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IN THE COURT OF ADDITIONAL DISTRICT JUDGE ORAKZAI, AT BABAR MELA

Civil Misc. Appeal No. 23/13 of 2022

Date of institution: 08.12.2022

Haji Mokil Shah. Vs Shaheen etc.

Serial No of order or proceedings	Date of Order Proceedings	Order or other Proceedings with Signature of Judge or Magistrate and that of parties or counsel where necessary
1	2	3
Order	01/02/2023	<p>Parties present. This is aimed to dispose of captioned Civil Misc. Appeal.</p> <p>2. This Miscellaneous Civil Appeal calls in question the validity and propriety of the Order dated 30.11.2022, passed by learned Senior Civil Judge, Orakzai, in Civil Misc. Application bearing No.39/6 of 2022; whereby, the learned Trial Court has dismissed application of plaintiff for grant of temporary injunction.</p> <p>3. The brief facts of the suit pending trial in the Civil Court are such that plaintiff being lessee was granted license of coal mining vide Lease No. 374 of the year 2016 regarding 1000 acre area located in Dray Khola Orakzai followed by issuance of approved sketch. Mining has been initiated by investing huge amount. Defendants having no legal authority had interfered in the coal mining area that necessitated presentation of suit for declaration mandatory injunction and recovery of damages.</p> <p>4. Defendants on appearance negated the stance of the plaintiff and had taken specific plea that they are working on coal mining in the area allotted to them since 2016. They have investment worth millions and if injunctive order has been passed, it would cause irreparable loss. They prayed for rejection of petition for grant of temporary injunction.</p> <p>5. The learned Trial Judge had dismissed application for grant of temporary injunction vide Order No.05 dated 30-11-2022. The plaintiff being aggrieved filed instant Misc. Civil Appeal, which is under consideration.</p> <p>6. Mr. Abdul Qayyum Advocate while opening the appeal has argued that all the ingredients required for grant</p>


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of temporary injunction are fully existed and had wrongly been excluded from consideration by learned Trial Judge. The mining lease was granted to the plaintiff under the KP Mining Concession Rule 2005 and Khyber Pakhtunkhwa 2 [Mines and Minerals] Act, 2017. is not applicable to the case of parties as the later stated Act has no retrospective effects. Even if it is being made applicable, the dispute is between two private persons having no nexus with the order of licensing Authority; therefore, the Civil Court being Court of ultimate jurisdiction has got the jurisdiction to try such suit.

7. Mr. Zahoor ur Rehman Advocate representing respondents/defendants was of the stance that defendants have been issued mining lease with approved sketch specifying the area where they are conducting coal mining under the authority and supervision of Office of the Director Licensing (South) Mineral Development Khyber Pakhtunkhwa. They are working in specified area of the sketch and neither interfered nor intended to do any illegal activity. Huge amount has been spent over there and coal mining is in progress in accordance with law. If the plaintiff has got any issue, he may approach to the Licensing Authority to redress his grievance as special mechanism has been provided. He concluded that the Civil Court has got no jurisdiction to entertain the suit and application for temporary injunction has rightly been declined by learned Trial Judge.

8. In the light of above discussed facts and circumstances of the case followed by professional assistance rendered by way of arguments of the counsel representing parties, the matter of withholding of injunction is being determined in following terms.

9. Order-39 of the Code of Civil Procedure, 1908, is dealing with the subject of granting or withholding of temporary injunction. The prima facie existence of a right and its infringement, the irreparable damage and balance of


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inconvenience are prime prerequisites to be considered while determining the question of temporary injunction. It has been established on its face that the plaintiff has been issued Prospecting License for Coal over an area of 1000 acres of land situated at Chappar Mishti, Dere Khulay in District Orakzai for a period of two years vide Letter No. 539-40/FDA/MCC/OKI/PL-Col (374)/216 dated 13-09-2018. It was 26-09-2018 when such Prospecting License was followed by Mining Lease on fulfilment of requirements by the plaintiff which was communicated vide allotment Letter/Work Order dated 26-09-2018. Plaintiff was granted permission to start prospecting/mining operation in the area demarcated between the periods of issuance of Prospecting License and Mining Lease. The defendants have simultaneously started work on the mining in area which was objected by the plaintiff before the Office of Director Licensing (South). The Mineral Department at Kohat has issued Letter No. 579/MDW/OKI/PL-Col (374)/216 dated 15-11-2022 to the Director Mines and Minerals KP Peshawar that applied sketch of the plaintiff has unfortunately been found changed and another area has been marked instead of applied area and the applied area has been awarded to Mr. Shaheen (defendant). The office so addressed has been requested in the said letter by the Mineral Department Kohat to constitute Committee to find out the person responsible for such change during the proceedings. All these documentary evidence established on the face of it that prospecting license and Mining Lease was validly granted in favor of plaintiff over specified area that has been demarcated and reflected in approved sketch. The marked area has been subsequently awarded to defendant on the strength of disputed changed in the sketch of plaintiff which speaks about the infringement of accrued right of the plaintiff. Second ingredient are of irreparable damage and third ingredient of irreparable loss being


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interlinked in the present case are taken jointly for consideration. Plaintiff has been issued Prospecting License and Mining Lease in due process of law and investing huge amount on issuance of Work Order on prepared sketch by installation of machinery and skilled workers if interfered will cause more inconvenience on withholding of injunction and will obviously follow irreparable injury. All the three conditions required for grant of temporary injunction are available in the case and therefore decline of the petition is not sustainable.

10. As for as having no retrospective effects of the existing law raised by learned counsel for appellant/plaintiff and the plea of ouster of jurisdiction of the Trial Court raised by learned counsel for respondents/defendants is concerned, return of plaint or bar by law are questions not in issue before this Court; and, therefore excluded from discussion. The Civil Misc. Appeal in hand is about determination of the question of withholding of injunction and its grant which has been focused by excluding all such arguments for being not in issue before this Court.

11. It is not out of place to mention here that the issue between the parties pertaining to change of sketch from applied area under File No. MDW/OKI/PL-COAL (374)/216 is pending resolution since long amongst the offices of Mineral Development Kohat, DG Mines and Minerals Kohat and District Administration Orakzai and being referred to each other without any progress. All of them being public functionaries are supposed to act fairly and the matter involving public exchequer shall be disposed of on high priority. It is, therefore, directed in prevention of the ends of justice being defeated that the matter of change in sketch as well as specification of area for both the plaintiff and defendants be carried out within fortnight but shall not be more than one month period of this Order failing which shall give birth to expose them to

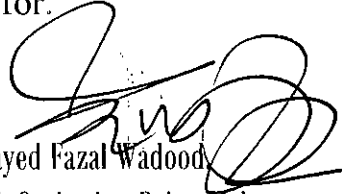

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legal liabilities.

12. Instant Civil Miscellaneous Appeal is allowed with the observation articulated in Paragraph No. 11 of this Order. Requisitioned record be returned with the copy of this Order while file of this Court be consigned to the District Record Room Orakzai after completion and compilation, within the span allowed for.

Announced in open Court


Sayed Fazal Wadood
AD&SJ, Orakzai at Baber Mela