

سوال	جواب
(1) آیا یہ درست ہے کہ حکومت کی طرف سے پشاور کے شہری علاقوں پر خانہ کاشت عائد کیا گیا ہے جبکہ گاؤں کی زمینیں جو کہ کاشت والی ہیں وہاں پر انتخابات ہو رہے ہیں؟	(1) الف کا جواب ہاں ہے۔ یہ درست ہے کہ بورڈ آف ریونیو کی طرف سے خانہ کاشت میں انتخابات پر پابندی عائد کی گئی ہے جہاں شملات کے جدول تیار نہیں کئے گئے ہیں اور ہر ایک مالک کا حصہ معلوم نہیں ہے۔ اس مسئلے کی اصل اور بنیادی مقصد یہ ہے کہ شملات میں کسی کے اصل حصے سے زیادہ زمین کی فروخت کے خدشے کو دور کیا جائے۔ پشاور ہائی کورٹ ایبٹ آباد بیچنے نے 07.04.2015 کے اپنے فیصلے میں سید اطہر حسین شاہ بمقابلہ سینئر ممبر بورڈ آف ریونیو خیر بختیخواہ وغیرہ (کاپی لف) جیرا گراف-11 میں ایک طریقہ کار فراہم کیا اور صوبائی گورنمنٹ اور سینئر ممبر بورڈ آف ریونیو کو ہدایت کی گئی کہ وہ اس حوالے سے 24.07.2015 کا نوٹیفکیشن جاری کرے۔ (کاپی لف) پشاور ہائی کورٹ ایبٹ آباد بیچنے نے نوابزادہ فتح کی نظر ثانی پیشین میں نوٹیفکیشن پر کارروائی معطل کر دی تھی جس کی وجہ سے نوٹیفکیشن 29.12.2015 کو جاری کیا گیا۔ پشاور ہائی کورٹ ایبٹ آباد بیچنے نے 26.11.2019 کی اپنی آرڈر شیٹ میں نظر ثانی کی درخواست کو واپس لیتے ہوئے مسترد کر دیا کیونکہ درخواست گزار نے عدالت عظمیٰ سپریم کورٹ سے رجوع کیا۔ (کاپی لف) ذکورہ آرڈر کی روشنی میں ریونیو اینڈ اسٹیٹ ڈپارٹمنٹ نے اپنے سابقہ نوٹیفکیشن کو بحال کر دیا ہے جس میں خانہ کاشت میں انتخابات پر پابندی عائد کی گئی تھی بہت جلد خانہ کاشت کے خانہ ملکیت میں اندراج کے مقدمات کی کس نوکیس بنیاد پر منتقلی شروع ہو جائے گی۔ اس سلسلے میں بورڈ آف ریونیو نے صوبہ بھر کے ADCs, DCs تحصیلداران کی بورڈ میں ٹریننگ کی ہے اور سب کو سخت ہدایات جاری کی گئی ہیں اور بمطابق نوٹیفکیشن واضح کیا کہ تمام حصہ داری بائچ کے نام خانہ کاشت سے خانہ ملکیت بدر حصہ منتقل کیا جائے۔
(ب) اگر الف کا جواب اثبات میں ہو تو (1) حکومت کی طرف سے یہ اقدام کیوں اٹھایا گیا ہے کیا اس اقدام سے حکومت کو فائدہ ہو رہا ہے یا نقصان؟	(ب) (1) یہ اقدام معزز عدالت کی احکامات اور بہترین عوامی مفاد میں اٹھایا گیا ہے۔ فی الوقت اس لحاظ سے حکومت اور عوام دونوں کو فائدہ ہے۔
(2) خانہ کاشت کی وجہ سے پر اپنی کاروبار جو کہ مکمل طور پر رک گیا ہے اس کے لیے حکومت کی طرف سے کیا پالیسی اور لائحہ عمل بنایا گیا ہے؟	(2) تمام لوگوں بشمول پر اپنی ڈیلرز کی سہولت کیلئے حکومت بریڈ ڈاریکٹریٹ لینڈ ریکارڈز، زمینوں کے تمام ریکارڈز کو درست اور کمپیوٹرائزڈ کرنے پر کام کر رہی ہے۔ اس کی بعد زمینوں کی خرید و فروخت سہل اور شفاف ہو جائے گی جس سے سب کا فائدہ ہوگا۔
(3) پر اپنی ڈیلرز کیلئے پنجاب حکومت کی طرف سے 2 فیصد مزدوری / کمیشن کب تک منظور کیا جائے گا اور اس پر اب تک کتنا کام ہوا ہے مکمل تفصیل فراہم کی جائے۔	(3) اس مسئلے کو اس سلسلے میں کوئی احکامات موصول نہیں ہوئے۔ اگر حکومت اس قسم کی کوئی منظوری دیتی ہے تو متعلقہ قانون کی روشنی میں یہ مسئلہ اس پر عمل درآمد کا پابند ہوگا۔

[REDACTED]

(A) Yes, it is right that Board of Revenue has imposed ban on mutations in Khana-e-Kasht, where Jadool is not prepared and ownership of each owner is not determined.

