mohammad Aaqib
Civil: Judge-VII, D.I.Khan

ATTENDED
Examiner
15/03/16



نظام الامتحان رقم DC

34

م
 29/5/14 : نما لیکچر سہ ماہیوں کے بعد سول علم اے اے 3 لکھنے کوئی نہ بنے
 سول علم پلر 2 کو جسے جتنی موبیوں نے لکھا ہے اس قدر لکھنا ہے
 شد۔ اور وہ ہیں اس کے بعد لکھنا ہے کہ AD کا ڈیوٹی و دوق
 شد۔ کوئی نہ بنے سول علم پلر 2 مڈویچ اور اس کے بعد حورف
 28/6/14 کے لئے لکھنا ہے جو
 29.5.14

Mohammad Aaqib
Civil: Judge-VII, D.I.Khan

13
 28/6/14 : سول علم اے اے 3 لکھنے میں سہ ماہیوں کو فی لکھنے میں
 سول علم پلر 2 لکھنا ہے۔ AD کا ڈیوٹی و دوق میں
 جو دیکھو اللہ سبحانہ سول علم پلر 2 لکھنا ہے اور اس کے بعد حورف
 میں جو کہ شامل میں ہے لکھنا کوئی نہ بنے سہ ماہیوں کے بعد
 وکیل حورف
 19/7/14 کے لئے لکھنا ہے

28.6.14
Mohammad Aaqib
Civil: Judge-VII, D.I.Khan

14
 19/7/14 : نما لیکچر سہ ماہیوں کے بعد سول علم اے اے 3 لکھنے میں سول علم پلر 2
 لکھنا ہے۔ نما لیکچر سہ ماہیوں کو کہہ سوا کہ آج ہے اس کے بعد لکھنا
 ہے کہ AD کا ڈیوٹی و دوق لکھنا ہے اور اس کے بعد حورف
 لکھنا کوئی نہ بنے سول علم پلر 2
 19/7/14 کے لئے لکھنا ہے


19.7.14
Mohammad Aaqib
Civil: Judge-VII, D.I.Khan

ATTESTED
Examiner
15/6/14


35

Reader
20.09.2014.


Presence as before. As the learned Presiding Officer is leaving for the purpose of attending training at Judicial Academy, Peshawar, therefore file to come up for previous proceedings on 01/10/14.



READER.

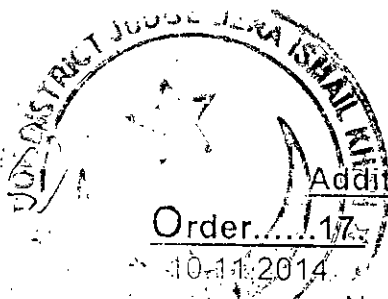
0-15
1-10-14
سائلین بذریعہ نمائندہ حواء اسٹینڈ وکسین حاضر۔ مشول علیہ نما ۱۵۰۰
مشول علیہ نما ۲۰۰۰ نہیں مشول علیہ نما عدالت کے طلب کرنے کی گزارش
حسوس نہیں کرتی۔ مشول علیہ نما ۳۰۰۰ امروزہ ۵۰۰۰ ہے۔ بلوچستان
جوگہ اصل مشول علیہ نما مشول علیہ نما ہے۔ جسکی طرف سے جواب
درخواست دائر کردہ ہے۔ لیڈا علیہ نما جوگہ اصل آئندہ
برائے بحث پر درخواست (2) 12 جن۔ د. مور ۱۰/18
کو پیش ہو۔
2014


Mohammad Aaqib
Civil Judge-VII, D.I.Khan

0-16
18-10-14
وکسین سائلین حاضر۔ مشول علیہ نما حواء وکسین حاضر۔ ابتدائی
بحث پر درخواست (2) 12 جن۔ د. عدالت سے مشول علیہ نما
برائے حکم مور ۱۱/14 کو پیش ہو۔


Mohammad Aaqib
Civil Judge-VII, D.I.Khan

ATTESTED

15/10/14



Additional Deputy Commissioner Vs Nizam ud Din

Order.....17

10-11-2014

36

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 script, including dates like 2013, 06/12/12, and 10/11/14.

Handwritten signature and date 10-11-14, with a stamp that reads "Civil Judge VII B.I.Khan".

