

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

**Present:**

Mr. Justice Qazi Faez Isa  
Mr. Justice Amin-ud-Din Khan

**Civil Misc. Application No. 6762 of 2020**  
**In**  
**Civil Appeal No. 20 of 2014**

*Administrator Municipal Corporation  
Peshawar.*

... *Petitioner*

**Versus**

*Taimur Hussain Amin and others.*

... *Respondents*

**On Court's Notice:**

Mr. Aatif Ali Khan,  
Addl. Advocate General, KP  
Mr. Asadullah Khan,  
Dy. Secretary, Local Council Board.  
Israrullah, Director, LG & RD.

Date of Hearing: 18.11.2020

**ORDER**

Mr. Aatif Ali Khan, the learned Additional Advocate General, Khyber Pakhtunkhwa (**'AAG'**) states that in compliance with paragraph Nos. 20 to 25 of order dated 11 February 2020 (**'the order'**) Civil Miscellaneous Application No. 7246 of 2020 (**'CMA'**) has been filed. The CMA comprises of 479 pages and details the moveable assets, of different District Councils, Tehsil/Municipal Administrations, Village and Neighborhood Councils.

2. We had not sought the documents which have been filed in the CMA. Instead, we had directed the Chief Secretary and Secretary, Local Government Elections and Rural Development Department (**'the said Secretary'**) to issue written instructions to the concerned to ensure compliance with section 39 of the Khyber Pakhtunkhwa Local Government Act, 2013 (**'the Act'**) which mandates that annual reports be submitted disclosing: “(a) particulars of the properties held during the preceding year; (b) total value of the property and annual return there from; (c) particulars of

*unserviceable articles and losses if any; and (d) plans for utilization, development and improvement during the following year*". We had further directed that in case any pilferage / loss of public property takes place action pursuant to section 41 of the Act be taken. However, the Chief Secretary and the said Secretary have unnecessarily filed 479 pages, assuming that quantity is a substitute for quality.

3. The order had also directed to preserve and protect public property and to ensure that this is done by all concerned and that the public once informed would also remain alert about the properties which ultimately are for their use/benefit, and in this regard had directed that *'easy access to particulars of all public properties in the Province of Khyber Pakhtunkhwa'* be disclosed to enable them to have information about the properties in accessible digital/electronic form. On our query the learned AAG enquired from the officers present in Court and informed us that as yet there is no public disclosure of public properties on any website of the Province. Consequently, the public does not know what is owned and such opaqueness and non-transparency facilitates pilferage, theft and conversion of public properties to private use.

4. The Government of the Province by its conduct is displaying lack of interest in preserving public property nor wants to make the requisite disclosure of public properties to the public. The people must not be deprived of their valuable properties. The object of *government* is to provide *governance* which can only mean to serve the people. The people of the Province are not served when the Government itself disregards the law, including section 39 of the Act. The learned AAG says that if one more opportunity is granted to the Government he shall ensure that the order and the Act are complied with. Accordingly, acting purely on the assurance extended by the learned AAG we grant last and final opportunity to the Chief Secretary of the Province and the said Secretary to comply with the order and section 39 of the Act, and to disclose

the said public properties electronically / digitally on a Government website and ensure it functions and is accessible by everyone before the next date of hearing, failing which they should be in attendance in Court to respond as to why action pursuant to section 41 of the Act may not be ordered to be taken against them as well as action for disobeying the order.

5. We have noted that items of little value like wastepaper baskets, cupboards, racks and chairs have also been mentioned in the documents filed in the CMA. However, our concern (as expressed in the order) was primarily with regard to immovable properties and it is these and vehicles which are the most valuable and must be disclosed and, if the Government wants to also disclose other assets over a particular value it is upto the Government, keeping in mind that particulars of immovable properties and valuable items don't get buried in a surfeit of information.

6. During the hearing it transpired that the Province is bereft of elected representatives, after the term of the elected representatives of the people came to an end on 28 August 2019. Therefore, Chapter V of the Act titled '*Local Council Elections*', which comprises of 47 sections, has been rendered redundant. We are surprised to note this brazen disregard of the law. Local government and local government elections is also (for the last ten years) a requirement of the Constitution of the Islamic Republic of Pakistan, 1973 (**'the Constitution'**), which stipulates as under:

**140A.** (1) Each Province shall, by law, establish a local government system and devolve political, administrative and financial responsibility and authority to the elected representatives of the local governments.

(2) Elections to the local governments shall be held by the Election Commission of Pakistan.

7. The aforesaid responsibility of the Chief Election Commissioner and the Election Commission of Pakistan (**ECP**), which is a constitutional body, is reiterated in Article 222(f) of the Constitution and also finds mention in the Act. To abide by the Constitution and the law is not optional but obligatory. All constitutional office holders before entering their offices take oath, including the Chief Election Commissioner and the members of the ECP whose oath requires them to act '*in accordance with the Constitution of the Islamic Republic of Pakistan and the law*', but unfortunately, neither they, the Chief Minister nor the Members of the Provincial Cabinet are abiding by the Act and the Constitution as local government elections are not being held and the people continue to be deprived of democracy. This grave violation of the Act and the Constitution must be brought to an end and the Act and the Constitution must be complied with.

8. Copy of the order passed today be sent to the Chief Election Commissioner, the Members of ECP, the Chief Minister and every member of the Provincial Cabinet to ensure compliance with the Act and the Constitution and their respective legal and constitutional duties and to the Government of Khyber Pakhtunkhwa, through its Chief Secretary, and to the said Secretary. Notices be also sent to the learned Advocate-General, Khyber Pakhtunkhwa and the learned Attorney-General for Pakistan to advise their respective governments to abide by the law and the Constitution and to stop depriving the people of their democratic right to elect their local government representatives.

9. **To come up on 15 December 2020.**

Judge

Judge

*Bench-IV*  
Islamabad  
18.11.2020  
(M. Tauseef)