

**Order...11**  
02.02.2023

**Present:**

Petitioner No.02 in person.

Respondents absent.


Today the case was fixed for arguments on temporary injunction application but none appeared on behalf of respondents, therefore, proceedings are adjourned.

Perusal of case file transpires that ample opportunities have been provided for arguments on temporary injunction application but they failed to do so.

Last opportunity granted to both the parties with directions to produce their counsel on next date positively. Otherwise the instant petition will be decided on the available record.

Summons be issued to the respondents for **06.02.2023**.

File to come up for arguments on an application for temporary injunction on the date already fixed.

  
**Sami Ullah**  
Civil Judge-I,  
Orakzai (at Baber Mela)


**Order...12**  
06.02.2023

**Present:**

Parties in person alongwith counsels.

1. This order is intended to dispose of an application for grant of temporary injunction filed by the petitioners/plaintiffs (hereinafter called plaintiffs) against the respondents/defendants (hereinafter called defendants).
2. Brief facts of the case are that the plaintiffs have filed the instant suit for declaration and permanent injunction to the effect that the plaintiffs/petitioners are owner in the disputed property detailed in the

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**Sami Ullah**  
Civil Judge/JM-I  
Orakzai at (Babar Mela)

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**Tor Khan and others Vs Provincial Government and others**

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headnote of the plaint and description of property separately placed on file. That the defendants are passing a water pipeline for the benefit of adjacent village namely Mazari Ghari. That the defendants are passing the said pipeline on agricultural property of the plaintiffs. That doing so the agricultural property of the plaintiffs would suffer irreparable loss and a portion of the same would be wasted. That the defendants be restrained from interfering in the suit property.

3. The defendants/respondents contested the suit by filing written statement and reply of the application for grant of temporary injunction. In the written statement the defendants/respondents contended that the said water supply scheme is not passing through agricultural property of the plaintiffs rather the same is to pass along-side the road.
4. Detailed arguments on application for grant of temporary injunction heard and record perused.
5. Learned counsel for the plaintiffs/petitioners argued that plaintiffs have got a prima facie case. Balance of convenience also lies in their favor and that if temporary injunction is not granted, they would suffer irreparable loss and lastly prayed for the acceptance of the application.
6. The other side fully resisted the application through arguments.
7. It is well settled law that for grant of temporary injunction that a party has to prove three essential ingredients i.e., prima facie case in his favor, balance of convenience tilts in his favor and in case temporary injunction is not granted, he would suffer irreparable loss. Insofar, as the

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*Sami Ullah*  
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instant case is concerned, plaintiffs are claiming that they are owners of the suit property and are in possession of the same from long time. Although plaintiffs have not annexed with their plaint any reliable documentary proof in support of their claim and contention but in this newly merged area of District Orakzai there is no revenue record and also the title of disputed land is not contested by defendants. Therefore, prime facie case regarding the title of disputed land exists in favour of the plaintiffs. As far as the second ingredient necessary for grant of temporary injunction i.e. irreparable loss, is concerned, the plaintiffs has contended that the defendants are passing the said pipeline on agricultural property rather than along-side existing road. Defendants on the other side have contended this stance in their written statement and said therein that the pipeline will passed only alongside the road and not on agricultural property of the plaintiffs. Keeping in view the above stated fact, the plaintiffs are not contesting passing of pipeline on road as far as their prayer for temporary injunction is concerned but according to their pleadings, passing of pipeline through their agricultural property will cause them irreparable loss. Defendants on the other hand are not pressing passing of pipeline through agricultural property. Therefore, tentatively on the basis of available record on file and arguments from the learned counsels, the grant of temporary injunction on the suit property will not stay the said water supply scheme. Rather the defendants will be restrained from passing the pipeline on agricultural

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property only, which if done so, will indeed cause irreparable loss to the plaintiffs.

8. The third important essential ingredient for grant of temporary injunction which is balance of convenience also lies in favor of plaintiffs in the present circumstances.
9. As a result of above discussion, all three essential ingredients for grant of temporary injunction co-exist in favor of the plaintiffs, therefore the application for temporary injunction to the extent of passing the pipeline on agricultural property of the plaintiffs is **Accepted** for six months or till the disposal of instant case whichever comes earlier.
10. No order as to cost. This order of mine is tentative in nature and shall not affect the merits of the case.
11. File be consigned to the record room after its necessary completion and compilation and copy of this order be placed on main file.

Announced  
06.02.2023

*Sami Ullah*  
**Sami Ullah**  
Civil Judge-I,  
Orakzai at Baber Mela.