

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

**Present:**

MR. JUSTICE MAZHAR ALAM KHAN MIANKHEL  
MR. JUSTICE QAZI MUHAMMAD AMIN AHMED

**Civil Petition No.509-P/2012**

(Against the judgment dated 14.09.2012 passed by  
the Peshawar High Court, Peshawar in C.R.  
No.156-P/12)

General Manager, SNGPL, Peshawar

**...Petitioner**

**Versus**

Qamar Zaman and others

**..Respondents**

For the petitioner: Mr. Asad Jan, ASC

For the respondents: N.R.

Date of hearing: 07.07.2021

**ORDER**

**MAZHAR ALAM KHAN MIANKHEL, J-**. The petitioner, through instant petition for leave to appeal, has questioned the judgment dated 14<sup>th</sup> September, 2012 of the Peshawar High Court, Peshawar whereby civil revision of the petitioner against the concurrent findings of the trial Court and the appellate Court regarding decretal of suit of the respondent for declaration was dismissed and the concurrent findings of the two Courts below were upheld.

2. On the very first day of hearing i.e. 30<sup>th</sup> June, 2021, this Court had observed that a short question of maintainability of the suit and jurisdiction of the Civil Court was involved, so, the respondents were ordered to be put on notice for 7<sup>th</sup> July, 2021.

3. Today when the case was called for hearing, the Court Associate informed the Court that despite service of notice, the respondents are not in attendance. They are, therefore, proceeded ex-parte.

4. Learned counsel for the petitioner confined his arguments only to the question of maintainability of the suit and jurisdiction of the Civil Court in view of the provisions of Section 43 of the Oil & Gas Regulatory Authority Ordinance, 2002 (the '**Ordinance**') which reads as under:-

" 43. **Ordinance to override other laws.** (1) The provisions of this Ordinance, the rules and the regulations, and any licences issued hereunder shall have effect notwithstanding anything to the contrary contained in any other law, rule or regulation, for the time being in force, and any such law, rule or regulation shall, to the extent of any inconsistency, cease to have any effect on the commencement of this Ordinance and the Authority shall, subject to the provisions of this Ordinance, be exclusively empowered to determine the matters in its jurisdiction as set out in this Ordinance.

(2) Nothing in this ordinance, or any repeal effected thereby, shall affect or be deemed to affect anything done, action taken, proceedings commenced, directions given, instruments executed or orders, rules or regulations issued under or in pursuance of any law repealed or amended by this Ordinance and any such things, action, proceedings, directions, instruments or orders shall, if in force on the commencement of this Ordinance, continue to be in force and have effect as if the same were respectively done, taken, commenced, given executed or issued under this Ordinance."

5. A look at the above noted provisions of law makes it abundantly clear that the provisions of this Ordinance will have an overriding effect and the Authority shall, subject to the provisions of this Ordinance, be exclusively empowered to determine the matters in its jurisdiction as set out in the Ordinance. Sub-section (2), noted above, gives protection to all the matters, acts done and laws in force on the commencement of this Ordinance.

6. Section 6 of the Ordinance defines the powers and functions of the Authority. Sub-section (2) clause (q) of Section 6 empowers the Authority to protect the interest of all the stakeholders including consumers and the licensees. For ready reference sub-section (2) clause (q) of Section 6 of the Ordinance is reproduced below:-

**"6. Powers and functions of the Authority. (1).....**

(2) Without prejudice to the generality of the foregoing,  
the Authority shall-

(a)

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(b)

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(c)

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(d)

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(e)

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(f)

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(p)

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(q)

protect the interests of all stakeholders including  
the consumers and the licensees in accordance  
with the provisions of this Ordinance and the  
rules;

(r)

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(s)

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(t)

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(u)

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(v)

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(w)

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(x)

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(y)

..... "

Section 11 of the Ordinance prescribes the procedure for redressal of disputes by filing complaints which reads as under:-

**"11. Complaints. (1)** Any interested person may file a written complaint with the Authority against the licensee for contravention of any provision of this Ordinance or of any rule or regulation.

(2) The Authority shall, on receipt of a complaint, provide an opportunity to the complainant as well as to the licensee, or any other person against whom such complaint has been made to state its case before taking action thereon."

Similarly, Section 12 of the Ordinance, provides the right of appeal.

7. The Ordinance being a special law explaining the powers and jurisdiction of the Authority and redressal of the disputes with overriding effect, then no other forum, Tribunal shall have the jurisdiction to step in for resolving the disputes. An overall look of the Ordinance would reflect that except the provisions of Section 43, which gives the overriding effect to the Ordinance, and the provisions of Sections 11 & 12 of the Ordinance, providing the procedure for resolving the disputes and appeal against the order/decision of the Authority, no other specific provision barring the jurisdiction of the Civil Court is there in the Ordinance. In the given circumstances, question would arise, as to whether a Civil Court, being a Court of plenary and ultimate jurisdiction, will have no jurisdiction to entertain the disputes referred to in the Ordinance despite the fact that there is no specific bar in the statute over the jurisdiction of the Civil Court? Answer to the above question would be a simple yes! No doubt, there is no specific bar provided in the statute over the jurisdiction of Civil Court but the above noted provisions of the Ordinance would reflect that an exclusive jurisdiction has been conferred on the Authority for determining the disputes referred to in the Ordinance which reflect the intent of the legislature. In such like situation, the jurisdiction of Authority is exclusive and the jurisdiction of Civil Court is barred but this would be an implied bar, very much permissible under the settled law and it will be equivalent to the specific bar provided in any statute.

8. We have gone through the record of the case which reflects that the suit was filed on 25<sup>th</sup> March, 2010 when the ordinance was very much in the field. The petitioners/department, it appears so, had

raised objections of maintainability of suit and jurisdiction of Civil Court just as a matter of routine and issue No.5 in this regard was framed and was dealt with in a cursory manner as no proper assistance was given to the trial Court. Similar is the case with memo of appeal before the Appellate Court and memo of Civil Revision before the High Court which contains the ground/objection regarding lack of jurisdiction but no proper contest by the petitioners and findings by the Courts. The question of jurisdiction being a crucial one, going to the roots of the case, was dealt with in a very casual manner.

9. In view of the statutory provisions, noted above, this civil suit was not maintainable before a Civil Court of plenary jurisdiction. Thus the same was wrongly entertained by the Civil Court. Any judgment/decreed/order passed/rendered by a Court having no jurisdiction would be no judgment/decreed/order in the eyes of law and will have no binding force attached to it. So, in the circumstances, the judgments and decrees of the Courts below, being without lawful authority, jurisdiction and *coram non judice*, are set aside. Costs shall follow the event. We have been informed that the issue of department is still alive. So, we, in the circumstances, direct that the civil suit along with all necessary documents be sent to the Authority under the Ordinance and the same be treated as a complaint under Section 11 of the Ordinance, pending adjudication before the Authority, who shall decide the same strictly in accordance with law, surely after hearing the respondent, who was placed ex-parte today. The office of the Civil Court shall retain the photo copies of the said documents as its record. This petition, in the given

circumstances, is converted into appeal and allowed in the above terms.

Judge

Judge

Peshawar,  
7<sup>th</sup> July, 2021  
*Nasir Khan* /-  
'Approved for reporting'