It is therefore, clarified that ban on mutations in those Khana-e-Kasht has been imposed where Jadool of such Shamilat is not prepared and share of each individual owner is not known. The main and basic purpose of this step is to obviate the apprehension of sale of land more than one's actual share in the Shamilat as such.

The Peshawar High Court Abbottabad Bench in its judgment dated 07.04.2015 in Syed Azhar Hussain Shah Vs Member Board of Revenue KPK etc (Annexure-A). Case in Paragraph – 11, provided a procedure and directed the Provincial Government/Senior Member Board of Revenue to issue notification to this effect and subsequently this department issued a notification dated 24.07.2015 (Annexure-B).

Moreover, the Peshawar High Court Abbottabad Bench in review petition of Nawabzada Muhammad Fateh Khan Vs SMBR vide an interim order dated, 09.09.2015 suspended the operation of notification dated, 24.07.2015 and notification to that effect was issued on 29.12.2015 (Annexure – C & D).

The Peshawar High Court Abbottabad Bench in its order sheet dated 26.11.2019 dismissed the review petition as withdrawn as the petitioner approached the August Supreme Court of Pakistan. The Revenue & Estate department in light of the above order restored the operation of its previous notification of ban on mutations in Khana-e-Kasht vide notification dated 03.03.2020. The Board of Revenue has started training of the Revenue Officers on the subject of Khana e Kasht and very soon will start transposition of entries of Khana e Kasht into Khana e Malkiat on case to case basis.

(B)

(1) This step is taken on the basis of decision of the Hon'ble Court and in the best public interest. For the time being, it benefits both the Government and the public.

(2) The Government through the Director Land Record is correcting and computerizing the land record for the ease of both the Property Dealers and the public. After which, sale and purchase of land will become transparent and will benefit everyone.

(3) This department has not received any orders in this regard. If Government issues any order in this regard, the department will be bound to implement it in the light of rules / law.

Judgment Sheet

**IN THE PESHAWAR HIGH COURT,
ABBOTTABAD BENCH
JUDICIAL DEPARTMENT**

JUDGMENT

WP No. 480-A/2014
Date of hearing...07.04.2015



Syed Azhar Hussin Shah Vs Member Board of Revenue, PPK, etc.

Appellant(s) by *M/s. Haji Ghulam Basit, Yasir Zahoor Abbas*
Respondent(s) by *M/s. P. Idris, Muhammad Akbar, Sultan Ahmad Jan*
Malik Masoud ul Rehman, Amicus Curia

ABDUL LATIF KHAN, J:- Through instant petition,
the petitioner seeks Constitutional jurisdiction of
this Court, praying that:-

*"By acceptance of instant writ
petition, the judgments/orders
of respondents No.1 & 2 may be
declared illegal, void in violation
of law, in excess of jurisdiction
& as such ineffective upon the
rights petitioner. Petitioner may
further be granted any other
appropriate relief, which the
Court deems fit."*

Arguments heard and record perused.

2. A perusal of record reveals that
respondent No.4 Syed Sikandar Shah moved an

name remains intact in column of ownership would create problems not only for the purchaser of cultivation column as well as for the persons who purchase the ownership right from such owners who had already transferred his share in column of cultivation. Needless to mention that by selling the land in column of cultivation the name of ownership shall automatically be removed from column of ownership corresponding share as mere entry in the column of ownership would not be helpful and at the time of partition, problems are created for the purchaser in column of cultivation. Shamilat land is partitionable with the consent of original owners and mode of partition must be in accordance with their share 'Hasb-e-Rasad Khewat' and no owner can transfer Shamilaqt deh in excess of their share. The principle that no one could alienate nor retain the possession under the garb of hissadari, beyond his share in joint Khata equally applies to possession of a co-sharer over Shamilat deh.

