

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT: MR. JUSTICE MIAN SAQIB NISAR
MR. JUSTICE FAISAL ARAB
MR. JUSTICE IJAZ UL AHSAN

CIVIL APPEALS NO.1023, 1024, 1357, 1358 AND 2155 OF 2016
(Against the judgment dated 19.1.2016 of the Peshawar High Court, Peshawar passed in Writ Petitions No.2485-P and 506-A/2014)

1. Abdul Haq Khan etc. Vs. Haji In CA 1023/2016
Ameerzada etc.
2. Deedar Khan etc. Vs. Maulana In CA 1024/2016
Asmatullah etc.
3. Malik Qadam Khan etc. Vs. Haji In CA 1357/2016
Ameerzada etc.
4. Malik Qadam Khan etc. Vs. Maulana In CA 1358/2016
Muhammad Asmatullah etc.
5. Government of KPK through Chief In CA 2155/2016
Secretary, Civil Secretariat, Peshawar
etc. Vs. Haji Ameerzada etc.

For the appellant(s): Mr. Aitzaz Ahsan, Sr. ASC
(In CAs 1023 & 1024/2016)

Sardar Abdul Raziq Khan, ASC
(In CAs 1357 & 1358/2016)

Mr. Waqar Ahmed Khan, Addl.A.G. KPK
Mr. Mugees Sana Ullah, Assistant
Commissioner, PATA
(In CA 2155/2016)

For the respondent(s): Mr. Arshad Zaman Kayani, ASC
Ch. Akhtar Ali, AOR
(For respondents 1 to 7 in CA 1023/2016)

Syed Iftikhar Hussain Gillani, Sr. ASC
(For respondents 1 to 5 in CA 1024/2016)

Mr. Waqar Ahmed Khan, Addl.A.G. KPK
(For respondents 6 to 11 in CA 1023/2016)

Mr. Arshad Zaman Kayani, ASC
Ch. Akhtar Ali, AOR
(For respondent No.1 in CA 1357/2016)

Mr. Waqar Ahmed Khan, Addl.A.G. KPK
(For respondents 8 to 13 in CA 1357/2016)

Mr. Imtiaz Ali, ASC
(For respondents 1, 11 to 15 in CA 1023/2016)

For Federation: Mr. Sajid Ilyas Bhatti, DAG

Dates of hearing: 22.11.2016 & 23.11.2016

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JUDGMENT

MIAN SAQIB NISAR, J.- These appeals, with the leave of the Court, involve the sole proposition of law whether the re-constitution of districts in the Provincially Administered Tribal Areas (*PATA*) of Khyber Pakhtunkhwa (*KPK*) is violative of the provisions of Article 246 of the Constitution of the Islamic Republic of Pakistan, 1973 (*the Constitution*).

2. The facts are that *vide* notification dated 20.9.1976, issued under Section 3 of the West Pakistan District Re-constitution Ordinance, 1960 (*the Ordinance*), Hazara District was split into three districts, namely, Abbottabad, Mansehra and Kohistan (*Kohistan comprised of 159 villages*). Through another notification of even date issued under Sections 5 and 6 of the West Pakistan Land Revenue Act, 1967 (*the Act*), Hazara District ceased to be a part of Peshawar Division, and was to be known as Hazara Division consisting of the aforementioned three districts. Kohistan District comprised of Sub-division and Tehsil Dasso which in turn comprised of the 159 villages of Kohistan (*settled area*). Thereafter by a notification dated 1.10.1976 issued by the Governor, KPK (*note:- the notification does not state under which law it was issued*), 154 villages of Swat District were included in Kohistan District (*note:- Swat is admittedly a PATA*). On 30.12.1976, the Constitution (Sixth Amendment) Act, 1976 (*6th Amendment*) was passed which added the phrase “tribal area of Kohistan district” to Article 246(b)(i) of the Constitution. Another

