

PESHAWAR HIGH COURT, MINGORA BENCH (DAR-UL-QAZA),
SWAT.
FORM "A"
FORM OF ORDER SHEET.

Serial No of order or proceeding	Date of Order or Proceeding	Order or other proceedings with Signature of judge or Magistrate and that of parties or counsel where necessary												
1	2	3												
	22.11.2017.	<p><u>W.P.No.740-M/2017.</u></p> <p><u>Present:-</u> Syed Abdul Haq, Advocate for the petitioners.</p> <p style="text-align: right;">Mr.Akhtar Munir, Advocate for the respondents.</p> <p style="text-align: center;">=====</p> <p><u>MUHAMMAD NASIR MAHFOOZ, J:-</u> Petitioners have invoked jurisdiction of this court under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, on the ground that the respondents/WAPDA has awarded a project for erecting electricity poles 220 KV line and without following the legal provisions of law and without payment of any compensation they have started excavation of their valuable lands. According to the details of number of poles/towers alongwith serial numbers of pole is mentioned below:-</p> <table border="1" style="width: 100%; border-collapse: collapse; margin-top: 10px;"> <thead> <tr> <th style="width: 10%;">S.No.</th> <th style="width: 60%;">Petitioner</th> <th style="width: 30%;">Poles/Tower Number</th> </tr> </thead> <tbody> <tr> <td style="text-align: center;">1</td> <td>Bakht Muhammad</td> <td>110. 111, 112 & 117</td> </tr> <tr> <td style="text-align: center;">2</td> <td>Naseeb Rawan</td> <td>121 & 122</td> </tr> <tr> <td style="text-align: center;">3</td> <td>Omer Islam</td> <td>114 & 115</td> </tr> </tbody> </table>	S.No.	Petitioner	Poles/Tower Number	1	Bakht Muhammad	110. 111, 112 & 117	2	Naseeb Rawan	121 & 122	3	Omer Islam	114 & 115
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4	Yar Nawaz Khan	118
5	Izhar Hussain	113

2. It is alleged that due to the act of respondents they have suffered huge financial losses and their property has been damaged but no proper procedure for assessment of damages or compensation has been followed, hence, seek restraining the respondents from the said act.

3. The standing counsel for the respondents Mr.Akhtar Munir, Advocate appeared in court and stated that this is the only recourse to stop the menace of load shedding.

4. This court has already decided the subject matter on 8.10.2017 in W.P.No.34-M/2017. Reliance is also placed on judgment of August Supreme Court of Pakistan in **2011 SCMR 226 Nisar Ahmad Vs. Masood Akhtar and others.**

5. The erection of poles and supply lines are dealt with in Section 12 of the Electricity Act, 1910 which is reproduced for convenience:-

“12.Provisions as to the opening and breaking up of streets, railways and tramways. (1) Any licensee may, from time to time but subject always to the terms and conditions of his license, within the area of supply, or when permitted by the terms of his license to lay down or place electric

		<p><u>supply-lines without the area of supply, without that area.</u></p> <p>(a) open and break up the soil and payment of any street, railway or tramway</p> <p>(b) open and break up any sewer, drain or tunnel in or under any street, railway or tramway</p> <p>(c) <u>lay down and place electric supply lines and other works;</u></p> <p>(d) repair, alter or remove the same; and</p> <p>(e) <u>do all other acts necessary for the due supply of energy.</u></p> <p>(2) <u>Nothing contained in sub-section (1) shall be deemed to authorize or empower a licensee, without the consent of the local authority or of the owner and occupier concerned, as the case may be, to lay down or place any electric supply – line or other work in through or against any building, or on, over or under any land not dedicated to public use whereon, wherever or whereunder any electric supply – line or work has not already been lawfully laid down or placed by such licensee:</u></p> <p>Provided that any support or an aerial line or any stay or strut required for the sole purpose of securing in position any support of an aerial line may be fixed on any building or land, or having been so fixed may be altered, notwithstanding the objection of the owner or occupier of such building or land, <u>if the District Magistrate by order in writing so directs:</u> Provided also, that, if at any time the owner or occupier of any building or land on which any such support, stay or strut has been fixed shows sufficient cause the District Magistrate may by order in writing direct any such support, stay or strut to be removed or altered.</p> <p>(3) <u>When making an order under sub-section (2), the District Magistrate shall fix the amount of compensation or of annual rent, or of both, which should in his opinion be paid by the licensee to the owner or occupier.</u></p> <p>(4) <u>Every order made by a District Magistrate under sub-section (2) shall be subject to revision by the Provincial Government.</u></p> <p>(5) Nothing contained in sub-section (1) shall be deemed to authorize or empower any licensee to open or break up any street not repairable by the Federal Government or the</p>
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		<p>Provincial Government or a local authority, or any railway or tramway, except such streets, railways or tramways (if any), or such parts thereof, as he is specially authorized to break up by this license, without the written consent of the person by whom the street is repairable or of the person for the time being entitled to work the railway or tramway unless with the written consent of the Provincial Government.</p> <p>Provided that the Provincial Government shall not give any such consent as aforesaid, until the licensee has given notice by advertisement or otherwise as the Provincial Government may direct, and within such period as the Provincial Government may fix in this behalf, to the person above referred to, and until all representations or objections received in accordance with the notice having been considered by the Provincial Government.</p> <p><u>(Underlines supplied for emphasis)</u></p> <p>6. Similarly Section 14 of the West Pakistan Water and Power Development Authority (WAPDA) Act, 1958, being relevant with the present matter, is also reproduced for the sake of convenience:-</p> <p>“14. Right of entry.— (1) The Chairman or any person authorised by him in writing, may enter upon and survey any land, erect pillars for the determination of intended lines of works, make borings and excavations and do all other acts which may be necessary for the preparation of any scheme:</p> <p>Provided that when the affected land does not vest in the Authority, the power conferred by this sub-section shall be exercised in such manner as to cause the least interference with, and the least damage to, the rights of the owner thereof.</p> <p>(2) When any person enters into or upon any land in pursuance of subsection (1), he shall, at the time of entering or as soon thereafter as may be practicable, pay or tender payment for all necessary damage to be done as aforesaid, and in case of dispute as to the</p>
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sufficiency of the amount so paid or tendered, the dispute shall be referred to the Deputy Commissioner of the district whose decision shall be final”.

