

کیا وزیر اوقاف ارشاد فرمائیں گے کہ:-

نمبر شمار	سوال	جواب
(ا)	آیا یہ درست ہے کہ مردان میں محکمہ کی 35 ہزار کنال زمین موجود ہے جو کہ لوگوں کے قبضے میں ہے؟	ہاں یہ درست ہے کہ مردان میں محکمہ کی 36110 کنال زمین موجود ہے جو کہ لوگوں کے قبضہ میں ہے۔
(ب)	آیا یہ بھی درست ہے کہ سپریم کورٹ آف پاکستان نے اس اراضی کا فیصلہ محکمہ اوقاف کے حق میں دیا ہے؟	جی ہاں یہ بھی درست ہے کہ سپریم کورٹ آف پاکستان نے اس اراضی کا فیصلہ محکمہ اوقاف کے حق میں دیا ہے۔
(ج)	اگر (ا) و (ب) کے جوابات اثبات میں ہوں تو سپریم کورٹ کا فیصلہ کب آیا ہے اور حکومت نے اس فیصلے کے بعد زمین کو واگزار کرنے کیلئے کیا اقدامات اٹھائے ہیں تفصیل فراہم کی جائے۔	وقف اراضی تعدادی 36110 کنال کا مقدمہ سپریم کورٹ آف پاکستان نے 16 جون 2014 کو محکمہ اوقاف کے حق میں صادر کیا ہے۔ (جمنڈا الف)۔ محکمہ کی Petitioners کے ساتھ معاہدہ اجارہ داری کے حوالے سے بات چیت ہوئی تھی لیکن جن شرائط پر محکمہ معاہدہ اجارہ داری کرانا چاہتا تھا اس کے لئے وہ راضی نہیں تھے اور محکمہ ان کے مطالبات پر راضی نہیں تھا۔ اس لئے محکمہ نے اخبارات میں اشتہارات شائع کئے جس کے تحت تمام متعلقہ کاشتکاران کو اجارہ داری کے لئے دعوت دی گئی (جمنڈا ب)۔ ان میں صرف 74 قابضین نے محکمہ کے ساتھ 3 ہزار 78 کنال 16 مرلے وقف اراضی کا معاہدہ اجارہ دستخط کیا۔ اس کے بعد Petitioners نے دوبارہ پشاور ہائی کورٹ میں اخباری اشتہار برائے اجارہ داری کے خلاف حکم امتناعی حاصل کی ہے (جمنڈا ج)۔ اور محکمہ نے مزید معاہدہ اجارہ داری کرنے پر کاروائی روک دی۔ سیکرٹری اوقاف خیبر پختونخوا نے ایک کمیٹی بروئے نمبر 17.02.2017 مورخہ SO(Auqaf-II)2-4/2016/1370-79 بنائی (جمنڈا د) کہ وہ مذکورہ وقف اراضی کو اجارہ پر دینے کے لئے کوئی ٹھوس حل نکالے۔ اس سلسلے میں وقتاً فوقتاً کمیٹی کے اجلاس منعقد ہو رہے ہیں۔ حال ہی میں پشاور ہائی کورٹ نے رٹ پٹیشن پر فیصلہ صادر فرما دیا ہے لیکن تحریری فیصلہ ابھی موصول نہیں ہوا ہے۔ جو نئی تحریری فیصلہ موصول ہو جائے گا تو ہائی کورٹ کے فیصلے کے مطابق لائحہ عمل طے کیا جائے گا۔

**Question No. 778:**

**From:** Mr. Inayat Ullah, M.P.A

The worthy Minister Auqaf is requested to respond to the following question:

