

Peshawar
6/2/24

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNL PESHAWAR.

Service Appeal No. 2430/2023

Muhammad Zubair, District Attorney.....Appellant.

Versus

Govt. of Khyber Pakhtun khwa through Chief Secretary and others.

.....Respondents

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(MUHAMMAD ZUBAIR)

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL PESHAWAR

Service Appeal No. 2430/2023

Muhammad Zubair, District Attorney.....Appellant.

Versus

Govt. of Khyber Pakhtunkhwa through Chief Secretary and others...

.....Respondents.

Khyber Pakhtunkhwa
Service TribunalREJOINDER ON BEHALF OF APPELLANTDiary No. 10964Dated 1-2-2024RESPECTFULLY SHEWETH:Preliminary objections:

- (1-9) Objections 1-9 raised by the respondents are incorrect and baseless. Rather the respondents are estopped to raise any objection due to their own conduct.
10. Objection No. 10 raised by respondents is also incorrect and baseless. The representative of the Deputy Commissioner/ District Collector, Shangla was not interested in his duties. Neither he was regular in court attendance nor was interested in his duties. The matter was reported to the Deputy Commissioner, Shangla vide District Attorney Shangla letter No. 80-81/DA, dated 19.8.2022(Annexure-A), letter No. 125-126/DA, dated 8.12.2022(Annexure-B), letter No. 153/DA, dated 15.2.2023(Annexure-C), letter No. 158-59/DA, dated 28.2.2023(Annexure-D), letter No. 168-69/DA, dated 24.2.2023(Annexure-E), letter No. 170-73/DA, dated 27.3.2023(Annexure-F), letter No. 180-81/DA, dated 31.3.2023(Annexure-G), letter No. 182-85/DA, dated 3.4.2023(Annexure-H), letter No. 197-200/DA, dated 13.4.2023(Annexure-I). Moreover, two land acquisition references were decided by the hon'ble court of District Judge, Shangla against the government on 10.12.2022(Annexure-J&K). The hon'ble court sent copies of

judgments to the office of District Collector, Shangla but the District Collector, Shangla failed to file appeal in the Peshawar High Court within the stipulated period. The Solicitor to Govt. of Khyber Pakhtunkhwa and Law Officer of Advocate General Office raised objections over it and asked for fixing the responsibility for delaying the appeal vide their letter No. SOL/Law/10-23(17)/Rev/2023/ 1489-95, dated 22.2.2023, No. SOL/Law/10-23(17)/Rev/ 2923/1496-1502, dated 22.2.2023(Annexure-M), No. 4737-41/AG, dated 25.2.2023 (Annexure-N). The Deputy Commissioner, Shangla instead of taking disciplinary proceedings against the responsible officers/officials of his office, shifted the responsibility to the shoulder of appellant vide his letter No. 3306-08/HC/DC/SH, dated 8.3.2023(Annexure-O). The matter was also reported by the appellant to the Govt. of Khyber Pakhtunkhwa vide District Attorney, Shangla letter No. 174-79/DA, dated 30.3.2023 but no action was taken against the delinquent officer nor any proper inquiry was conducted because the responsible persons were belonging to strong association of PAS/PMS cadre.

11 to 12 These objections are also incorrect and baseless. The impugned transfer notification is against the posting/transfer policy of the provincial government.

FACTS

1. Para No. 1 is incorrect. The competent authority is bound to exercise powers in accordance with the rules and policy framed by the government. In the impugned transfer notification, he has violated the policy and also the legal rights of the appellant. Therefore, the appellant has got locus-standi and cause of action to challenge the transfer notification.
2. As this para has not been denied by the respondents, therefore, needs no clarification.
3. As this para has also not been denied by the respondents, therefore, needs no clarification.
- 4 to 6. No specific denial is given by the respondents against these paras, therefore, needs no clarification.

7. Incorrect. The Deputy Commissioner, Shangle being PAS officer has managed to transfer the appellant pre-maturely just to shift the responsibility of huge loss to the public exchequer occurred due to involvement of the Deputy Commissioner, Shangla office.

8&9. No specific denial is given by the respondents against these paras, therefore, needs no clarification.

GROUNDS

- a. Incorrect. The impugned order dated 31.7.2023 is against the law, facts, norms of justice, policy of the government, therefore, not tenable and liable to be set aside.
- b. Incorrect. The appellant has not completed his normal tenure on the station transferred from, therefore, the posting/transfers orders is against the policy and liable to be set-aside.
- c. Incorrect. The posting/transfer policy is very much attracted to the appellant because appellant is government servant and all policies of the provincial government of Khyber Pakhtun-Khwa is attracted to the appellant.
- d. Incorrect. The appellant has not been treated in accordance law and policy of the government and has been tortured just to please some-one belonging to strong cadre.
- e. Incorrect. Needs no clarification.
- f. Incorrect. Needs no clarification.
- gtol. All replies to the grounds g to l given by the respondents are incorrect. The public interest has been damaged in the present posting /transfer by occurring huge financial loss to the public exchequer.

PRAYER


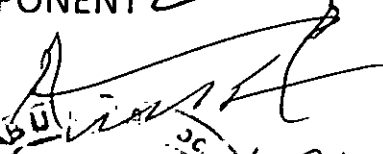
It is, therefore, most humbly prayed that the appeal of the appellant may kindly be accepted as prayed for.

APPELLANT.


(MUHAMMAD ZUBAIR)

AFFIDAVIT

It is affirmed and declared that the contents of rejoinder are true and correct to the best of my knowledge and belief.


DEPONENT

Date 30/09/2024
Commissioner Sharnah



OFFICE OF THE
DISTRICT ATTORNEY
SHANGLA AT ALPURAI
NO. 80-81 D.A (SH)/Dated 19/08/2022.
Phone & Fax# 0996-851279.
governmentpleadershangla@gmail.com

(4)

(A)

To

The Deputy Commissioner,
Shangla.

Subject: **PROVINCIAL LITIGATION POLICY.**

Dear Sir,

Enclosed kindly find herewith a copy of provincial litigation policy issued by the government of Khyber Pakhtunkhwa, Establishment Department on 26.03.2018 for your kind perusal.

The undersigned propose the following initiatives to be taken at District level by your office for proper defence of public interest.

1. To establish District progress review committee headed by atleast Additional Deputy Commissioner (G).
2. All district level Departments may be directed to share their cases and names with mobile No. of their departmental representative.
3. To establish a litigation section on District level where sufficient staff including Office Assistant, Computer Operator and other staff is provided for proper record keeping and correspondence with all facilities like computer, scanner, printers, UPS photo copier and DSL.
4. To conduct quarterly performance review of litigation in different courts, progress made in cases, issues and the line of action adopted.
5. To recommend action to the next higher authority against the officer/official on account of poor performance and negligence of duty in a case or cases.
6. To recommend incentive for those who showed excellent performance in the conduct of cases.

Thanks.


DISTRICT ATTORNEY
SHANGLA

Copy forwarded to the Secretary to Government of Khyber Pakhtunkhwa, Law, Parliamentary Affairs and Human Rights Department Peshawar for favour of information and necessary action please.


DISTRICT ATTORNEY
SHANGLA



NOTIFICATION:

No. SO(POLICY)1-41/2018. In order to streamline the processes and devise a policy based on standardized procedures for litigation, the Competent Authority is pleased to approve the Provincial Litigation Policy for all Administrative Departments and attached formations with immediate effect. The policy shall be followed in letter and spirit by all concerned.

Provincial Litigation Policy

1. Purpose

It has been the utmost priority of the Provincial Government to emphasis on welfare legislation and social reforms. The Provincial Litigation Policy is aimed to transform all government departments and attached formations into efficient and responsible litigants. This policy adheres to the responsibility of the government to protect the rights of citizens while strictly adhering to the laws, rules and regulations in vogue. The primary objective of this policy is to reduce unnecessary litigation workload of the departments in courts so as to avoid wastage of valuable time of the courts and government. This Policy will also enable the officers heading the litigation sections of the departments to work more efficiently and objective oriented.

*Attended
[Signature]*

2. Salient Features

The salient features of the policy are;

- a. To ensure that litigation section/cell of a department is as important as other sections. However, all other sections (internal or external if related to the case) are equally responsible to cooperate while filing/contesting cases.
- b. It guides to place correct facts, all relevant documents before the court/tribunal and not to mislead them.
- c. It guides about progress review of departments both internally and externally via notified departmental committees.
- d. It sensitizes the government departments in important cases for efficient and timely disposal.
- e. To put in place an external monitoring mechanism to review progress of the line departments in terms of success/failure and determine responsibilities.
- f. To lay down a model for departmental litigation sections.
- g. To lay down incentives based litigation model.

[Signature]

3. Principles of Efficiency

Competency	A Department to be represented by a competent and sensitive litigation officers or team of officers: competent on the basis of qualification, experience and skills (presentation/arguments) and sensitive to the facts that government is not an ordinary litigant and that a litigation does not have to be won at any cost.
Prioritization	The core cases which if decided in favour of the Government could either strengthen the government stance or result into revenue or both.
Management	Initiate litigation in a uniform and coordinated manner and ensuring that cases of public interest are won and otherwise are not needlessly persisted with.
Responsibility	<ul style="list-style-type: none"> That litigation will not be resorted to for the sake of contesting. That false pleas will not be taken and shall be avoided in presentation before the court.

4. Progress Review Committee (PRC)

In order to streamline working of litigation sections and make an efficient environment therein, it is direly needed to vigilantly review progress and efficiency of these sections both internally and externally. For the purpose, the following two tiers of Progress Review Committee are laid down;

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[Signature]

- a. Departmental Progress Review Committee (DPRC)
- b. Provincial Progress Review Committee (PPRC)

a. Departmental Progress Review Committee (DPRC)

The DPRC Committee to be notified by the concerned department preferably under the Chairmanship of the Special Secretary concerned. However, those departments where the post of Special secretary does not exist shall notify the same under any well versed officer but not below the rank of Additional Secretary or BPS-19. The rest of composition shall include members from the concerned attached formations, litigation section, and any coopted expert(s).

ToRs:

- i. To conduct quarterly performance review of the litigation section of the department and that of the attached formations in terms total number of cases at different courts, progress made in cases, issues and the line of action adopted.
- ii. To recommend action to the next higher authority against the officer/official on account of poor performance and negligence of duty in a case or cases.
- iii. To review cases for possible resolution/settlement at the Committee's level or by means of negotiation with complainant/litigant to withdraw his case or cases accordingly.
- iv. To furnish minutes/reports of the quarterly meeting to Law Department regularly.

[Signature]

Provincial Progress Review Committee (PPRC)

The PPRC Committee to be notified by the Establishment Department under the Chairmanship of Secretary Law Department. The rest of composition shall include Advocate General, Khyber Pakhtunkhwa, Chairman Departmental Progress Review Committee of the concerned department, Additional Secretary (Judicial) and any coopted expert(s).

ToRs:

- i. To conduct quarterly performance review of the department in terms total number of cases at different courts, progress made in cases, issues and the line of action adopted.
- ii. To recommend action to the next higher authority against the officer/official on account of poor performance and negligence of duty in a case or cases.
- iii. To furnish a consolidated performance report on a proper format to the Chief Secretary for decision.

5. Efficient Litigation Section

Despite significant role in safeguarding the public interest, the litigation sections of the departments/attached formations have always been marginalized. The Sections mostly suffer from issues like lack of qualified and experienced staff, necessary equipment, and transportation facility. Due to cumbersome and unattractive nature of work, the officers/officials avoid postings and resultantly either unwilling workers are posted or the positions are filled on additional charge basis. To address this ignored area for better service delivery, model of a strengthened and efficient litigation sections is laid down for implementation by the departments. The Administrative Heads are required to ensure the following;

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Abbas

a. Staffing

- i. There shall be no vacant position in the litigation section. It shall be ensured that the vacant positions are filled either by means of initial recruitment or transfer as the case may be. The establishment department shall prioritize and give special attention to the needs of line departments in this context.
- ii. The litigation sections shall be run by dedicated and full time staff and assigning of additional charge to any officer/official working in some other section be avoided and vice versa. In case of leave not exceeding 120 days, additional charge of the post as stopgap arrangement is permissible.
- iii. Staffing of litigation section shall not be taken for granted and in case of additional staff requirement (as per standardization) other than the sanctioned, the Department shall move SNE to Finance Department for creation of the same.

b. Equipment

A litigation section shall have all required equipment as per need. The following dedicated equipment shall be made available to each litigation section in the requisite quantity.

- i. Computers
- ii. Scanners
- iii. Printers
- iv. UPS system
- v. Photocopier
- vi. DSL Facility

Q

c. Transportation

For timely attendance in outstation courts, submission of comments/replies, hearings, and meetings with line formations and other regulatory departments, every litigation section shall be provided with a good condition dedicated pool vehicle (to be authorized by administration department) with provision of necessary POL.

(8)

d. Computerization of Record
 For instant and handy use as reference in other similar cases, the court decisions in different cases whether in favour or against the department shall be listed and preserved/scanned in the system. The record of cases shall be categorized and maintained on the given sample format.

Consolidation of Decided/Closed Case

Decision/Court	Services Tribunal	Civil Court		High Court		Supreme Court	
		Service Matter	other	Service Matter	other	Service Matter	Other
In Favour							
Against							
Total							

ii. Detailed Description

Court	Nature of Case	Decided in Favour of the Govt.		Decided against the Govt.	
		S.No	Title of case	S.No	Title of case
Services Tribunal	Service Matters				
Civil Court	Service Matters				
	Others				
High Court	Service Matters				
	Others				
Supreme Court	Service Matters				
	Others				

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Arshina

e. Scheduling & Coordination

65

For in time submission of para-wise replies in court cases and other requisite preparation/consultation, timely coordination with concerned sections is imperative. Thus, section officer litigation/in-charge of the section in the departments shall on regular basis share their monthly schedule of cases/hearings with all concerned sections.

Litigation Management Information System (LMIS)

Apart from record keeping and management of cases at departmental level, the overall load shall be supervised through Litigation Management Information System by the Law Department. All technical support to be provided by the PMRU.

Incentive Plan

While expecting best results in litigation, departments are required to carry out the litigation activities in an efficient and effective manner. To keep the litigation staff motivated and committed for best possible results, there shall be a mechanism whereby they can besides regular litigation-section allowance be rewarded on account of excellent performance. Pivotal to this reward concept is how and to what extent incentive be tied to litigation staff and specific types of performance. The incentive will not be treated the same way for every position. However, every department should be able to identify certain performance objectives it wants its litigation staff to fulfill.

*Attested
Signature*

a. The specific objectives of the plan are to:

- i. Encourage higher levels of performance by clearly identifying priorities followed by incentives paid for successful achievement of that performance.
- ii. Facilitate and ensure posting/retention of competent and willing officers/officials in the litigation sections.
- iii. Increase the level of accountability for tangible output.
- iv. Enable the litigation staff to adhere to best practices in planning, goal-setting, and performance management.
- v. Promote the attributes of hard work, focus, teamwork, and honesty.

Signature

b. **Performance Based Incentives Structure**

Apart from regular litigation section allowance, there shall be performance based incentive as well for the litigation staff only. This incentive shall be subject to performance of the section. This entails eligibility for honorarium @ three to four basic pays a year over and above any other routine incentive. However, the Administrative Secretary shall after recommendations of the Law department, may sanction the honorarium.

**CHIEF SECRETARY,
KHYBER PAKHTUNKHWA.**

(10)

NDST: NO & EVEN DATE

Copy is forwarded to:-

1. Additional Chief Secretary, Govt. of Khyber Pakhtunkhwa, Planning & Development Department.
2. Additional Chief Secretary (FATA), FATA Secretariat Peshawar.
3. The Senior Member Board of Revenue, Khyber Pakhtunkhwa.
4. All Administrative Secretaries to Govt. of Khyber Pakhtunkhwa.
5. The Principal Secretary to Governor, Khyber Pakhtunkhwa.
6. The Principal Secretary to Chief Minister, Khyber Pakhtunkhwa.
7. All Divisional Commissioners in Khyber Pakhtunkhwa.
8. All Heads of Attached Departments in Khyber Pakhtunkhwa.
9. All Autonomous/Semi Autonomous Bodies in Khyber Pakhtunkhwa.
10. All Deputy Commissioners in Khyber Pakhtunkhwa.
11. The Registrar Peshawar High Court, Peshawar.
12. The Registrar, Khyber Pakhtunkhwa Service Tribunal, Peshawar.
13. The Secretary, Khyber Pakhtunkhwa Public Service Commission, Peshawar.
- X 14. All Special Secretaries, Additional Secretaries, Deputy Secretaries and Section Officers in Establishment & Administration Department.

