

**PESHAWAR HIGH COURT ABBOTTABAD**  
**BENCH**

JUDICIAL DEPARTMENT

**JUDGMENT SHEET**

**WP No. 814-A/2019.**

*Date of hearing 02.02.2023.*

*Petitioner/s (Muneer Ahmed) by Haji Ghulam Basit, Advocate.*

*Respondent/s (Galiyat Development Authority) by Mr. Rashid ul Haq Qazi, Advocate.*

**FAZAL SUBHAN, J.** Through this writ petition filed under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, (Constitution) the petitioner *Muneer Ahmed* has impugned the judgment/order dated: 27.04.2019 with the following prayer: -

*In view of above, it is submitted that by acceptance of present writ petition, the judgment/order of respondent No.2 be declared unlawful, ineffective upon the right of petitioner and case be remanded to the trial Court for further proceedings with cost throughout.*

2. The backdrop in filing of instant writ petition is that earlier, the petitioner had instituted a suit before learned Civil Court, claiming therein that he is allottee of plot No. 170 situated at Khanpur, whereas, additional

land was also allotted to him through certificate No. HT/IT/170-KP 137 dated: 13.03.1999, but now the officials of respondent/Galiyat Development Authority (GDA) are interfering in his ownership and possession of the suit plot No. 170, hence, he sought decree for perpetual injunction.

3. In response to summon issued, the respondent appeared and filed written statement wherein, it was contended that petitioner has encroached upon extra land. During pendency of suit, respondent submitted application for rejection of plaint under Order 7 Rule 11 CPC by raising plea that controversy between the parties is in respect of encroachment over the public property, therefore, jurisdiction of Civil Court is barred under section 11 of Khyber Pakhtunkhwa Public Property (Removal of Encroachment) Act, 1977 (Act). After hearing arguments of learned counsel for parties on the application, the learned Civil Court vide its order dated: 13.03.2018 held that jurisdiction of Civil Court is specially barred under section 11 of the Act, and thus returned

the plaint under Order VII, Rule 10 of Civil Procedure Code, 1908 to the petitioner/plaintiff for its presentation before Tribunal established under the Act. After the return of plaint, the petitioner/plaintiff approach respondent No. 2/ Additional District Judge, Abbottabad (Tribunal) established under the Act, however, after hearing learned counsel for the parties, the Tribunal vide order dated: 27.04.2019, also dismissed the suit of petitioner/plaintiff. Aggrieved from the said order, the petitioner filed this constitutional petition.

4. Arguments heard and record perused.
5. The Khyber Pakhtunkhwa, Public Property (Removal of Encroachment) Act, 1977 (Act) and the Rules framed under section 17 of the Act, have been promulgated to provide for measures of removal of encroachment from public property and matters ancillary thereto. Section 3 of the Act provides a comprehensive procedure for removal of an unauthorized person from the public property, which read as following: -

*Section. 3 (1) If Government, or any authority or officer authorized by Government in this behalf, is satisfied that any person is an unauthorized occupant, it or he may, by order in writing, direct such person to vacate the public, property and to remove the structure, if any, raised by him on the public property, within such period as may be specified in the order; provided that such period shall not be less than three days.*

*(2) The order under sub-section (1) may be served by—*

*(a) giving or tendering it to the unauthorized occupant or any adult male person residing with him; or*

*(b) affixing it at a conspicuous place on or near the public property to which it relates.*

At the same time, section 4 of the Act gives a right to an aggrieved person to have recourse to the Government or authority for review of the order, which is reproduced below for convenience: -

*Section 4. (1) Any person aggrieved by an order made under section 3 may, within seven days of the service thereof, prefer a review petition to Government or any authority or officer who has made such order.*

*(2) Government or, as the case maybe, the authority or officer as aforesaid, may, after considering the review petition filed under sub-section*

*(1) and after giving the petitioner or his duly authorized agent an opportunity of being heard, confirm, modify or vacate the order.*

6. Rule 3 of the Rules deals with the contents of the order issued under section 3 of the Act and review petition, which is replicated for better understanding: -

***Contents of order under section 3---***  
*An order under section 3 shall as far as possible.*

*(a) Contain the description of the Public Property which has been or any other description to identify the property;*

*(b) The nature of the encroachment required to be removed.*

Thus, section 3 of the Act authorized the Government, Authority or authorized officer

to issue an order directing an unauthorized person to vacate the public property, within a period specified in the order, passed in strict compliance of Rule 3 of the Rules, and after issuance of such order, in compliance to the law and Rules, a person aggrieved to such order may have recourse to the relief of review. Thus, the provision of section 4 of the Act would only be pressed into service when order under section 3 of the Act is served upon an aggrieved person, who in addition to the right of review may also filed a suit or application before the Tribunal under section 14 of the Act.

