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**IN THE COURT OF ABDUL BASIT,
ADDITIONAL DISTRICT JUDGE-II, ORAKZAI**

Civil Appeal No. 22/13 of 2024

Date of institution: 26.08.2024

Date of decision: 01.11.2024

Date of consignment:

Adam Khan son of Yad Shah resident of Malai, Dabori, District Orakzai
and one other (appellant/plaintiff)

Versus

Project Director, Project Management Unit (PMU), Fata Secretariat,
Peshawar and two others (respondents/defendants)

JUDGMENT

This civil appeal is filed by appellant against respondents wherein impugned the judgment and order dated 31.07.2024 of the court of learned Senior Civil Judge, Orakzai, whereby, he has allowed the application of respondents and returned the plaint under Order VII Rule 10 CPC to the appellant.

Concise facts of the case are that appellant/plaintiff is the owner in possession of a house bounded from north his own house, south his own house and field, east his own houses and lands and west under construction road from Ghiljo to Dabori, situated at Mulla Malaiy Dabori, District Orakzai, the suit house; that the district administration and the committee have visited his house and issued a detailed letter to department to save the suit house from demolishing, to which respondents/defendants had agreed and prepared site plan suggesting the protection walls; that suit house was constructed some 80-90 years ago and the under construction road had also been passed through his lands for which no compensation had been paid to him but now respondent no. 3 was not ready to build construction walls and

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bent upon to demolish his house; that project of leading the road from this area was initiated by non-governmental organization, a project not approved by government, and intended to cause damage to the public; therefore, appellant/plaintiff has prayed for declaration that he is owner in possession of the suit house and decree for permanent and mandatory injunctions may be granted in his favour so as to restrain the respondents/defendants from demolishing the suit house, making any sort of interference in it and to direct them to widen the road by constructing the approved protection walls on western side of the suit house as proposed/suggested earlier; that he has also prayed for recovery of compensation amount for construction of the road by them over his lands without his prior permission, hence, the suit.

Respondents/defendants were summoned by the learned trial court, where they appeared and filed a joint written statement and written reply, wherein, they have raised various legal & factual objections. On 09.07.2024, respondents/defendants have filed an application for rejection of plaint under Order VII Rule 10 CPC, to which the appellant filed written reply and contested the application. The learned trial court heard the parties and on allowing the application, returned the plaint to appellant.

The appellant/plaintiff being dissatisfied with the decision of learned trial court has impugned herein the judgment and order dated 31.07.2024.

Arguments heard and record perused.

Viewing the arguments advanced by learned counsel for parties and record before the court, it is held that the main controversy between the parties at dispute relates to that appellant alleged the leading of public road by a non-governmental organization by demolishing his suit house despite fact that they had agreed to construct a protection wall; therefore, when an alternate mode is available then leading the road through the suit house is

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unjustified. On the other side, the respondents/defendants contended that they had already requested the administration department for acquiring land under The Land Acquisition Act, 1894 and in this respect their request was allowed and the land has been acquired vide notification no. 991 issued by Deputy Commissioner, Orakzai under section 4 of The Land Acquisition Act, 1894. When, the appellant and learned counsel for the appellant was confronted with the notification, they admitted the acquiring of suit house through the notification *ibid*, which makes this believe the court that the Government of Khyber Pakhtunkhwa had already acquired the suit house for construction of road under section 4 of The Land Acquisition Act, 1894.

Section 4 of The Land Acquisition Act, 1894 explicitly empowers the government that whenever it appears to the Provincial Government that land in any locality is needed or is likely to be needed for any public purpose, a notification to that effect shall be published in official Gazette, and Collector shall cause public notice of the substance of such notification to be given at convenient places in the said locality. Likewise, section 5-A (1) & (2) of The Land Acquisition Act, 1894 further provides that when any person interested in any land, which has been notified under section 5 as being needed for a public purpose or for a company may, within thirty days after the issue of the notification, object to the acquisition of the land or of any land in the locality, as the case may be, to the Collector in writing, and the Collector shall give the objector an opportunity of being heard either in person or by pleader and the objections shall be decided accordingly; therefore, keeping in mind above referred provisions, it is held that proper remedy with appellant is to file an objection before the proper forum under relevant law and the civil court has got no jurisdiction to interfere/entertain the matter being a public cause unless the reference is made to the court.

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In the backdrop of my above findings, it is held that it was rightly concluded by the learned trial court that respondents had already initiated correspondence with district administration of land acquisition much before institution of suit and in this respect notification under section 4 had also been issued. Since, the contents of plaint did not suggest any objection over notification, which otherwise is supposed to be filed before the Collector, whereas, the suit house had been acquired by the provincial government for public purpose through notification *ibid*; therefore, appellant/plaintiff has got no *locus-standi* to file the suit in hands, hence, the impugned judgment and order of the learned trial court is upheld with modification that the plaint should have been rejected under Order VII rule 11 CPC instead of its return to the appellant/plaintiff, whereas, the appeal in hands **dismissed**.

As none of the parties have proved the costs incurred on their suit, thus, they have to bear costs of their proceedings.

Copy of this order be placed on record of learned trial court, where after, the requisitioned record be returned and file of this court consigned to record room after necessary completion and compilation.

Announced
01.11.2024


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CERTIFICATE

Certified that this judgment consists of four (04) pages, those are signed by me after necessary corrections.

Announced
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