

PESHAWAR HIGH COURT, MINGORA BENCH
(DAR-UL-QAZA), SWAT

FORM OF ORDER SHEET

Court of

Case No..... of.....

Serial No. of order or proceeding	Date of Order or Proceedings	Order or other Proceedings with Signature of Judge and that of parties or counsel where necessary.
1	2	3
	24.05.2022	<p><u>W.P No.1013-M/2019 with Interim Relief (N)</u></p> <p>Present: <u>Mr. Hazrat Rehman, Advocate for Petitioner.</u></p> <p><u>Mr. Raza Uddin Khan, A.A.G for official Respondents.</u></p> <p style="text-align: center;">***</p> <p><u>MUHAMMAD NAEEM ANWAR, J.-</u> By invoking the constitutional jurisdiction of this Court under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, through this petition the petitioner has questioned challenged the letter No.4046 dated 13.05.2019 issued by respondent No.7 (Deputy Commissioner, Dir Lower at <i>Timergara</i>), being based upon the report of Patwari and Tehsildar Timergara dated 08.05.2019, whereby the Deputy Commissioner, Dir Lower has sought the appropriate action from authorities concerned, through his letter, with the subject of "<u>PROVISION OF STATE LAND FOR THE ESTABLISHMENT OF ERS (RESCUE 1122) STATION AT DISTRICT DIR LOWER</u>" by alleging therein that the land measuring 02-kanal 13-marla and 05-sarsai situated</p>

near the Rest House *Timergara* is available for the establishment of permanent ERS Station at District Dir Lower.

2. Succinctly, facts of the instant petition are that the petitioner is daughter of Nawab of Dir namely Muhammad Shah Khisro, who was owner of considerable properties in various places at Districts Dir Lower and Dir Upper and that he had gifted many properties in favour of the petitioner including the property as described through site map annexed with the petition, with specification of the properties as "A", "B", and "C", adjacent to each other, towards northern side of the property described as 'A', there is a road, towards western side there is a Rest House, towards southern of the property described as "C" there is 'Jalo Baba Qabristan' and there exists a road passing the property described as "B" & "C" leading to Bus Stand towards east. With the aforementioned description, it was alleged, that in the year 1976-77, the land was taken into possession by Pakistan Army temporarily. In the 1987, Pakistan Army left the possession of the property and the District Administration took the possession of the land, the predecessor in interest of the petitioner, for redressal of his grievance submitted certain applications on 12.07.1978 & 14.05.1979, to the District Administration but no heed was

paid to those applications. When he was left with no other option, he moved to the Civil Court through a suit seeking recovery of possession of the property as described in the instant petition and boundaries whereof were given in the headnote '*Alif*' of the plaint of Civil Suit No.8/1 instituted on 04.02.1988 decided on 23.10.1989. The reliefs for mesne profit and damages were also sought. The suit was resisted by the defendants i.e., Government of Khyber Pakhtunkhwa through Home Secretary, Commissioner Malakand Division at Saidu Sharif Swat, Deputy Commissioner District Dir at Timergara, Malak Gul Roz Khan s/o Ajab Khan resident of Timergara. In the written statement of the civil suit, the contesting defendants have submitted that it is a state land, however, they remained unable to produce any document before the Court to substantiate their version, as such issue No.6 of the civil suit i.e., whether the plaintiff is the owner of the suit property?, was decided in favour of the plaintiff and the suit was decreed on 23.10.1989 by the learned Senior Civil Judge, Dir at *Timergara* in favour of the predecessor in interest of the petitioner. The decree was followed by the execution proceedings, whereby the decree holder has sought recovery of possession. The learned Executing Court directed the Bailiff of the Court to visit to the spot

and hand over physical/actual possession of the decreed property to the decree holder. Possession of the property was handed over to the decree holder on 11.03.2005. Thereafter, the local police initiated proceedings u/s 145 Cr. P.C through S.H.O of Police Station *Timergara* vide complaint dated 14.03.2005, wherein notices were issued, however, the learned Judicial Magistrate/Civil Judge-II, Dir Lower at Timergara on 04.03.2006 dismissed the said complaint. The petitioner alleges that she is owner in possession of the disputed property with which the respondents have no got concern not only on the basis of decree of Civil Suit but she has also received the compensation when the property was acquired for the road passing from the centre of property, as such the impugned notice dated 13.05.2019 is ineffective upon her right and the same is illegal and violative to the provisions of the Constitution.

