

*In the name of almighty Allah who has got unlimited jurisdiction over and beyond the universe.*

BEFORE THE COURT OF  
ADDITIONAL DISTRICT JUDGE, ORAKZAI AT BABER MELA

**Civil Appeal No. CA-15/14 of 2022**

**Date of institution: 20.10.2022**

**Date of decision: 28.11.2022**

New Orakzai Flour Mills situated at opposite WAPDA House Thall Road Hangu, through its owner Doctor Malak Ghazi Gulab Jamal son of Jamal Dar resident of House No. 72 Simbli Road, Barakoh Islamabad.

..... (**Appellant/plaintiff**)

...Versus...

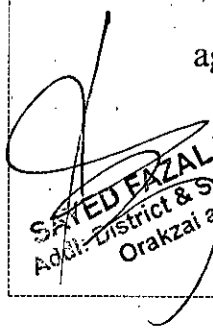
1. District Food Controller Orakzai, Railway Road Hangu Khyber Pakhtunkhwa.
2. Secretary Food Department Khyber Pakhtunkhwa Sahib Zada Abdul Qayyum Road Civil Secretariat Peshawar.
3. Deputy Commissioner Orakzai, District Headquarter Orakzai at Baber Mela District Hangu.
4. Additional Assistant Commissioner, District Headquarter Orakzai at Baber Mela District Hangu.
5. Executive Engineer Communication & Work Services, District Orakzai, at Baber Mela District Hangu.
6. Tehsildar Lower Orakzai at Tehsil Headquarters Kalaya Lower Orakzai.
7. Commissioner Kohat Division Kohat OTS Road Jungle Khel Kohat.
8. Secretary Home & Tribal Affairs Department KPK Sahibzada Abdul Qayyum Road Civil Secretariat, Peshawar.

..... (**Respondents/defendants**)

**Appeal against Judgement, Decree and Order dated 07.10.2022, passed in Civil Suit No. 37/1 of 2022.**

**JUDGMENT**

Instant Civil Appeal has been preferred by the appellant/plaintiff against the Judgment, Decree & Order dated 07.10.2022, passed by learned

  
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Addl. District & Sessions Judge  
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Civil Judge-1, Orakzai in Civil Suit bearing No.37/1 of 2022; whereby, plaint was rejected under Order-7 Rule-11 Code of Civil Procedure, 1908.

2. Plaintiff has established New Orakzai Flour Mill in the year 1999 and was allotted quota of flour for District Orakzai as sole distributor in the area. It was 9<sup>th</sup> of October, 2020 when Secretary Food Department Khyber Pakhtunkhwa initiated process of acquisition of land through Deputy Commissioner Orakzai being District Land Acquisition Collector, for establishing food grain storage on the prescribed criteria. The site proposed for such Godown was selected in the area which is far away from the location of plaintiff's Mill. This act of defendants was allegedly based on mala fide and is expected to cause loss not only to the plaintiff but to the costumers as well. The matter was agitated in Writ Petition WP No. 2987-P/2021 which was decided on 29-09-2021; the operating part of which speaks that the District Collector shall decide the objection petition and if no objection is pending, the writ petition shall be treated as objection petition and be decided in accordance with law within one month. Second writ petition bearing No. WP No.1260-P/2022 was filed and was decided on 05-07-2022 by dismissing the same on the score of being not maintainable. The matter was agitated in the Civil Suit where respondents had presented application for rejection of plaint which was allowed.

3. Defendants/respondents on appearance objected the suit on various legal as well as factual grounds in their written statement. It was specifically pleaded that neither cause of action has been disclosed in contents of the plaint nor the plaintiff has got locus standai to file suit. Jurisdiction of the Court was also questioned in the petition with the prayer of rejecting plaint.

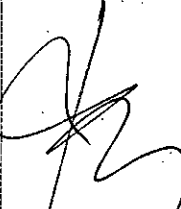
4. The learned Trial Court has obtained reply of the petition and on hearing the parties, rejected the plaint on the score of lacking jurisdiction.



Feeling aggrieved, plaintiff preferred instant Civil Appeal which is under consideration.

5. Learned counsel representing appellant argued that the matter in issue of the suit is that of purely civil nature carrying actual controversy and does not fall within the ambit of the jurisdiction of Land Acquisition Collector. The Civil Court being Court of ultimate jurisdiction is competent and is single available forum for determination of factual controversy of the civil nature. The Flour Mill of the plaintiff is the exclusive and sole distributor of flour and is running on the basis of specified quota of flour for District Orakzai. If the site proposed has been finalized, the plaintiff's mill as well as the costumers will suffer huge financial loss; that too, in continuation. It was added that the proposed site has been selected in violation of the policy of the Provincial Government. It was concluded that the contents of the plaint have been misconceived followed by wrong application of Law on the given facts need interference of this Court.