11. A plain consideration of the matter in our opinion, leads to the conclusion that the following directions shall be followed by the

Provincial Government/Senior Member Board of Revenue in letter and spirit with immediate effect and submit the compliance report to the Additional Registrar (Judicial) of this Court accordingly.

i) To issue a notification to the effect that Revenue Officer concerned shall be responsible to ensure that the vendor shall not sell the property in excess to his share in the garb of hissadari and those transactions already effected should be adjusted by deleting the names of owners from the column of ownership respectively and necessary corrections be made in the revenue record accordingly.

ii) All the transactions made in column of cultivation as hissadar, the share of vendor in column of ownership shall also be effected through corresponding mutation in ownership column and all those mutations attested in column of cultivation, corresponding entries to that effect shall be made in column of ownership and rights of the parties are to be adjusted accordingly in order to eliminate the



re-sale/double sale of same property both in column of cultivation and column of ownership.

iii) Similarly in Shamilat land sold in column of cultivation, the share of vendor should be reduced proportionately in the column of ownership in furtherance of notification issued on 10.6.2004 and further clarification dated 6.9.2004, and no further sale be made in cultivation column beyond the share of vendor, in future.

iv) The SMBR/ Revenue Officer shall frame rules with regard to the partition of land with special reference to preparation of Naqsha Bai & Naqsha Jeem, mode of partition and to make out a methodology in order to meet the problems faced by the general public in partition proceedings. A period of 4 months shall be fixed for disposal of partition proceedings/ application before revenue hierarchy in order to curtail the agony of litigants.

v) The SMBR is also directed to frame rules regarding modification in Wajib ul Arz in order

Partition

Judicial
Section

[Handwritten signature]

4910

to make it applicable to the needs of the day as the same prepared at the time of settlement carried out at different times in different areas mostly about more than 40 years back.

vi) No further mutation shall be allowed to be attested in column of cultivation as hissadari and to this effect too notification be issued accordingly.

vii) To issue notification that those who acquired lands through hissadari transaction be given weight, the payment of compensation by the Collector in acquisition of lands, properties to their share in column of ownership, and compensations should not be given to those whose names still exists in column of ownership despite sale of that share in column of cultivation in hissadari.

viii) To frame rules in respect of sale/purchase by owners who acquired land in column of cultivation from hissadar to give effect only to the extent of his share proportionate to the column of ownership and be treated as owner

1997
1998
1999
ccml

Acquisiti
to make in
comment of all
Dist. Belant
for. In
process.
[Signature]

L. Acquisit

for the purpose of partition of land in terms of Section 135 of the Land Revenue Act, 1967.

ix) Notification be issued with directions to the concerned revenue officials to prepare the list of owners in Shamilat and be placed with the index of Jamabandi alongwith Shajra Nasab, so as to make available to general public like extract from Jamabandi on payment of routine fee in terms of relevant rules. ✓

12. In view of what has been noticed above, we find no merit in the instant petition, which is accordingly dismissed.

A copy of this judgment be sent to the SMBR & Law Department KPK, Peshawar.

Announced.
07.04.2015.

Sd/-
Judges

"A. Qayum"

11/5 2/3

GOVERNMENT OF KHYBER PAKHTUNKHWA
BOARD OF REVENUE
REVENUE AND ESTATE DEPARTMENT

NOTIFICATION

No. Rev: VI/4/60/MF/145/16993/ In pursuance of directions passed by Peshawar High Court in W.P. 480-A/2014, following instructions are circulated for compliance in letter and spirit by Revenue Officers, Sub Registrars, and Incharge of Service Delivery Centers. Revenue Officers and Incharge of SDC shall carry out necessary corrections in respective revenue record within three months and report compliance.

- a. Where sale has been made in cultivation column of periodical Record of Rights (hissadari sale), the vendor and co-owners shall not alienate in column of ownership the land already sold by way of hissadari. Notification No. Rev: VI/4/60/MF/145/9683 of 27-04-2015 refers.
- b. Transactions already recorded as hissadari sale shall be adjusted through corresponding mutations to substitute the name(s) of vendor(s) in ownership column of periodical Record of Rights with the name of hissadari purchaser(s) to the extent of share of hissadari vendor(s) in the holding(s) in the revenue estate. In case where hissadari sale has been made in excess of ownership in holding(s), the excess sale shall be reversed after giving notices to the affected parties so as to safeguard the interests of other co-owners.
- c. No further mutations or sale deeds shall be attested or registered in cultivation column of periodical Record of Rights as hissadari sale.
- d. Revenue Officer/official of every revenue estate shall immediately prepare list of owners with respective share in shamlat, if already not prepared. While preparing the list of owners, share of owner(s) who has/have sold shamlat land in column of cultivation shall be proportionately reduced. The list of owners shall form part of the periodical Record of Rights.
- e. Where land sold as hissadari is acquired, the Collector shall give due weightage to hissadari transaction, and make payment to hissadari purchaser in accordance with vendor(s) corresponding share in the column of ownership.
- f. Hissadari purchaser shall have the right to apply for partition and will be treated as owner for purposes of Section 135 of the Land Revenue Act, 1967 proportionate to the vendor(s) share recorded in column of ownership.