notification dated 8.10.1977 was issued under Sections 5 and 6 of the Act which partially modified the second notification dated 20.9.1976 under which a new Sub-division and Tehsil Pattan were created and the 154 villages *(formerly)* of Swat District were made a part thereof. Therefore at this point of time, Kohistan District comprised of two Tehsils, namely Dassu *(comprising 159 villages i.e. settled area)* and Pattan *(comprising 154 villages i.e. former Swat District villages which were PATA)*. On 20.10.1995 a notification was issued under Sections 5 and 6 of the Act which created another Sub-division in Kohistan District, i.e. Palas, and for this purpose some of the villages which earlier formed a part of Sub-division Pattan *(500 villages in 10 Union Councils)* were now made part of Palas. Thus at this point, Kohistan District comprised of three Sub-divisions and Tehsils, i.e. Dassu, Pattan and Palas. *Vide* notification dated 23.8.2007 issued under Section 6(1) and (2) of the NWFP Land Revenue Act, 1967 *(the West Pakistan Land Revenue Act, 1967 was renamed thus)* Tehsil Kandia was created *(note:- Kandia and Dassu are settled areas)*. Thereafter *vide* notification dated 15.1.2014 issued under Sections 5 and 6 of the KPK Land Revenue Act, 1967 *(the NWFP Land Revenue Act, 1967 was renamed thus)* Kohistan (Lower) District was carved out of the existing Kohistan District; the former comprised of Sub-divisions and Tehsils Pattan and Palas while the latter comprised of Sub-divisions and Tehsils Dassu and Kandia. It is instructive to note at this juncture that a notification dated 7.2.2014 partially amended the notification dated 15.1.2014, in that 63 villages out of the 154 villages formerly of Swat District were removed from Tehsil Pattan and 20 were instead included in Tehsil Dassu, whilst the remaining 43 were included in Tehsil Kandia. Thus both Kohistan District and Kohistan (Lower) District comprised of settled areas as well as PATA. This act of splitting Kohistan District *vide* notification dated

15.1.2014 was challenged through eight constitutional petitions. The first Writ Petition No.79-A/2014 titled *"Action Committee Palas Vs. Secretary to Govt. of KPK Revenue Department, Civil Secretariat, Peshawar and others"* was dismissed on 24.6.2014 as not being maintainable. Of the remaining seven constitutional petitions, five were dismissed through the impugned judgment (*note:- none of the six dismissals have been challenged before us*). However *vide* the same judgment, two of them, Writ Petition No.2485-P/2014 titled *"Haji Amirzahda and others Vs. Secretary to Govt. of KPK Revenue Department, Civil Secretariat, Peshawar and others"* and Writ Petition No.506-A/2014 titled *"Maulana Muhammad Asmatullah and others Vs. Secretary to Govt. of KPK Revenue Department, Civil Secretariat, Peshawar and others"* were partially allowed. In all these constitutional petitions four issues were raised:-

1. Whether the impugned action of the Government of KPK is *ultra vires* on the ground that the creation of districts could only be made by the Provincial Government under the Ordinance;
2. Whether the impugned action of the Provincial Government was adverse to public interest and resulted in administrative difficulties, practical inconvenience and difficulties for the local population;
3. Whether the impugned action of the Provincial Government was illegal for being based on mala fide;
4. Whether the impugned action of the Provincial Government offends the mandate of Article 246 of the Constitution, in that the constitutional status of PATA forming part of Kohistan District, has been disturbed without any constitutional amendment.

The learned High Court decided the first three issues against the writ petitioners by holding that:-

1. The assertion of the writ petitioners that the action of the Provincial Government lacked authority for not having been invoked under the Ordinance of 1960 was not legally correct. The impugned action of the Provincial Government fell within the authority vested in the Provincial Government under the enabling provisions of the Act;
2. The concerns raised in issue No.2, unless patently absurd or unreasonable, were not justiciable. Thus it was best to leave it to the wisdom of the Executive Authority of the State to maintain the trichotomy of power as engrained in the Constitution;
3. The general and bald assertions of ill will and mala fide attributed in the writ petitions were without particulars and would not survive the legal test laid down by the Supreme Court. The ground of mala fide taken in the writ petitions did not fulfil the condition precedent to successfully challenge the impugned action on this basis.