Beenish Iqbal
26/03/18

(BEENISH IQBAL)
SECTION OFFICER (POLICY)

Attested
Chahar



OFFICE OF THE
DISTRICT ATTORNEY
SHANGLA AT ALPURAI

NO. 125-126 D.A (SH)/Dated 28/1/22 /2022.

Phone & Fax# 0996-851279.
governmentpleadershangla@gmail.com

(11)

(B)

To

The Deputy Commissioner,
Shangla.

Subject: **PROVINCIAL LITIGATION POLICY.**


Dear Sir,

Reference in continuation of this office letter No. 80-81/DA, dated 19.08.2022.

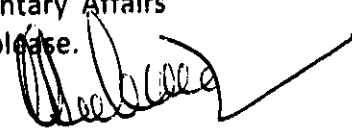
It is submitted that the representative of District Administration are not performing their duties as per requirement of courts. This creates difficulties in proper defence of the public interest. In some cases ex parte proceeding have been ordered by the courts due to their absence especially the CDLD staff.

You are, therefore, requested to please nominate responsible persons to maintain their record and ensure their presence and also assist the undersigned in cases as and when required.

An early response will be highly appreciated please.


DISTRICT ATTORNEY
SHANGLA

Copy in continuation of this office letter cited above is forwarded to the Secretary to Government of Khyber Pakhtunkhwa, Law, Parliamentary Affairs and Human Rights Department Peshawar for favour of information please.


DISTRICT ATTORNEY
SHANGLA
and Secy copy



OFFICE OF THE
DISTRICT ATTORNEY
SHANGLA AT ALPURAI

NO. 153 D.A (SH)/Dated 15 / 02 /2023.

Phone & Fax# 0996-851279.
governmentploadershangla@gmail.com

(12) 11
"C"

To

The Deputy Commissioner,
Shangla.

Subject: **PROVINCIAL LITIGATION POLICY.**

Dear Sir,

Your kind attention is invited to this office letter No. 80-81/DA(SH) dated 19.08.2022 and No.125-26/DA(SH) dated 08.12.2022 on the subject noted above.

It is submitted that the performance of departmental representative of civil administration i.e Assistant District Qanongo in the court cases is very weak. He has neither interested to defend cases and provide assistance properly, nor attending courts.

You are, therefore, requested to please look into it and nominate responsible people so that public interest is defended.

An early action will be appreciated.

Thanks.


DISTRICT ATTORNEY
SHANGLA

Attested
Abbas



OFFICE OF THE
DISTRICT ATTORNEY
SHANGLA AT ALPURAI

NO. 159-39 D.A (SH)/Dated 28/10/2023.

Phone & Fax# 0996-851279.
governmentpleadershangla@gmail.com

(13)

"D"

To

The Deputy Commissioner,
Shangla.

Subject: PROVINCIAL LITIGATION POLICY.

Dear Sir,

Your kind attention is invited to this office letter No. 80-81/DA(SH) dated 19.08.2022, No.125-26/DA(SH) dated 08.12.2022 and No. 153/DA(SH) dated 15.02.2023 on the subject cited above.

It is submitted that your office/departmental representative is not punctual in court attendance. This attitude of the official will result in huge financial loss to the public interest/exchequer.

You are, therefore, requested to please look into it and solve the issue by nominating a responsible team as departmental representative for litigation relating to local administration.

An early and quick response will be highly appreciated please.

o/l

DISTRICT ATTORNEY
SHANGLA

Copy alongwith copies of letters mentioned above is forwarded to the Secretary to Government of Khyber Pakhtunkhwa Law, Parliamentary Affairs and Human Rights Department Peshawar for favour of information please.

o/l

DISTRICT ATTORNEY
SHANGLA

*Attended
Shangla*



OFFICE OF THE
DISTRICT ATTORNEY
SHANGLA AT ALPURAI

NO. ~~168-69~~ D.A (SH)/Dated ~~24/03/2023~~.

Phone & Fax# 0996-851279.
governmentpleadershangla@gmail.com

(14)

"E"

To

The Deputy Commissioner,
Shangla.

Subject: **PROVINCIAL LITIGATION POLICY.**

Dear Sir,

Your kind attention is invited to this office letter No. 80-81/DA(SH) dated 19.08.2022, No.125-26/DA(SH) dated 08.12.2022, No. 153/DA(SH) dated 15.02.2023 and No.158-59 dated 28.02.2023 on the subject noted above. It is once again brought to your kind notice that the departmental representatives of your office for court cases are not punctual in their duties. Today case titled Muhammad Salim etc Versus Provincial coordinator CDLD etc was fixed for hearing in the court of Senior Civil Judge (Judicial) Shangla but no one was present or attended the court and the Hon'ble court announced exparte decree against the District Administration.

You are, therefore, requested to please look into the matter personally before it is too late.

Thanks.

o/c

DISTRICT ATTORNEY
SHANGLA

Copy in continuation of this office letters No. 80-81/DA(SH) dated 19.08.2022, No.125-26/DA(SH) dated 08.12.2022 and No.158-59 dated 28.02.2023 is forwarded to the Secretary to Government of Khyber Pakhtunkhwa Law, Parliamentary Affairs and Human Rights Department Peshawar for favour of information please.

o/c

DISTRICT ATTORNEY
SHANGLA

Attested
[Signature]



OFFICE OF THE
DISTRICT ATTORNEY
SHANGLA AT ALPURAI

NO. 170-73 D.A (SH)/Dated 27/3 /2023.

Phone & Fax# 0996-851279.
governmentpleadershangla@gmail.com

(15)

"F"

To

The Deputy Commissioner,
Shangla.

Subject: Defence of Government cases pending in the District
Courts.

Dear Sir,

It is submitted that the following cases is pending in the courts noted against each. The District Collector/Deputy Commissioner shangla is the main contesting party. Your office has not yet able to provide parawise comments and other connected documents instead of our repeated request to your representative Mr. Daftar Ali. He is neither interested in the defence of government interest or attending courts in the cases fixed for hearing. This attitude of your office creating problems for this office in court rooms when a case is called by the presiding officer.

Sl #	Titile of Case	Name of Court	Date of institution	Date of hearing
1.	Niamatul Mulk etc. versus Govt. of Kpk. etc	Additional District Judge Shangla	15.02.2023	29.03.2023
2.	Muddasir etc Versus Secretary Board etc	Additional District Judge Shangla	26.05.2021	31.03.2023
3.	Latif ullah etc Versus Secretary Board etc	Additional District Judge Shangla	26.05.2021	31.03.2023
4.	Jamal Uddin etc versus Govt. of Kpk. etc	Additional District Judge Shangla	26.05.2021	31.03.2023
5.	Muhammad Wadood etc versus Govt. of Kpk. etc	Additional District Judge Shangla	26.05.2021	31.03.2023
6.	Mazhar ul Haq etc versus Govt. of Kpk. etc	Additional District Judge Shangla	26.05.2021	31.03.2023
7.	Bahrud Din etc versus Govt. of Kpk. etc	Additional District Judge Shangla	26.05.2021	31.03.2023
8.	Ihsan Ullah etc versus Govt. of Kpk. etc	Additional District Judge Shangla	26.05.2021	31.03.2023
9.	Ahmad Sher etc versus Govt. of Kpk. etc	Additional District Judge Shangla	26.05.2021	31.03.2023
10.	Sher Ali Khan etc versus Govt. of Kpk. etc	Additional District Judge Shangla	26.05.2021	31.03.2023
11.	Abdul Bar etc versus Govt. of Kpk. etc	Additional District Judge Shangla	26.05.2021	31.03.2023
12.	Basheer Ahmad etc versus Govt. of Kpk. etc	Additional District Judge Shangla	26.05.2021	31.03.2023
13.	Bakhtyar etc versus Govt. of Kpk. etc	Additional District Judge Shangla	26.05.2021	31.03.2023
14.	Seraj etc versus Govt. of Kpk. etc	Additional District Judge Shangla	26.05.2021	31.03.2023

Attested

(16)

15.	Abdullah Khan etc versus Govt. of Kpk. etc	Additional District Judge Shangla	26.05.2021	31.03.2023
16.	Fazal Jamheer etc versus Govt. of Kpk. etc	Additional District Judge Shangla	26.05.2021	31.03.2023
17.	Noora Jan etc versus Govt. of Kpk. etc	Additional District Judge Shangla	26.05.2021	31.03.2023
18.	Shahsawar etc versus Govt. of Kpk. etc	Additional District Judge Shangla	26.05.2021	31.03.2023
19.	Khalil Ur Rahman etc versus Govt. of Kpk. etc	Additional District Judge Shangla	26.05.2021	31.03.2023
20.	Wajid Rahman etc versus Govt. of Kpk. etc	Additional District Judge Shangla	26.05.2021	31.03.2023
21.	Muhammad Rafeeq etc versus Govt. of Kpk. etc	Additional District Judge Shangla	26.05.2021	31.03.2023
22.	Umreen etc versus Govt. of Kpk. etc	Additional District Judge Shangla	26.05.2021	31.03.2023
23.	Wahid Rahman etc versus Govt. of Kpk. etc	Additional District Judge Shangla	26.05.2021	31.03.2023
24.	Muhammad Kabir etc versus Govt. of Kpk. etc	Additional District Judge Shangla	26.05.2021	31.03.2023
25.	Hazrat Rahman etc versus Govt. of Kpk. etc	Additional District Judge Shangla	26.05.2021	31.03.2023
26.	Said Akbar etc versus Govt. of Kpk. etc	Additional District Judge Shangla	26.05.2021	31.03.2023
27.	Rasheed Ahmad etc versus Govt. of Kpk. etc	Additional District Judge Shangla	26.05.2021	31.03.2023
28.	Bahadar Sher etc versus Govt. of Kpk. etc	Additional District Judge Shangla	26.05.2021	31.03.2023
29.	Aziz Ur Rahman etc versus Govt. of Kpk. etc	Additional District Judge Shangla	26.05.2021	31.03.2023
30.	Izaz etc versus Govt. of Kpk. etc	Additional District Judge Shangla	26.05.2021	31.03.2023

Attested
[Signature]

I would also like to invite your attention to chapter-V of establishment code of government of Khyber Pakhtunkhwa where proper procedure is given for the streamlining of litigation for and against the Government of Khyber Pakhtunkhwa. Relevant abstract is reproduce as under:-

Chapter-V

Streamlining of Litigation procedure for and against the Government of Khyber Pakhtunkhwa.

It has been noticed with concern that great difficulties are being faced by the Law Officers and Government Pleaders in conducting cases/appeals/revisions/writ petitions, etc, before the Court/Tribunal noted against each:

- (C) (i) Government Pleaders; Court of Senior Civil Judge.
(ii) Addl Government Pleader Court of Senior Civil Judges,
Court of Addl Distt: Judges,
Courts of District Judges.

2. The subordinate officers do not extend the requisite assistance to them. Necessary documents e.g., copies of the plaint, brief history of the case, parawise comments, etc, are not provided to them well within time. Consequently, it becomes extremely difficult, some times impossible, for the Law officers/Government Pleaders to prepare/defend the cases properly. The officers who are deputed to contact, brief and assist the Law Officers/Government Pleaders, do not take the trouble of attending their offices or for that matter even the Courts. Instead, some clerks who are not at all conversant with the facts of the case, are sent to handle such extremely important task. Most of the time these officials miserably fail to provide any assistance to the Law Officers whatsoever as a result of which the Government interest suffers badly. In most of the cases even these clerks absent themselves, on one pretext of the other, on the date fixed for hearing of the case and as such orders are passed against the Government, resulting in great financial loss besides creating other complications/embarrassment.

3. I am, therefore, directed to request you that the following instructions may please be issued immediately to all concerned including the officers who are deputed to brief and assist the Law Officers/Government Pleaders conducting the cases in various Courts including the High Court/ Supreme Court:-

- i. On receipt of summons/ notices of the Court, the concern staff should immediately get a copy of plaint/Memo, of Appeal/writ petition, as the case may be and prepare brief history of the case alongwith parawise comments in annotated form.
- ii. One set of these documents should be sent to the head of the Department for onward transmission to the Administrative Department for issuance of Sanction order for the defence of case at public expense as required under para 15.2 of Law Manual. The Administrative Department will issue the Sanction Order and Communicate the same to:-
 - (a) The Solicitor for issuing necessary directions to the Government Pleader to defend the case in the Lower Courts, i.e Courts of Civil Judges/Senior Civil Judges/Additional District Judges/District Judges and Services Tribunal/Peshawar. The Administrative Department should also endorse a copy of the same to the Secretary to Government of Khyber Pakhtunkhwa, Law Department with the request to direct the Solicitor to do the needful;
 - (b) The Law Department for issuance of necessary authorization/directions to the Advocate General to defend the case/writ petitions/Appeals, etc, in the High Court/Supreme Court/Federal Shariat Court, Sharia Appellate Branch of Supreme Court of Pakistan.
- iii. The second set of the said documents should be dispatched to the concerned Government Pleader/Advocate General, as the case may be, so that action on their part in anticipation of this sanction mentioned above is initiated, if needed.

Attested
[Signature]

- iv. The third set be retained as office copy for necessary action and record.
- v. The above mentioned steps should be taken before the date fixed for appearance/hearing in the Court. If the date fixed is quite close, the Government Pleader/Advocate General may be contacted immediately for the purpose of getting adjustment. At the same time it should be ensured that the Court is attended invariably on the date fixed for hearing of the case to avoid ex-parte decisions against the Government/Departments.
- vi. The Heads of Administrative Departments on receipt of the documents mentioned above should on the one hand arrange for communication of sanction order for the deference of the case at the public expense to the Solicitor (if the case is pending in Lower Courts) and to the Law Department (if the case/writ Petition is pending in the High court / supreme court etc.) and on the other hand, without any loss of time, to nominate an efficient and responsible officer of the department well conversant with the facts of the case to assist and brief the government pleader / Advocate General. Such officers / officials may be called the departmental representatives (Deptt; rep;).
- vii. the name , designation, address and telephone No: if any , of the department: Repr. should invariably be communicated to the Government Pleader / Advocate General concerned, as well as to the Administrative Department, Solicitor and the Law Department so that he could be contacted by them, whenever is deemed necessary.
- viii. The Deptt; rep; shall personally attend the Court on each and every date of hearing and prepare a short report of the proceedings of the Court, indicating the progress and result of the case. This progress report should also be communicated to the Head of the Department as well as to the Law Department without fail, so that the Law Department may also watch the development and progress of each case.
- ix. When a case is decided, copy of the Judgment / order should be immediately be obtained by the Dept; rep; and supplied to the Administrative Department as well as to the Government Pleader/ Advocate General so as to enable him to furnish his opinion to Solicitor/ Law Department. The Department's decision / views about the future course of action should also be finalized and communicated to the Solicitor / Law Department for the further action.
- x. Period of limitation prescribed by law for filling appeal/revision etc., should be ascertained from the Government Pleader/Advocate General and all steps should be taken well ahead of the limitation period so that the appeal/revision etc if any, is not rendered time barred.

Attested
[Signature]

- xi. Whenever it is deemed necessary to approach the Solicitor/Law Department/reference number of authorization letter issued by the office of Solicitor/Law Department should always be mentioned, so that relevant record of the case in their offices is traced out conveniently.

