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Order-10
12/02/2021

Petitioner absent.

Respondent present.

Order could not be announced due to absence of petitioner. Petitioner be noticed for next date. File be put up for order on 19.02.2021.


Farman Ullah
Senior Civil Judge,
Orakzai at Baber Mela.

Order-11
19/02/2021

Petitioner present through counsel.

Respondent present in person.

My this order is intended to decide question of maintainability of instant execution petition.

Learned counsel for the parties already heard and record gone through.

Record reveals that, Piyao Khel and Ajab Gul submitted an application to the Assistant Commissioner, Lower Orakzai on 13.02.2019; wherein, it was contended that Irshad Khan, Khanjid and Muhammad Naeem have stolen their four cows and were also found guilty by the Qaumi Jirga but in spite of that they have neither returned their cows nor paid price of the same.


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Senior Civil Judge
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Along with the petition copy of decision of Jirga dated: 22.11.2017 was annexed and according to which there was a dispute between Ajab Gul, Piyao Khel of sect Bezot and Muhammad Naeem, Irshad Khan, Khanjid of sect Stori Khel, over stealing of four cows. It was the allegations of Ajab Gul etc. that Irshad Khan etc. are involved in commission of theft of their four cows. On such allegations of Ajab Gul etc. a Jirga comprising 06 members from sect Bezot and 06 members from sect Stori Khel was constituted and as per available record the Jirga members vide their decision dated: 22.11.2017 found Irshad Khan guilty.

The same application was marked by the learned Assistant Commissioner to Tehsildar concerned to resolve the issue. However, after merger of FATA, into Khyber Pakhtunkhwa, the case file was transferred to the court of learned Civil Judge-II Orakzai. The learned Civil Judge-II Orakzai disposed of the case vide order dated: 03.09.2019 by holding that the issue between the parties is past and closed transaction as it has been resolved through Jirga dated: 22.11.2017. However, the parties are at liberty to adopt any legal course for redressal of their

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grievances and thereafter, instant petition for execution of decision of Jirga dated: 22.11.2017 was filed.

Admittedly, instant execution has been filed on the strength of and for execution of decision of Jirga dated: 22.11.2017.

The question before the court is whether the decision of the Jirga dated: 22.11.2017 is executable by the court or not? Keeping in view the available record it is evident that the Jirga, which has given the decision was neither constituted by the APA under the FCR nor by the Assistant Commissioner after the introduction of FIGR, rather, from the record it is evident that the same Jirga was privately constituted. Similarly, from the record it is also clear that neither any order/decreed has been passed by the APA or AC on the basis of such decision of Jirga, nor the court has passed any decree/order on the strength of such a decision of Jirga. The court can only execute a decree/order which has been passed by the competent forum but in instant case no such circumstances exist ⁱⁿ as instant case no order/decreed of competent court is in existence rather decision dated: 22.11.2017 is the outcome of privately constituted Jirga. Hence, the

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OR

execution petition in hand is not maintainable. So,
the instant execution petition is dismissed. No order
as to cost.

File be consigned to record room after
completion and compilation.

Farman Ullah
19.02.2021

~~FARMANULLAH
Senior Civil Judge
Orakzai at Baber Mela
Farman Ullah
Senior Civil Judge,
Orakzai at Baber Mela.~~