

**IN THE COURT OF SENIOR CIVIL JUDGE/JUDICIAL MAGISTRATE,**  
**ORAKZAI**

Case No .....69/01 of 2024.

Date of Original Institution.....16.04.2024.

Date of Transfer In.....21.05.2024.

Date of decision.....31.07.2024.

**Order.No.13**  
**31.07.2024**

Presence as before.

Arguments, on the application for return of plaint under Order VII Rule 11 CPC, submitted by the counsel for the defendants/petitioners, already heard and reply submitted.

Facts of the case as per plaint are that plaintiff/respondent Adam Khan has instituted the instant suit for declaration-cum-perpetual and mendatory injunctions to effect that the defendants/petitioners are carrying out the construction work of Ghiljo to Dabori road and the plaintiff being owner of a house and landed property situated at Mallah Khel, Dabori has prayed for restraining the defendants/petitioners from demolition of his house and using his landed property for the construction of road without payment of compensation. It is also alleged that priviously after correspondence of District Administration with the defendants, they agreed to save the house of the plaintiff from demolition by constructing protection wall at the western side of the road, but now

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the defendants/petitioners resiled from their promise and with malafide intention are bent upon demolishing the house of the plaintiff/respondent.

On the other hand, the defendants/petitioners have alleged in their written statement that the property is required for the public purpose and this court has got no jurisdiction to entertain the present suit. It is alleged that the demolition of the house is essential for the sustainability of the scheme as per approved design. It is mentioned in the written statement that in order to transfer the compensation amount to the Land Acquisition Collector Orakzai and initiating the procedure for acquiring the land required for the construction of the road under the Land Acquisition Act, 1894, the District Administration, Orakzai have been asked for proper demarcation of land falling within the approved design of the road and to calculate the cost of any such property required for the construction of road.

On 09.07.2024, counsel for the defendants/petitioners submitted application for placing on file some documents, which were placed on file. The said documents consisted of notification No. 991 issued from the office of Deputy Commissioner, Orakzai made under the provision of Section 4 of the Land Acquisition Act, 1894.

Counsel for the petitioners/defendants argued that this court seized to have jurisdiction in the matter because notification U/S 4

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of the Land Acquisition Act, 1894 has been issued and that the process of acquiring land required for the construction of road will be completed soon. He argued that the compensation amount will be transferred to the Land Acquisition Collector Orakzai soon after completion of the process. He further argued that there is no malafide on the part of the defendants/petitioners and the construction of protection wall at the western side of the road will not be a durable solution and the demolition of the boundary wall of the house is essential for the construction of road in accordance with its approved design. He argued that now after initiation of proceedings under the Land Acquisition Act, 1894, this court seized to have any jurisdiction in the matter as the special law provides forum for the redressal of grievances of the effectees/land owners.

Counsel for the plaintiff/respondent argued that the plaintiff is not being treated in the same manner as other people of the area and that the defendants have already saved houses of several people from demolition by making alteration in the approved design of the road. He argued that such act of defendants is based on malafide and that the defendants have already used some of his landed property for the construction of road and no compensation has been paid to him so far, and now the defendants are bent upon demolishing his house without his consent.

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After hearing arguments available record perused which shows that the defendants/petitioners have already stated in their

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written statement that they have asked for acquiring the land required for the construction of road and in this connection, the District Administration, Orakzai has now issued notification under Section 4 of the Land Acquisition Act, 1894. Copy of the said notification along with drawing and pictures of the road are already available on the case file. The perusal of record shows that as per design the original width of the road is 7.3 meters which is squeezed to 5.70 meters at site under dispute due to reluctance of the house owner to allow removal of his structure/house. It has also been communicated in several letters by the defendants to the District Administration for resolution of the issue as according to the defendants the construction of retaining wall/protection wall at the western side of the house of the plaintiff will affect the sustainability of the scheme and that technically construction of such a huge protection wall is not possible for them. Assistant Commissioner Upper Orakzai vide his letter No. 1864, dated 08.03.2024/in his site visit report has also proposed for avoiding demolition of the house and re-designing of the retaining wall in order to widen the road, but the defendants in their each and every letter described the issue as chronic in nature and they hold several meetings in this connection with the District Administration. The petitioners/defendants have much before from institution of the instant suit vide letter No. PMU (F)/SDU/2021-22/5756, dated 09.02.2022 asked the District Administration for land acquisition, required for the construction of

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road, but now notification under Section 4 has been issued and soon the amount of compensation will be transferred to the Land Acquisition Collector concerned. The correspondence of the defendants with the District Administration and Commissioner Kohat Division reveals that the construction of the road is a foreign funded time bound project and they needs to complete the same immediately, otherwise there is apprehension of withdrawal of the fund provided for the said purpose. Section 17 provides for taking possession of any land needed for public purpose in cases of urgency. The completion of road is a public purpose and the payment of compensation will ultimately redress the grievances of owner/plaintiff. The special law of land acquisition has been brought in motion which provides forum for the redressal of grievances of the plaintiff/land owner. The remedy available under special law cannot be bypassed and this court being civil court seized to have jurisdiction in matter anymore after initiating the procedure under the Land Acquisition Act, 1894. The application under order VII Rule 10 CPC is hereby accepted. With no order as to cost. Plaint of the plaintiff be returned under order VII Rule 10 CPC. Moharrir is directed to do the needful.

Needless to mention that the plaintiff/respondent may knock the door of proper forum for redressal of his grievances.

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File of this court be consigned to record room after necessary completion and compilation.

**ANNOUNCED:**

31.07.2024

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