3. Arguments heard and record perused.


4. *C.M No.1865-M/2020*

The petitioner, through this application, seeks placing on file the revenue papers of the disputed property, objection/reference petition filed u/s 18 of the Land Acquisition Act, 1894 for enhancement of compensation, attested copy of the written statement in the reference, copy

of the report of the local commission, short order dated 11.11.2020 and copy of the decision in LLA No.106/4 of 2020 dated 11.11.2020, whereby the objection/ reference of the petitioner was allowed and she was held entitled for compensation of an amount of Rs.20,00,000/- per *kanal*. As the documents annexed with the application are attested copies from the judicial record, therefore, this application is allowed and the documents annexed therewith shall be read as part and parcel of the main writ petition.

5. Scrutiny of Civil Suit No.8/1 of 1988 reveals that the description of the property of the suit and that of the instant petition is one and the same. Through the referred to above suit, the predecessor in interest of the petitioner has sought recovery of possession against the then defendants. Though, it was resisted on certain legal and factual objections including the plea that it is a state property, however, the defendants could not prove their contention, as such, the suit was decreed and during execution proceedings physical possession of the property was transferred to the decree holder. It is pertinent to mention that on 11.03.2005, the execution petition was filed after its satisfaction whereas on 14.03.2005, the local police have moved for proceedings u/s 145 Cr.P.C, however, after a long trial, the learned Judicial

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		<p>Magistrate/ Civil Judge-II, Dir Lower at <i>Timergara</i> dismissed the complaint on 04.03.2006.</p> <p><u>6.</u> Not only the civil suit was decreed against the respondents but when 03-kanal 03-marla and 03-sarsaya land was acquired by the Government for construction of <i>Timergara</i> Bypass Road, which passes through from the disputed property, the reference filed by the petitioner was allowed by the learned Referee Court through its judgment dated 11.11.2020. The respondents alongwith their comments have annexed <u>notification bearing No.10/16-SOTA-II/72-1520 dated 15.09.1972</u>, by making a reference to No. (a) of it that the property specified in column 2 of Schedule and more particularly property described in the instant petition alongwith a copy of gazette notification was also annexed reflecting at serial No.85 (14 satta of land in Wand Jalo Baba, Timergara) with contention that it is a state land. In almost three rounds, firstly in civil suit No.8/1 of 1988, the predecessor in interest of the petitioner was declared owner of the disputed property, decree for possession was granted in his favour and during execution proceedings actual possession was transferred to him and that too against the Government. Record reflects that the decree in civil suit No.8/1 of 1988 was assailed before the</p>
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learned District Judge through an appeal, which was dismissed on 09.09.2002, against which, C.R No.311/2005 was filed before this Court. Same was also dismissed by this Court on 20.12.2010 and thereafter the order of this Court was not assailed by the defendants/ respondents, as such, it attained finality. It is by now well settled that an issue decided against a party, if not challenged, shall attain the finality. Reliance in this regard is placed on the cases reported as *Muhammad Aslam and 2 others v. Sved Muhammad Azeem Shah* (1996 SCMR 1862) and *Kanwal Nain v. Fateh Khan* (PLD 1983 SC 53).

7. More-so, the contentions of the respondents are also belied on the basis of the judgment of the civil Court, Appellate Court, this Court and of the Referee Court, therefore, with same plea the respondents cannot assert their right over the suit property by contending that it is a state land. It is an established law that one cannot blow hot and cold in the same breath i.e., approbate and reprobate and on the basis of the principle of estoppel that once the decree was passed and remained unchallenged, it has attained finality, therefore, the claim of the petitioner has been admitted in terms of the decree of the Civil Court and report of *patwari* is in negation of the claim of the respondents.

For setting up a claim about the state land, the respondents were required not only to assail the decree of the civil Court but also of the Referee Court and especially when the possession of the property was handed over to the petitioner, she was required to have been associated with any proceedings conducted by the Patwari, Girdawar or Assistant Commissioner, as the case may be, for holding it to be a stand land.

8. Furthermore, if the respondents are in need of this particular piece of land, they can get it, save in accordance with law, but according to the provisions of the Constitution they cannot be allowed to usurp the property of the petitioner to dispossess her or infringe her fundamental and statutory rights that too in violation of law of the land. The respondents are duty bound to act in accordance with law and the petitioner is entitled to be treated in consonance with law.

9. The learned A.A.G has not been able to controvert this developed aspect when the right of the petitioner qua the disputed property was substantiated through decree of the Court of law. Once a piece of land was acquired from the disputed property by the Government and compensation was paid to the petitioner then her proprietorship cannot be

denied.

10. Therefore, the reasons discussed above, the petitioner has been able to make out a case for issuance of writ. Hence, by allowing the instant petition, the impugned notification is hereby declared to be illegal, against law, in violation of the fundamental right of the petitioner and basic statutory provisions affecting the rights of the petitioner.

Announced
24.05.2022


JUDGE


JUDGE

Office
31/5/2022