The findings on these issues going against the writ petitioners have not been challenged before this Court and have therefore attained finality. However, the two constitutional petitions mentioned above were allowed on the fourth issue, as the learned High Court held that the PATA excluded from Kohistan District and included in the newly established Kohistan (Lower) District did not figure anywhere in Article 246 of the Constitution thus the same could not be regarded as territory forming part of PATA, and hence the impugned action of the Provincial Government had disturbed the constitutional status of the said area.

2. Mr. Aitzaz Ahsan, learned counsel for the appellants in Civil Appeals No.1023 and 1024/2016 made the following submissions:-

1. Article 246(b) of the Constitution merely identifies the physical areas forming part of PATA;
2. The inclusion or exclusion of these identified areas (*PATA*) in any other district will not change their character and PATA status;
3. PATA's status can only be changed in accordance with Article 247(6) of the Constitution which process has not been undertaken in the matter and therefore the said area retains its PATA status;
4. The constitution or reconstitution of districts is not as sacred as the constitutional limits of the provinces which can only be altered in terms of the mandate of Article 239(4) of the Constitution;
5. The constitution or reconstitution of districts is an administrative function of the executive and shall not be interfered with in the constitutional jurisdiction if such executive authority has been properly and fairly exercised;
6. On facts, the administrative changes made (*the splitting of Kohistan into two districts*) are reasonable and in the public interest considering the size and terrain of the original Kohistan District.

He relied upon the judgment reported as **The Collector Customs Vs. Abdul Jabbar and others** (PLD 2005 SC 247).

3. Sardar Abdul Raziq Khan, learned counsel for the appellants in Civil Appeals No.1357 and 1358/2016 adopted the arguments of Mr. Aitzaz Ahsan, learned ASC. However he added that the Government of KPK had addressed the grievances of the people of these areas by issuing a revised notification dated 7.2.2014 returning some of the villages to their respective tehsils. He argued that this subsequent notification was never challenged yet the learned High Court set it aside.

4. The learned Advocate General in Civil Appeal No.2155/2016, while adopting the arguments of Mr. Aitzaz Ahsan, learned ASC, submitted that Article 246 of the Constitution merely defines the tribal areas and identifies their boundaries. It does not confer territorial integrity to the areas mentioned therein and does not bar the competent authority from making it a part of a district by attaching or detaching it from a settled area. Further, while referring to Section 4 of the Ordinance and Article 247(1) of the Constitution, he contended that no authorization is required from the Federal Government in this regard, rather the Governor is the competent authority to take action in this case.

5. On the other hand, Mr. Arshad Zaman Kiyani, learned counsel for the respondents in Civil Appeals No.1023 and 1357/2016 (*states that his concise statement, filed vide C.M.A.No.6393/2016 should be read as part of his arguments*) submitted that as shown in the map appearing at page 13 of the noted C.M.A., the area east of the Indus River is settled whereas the area west of the Indus River is tribal, and the culture, customs and language etc. of both east and west parts are entirely different. Further, while referring to Article 246 of the Constitution, he argued that there is a distinction between the word "means" appearing in Article 246(b) and the word "includes" appearing in Article 246(c). He submitted that by virtue of the splitting of Kohistan the meaning of PATA changes and this impinges on Article 246(b). Lastly he argued that in paragraph D of the memo of appeal (*Civil Appeal No.1023/2016*) the appellants have admitted the case of the respondent which is adequate to non-suit the appellants.

6. Syed Iftikhar Hussain Gillani, learned counsel for the respondents in Civil Appeal No.1024/2016 stated at the very outset that in order to understand the proposition in hand, it is important to