S. No	Question	Answer
A	Is it correct that waqf land measuring 35000, Kanal exists at Mardan, presumably under possession of local?	It is correct that Auqaf department owns waqf land measuring 36110 Kanal at Mardan under the occupation of locals.
B	Is it correct that the Honorable Supreme Court of Pakistan has given verdict in favour of Auqaf department?	It is correct that the Honorable Supreme Court of Pakistan has decided the case of this land in favour of Auqaf department.
C	If part A and B are correct then provide detail as to when did the Supreme Court decided the case and what steps for its possession has so far been taken by the government.	<p>The Honorable Supreme Court of Pakistan has decided the case in favour of Auqaf department in respect of waqf land measuring 36110 Kanal on 16.06.2014 <b>(Flag-A)</b></p> <p>The Auqaf department commenced negotiation in respect of lease agreement with other party/petitioners however those efforts were not successful as the terms and conditions of both the parties were literary contradictory. Therefore Auqaf department published advertisement in daily newspapers wherein the persons whom were tilling the land were invited for entering into lease agreement <b>(Flag-B)</b>.</p> <p>Among those persons only 74 occupants have signed agreement for waqf property measuring 3078 Kanal and 16 Marla. Afterwards the petitioners sought out status quo order against the said advertisement from Peshawar High Court Peshawar. <b>(Flag-C)</b>.</p> <p>The committee was assigned the task to work out a concrete proposal for leasing out of waqf property, the meeting of the committee are held on and off. In the meanwhile, Peshawar High Court, Peshawar has decided the said writ petition but detailed judgment is awaited. Further steps will be taken in the light of the said judgment. Consequently Auqaf department stopped proceedings in respect of further lease agreement. The Chief Administrator Auqaf Khyber Pakhtunkhwa then constituted a committee vide order No. SO(Auqaf-II)2-4/2016/1370-79, dated 17.02.2017 <b>(Flag-D)</b>.</p>

Fig V-39

جسٹس "الف"

5 ?

**IN THE SUPREME COURT OF PAKISTAN**  
(Appellate Jurisdiction)

Present:

Mr. Justice Jawwad S. Khawaja  
Mr. Justice Mushir Alam

Civil Appeal Nos.1181 and 1182 of 2008  
(Against the judgment & decree dated 28.09.2005 of  
the Peshawar High Court, Peshawar passed in CR  
No.136 and 135 of 1999)

Muhammad Iqbal Khan and others ... Appellants in CA-1181/08  
Habibullah Khan and others ... Appellants in CA-1182/08  
Versus  
Chief Administrator Auqaf NWFP,  
Peshawar, etc. ... Respondents in both cases

For the appellant(s): Mr. Wasim Sajjad, Sr. ASC

For the respondent(s): Mr. Abdul Aziz Khan Kundi, ASC/AOR

Date of hearing: 16.06.2014

Judgment

Jawwad S. Khawaja, J.- We have heard learned counsel for the parties at length and have also gone through the impugned judgment and record with their able assistance. Leave to appeal was granted in these two matters vide order dated 10.06.2008 which, in relevant part, is reproduced as under:-

*"We have heard learned counsel for the parties at length. Leave is granted, inter alia, to consider:-*

- i. *Whether the petitioners had become owner in possession under the amending provisions of Act XI of 1992.*
- ii. *If not so, whether the petitioners could retain the land as tenants on lease on the terms to be decided between the parties."*

The appellants claim that they were occupancy tenants of the land which measures 36113 kanals, 12 marlas in village Kalu, Tehsil Takht Bhai, District Mardan. They filed respective suits to assert the claim that the land was in the occupancy tenancy of the residents of village Kalu. The respondent i.e. Auqaf Department, KPK, however, asserted that the land was Waqf property and had always remained with the Auqaf Department. Furthermore, the Auqaf Department under the law namely the NWFP Charitable Institutions Act, 1949 and subsequent amendments is entitled to administer, control, manage and maintain the Waqf properties. We may here refer to the notification of March, 1950 issued by the Govt. of NWFP in exercise of powers conferred upon it under Section 3 of the aforesaid Act,

9/15/14  
9/17/14  
KPK  
L.A  
For compliance in  
letter and spirit  
at/14

**ATTESTED**

Superintendent  
Supreme Court of Pakistan  
Islamabad

6  
127

1949. This specifically referred to the land which is in question before us and directs that the property is Waqf property which should be so administered, controlled, etc. as such.

