

IN THE FEDERAL SHARIAH COURT
(Original Jurisdiction)

PRESENT

MR. JUSTICE HAZIQUL KHAIRI, CHIEF JUSTICE
MR. JUSTICE DR. FIDA MUHAMMAD KHAN
MR. JUSTICE SALAHUDDIN MIRZA

SHARIAT PETITION NO. 29/I OF 1992 (Linked with)

Mst. Sakina Bibi etc. --- Petitioners

Versus

Government of Pakistan and others --- Respondents

SHARIAT PETITION NO. 43/I OF 1992 (Linked with)

Tariq Mehboob etc. --- Petitioners

Versus

Governments of Pakistan and NWFP --- Respondents

SHARIAT PETITION NO. 64/I OF 1992 (Linked with)

Fida Muhammad Khan etc. --- Petitioners

Versus

Governments of Pakistan and NWFP --- Respondents

SHARIAT PETITION NO. 67/I OF 1992

Salar Sufi Haji Abdul Ghani --- Petitioner

Versus

Governments of Pakistan and NWFP --- Respondents

For the Parties

Mian Sultan Muhammad, Attorney for petitioners in S.P. No.29/I of 1992

Muhammad Shafi, Attorney for petitioners in S.P. No.43/I of 1992

Sardar Abdul Majeed, Standing Counsel for Federal Government

Peer Liaqat Ali Shah, Advocate-General, NWFP

Mr. Shafqat Munir Malik, Additional Advocate-General, Punjab

Mr. Mehmood Raza, Additional Advocate-General, Balochistan

Mr. Arshad H. Lodhi, Assistant Advocate-General, Sindh

Mr. Masood Jan, Assistant Secretary, Board of Revenue, NWFP

Mr. Muhammad Daood, Superintendent, Board of Revenue, NWFP

Mr. Raj Muhammad, Deputy Director, Sericulture, NWFP

Mr. Nasim Khan, Secretary Law, Government of NWFP

Mr. Muhammad Saeed, Deputy Solicitor, Law Department, Government of NWFP.

Dates of Institution	---	6.5.1992, 1.7.1992, 2.11.1992 and 3.12.1992 respectively
Dates of Hearing	---	1.7.1992, 18.10.1992, 11.11.1992, 15.6.1993, 1.12.1993, 3.4.1994, 10.12.1995, 18.12.1995, 27.5.1999, 4.6.1999, 28.6.1999, 28.3.2000, 28.3.2002, 23.1.2007, 12.2.2007, 13.2.2007, 28.3.2007, 7.5.2007, 29.5.2007, 11.9.2007, 22.1.2008, 29.1.2008, 12.3.2008, 27.3.2008 and 7.5.2008
Date of Decision	---	7.5.2008

JUDGMENT:

HAZIQUL KHAIRI, CHIEF JUSTICE.- By this judgment we

propose to dispose of Shariat Petition Nos. 29/I, 43/I, 64/I and 67/I of 1992

filed by the following petitioners:-

SHARIAT PETITION NO.29/I OF 1992

- (1) Mst. Sakina Begum widow of Ghulam Mustafa, care of Haji Ahmad Din Butt, Mohallah Haveli Shakoor Khan, Rampura, Peshawar City,
- (2) Haji Ahmad Din Butt son of Ghulam Muhammad Butt, resident of Mohallah Haveli Shakoor Khan, Rampura, Peshawar City,
- (3) Muhammad Javed son of Ghulam Mustafa, resident of Mohallah Jogiwara, Hasht Nagri, Peshawar,
- (4) Mst. Nazir Begum daughter of Ghulam Mustafa, resident of Mohallah Jogiwara, Hasht Nagri, Peshawar,
- (5) Syed Muhammad son of Alif Din, resident of Mohallah Jogiwara, Hasht Nagari, Peshawar,
- (6) Muhammad Ismail son of Peer Bakhsh care of Haji Abdul Jalil, Mohallah Shaikh Bahauddin, Peshawar,
- (7) Malik Ghulam Muhammad son of Malik Jaffar Khan, resident of Mohallah Wigar Yagran, Karimpura, Peshawar,
- (8) Muhammad Ali son of Sahibzada Muhammad Umar Khan, resident of House No.4221, Karimpura, Peshawar,
- (9) Mst. Taj Begum daughter of Ghualm Din,
- (10) Mst. Zeba Begum daughter of Ghulam Din,
- (11) Mst. Sonia Begum daughter of Ghulam Din,
- (12) Mst. Shagufta Bibi daughter of Manzoor Hussain,
- (13) Abdul Qayyum son of Ghulam Din,
- (14) Muhammad Aslam son of Ghulam Din,
- (15) Muhammad Kamal son of Ghulam Din,
- (16) Mehmood Khan son of Ghulam Din, from serial No. 9 to 16 all residents of Dhaki Nalbandi, Androon Shaher Peshawar.

