

COURT OF SENIOR CIVIL JUDGE, ORAKZAI AT BABER MELA

Case Title: Habib Ullah etc VS Abdul Jalil etc

Serial No of order or proceedings	Date of Order Proceedings	Order or other Proceedings with Signature of Judge or Magistrate and that of parties or counsel where necessary
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Order No. 11	23.10.2024	<p>Petitioner No. 02 in person and as special attorney for petitioner No. 01 along with counsel present. Respondent No. 04 in person and as special attorney for remaining respondents along with counsel present.</p> <p>This order decides instant application seeking restraining order filed by plaintiff to judicially hold the defendants from interference with the form and title of the suit property. Written reply by the respondent has already been filed, and arguments have been heard.</p> <p><u>Brief Account:</u></p> <p>The matter as recounted in the plaint reads that suit property i.e. three constructed residential buildings, is the patrimonial property of the plaintiffs since earlier times. That during the upsurge in militancy in the year 2009, they moved to adjacent Kohat District for security and well-being. That recently, on 20/04/24 they found out that the respondents had illegally acquired the possession of the suit property. The plaint reports that in a bid to resolve the matter, when the efforts were resisted with criminal force an FIR was lodged by the plaintiffs</p> <p>/Petitioners.</p> <p>Defendants counter assert that plaintiffs were Kasabdaars, who were allowed to occupy suit property temporarily.</p>

Senior Civil Judge
Orakzai at Baber Mela
23 OCT 2024

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<p>Order No. 11 Continued</p>	<p>23.10.2024</p>	<p>That suit property is ownership of the defendants since ages, and that they have been occupying it ever since, especially since 2019 when the premises were vacated from the plaintiffs. They allege that plaintiffs were tenants at will who have now laid claim to title the of suit property only to qualify for the compensation promised by government for reconstruction of militancy hit residential structures.</p> <p><u>Reasons/Merits:</u></p> <p>Arguments made and points raised at the bar shall be referred to, relied upon and addressed during the course of appraisal of merits.</p> <p>First, petitioners claim that they are owners of the suit houses. They seek to substantiate the assertion by their registration as such for the purpose of compensation by government as alluded above. Clearly, public bodies, in their acts and records, are blessed with a presumption of correctness, which, although rebuttable, is prima facie worthy of reliance until discredited.</p> <p>In response, counsel for respondent furnished diverse and divergent pleas which found little support in their pleadings. He stated that the registration was done with leave of the respondents/owners. That since petitioners were occupying the houses at the time, and government seemed inclined to rely on the fact of possession alone, hence the arrangement. However, there is no trace of this</p>
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explanation within the pleadings or accompanying record.

Second, Police reports and statements of the members of the locality also support the claim and version of the plaintiffs. Respondents contend that petitioners managed to influence local police and members of the locality to their prejudice.

Again, the contention of the petitioners being Kasbdaars, and simultaneously so influential as to sway the police and locality to their favour against the respondents, does not enjoy the benefit of coherence.

Third, petitioners seek to restrain the defendants from illegal constructions on the suit land. Respondents' counsel explained that the locality is unsafe, and that his clients should be allowed to at least raise a boundary wall as protection from wild animals etc.

Again, as per the narrative so far maintained by the respondents, they have been occupying the suit houses since 2019 after the respondents moved out, but in last five years, they have not raised boundary walls to keep wildlife out.

It is pertinent to mention that in order to justify the grant of a restraining order, an exceptional relief against imminent risk of irreparable harm, it is necessary to have a good case, and at the same time to be at risk of irreparable loss and inconvenience.

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<p>Order No. 11 Continued</p>	<p>23.10.2024</p>	<p>Presently, plaintiffs are supported by government record for compensation of war-torn areas, police records, and statements of the locals, while defendants are merely occupying the land.</p> <p><u>Ruling:</u></p> <p>In the circumstances of the case, defendants shall submit an affidavit to the effect that any construction or improvement to suit property henceforth shall be at their risk and cost. They are further restrained from availing any fiscal benefits from the title of the suit property before intimation to the court. This order shall remain in field for 06 months or disposal of suit whichever comes first.</p> <p>Observations made above shall stand limited to the instant petition only, and shall have no bearing on the merits of the claim.</p> <p>Bailiff of the court, accompanied by local police, if necessary, and facilitated by the defendants shall submit a photographic report of the current status of the structures of the suit houses.</p> <p>File be consigned to the record room after its necessary completion and compilation.</p> <p><u>Announced</u> 23.10.2024</p> <p>Ijaz Mahsood Senior Civil Judge, Orakzai (at Baber Mela)</p>
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