Handwritten number 2256 and signature.

ATTESTED stamp with a 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.

37
Civil Judge
10-11-14
D. Khan

Examiner 15/03/16



Additional Deputy Commissioner etc Vs Nizam ud Din etc.

32

Contd: Or; # 17 Dated 10.11.2014.


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.

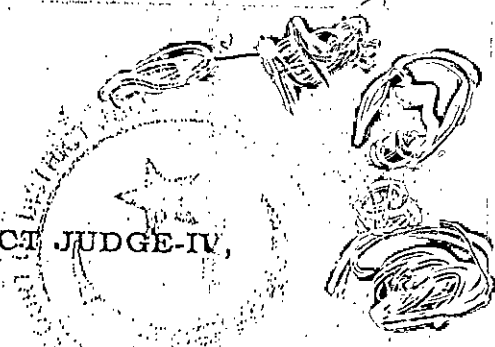
Announced.
10.11.2014




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

TESTED TO BE TRUE COPY
15/03/16
Examiner
District And Sessions Judge
Dera Ismail Khan

39 Adm G



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-IV
Dera Ismail Khan

17.04.15

ATTESTED

TESTED

Examined 10/15

76
ADD-IV
uf 2015
13

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 petition 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

[Signature]
KASHIF NADEEM
Additional District Judge-IV
Dera Ismail Khan

ATTESTED

C E R T I F I C A T E

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
[Signature]
District And Sessions Judge
Dera Ismail Khan

[Signature]
KASHIF NADEEM
Additional District Judge-IV,
Dera Ismail Khan

BEFORE THE HONOURABLE PESHAWAR HIGH COURT BENCH

DERA ISMAIL KHAN.

Writ Petition No. 857/2015

1. The Government of Khyber Pakhtun and Other
Versus

1. Nizam Uddin and others

S No.

INDEX
Particular

Annexure pp

- | | | |
|-----|--|------|
| 1. | Memo of Writ Petation 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

42

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 ^{Dera Ismail Khan} (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 (Plaintiff 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 3rd regular settlement of 1973-74 of village Shorkot are owned by the Petitioners (copy of the ^{Scheme} Misc. haqiat 1965-66 ⁷³⁻⁷⁴ is enclosed alongwith copies of periodical records of 1973-74, 2004-05 and 2008-09)

ATTESTED
Senior Member

- 2 -

43

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 ~~Ban~~ Dera Ismail Khan Road copy of Khata No of the Plaintiffs 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

REGISTERED
Senior Member

33

Handwritten scribbles and initials in the top right corner.

44

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 Jilani" 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 ^{in occupation} 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-

ATTESTED

Senior Member

34
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 Jilani (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.

Your Humble Petitioner

Dated: ___/08/2015


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

ATTESTED

46

FORM OF ORDER SHEET

Date of order or proceedings (1)

20.01.2016

Order or other proceedings with signature of Judge(s)

(2)

W.P. No. 857-D/2015.

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

The learned A.A.G. 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 adverted 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.

JUDGE

JUDGE

ATTESTED

ADJ I
WA

DISCIPLINARY ACTION

I, Muhammad Humayun Khan, Senior Member, Board of Revenue Khyber Pakhtunkhwa as Competent Authority, am of the opinion that Mr. Abdul ~~Khan~~ (Ex-Kanungo Circle DIKhan) presently posted as Naib Tehsildar, DIKhan has rendered himself liable to be proceeded against, as he committed the following acts of omission within the meaning of Rules-3 of the Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011.

STATEMENT OF ALLEGATIONS

- a). That you being an Authorized Official did not appear before the court of learned Civil Judge-VII, DIKhan to pursue the application u/s 12(2) C.P.C submitted by the Additional Commissioner, D.Khan for the cancellation of an exparte order and decree in Civil Suit titled Nizam-ud-Din Versus Govt. of Khyber Pakhtunkhwa etc. which was taken through misrepresentation and fraud and resultantly the said application was dismissed on 10.11.2011 due to non-prosecution. As a result of which the Govt. of Khyber Pakhtunkhwa suffered irreparable loss and valuable Govt. land measuring 16 Kanais situated in Mauza Shor Kot Tehsil and District DIKhan was illegally grabbed by the decree holder name y Nizam-ud-Din on the basis of an exparte decree which shows mala fide and gross negligence on your part.
- b). Your this act tantamounts to misconduct and make you liable to be proceeded against under Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011.
2. For the purpose of inquiry against the said accused with reference to the above allegations Malik Mansoor Qaiser Secretary to Commissioner DIKhan Division DIKhan is appointed as Enquiry Officer under Rule 10(1)(a) of the rules 1911.
3. The Inquiry Officer shall, in accordance with the provisions of the rules, ibid provide reasonable opportunity of hearing to the accused, record its findings and make, within thirty days of the receipt of this order, recommendations as to punishment or other appropriate action against the accused.
4. The accused and a well conversant representative of the Office of Deputy Commissioner DIKhan shall join the proceedings on the date, time and place fixed by the Inquiry Officer.

