

THE ' [KHYBER PAKHTUNKHWA] GOMAL ZAM PROJECT
CONTROL AND PREVENTION OF SPECULATION IN LAND
ORDINANCE, 2001.

? IKHYBER PAKHTUNKHWA] ORDINANCE NO.XII OF 2001.

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[04 August, 2001]

AN

ORDINANCE

to control the lands and

their alienation in the Gomal Zam Project Area.

WHEREAS Government contemplates to commence the execution of the Gomal Zam Project in order to conserve and utilize to the best advantage of the waters of the Gomal River;

AND WHEREAS considerable purchases of land which are of speculative character have been made or are likely to be made in the area which is to be irrigated when the project is complete;

AND WHEREAS it is necessary that Government should control the areas as well as the alienations;

AND WHEREAS the Governor of the *[Khyber Pakhtunkhwa] is satisfied that circumstances exist which render it necessary to take immediate action;

NOW, THEREFORE, in pursuance of the Proclamation of Emergency of the fourteenth day of October, 1999, as amended upto date, and the Provisional Constitution Order No. | of 1999, read with Article 4 of the Provisional Constitution (Amendment) Order No. 9 of 1999, and in exercise of all powers enabling him in that behalf, the Governor of the "[Khyber Pakhtunkhwa] is pleased to make and promulgate the following Ordinance:

1. Short title, extent_and_commencement.---(1) This Ordinance may be called the *[Khyber Pakhtunkhwa] Gomal Zam Project (Control and Prevention of Speculation in Land) Ordinance, 2001.

(2) It shall extend to such areas and villages in Dera Ismail Khan and Tank Districts, as Government may, from time to time, by notification in the official Gazette, specify.

(3) It shall come into force at once.

2. Definitions.---In this Ordinance, unless the context otherwise requires, the following expressions shall have the meanings hereby respectively assigned to them, that is to say-

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(a) "alienation" includes sale, mortgage, lease, gift, exchange but shall not include alienation of land in lieu of dower;

(b) "Government" means the Government of the 'Khyber Pakhtunkhwa];

(c) "project area" or "area" means the area consisting of the villages or portion of villages or areas notified by Government under sub-section (2) of section 1;

(d) "project land" or "land" means land in such area;

(e) "prescribed" means prescribed by rules made under this Ordinance.

3. Appointment of Collector, his status and duties.---(1) | Government may, by notification in the Official Gazette, appoint, either by name or by designation, a Collector for the project area.

(2) The Collector so appointed shall perform such duties and exercise such powers as may be prescribed.

(3) Every such Collector and every member of his staff appointed to assist him shall be deemed to be a 'public servant' within the meaning of section 21 of the Pakistan Penal Code, 1860 (Act XLV of 1860).

4. Bar on alienation of project land.--- *TExcept for the purpose of mortgaging with bank and other financial institutions for obtaining loans, no] person shall alienate the project land from the commencement of this Ordinance until the expiry of ten years after such date as may be notified by Government or the date on which water from the Gomal Zam Project is made available for the irrigation of the land:

Provided that the Board of Revenue may on application, if satisfied that there are sufficient grounds for doing so, permit the land to be alienated before the expiry of the said period on such payment to Government and subject to such conditions as it may deem fit to impose.

5. Annulment of certain alienations.---(1) No alienation of any land in the project area made by any owner, his agent, assignee or attorney on or after the first of March, 2001, and until the commencement of this Ordinance, shall be effective so as to confer any right or remedies on the party to such transfer or any person claiming under him, unless such transfer is proved to the satisfaction of the Collector to be bona fide, for a reasonable price and not speculative in character.

(2) Every such alienation shall be speculative in character-

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*Substituted vide Khyber Pakhtunkhwa Ordinance No. I of 2002

- (a) if made in favour of a non-resident of the revenue estate concerned, irrespective of the area of the land involved; or
- (b) if made in favour of a resident of the revenue estate concerned, when the total area involved is more than one hundred (100) kanals of irrigated land or more than two hundred (200) kanals of unirrigated land.

(3) Upon the commencement of this Ordinance or upon the determination of issues under sub-section (1), as the case may be, the alienated land shall immediately vest in Government.

(4) Government shall pay such consideration to the alienee as may be determined by the Collector.

(5) The Collector shall, after hearing the alienor and the alienee and after making such inquiry, as he may deem fit, determine the consideration, and while doing so shall also be guided by the principles laid down in sub-section (2) of section 6.

(6) Upon an application made to the Collector and upon deposit of such consideration in favour of Government or in favour of the alienee, as the case may be, within a period of two years from the date of the order passed under sub-section (5), the Collector shall order and Government shall transfer the alienated land to the alienor.

