

JUDGMENT SHEET
IN THE PESHAWAR HIGH COURT, BANNU
BENCH.

C.R No. 158-B/2018.

Zia-ul-Haq etc: Vs Abdul Ghafoor

JUDGMENT

Date of hearing 12.02.2019.

Appellant-petitioner: **By Mr. Abdul Jabbar Khattak &**

Irshad Ullah, Advocate.

Respondent: **By Asghar Ali Khan, Daim Khel,**

Advocate.

MUHAMMAD NASIR MAHFOOZ, J.--- This revision petition arises out of orders dated 19.7.2018 and 06.3.2018, passed by learned Additional District Judge, Takht-e-Nasrati Karak and Civil Judge-II, Takh-t-Narati Karak, respectively, whereby application for attachment of tube-well and appointment of receiver filed by the present petitioner was dismissed.

2. Brief facts are that the petitioner instituted a civil suit No. 136/1 of 2017, for declaration along with permanent and mandatory injunction to the effect that

respondent is not owner of Community tube-well installed at Abdul Ghafoor Koroona Chokara, fully detailed in the heading of plaint, in the court of Civil Judge Takht-e-Nasrati Karak; that petitioners had also filed an application for interim relief; that the trial court issued interim injunction order till dated 02.10.2017 whereby the respondent was restrained from interference in right of water supply to the petitioners which was contested by the respondent, on early hearing application on 21.9.2017 and replied to the application of the petitioners on the same date, the trial court dismissed another application for attachment of impugned tube-well. It is alleged in the plaint that the impugned tube-well was owned by community and not by the respondent which was not only agreed by the respondent in the agreement between the parties dated 22.9.2017, but also the respondent had taken in defense in the earlier suit No. 84/1 of 2007 that the impugned tube-well was a community tube-well on which all the expenditures were incurred by Barani Area Development Project-II of Govt: of Khyber

Pakhtunkhwa on demand of an NGO namely Green Land Chokara while the respondent has dishonestly taken the stance in reply to the application in the present suit that the impugned tube-well is privately owned by him; that the learned trial court confirmed the ad-interim injunction on 28.9.2017 which appealed against in Civil Appeal No. 05/14 of 2017 in the court of Additional District Judge, Takht-e-Nasrati Karak which was dismissed on 31.01.2018; that since the respondent was violating the interim injunction of the trial court repeatedly and water supply to the petitioners was discontinued, thus, the petitioners filed not only contempt of court petition but also an application for attachment of the tube-well and appointment of receiver which was accepted by the learned trial court on 06.3.2018 while appointing a receiver to take possession and control of the tube-well; that aggrieved from the order dated 06.3.2018, the respondent filed an application in the court of District Judge, Karak for transfer of the case to another court which was allowed and the case was entrusted to the court of Civil

Judge-I, Takht-e-Nasrati Karak; that the respondent challenged the order dated 06.3.2018 by filing a civil appeal in the court of Additional District Judge Takht-e-Nasrati Karak on 07.3.2018, on which date the order impugned in the appeal was suspended and the respondent was restrained from discontinuing the water supply to the petitioners but the respondent violating the interim order of appellate court and discontinued supply of water to the petitioners on false pretext during pendency of the appeal which violation was brought into the notice of the appellate court and some additional documents found by the petitioners were also filed; that appeal No. 10/14 of 2018 of the respondent was allowed by the learned Additional District Judge That-e-Nasrati Karak on 19.7.2018. Along with the plaint, the petitioner submitted an application for attachment of tube-well and appointment of receiver for running the tube-well which has resulted into the present impugned orders, hence, this revision petition.

3. I have heard arguments of learned counsel for the parties and perused the record.

4. Before discussing the subject matter as agitated in the instant revision petition, it would be essential to mention that the Govt: of Pakistan, Planning Commission prepared an infrastructure for carrying certain developmental works relating to the welfare of community at large. One of these projects included constructions of DWSS TUBEWELL @ WVO Green Land Chokara District Karak. The authority responsible for sponsoring, execution, operation and maintenance of the tube-well was Barani Area Development Project (BADP-II). The project was funded through Asian Development Bank loan and the obligations of the project was to provide clean drinking water to the poor community at their door step. This scheme would benefit 200 houses which will not only save time for the community, but will also be used as an income generating activity. The total cost of the scheme was Rs.1.5 millions

to be maintained by the community with technical assistance of DIU Engineering Staff Karak.

5. The instant dispute arises out of the said community tube-well, i.e, alleged by the petitioner to be used by the respondent for his personal gains and has deprived him from utilizing the water of said tube-well are led to the institution of the present suit. This tube-well is said to be constructed on personal property of respondent situated in Union Council Chokara Ahmad Abad Karak. An agreement was executed between the members Green Land WVO, a local organization setup for running the community tube-well. The terms and conditions include the responsibility of members of the organization and surveillance committee was also formed consisting of social organizers Sarhad Rural Support Program (BADP-II), infrastructure Co-ordinator (BADP-II) and Director (BADP-II).

6. After construction of this tube-well, some dispute arose between one Deedan Gul who instituted a

similar suit against the respondent including the Local Govt: officials, but the same was rejected U/O-7 Rule-11 CPC on 05.10.2007. Now the present petitioner has raised the same grievance and has requested for appointment of receiver to run the community tube-well.

7. The Govt: Departments have consistently followed a trend of constructing schools or other community level development schemes on the properties owned by the private people without following the procedure by acquiring the property and it is considered to be a donation by an individual who then manages the affairs as an administrator without realizing the fact that the community based project is a public interest project and could not assume the status as his ownership. This awareness is yet to be created in the minds of general public of the area but the fault of unawareness would lie on the concerned Govt: officials/departments because no proper set of infrastructure is left for managing the affairs of such like community based projects. Like-wise, the

Barani Area Development Project that has constructed the community tube-well, is stated to have been abolished and, therefore, the disputes of such like nature crop-up between the villagers. No person is authorized to own such like community based projects merely on the ground that it is constructed or located in his personally owned property. Similarly, in the instant suit, respondent cannot lay any exclusive claim to the tube-well or its water which has to be utilized for the use of local villagers of the area concerned. Though, learned counsel for respondent stated at the bar that he has never stopped the supply of water to the petitioners and he is merely creating an excuse for involving him in unnecessary litigations.

8. After going through the record, I have arrived at the conclusion that the statement at the bar of learned counsel for respondent is worth consideration to allay the fears of petitioner against stoppage of supply of water to his premises or according to the routine set which is not being objected upon by anyone else from the

locality, however, it would be appropriate that the concerned Nazim of the Union Council is associated with managing the affairs of water supply in a fair, transparent and just manner without caring for any political or other inclinations. His role would not be a role as a receiver, but only to supervise the tube-well and its water supply to the community concerned. Any person aggrieved, may submit a complaint in writing to the Nazim of Union Council Chokara, who shall give proper attention to address the grievance, if based on proper and reasonable grounds.

9. The instant revision petition is disposed of in the above terms.

Announced.
12.02.2019.

JUDGE