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**IN THE COURT OF SAMI ULLAH,**  
**CIVIL JUDGE/JM-I, ORAKZAI AT BABER MELA**

Civil Suit No. 37/1 of 2022

**New Orakzai Flour Mills**

.....VS.....

**District Food Controller and others.**

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**Order.**

07.10.2022

1. Parties present.
2. This order from my court is directed to dispose of two applications;
  - a. Application for rejection of plaint under order VII Rule 11 CPC, filed by petitioners/defendants.
  - b. Application for temporary injunction filed by petitioner/plaintiff.
3. Brief facts of the case are that plaintiffs have filed the instant suit for declaration and permanent injunction to the effect that notification Under Section 4 of the Land Acquisition Act, 1894 issued by the District Collector, Orakzai in respect of Acquisition of land for Grain storage was illegal, without lawful authority and of no legal effect. That plaintiff has established New Orakzai Flour Mill in the year 1999 and was allotted quota of floor for District Orakzai as sole distributor in

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the area. On 9th October, 2020 Secretary Food Department Khyber Pakhtunkhwa initiated process of acquisition of land through District Commissioner Orakzai for food grain storage. That the site proposed for such Godown was selected in the area which is neither suitable nor is in accordance with the prescribed criteria issued by the Food Department Khyber Pakhtunkhwa. The plaintiff approached the Honorable Peshawar High court, Peshawar in its Writ jurisdiction through Writ Petition No.2987-P/2021 and the matter was decided on 29.09.2021. August Peshawar High Court, Peshawar declared that the writ petition be treated as an objection petition and the District Collector shall decide the objection Petition. Afterwards, feeling aggrieved from the Award issued by the District Collector Orakzai under the act ibid, the plaintiff once again approached the Honorable Peshawar High court, Peshawar through writ petition No.1260-P/2022 and it was decided that the case involves exclusive executive decision of Executive Authority and Factual Controversy which cannot be decided in the writ petition, hence the instant suit.

4. Defendants were summoned, who appeared before the court and submitted their written statement wherein they raised numerous factual and legal objections. Defendants also submitted an application under order VII rule XI, of Civil Procedure Code, 1908, for the rejection of plaint.

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5. The plaintiff had earlier filed an application for the grant of Temporary Injunction at the time of institution of Suit, which was put to notice for the defendants to rebut the same.
6. Detail arguments on applications collectively heard and record perused wherein submissions of the parties and case laws referred were considered.

**A**      **Application under Order 7 Rule 11 CPC:**

7. This application was filed by petitioner/defendants contending that suit of plaintiff is barred by law and liable to be dismissed. Defendants/petitioners have sought rejection of plaint on the ground that as per Section 52 of the Land Acquisition Act, 1894 jurisdiction of this court is barred to adjudicate upon such matters. The application was contested by respondent/plaintiff.
8. Perusal of record shows that plaintiff has sought declaration to the effect that the notification dated 5<sup>th</sup> April 2022 under section 4 of the Land Acquisition Act, 1894 issued by Deputy Collector, Orakzai in respect of acquisition of land for food grain storage at Sthar Sam to be illegal in connection with the instructions issued by the food department for the selection of site for aforementioned purpose.
9. Record further reveals that the land in question was acquired by the defendant No. 3 for defendant No.1 under section 4 of the Land Acquisition Act, 1894 and all codal formalities have been

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observed and at the end an award under section 11 of the act  
ibid has been issued.

10. Further, the procedure provided by the Act ibid is such that an objector/aggrieved person is supposed to move to the office of the collector in case of any grievance against Award so granted. And then the collector may file reference in the court of Referee Judge as provided in section 18, 30 and 52 of the Act ibid. But in the instant case the plaintiff didn't follow the mechanism provided by the law and have brought the suit in this court. This court lack jurisdiction in the present suit as alternate procedure is provided by the Act ibid. Guidance has been taken from 2009 YLR 1402, the operative part of the said judgment of Honorable Peshawar High court, Peshawar read as follow,

*"That whatever may have been the objections that shall be adjudicated upon by the authority mentioned in Section 5-A of the Land Acquisition Act, 1894, which debars a civil court from questioning the propriety of a notification under section 4 of the Act. The objectors have to go to the Collector and the finding of the Provincial Government/ Commissioner on the objection shall be conclusive."*

Likewise, similar view has been held in the judgments of Higher Judiciary in 2010 YLR, Karachi, 247 and 2005 MLD, Lahore 168.

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11. The object of exercise of power Under Order-VII, Rule-11 of Civil Procedure Code, 1908, is to bring an end to the incompetent suits at the earliest to avoid wastage of time and on account of some legal impediments full-fledged trial would be futile exercise.
12. Keeping in view the above legal and factual position, it is held that the present suit is barred by the above-mentioned legal provisions. Hence, application for rejection of plaint is accepted. Plaint stands rejected.

**B**      **Application for temporary injunction.**

13. As plaint is rejected, therefore, application for grant of temporary injunction needs not to be discussed.
14. File be consigned to record room after necessary completion and compilation.
15. Costs to follow the events.

**Announced**  
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