

IN THE PESHAWAR HIGH COURT, BENCH MINGORA/

DAR-UL-QAZA, SWAT
OBJECTION SLIP

Shoja ul Mulla

VERSUS

Fedorta

1. This petition has been presented by *Mr. Mulla d. Oshor*
2. Signature of council/petitioner requires on _____
3. Enactment under which the petition was file is not mentioned correct.
4. Approved file cover is not used.
5. Affidavit is not duly attested/ appended.
6. Checklist has not been filed/ duly filled in/ signed
7. Petition/ annexures are not properly paged according to index.
8. Certified copies of annexures/ page # _____ have not been filed.
9. Copies of annexure/ pages # _____ are not legible.
10. Certificate be furnished that whether nay petition on the subject matter has earlier been filed in this court.
11. There should be separate application for each prayer/ case.
12. Copy of application is not delivered to A.G.
13. The appeal, revision, application is time barred.
14. Value for the purpose of court fee and jurisdiction has not been mentioned in the relevant column of the opening sheet.
15. Opening sheet has not been filled in properly.
16. The P/A of the council engaged is not attested/ signed by all petitioners/ appellants.
17. Chamber address and phone number of council has not been mentioned on index/wakalatnama.
18. Memo of parties name & address not filed.
19. Petitioner's/ Attorney of Petitioners' CNIC #/ present address/ permanent address/ phone #/ Cell #/ Fax #/ E-mail address has not been mentioned in memo of addresses of the parties.
20. No. of referred cases is not given/ correct.
21. Petition received by post is not entertain-able except through jail.
22. Petition containing overwriting is not entertain-able. Fair petition be filed.
23. Appeal/ Revision is not competent.
24. List of books have not been mentioned at the end of the petition.
25. Case does not relate to _____
26. Petition should be drafted by a person competent to do so.
27. _____ spare copies be filed. . . .
28. In what jail the petitioner is confined.
29. Revision/appeal may be filed on the prescribed form.
30. Copies of annexure _____ are not translated.
31. Court fee stamps are not been affixed.
32. Power of Attorney is not attested by the jail authority.
33. Certified copies of impugned orders/ decree sheets/ pleadings/ evidence/ ground of revision/ appeal before District Judge have not been filed.
34. District Judge or any other Judicial Officer cannot be made as respondent on top of the petition.
35. Index has not been filed/ signed/ duly completed/ or it carries overwriting.
36. The Petition has not been flagged/ marked with annexures' marks.
37. Power of attorney for petitioner/ petitioners has not been filed.
38. Every miscellaneous application should be followed by an affidavit.

39. *order sheet in which the comments sought from the respondent has also*

[Signature]

READER

Returned with objections at Sr. Nos. *38* for removal to be

re-submitted on or before *14/11/15*

not attached

[Signature]
Additional Register
PHC, Bench Mingora/Dar-ul-Qaza, Swat.

BEFORE THE PESHAWAR HIGH COURT MINGORA BENCH /
DARUL QAZA SWAT

W.P No. 370-M of 2015

Shuja Ul Mulk and others **VERSUS** *Federation of Pakistan and others*

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RESPONDENT NO. 7

Muhammad Ashfaq Deputy Director

Maintenance NHA Swat

Muhammad Ashfaq
Dy. Director (Maint)
NHA SWAT

664
FILED TODAY
31 OCT 2015
FM
Additional Registrar

6719
Re-Filed Today
05 NOV 2015
FM
Additional Registrar

①

**BEFORE THE PESHAWAR HIGH COURT MINGORA BENCH/
DARUL QAZA SWAT**

W.P No. 370-M of 2015

Shuja Ul Mulk and others **VERSUS** Federation of Pakistan and others

Comments on behalf of respondent No. 7

Respectfully Sheweth:

Preliminary objections:

1. That the petitioners have got no locus standi to institute the present petition.
2. That the writ petition is not maintainable because efficacious remedy is available.

On facts.