M. Raza
Senior Member

Dated Peshawar July 24, 2015.

No. Rev: VI/4/60/MF/145/16993-17/12
Copy forwarded to:

1. Members Board of Revenue, Civil Secretariat Peshawar for Information.
2. All Commissioners in Khyber Pakhtunkhwa for compliance. They are requested to supervise implementation of Peshawar High Court directions and furnish fortnightly reports to Director Land Records.

Printed with Care

3. All Additional Commissioners in Khyber Pakhtunkhwa for information and compliance.
4. Director Land Records to monitor progress of Peshawar High Court directions and ensure that correction of revenue record is completed in three months.
5. All Deputy Commissioners/Collectors in Khyber Pakhtunkhwa for compliance. They are instructed to implement directions of Peshawar High Court in three months and furnish fortnightly reports to Director Land Records.
6. All Revenue Officers of revenue districts in Khyber Pakhtunkhwa for compliance.
7. All Sub Registrars of revenue districts in Khyber Pakhtunkhwa for compliance.
8. The Manager Government Printing Press and Stationery Department Peshawar with the request to publish the notification in the extra ordinary gazette of Khyber Pakhtunkhwa and supply 50 copies (printed) of the same to Board of Revenue.


Secretary-I

169

GOVERNMENT OF KHYBER PAKHTUNKHWA
BOARD OF REVENUE
REVENUE & ESTATE DEPARTMENT
Peshawar Dated 29/12/2015.

NOTIFICATION

No. Rev: VI/4/60/MF/145/28954. In pursuance of directions passed by Peshawar High Court Abbottabad Bench in an interim order dated 09.09.2015 in writ petition No. 16/A/2015, operation of the notification No. Rev: VI/4/60/MF/145/16993 dated 24.07.2015 is hereby suspended till final decision of the case.

Senior Member

No. Rev: VI/4/60/MF/145/28955-29041

Copy forwarded to:-

1. All Commissioners in Khyber Pakhtunkhwa.
2. All Deputy Commissioners in Khyber Pakhtunkhwa.
3. PS to Senior Member, Board of Revenue.
4. All Revenue Officers in Khyber Pakhtunkhwa.
5. The Manager Government Printing Press and Stationery Department Peshawar. He is requested to publish the above notification in the extra ordinary gazette of Khyber Pakhtunkhwa.

Secretary-II

D

54

GOVERNMENT OF KHYBER PAKHTUNKHWA
BOARD OF REVENUE
REVENUE AND ESTATE DEPARTMENT

Peshawar Dated the 3 /03/2020.

NOTIFICATION.


No. Rev:VI/4/60/MF/145/ 8279 In pursuance of order dated 09.09.2015 passed by the Peshawar High Court Abbottabad Bench in Review Petition No. 16-A/2015 and suspended operation of Notification No. Rev:VI/4/60/MF/145/6993 dated 24.07.2015 issued by this Department whereby the Review Petition has been dismissed as withdrawn vide order dated 26.11.2019 of Peshawar High Court Abbottabad Bench. In light of the above, previous Notification No. Rev:VI/4/60/MF/145/16993 dated 24.07.2015 regarding ban on Khana Kasht is hereby restored and suspension of the Notification No. Rev:VI/4/60/MF/145/28954 dated 29.12.2015 has been withdrawn.


Senior Member
Board of Revenue

No. Rev:VI/4/60/MF/145/ 8280-330

Copy forwarded to the:-

1. Member-I, II and III Board of Revenue, Khyber Pakhtunkhwa.
2. All Divisional Commissioners in Khyber Pakhtunkhwa.
3. All Deputy Commissioners in Khyber Pakhtunkhwa.
4. Director Land Records Khyber Pakhtunkhwa.
5. Director Information Khyber Pakhtunkhwa.
6. PS to Senior Member Board of Revenue Khyber Pakhtunkhwa.
7. Budget and Accounts Officer Board of Revenue, Khyber Pakhtunkhwa.
8. Manager Government Printing, & Stationary Department Khyber Pakhtunkhwa with the request that this Notification may be published in the Government Gazette of Khyber Pakhtunkhwa.


Deputy Secretary-II

Marked with Confirmation