7. In the matter in hand, so far no order under section 3 of the Act read with rule 3 of the Rules has been passed, directing the petitioner to vacate any public property, rather it is contended in the suit before the Civil Court as well as before the Tribunal that the officials of the respondent/GDA are interfering in his peaceful possession, hence, in the absence of any order *ibid*, the Tribunal established under the Act had no jurisdiction to entertain the suit, and therefore, the suit

filed before the Tribunal was not maintainable, hence, the impugned order was patently correct, hence, this writ petition being devoid of any merits stands dismissed

8. Before parting this judgment, it is to be mention that the petitioner, if had any grievance against the officials of the respondent/GDA for interference in his possession, his remedy was available before the Civil Court, which has plenary jurisdiction in the matter. The petitioner had already filed a suit for redressal of his grievance but his earlier suit was returned for want of jurisdiction. Though the said order of return of plaint was not challenged through appeal, however, as a result thereof, petitioner was technically knocked out and at present he has been left high and dry which is not the essence of law. From the facts and circumstances of the case, the petitioner had a valid case before the Civil Court, unless he has been ordered to remove encroachment, if any under the Act. In arriving to this conclusion, reliance can be made to the case of *Muhammad Farid and others-Vs-*

*Municipal Committee, Abbottabad through Administrator and others*, reported in **PLD 1999 Supreme Court, 41**, wherein, it has been held that: -

*Reading of sections 11 and 12 together, makes it abundantly clear that in cases where the Tribunal has been vested with exclusive jurisdiction, the jurisdiction of the Civil Court is barred, Mr. Mushtaq Ali Tahir Kheli, learned counsel for the respondents Nos. 1 and 2 has argued that the Tribunal has been vested with limited kind of jurisdiction and it has no jurisdiction to determine rights between the parties. In our view, the learned counsel appears to be right because section 13 clearly vests the Tribunal with jurisdiction only to determine whether any property is not a public property or that any lease or licence in respect of such public property has not been determined for the purpose of the said Act. Evidently, the questions dealt with by the Tribunal in the present case did not fall within the ambit of its jurisdiction, as visualised by section 13. It is only in this regard that the Tribunal appears to have been vested with*

*exclusive jurisdiction and the jurisdiction of the civil Court has been barred as indicated by section 11. Mr. Muhammad Ibrahim Satti has, however, argued that the words "or anything done or intended or purported to be done under this Act" occurring in section 11 tend to enlarge the jurisdiction of the Tribunal to any action that may be taken under the provisions of the said Act. This contention of the learned counsel appears to be fallacious on the face thereof as sections 11 and 13 are to be read together. Section 13 of the said Act hardly leaves any doubt that the jurisdiction of the Tribunal extends to matters only referred to therein. As has been pointed out earlier, it is only where the Tribunal has been vested with exclusive jurisdiction, the jurisdiction of the Civil Courts to that extent has been barred. The said words referred to by Mr. Muhammad Ibrahim Satti indicate that section 11 does not only relate to actions which may be taken under the Act, but the bar provided in the said section would even relate to purported actions that may be taken under the said Act. Therefore, the Tribunal is clearly not vested with*

*jurisdiction to determine questions other than those referred to in section 13 of the said Act and jurisdiction of the Civil Courts in such cases would not be barred.*

9. With these observations, and while relying on the above quoted judgment, it is held that in case of non-observance of the legal formalities under section 3 of the Act, by the respondent/GDA, the petitioner can competently have recourse to a Civil Court with the fresh suit, in the event of any fresh cause.

***Announced.***

***02.02.2023.***

*Tahir PS*

***J U D G E***