2. The claim of the appellants-plaintiffs needs to be seen in the light of an earlier round of litigation which ended in the year 1992 vide judgment rendered by a Bench of this Court headed by Hon'ble the Chief Justice. In the said judgment, the entitlement of the appellants-plaintiffs as well as the rights of the Auqaf Department to administer, control, etc. the property was determined. For ease of reference, the relevant portion of the said judgment which also has been reproduced partly in the leave granting order is reproduced as under:-

*"The High Court dismissed their [present appellants] writ petition amongst others on the ground of laches, estoppel and other elements of conduct of the appellants. Be that as it may, learned counsel for the appellants ultimately argued that it was the order of the Chief Minister, NWFP, dated 29.3.1987 which had given rise to the grievance, which was agitated in the High Court through the writ Petition filed within the short time of the issuance of said order by the Chief Minister. He also argued that though the High Court was right in treating the case, vis-à-vis, the notification dated 3.4.1950 under Act VIII of 1949, as past and close transaction and also subject to the objection like laches yet at the same time he emphasized that there was no justification for ignoring the grievance regarding the direction of the Chief Minister issued in March, 1987 shortly before the filing of the petition. When faced with this summarized submission of the learned counsel for the appellants, the learned counsel for the respondents agreed to discuss this new situation with the appellants and his clients. The parties were allowed time to enter into a meaningful dialogue for just solution. As a result thereof both sides have submitted their separate proposed drafts. They are reproduced below:-*

1. *"The parties have agreed as under:*

*"1. That the rights of the parties are regulated by the Notification of 3/4 /50, issued under Section 3 of Act VIII of 1949.*

*"2. That the directions of the Chief Minister of NWFP of 29.3.87 be ignored.*

*" The appeal may be allowed in the terms above and the parties left to bear their own costs.*

Sd/-

Nur Ahmed, A.O.R.  
For the appellants.

✓ *2. "The Chief Minister's direction that the land should be given to tenants at will be ignored. The appellants be considered, if they take the land in their possession on lease in accordance with law, they shall be liable to ejectment if they do not abide by the*

**ATTESTED**

Superintendent  
Supreme Court of Pakistan,  
Islamabad

128 / 7  
129

*terms settled or show a conduct unbecoming of a tenant for instance they are troublesome"*

*The above was read out by me to the administrator Auqaf (Mr. Nazir Hussain) and Chief Administrator, Auqaf (Mr. Shafi). They agree with what I have written in the first para. The latter, however, added that fresh terms will be settled with the appellants. Submitted. Orders may be passed which your lordships consider to be in the interest of justice.*

Sd-

(Abdul Hakim Khan)  
ASC 29.3.92.

It is true that the draft submitted by the learned A.C.R. for the appellants is not shown to have been agreed to by the learned counsel for the respondents. However, when note of the learned counsel for the respondents reproduced above is read in the context and the facts and circumstances of the case as well as in the context of the draft agreement signed by the learned counsel for the appellants, in our view, there is not much dispute left between the parties.

The respondents do rely on the notification on 1950. Not only this but the same having been accepted and acted upon for the last 40 years none of the parties can escape from these consequences, legal or otherwise. Both the parties have agreed that the directions of the chief Minister dated 29.3.1987 should be ignored. That being so, the further clarification by the learned counsel for the respondents in his note does not present any insurmountable difficulty in partly allowing this appeal in terms of both drafts submitted by the counsel. They are fair. When read together they are workable. They shall be given the effect accordingly.

With the foregoing order of disposal, this appeal stands partly allowed. There shall be no order as to costs."

From the above it is evident that the respective rights between the parties were settled by the Supreme Court. Since the aforesaid judgment was pronounced on 29.3.1992, the Auqaf Department also issued advertisements in May, 1992 based on its right to administer, control etc. the property in question. The advertisement for lease of the land was for all those who were in cultivating possession of the land.