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- (17) Mst. Sultan Jehan Begum daughter of Sahibzada Muhammad Turab Khan, resident of Mohallah Ghazi Abdur Rasheed, Peshawar,
- (18) Mian Sultan Muhammad son of Mian Muhammad Jan, resident of Mauza Swati, Bara Lane Stadium Road, Peshawar (Petitioner's Attorney),
- (19) Saeed Sultan, .
- (20) Tariq Sultan,
- (21) Tahir Sultan, all sons of Sultan Muhammad, residents of Mauza Swati, Peshawar,
- (22) Amanullah Khan son of Sahibzada Muhammad Turab Khan, resident of Mohallah Ghazi Abdur Rasheed, Karimpura, Peshawar,
- (23) Mst. Raees-un-Nisa Begum,
- (24) Shahida Parveen,
- (25) Quratul Ain all daughters of Rizwan Ullah,
- (26) Irfanullah,
- (27) Zeeshan Mozamil
- (28) Rehan Mozamil
- (29) Fakhre Alam all sons of Amanullah Khan
- (30) Sajid Ali Khan son of Sahibzada Muhammad Umar Khan, resident of Mohallah Ghazi Abdur Rasheed, Karimpura, Peshawar

SHARIAT PETITION NO.43/I OF 1992

- (1) Tariq Mehbbob,
- (2) Tahir Mehboob,
- (3) Shahid Mehboob all sons of Late Mehboob Khan, residents of 7-AA, Mehboob Lodge, Faisal Colony, G.T. Road, Peshawar City

SHARIAT PETITION NO.64/I OF 1992

- (1) Fida Muhammd Khan son of Late Tehmas Khan
- (2) Mst. Dilbar Sultan wife of Mufti Masood Jan
- (3) Mst. Zeenat Sultan wife of Mian Muhammad Akhtar, both daughters of Late Tamas Khan, all residents of Bungalow No.26-A, Shami Road, Peshawar Cantt.

SHARIAT PETITION NO.67/I OF 1992

(1) Salar Sufi Haji Abdul Ghani son of Sufi Abdul Samad, resident of Illaqa Karimpura, Mohallah Ghazi Abdur Rasheed, House No.1796-K, Peshawar City.

2. In the above named petitions the petitioners have impugned the Martial Law Order Nos.425 and 107 and laws and rules made there under on the ground that acquisition of the lands of the petitioners under the said laws by the NWFP Government is repugnant to Holy Quran and Sunnah of the Holy Prophet (PBUH).

3. Brief facts of the case as per the summary, dated 27.1.1987, submitted to the Chief Minister, NWFP are that land comprising Khasra No.147, 148, 149 and 150 situated in Mahal Terai Tehsil and District Peshawar measuring 79 Kanals and 8 Marlas was an evacuee property. This land was allotted on temporary basis by Deputy Rehabilitation Commissioner, Peshawar to Sericulture Department on 4.11.1953 and formal order was issued by the Deputy Rehabilitation Commissioner on 18.1.1954. Out of the above land, an area of 20 Kanals and 18 Marlas comprising Khasra No.149 Min and 150 Min was allotted and confirmed in the name of four displaced persons namely Mst. Murtaza Bano, Maqbool Ahmad, Maqsood Ahmad and Tasleem Ahmad on 25.8.1966 against their verified claims. The remaining land was also allotted to some other refugees because the allotment order in