خدمت جناب ملک منصور قیصر صاحب سیکرٹری ٹریڈنگ ڈیپارٹمنٹ ڈیرہ اسمبل خان

(انٹوائسری آفیسر)

جواب چارج شیٹ

جناب عالی۔

چارج شیٹ میں فوجیہ الزام لگایا گیا ہے۔

کہ درخواست 2 اضعن 2 ضابطہ دیوانی کہ ایڈیشن ڈیپارٹمنٹ ڈیرہ اسمبل خان وغیرہ مقدمہ نظام الدین وغیرہ لعدالت جناب سول جج صاحب VII ڈیرہ اسمبل خان میں حاضر نہیں ہوا ہوں اور ایسکی پیروی میں نے نہیں کی۔

اس نسبت عرض ہے کہ درخواست 2 اضعن 2

مقدمہ نظام الدین وغیرہ لعدالت جناب سول جج صاحب VII ڈیرہ اسمبل خان کے سلسلے میں مجھے کسی آفیسر کی طرف سے اتھارٹی لیٹر نہیں ملا ہے۔ بلکہ مقدمہ مذکور میں کراہت اللہ خان تحصیلدار ڈیرہ اسمبل خان کو پیروی درخواست کے لیے اتھارٹی لیٹر ایڈیشن ڈیپارٹمنٹ کلکٹر ڈیرہ اسمبل خان و ایڈیشن اسٹنٹ کمشنر ریونیو ڈیرہ اسمبل خان جاری کیا گیا تھا۔ اور وہ پیروی مقدمہ کرتا رہا۔ (کاپی اتھارٹی لیٹر مورخہ 2013-07-01 و مکمل آرڈر شیٹ ہمراہ لفٹ ہیں)

کیونکہ یہ الزام بے بنیاد اور من گھڑت ہے۔ اس لیے

مجھے اس الزام سے نبری الذمہ فرمایا جاوے۔ مورخہ 2015-10-26

محمد

عبدالحلیم نائب تحصیلدار تحصیل دراب

ضلع ڈیرہ اسمبل خان

ATTESTED

(a)

Address: K.

Handwritten initials/signature

48

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 "Kashitka" 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 05.09.2008.

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 S.M.B.R 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 114

ATTESTED

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 Gurdawar Circle DIKhan now Naib Tehsildar Dera Iskan DIKhan
5. Mr. Sler 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

ATTESTED

12

51

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-J) 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 exoneration 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. Quadratullah 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

314


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 D.O. 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

Amd 2
S3

GOVERNMENT OF KHYBER PAKHTUNKHWA
BOARD OF REVENUE
REVENUE & ESTATE DEPARTMENT

SHOW CAUSE NOTICE

I, Muhammad Humayun Khan, Senior Member, Board of Revenue, as Competent Authority, under the Khyber Pakhtunkhwa Government Servant (Efficiency and Discipline) Rules, 2011, serve you Mr. Abdul Jalil the then Girdawar now Naib Tehsildar Daraban D.I.Khan, show cause notice that an enquiry was conducted against you, wherein an opportunity was given to you to be heard in person and furnish written defense. The Enquiry Officer has submitted his report on 05/11/2015.


