

**IN THE COURT OF ASGHAR SHAH**  
DISTRICT JUDGE, ORAKZAI AT BABER MELA

CIVIL APPEAL NO. : 2/19 OF 2019  
DATE OF INSTITUTION : 15.12.2018  
DATE OF TRANSFER : 01.04.2019  
DATE OF DECISION : 25.06.2019

Walayat Khan s/o Gul Rehman section Mulakhel, sub section  
char khela, Orakzai District

.....(APPELLANT)

-VERSUS-

1. Mohammad Waar Khan s/o Sarwar Khan section Mula khel
2. Assistant Commissioner/ADM Upper Orakzai

..... (RESPONDENTS)

---

JUDGEMENT  
25.06.2019

Vide impugned order, dated 30.10.2018, the learned Assistant Commissioner/Additional District Magistrate Upper Orakzai, while accepting the findings of the Jirga members dismissed the claims of the appellant pertaining to the title of suit property as well as his claims of benefits attached to the suit property in shape of class-IV employees. Hence the appeal in hand.

2. Arguments heard and record perused.

3. It is worth mentioning that on May 29<sup>th</sup>, 2018 FATA Interim Governance Regulations, 2018 (FIGR) was promulgated whereby the Frontier Crimes Regulations, 1901 was repealed and on May 31<sup>st</sup>, 2018 the President of Pakistan assented the Act, called the constitution (Twenty-Fifth

*Handwritten signature and date:*  
25/06/19

*Handwritten note:*  
Seen  
01-07-19

Amendment) Act, 2018, promulgated on June 5<sup>th</sup>, 2018, thereby omitting the Article-247 of the constitution and altered Article-246, bringing FATA within the limit of province of Khyber Pakhtunkhwa. Later on (FIGR) was challenged before the Peshawar High Court, Peshawar in the constitutional petition no. 3098-P of 2018 and accordingly the same was declared ultra vires through judgement dated 30.10.2018. The said judgement was upheld by the Supreme Court of Pakistan in civil petition no. 773-P of 2018 on 31.12.2018 and the Provincial Government of Khyber Pakhtunkhwa was granted six months time to extend the jurisdiction of ordinary courts throughout the province.

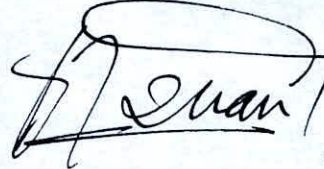
4. Admittedly, by the time of passing of impugned order dated 30.10.2018 neither the FCR nor the FATA Interim Governance Regulations, 2018 (FIGR) was in field hence, the impugned order passed by the Assistant Commissioner/Additional District Magistrate Upper Orakzai is illegal and **CORRUM NON JUDICE**. Therefore, without touching the merits of the case, appeal in hand is accepted, impugned order of the Assistant Commissioner/Additional District Magistrate Upper Orakzai dated 30.10.2018 stands set aside and the case is remanded to the court of Civil Judge-I for trial afresh in accordance with law, where parties shall appear for trial on 01.07.2019. No order as to costs.

2/2/2019  
25/6/19

13

5. File be consigned to Sessions Record Room after its completion and compilation.

Announced  
25.06.2019



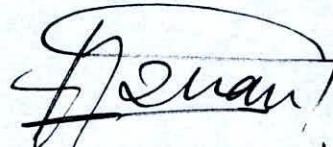
(ASGHAR SHAH)  
District Judge, Orakzai  
at Baber Mela

25/06/19

CERTIFICATE

Certified that this judgment consists of three (03) pages.  
Each page has been read, corrected where-ever necessary and signed  
by me.

Dated: 25.06.2019.



(ASGHAR SHAH)  
District Judge, Orakzai  
at Baber Mela

25/6/19