the name of Sericulture Department was without jurisdiction. The Sericulture Department filed an appeal before the Additional Settlement Commissioner, Peshawar to set aside the allotment order in favour of the refugees. The Additional Settlement Commissioner set aside the allotment in favour of refugees on 25.9.1969 and directed the Sericulture Department to move for outright sale. Mr. Fida Muhammad Khan who had purchased 20 Kanals and 8 Marlas of land in Khasra No.149 and 150 Min, went to High Court in revision against the judgment of Additional Settlement Commissioner, Peshawar. On dismissal of revision on 29.1.1970 from High Court he went in appeal to Supreme Court which set aside the impugned order of the High Court and remanded the case to Chief Settlement Commissioner/Member, Board of Revenue, NWFP with the direction to decide whether the land should be sold to Sericulture Department under provision of section 12(b) or should be allotted to the refugees. The Chief Settlement Commissioner vide his detailed judgment, dated 26.10.1988, decided to transfer the whole of the land to the refugees. Again this decision was challenged in the High Court but before any decision Martial Law Order No.425 was issued by the Martial Law Administrator, Zone B on 19.4.1984,

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whereby this land was transferred to the Sericulture Department with effect from 25.10.1983. The Sericulture Department deposited Rs.1,30,374/- as cost of the land which was kept in the pool of Chief Settlement and Rehabilitation Commissioner, NWFP. The refugees also deposited their verified claims amount in the same pool. Then the matter was referred to Law Department for examination for their advice. After long delay, the matter was ultimately taken up by the Provincial Cabinet in its meeting held on 2.4.1988 which in principle approved the payment of compensation to the effectees at 1984 ratio out of the development budget and also to amend the Martial Law Order No. 425 with the addition of new paragraph reproduced below:-

“2. The claims of the persons or their successors-in-interest deprived of the land and the rights therein under paragraph 1 shall be satisfied through cash compensation which shall be assessed by the Board of Revenue on the basis of average price prevailing during the period of one year immediately before the commencement of this Order”.

4. Subsequently the above named petitioners approached the Federal Shariat Court. Similar questions came up before the Federal Shariat Court and the Hon'ble Shariat Appellate Bench of the Supreme Court. Finally the

Hon'ble Supreme Court of, Pakistan in the case of Qazalbash Waqf and others Vs. Chief Land Commissioner, Punjab, Lahore (PLD 1990 SC 99) and examined the Land Reforms Regulation, 1972 (M.L.R.115) Land Reforms Act (II of 1977) and the Punjab Tenancy Act, 1887 and held inter-alia that "the State is not empowered to acquire private property without the consent of the owner. In case if it is acquired in dire need or in exceptional circumstances, the Government is bound to pay its compensation to its owner according to the market value or to provide the alternate property".

5. These petitions relate to the year 1992 and came up for hearing from time to time and were partly heard on 12.2.2007 and thereafter on others dates. The position taken up by the Federal Government that it is a provincial matter and the Provincial Government is the competent authority to deal with it as it may deem fit. Today when the case came up for hearing Mr. Muhammad Saeed, Deputy Solicitor, Law Department, Government of NWFP filed before us certified copy of the minutes of the meeting held on 13.3.2008 under the Chairmanship of Minister for Environment Government of NWFP in which the following decision was taken:-

“In the backdrop of the entire history of the case, the Committee was of the view and has finally concluded that matter may be left to the Federal Shariat Court to decide on merits and according to the relevant legal provisions. The Committee agreed that this decision may be communicated as its recommendations to the Chief Minister.”

6. Accordingly following the decision of the Hon'ble Supreme Court of Pakistan quoted above we direct the Government of NWFP to pay compensation to the petitioners/owners/legal heirs within six months hereof and also to those aggrieved persons who have not approached this Court and whose property has been acquired under the impugned laws.
7. Copy of this judgment may be sent to the Government of NWFP and Board of Revenue, NWFP, Peshawar.

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JUSTICE HAZIQUUL KHAIRI
Chief Justice

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JUSTICE DR. FIDA MUHAMMAD KHAN

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JUSTICE SALAHUDDIN MIRZA

Islamabad, the 7th May, 2008.
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