2. After going through the findings of the Enquiry Officer, material on record and your written defense before the Enquiry Officer, I am satisfied that you have committed misconduct on the following account:

- a) That you being an Authorized Official did not appear before the court of learned Civil Judge-VII, DIKhan to pursue the application u/s 12(2) C.P.C submitted by the Additional Commissioner, DIKhan for the cancellation of an exparte order and decree in Civil Suit titled Nizam-ud-Din Versus Govt. of Khyber Pakhtunkhwa etc, which was taken through misrepresentation and fraud and resultantly the said application was dismissed on 10/11/2014 due to non-prosecution. As a result of which the Govt. of Khyber Pakhtunkhwa suffered irreparable loss and valuable Govt. land measuring 16 Kanals situated in Mauza Shor Kot Tehsil and District DIKhan was illegally grabbed by the decree holder namely Nizam-ud-Din on the basis of an exparte decree which shows malafide and gross negligence on your part.
- b) Your this act tantamounts to misconduct and make you liable to be proceeded against under Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011.

3. As a result thereof, I, as Competent Authority, am of the view to impose major penalty as indicated in Rule-4 of the Khyber Pakhtunkhwa Government Servant (Efficiency and Discipline) Rules, 2011.

4. You are therefore required to show cause as to why the aforesaid penalty should not be imposed upon you. Furthermore, you are directed to appear on 14/12/2015 at 10:00 A.M before the undersigned for personal hearing.

5. If no reply to this Notice is received within 07 days of its delivery, it shall be presumed that you have no defence to put in and in that case ex-parte action shall be taken against you.


Senior Member

No.PF/Ghulam Qasim/ 2800

Peshawar, dated 14/12/2015

Mr. Abdul Jalil Naib Tehsildar Daraban D.I.Khan.

ATTESTED

A.M.S. M

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. Abdul Jalil the then Girdawar Circle DIKhan now Naib Tehsildar Daraban 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 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. Abdul Jalil the then Girdawar Circle DIKhan now Naib Tehsildar Daraban with immediate effect.

Sd/-
Senior Member

No.Estt:I:/PF/ G.Qasim / 28774-78

Copy forwarded to the:-

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

Secretary -

ATTESTED

BEFORE THE GOVERNMENT OF K.P.K. THROUGH CHIEF SECRETARY
AND SECRETARY REVENUE & ESTATE DEPARTMENT, PESHAWAR.

Appellants N
33
55

Appellant:- Abdul Jalil- Ex-Naib Tehsildar.

Departmental Representation.

Appeal No. _____/2016..

INDIA.

S.No.	Particulars.	Pages.
1-	Memo: of Departmental Appeal.	1-7
2-	Copy of Impugned Order dated 23.12.2015. received on 4.1.2016.	8
3-	Copy of Show Cause Notice dated 14.12.2015.	9
4-	Copy of Inquiry Report dated 5.11.2015.	10-13
5-	Copy of Charge Sheet dated 5.10.2015.	14-15
6-	Copy of Reply from the Appellant dated 21.10.2015.	16
7-	Copy of Authority Letter No.224/OKG dated 17.5.2007, by designation (NOT by name). from <i>Ghoga namay Tehsildar</i>	17
8-	Copy of Order Sheet of Civil Suit No.80/1 Dated 12.5.2007 of CJ-VII, DIKhan. to 4-7-07	18-26
9-	Copy of Authority Letter No.531-3/SK Dated 2/7/2013.	27
10-	Copy of Authority Letter No. 211 Dated 20.6.2007.	28
11-	Copy of Authority Letter No.795-96/SK Dated 5.11.2013.	29.
12.	Copy of WP NO 857/af 22.12.15	30-35

Dated 11.01.16

Monday

Appellant.

ATTESTED

(1)
56

BEFORE THE GOVERNMENT OF KHYBER PAKHTOONKHAWA

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.K., Peshawar. The Order
was communicated on _____.

Appellant → Abdul Jaleel. --- Naib Tehsildar

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

PART-A.

1- The Appellant during June, 2007 till 2008 remained
incumbent of BPS 09 in the capacity of Girdawar
Circle or Kanungo under the domain of Tehsildar,
DIKhan which fact is not denied by the District
Revenue Hierachy & the Inquiry Officer too and the
Appellant was not a Gazetted Official for legal
representation in the Courts or Tribunal, under the
dictates of Law Manual (Instructions for Management of
legal Affairs).