(19)

After my taking over charge as District Attorney Shangla on 11.06.2022, It was noted that your office is not interested in the defence of government cases. A meeting was arranged with the Deputy Commissioner Shangla Mr. Zia ur Rahman Khan and was also attended by the present A.D.C(G) Mr. Aziz Ullah Jan and all representatives of District Departments. All of them were informed about the litigation policy of the provincial government so that proper defence of government cases is ensured in the court of Law. Written Requests in this connection were also made vide this office letter No. No. 80-81/DA(SH) dated 19.08.2022, No.125-26/DA(SH) dated 08.12.2022, No. 153/DA(SH) dated 15.02.2023, No.158-59 dated 28.02.2023 and No. 168-69 DA(SH) dated 24.03.2023 but all of may these request were thrown to the dust bin and no improvement was noticed in the attitude of your office.

As all of us are bound to follow the instructions of provincial government on the subject and perform as such.

You are, therefore, once again requested to please depute responsible persons as your representatives, provide comments and all connected documents well within time and ensure proper defence of government interest in the court of law otherwise your office will be held responsible for any loss to government interest.

Thanks:


DISTRICT ATTORNEY
SHANGLA

Attested
Arshad

Copy forwarded to :

- 1) The Secretary to Govt. Of Khyber Pakhtunkhwa Law, Parliamentary Affairs and Human Rights Department, Peshawar. This is in continuation of this office letters No. 80-81/DA(SH) dated 19.08.2022, No.125-26/DA(SH) dated 08.12.2022, No.158-59 dated 28.02.2023, and No. 168-69 DA(SH) dated 24.03.2023.
 - 2) The Senior Member Board of Revenue, Govt. of Khyber Pakhtunkhwa, Peshawar.
 - 3) The Commissioner, Malakand Division, Swat at Saidu Sharif.
- For favour of information and further necessary action please.


DISTRICT ATTORNEY
SHANGLA



OFFICE OF THE
DISTRICT ATTORNEY
SHANGLA AT ALPURAI

NO. 180-87 D.A (SH)/Dated 31/03/2023.

Phone & Fax# 0996-851279.
governmentpleadershangla@gmail.com

(20)

"6"

To

The Deputy Commissioner,
Shangla.

Subject: **PROVINCIAL LITIGATION POLICY.**

Dear Sir,

Your attention is invited to this office letter No. 168-69/DA(SH) dated 24.03.2023 on the subject noted above.

It is submitted that the case mentioned in the letter was exparte decided against your department on 24.03.2023. If you want to contest it or consider that public interest is involved in it and be defended, then complete record immediately be provided to this office with a representative for legal remedy available to us under the law. A quick response is needed from your office.

*Attended
Chahine*

Thanks.

OK DISTRICT ATTORNEY
SHANGLA

Copy in continuation of this office letter No. 168-69/DA(SH) dated 24.03.2023 is forwarded to the Secretary to Government of Khyber Pakhtunkhwa Law, Parliamentary Affairs and Human Rights Department Peshawar for favour of information please.

OK DISTRICT ATTORNEY
SHANGLA



OFFICE OF THE
DISTRICT ATTORNEY
SHANGLA AT ALPURAI

NO. 182-85 D.A (SH)/Dated 3/4 /2023.

Phone & Fax# 0996-851279.
governmentpleadershangla@gmail.com

(21)

"H"

To

The Deputy Commissioner,
Shangla.

Subject:

Defence of Government cases pending in the District
Courts.

Dear Sir,

Reference in continuation of this office letter No. 80-81/DA(SH) dated 19.08.2022, No.125-26/DA(SH) dated 08.12.2022, No. 153.DA(SH) dated 15.02.2023 No.158-59 dated 28.02.2023, No. 168-69 DA(SH) dated 24.03.2023, No. 170-73 DA(SH) dated 27.03.2023 and No.180-81 dated 31.03.2023, on the subject noted above, it is again intimated that the following cases were fixed in the courts and dates mentioned against each. In spite of our repeated request neither parawise comments received in this office nor any one on your behalf attended the court. This attitude on behalf of your office shows gross negligence and lack of interest in defence of public interest in the court of Law.

*Attended
Dudhina*

Sl #	Title of Case	Name of Court	Date of hearing
1.	Niamatul Mulk etc. versus Govt. of Kpk. etc	Additional District Judge Shangla	29.03.2023
2.	Muddasir etc Versus Secretary Board etc	Additional District Judge Shangla	31.03.2023
3.	Latif ullah etc Versus Secretary Board etc	Additional District Judge Shangla	31.03.2023
4.	Jamal Uddin etc versus Govt. of Kpk. etc	Additional District Judge Shangla	31.03.2023
5.	Muhammad Wadood etc versus Govt. of Kpk. etc	Additional District Judge Shangla	31.03.2023
6.	Mazhar ul Haq etc versus Govt. of Kpk. etc	Additional District Judge Shangla	31.03.2023
7.	Bahrud Din etc versus	Additional District Judge	31.03.2023

	Govt. of Kpk. etc	Shangla	
8.	Ihsan Ullah etc versus Govt. of Kpk. etc	Additional District Judge Shangla	31.03.2023
9.	Ahmad Sher etc versus Govt. of Kpk. etc	Additional District Judge Shangla	31.03.2023
10.	Sher. Ali Khan etc versus Govt. of Kpk. etc	Additional District Judge Shangla	31.03.2023
11.	Abdul Bar etc versus Govt. of Kpk. etc	Additional District Judge Shangla	31.03.2023
12.	Basheer Ahmad etc versus Govt. of Kpk. etc	Additional District Judge Shangla	31.03.2023
13.	Bakhtyar etc versus Govt. of Kpk. etc	Additional District Judge Shangla	31.03.2023
14.	Seraj etc versus Govt. of Kpk. etc	Additional District Judge Shangla	31.03.2023
15.	Abdullah Khan etc versus Govt. of Kpk. etc	Additional District Judge Shangla	31.03.2023
16.	Fazal Jamheer etc versus Govt. of Kpk. etc	Additional District Judge Shangla	31.03.2023
17.	Noora Jan etc versus Govt. of Kpk. etc	Additional District Judge Shangla	31.03.2023
18.	Shahsawar etc versus Govt. of Kpk. etc	Additional District Judge Shangla	31.03.2023
19.	Khalil Ur Rahman etc versus Govt. of Kpk. etc	Additional District Judge Shangla	31.03.2023
20.	Wajid Rahman etc versus Govt. of Kpk. etc	Additional District Judge Shangla	31.03.2023
21.	Muhammad Rafeeq etc versus Govt. of Kpk. etc	Additional District Judge Shangla	31.03.2023
22.	Umreen etc versus Govt. of Kpk. etc	Additional District Judge Shangla	31.03.2023
23.	Wahid Rahman etc versus Govt. of Kpk. etc	Additional District Judge Shangla	31.03.2023
24.	Muhammad Kabir etc versus Govt. of Kpk. etc	Additional District Judge Shangla	31.03.2023
25.	Hazrat Rahman etc versus Govt. of Kpk. etc	Additional District Judge Shangla	31.03.2023
26.	Said Akbar etc versus Govt. of Kpk. etc	Additional District Judge Shangla	31.03.2023
27.	Rasheed Ahmad etc versus Govt. of Kpk. etc	Additional District Judge Shangla	31.03.2023
28.	Bahadar Sher etc versus Govt. of Kpk. etc	Additional District Judge Shangla	31.03.2023

22

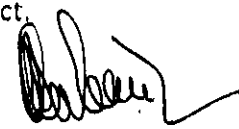
Attended
 Bahar

29.	Aziz Ur Rahman etc versus Govt. of Kpk. etc	Additional District Judge Shangla	31.03.2023
30.	Izaz etc versus Govt. of Kpk. etc	Additional District Judge Shangla	31.03.2023

23

You are, therefore, requested to please look into it and do the needful as per instructions of the government on the subject.


Thanks.




o/c
**DISTRICT ATTORNEY
SHANGLA**

Copy forwarded to :

- 1) The Secretary to Govt. Of Khyber Pakhtunkhwa Law, Parliamentary Affairs and Human Rights Department, Peshawar. This is in continuation of this office letters No. 80-81/DA(SH) dated 19.08.2022, No.125-26/DA(SH) dated 08.12.2022, No.158-59 dated 28.02.2023, No. 168-69 DA(SH) dated 24.03.2023, No. 170-73 DA(SH) dated 27.03.2023 and No.180-81 dated 31.03.2023.
- 2) The Senior Member Board of Revenue, Govt; of Khyber Pakhtunkhwa, Peshawar. This is in continuation of this office letters No. 170-73 DA(SH) dated 27.03.2023 and No. 174-79 DA(SH) dated 30.03.2023.
- 3) The Commissioner, Malakand Division, Swat at Saidu Sharif. This is in continuation of this office letters No. 170-73 DA(SH) dated 27.03.2023 and No. 174-79 DA(SH) dated 30.03.2023.

For favour of information and further necessary action please.


o/c
**DISTRICT ATTORNEY
SHANGLA**



OFFICE OF THE
DISTRICT ATTORNEY
SHANGLA AT ALPURAI
NO. 197-2nd Flr D.A (SH)/Dated 13/04/2023
Phone & Fax# 0996-851279.
governmentpleadershangla@gmail.com

(24)

"I"

To

The Deputy Commissioner,
Shangla.

Subject: **AUTHORITY LETTER.**

Dear Sir,

Reference your office letter No. 4624-25/4-3/litigation cell/DC SH; dated 12.04.2023 on the subject noted above. It is stated that your office is only forwarding authority letter issued in the designation of ADK which is not sufficient for proper defence of court case. In this respect your attention is invited to the instructions available in chapter-V of the Esta-code of Khyber Pakhtunkhwa and already communicated to your office vide this office letter No.170-73 D.A(SH) dated 27.03.2023. These are again reproduced below;-

Chapter-V

Streamlining of Litigation procedure for and against the Government of Khyber Pakhtunkhwa.

It has been noticed with concern that great difficulties are being faced by the Law Officers and Government Pleaders in conducting cases/appeals/revisions/writ petitions, etc, before the Court/Tribunal noted against each:

- | | | |
|-----|------------------------------|---|
| (C) | (i) Government Pleaders; | Court of Senior Civil Judge. |
| | (ii) Addl Government Pleader | Court of Senior Civil Judges,
Court of Addl Distt: Judges,
Courts of District Judges. |

2. The subordinate officers do not extend the requisite assistance to them. Necessary documents e.g, copies of the plaint, brief history of the case, parawise comments, etc, are not provided to them well within time. Consequently, it becomes extremely difficult, some times impossible, for the Law officers/Government Pleaders to prepare/defend the cases properly. The officers who are deputed to contact, brief and assist the Law Officers/Government Pleaders, do not take the trouble of attending their offices or for that matter even the Courts. Instead, some clerks who are not at all conversant with the facts of the case, are sent to handle such extremely important task. Most of the time these officials miserably fail to provide any assistance to the Law Officers whatsoever as a result of which the Government interest suffers badly. In most of the cases even these clerks

*Attended
Dabbar*

absent themselves, on one pretext of the other, on the date fixed for hearing of the case and as such orders are passed against the Government, resulting in great financial loss besides creating other complications/embarrassment.

(25)

3. I am, therefore, directed to request you that the following instructions may please be issued immediately to all concerned including the officers who are deputed to brief and assist the Law Officers/Government Pleaders conducting the cases in various Courts including the High Court/Supreme Court:-

- i. On receipt of summons/ notices of the Court, the concern staff should immediately get a copy of plaint/Memo, of Appeal/writ petition, as the case may be and prepare brief history of the case alongwith parawise comments in annotated form.
- ii. One set of these documents should be sent to the head of the Department for onward transmission to the Administrative Department for issuance of Sanction order for the defence of case at public expense as required under para 15.2 of Law Manual. The Administrative Department will issue the Sanction Order and Communicate the same to:-
 - (a) The Solicitor for issuing necessary directions to the Government Pleader to defend the case in the Lower Courts, i.e Courts of Civil Judges/Senior Civil Judges/Additional District Judges/District Judges and Services Tribunal/Peshawar.
The Administrative Department should also endorse a copy of the same to the Secretary to Government of Khyber Pakhtunkhwa, Law Department with the request to direct the Solicitor to do the needful;
 - (b) The Law Department for issuance of necessary authorization/directions to the Advocate General to defend the case/writ petitions/Appeals, etc, in the High Court/Supreme Court/Federal Shariat Court, Sharia Appellate Branch of Supreme Court of Pakistan.
- iii. The second set of the said documents should be dispatched to the concerned Government Pleader/Advocate General, as the case may be, so that action on their part in anticipation of this sanction mentioned above is initiated, if needed.
- iv. The third set be retained as office copy for necessary action and record.
- v. The above mentioned steps should be taken before the date fixed for appearance/hearing in the Court. If the date fixed is quite close, the Government Pleader/Advocate General may be contacted immediately for the purpose of getting adjustment. At the same time it should be ensured that the Court is attended invariably on the date fixed for hearing of

Attested
Quhair

the case to avoid ex-parte decisions against the Government/Departments.

(26)


- vi. The Heads of Administrative Departments on receipt of the documents mentioned above should on the one hand arrange for communication of sanction order for the defence of the case at the public expense to the Solicitor (if the case is pending in Lower Courts) and to the Law Department (if the case/writ Petition is pending in the High court / supreme court etc.) and on the other hand, without any loss of time, to nominate an efficient and responsible officer of the department well conversant with the facts of the case to assist and brief the government pleader / Advocate General. Such officers / officials may be called the departmental representatives (Deptt; rep;).
- vii. The name, designation, address and telephone No: if any, of the department: Repr. should invariably be communicated to the Government Pleader / Advocate General concerned, as well as to the Administrative Department, Solicitor and the Law Department so that he could be contacted by them, whenever is deemed necessary.
- viii. The Deptt; rep; shall personally attend the Court on each and every date of hearing and prepare a short report of the proceedings of the Court, indicating the progress and result of the case. This progress report should also be communicated to the Head of the Department as well as to the Law Department without fail, so that the Law Department may also watch the development and progress of each case.
- ix. When a case is decided, copy of the Judgment / order should be immediately be obtained by the Deptt; rep; and be filed to the Administrative Department as well as to the Government Pleader/ Advocate General so as to enable him, to furnish his opinion to Solicitor/ Law Department. The Department's decision / views about the future course of action should also be finalized and communicated to the Solicitor / Law Department for the further action.
- x. Period of limitation prescribed by law for filing appeal/revision etc., should be ascertained from the Government Pleader/Advocate General and all steps should be taken well ahead of the limitation period so that the appeal/revision etc if any, is not rendered time barred.
- xi. Whenever It is deemed necessary to approach the Solicitor/Law Department/reference number of authorization letter issued by the office of Solicitor/Law Department should always be mentioned, so that relevant record of the case in their offices is traced out conveniently.

*Alleged
Dobie*

You are, therefore, requested to please read these instructions forwarded each and every case accordingly so that proper defence of government cases is ensured in the court of law. More-over, the cases already instituted/pending in various courts and communicated to your office for comments vide this office letter No. 170-73. DA(SH) dated 27.03.2023 may also be prepared and relevant record be submitted alongwith well conversant officer of your office for proper assistance of the undersigned on each and every case.

(27)

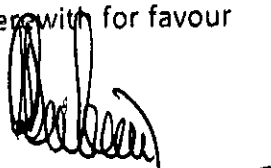
Matter may please be considered on priority basis.



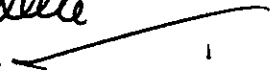

DISTRICT ATTORNEY
SHANGLA

Copy forwarded to:-

1. The Secretary to Govt: of Khyber Pakhtunkhwa Law, Parliamentary Affairs and Human Rights Department Peshawar.
2. Senior Member Board of Revenue, Govt; of Khyber Pakhtunkhwa Peshawar.
3. Commissioner, Malakand Division, Swat at Saidu Sharif.

For favour of information. A copy of authority letter issued by Deputy Commissioner Shangla mentioned above is also enclosed herewith for favour of perusal please.


DISTRICT ATTORNEY
SHANGLA

(28)
"J"

**IN THE COURT OF FARZINA SHAID DISTRICT
JUDGE / ZILLA QAZI/ REFEREE JUDGE, SHANGLA.**

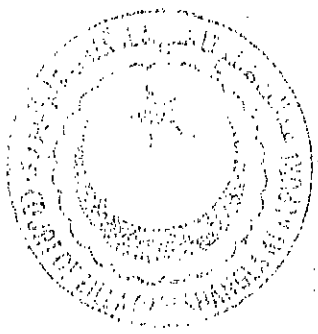
Reference No: 2/4 of 2011.