appreciate the scheme of the Constitution vis-à-vis the tribal areas. He referred to Articles 103 and 104 of the Constitution of 1956 which contained the concept of special areas (*now called tribal areas*). The term tribal areas was first introduced in Articles 223 and 223A of the Constitution of 1962 which provisions according to him were *pari materia* to Articles 246 and 247 of the present Constitution. He pointed out that previously, there was no concept of PATA, only Federally Administered Tribal Areas, and the former concept was introduced in Articles 260 and 261 of the interim Constitution of 1972 which is reflected in Articles 246 and 247 of the present Constitution. He argued that since 1956 the scheme has been the same throughout in that anything to do with a tribal area, particularly one which is provincially administered, requires the involvement of the Federal Government. In this context he stated that wherever the Constitution talks about administration by the Governor, it must be with the prior approval of the President, and in the instant case, whilst issuing the impugned notification the Provincial Government had tried to bypass the Federal Government which is not permissible under the constitutional scheme. He argued that the inclusion of the villages of Swat District (*PATA*) into Kohistan District *vide* notification dated 1.10.1976 was unlawful and this is bolstered by the fact that subsequently the 6th Amendment was brought about in order to give cover to this act by adding the "tribal area in Kohistan District" to Article 246(b)(i) of the Constitution, and interestingly, in the 6th Amendment it was specifically mentioned that it would take effect from 1.10.1976 which is the date of the said notification, otherwise there was no need to specify the date. He vehemently argued that though the President can exclude, and not include, any area from a tribal area

in accordance with Article 247(6) of the Constitution, it is only Parliament which has the power to include an area as a tribal area through a constitutional amendment, as it had done *vide* the 6th Amendment. PATA are set out in Article 246(b)(i) of the Constitution and any area not included or mentioned therein is not a PATA, therefore until and unless Kohistan (Lower) District was added into the said article by virtue of a constitutional amendment, the character of the areas listed therein would stand changed in that they would cease to be tribal area(s) for the purposes of our Constitution. He further stated that a district with part-settled and part-tribal area could not be created as it was against the scheme of the Constitution. Finally he submitted that the notifications have been issued under the Act which has never been extended to Kohistan District, and are therefore invalid on this score as well.

7. Mr. Imtiaz Ali, learned counsel for respondents Nos.1 and 11 to 15 in Civil Appeal No.1358/2016 adopted the arguments of Mr. Syed Iftikhar Hussain Gillani, learned Sr. ASC and additionally stated that it is clear from Article 246(b)(i) of the Constitution that the phrase "which includes Kalam" therein was subsequently added which reflects the fact that Kalam was not part of Swat initially and this connotes that PATA cannot be changed without a constitutional amendment.

8. The learned Additional Attorney General stated that certain tribal areas were taken out of D. I. Khan and Bannu and put into Lakki Marwat and Tank Districts by virtue of the 18th Amendment (*note:- this was in fact done by the 19th Amendment which change exists till date*) and this means that the tribal areas of Kohistan (Lower) District could only have been created through a constitutional amendment.

9. Mr. Aitzaz Ahsan, learned Sr. ASC stated in rebuttal that drawing an analogy with Abdul Jabbar's case (*supra*) it could be said that the Act was deemed to be applicable to the tribal areas in Kohistan by virtue of the fact that the Act was previously made applicable to Swat District, as Kohistan District was subsequently carved out of Swat for administrative purposes. He further stated that the phrase "tribal area of Kohistan" featuring in Article 246(b)(i) of the Constitution itself envisages districts consisting of both settled and tribal areas.

10. Heard. Before answering the question identified in the opening paragraph of this opinion, let us first examine the meaning and purpose of a "district". A district is basically a type of territorial division usually made for administrative or electoral purposes, etc. Territories are marked off as districts to facilitate local governments in terms of administration. In Pakistan, districts are the third tier of administrative division, featuring after provinces and divisions. The creation and variation of the limits of districts was governed by the West Pakistan Land Revenue Act, 1967. At present for the purposes of KPK, it is the KPK Land Revenue Act, 1967 which is in force. The relevant provisions are contained in Section 6 thereof which read as under:-

"6. Division to be divided into Districts and District into Subdivision, etc. (1) Each Division shall be divided into such Districts, and each District may be divided into such Sub-Divisions or Tehsils (which also include Talukas) as Government may, by notification, specify; and each sub-Division may consist of Tehsils and having such limits, as Government may, by notification, direct.

(2) Government may, by notification, vary the number and limits of Division, Districts, Sub-Division or Tehsils in the Province.”

Therefore it is the Government which has the power to divide a division into districts and vary the number and limits of such districts by issuing a notification under the Act.