3. It was, however, urged on behalf of the appellant that through subsequent amendment made in the NWFP Tenancy Act, 1950 the appellants who had admittedly been occupancy tenants for generations, were vested with complete title. The said amendment stipulated that the exception in Section 4A of the aforesaid statute was to be deleted. We are afraid this argument of the learned counsel for the appellants cannot be accepted firstly because the rights of the parties were settled by a Bench of this Court as far back as 1992 and thereafter, the Auqaf Department continued to exercise administration, control etc. over the property in question. Secondly, the North-West Frontier Province Waqf Properties Ordinance, 1979 being a special law would prevail

TESTED

Superintendent  
reme Court of Pakistan  
Islamabad

GJK

81  
125

over the NWFP Tenancy Act, 1950. Learned counsel for the appellants stated that the said statute would only apply where a notification had been issued under Section 7 thereof and not otherwise. This contention however is not well-founded because the management, control etc. was vested with the Auqaf Department under Section 3 of the NWFP Charitable Institutions Act, 1949. That statute also was a special enactment and empowered the governor of the Province to issue a notification under Section 3 which he did. The tenancy Act is a law of general application which cannot have the effect of overriding provisions of a special law.

4. At the end we may add that learned counsel for the Auqaf Department also drew our attention to the extracts from the case titled Qazilbash Waqf Vs. Chief Land Commissioner (PLD 1990 SC 99) wherein it has been held that Waqf property vests in Allah Almighty. In the present case, the property was dedicated for the same purpose being attached to the shrine of Mian Umar Sahib of Chamkani.

5. Learned counsel for the appellants, faced with the above, stated that those who are actually tilling the land or are in occupation or who were recognized by the judgment of the Supreme Court dated 12.05.1992 should be entitled to leasehold rights as per terms which may be settled by the Auqaf department. On this, learned counsel for the Auqaf Department states that the Department itself is prepared to consider and grant leases to people who are actually in occupation, as above and that the terms of the leases will be settled by the Auqaf department.

6. For the foregoing reasons, we find no justification for allowing these appeals. The

appeals are, therefore, dismissed.

Sd/- Jawwad S. Khawaja, J  
Sd/- Mushir Alam, J



Certified to be True Copy  
*[Handwritten Signature]*  
3/19/14  
Superintendent  
Supreme Court of Pakistan  
Islamabad



جسٹس "ب" 24 9

۷۳۲

Nary No. 259  
Office of the Admin  
27

پشاور اینٹ آباد اور اسلام آباد سے بیک وقت شائع ہونے والا کثیر الشمارہ

روشنی کی مناسبت ان کا سب اہم

روزنامہ

پشاور پاکستان

12

25 مارچ 2017ء 5:20 بجے 1439ھ 13 جمادی الثانی 1439ھ 25 مارچ

**استعمال کے لیے اجازت خط و وقت**

**پشاور اینٹ آباد اور اسلام آباد سے بیک وقت شائع ہونے والا کثیر الشمارہ**

18-05-2014

INF(P) 5502

Say No to Corruption / Drugs

0313-9071719, 0937-9230

DA-I

26/9/17

27/9

2219

27/9/17  
Relvant file  
27/9/17

۷-39

10  
25

روزنامہ مشرق شہار اسلام آباد..... (3) ..... 28 ستمبر 2017ء



**شہار اسلام آباد کے روزنامہ مشرق**

قانونی طور پر منظور شدہ روزنامہ مشرق شہار اسلام آباد کی شہادت کے 51 سال 16.06.2014ء تا 16.06.2017ء تک جاری رہا ہے۔

1- مشرق (روزنامہ) روزانہ صبح 7 بجے شہار اسلام آباد سے شائع ہوتا ہے۔

2- قیمت پاکستان روپے 100 روپے ہے۔

3- یہ روزنامہ شہار اسلام آباد کے تمام علاقوں میں شائع ہوتا ہے۔

4- یہ روزنامہ شہار اسلام آباد کے تمام علاقوں میں شائع ہوتا ہے۔

5- یہ روزنامہ شہار اسلام آباد کے تمام علاقوں میں شائع ہوتا ہے۔

نوٹ: مزید معلومات اور اشتراکات کے لیے مشرق شہار اسلام آباد سے مندرجہ ذیل نمبروں سے مندرجہ ذیل نمبروں سے رابطہ کریں۔

INF(P)5502

المشرف

ڈائریکٹر اشتراکات و سہولیات

رائی (ایم، ایچ، ایچ) شہار اسلام آباد

فون نمبر: 2043427-091، 92301-0937، 9071719-0313

26/9/17

BAI  
27/9

Supat  
27/9



Asst  
27/9/17  
Belmont file  
Jc



(ع) 1/11/17

PESHAWAR HIGH COURT, PESHAWAR.