1. That Para No. 1 is admitted as correct.
2. That Para No. 2 is subject to proof and is a question of fact which can not be settled in writ petition.
3. That Para No. 3 is correct.
4. That Para No. 4 is also admitted as correct.
5. That Para No. 5 is mentioned in the writ petition is admitted as correct.
6. That Para No. 6 mentioned in the writ petition is not admitted as correct. For the removal of encroachments the removal of encroachment of public properties Act, is enforceable and the said Act has been extended to PATA. The said Act also proved efficacious remedy to the petitioners but, they did not knocked the doors for justice of the relevant foras, thus the petitioners can not approached this August court, and the jurisdiction of this court, is barred. It is pertinent to mentioned here that highway No. N95 Chakdara to Kalam as well as N 90 Khwaza

FILED TODAY
31 OCT 2015
ADDITIONAL REGISTRAR

Khela to Bisham was federalized in 2007 and handed over to NHA by the then FHA now KPHA, through vide letter No. 9-M-561 dated 10/05/2007. the Chakdara Kalam road has been federalized as national Highway with complete transfer of right of way to the NHA for the purpose of application of National Highway authority Act 1991. (Copy of handing taking agreement is attached as annexure A).

7. That Para No. 7 of the plaint is subject to proof. As stated above these are question of facts which can not be determine in the writ petition.
8. That Para No. 8 mentioned in the writ petition is wrong hence denied.
9. That in reply to Para No. 9 it is stated that national highway authority issued notices to the encroachers as per record handed over by the then FHA now KPHA to NHA. As per the direction of District Administration of Swat , as for as determine building line 50% demarcation has already been completed and for the remaining 50% demarcation of building line the encroachers did not allowed the national highway authority.
10. That Para No. 10 of the writ petition is wrong, hence denied.
11. That Para No. 11 of the writ petition is wrong, the petitioner have adequate efficacious remedy under the law but they did not approached the proper forum, hence the writ petition is not maintainable.

Grounds.

- a. That ground No. A is incorrect notices have been issued in accordance with law.

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31 OCT 2015

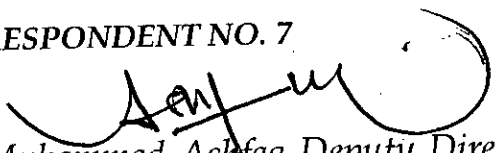
FM
National Highway
Swat

③

- b. That ground No. B is incorrect hence denied. Encroachment can not be legalized by way of prescription.
- c. That ground No. C is incorrect hence denied, the subject road has been notified as N95.
- d. That ground No. D is wrong hence denied.
- e. That ground No. E is incorrect the national Highway authority has acted in accordance with law.
- f. That ground No. F mentioned in the writ petition is wrong hence denied, notices are issued in accordance with law and the petitioners are encroachers.
- g. That ground No. G is wrong hence denied in fact the building of the petitioners have been build over the property of NHA and the spot the NHA has effected demarcation and has asked the encroachers to remove the encroachment.
- h. That ground No. H is wrong detail answer has been given above.
- i. That ground No. I is wrong.

It is therefore, humbly prayed that this writ petition may kindly be dismissed with cost.

RESPONDENT NO. 7


Muhammad Ashfaq Deputy Director
Maintenance NHA Swat.

FILED TODAY

31 OCT 2015

Am
21/10/15

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**BEFORE THE PESHAWAR HIGH COURT MINGORA BENCH/
DARUL QAZA SWAT**

W.P No. _____ of 2015

Shuja Ul Mulk and others **VERSUS** *Federation of Pakistan and others*

Comments on behalf of respondent No. 7

AFFIDAVIT

*It is stated on oath that all contents of these comments
are true to the best of my knowledge and information.*

RESPONDENT NO. 7

(Signature)
Muhammad Ashfaq Deputy Director
Maintenance NHA Swat
21-10-15

FILED TODAY
31 OCT 2015
FW
Additional Registrar

3731
Certified that the above was verified on Solemn
affirmation before me on this 21st day
of Oct 2015 by M. Ashfaq
S/o Nader Khan, Swat who
was identified by _____
Who is personally known to me.

