

Adam Khan Vs Project Director "PMU" and others

Order...02

29.04.2024

Present:

Petitioner in person along with counsel.

Respondent No.01 and 02 through attorney and respondent No.03 in person.


Muhammad Hussain Naeem submitted authority letter on behalf of respondent No.01 and 02 which is placed on file.

In respect of personal appearance of respondent No.03, his signature is obtained on the margin of order sheet.

Reply of the instant petition submitted by respondents which are also placed on file.

Moreover, counsel for the petitioner submitted an application for extension of status quo. Perusal of case file transpires that status quo has already been granted, hence, extended till next date, subject to any contrary order of superior court.

File to come up for arguments on the instant petition on 07.05.2024.


Sami Ullah
Civil Judge-I,
Orakzai (at Baber Mela)

Order...03

07.05.2024

Present:


Petitioner in person along with counsel.

Respondent No.01 and 02 through their representative while defendant No.03 in person.

Hashmat Khan, Legal Advisor of the respondent No.01 and 02 submitted authority letter on behalf of said respondents which is placed on file.

1. Arguments on application for grant of temporary injunction heard and record perused.

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Sami Ullah
Civil Judge/JM-I
Orakzai (at Baber Mela)


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balance of convenience tilts in his favor and in case injunction is not granted, they would suffer irreparable loss. Insofar, as the instant case is concerned, the plaintiff claimed that he is owner in possession of the said house. The under-construction road has already been constructed in front of the house of plaintiff and the defendants are claiming Right of Way (ROW) alongside the road which passes by the said house and for which the defendants are suggesting demolishing of a portion of the house of plaintiff. The foremost controversy to be taken in consideration at this stage is to see whether any legal process for acquisition of land of the plaintiff has been initiated or not. Perusal of case file reveals that no such process has been initiated till date, not even a single notice is placed on file which was given to the plaintiff in this regard. The plaintiff has also annexed certain documents with the plaint which consists of his application to the District Administration and the proceedings conducting by them in response to the said application. Two letters of Leaned Assistant Commissioner Upper Orakzai is worth mentioning here which suggested alternate arrangement of Right of Way (ROW) as per report of Resident Engineer after visit of the spot and has also suggested that demolishing of the house may be avoid. In rebuttal of stance of the plaintiff the defendants produced minutes of the meeting dated 05.04.2024 conducted by Learned Additional Deputy Commissioner (G) District Orakzai regarding the issue in question. Perusal of the minutes reveals that it was decided in the meeting that the process of acquisition and compensation will be initiated. This fact is sufficient to determine that no process has been initiated by the defendants as yet. Therefore, a prima facie case exists in favor of plaintiff and balance of convenience also lies in favor of plaintiffs. There is also an apprehension of irreparable loss to the plaintiffs in absence of any
(Continued...)


Sami Ulfah
Civil Judge/JM-I
Orakzai at (Babar Mela)

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legal process being initiated and if the house of the plaintiff is demolished without recourse to the legal procedure.

8. As a result of above discussion, all the three ingredients for the grant of temporary injunction co-exist in favor of the plaintiff, therefore the application for temporary injunction is **Accepted** for six months or till the disposal of instant case whichever comes earlier. No order as to cost. This order is tentative in nature and shall not affect the merits of the case.

File be consigned to the record room after its necessary competition and compilation.

Announced

07.05.2024

Sami Ullah
Sami Ullah
Civil Judge-I,
Orakzai (at Baber Mela).