2- The usage of " Letter of Authority" signed by the Government
Public Officer as Suitors or Defendants is meant for
limited purpose just to enter appearance at the call
of the *Adv. Jaleel* of the Court, and is not a recognised
Agency for Pleading and Acting in the legal proceedings
(Reference to Chapters-XIII to XXV of the Law Manual, and
the Collector is --- next)

ATTESTED

the sole plenipotentiary Agent of the Government and the entire Spectrum of the suit was flawed and faulted and the Trier-Civil Judge-VII {then was Mr. Adam Khan Suleman Khel of South Waziristan Agency when the Plaintiff, too is bonafide resident of South Waziristan Agency. Such Reference is Noteworthy.}

3- The Collector and the Tehsildar of those times (Namely *خان خورشید* and *غازی لودھی*) were under obligation to involve the sitting Government Pleaders (as defined in S.2(?) EPC, or the Special Government Pleader under the agis of the Govt: Pleader but the said Officer was bypassed or relegated by the two Officials=defendants, and the real fault, indifference or irresponsibility float on the surface of the Order-Sheets of the Court, though the impropriety of the then Civil Judge is not omissionworthy or ignorable when the decision/decree dated 05-01-2008 is slpshod on the pedestals of lack of jurisdiction under Tenancy Act(25) 1950 and Land Reforms Regulation 115/1972 of LR Act-II of 1977.

4- Even in case of non-submission of written Statement or avoidance of examination of the Plaintiff's witness^s, the event did not absolve the Trier-Judge, Mr. Adam Khan to remain passive or inactive against the Plaintiff and Judge is required to wear all the laws on the sleeves of his robes (As is consistent pronouncements^s of the Supreme Court) and the fault, and wrongs in the exercise of the jurisdiction, which was wanting in the case, had been vicariously shifted to the law-paid Officials when the plaint was bereft of the Disclosure of the cause of action and barred by Law of Land Reforms and Tenancies.

ATTACHED

5- These Objections are thus preambulatory to the following submissions qua the proceedings which had begun since framing of Charge Sheet dated 5.10.2015.

Copy is enclosed for favour of ready reference.

The Charge-Sheet is concerned with events of Application under S.12(2) CPC dated 9.7.2013 and the Appellant was not nominated for appearance ⁱⁿ ~~by~~ the 12(2)Applicants.

PART-B

(i) The Application dated 9.7.2013 was instituted at the behest of Collector Defendant No.2(in the Civil Suit No.80/ dated 12/5/2007 decided on 5.1.2008 in haste by Mr.Adam Khan Suleman Khel when Mr.Adam Khan,Civil Judge allowed the Plaintiff to successfully plead his fraud for award of decree in his favour.

Copy of the Application dated 9.7.2013 under S.12(2)CPC of 1908 is enclosed.

(ii) Mr.Karamatullah Tehsildar, D.I.Khan appeared on 20.9.2013 in the case No.6/12(2) under section 12(2)CPC and he was then substituted by Mr.Shah Nawaz Tehsildar who later on was substituted by Abdur Rehman Shah Tehsildar on 10.12.2013 and there is no reference to the Appellant in the case referred in the charge-sheet. and the Appellant has been ~~wrongly~~ ^{seriously} substituted for these officials which is a ^{serious} anomaly in the instant proceedings.

(iii) The Summons could not be served on the main contestant Mr.Nizam Khan till 20.2.2014 and later on there is no specific mention of the Representative of the Collector

ATTESTED

on 25.3.2014, although there is mention on 25.3.2014. نہ اس کے ساتھ ساتھ وکیل کا نام but there is no Power of Attorney (may be "Letter of Authority) nor proper vakalatnama from the Collector on 25.3.2014 and confusion crept in and then again on 25.3.2014 there is indifference from the Succeeding Court of Civil Judge-VII, D.I.Khan.

(iv) On 1.10.2014, there is mention of Assistant of Advocate though Advocate not properly named and Nisam Din submitted his reply on 1.10.2014 and the case was fixed for arguments on 18.10.2014 on the Misc:Application No.6/12(2) CPC dated 9.7.2013 after fifteen months due to procedural infirmities.

(v) On 18.10.2014, the stated counsel for the Collector was present in the Court and Preliminary arguments on maintainability of the said Review ^{Issue-like} Application were heard and the case was adjourned for Order on the said maintainability and without framing of Issues or Examination of witnesses of the Collector, the said Misc: Application No.6/12(2) CPC was dismissed on 14.11.2014. The entire Order Sheet is enclosed.