6. Learned District Attorney Orakzai and Superintendent to the Office of Deputy Commissioner Orakzai being respondents/defendants are of the stance that land acquisition for construction of Food Grain Godown, Orakzai has been initiated in the light of the Policy of the Government after technical assessment while keeping in view the needs and proper utilization of the project. The land acquisition is in the process of award and law on the subject has fully been complied with. The objection petition referred by honorable, the Peshawar High Court, Peshawar has been dismissed on its merit by the Land Acquisition Collector Orakzai and further remedy of referee Judge is available to the plaintiff. The learned Trial Court has rightly rejected the plaint and proceeding further with the matter is of no use; the District Attorney of Orakzai stated.

  
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7. Objective perusal of impugned order reflects that the plaint has been rejected under Order-7 Rule-11 Code of Civil Procedure, 1908; that too, on the score of lacking jurisdiction. Whether the Civil Court is having jurisdiction and that the rejection of plaint has rightly been carried out are questions for determination in instant appeal. Section 5A of the Land Acquisition Act 1894, is reproduced herein below being relevant provision of law:

**[5-A. Hearing of objections.---(1)Any person interested in any land which has been notified under Section-4, sub Section (1), as being needed are likely to be needed for a public purpose or for a company may, within 30 days after the issue of the notification, object to the acquisition of land or of any land in the locality, as the case may be.**

**(2) Every objection under sub Section (1) shall be made to the collector in writing and the collector shall give the objector an opportunity of being heard all such objections and after making such further inquiry, if any as he thinks necessary, submit the case for the decision of the Provincial Government, together with the record of the proceedings held by him and a report containing his recommendation on the objections. The decision of the Provincial Government on the objection shall be final.**


**(3) For the purpose of this section, a person shall be deemed to be interested in land who would be entitled to claim and interest in compensation if the land were required under this Act.]**

The word "interested" has been used in Section-5A of the Land Acquisition Act, 1894, which obviously include the plaintiff as he is interested in the land under acquisition by implication. It is plaintiff who seeks remedy against the acquisition of such land and suggesting some other site near the flour mill of the plaintiff and thus, he, by consequence, falls within the definition of the

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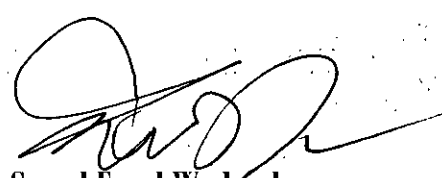
person interested in the land notified under Section-4 of the Land Acquisition Act 1894 for construction of Food Grain Godown. Further, the word "object to the acquisition of land" includes every type of dispute. Similarly, a mechanism has already been provided under Land Acquisition Act, 1894, for settlement of dispute of all types and natures pertaining to every matter of acquisition. Moreover, Section-5A of Land Acquisition Act, 1894, on providing mechanism for dispute resolution impliedly excludes the jurisdiction of Civil Court and thus it has rightly been determined by the learned Trial Court that Civil Court has got no jurisdiction. It is not out of place to mention that honorable the Peshawar High Court, Peshawar vide Judgement dated 05-07-2022 passed in Writ petition No. 1260-P/2022 titled "New Orakzai Flour Mills vs Government of Khyber Pakhtunkhwa & Other" has termed the matter in issue of the suit as executive decision of Executive Authority that cannot be reviewed in the Court. As for as operating part of the impugned order is concerned, it is well settled notion of the Law that objection to jurisdiction shall be dealt with under Order-7 Rule-10 of the Code of Civil Procedure, 1908 and Rule-11 of this Order is not applicable to the bar of jurisdiction (1986 CLC 1181). The Trial Court was required to attract Rule-10 which prescribes the return of plaint instead of rejecting of the plaint. The law on the subject is mandatory in nature as an adjudication by a Court without jurisdiction is *Coram non judice*. When the Court lacks jurisdiction, the plaint is to be returned for presentation to proper forum and Court cannot pass any Judicial Order (2013 MLD 1532-2011 CLC 1450).

8. For what has been discussed above, appeal is partially allowed to the extent of setting aside order of rejection of plaint under Order-7 Rule-11 of Code of Civil Procedure, 1908. The case is remanded back to the learned Trial Court for return of plaint under Order-7 Rule-10 of Code of Civil

  
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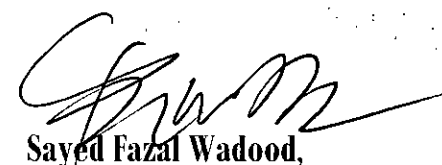
Procedure, 1908 on the score of lacking jurisdiction. The appellant/plaintiff shall appear before the learned Trial Judge for receiving plaint with endorsement thereon, the date of its presentation and return, the name of the party presented it and a brief statement of reasons for such return of plaint. Requisitioned record be returned with copy of this Judgement; whereas, File of this Court be consigned to District Record Room, Orakzai as prescribed within span allowed for.

Announced in the open Court  
28.11.2022

  
Sayed Fazal Wadood,  
ADJ, Orakzai at Baber Mela

**CERTIFICATE.**

Certified that this Judgment is consisting upon six (06) pages; each of which has been signed by the undersigned after making necessary corrections therein and read over.

  
Sayed Fazal Wadood,  
ADJ, Orakzai at Baber Mela