(Signature)
Addl. Registrar
Peshawar High Court
Mingora Bench, Darul Qaza, Swat.
21/10/15

(5)
HANDING / TAKING OVER AGREEMENT.

Annexure A

Subject:- FEDERALIZATION OF PROVINCIAL HIGHWAYS, CHAKDARA-MINGORA-KHAWAZAKHELA-KALAM (S-3) AND KHAWAZAKHELA-SHANGLA - BESHAM (S-3A) NOW CONVERTED INTO N-95 AND N-90 RESPECTIVELY.

This agreement is made and executed on this 30th day of March, 2007 between the Frontier Highways Authority hereinafter called (PARTY OF THE FIRST PART) through its Managing Director and National Highway Authority hereinafter called (PARTY OF THE SECOND PART) through its General Manager, NWFP.

- a. Whereas the said roads were federalized by the Federal Cabinet and made part of NHA Vide Notification No. 13(I) 88-Roads dated 14th February, 2007 for N-95 and N-90.
- b. Whereas the Provincial Government vide Secretary to Govt. of NWFP works & Services Department No. SO (R) W&S/Roads/2006-07/2-2/NHA dated 03-2-2007 allowed the Frontier Highways Authority to hand over the said roads to the National Highway Authority free of all encumbrances.
- c. Whereas the Frontier Highways Authority has already finalized/ closed all the running contracts in order to hand over the road to National Highway authority free of all encumbrances except the contract awarded to M/s Dir Construction Company for the Re-Construction of Damaged Bridge in KM-1 Khawaza Khela Kalam Road, which shall be handed over to NHA after its completion by the FHA through Provincial resources.

1. In view of the above, the Provincial Highway (Old S-3 now N-95) Chakdara-Mingora - Khawazakhela - Kalam having a length of 135 KM and Khawaza Khela - Shangla-Besham (Old S-3A new N-90) having a length of 64 KM along with ROW are being handed over to the NHA by the FHA free from all encumbrances/contractual liabilities with the old contractors and any kind of legal proceedings present and future arising out of the closed contracts pertaining to the construction of the above said roads entered into by the FHA and the contractors.

2. The National Highway Authority (NHA) on this 30th day of March 2007 takes over the said Highways/Roads and will act as custodian for the purpose of construction, improvement, maintenance and operation related to these Highways/Roads with effect from 30-3-07 date of taking over/signing of this agreement.

3. All the ongoing construction agreements with FHA shall be closed/settled amicably between the FHA with the contractors at the time of handing over of the said Highways/Roads. Thereafter the NHA shall be responsible to upgrade and maintain the roads as

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A
ANWAR USMAN
MANAGING DIRECTOR (M.A.)
NATIONAL HIGHWAY AUTHORITY
MINGORA (NWFP)

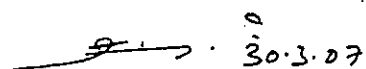
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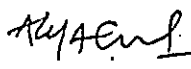
4. Financial Matter and implications, if any, cropping up in respect of above mentioned Highways /Roads prior to the date of taking over in respect of the closed contract shall be the responsibility of FHA and NHA will not be responsible for any dispute/encumbrances arising out of the closed contracts.

5. Proper inventories of the assets of ROW of the said Highways/Roads will be jointly prepared by FHA and NHA and then be handed over to NHA. List of assets/inventory annexed as annexure (A).

HANDED OVER.

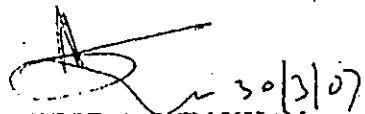
TAKEN OVER

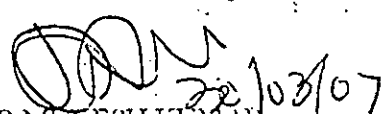

30.3.07
ENGR. HABIB ALI
MANAGING DIRECTOR,
F.H. A. PESHAWAR.

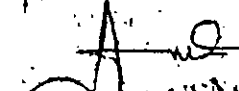

30.3.07
ENGR. ATIQ AHMAD
GENERAL MANAGER
NHA PESHAWAR.

WITNESS.