(vi) The appellant (Accused) had never been a Representative of the Collector, ADC or A.A.C, DIKhan in the said case of S.12(2)CPC of 2013 but he had been issued Charge-Sheet dated 5.10.2015 (received on 20.10.2015) and thus the Charge-Sheet is thus misplaced - ~~Case~~ - mistaking جس کے misdirected in points of procedural Law and the Law Manual and the Appellant has been wrongly substituted for the Tehsildar, DIKhan. Applicant No.3 in the Case of S.12(2)CPC and such allegations are thus unfounded, flawed and error-conceived.

- (vii) The Appellant submitted his reply on time to the Inquiry Officer at D.I.Khan and the Inquiry Officer did not consider it appropriate to examine the Appellant and other co-accused or the Representative of the Prosecuting Authority and more clearly. ---
- (viii) The Inquiry Officer did not offer opportunity of cross-examination of the representative of the Prosecuting Authority/ Accusing Authority nor the Appellant was examined on Oath and not cross-examined and the dictates of Rules 5 to 14 of the E & D Rules, 2011 were not followed although the check-list of 1985 under E & D Rules, 1973 is quite elaborate on this count.
- (ix) The Appellant was not properly heard in person by the Inquiry Officer before submission of his report.
- (x) The Appellant had thus no nexus with the Misc:Application No.6/12(2) dated 9.7.2013 and he had been charged-sheeted for his non-appearance or non-pursuit of the said proceedings of 2013 and the Charge-sheet is misplaced and misoriented;
- (xi) In the reply to the Charge Sheet, the Appellant had stated that he was not legal Clerk of the D.I.Khan Revenue Department and his authority letter from Tehsildar was just to attend the Court on the call of the JK official of the Court though Patwari Halqa as Defendant No.4 did not pursue his defence and the Court on 2.6.2007, 21.6.2007

61

did not ask for written statement and in his hasty justice, wasted justice and he suborned illegality in such situation when Government Defendant No-1 in Civil Suit No.80/1 of 12-5-2007 was not duly and properly served through Govt. pleader Mr. Mustafa Kamal Mehsud. The reply submitted by the Appellant before Mr. Qaisar Mansoor at D.I. Khan was not found satisfactory by him and he submitted his Inquiry Report dated 5.11.2015.

(xii) In pursuance of the Inquiry Report, the Show Cause Notice dated 14.12.2015 was issued against the Appellant on account of acts of omission in proceedings of Application 12(2) CPC of 9.7.2013 and not for proceeding of Civil Suit No.80/1 of 12.5.2007 decided on 5.1.2008 by Mr. Adam Khan, Civil Judge, VII, D.I. Khan who is domiciled in South Waziristan and who was the Principal facilitator for such impugned proceedings and the subsequent decree dated 5.1.2008.

(xiii) The proceedings by the Inquiry Officer were thus conducted in utter violation of the Rules 5, 10-11- & 14 of the E & D Rules 2011 and are not apt to bear the thrust of quasi-judicial scrutiny by the Appellate Authority and are hit by the Rule of ignorantia elenchi (Latin), i.e. ignoring the points in question and are conceived with the fallacy of asserting to wrong points.

(xiv) The Inquiry Officer has assumed for himself the authority of the Competent Authority by recommending the punishment, which is violative of the Notification No. SOR-V-(E & AD) Instructions 2014 dated 28.3.2014. Copy enclosed for ready reference.

ATTES

797

67

The Appellant also wishes to be heard in person to explain further qua the proceedings of Writ Petition No. 357 of 2015, Copy enclosed. Instituted by ADC - Dikhan on 22.12.2015

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 Naib Tehsildar BPS-14 with all back ~~date~~ benefits.

Your Humble Appellant,

(Abdul Jalil)

Ex-Girdawar Circle, DIKhan.

Dated: 8.1.2016.