Date of Original Institution: 13/07/2011
Date of first Decision: 12/07/2013.
Date of Remand to this Court: 25/10/2022
Date of Decision: 10/12/2022

**Said Romin s/o Sultan Zarin r/o Lilownai Tehsil
Alpurai District Shangla..... Petitioner.**

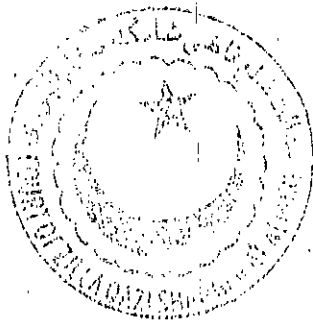
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Alpurai*

VERSUS



1. Provincial Government through Chief Secretary KPK at Civil Secretariat Peshawar.
2. Chief Engineer Works and Services KPK at Civil Secretariat Peshawar.
3. Secretary/Senior Member Board of Revenue KPK at Civil Secretariat Peshawar.
4. Commissioner Malakand Division at Saidu Sharif Swat.
5. Director General PERRA KPK at Abbottabad.
6. Program Manager DRU Shangla at Besham
7. District Coordination Officer Shangla at Alpurai.
8. District Officer Revenue and Estate/collector District Shangla at Alpurai
9. Deputy District Officer Works and Services Shangla at Alpurai.

Farzina
10/12/22
Farzina Shaid
Sessions Judge/Zilla Qazi
MCFC, Shangla.



10. SDO Works and Services Alpurai District Shangla.

11. Tehsildar Alpurai District Shangla.

12. Patwari Halqa Moza Lilownai Tehsil Alpurai District Shangla..

Respondent/Defendant

Reference Argued by: -

Mr. Hazrat Yousaf Advocate for Petitioner.

Mr. Shaiber Khan and District Attorney for respondents.

JUDGMENT:

10th December, 2022.

*Attested
Qazi*

1. The respondents/Provincial Government of KPK through District Officer Revenue and Estates in order to acquire land for erection of District Complex at village Lilownai Tehsil Alpurai District Shangla issued notification under section 4 of Land Acquisition Act 1894 on 21.03.2008, regarding landed property of the petitioners.

2. The objectors submitted a reference under section 18 of the Land Acquisition Act 1894 to the Land Acquisition Collector which was made over to this court for determination.

3. Succinctly stating facts are such that the respondents/ Provincial Government of KPK through District Officer Revenue and Estates through Award dated 30.05.2011 acquired the landed property of petitioner for construction of offices and

Farzina Shaid
10/12/22
Farzina Shaid
Sessions Judge/Zilla Qazi
MCFC, Shangla.

residential colony District Complex Tehsil Alpurai but has not fixed the market value of the acquired land situated in Khasra No. 1979,1980 and 1933 Moza Lilownai. The respondents then fixed price market value of the acquired land on the strength of one-year average for the year 2007 and 2008, and thereafter announced award under reference on 30.05.2011, through which different kind of land was acquired in lieu of Rs. 37385/- for Barai kind of land, Rs.3,75,000/- for Ghair Mumkin Abadi and Rs. 7,96,000/- for houses. While for the trees in Khasra No. 1933 no compensation was fixed.



4. The petitioner being not satisfied from the assessment of the compensation market value of the acquired land refused to receive the compensation under protest, preferred reference petition before the District Collector. The petitioner has assailed the award and have contended for enhancement of compensation for the acquired land *inter alia* on the grounds that the acquired land is situated on main road Alpurai to Lilownai surrounded by Agriculture Offices, Social Welfare and Technical College, other residential and government officials offices and others. That the acquired land is of commercial type. Hence, the petitioner has made request through the reference in hand for enhancement and fixation of the market value at the rate of Rs. 30,00,000/- (thirty lac) for barrai kind of land and two crore for remaining land/houses.

*Alleged
Abuse*

Farzina Shaid
10/12/12
Farzina Shaid
Sessions Judge/Zilla Qazi
MCTC, Shajla.

5. Defendants were summoned, who appeared and submitted written statement by contending therein that after fulfilling all legal and codal formalities, the market value of the acquired land was fixed and the same is never the commercial property although the same is situated on main road Alpurai to Lilownai but is situated far away from the population/residential.

6. Respondents have controverted the contention of the petitioner on legal as well as factual grounds out of which the following issues were framed:

تشقیقات۔

Attested
Abdus

1۔ کیا ساہان کی اراضی، مکانات در خسره نمبرات 1933، 1980، 1979 موضع لیونئی کو مسئول الیم صوبائی حکومت وغیرہ نے حاصل کر کے اراضی، مکانات مذکورہ کی قیمت انتہائی کم مقرر کی ہے اور کہ جائیداد در ریفرنس بر لب روڈ و کمرشل نوعیت کی ہو کر اس کا قیمت کا تعین بہ مطابق باذہری قیمت کم رکھا گیا ہے اور کہ جو قیمتی و کمرشل جائیداد ہو کر اس کی قیمت بہت زیادہ ہے؟

2۔ جائیداد متدعو یہ کی بازاری قیمت کیا ہے؟

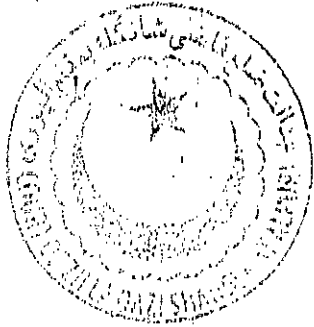
دادری۔

7. After framing of issues, both the parties were given opportunities to produce their evidence in support of their respective contentions which they availed as they wished.

8. In support of petitioner's contention attorney of the Allama Iqbal appeared as PW1 and produced copies of

Farzina
10/12/22
Farzina Shaid
Sessions Judge/Zilla Qazi
MCTC, Shapglia.

mutations as Ex.Pw.1/2 to Ex.Pw.1/15. Noor ul Bashir ADK as Pw2 who produced mutations from 08.05.2007 to 16.12.2008 as Ex.Pw.2/1 to Ex.Pw.2/33. He also appeared as Pw3 and produced attested copies of Mutations as Ex.Pw.3/1 to Ex.Pw.3/36. Bakht Malk Naib Qanoongo as Pw4 and produced copy of the minutes as Ex.Pw.4/1, Notification dated 26.07.2007 as Ex.Pw.4/2. Fazal Allah as Pw.5 and Gowhar Ali Junir clerk C&W as Pw6 but both the witnesses stated that they have no record of PC-1, site plan and master plan. One Ahmad Nawaz Girdar Circle appeared as Cw-1 who verified Ex.Pw.2/1 to E.x.Pw.2/33. Rafi Ullah Patwari Halqa appeared as Cw-2 and produced Fard Jama-bandi in respect of Khasra Nos 1933,1980,1979 measuring 28-K and 02-M Moza Lilownai as Ex.Cw.2/1. Goshwara aik Sala intiqalat as Ex.Cw.2/2, Aks Shajara Kishtwar as Ex.Cw.2/3. Fazal Allah Assistant DOR office appeared as Cw.3 and produced Award dated 30.05.2011 (ten pages) as Ex.Cw.3/1 to Ex.Cw.3/10, objections of petitioner as Ex.Cw.3/11 and Ex.Cw.3/12, order dated 23.03.2011 as Ex.Cw.3/13, letter No. 15290 dated 26.07.2007 Ex.Cw.3/14. Gohar Ali Junior Clerk C&W Department as Cw-4 who produced site plan (17 pages) as Ex.Cw.4/1 to Ex.Cw.4/12. Sher Hassan Manager DRU District Kohistan as Cw.5 who stated that they have no record and only works as Funding Agency.



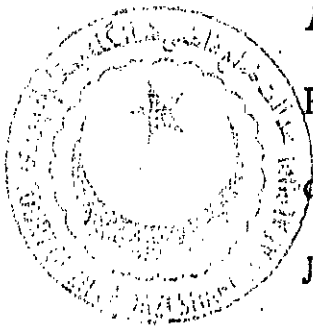
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Sessions Judge/Zilla Qazi
MCFC, Shargha.

9. On the other hand, defendants produced Ahmad Nawaz Girdawar Circle as Dw.1 who verified his signature on Aik Sala from 28.03.2007 to 28.03.2008 available on file as Ex.Cw.2/2. He also produced mutations as Ex.Dw.1/1 to Ex.Dw.1/18. One Ghulam Rahim SDO C&W appeared as Dw.2 who verified Ex.Cw.4/1, 4/2, 4/6, 4/7 and Ex.Cw.4/13. He also verified his signature on Ex.Cw.4/14 to Ex.Cw.4/17.

10. Initially this reference was received by this court being Referee Judge. My learned Predecessor-in-office vide order dated 01.12.2011 sent the same to learned Senior Civil Judge/A'ala Illaqa Qazi, Shangla who after recording of evidence decided the same vide the impugned order and judgment dated 12.07.2013.

11. An appeal was preferred before Hon'ble Peshawar High Court, Mingora Bench (Dar-ul-Qaza) Swat, RFA No 66-M/2013 wherein as per order dated 18/10/2022 the impugned order and judgment of learned Senior Civil Judge Shangla was declared illegal and *void-ab-initio* hence, set aside and the case was remanded back to this court with the direction that the same is deemed to be pending and this court shall itself re-write the judgment on the basis of evidence already recorded by the parties, however, this exercise shall be completed within a period of one month from the receipt of judgment of this court.



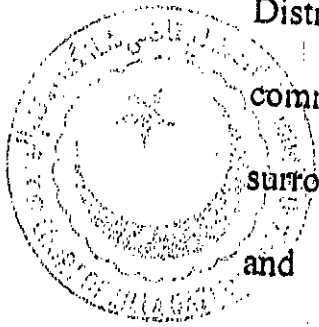
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MCTC, Shangla.

12. On 25.10.2022, the same was received before this court. Both the parties were summoned. Who alongwith their counsel appeared.

13. Learned counsel for the petitioners/objectors argued that vide Award dated 30-05-2011 the land in question was acquired and the price was fixed on the basis of one year average, which doesn't afford adequate basis for determination of compensation; that the market value of the suit land was not considered; that the acquired land is situated on main road from District Headquarter to Lolonai and has got the status of commercial nature and many governments offices situates in its surroundings, and where all the basic facilities like electricity and telephone etc. are available and thus suitable for official/residential as well as commercial purposes, while in Award this nature of the land has not been considered; that the ADK and Patwari Halqa produced different mutations in same area, which shows the prices were more as compare to the acquired one. Therefore, on acceptance of petition in hand, rate of acquired land may be enhanced as prayed for.

14. Conversely, respondents' counsel argued that the Award was passed on the basis of one-year average and the amount of compensation has been assessed fairly and in according to



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Patwari*

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prevailing circumstances of the area; keeping in view all the factors and as such prayed for dismissal of the reference.

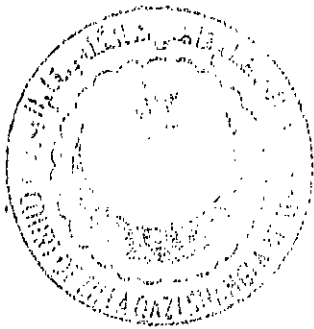
15. I have heard the respective arguments of the learned counsel for the parties and have gone through the available record with their valuable assistance. My issue wise findings are as under:

ISSUE No 1.

16. In its very inception, before going to evaluate the amount of compensation, the assessment of land collector and award passed under section 11 of the Land Acquisition Act, the market value and future potentiality, it is suffice to state that what is the purpose of Law of Acquisition, needed for the public purpose and how amount of compensation is to be determined. It is noteworthy that the Act is based and founded on the doctrine *savlus populi suprama lex*, that welfare of people is supreme law and private interest were subordinate to the interest of the state. Besides, the preamble of the Act sets out the purpose guiding and principles of the Act which states that:-

1. To amend the law for the acquisition of land needed for public purpose and the companies.
2. To determine the amount of compensation to be paid on account of such acquisition

17. The main controversy between the parties in this case is the fixation of the market value of the acquired land. The stance



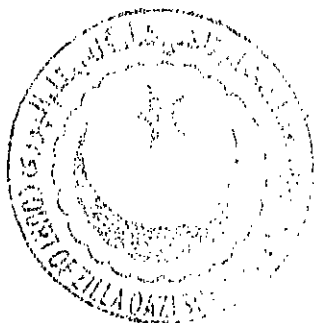
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MCYC, Sharghla.

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Chamber

of the petitioners is that the land acquired from them is not only an exceptional kind of land but has also got the status of commercial land as it is situated on the road side and other commercial as well as government buildings are in its surroundings. That the price /compensation as awarded by the respondents is not only inadequate but rather injustice has been done to the petitioners hence, the compensation may be enhanced up to the tune coping with the prevailing price of the adjacent lands.

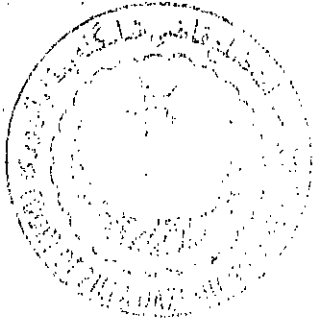
18. It may be noted that in support of their reference, the petitioners/landowners produced various mutations through PW-01 entered from 2006 to 2011, which carries price much higher than the one, which has been fixed by the respondents for the acquired land. The prime location of the acquired land is also admitted one. This witness had been subjected to a lengthy cross examination but nothing in derogation of the contention of the petitioners could have been brought to light and rather it has further been explained and proved that the acquired land has got high potential value for its situation and kind. The petitioners succeeded to establish that the market value near and around the acquired land was much higher as compare to the price ascertained by the respondents and as such the high potentiality of the acquired land can easily be assessed.

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Abdur*



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19. In this case, on application of the petitioners/land-owners, a commission was also appointed, who visited the spot and submitted its report. The said report which is available on record as Ex CW 6/15 to 6/20 is of worth perusal as the same presents the correct picture of the acquired land. The local commissioner has conducted detail survey of the area, prepared site plane and has also recorded statements of the witnesses hailing from the same area which further commensurate with the contention of petitioners. The learned local Commissioner after collecting different materials to ascertained the market value of the acquired land, has concluded that the commercial nature of the acquired land cannot be denied. That the land in question is of very important nature as it is nearest to District Headquarters and due to shortage of land in the area being hilly one, there is no plain land available and most of the Government offices are being shifting in the nearby vicinity. That a vast residential area already is present on front side and people are ready to obtain the same either on rent or ownership basis, therefore, the local commissioner recommended the market value from Rs. 30 to 40 lacs per Kanal, which as per him is the market value as well of the acquired land. These recommendations show the super imposing character of the acquired land. Statement of the local commissioner Mukhtar Ahmed Advocate has been recorded as Cw-6. He has been cross



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Mukhtar*

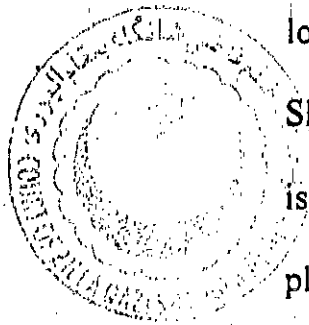
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examined at length wherein he has further explained that near and in surrounding of the acquired land sufficient number of government offices and NGOs are situated which depicts the situation of the acquired land to be a prime location and has got commercial status.

20. Even otherwise, the acquired land is situated on the main road leading from Headquarters to Lelonai, which is prime location and very costly. It may be noted here that the valley of Shangla largely comprises of hilly areas and very less plain area is available, therefore, the character of land of being mostly plain area speaks of something of its high potentiality, hence this factor too cannot be ignored.

21. It needs no further elaboration or explanation that the land under reference is admittedly is of prime location, very much appropriate for construction of District Complex and has a potential value and other lands situated in the same vicinity have been sold out at higher price than the land under reference. Hence it is held that the appraisalment of the market value/ compensation of the acquired land has wrongly been ascertained which is far less than the actual prevailing market value for the land under reference. Issue is decided in affirmative in favour of the petitioners.