Through N.W.F.P (Amendment of Laws) Ordinance XVIII of 2001 in section 14 (2), the word “Deputy Commissioner” has now been substituted with “Executive Engineer Irrigation”.

7. The august Supreme Court in judgment rendered in case titled “Nisar Ahmad V/s. Masood Akhtar and others” (2011 SCMR 226) held as under:-

“The said provision clearly bars the licensee (WAPDA) to lay down any electricity supply line or other work on or over any land without the consent of its owner or occupier. In case of objection by the owner or the occupier of the land, the licensee is obliged to obtain written permission from the District Magistrate before erecting any electric pole or laying aerial line. In case, the District Magistrate grants such permission, he is obligated to fix the amount of compensation or rent to be paid by the licensee to the owner or occupier of the land. This process is to be undertaken before installation as the Magistrate is required to inquire into the merits of the objection raised by the owner. Permission can be refused in appropriate cases. The fixation of compensation by the District Magistrate upon direction of the Appellate Court was not in terms of section 12 of the Act. The direction appears to have been influenced by the equitable consideration that removal of the poles and power supply to the appellant would be unfair and unjust. This was not relevant factor for the Appellate Court to have taken into consideration in view of the clear statement of the law. Even if the case was to be considered on equity, the Appellate

Court lost sight of the fact that the installation of the electric poles, the laying of aerial wiring to the land of the appellant and installation of meter was completed with indecent haste of only two days when the plaintiff was away from the village.

6. True that WAPDA is responsible for providing electricity connection to its consumers but only in accordance with the procedure laid down in the law. As already determined, the electric poles were erected on the land owned by the respondent and the aerial wires were also laid over it. This having been done without the consent of the respondent and the written permission of the District Magistrate, WAPDA had violated the provision of section 12 of the Electricity Act. Since the findings of the Appellate Court were not in accord with the said statutory provisions, the High Court was justified in setting them aside in its revisional jurisdiction. This appeal, therefore, fails and the same is dismissed with no order as to cost”.

8. We thus while getting guidance from the above referred judgment of the apex Court, Section 12 of the Electricity Act, 1910 and Section 14 of the WAPDA Act, 1958, direct that the petitioners and all other effectees are allowed to approach the concerned Executive Engineer Irrigation within 30 days of the receipt of this judgment by placing their grievances before him and Executive Engineer Irrigation shall resolve the issue regarding the grievances of the petitioners and other effectees strictly in accordance with the law above referred. The Executive Engineer Irrigation is directed to decide the matter if placed before him within a

period of two months positively, but strictly in accordance with law. Either party, if aggrieved of his determination, would be at liberty to avail the remedies available to them under the law. Needless to observe that any decision of the WAPDA previously issued regretting the claims of the effectees shall be ignored by the Executive Engineer Irrigation while deciding the above matter. This writ petition is disposed of in the above terms.

JUDGE

JUDGE

(A.K.KHAN)

**HON'BLE MR.JUSTICE ISHTIAQ IBRAHIM &
HON'BLE MR.JUSTICE MUHAMMAD NASIR MAHFOOZ.**