عبد الجليل دہ گھڑاؤں کے علاقے دیکنہ
ڈیڑہ اسٹیشن
03467870060

ATTEST

GOVERNMENT OF KHYBER PAKHTUNKHWA
BOARD OF REVENUE
REVENUE & ESTATE DEPARTMENT


No. Estt:/ Abdul Jalil/ 8525
Peshawar dated the 14/03/2016

To

Mr. Abdul Jalil,
Ex- Naib Tehsildar DIKhan
R/O Sakna Mohallah Shab Shah 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

قیمت
10 روپے



45776

پشاور بار ایسوسی ایشن، خیبر پختونخوا

رابطہ نمبر: 0333 9127288

بعدالت جناب: سروس سٹریٹیجی کے لیے درخواست

<p>منجانب: <u>پیشتر</u></p> <p>عبد الجلیل بنام کلکتہ</p> 	<p>دعویٰ: <u>سروس سٹریٹیجی</u></p> <p>علت نمبر: <u>77</u></p> <p>موردہ نمبر: <u>77</u></p> <p>جرم: <u>77</u></p> <p>تھانہ: <u>77</u></p> 
بامث تحریر آنگہ	

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

آن مقام پشاور محمد اعجاز خان کدوئی صاحب 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 تقریر نمائندگی و فیصلہ برعلف دینے جواب دعویٰ اقبال دعویٰ اور درخواست از ہر قسم کی تصدیق زریں بند دیکھ کر کرنے کا اختیار ہوگا۔ نیز ضرورت ہوتی ہے کہ پیروی یا اہل کی برآمدگی اور منسوخ، نیز دائر کرنے اہل نگرانی و نظریاتی و پیروی کرنے کا اختیار ہوگا اور ضرورت ہوتی ہے کہ مقدمہ مذکورہ کے کل یا جزوی کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار ہو گا اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ اختیارات حاصل ہوں گے اور اس کا سامنے پر داختم منظور و قبول ہوگا دوران مقدمہ میں جو خرچہ ہر جہان اتوائے مقدمہ کے سب سے ہوگا وہ وکیل موصوف وکیل کے اختیار ہوگا کوئی تاریخ پیشی مقام دورہ یا حد سے باہر ہو تو وکیل صاحب پابند نہ ہوں گے کہ پیروی یا مختار وکیل، لہذا وکالت نامہ لکھ دیا تاکہ مندر ہے۔

المرقوم:

وقت اس بات کی ذمہ داری، قابل قبول ہوگی

Accepted
Asla Me

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL.

Service Appeal No. 393 of 2016

Abdul Jalil s/o Abdul Latif resident of Mohallah Shiv Shah City D.I.Khan. (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. Correct.
3. The Appellant was while posted as Kanungo Circle D.I.Khan, directed / authorized by the then Tehsildar, D.I.Khan to attend and pursue 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 appeared before the court on one adjournment but later-on he did not appear before the court hence ex-Parte proceedings were ordered by the learned Court.
4. The Appellant neither attended the court of learned Civil Judge-VII/Judicial Magistrate, D.I.Khan on other adjournments nor did he approach the learned court for the cancellation of ex-parte orders. When the matter was come into the notice, the Additional Deputy Commissioner, D.I.Khan and other moved an application u/s 12 (2) CPC before the court of learned Civil Judge-VII/Judicial Magistrate, D.I.Khan which was rejected by the learned court. Later-on, an appeal was submitted before the court of Learned District & Sessions Judge, D.I.Khan against the orders of learned Civil Judge-VII/Judicial


Magistrate, D.I.Khan but the same was also rejected by the learned Additional District & Sessions Judge-IV, D.I.Khan vide order dated 16/04/2015.

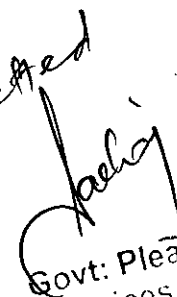
5. Correct.
6. Correct. As stated above in Para No. 4.
7. Correct. As stated above in Para No. 4.
8. On the rejections of revisions Petitions by the lower courts, the Respondent lodged a Writ Petition before the Hon'ble Peshawar High Court Bench which is pending before the Hon'ble Court for decision.
9. Relates to respondent No. 3.
10. Relates to respondent No. 3.
11. Relates to respondent No. 3.
12. Relates to respondent No. 3.
13. Relates to respondent No. 3.
14. Relates to respondent No. 1.
15. Relates to respondent No. 1.
16. Due to negligence in performance of their duties, a piece of Government land was decreed in favour of one Nizam-ud-Din.



ON GOUND.

- A. Relates to respondent No. 3.
- 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. Incorrect.
- H. Correct to the extent the Writ petition submitted by the respondent 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)

Verified

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