11. Let us now discuss the concept of Provincially Administered Tribal Areas or PATA. Article 246 of the Constitution deals with PATA. Prior to the 6th Amendment, Article 246 read as follows:-

“246. In the Constitution,—

(a) “Tribal Areas” means the areas in Pakistan which, immediately before the commencing day, were Tribal Areas, and includes—

(i) the Tribal Areas of Baluchistan and the North-West Frontier Province; and

(ii) the former States of Amb, Chitral, Dir and Swat;

(b) “Provincially Administered Tribal Areas” means—

(i) the districts of Chitral, Dir and Swat (which includes Kalam), Malakand Protected Area, the Tribal Area adjoining Hazara district and the former State of Amb; and

(ii) Zhob district, Loralai district (excluding Duki Tehsil), Dalbandin Tehsil of Chagai district and Marri and Bugti tribal territories of Sibi district; and

- (c) *“Federally Administered Tribal Areas” includes—*
- (i) *Tribal Areas adjoining Peshawar district;*
 - (ii) *Tribal Areas adjoining Kohat district;*
 - (iii) *Tribal Areas adjoining Bannu district;*
 - (iv) *Tribal Areas adjoining Dera Ismail Khan district;*
 - (v) *Bajaur in Malakand Agency;*
 - (vi) *Mohmand Agency;*
 - (vii) *Khyber Agency;*
 - (viii) *Kurram Agency;*
 - (ix) *North Waziristan Agency; and*
 - (x) *South Waziristan Agency.”*

After the 6th Amendment was introduced, Article 246 read as below:-

“246. In the Constitution,—

- (a) *“Tribal Areas” means the areas in Pakistan which, immediately before the commencing day, were Tribal Areas, and includes—*
- (i) *the Tribal Areas of Baluchistan and the North-West Frontier Province; and*
 - (ii) *the former States of Amb, Chitral, Dir and Swat;*
- (b) *“Provincially Administered Tribal Areas” means—*
- (i) *the districts of Chitral, Dir and Swat (which includes Kalam), the Tribal Area in Kohistan district, Malakand Protected Area, the Tribal Area adjoining Mansehra*

- district and the former State of Amb; and*
- (ii) *Zhob district, Loralai district (excluding Duki Tehsil), Dalbandin Tehsil of Chagai district and Marri and Bugti tribal territories of Sibi district; and*
- (c) *“Federally Administered Tribal Areas” includes—*
- (i) *Tribal Areas, adjoining Peshawar district;*
- (ii) *Tribal Areas adjoining Kohat district;*
- (iii) *Tribal Areas adjoining Bannu district;*
- (iv) *Tribal Areas adjoining Dera Ismail Khan district;*
- (v) *Bajaur Agency;*
- (va) *Orakzai Agency;*
- (vi) *Mohmand Agency;*
- (vii) *Khyber Agency;*
- (viii) *Kurram Agency;*
- (ix) *North Waziristan Agency; and*
- (x) *South Waziristan Agency.”*

(Emphasis supplied)

A bare reading of Article 246(b) of the Constitution suggests that it is a clause which defines and describes PATA and according to sub-part (i) thereof, the tribal areas of Kohistan District have been declared to be PATA. We find that the mention of particular names of certain districts or areas in Article 246(b) is only for the purposes of describing the geographical limits of PATA or to mark a certain area as a tribal area. It is not the “districts” mentioned therein which have attained territorial sanctity, rather it is the area identified as PATA which has attained

territorial sanctity. This fine distinction needs to be appreciated. To attach such sanctity to districts would be to equate them with provinces, which interpretation to our mind is incorrect keeping in view the scheme of the Constitution. In this context it is relevant to reproduce Article 239(4) of the Constitution which reads as under:-

“A Bill to amend the Constitution which would have the effect of altering the limits of a Province shall not be presented to the President for assent unless it has been passed by the Provincial Assembly of that Province by the votes of not less than two-thirds of its total membership.”