ORDER SHEET

Date of Order/ Proceedings	Order or other Proceedings with Signature of Judge.
<u>01/11/2017.</u>	<p><u>WP No. 4150-P/2017</u></p> <p><u>Present:</u> Clerk of counsel for the petitioners.</p> <p>===</p> <p>Comments be called from respondents No. 2 to 4 so as to reach this Court within fortnight.</p> <p><u>Interim Relief</u></p> <p>Notice for a short date. In the meanwhile, status quo be maintained.</p> <p style="text-align: center;"> <u>JUDGE</u></p> <p style="text-align: center;"> <u>JUDGE</u></p>



جمعہ ۱۰ دسمبر ۲۰۱۷

۱۲

۲۱۴

**Government of Khyber Pakhtunkhwa**  
**Auqaf, Hajj Religious & Minority Affairs Department**  
SDU Building, Attached Department's Complex, Khyber Road, Peshawar  
Auqaf@kp.gov.pk

Dated Peshawar, the 17<sup>th</sup> February, 2017

**NOTIFICATION:**

**No. SO(Auqaf-II)2-41/2016**

In pursuance of the directions of the Standing Committee No. 6 for Auqaf, Hajj & Religious Affairs Department, issued in a meeting held on 20.01.2017, the Competent Authority has been pleased to re-constitute the following committee to lease out the Waqf Property measuring 36110 kanal at Mouza Mahal Kalo, District Mardan:-

i.	Administrator Auqaf, KP, Peshawar	Chairman
ii.	Assistant Commissioner, Tehsil Takhtbhal	Member
iii.	Deputy Administrator Auqaf-I	Member
iv.	Deputy Administrator Auqaf-II	Member
v.	Legal Advisor, Auqaf (Mr. Nasir Mehmood)	Member
vi.	Manger Auqaf Mardan	Member

**Note:** Legal Advisor-II, Auqaf and Patwari Auqaf will assist the committee as and when required.

2. TORs of the Committee are as under:-

- e. The Committee will be bound to find out ways & means to lease out the land in light of the judgment of Supreme Court of Pakistan dated 16.06.2014 (CA-1181/08 & CA-1182/08).
- f. Lease Agreement may be executed at the rates, which shall not be less than the rates, to be provided by Deputy Commissioner, Mardan/Revenue Authority Mardan.
- g. The committee will finalize the task within one month period.

Sd/  
**Secretary/Chief Administrator Auqaf**  
Khyber Pakhtunkhwa, Peshawar

**Endst: of even No. & Date.**

Copy forwarded for information & necessary action to:

1. Mr. Noor Saleem Malak, Chairman Standing Committee No. 6 for Auqaf, Hajj & Religious, Khyber Pakhtunkhwa.
2. The Deputy Commissioner, Mardan.
3. The District Police Officer, Mardan.
4. The Administrator Auqaf, Khyber Pakhtunkhwa, Peshawar.
5. The Deputy Administrators - I & II, o/o the Administrator Auqaf, Peshawar.
6. The Assistant Commissioner, Tehsil Takhtbhal, District Mardan.
7. The Legal Advisors - I & II, o/o the Administrator Auqaf, Khyber Pakhtunkhwa, Peshawar.
8. The Manager Auqaf, Mardan
9. The Patwari, o/o the Administrator Auqaf, Peshawar.
10. PS to Secretary Auqaf, Hajj, Religious & Minority Affairs Department.

ac  
  
Section Officer (Auqaf)