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17.02.2021

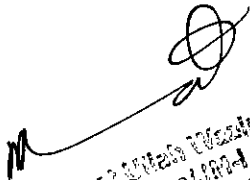
Presence as before. Through my this single order, I intend to dispose off an application for rejection of plaint U/O 7-R-11 CPC, filed by the defendants against the plaintiff.

This application was strongly contested by the other party by filing replication and forwarding arguments thereto.

Brief facts of the case are that the plaintiff filed the instant suit for specific performance of the agreement dated 16.12.2016 through which the defendant No. 01 to 05 is the elders of their respective tribes agreed to give the coal mining area measuring 926 Acres situated at Utman Khel, Pitaw Mela to the plaintiff. That the plaintiff fulfilled all the codal formalities and submitted the case before the Director Minerals, FDA on 04.01.2017. The Deputy Director Minerals forwarded a letter to the then Political Agent Orakzai for further proceedings on 08.02.2017 but the aforesaid defendants refused to honor the agreement. The plaintiff then submitted an application before the Commissioner Kohat on 31.12.2018 for implementation of the agreement, who forwarded the same for necessary action to the Deputy Commissioner, Orakzai. That in the meanwhile, the defendant No. 27 got an agreement with the same tribe for coal mining in the aforesaid area without notice to the plaintiff. That the plaintiff submitted an objection petition over the said agreement before the DC, Orakzai, who marked the same to the concerned Tehsildar and on appearance by both the parties before the Tehsildar, the relevant defendants refused to honor the same agreement. That the relevant defendants were asked time and again to honor the agreement but they refused, hence, the present suit.

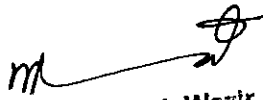
Arguments heard and record perused.

After hearing of arguments and perusal of the record, I am of the opinion that admittedly the lease area comprises in 926 Acres which is equal to 7408 Kanals and the same is owned by the Utman Khel tribe which comprises in thousands of persons.


F. S. R. Rikab Ali
Deputy Commissioner
Orakzai (Pitaw Mela)

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The alleged agreement is signed by only 05 persons of the Utman Khel tribe but there is nothing on record that they were the representatives of a tribe comprising in thousands of persons and also there is nothing on record that these 05 persons were having special power of attorney on behalf of the whole tribe to enter into an agreement on their behalf with the plaintiff with respect to thousands of Kanals of land owned by the tribe. As per the KPK Minerals Sector Governance Act, 2017 and the KPK Minerals Sector Governance (Amendment) Act 2019, there is Jalsa-e-Aam for such agreements in which the participation of the whole tribe is necessary and the same can not be conducted by obtaining consent of a few persons. The suit agreement is done in such a way which clearly smells the suppression of the rights of the co-tribesmen and fraud committed with them. The said agreement is without any consideration on behalf of the plaintiff which is the life blood for any agreement. Such a collusive and fraudulent agreement cannot be permitted to be used as a tool to frustrate the explorations of Minerals in ones paternal property by suing them and dragging them in the courts of law. The suit agreement has neither been registered under the Registration Act, 1908 nor any overt act has been done by any of the party in furtherance of the agreement rather there are findings of the Additional Deputy Commissioner, Orakzai, Additional Assistant Commissioner, Lower Orakzai and the Tehsildar, Lower Orakzai, (available on case file) in inquiries concerning the suit agreement that the same be cancelled and the suit land has been given by the concerned tribe to the one Nizam Uddin, the present defendant No. 27 in Jalsa-e-Aam. Thus, there is no substance in the case of the plaintiff.


Rafiq Ullah Wazir
Civil Judge/JM-I
Orakzai at (Bahar Mela)

Furthermore, according to the KPK Minerals Sector Governance Act, 2017 and the KPK Minerals Sector Governance (Amendment) Act, 2019, there is a complete scheme and frame work of things to be done has been provided in the said Acts and also laid

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down means and procedures for protection of rights claimed by the interested persons. They can approach for redressal of grievances to the licensing authority as envisaged in the section 02 (U) of the KPK Minerals Governance Act, 2017 and then to the Appellate Tribunal as envisaged in the section 05 (A) of the KPK Minerals Governance (Amendment Act, 2019). Further, u/s 102 (6), it is provided that

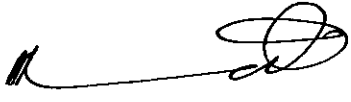
“notwithstanding anything provided in the other law for the time being in force, no court shall have jurisdiction to entertain or to adjudicate upon any matter to which the Appellate Authority under this Act is empowered to dispose off or to determine the validity of anything done or an order passed by it”.

Thus, jurisdiction of the Civil Court is specifically barred under the said provisions.

Therefore, in the light of the aforesaid findings, the application in hand is accepted and the plaint of the plaintiff is hereby **rejected** being not disclosing any cause of action against the defendants and being barred by law. Costs shall follow the event.

File be consigned to the record room after its necessary completion and compilation.

Announced
17.02.2021


(Rehmat Ullah Wazir)
Civil Judge-I
Orakzai (at Baber Mela)