Article 239(4) reproduced above essentially confers territorial sanctity upon the geographical limits of a province by providing that such limits cannot be changed without a constitutional amendment. Conversely, there is no such bar in the Constitution which prevents the limits of districts, whether in relation to a PATA or not, from being changed without a constitutional amendment. To impute such a bar into Article 246(b) would be to read into it something which is not there and is not envisaged by the Constitution. This is not a correct interpretation of the law. The reading in of words or meaning into a statute when its meaning is otherwise clear is not permissible. As a matter of statutory interpretation, Courts generally abstain from providing *casus omissus* or omissions in a statute, through construction or interpretation. An exception to this rule is, when there is a self-evident omission in a provision and the purpose of the law as intended by the legislature cannot otherwise be achieved, or if the literal construction of a particular provision leads to manifestly absurd or anomalous results, which could not have been intended by the legislature. However, this

power is to be exercised cautiously, rarely and only in exceptional circumstances. The creation or variation of the limits of a **district** is not governed by the Constitution, but as mentioned in the earlier portion of this opinion, by the Act. The limits of a tribal area, in this case PATA, are most certainly governed by the Constitution and the creation or increase in the limits of PATA can only take place through a constitutional amendment by amending the list provided in Article 246(b). The reduction in the limits of a tribal area is governed by Article 247(6) of the Constitution according to which the President has the authority to declare that a tribal area or a part thereof has ceased to be a tribal area. The said article is reproduced herein below for ease of reference:-

“247(6) The President may, at any time, by Order, direct that the whole or any part of a Tribal Area shall cease to be a Tribal Area, and such Order may contain such incidental and consequential provisions as appear to the President to be necessary and proper:

Provided that before making any Order under this clause, the President shall ascertain, in such manner as he considers appropriate, the views of the people of the Tribal Area concerned, as represented in Tribal jirga.”

There is no bar in the Constitution that prevents a district from comprising both a settled area and PATA. Furthermore, as stated by Mr. Aitzaz Ahsan, learned ASC, the status of the areas marked as PATA which fell within Kohistan District and Kohistan (Lower) District was not changed despite the change in district. Such areas never ceased to be tribal areas as the process provided in Article 247(6) of the Constitution to remove their PATA status was never invoked. These

areas remained PATA for all intents and purposes and they were simply made part of a different district(s) for the purposes of local government administration.

12. Now that we have established that it is not the Constitution but the Act which governs the creation and variation of limits of districts, an ancillary question that arises is whether the Act is applicable to PATA. In this context, Article 247(3) and (4) of the Constitution are relevant which read as under:-

“(3) No Act of Majlis-e-Shoora (Parliament) shall apply to any Federally Administered Tribal Area or to any part thereof, unless the President so directs, and no Act of Majlis-e-Shoora (Parliament) or a Provincial Assembly shall apply to a Provincially Administered Tribal Area, or to any part thereof, unless the Governor of the Province in which the Tribal Area is situate, with the approval of the President, so directs; and in giving such a direction with respect to any law, the President or, as the case may be, the Governor, may direct that the law shall, in its application to a Tribal Area, or to a specified part thereof, have effect subject to such exceptions and modifications as may be specified in the direction.

(4) Notwithstanding anything contained in the Constitution, the President may, with respect to any matter within the legislative competence of Majlis-e-Shoora (Parliament), and the Governor of a Province, with the prior approval of the President, may, with respect to any matter within the legislative competence of the Provincial Assembly make regulations for the peace and good government of a Provincially Administered Tribal Area or any part thereof, situated in the Province.”

(Emphasis supplied)

Therefore for an Act of Parliament or a Provincial Assembly to be applicable to PATA or any part thereof, the Governor of the Province in which the tribal area is located, with the approval of the President, must issue a direction to that effect. Further, the Governor also has the power, with the prior approval of the President, to issue regulations for the peace and good governance of PATA or any part thereof. The question is whether the Act that was made applicable to the tribal areas of Swat District still continues to remain applicable to such tribal areas that are taken out from Swat District and made part of Kohistan District and Kohistan (Lower) District? Prior to the formation of Kohistan (Lower) District and even Kohistan District, the PATA that formed a part thereof was a part of Swat District. The Governor of NWFP, with the approval of the President, promulgated the Provincially Administered Tribal Areas (Application of Laws) Regulation, 1974 (*NWFP Regulation No.1 of 1974*) (*the Regulation*) pursuant to Article 247(4) of the Constitution, and the relevant provisions thereof are reproduced below for ease of reference:-

“1(2) It extends to the Provincially Administered Tribal Areas of Chitral, Dir, Kalam, Swat and Malakand Protected Area.