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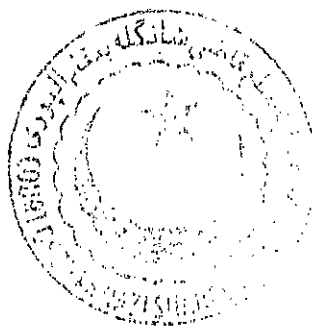
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Issue No.2.

22. It is well settled since long that while determining the market value of the acquired land, not only the existing potentiality and market value of the acquired land is to be considered but its future potentiality and tendency of inflated rate in future is also to be considered. It is also necessary to keep in mind that this transaction of acquired land is not between a willing purchaser and willing seller rather it is a transaction which was forced upon the land owners and is against their consent. With such background of transaction, a land owner has every right that he/they may be compensated on the basis of celebrated phenomena of '*gold for gold and not copper for gold*'. Furthermore, while determining the market value of the acquired land, multiple factors including its location, existing potentiality, proximity to road or any commercial building and over and above its future prospects have to be considered.

Attended
Chaudhary

23. It is imperative to note that the notification under section 4 of the Land Acquisition Act, 1894 was issued on 21-03-2008, while Award was made in the year 2011, the inflation in prices during intervening period between issuance of notification under section 4 of the Land Acquisition Act, 1894 and the Award was ignored while determining fair and reasonable rate of compensation. Moreover, people do enter in the mutation less prices that actually paid for reducing the payment of taxes to be levied on each transfer and this general tendency of people



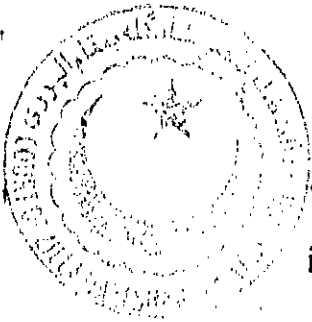
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cause less average price of each marla. Thus rate of compensation assessed on the basis of 01-year average is not reasonable and cannot be accepted.

24. For the assessment of the compensation of the acquisition of land under section 23 of the Land Acquisition Act, 1894 provides a detail procedure/criteria. The word compensation as given in Oxford Dictionary means something, typically money, in recognition of loss, suffering, or injury incurred; recompense. payments were made to farmers to compensate them for cuts in subsidies, whereas in Cambridge it is defined as money that is paid to someone in exchange for something that has been lost or damaged or for some problem. In case titled "Abdul Aziz Vs AJK" PLD 2010 Supreme Court AJK 86, Hon'ble Superior Court has observed that:-

"Word compensation had a very wide meaning and it did not mean weighing copper against gold. Market value of the land at the time of notification of section 4 of Land Acquisition Act was merely one mode for determining the compensation and was not absolute yardstick for the assessment of compensation".

25. Besides Hon'ble Supreme Court of Pakistan in case titled Land Acquisition Collector Vs Mst. Iqbal Begum & others PLD 2010 Supreme Court 719 held that:



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'Potentiality of the land should not be determined merely at the time of issuance of notification u/s 4 of the Land Acquisition Act, 1894 but it should also be with reference to use to which land is reasonably capable of being put in future.'

26. Moreover, this view is also reproduced by the Hon'ble Superior Court in case titled **Sultan Shah & other Versus L.A.C Swabi & other PLD 2011 Peshawar 60** held that:

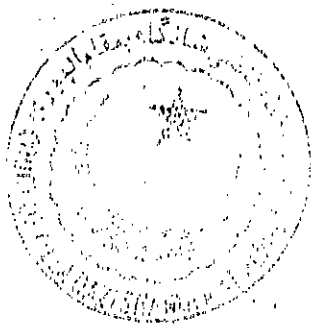
"In order to determine the compensation for the acquired property, the determining factor should not only be the market value of sales taking place at the time of notification, but it should also be with reference to the use to which acquired property is reasonably capable of being put in future. In this regard, future sales can also be taken into consideration while determining the compensation for the acquired property."

Similarly, in 1998 SCMR 2306 it is held that:

"Yardstick of one year average in compensation in an acquisition case could not be applied to a case, without examining all the attending circumstances and analogies applicable to the acquisition in questions, principles Supreme Court, in circumstances enhanced the compensation with award of interest."

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Arbab*

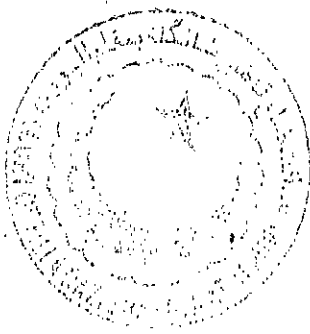
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Likewise, in 2004 CLC 1086 it is held that:

"Acquisition of land...Determination of market value and potential value...Appeal...Basic method of determination of market value of acquired land was to take into consideration the instances of sale of adjacent land made shortly before and after notification under S.4 of Land Acquisition Act, 1894...Market value of acquired land was to be determined on the basis of instances of sale of land in the neighboring locality as there was trend of rise in price of land of the area...Potential value of land need not be separately awarded because such sale would cover the potential value...Value of land of adjoining area which was simultaneously acquired and for which different formula of compensation had been adopted, should also be taken into consideration...Referee Court had rightly enhanced amount of compensation by fixing amount as per guidelines provided by Superior Court in their various judgments.

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Chakrabarti*



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27. The respondents have determined the market value/compensation of the acquired land vide award dated 30.05.2011 @ Rs. 37585/ per Kanal for Barai kind of land, Rs. 37,5000/ per kanal for Ghair Mumkin land, Rs. 7,96,000/- for

constructed houses, while the petitioners seek enhancement of the compensation to the tune of Rs. 30,00,000/- per Kanal for land and for houses Rs. 2 crores sought.

28. So far the awarded compensation for the acquired land is concerned it has already been discussed in detailed in above issue and is held to have been estimated much lower than the deserved one.

29. While elaborating the principle of "market value & potential value" august the Supreme Court of Pakistan in the case of Province of Sindh through the Collector District Dadu & others Vs Ramzan & others PLJ 2005 SC 262 held that:

"mandatory returns proposed to be given to land owners is "compensation" and not market value". It was further held, "compensation is wider term indicating the land owner, is to be compensated and not merely paid price of land which is just an interaction of supply & demand fixed between a willing buyer and a willing seller."

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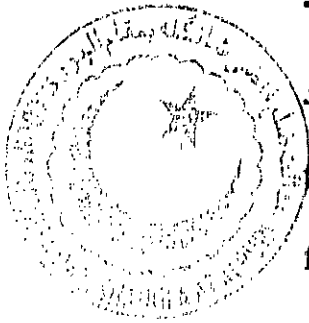
30. Needless to mention that land Acquisition Collector fixed the compensation of land on the basis of average of one year and miserably failed to consider the market value of the adjacent properties of same nature, the future potentiality and its future value.

31. Applying the principles deducible from the above mentioned precedent cases to the case in hand, this court is persuaded to hold that commission report is comprehensive, exhaustive and well-reasoned and it is hereby confirmed. Accordingly, the compensation of acquired land is fixed and enhanced with reference to market value of the land at the time of publication of notice under section 4 and also considering, the future use and potentiality. Eventually, the issue is decided in above terms.

RELIEF:

32. In view of above legal discourse and highlighted facts, the court reached to inevitable conclusion that the compensation fixed acquired land was neither appropriate nor justifiable and accordingly, the objection petition is partially allowed and the objectors are held entitled to the compensation @ Rs. 30,00,000/- (Thirty lacs) Per Kanal for Ghair Mumkin land and Rs. 40,00,000/- (Forty lacs) for houses, for being the market value at the time of publication of section 4 and having considered other aspects, the future use and potentiality of the land. The petitioners are also entitled to 15% Compulsory Acquisition Charges in view of Section 23 (2) of the Act ibid, and 6% simple interest from the date of taking over possession till final payment of compensation to the land owners. The

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petitioners are also entitled to other charges as mentioned in the impugned award dated 30/05/2011. The Reference is thus answered in the above terms. A copy of the judgment be sent to the Land Acquisition Collector, Shangla for compliance. Parties are left to bear their own costs. File be consigned to the record room after its necessary compilation & completion.

Announced:
On this 10th Day of December, 2022

[FARZINA SHAHID]
District Judge/Zilla Qazi/
Referee Judge, Shangla



CERTIFICATE:

Certified that this Judgment of mine consist of 18 pages. Each page has been read, signed and corrected by me wherever necessary.

FARZINA SHAHID
District Judge/Zilla Qazi/
Referee Judge, Shangla



Date of Presentation of Application 13. 2. 23
Date of Judgment 13. 2. 23
Page No. 32
Name of Plaintiff Shahid Ali
Name of Defendant
Date of Filing 13. 2. 23

Attested
Shahid Ali

Attested to be True Copy
13/2/23


FORM "A"
FORM OF ORDER SHEET

IN THE COURT OF FARZINA SHAID DISTRICT JUDGE/ZQ SHANGLA

RFA No. _____ of

Title: Khyzer hayat etc VS Govt of KPK etc

46. (K)

<p>09</p> 	<p>06.12.2022</p>	<p>Petitioners No. 3 in person present. ADK on behalf of respondent No. 7 present. Sher Muhammad Khan representative of respondent No. 5 and 6 present. Counsel for the parties present. Remaining arguments heard. For order on 10. 2.2022.</p> <p style="text-align: right;"><i>(Signature)</i> (FARZINA SHAID) District Judge/ZQ, Shangla.</p>
<p>10</p> <p style="text-align: right;"><i>(Signature)</i> Farzina Shaid District Judge/Zilla Qazi Shangla.</p>	<p>10.12.2022</p>	<p>1. Petitioners No. 3 in person present. ADK on behalf of respondent No. 7 present. Sher Muhammad Khan representative of respondent No. 5 and 6 present.</p> <p>2. Arguments already heard. Record available on file perused.</p> <p>3. Vide my detailed judgment of today consisting of 19 pages, duly signed and separately placed on file, the court reached to inevitable conclusion that the compensation fixed acquired land was neither appropriate nor justifiable and accordingly, the objection petition is partially allowed and the objectors are held entitled to the compensation @ Rs. 30,00,000/- (Thirty lacs) Per Kanal for Abi/Agricultural, Rs. 15,00,000/- (Fifteen lacs) per kanal for Dhakarakh, Barai, constructions and water channel, for being the market value at the time of publication of section 4 and having considered other aspects, the future use and potentiality of the land. The petitioners are also entitled</p> <p style="text-align: right;"><i>(Signature)</i> Alikhan</p>

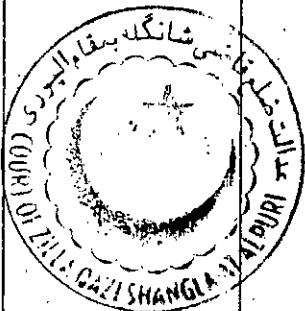
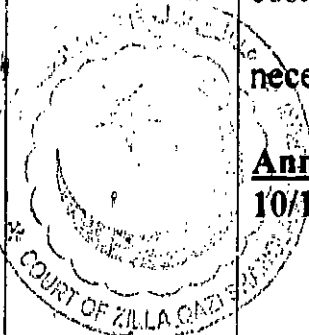
FORM "A"
FORM OF ORDER SHEET

(47)

IN THE COURT OF FARZINA SHAID DISTRICT JUDGE/ZO/REFEREE JUDGE, SHANGLA

Ref No. 3/4 of 2011

Title: Khyzer hayat etc VS Govt of KPK etc

<p>10</p> <p>10.12.2022</p>   <p>پروپوزیشن فی حق ترقی سید</p> <p>Farzina Shaid District Judge/Zilla Qazi Shangla.</p> <p>Certified to be True Copy EXAMINER District & Sessions Judge SHANGLA</p>	<p>to 15% Compulsory Acquisition Charges in view of Section 23 (2) of the Act ibid, and 6% simple interest from the date of taking over possession till final payment of compensation to the land owners. The petitioners are also entitled to other charges as mentioned in the impugned award dated 30/05/2011. The Reference is thus answered in the above terms. A copy of the judgment be sent to the Land Acquisition Collector, Shangla for compliance. Parties are left to bear their own costs. File be consigned to the record room after its necessary compilation & completion.</p> <p>Announced: 10/12/2022</p> <p><i>(Signature)</i> (FARZINA SHAID) District Judge/ZO/Referee Judge, SHANGLA.</p> <p><i>Attested</i> <i>(Signature)</i></p>	<p>No. of Presentation of Application 1, 4, 23</p> <p>Date on which Copy Prepared 1, 4, 23</p> <p>No. of Pages 8</p> <p>Cost Fee</p> <p>Name of Copyist <i>Shahid Au</i></p> <p>Signature</p> <p>Printing Fee</p> <p>Date of Delivery 1, 4, 23</p>
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(48)

**IN THE COURT OF FARZINA SHAID DISTRICT
JUDGE / ZILLA QAZI/REFEREE JUDGE SHANGLA.**



Reference No: 3/4 of 2011.

Date of Original Institution: 13/07/2011
Date of first Decision: 12/07/2013.
Date of Remand to this Court: 25/10/2022.
Date of Decision: 10/12/2022

1. Khyzer Hayat S/O Mohammad Azizullah.
2. Imran Ali
3. Ikramullah Sons/O of Sher Ali Khan.
4. Gul Adil Shah S/O Maghat Mian.
5. Iqbal Shah S/O Rahim Bakhsh.
6. Shah Irani S/O Zarawar Mian.
7. Sangi Faras S/O Khadim Mian R/O
Lilownai Tehsil Alpurai District
Shangla..... Petitioners.

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VERSUS

1. Provincial Government through
Chief Secretary KPK at Civil
Secretariat Peshawar.
2. Chief Engineer Works and Services
KPK at Civil Secretariat Peshawar.
3. Secretary/Senior Member Board of
Revenue KPK at civil Secretariat
Peshawar.
4. Commissioner Malakand Division at
Saidu Sharif Swat.

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10/12/22
Farzina Shaid
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5. Director General/Secretary PERRA KPK at Abbottabad.
 6. Program Manager DRU Shangla at Besham
 7. District Coordination Officer Shangla at Alpurai.
 8. District Officer Revenue and Estate/collector District Shangla at Alpurai
 9. Deputy District Officer Works and Services Shangla at Alpurai.
 10. SDO Works and Services Alpurai District Shangla.
 11. Tehsildar Alpurai District Shangla.
 12. Patwari Halqa Moza Lilownai Tehsil Alpurai District Shangla..
-Respondent/Defendant

Reference Argued by: -

Mr. Haq Nawaz Khan Advocate for Petitioners.

Mr. Shaiber Khan and District Attorney for respondents.

JUDGMENT:

10th December, 2022.

1. The respondents/Provincial Government of KPK through District Officer Revenue and Estates in order to acquire land for erection of 'District Complex' at village Lilownai Tehsil Alpurai District Shangla issued notification under section 4 of

Farzina Shaid
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Shangla.

Attested
Subscribed

Land Acquisition Act 1894 on 21.03.2008, regarding landed property of the petitioners.

2. The objectors submitted a reference under section 18 of the Land Acquisition Act to the Land Acquisition Collector which was made over to this court for determination.

3. Succinctly stating facts are such that the respondents/provincial government of KPK through District Officer Revenue and Estates in order to acquire land for erection of District Complex at village Lilownai Tehsil Alpurai District Shangla issued notification under section 4 of Land Acquisition Act on 21.03.2008, regarding landed property of the petitioners. The respondents then fixed price market value of the acquired land on the strength of one-year average from 28.03.2007 to 27.03.2008, and thereafter announced award under reference on 30.05.2011, through which different kind of land was acquired in lieu of Rs. 37385/- for Barai kind of land, Rs. 136385/- for Dhakarakh per Kanal, Rs. 529286/- for Abi /agriculture land per Kanal and 153846/ for ghair mumkin land per Kanal. The petitioners being not satisfied from the assessment of the compensation market value of the acquired land, refused to receive the compensation under protest and preferred reference petition before the District Collector which was sent to the court of District Judge Shangla, where after summoning the parties



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Shangla.