WITNESS.


30/3/07
ENGR. ABDUL SAMIN KHAN
DIRECTOR MAINTENANCE,
FHA PESHAWAR.


30/03/07
ENGR. MUKESH KUMAR
DIRECTOR MAINTENANCE,
NHA PESHAWAR.

Attested

SITWAR USMAN
ASST. DIRECTOR (MAINTENANCE)
NATIONAL HIGHWAY AUTHORITY
PESHAWAR



OFFICE OF THE DEPUTY DIRECTOR (NORTH),
FRONTIER HIGHWAYS AUTHORITY, SWAT.

Tel # 0946/9240118

STATEMENT OF ROADS CONDITION REPORT

S No	Name of Road	Length (Km)	Carriage way - width (M)	Right of way (M)	Existing pavement condition	Remarks
1	<u>PROVINCIAL HIGHWAYS S-3</u> <u>CHAKDARA - LANDAKAI -</u> <u>KHWAZAKHELA - KALAM.</u>					
	i) Chakdara - Landaki	11.70	7.31	20.11	Refer progress report of the Project.	i) Construction of pucca Drain on both sides of the Road from Habit Gram to Jalala is required for drainage of the Road. ii) Construction of 2 Nos Slab Culvert in Km 32 & 33 is also required
	ii) Landaki - Khwazakhela	56.30	6-7	20.11	Few patch Plus surface cracks at different locations. Which need immediate surface repair	ADP Project (Charbagh to Khwazakhela)
	iii) Khawazakela - Behrain	36	5.5-6.10	20.11	Good to worst conditions of road pavement. Damaged reaches need immediate repair. Left abutment of Bridge at Behrain in Bazar need immediate restoration	Project Area
	iv) Behrain - Kalam	33	6.10	10.00	Worst conditions of road pavement. Adequate drainage of road is urgently required. Surface dressing will facilitate road commuters.	Project Area
	<u>PROVINCIAL HIGHWAYS S-3 A</u> <u>KHWAZAKHELA - ALPURI -</u> <u>BESHAM ROAD</u>					
v) Khwazakhela - Alpuri	31	6.10	10	Refer Progress report of the Project.	Project Area	
vi) Alpuri - Besham	38	3.65	10	Bad to worst condition, road crest badly damaged, need immediate repair		

7

AD(NRD)
Study & discuss
[Handwritten signature]

[Handwritten signature]
DEPUTY DIRECTOR (NORTH)

AA

study the concerned
and discuss.

AA 87 d
[Handwritten signature]
ASSISTANT DIRECTOR (MAINTENANCE)
NATIONAL HIGHWAY AUTHORITY
MINGORA, SWAT

**PESHAWAR HIGH COURT, MINGORA BENCH/
DAR UL QAZA, SWAT**


FORM OF ORDER SHEET

Court of

Case No..... of.....

Serial No. of order or proceeding	Date of Order or Proceedings	Order or other Proceedings with Signature of Judge or Magistrate and that of parties or counsel where necessary.
1	2	3
	09.9.2015	<p><u>Interim Relief</u> <u>With W.P. No. 370/2015.</u></p> <p>Present: Mr.Sher Muhammad Khan, Advocate, for the petitioners.</p> <p>MianHussain Ali, .D.A.G, on behalf of the Federation, in person.</p> <p>Mr. Sabir Shah, A.A.G. for the provincial respondents, in person.</p> <p align="center">***</p> <p>Comments of the respondent No. 7 be sought alongwith all the relevant record so as to reach this Court within fortnight. In view of the order handed down by this Court on 28.7.2015, learned counsel for the petitioners is directed to do the needful within seven (7) days. Adjourn to a date in office and till then status quo be maintained/</p>

Attested
by
Fazidullah
Adil



Nawab

Attested
10/8