

IN THE COURT OF ZAHIR KHAN, JUDICIAL MAGISTRATE-I
KALAYA, ORAKZAI

Complaint No: 2/4 OF 2022.
Date of Institution: 19.02.2022.
Date of Decision: 02.08.2022.

Muhammad Saeed S/O Khanokay R/O Feroz Khel, Lower Orakzai
VS
Abdul Samad and Company, Feroz Khel, Lower Orakzai

Complainant absent. Respondent Abdul Samad present.
Counsel for complainant did not bother to appear before the court for arguments on maintainability of the complaint in hand despite repeated opportunities. Record perused.

Record shows that complaint in hand was filed by Muhammad Saeed U/S 145 Cr. PC alleging that respondent Abdul Samad and company is operating mining operation in the area of Feroz Khel, District Orakzai without any prospecting license for coal over the area which is joint and undivided land of Qoum Feroz Khel. That without partition of the area/land, the operation of mining by respondent and his company is resulting into breach of peace as respondent and company made firing, therefore, the disputed property be attached accordingly.

The learned transferor court recorded statement of complainant U/S 200 Cr. PC and vide order dated: 19.02.2022, directed S.H.O PS

Lower Orakzai to conduct inquiry and submit his report on date fixed.

After completion of inquiry, inquiry report of S.H.O concerned was received and placed on file. In light of available record, complaint was fixed for arguments on the point of maintainability.

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As per contention of respondent, he has a valid Prospecting License for coal over an area of 787.32 Acres near village Pitao Feroz Khel, District Orakzai. Copy placed on file.

It is alleged that sufficient material is placed on file and that there is apprehension that the dispute is likely to lead to breach of peace and it is requested that the disputed property be attached. Application of Qoum Feroz Khel for restraining respondent and company from operation of mining, application for proceedings U/S 107 Cr. PC, copy of Iqrar Nama, copy of Jirga decision, copy of application dated August, 31st 2020, copy of FIR No. 32 dated 24.04.2020 U/S 341, 186, 188, 189, 147, 149 PPC PS Lower Orakzai and copy of Offer Letter for grant of Prospecting License bearing endorsement number 2828 dated 16.03.2021 addressed to respondent Abdul Samad and company is placed on file.

Residents of Qoum Feroz Khel through complainant are seeking attachment of the mining area situated at Feroz Khel. As per Section 2-A of the Khyber Pakhtunkhwa Minerals Sector Governance (Amendment) Act, 2019 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 right thereto. The Act ibid is extended to the newly merged districts. There is a District Mining Liaison Committee to resolve issues relating to mines and minerals, remove hindrances that arise in the operation of mineral title and ensuring un-obstructed access of the mineral title holders to the area granted under the mineral title. Any person(s) involved in illegal mining is to be proceeded against the relevant provisions of Act ibid. As mentioned above, the ownership of

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mines and minerals is vested in government, therefore, the area in question cannot be attached within the meaning of Section 145 Cr. PC. Furthermore, attachment of the area in question will result into loss to government kitty on one hand and will amount to interference in functions of authorities concerned on the other hand.

As far as apprehension of alleged breach of peace is concerned, S.H.O concerned is required to bound down the parties within the meaning of Section 107 and 151 Cr. PC.

In view of the above facts, this court is debarred from proceeding further with the complaint. Complaint is hereby dismissed being not maintainable.

File be consigned to record room after necessary completion & compilation.

Announced
02.08.2022



Zahir Khan
Judicial Magistrate-I
Kalaya, Orakzai