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necessary issues were framed and thereafter the reference/petition was sent to the court of Senior Civil Judge Shangla for disposal on 01.12.2011. The petitioners have assailed the award and have contended for enhancement of compensation for the acquired land inter alia on the grounds that they are owners in the suit Khasra numbers described in Para No 1, of the reference where from land measuring 60K 10M, situated towards the north from District Head Quarter Shangla in the revenue estate of Lilownai, which is unique in its nature on account of its location and the sole fit land for construction in the area. That since the acquired land is not only the most appropriate site but is of commercial nature because of its situation as in the entire District no such land is situated where the requisite purpose of the government could be full filled. That keeping in view the potential value of the acquired land, the price fixed by the District Collector is in no way justified hence, the petitioners have made request through the reference in hand for enhancement and fixation for compensation to the tune of Rs. 20,00,000/- per Kanal for Barai, Rs. 1500,000/- for Dhakarakh, Rs. 30,00,000/- for agriculture, Rs. 20,00,000/- for construction and Rs. 20,00,000/- for water channel.

*Attested
Collector*

Farzina Shaid
10/12/22
Farzina Shaid
District Judge/Zilla Qazi
Shangla.

4. Respondents have controverted the contention of the petitioners on legal as well as factual grounds out of which the following issues were framed.

تذقیحات

1- کیا سائیلان کی مسئول الیم سوہائی حکومت وغیرہ کی طرف سے حاصل کردہ اراضی در ریٹرنس تعدادی 60 کنال 10 مرلے و ایک کنال 2 مرلے انتہائی قیمیتی و کمرشل حیثیت کی جائیداد ہے اور اس کی قیمت بہ مطابق بازاری قیمت کم تعیین کی گئی ہے؟

2- جائیداد متدعوئیہ کی بازاری قیمت کیا ہے؟

دارسی۔



5. Parties were accorded opportunity to adduce their respective evidence. During the course of which petitioner No 6 Shah Irani for himself and as attorney for the rest of petitioners appeared as PW-1, who narrated in line with the assertion made in the reference and produced the award under reference as ExPw-1/2, objection petition as ExPw-1/3, order of District Collector as ExPw-1/4, one year average on the basis of which the compensation for the acquired land was fixed as ExPw-1/5, report of the Gardawar Circle as ExPw-1/6 and attested copies of the revenue record as ExPw-1/7 to ExPw-1/38. Muhammad Wahid deposed as PW-2 in support of the petitioner's stance. Waheed Murad as PW-3 stated in favour of the petitioners. Fazli Aala record clerk as PW-4 produced the record pertaining to the various proceedings regarding notification of section 4 of LAA and the award which have already been brought on record by Pw-1. Gohar Ali record clerk produced the record of the office of XEN C&W as Pw-5. Iqbal shah was examined as Pw-6.

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Shangla.

6. On the other hand, Ghulam Rahim SDO C&W as DW-01 narrated the proceedings of evaluation of the construction on the site conducted by him, which have already been placed on file as ExPw-5/15 to ExPw-5/18. Latif-ur-Rahman Tehsildar as Dw-2 who prepared his report regarding fixation of the compensation which is already placed on file as ExPw-1/6. He further produced attested copies of the mutations already placed on file as ExDw-2/1 to ExDw2/19. Ahmad Nawaz Gardawar Circle as CW-01 has produced one year average which has already placed on file as ExPw-1/5. Cw-2 Said Usman Shah District Qanoongo has produced minutes of the meeting dated 21.06.2007, as ExCw-2/1, letter issued by Board of Revenue KPK bearing No 15290 dated 26.07.2007, containing instructions regarding commercial and non-commercial land has been produced as ExCw-2/2. Faheemullah Patwari Halqa Muza Lilownai as Cw-3 has produced copies of the mutations from 2007 to 2011, near the road side from District Headquarter Alpurai to village Lilownai as ExCw-3/1 to ExCw-3/70. Noor-ul-Bashar ADK (CW-4) has produced copies of mutation entered from 2007 to 2011 in the revenue estate of village Lilownai as ExCw-4/1 to ExCw-4/76.

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7. On completion of evidence of the parties, counsel for the petitioners and learned Government Pleader requested the court for detailment of local commission which was accepted and Mr.



Shah Fawad Advocate was appointed as local commission with the mandate to visit the spot, prepare site plane of the acquire land, enquire about the market value of the adjacent lands and also submit his report regarding the potential value of the acquired land. Accordingly, the local commissioner submitted his report against which objections were filed and he was examined as cw-5. Report of commission placed on file as ExCw-5/1.

8. Initially this reference was received by this court being Referee Judge. My learned Predecessor-in-office vide order dated 01.12.2011 sent the same to learned Senior Civil Judge/A'ala Illaqa Qazi, Shangla who after recording of evidence decided the same vide the impugned order and judgment dated 12.07.2013.

Ali Akbar

9. An appeal was preferred before Hon'ble Peshawar High Court, Mingora Bench (Dar-ul-Qaza) Swat, wherein vide order dated 18/10/202, the impugned order and judgment of learned Senior Civil Judge Shangla was declared illegal and *void-ab-initio* hence, set aside and the case was remanded back to this court with the direction that the same is deemed to be pending and this court shall itself re-write the judgment on the basis of evidence already recorded by the parties, however, this exercise shall be completed within a period of one moth from the receipt of judgment of this court.

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Swat

10. On 25.10.2022, the same was received before this court. Both the parties were summoned. Who alongwith their counsel appeared and resumed proceedings before this forum.



11. Learned counsel for the petitioners/objectors argued that vide Award dated 30-05-2011 the land in question was acquired and the price was fixed on the basis of one year average, which doesn't afford adequate basis for determination of compensation; that the market value of the suit land was not considered; that the acquired land is situated on main road from District Headquarter to Lolonai and has got the status of commercial nature and many governments offices situates in its surroundings, and where all the basic facilities like electricity and telephone etc. are available and thus suitable for official/residential as well as commercial purposes, while in Award this nature of the land has not been considered; that the ADK and Patwari Halqa produced different mutations in same area, which shows the prices were more as compare to the acquired one. Therefore, on acceptance of petition in hand, rate of acquired land may be enhanced as prayed for.

*Attended
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12. Conversely, respondents' counsel argued that the Award was passed on the basis of one-year average and the amount of compensation has been assessed fairly and in according to prevailing circumstances of the area; keeping in view all the factors and as such prayed for dismissal of the reference.

13. I have heard the respective arguments of the learned counsel for the parties and have gone through the available record with their valuable assistance. My issue wise findings are as under:

ISSUE No 1.

14. In its very inception, before going to evaluate the amount of compensation, the assessment of land collector and award passed under section 11 of the Land Acquisition Act 1894, the market value and future potentiality, it is suffice to state that what is the purpose of Law of Acquisition, needed for the public purpose and how amount of compensation is to be determined. It is noteworthy that the Act is based and founded on the doctrine *savlus populi suprama lex*, that welfare of people is supreme law and private interest were subordinate to the interest of the state. Besides, the preamble of the Act sets out the purpose guiding and principles of the Act which states that:-

1. *To amend the law for the acquisition of land needed for public purpose and the companies.*
2. *To determine the amount of compensation to be paid on account of such acquisition*

15. The main controversy between the parties in this case is the fixation of the market value of the acquired land. The stance of the petitioners is that the land acquired from them is not only an exceptional kind of land but has also got the status of commercial land as it is situated on the road side and other



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commercial as well as government buildings are in its surroundings. That the price /compensation as awarded by the respondents is not only inadequate but rather injustice has been done to the petitioners hence, the compensation may be enhanced up to the tune coping with the prevailing price of the adjacent lands.



16. It may be noted that in support of their reference, the petitioners/landowners produced various mutations through PW-01 entered from 2006 to 2011, which carries price much higher than the one, which has been fixed by the respondents for the acquired land. The prime location of the acquired land is evident from the Aks Shajar Kishtwar ExPw-1/19. This witness had been subjected to a lengthy cross examination but nothing in derogation of the contention of the petitioners could have been brought to light and rather it has further been explained and proved that the acquired land has got high potential value for its situation and kind. PW-2 has also supported version of the petitioners. PW-3 Waheed Murad, who is owner of land situated opposite the acquired land contended that building of Technical College is under construction just opposite side of the road splitting the acquired land. Pw-04 is the Record Clerk District Collector Sharghla, who produced the official record of the acquisition process. The petitioners succeeded to establish that the market value near and around the acquired land was

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much higher as compare to the price ascertained by the respondents and as such the high potentiality of the acquired land can easily be assessed.

17. In this case, on application of the petitioners/land-owners, a commission was also appointed, who visited the spot and submitted its report. The said report which is available on record as Ex CW 5/1 is of worth perusal as the same presents the correct picture of the acquired land. The local commissioner has conducted detail survey of the area, prepared site plane and has also recorded statements of the witnesses hailing from the same area which further commensurate with the contention of petitioners. The learned local Commissioner after collecting different materials to ascertain the market value of the acquired land, has concluded that the commercial nature of the acquired land cannot be denied. That the land in question is of very important nature as it is nearest to District Headquarters and due to shortage of land in the area being hilly one, there is no plain land available and most of the Government offices are being shifting in the nearby vicinity. That a vast residential area already is present on front side and people are ready to obtain the same either on rent or ownership basis, therefore, the local commissioner recommended the market value from Rs. 30 to 35 lacs per Kanal, which as per him is the market value as well of the acquired land. These recommendations show the super



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imposing character of the acquired land. Statement of the local commissioner Shah Fawad Advocate has been recorded as Cw-5. He has been cross examined at length wherein he has further explained that near and in surrounding of the acquired land sufficient number of government offices and NGOs are situated which depicts the situation of the acquired land to be a prime location and has got commercial status.



18. Even otherwise, the acquired land is situated on the main road leading from Headquarters to Lelonai, which is prime location and very costly. It may be noted here that the valley of Shargla largely comprises of hilly areas and very less plain area is available, therefore, the character of land of being mostly plain area measuring 60 K 10 M speaks of something of its high potentiality, hence this factor too cannot be ignored.

19. It needs no further elaboration or explanation that the land under reference is admittedly is of prime location, very much appropriate for construction of District Complex and has a potential value and other lands situated in the same vicinity have been sold out at higher price than the land under reference. Hence it is held that the appraisalment of the market value/ compensation of the acquired land has wrongly been ascertained which is far less than the actual prevailing market value for the land under reference. Issue is decided in affirmative in favour of the petitioners.

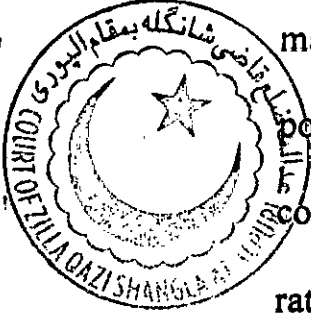
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Issue No.2.

20. It is well settled since long that while determining the market value of the acquired land, not only the existing potentiality and market value of the acquired land is to be considered but its future potentiality and tendency of inflated rate in future is also to be considered. It is also necessary to keep in mind that this transaction of acquired land is not between a willing purchaser and willing seller rather it is a transaction which was forced upon the land owners and is against their consent. With such background of transaction, a land owner has every right that he/they may be compensated on the basis of celebrated phenomena of '*gold for gold and not copper for gold*'. Furthermore, while determining the market value of the acquired land, multiple factors including its location, existing potentiality, proximity to road or any commercial building and over and above its future prospects have to be considered.

21. It is imperative to note that the notification under section 4 of the Land Acquisition Act, 1894 was issued on 21-03-2008, while Award was made in the year 2011, the inflation in prices during intervening period between issuance of notification under section 4 of the Land Acquisition Act, 1894 and the Award was ignored while determining fair and reasonable rate of compensation. Moreover, people do enter in the mutation less



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prices that actually paid for reducing the payment of taxes to be levied on each transfer and this general tendency of people cause less average price of each marla. Thus rate of compensation assessed on the basis of 01-year average is not reasonable and cannot be accepted.



22. For the assessment of the compensation of the acquisition of land under section 23 of the Land Acquisition Act, 1894 provides a detail procedure/criteria. The word compensation as given in Oxford Dictionary means something, typically money, in recognition of loss, suffering, or injury incurred; recompense. Payments were made to farmers to compensate them for cuts in subsidies, whereas in Cambridge it is defined as money that is paid to someone in exchange for something that has been lost or damaged or for some problem. In case titled "Abdul Aziz Vs AJK" PLD 2010 Supreme Court AJK 86, Hon'ble Superior Court has observed that:

"Word compensation had a very wide meaning and it did not mean weighing copper against gold. Market value of the land at the time of notification of section 4 of Land Acquisition Act was merely one mode for determining the compensation and was not absolute yardstick for the assessment of compensation".

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23. Besides Hon'ble Supreme Court of Pakistan in case titled **Land Acquisition Collector Vs Mst. Iqbal Begum & others** PLD 2010 Supreme Court 719 held that :



'Potentiality of the land should not be determined merely at the time of issuance of notification u/s 4 of the Land Acquisition Act, 1894 but it should also be with reference to use to which land is reasonably capable of being put in future.'

24. Moreover, this view is also reproduced by the Hon'ble Superior Court in case titled **Sultan Shah & other Versus L.A.C Swabi & other** PLD 2011 Peshawar 60 held that :

"In order to determine the compensation for the acquired property, the determining factor should not only be the market value of sales taking place at the time of notification, but it should also be with reference to the use to which acquired property is reasonably capable of being put in future. In this regard, future sales can also be taken into consideration while determining the compensation for the acquired property."

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Similarly, in 1998 SCMR 2306 it is held that:

"Yardstick of one year average in compensation in an acquisition case could not be applied to a case, without examining all the attending circumstances and

analogies applicable to the acquisition in questions, principles Supreme Court, in circumstances enhanced the compensation with award of interest."

Likewise in 2004 CLC 1086 it is held that:

"Acquisition of land...Determination of market value and potential value...Appeal...Basic method of determination of market value of acquired land was to take into consideration the instances of sale of adjacent land made shortly before and after notification under S.4 of Land Acquisition Act, 1894...Market value of acquired land was to be determined on the basis of instances of sale of land in the neighboring locality as there was trend of rise in price of land of the area...Potential value of land need not be separately awarded because such sale would cover the potential value...Value of land of adjoining area which was simultaneously acquired and for which different formula of compensation had been adopted, should also be taken into consideration...Referee Court had rightly enhanced amount of compensation by fixing amount as per guidelines provided by Superior Court in their various judgment.



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25. The respondents have determined the market value/compensation of the acquired land vide award dated 30.05.2011 @ Rs. 37385/ per Kanal for Barai kind of land, Rs. 136285 for Dhakarakh per kanal, Rs. 529286 for agriculture land per kanal, Rs. 153846 for Ghair mumkin kind of land, while the petitioners seek enhancement of the compensation to the tune of Rs. 20,00,000/- per Kanal for Barai, Rs. 1500,000/- for Dhakarakh, Rs. 30,00,000/- for agriculture, Rs. 20,00,000/- for construction and Rs. 20,00,000/- for water channel.

26. So far the awarded compensation for the acquired land is concerned it has already been discussed in detailed in above issue and is held to have been estimated much lower than the deserved one.

27. As evident from Ex.Pw.1/5 the District Collector Shangla has fixed the market value for Barai land on the basis of the mutations placed on file as Ex.Pw.1/7 to Ex.Pw.1/12 but as admitted by Cw-1 Gardawar Circle in his cross-examination, the land under referred mutations is situated at sufficient distance from the acquired one and have no access to road but the mutations indicated on serial No. 1,4,6,8,9 to 16 of index Ex.Pw.1/20 placed on file as Ex.Pw.1/21, Ex.Pw.1/24, Ex.Pw.1/26 to 1/38 have not been taken into consideration which carries high market value/sale price than the awarded one



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for the acquired land. Record further reflects that as per mutations No. 3112, 2275, 2780, 2762 and 3051, the TMA Shangla has acquired the land measuring 1 Kanal and 12 Marla in lieu of Rs. 24,00,000/- in the same locality. Apart from the afore mentioned documentary record needless to repeat the learned Local Commissioner has also suggested fair market value for the acquired land much more than the awarded one, the report is well-reasoned and it is hereby confirmed. Accordingly, the compensation of acquired land is fixed and enhanced with reference to market value of the land at the time of publication of notice under section 4 and also considering, the future use and potentiality. Eventually, the issue is decided in above terms.