3. The Laws specified in the Schedule as in force in the North-West Frontier Province immediately before the commencement of this Regulation, subject to modifications herein specified and so far as may be, all rules, notification and orders made or issued thereunder, shall apply to the Provincially Administered Tribal Area of Chitral, Dir, Kalam, Swat and Malakand Protected Area, hereinafter referred to as the said Areas.

SCHEDULE

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- 2.....
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- 4.....
5. *The West Pakistan Land Revenue Act, 1967 (W. P. Act No. XVII of 1967).*”

According to Section 3 read with Entry 5 in the Schedule of the Regulation, the Act was made applicable to the PATA of Swat. Subsequently *vide* notification dated 1.10.1976 issued by the Governor, KPK, 154 villages of Swat District were included in Kohistan District. As we have established above, variation in the limits of a district does not affect the PATA status of an area, therefore the tribal areas of Swat District remained tribal areas even after they became a part of Kohistan District. Since the Act was made applicable to **PATA** in Swat through the Regulation, even if such tribal area was subsequently made a part of Kohistan, it remained a tribal area for all intents and purposes and the Act would be **deemed** to be applicable to such area. The case of **Abdul Jabbar** cited by Mr. Aitzaz Ahsan, learned ASC deals with a matter in which this Court had to answer *inter alia* the following questions:-

- “(a) *Whether the provisions of Customs Act, 1969 have been extended to the area in question within the contemplation of Article 247 of the Constitution;*
- (b) *Whether the area in question having once been detached from the Malakand Division (to which the Customs Act, 1969) was extended and subsequently attached to Kohistan District of Hazara Division (to which Customs Act, 1969 was not then extended) would*

still be deemed to be a part of Malakand Division for the purpose of the extension of Customs Act, 1969;”

In answering the above a three member bench of this Court held as follows:-

“It is to be noticed that there is no dispute between both the parties that the tribal area of Kohistan was a part and parcel of Swat District. Admittedly vide Regulation No.III of 1975, Customs Act was extended to the Swat District with effect from 22nd July, 1975. At that time Constitutional position as per Article 246 of the Constitution of Swat District was as follows...

Later on Kohistan area was carved out from Swat District and ultimately status of District was also given to it by the Provincial Revenue Department for administrative purposes but by means of Act 1976 of the Constitution following amendment was made in Article 246(b)...

7. Although by means of above amendment the tribal area in Kohistan was recognized to be a Provincially Administered Territory but fact remains that it is the same area which was once a part of the Swat District where Regulation No.III of 1975 was extended, therefore, following the dictum laid down in the case of Superintendent, Land Customs, Torkham (Khyber Agency) (ibid) it would be deemed that the Act 1969 was also extended to the tribal area in Kohistan...”

In a similar vein, since all the PATA in Kohistan District and Kohistan (Lower) District were once a part of Swat District to which the Regulation had extended the application of the Act, therefore, it (*the Act*) would be deemed to be extended to the tribal areas in both Kohistan District and Kohistan (Lower) District.

13. In the light of the above, all the appeals are allowed and the impugned judgments are set aside to the extent that they hold that the PATA in Kohistan (Lower) District do not find mention anywhere in Article 246 of the Constitution, thus the same cannot be regarded as territory forming part of PATA, and the impugned action of the Provincial Government had disturbed the constitutional status of the said area. Resultantly any subsequent actions taken pursuant to the impugned judgments, including *inter alia* the letter dated 16.2.2016, shall cease to have effect.

JUDGE

JUDGE

JUDGE

Announced in open Court
on **17.1.2017** at **Islamabad**
Approved For Reporting
Ghulam Raza/*