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Order...08

27.08.2022

Plaintiff through counsel present. Arguments on the point of maintainability already heard and record perused.

Brief facts of the case in hand are that plaintiff namely Mutasim Khan has filed the instant suit against defendants namely Jasrat etc. for permanent injunction to the effect that plaintiff is a valid mining lease holder for coal over an area situated near village Ghaz Dara Bezot, District Orakzai. That a valid agreement dated 26.12.2017 was entered into with the elders of Qaum Bezot, Orakzai but now defendants are creating hinderance in the operation of mining and have obstructed access to the area under the mineral title by blockage of road/pathway. That defendants were asked time and again not to obstruct access to the area under the mineral title but in vain hence, the present suit.

The 25th Constitutional (Amendment) Act, 2018 omitted Article 247 of the Constitution of Islamic Republic of Pakistan, 1973, resultantly, all Federal and Provincial Laws stood extended to the newly merged districts. The Khyber Pakhtunkhwa Mineral Sector Governance (Amendment) Act, 2019 is therefore, extended to the newly merged districts.

As per Section 2(A) of the Act *ibid*, all mines and minerals shall be and shall always be deemed to have been the property of Government and Government shall have all powers necessary for the proper enjoyment of its rights thereto.



27/08/022

ZAHIR KHAN
Civil Judge/JM
Kalaya Orakzai

Section 8-A of the Act *ibid*, provides for establishment of District Mining Liaison Committee. Per Section 8-A (f), the Committee shall remove hindrances that arises in the operations of mineral title and ensuring un-obstructed access of the mineral title holder to the area granted under the mineral title.

Similarly, as per Section 56 of the Act *ibid*, if any person obstructs free access of a lease holder to the licensed or leased area or directly or indirectly tries to interfere with the prospecting or mining operation by a holder of a mineral title, it amounts to an offence punishable u/s 56 of the Act. On the complaint of the authority concerned, the local police may register a criminal case against the person who interferes in the operation of mining. There is nothing on record which could show that plaintiff has ever approached the authority concerned for redressal of his grievances. Plaintiff cannot file a declaratory suit in cases relating to mine and mineral, therefore, suit for permanent injunction is also not maintainable, hence, suit in hand stands dismissed. No order as to costs.

File be consigned to District Record Room, Orakzai after its necessary completion and compilation.

Announced
27.08.2022



Zahir Khan
CJ-I, Tehsil Lower, Orakzai.