RELIEF:

28. In view of above legal discourse and highlighted facts, the court reached to inevitable conclusion that the compensation fixed acquired land was neither appropriate nor justifiable and accordingly, the objection petition is partially allowed and the objectors are held entitled to the compensation @ Rs. 30,00,000/- (Thirty lacs) Per Kanal for Abi/Agricultural, Rs. 15,00,000/- (Fifteen lacs) per kanal for Dhakarakh, Barai, constructions and water channel, for being the market value at the time of publication of section 4 and having considered other



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Ali Akbar
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aspects, the future use and potentiality of the land. The petitioners are also entitled to 15% Compulsory Acquisition Charges in view of Section 23 (2) of the Act ibid, and 6% simple interest from the date of taking over possession till final payment of compensation to the land owners. The petitioners are also entitled to other charges as mentioned in the impugned award dated 30/05/2011. The Reference is thus answered in the above terms. A copy of the judgment be sent to the Land Acquisition Collector, Shangla for compliance. Parties are left to bear their own costs. File be consigned to the record room after its necessary compilation & completion.



Announced:

On this 10th Day of December, 2022

**[FARZINA SHAID]
District Judge/Zilla Qazi/
Referee Judge, Shangla**



CERTIFICATE:

Certified that this Judgment of mine consist of 19 pages. Each page has been read, signed and corrected by me wherever necessary.

No. 284
Date of Presentation of Application 28.3.23
Date on which Copy Prepared 28.3.23
No. of Pages 24
Impress Fee _____
Name of Copyist Shahid A
Signature _____
Copying Fee _____
Date of Delivery 28.3.23

**FARZINA SHAID
District Judge/Zilla Qazi/
Referee Judge, Shangla**

Certified to be True Copy
28/3/23
EXAMINER
District & Sessions Judge
SHANGLA

(65)

DECREE SHEET

**IN THE COURT OF FARZINA SHAID DISTRICT
JUDGE/ZILLA QAZI/REFEREE JUDGE SHANGLA**

Reference No.3/4 of 2011

Date of Original Institution.....13.07.2011
Date of 1st Decision.....12.07.2013
Date of Remand to this Court.....28.04.2022
Date of Decision10.12.2022



1. Khyzer Hayat s/o Mohammad Azizullah.

2. Imran Ali.

3. Ikramullah sons/o of Sher Ali Khan.

4. Gul Adil Shah s/o Maghat Khan.

5. Iqbal Shah s/o Rahim Bakhsh.

6. Shah Irani s/o Zarawar Mian.

7. Sangi Faras s/o Khadim Mian R/o Lilownai Tehsil Alpurai District
Shangla.....Petitioners

VERSUS

1. Provincial Government through Chief Secretary KPK at Civil Secretariat Peshawar.
2. Chief Engineer Works and Services KPK at Civil Secretariat Peshawar.
3. Secretary/Senior Member Board of Revenue KPK at civil Secretariat Peshawar.
4. Commissioner Malakand Division at Saidu Sharif Swat.
5. Director General/Secretary PERRA KPK at Abbottabad.
6. Program Manager DRU Shangla at Besham.
7. District Coordination Officer Shangla at Alpurai.
8. District Officer Revenue and Estate/collector District Shangla at Alpurai.
9. Deputy District Officer Works and Services Shangla at Alpurai.
10. SDO Works and Services Alpurai District Shangla.
11. Tehsildar Alpurai District Shangla.
12. Patwari Halqa Moza Lilownai Tehsil Alpurai District Shangla
.....Respondent/Defendant

Reference Argued by: -

Mr. Haq Nawaz Khan Advocate for Petitioners.

Mr. Shaiber Khan and District Attorney for respondents.

PRAYER IN REFERENCE

1. The respondents/Provincial Government of KPK through District Officer Revenue and Estates in order to acquire land for

erection of 'District Complex' at village Lilownai Tehsil Alpurai District Shangla issued notification under section 4 of Land Acquisition Act 1894 on 21.03.2008, regarding landed property of the petitioners. (67)

2. The objectors submitted a reference under section 18 of the Land Acquisition Act to the Land Acquisition Collector which was made over to this court for determination.



Succinctly stating facts are such that the respondents/ provincial government of KPK through District Officer Revenue and Estates in order to acquire land for erection of District Complex at village Lilownai Tehsil Alpurai District Shangla issued notification under section 4 of Land Acquisition Act on 21.03.2008, regarding landed property of the petitioners. The respondents then fixed price market value of the acquired land on the strength of one-year average from 28.03.2007 to 27.03.2008, and thereafter announced award under reference on 30.05.2011, through which different kind of land was acquired in lieu of Rs. 37385/- for Barai kind of land, Rs. 136385/- for Dhakarakh per Kanal, Rs. 529286/- for Abi /agriculture land per Kanal and 153846/ for ghair mumkin land per Kanal. The petitioners being not satisfied from the assessment of the compensation market value of the acquired land, refused to receive the compensation under protest and preferred reference petition before the District Collector which was sent to the court of District Judge Shangla, where after summoning the parties necessary issues were framed and thereafter the reference/ petition was sent to the court of Senior Civil Judge Shangla for disposal on 01.12.2011. The petitioners have assailed the award and have contended for enhancement of compensation for the acquired land inter

(68)

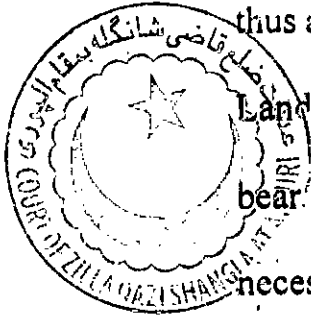
alia on the grounds that they are owners in the suit Khasra numbers described in Para No 1, of the reference where from land measuring 60K 10M, situated towards the north from District Head Quarter Shangla in the revenue estate of Lilownai, which is unique in its nature on account of its location and the sole fit land for construction in the area. That since the acquired land is not only the most appropriate site but is of commercial nature because of its situation as in the entire District no such land is situated where the requisite purpose of the government could be full filled. That keeping in view the potential value of the acquired land, the price fixed by the District Collector is in no way justified hence, the petitioners have made request through the reference in hand for enhancement and fixation for compensation to the tune of Rs. 20,00,000/- per Kanal for Barai, Rs. 1500,000/- for Dhakarakh, Rs. 30,00,000/- for agriculture, Rs. 20,00,000/- for construction and Rs. 20,00,000/- for water channel.

Order No. 10

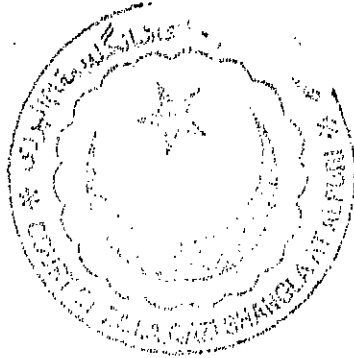
10.12.2022

Vide my detailed judgment of today consisting of 19 pages, the court reached to inevitable conclusion that the compensation fixed acquired land was neither appropriate nor justifiable and accordingly, the objection petition is partially allowed and the objectors are held entitled to the compensation @ Rs. 30,00,000/- (Thirty lacs) Per Kanal for All Agricultural, Rs. 15,00,000/- (Fifteen lacs) per kanal for Dhakarakh, Barai, constructions and water channel, for being the market value at the time of publication of section 4 and having considered other aspects, the future use and potentiality of the land. The petitioners are also entitled to 15% Compulsory Acquisition Charges in

view of Section 23 (2) of the Act ibid, and 6% simple interest from the date of taking over possession till final payment of compensation to the land owners. The petitioners are also entitled to other charges as mentioned in the impugned award dated 30/05/2011. The Reference is thus answered in the above terms. A copy of the judgment be sent to the Land Acquisition Collector, Shangla for compliance. Parties are left to bear their own costs. File be consigned to the record room after its necessary compilation & completion.



Announced:
10/12/2022



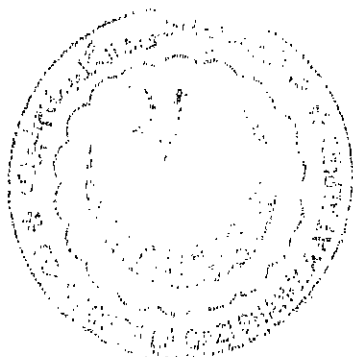
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FARZINA SHAID
District judge/ZQ/Referee Judge/
SHANGLA

COSTS OF PETITION.

Petitioner	Amount	Respondents	Amount
Stamp for memorandum	Rs.Nil	Stamp for memorandum	Rs.Nil
Stamp for power	Rs.Nil	Stamp for power	Rs.Nil
Services of processes	Rs.Nil	Services of processes	Rs.Nil
Diet money witnesses	Rs.Nil	Diet money witnesses	Rs.Nil
Proclamation fee	Rs.Nil	Proclamation fee	Rs.Nil
Pleader's fee	Rs.Nil	Pleader's fee	Rs.Nil
Court fee stamp	Rs.Nil	Court fee stamp	Rs.Nil
Miscellaneous	Rs.Nil	Miscellaneous	Rs.Nil
Total	Rs.Nil	Total	Rs.Nil

Given under my hand and the seal of the Court on this 10th day of December, 2022



Farzina
FARZINA SHAID
District judge/ZQ/Referee Judge/
SHANGLA



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

69
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(Agenda Item No. 21)

No. SOL/Law/10-23(17)/Rev/2023/ 1489-91
Dated Peshawar the 22-02-2023

To

1. The Advocate General,
Khyber Pakhtunkhwa, Peshawar.
2. The Senior Member Board of Revenue,
Khyber Pakhtunkhwa, Peshawar.
3. The Secretary to Govt. of Khyber Pakhtunkhwa,
Communication & Works Department.
4. The Secretary to Govt. of Khyber Pakhtunkhwa,
Relief & Rehabilitation Department.

1165-1
24/2/23

Subject: REFERENCE NO. 3/4 OF 2011 KHIZAR HAYAT ETC. VERSUS GOVERNMENT OF KHYBER PAKHTUNKHWA THROUGH CHIEF SECRETARY AND OTHERS.

I am directed to refer to Govt. of Khyber Pakhtunkhwa (BoR) Revenue & Estate Department letter No. No.Rev-VI/RC/Shangla/2022/4617-20 and Deputy Commissioner, Shangla letter No.1990-967/HO/DC/SH D-Complex, dated: 15.02.2023 on the subject noted above and to state that a meeting of the Scrutiny Committee has been held on 22-02-2023 under the Chairmanship of Secretary Law Department in order to determine the fitness of the subject case for filing of RPA before Peshawar High Court.

After threadbare discussion on the subject case particularly hearing the stance of Administrative Department, it was decided with consensus by the Scrutiny Committee that the subject case is a fit case for filing of RPA before Peshawar High Court alongwith application for condonation of delay application. However, the Administrative Department was advised to conduct inquiry against the delinquent officers / officials on fault of whom the subject case became time barred.

Therefore, the Administrative Department is advised to approach the office of Advocate General Khyber Pakhtunkhwa through well conversant representative alongwith complete record of the case for doing the needful forthwith, please.

Yours faithfully.

MR Shaheerullah
Dy. Secy
Sb
P.S.

(TAHIR IQBAL KHATTAK)
SOLICITOR
LAW DEPARTMENT

Encls: No. & Date Even.

Copy forwarded to the

1. Director General PERRA, KPK, Abbottabad.
2. Deputy Commissioner, Shangla.
3. PS to Secretary Law Department.

Needful done.

23.2.23
12-34 P.M

Incompleat record from
A of Office at 23.2.23
12-33 P.M

Signature
Signature



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

70

(Agenda Item No. 20)

No. SO/Law/10-23(16/Rov/2023)/496-150;
Dated Peshawar the 22-02-2023

To

1. The Advocate General, Khyber Pakhtunkhwa, Peshawar.
2. The Senior Member Board of Revenue, Khyber Pakhtunkhwa, Peshawar.
3. The Secretary to Govt. of Khyber Pakhtunkhwa, Communication & Works Department.
4. The Secretary to Govt. of Khyber Pakhtunkhwa, Relief & Rehabilitation Department.

R.F.A along with two separate applications condonation of delay and suspension suggested and sent to Civil Branch for further necessary action.

Subject:

REFERENCE NO. 7/4 OF 2011 SAID ROMIN VERSUS GOVERNMENT OF KHYBER PAKHTUNKHWA THROUGH CHIEF SECRETARY AND OTHERS

I am directed to refer to Govt. of Khyber Pakhtunkhwa (BoR) Revenue & Estate Department letter No.Rev-V/4/C/Shangla/2022/4617-20 and Deputy Commissioner, Shangla letter No.1990-967/HO/DC/SH D-Complex, dated: 15.02.2023 on the subject noted above and to state that a meeting of the Scrutiny Committee has been held on 22-02-2023 under the Chairmanship of Secretary Law Department in order to determine the fitness of the subject case for filing of RFA before Peshawar High Court.

After thorough discussion on the subject case particularly hearing the stance of Administrative Department, it was decided with consensus by the Scrutiny Committee that the subject case is a fit case for filing of RFA before Peshawar High Court along with application for condonation of delay application. However, the Administrative Department was advised to conduct inquiry against the delinquent officers / officials on fault of whom the subject case became time barred.

Therefore, the Administrative Department is advised to approach the office of Advocate General Khyber Pakhtunkhwa through well conversant representative along with complete record of the case for doing the needful forthwith, please.

Yours faithfully;

*MA Shaukatullah
PLG DAF*

*23-2-23
12-35 P.M*

(TAHIR IQBAL KHATTAK)
SOLICITOR
LAW DEPARTMENT

*Record found in
dt 23-2-23
12-32 P.M*

Encl: No & Date Para.
Copy forwarded to the.

1. Director General FERRA, KPK, Abbottabad.
2. Deputy Commissioner, Shangla.
3. PS to Secretary Law Department.

Needful, done.

*Mushtaq
Dabbar*

CONFIDENTIAL

(11)
(11)

OFFICE OF ADVOCATE-GENERAL, KHYBER PAKHTUNKHWA, PESHAWAR

No. 137-4/AG

dated 25/02/2023

Address: High Court Building, Peshawar
Tel. No. 031-9210119

Exchange No. 031-5033
Fax No. 031-9210270



To

1. The Senior Member Board of Revenue, Khyber Pakhtunkhwa, Peshawar.
2. The Secretary to Government of Khyber Pakhtunkhwa, Communication & Works Department, Peshawar.
3. The Deputy Commissioner, Shangla.

Subject:

LACK OF INTEREST IN REFERENCE PETITION NO. 2/4 OF 2011 TITLED SAID ROMIN VS GOVERNMENT OF KHYBER PAKHTUNKHWA & OTHERS AND IN REFERENCE PETITION NO. 3/4 OF 2011 TITLED KHYZER HAYAT ETC GOVERNMENT OF KHYBER PAKHTUNKHWA & OTHERS

Respected Sir,

I am directed to refer to letter Nos.SOL/Law/10-23(17)/Rev/2023/1489-1502 dated 22/02/2023 of the Law Department on the subject noted above it is bring in your kind notice that meeting of the Scrutiny Committee under the Chairmanship of Worthy Secretary-to Government of Khyber Pakhtunkhwa Law, Parliamentary & Human Rights Department was held on 22/02/2023 in order to determine fitness of the subject cases for filing of Regular First Appeals (R.F.As) before the Peshawar High Court wherein it was decided by the Committee that the subject cases are fit for filing of R.F.As before the Peshawar High Court.

The Law Department addressed letter Nos.SOL/Law/10-23(17)/Rev/ 2023/1489-1502 dated 22/02/2023 to this office as well as to your good office wherein the Administrative Department was advised to approach to the office of the Advocate General through well conversant representative alongwith complete record of the subject cases for filing of R.F.As.

The Administrative Department was required to complete process for challenging the Impugned Judgments, Decrees & Orders dated 10/12/2022 before the Hon'ble High Court well within time but needful was not done in stipulated time period and resultantly the subject cases became time barred.

HC (Revenue)

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Abbas

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As huge Government interest is involved in the subject case therefore, the undersigned drafted/prepared the two separate Regular First Appeals alongwith applications i.e suspension of the operation of impugned Judgment, Decree & Order and condonation of delay and sent to quarter concerned on 23/02/2023 for its onward submission before the Hon'ble Peshawar High Court.

I am further directed to take necessary action against the officers/officials due to whose negligence the subject cases become time barred under intimation to this office.

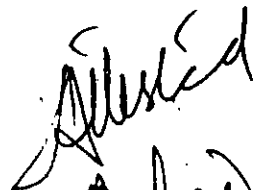
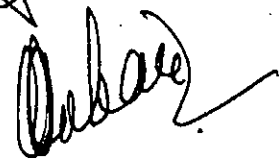

Law Officer

Endst: No. & date Even.

Copies are forwarded to:-

1. The Senior Private Secretary to Worthy Advocate General, Khyber Pakhtunkhwa, Peshawar.
2. The P.S to Worthy Secretary to Government of Khyber Pakhtunkhwa Law, PA & HR Department, Peshawar.


Law Officer

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Register

Amir
Zubair



**OFFICE OF THE
DEPUTY COMMISSIONER
SHANGLA**

Deputy Commissioner Shangla 0996850005	dco.shangla@gmail.com	twitter.com/DC Shangla
	DC Office at Alpural Distt Shangla	0996850006

No. 3306-09/7/HC/DC/SH D-Complex

Dated 03/03/2023

To

The Commissioner,
Malakand Division
Saidu Sharif, Swat.

Subject:

**LACK OF INTEREST/FACTUAL DETAILS OF CASES TITLED:
SAID ROMIN VS GOVT: OF KHYBER PAKHTUNKHWA &
OTHERS
KHIZAR HAYAT VS GOVT: OF KHYBER PAKHTUNKHWA &
OTHERS.**

Sir,

Please refer to the Solicitor Law, Parliamentary Affairs & Human Rights department Khyber Pakhtunkhwa Peshawar letter bearing No. SOL/Law/10-23(17)/Rev/2023/1489-95 dated 22/02/2023 Advocate General office letter No. 4737-41/AG dated 25/02/2023, coupled with factual detailed report of the Additional Assistant Commissioner (Revenue), Shangla vide letter No.96/AAC (R)/SH dated 01/03/2022 and report of the Additional District Kanungo Shangla (copies enclosed), on the subject above.

After perusal of the above, it is submitted that as per previous record, the District Attorney, Shangla namely Mr. Muhammad Zubair does not take any interest deliberately in the government cases instead of defending the Government cases and misguides the Government departments which leads to irreparable loss to the Government interest. Being the local of the district, he has sympathies with the local and also his own/family interest which ultimately badly affects the government interests/exchequer and become a big cause of embarrassment for the heads of Government departments. In this regard, reference can be made to the subject cases in which the District Attorney, Shangla had not made any communication to this office

timely which shows gross negligence, irresponsible and delinquent attitude on his part towards the services for which he is responsible.

In view of the above, it is, therefore, requested that the competent authority at Provincial level may kindly be approached to take strict disciplinary action against the above named delinquent officer. Moreover, the services of the officer may also be surrendered to the Provincial Government to safeguard the government interests and another suitable and responsible officer may kindly be posted in his place in the best public interest.

Hasan Abid
DEPUTY COMMISSIONER
SHANGLA

Endst:No.& Date Even;

Copy forwarded to the:

1. Secretary to Government of Khyber Pakhtunkhwa, Law, Parliamentary Affairs & Human Rights Department, Peshawar.
2. Solicitor Law, Parliamentary Affairs & Human Rights, department Khyber Pakhtunkhwa Peshawar with reference to above..
3. Law Officer, office of the Advocate General Khyber Pakhtunkhwa Peshawar with reference to above.

Hasan Abid
DEPUTY COMMISSIONER
SHANGLA

Hasan Abid
Shangla

جناب شیخ لکھنؤ صاحب مشاغلہ جہان اللہ

مخزنہ پورے دربارہ کی دینی بیورو



جناب صاحب

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D.K. + Readers

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Best copy

بخدمت جناب ڈپٹی کمشنر صاحب شانگلہ بمقام الپوریء (75)

عنوان:- رپورٹ دربارہ گورنمنٹ پلیڈر

جناب عالی!

گزارش کی جاتی ہے کہ محمد زبیر ایڈووکیٹ گورنمنٹ پلیڈر ہے۔ زیادہ تر مقدمات میں بذات خود پیش نہیں ہوتا ہے اور درست طور پر پیروی مقدمات نہیں کرتا ہے جس کی وجہ سے اکثر مقدمات حکومت کے خلاف آتا ہے۔ حال ہی میں مقدمات سید رومین بنام حکومت، خضر حیات بنام حکومت، شیرزادہ بنام حکومت ڈگری ہوچکے ہیں۔ جس کی وجہ سے حکومت کو کروڑوں روپیہ کے نقصان کا اندیشہ ہے کیونکہ وکیل مذکورہ نے بروقت تقولات لینے کے لئے نہیں بتایا ہے۔ حالانکہ میں نے بزاتہی تقولات کیلئے بروقت درخواست ہائے جمع کئے ہیں لیکن گورنمنٹ پلیڈر مقدمات سرکار میں دلچسپی نہیں لیتا ہے اور جیب کوئی مقدمہ ڈگری ہوتا ہے تو متعلقہ محکمے کے افسران کو اس بارے میں کوئی اطلاع نہیں کرتا ہے۔ لہذا بوجوہات بالامتعلقہ گورنمنٹ پلیڈر کے خلاف کارروائی کا حکم صادر فرمایا جائے۔

دستخط

العارض دفتر علی ایسٹنٹ ڈسٹرکٹ قانونگو شانگلہ

1.3.2023

Masud
Bakht



OFFICE OF THE
ADDITIONAL ASSISTANT COMMISSIONER (R)/
COLLECTOR/EXECUTIVE MAGISTRATE
SHANGLA

Additional Assistant Commissioner Shangla 0996830210 0996850006

No. 96 / AAC (R) / SH

Dated: 01 / 03 / 2023

To The Deputy Commissioner,
Shangla.

Subject: FACTUAL DETAILS OF CASES TITLED:
SAID ROMIN VS GOVT. OF KPK & OTHERS
KHIZAR HAYAT ETC VS GOVT. OF KPK & OTHERS.

Memo:


Please refer to the subject noted above and to submit herein the detailed report of the abovementioned cases related to the Land Acquisition for the District Complex at Shangla. The factual details of the abovementioned cases are:

The Referee Court/District Judge Shangla announced its judgment in the abovementioned cases on 10-12-2022 wherein the Referee Court had enhanced the Award made for the Acquired Land, whereas, the time limitation for filing First Regular Appeal (RFA) before the Hon'ble High Court was 30 days against the said Judgment.

The copies of the aforesaid judgments of the Referee Court were received to the office of the District Collector on 13-02-2023, wherein, the Cases mentioned above were already time-barred, thus the government interest was affected. It is pertinent to mention that no prior communication was made to the office of the District Collector, Shangla in relation to the judgment dated 10-12-2022 by the office of the District Attorney, Shangla pertaining to filing appeal against the said judgement and the time limitation associated therewith.

The District Collector, Shangla sent the same cases to the Law Department and Revenue and Estate Department, KP on 15-02-2023 for scrutiny meeting and obtaining sanctions for filing RFAs in the same cases to protect the government interest, whereupon, a meeting was scheduled by the Law Department on 22-02-2023 which was attended by the undersigned being authorized by the District Collector, for the purpose of attending the scrutiny meeting as scheduled, the decisions made thereupon were recorded in the minutes of the meeting held on 22-02-2023 (copy attached).

A concise brief of the cases is attached herewith for ready reference,
please.


ADDITIONAL ASSISTANT COMMISSIONER (R)/EM
SHANGLA AT ALPURA.

77

Ali Akbar
Abbas

FAS

secretarytocmd@gmail.com

Commissioner Malakand Division

commissioner.mkd



OFFICE OF THE
COMMISSIONER MALAKAND DIVISION
SAIDU SHARIF SWAT

No. 257 /16/2/Reader/Shangla/Yol-II

Dated 21 /03/2023

To,

The Secretary to Government of Khyber Pakhtunkhwa,
Law Parliamentary Affairs & Human Rights Department, Peshawar.

Subject: LACK OF INTEREST/FACTUAL DETAILS OF CASES TITLED SAID ROMIN VS GOVT. OF KHYBER PAKHTUNKHWA & OTHER. KHIZAR HAYAT VS GOVT. OF KHYBER PAKHTUNKHWA & OTHERS.

Sir,

I am directed to enclose herewith a copy of Deputy Commissioner, Shangla letter No. 3306-08/7/HC/DC/SH D-Complex dated 08.03.2023, along with its enclosure, the content of which are self-explanatory on the above noted subject.

2. I am further directed to request to initiate departmental proceedings against delinquent Officer and a suitable responsible Officer may be posted in the District for timely disposal of pending cases in the best public interest, please.

[Signature]
SECRETARY TO COMMISSIONER
MALAKAND DIVISION

No. & Date Even.

Copy forwarded to the Deputy Commissioner, Shangla for information please.

[Signature]
SECRETARY TO COMMISSIONER
MALAKAND DIVISION

[Signature]
[Signature]
21/3/23

[Signature]

21/3/23 *[Signature]* 21/3/2023 *[Signature]*



**OFFICE OF THE
DEPUTY COMMISSIONER
SHANGLA**

77^A

Deputy Commissioner Shangla 0996850005	dco.shangla@gmail.com DC Office at Alpurai Distt Shangla	twitter.com/DC Shangla 0996850006
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No. 4393-405/2/1-Estt: /DC SH:

Dated 05/08/2023

OFFICE ORDER.

To streamline the courts cases/matters and to defend the government interest a litigation cell comprising the following officials of this office is hereby notified with immediate effect in the best public interest:-

S. NO.	NAME OF OFFICER/OFFICIAL	FROM	TO/ASSIGNED DUTIES
01	Mr. Liaqat Ali Assistant	Diary Branch	Litigation Cell. He is also authorized to hold the charge of Assistant record room of this office
02	Mr. Amir Alam Assistant	Record Room of this office	Diary Branch of this office
03	Mr. Fazal Habib J/Clerk	Control Room	Litigation Cell
04	Mr. Ikram Ullah J/Clerk	Dispatch branch	Litigation Cell
05	Mr. Jehangir Patwari	Halqa Ptwarei Alpurai	ADK Shangla (OPS)
06	Mr. Tufail Mahmood	Halqa Patwari Mian Kaly Pirabad	Litigation Cell

The above official are further directed to maintain the record of all cases and progress thereof may be shared with all concerned if/whenever needed.

Moreover, Mr. Israr Ali Junior Clerk presently working as Reader of this office will be focal person of the cell.

Hasanahid
DEPUTY COMMISSIONER
SHANGLA

Endst: No. /

Copy of the above order is forwarded for information to the:-

1. District & Session Judge Shangla.
2. Additional Deputy Commissioner (Gen), Shangla.
3. District Attorney Shangla.
4. Secretary to Commissioner Malakand Division Saidu Sharif Swat.
5. All Assistant Commissioners in the District.
6. All Additional Assistant Commissioners in the District.
7. PS to Secretary Law, Parliamentary Affairs and Human Rights Department Peshawar.
8. District Nazir of local office.
9. Budget Assistant of local office.
10. Officials concerned for compliance.
11. Personal File of the officials for record.
12. File No.2/9-Establishment for record.

Seangla
Abbas

7/4/2023

Hasanahid
DEPUTY COMMISSIONER
SHANGLA

Israr Ali
Abbas



**KHYBER PAKHTUNKHWA
TECHNICAL EDUCATION & VOCATIONAL
TRAINING AUTHORITY**



5-771, Old Bara Road, University Town Peshawar

Web: www.kptevta.gov.pk Email: kptevta litigation@gmail.com

NO.KP-TEVTA/Lit/Shangla/ 1139
To

Dated. 02/02/2023.

(78)
"P"

The Deputy Commissioner/ Collector Land Acquisition,
Allpuri, District Shangla.

**SUBJECT: PAYMENT OF ENHANCED COST OF LAND ACQUIRED FOR THE ESTABLISHMENT
OF GOVT. POLYTECHNIC INSTITUTE, SHANGLA:**

Approved
Chand

I am directed to enclose herewith a cross cheque bearing No 49415103 dated. 31-12-2023, Bank of Khyber, in the name of Deputy Commissioner / Collector Land Acquisition District Shangla regarding the subject matter.

It is pertinent to mention that the capital estimated amount of Rs. 33,61,846.75/- as per award No 2016/DORNE/C(SH) 7/35/HC dated 07-10-2006 has already been received by the owners of the land through "Qabzul Wasool" performed of the District Revenue Office, Shangla in January 2007. Later on the matter regarding objection by the owners about the rate of the land in question remained sub-judice and whereas the Referee Court enhanced rate of the land. An amount of Rs. 56,02,110/- was, therefore, deposited in the respective court account by the Government vide Deputy Commissioner, Shangla Office Cheque No. AG0523335 dated 11-02-2015. Despite payment of this enhanced amount, the matter has not been finalized because of absence of proper statement of the Revenue Office concerned which ultimately resulted in erroneous calculation of the balance amount. As a matter of rule, the procedure of calculation is the entire responsibility and adept of the District Revenue office. Whereas, in this particular case, an absolutely erroneously calculation has been made through a commission consisted of an irrelevant person, wherein the 15% Compulsory Compensation Charges has been added with the yearly 6% simple interest. Hence 15+6=21% interest has been applied on the enhanced cost w.e.f. 2003/2004. Thus the enhanced amount has been illegally exaggerated. As a matter of rule, the Compulsory Compensation Charges (15%) is the integral part of capital cost of land and cannot be applied along with 6% interest on yearly basis. The Honorable Senior Civil Judge, Shangla is, therefore, under a wrong impression of the affairs of the case. The honorable court has thus ordered for the payment of further amount of Rs. 11,826,594/- to the decree holders and has also ordered for the seal of the property as well as starting of auction process of the public property in question despite the fact that CPLA No. 580-P/2022 against this

**KHYBER PAKHTUNKHWA
TECHNICAL EDUCATION & VOCATIONAL
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5-771, Old Bara Road, University Town Peshawar
Web: www.kptevta.gov.pk Email: kptevta litigation@gmail.com



erroneous calculation is also subjudice before the august Supreme Court of Pakistan. This office is of the view that almost the entire enhanced amount has already been paid by the Government to the decree holders. In case of any balance amount, the same may be calculated as per procedure by your good office please. Next date of hearing in the case has been fixed for 08-02-2022.

Your goodself is aware of the fact that under Section 28 of the Land Acquisition Act, the Collector has been empowered to pay the excess compensation. The instant bank cheque is, therefore, being submitted to your goodself for further necessary action with the request that in order to avoid the chance of irrevocable overpayment of Public Money to the decree holders, the honorable court may be requested on 08-02-2023 that either the payment to the decree holder may be made through the statement to be prepared by the District Revenue Office, Shangla or the matter of payment to the decree holders be deferred till final decision of the august Supreme Court of Pakistan in the afore cited CPLA.

Your personal interest in this regard shall be highly appreciated.

DA as Above

Endst: NO.KP-TEVTA/Lit/Shangla/ 111 39

DIRECTOR

(N&HR)

Dated. 02/02/2022

Copy of the above is forwarded for information and necessary action to :

1. Section Officer-III, Industries, Commerce and Technical Education Department.
2. Section Officer(Lit), Industries, Commerce and Technical Education Department.
3. The District Attorney, Shangla with the request that the matter may kindly be accordingly brought in notice of the honorable court in order to save the wastage of public money.

DIRECTOR(ADMN&HR)

Secy
3/11

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