Explanation-I.---The expression "consideration" used in this section means---

- (i) in case of sale, sale price;
- (ii) in case of lease or mortgage, the lease or mortgage money;
- (iii) in case of exchange, the price of such land.

Explanation-II.---For the purpose of this section "alienor" means the person who was owner of the alienated land before the 1st day of March, 2001.

6. Valuation of land in the project area.---(1) The Collector shall value all lands in the project area at the average price of such land prevailing during five years commencing from 15th August, 1996, and ending with 14th August, 2001.

(2) For the purpose of determining the value, the Collector shall consider the following among other matters as evidence of such value:

- (i) the price or value actually received by the vendors from the vendees in the sale of project lands during the said five years;
- (ii) the estimated amount of the average annual net assets of the land;
- (iii) the land revenue assessed upon the land; and

(iv) _ the value of land as shown in mortgages during the said five years.

(3) Subject to the provisions of the next succeeding sections, valuation fixed by the Collector shall be final and shall not be called in question in any civil, revenue or criminal court.

7. Power of Government to revise valuation.---Government may revise the value of any land fixed by the Collector under section 6 and fix any other valuation of such land, as it deems fit, in which case the value fixed by Government shall be final and shall not be questioned in any civil, revenue or criminal court.

8. Power of Government to re-value lands.---Government may, at any time, within ten years after such date, as may be notified in the Official Gazette or the date on which water from the Gomal Zam Project is made available for the irrigation of the land, re-value the lands in the project area, which valuation shall not in any case be less than 100 per cent above the valuation fixed under section 6 or section 7, as the case may be, and valuation so fixed shall be final and shall not be called in question in any civil, revenue or criminal court.

9. Difference between the two valuations to be a debt payable by the owner.---The difference which is found in re-valuation between the first valuation under section 6 or section 7,

as the case may be, and the second valuation under section 8, shall be a debt which the owners of the land for the time being shall be deemed to owe to Government and on demand shall be liable to pay this debt to Government in five equal annual installments.

10. Debt to be recoverable as an arrear of land revenue.---The debt or part of the debt due from the owner of the land shall be recovered as an arrear of land revenue.

11. Acquisition of land by Government.---(1) Any person owning any land in the project area shall, on demand made by Government by notice in writing within ten years from the commencement of this Ordinance, be bound to sell the land or part of the land, as the case may be, at the price mentioned in the notice.

(2) Government may dispose of any project land which it owns or which it acquires by purchase, in any manner it thinks fit.

12. Acquisitions made in contravention of the Ordinance to be null and void.---Any

alienation of project land made by a person against the provisions of this Ordinance shall be null and void and shall not confer any right or remedy on the parties to such alienation or any person claiming under them.

13. Power of Government to call for and examine the records.---Government or the officer appointed by it in that behalf may, at any time, either suomoto or on application, call for and examine the records relating to any order passed or proceeding taken under this Ordinance by any authority or officer, for the purpose of satisfying itself or himself as to the legality, regularity and propriety of such order or proceeding and may pass such order in regard thereto as it or he may think fit.

14. Finality of orders.---No order passed by Government or any authority or officer under this Ordinance shall be called in question in any civil, revenue or criminal court.

15. Bar of certain proceedings.---(1) No suit or other proceeding shall lie against Government for anything done or purported to be done under this Ordinance or any rule made thereunder.

(2) No suit, prosecution or other proceeding shall lie against any officer or servant of Government for any act done or purported to be done by such officer or servant under this Ordinance or any rule made thereunder, without the previous sanction of Government.

(3) No suit, prosecution or legal proceeding shall lie against any officer or servant of Government for anything which is in good faith done or purported to be done in pursuance of this Ordinance or any rule made thereunder.

16. Power to make rules.---(1) Government may make rules to carry out the purposes of this Ordinance.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for-

(a) all matters expressly required or allowed by this Ordinance to be prescribed;

(b) the opening and maintenance of a common register for the project area, showing the ownership, and changes in the ownership of lands therein and any other particulars which may be deemed necessary;

(c) the penalties which may be imposed for contravention of any of the provisions of this Ordinance and the authority which may impose such penalties; provided that penalty shall not in any one case exceed twenty thousand rupees;

(d) generally regulating the procedure to be followed and the forms to be adopted in proceedings under this Ordinance and fixing the time within which such proceedings shall be initiated.

(3) All rules made under this section shall be published in the Official Gazette and upon such publication shall have effect as if enacted in this Ordinance.

17. Power to remove difficulties.---If any difficulty arises in giving effect to the provisions of this Ordinance, Government may, as occasion may require, by order, do anything which

appears to it to be necessary for the purpose of removing the difficulty.

18. Savings.---Nothing in this Ordinance shall apply to the acquisition of land-

- (a) at a sale held by any civil, revenue or criminal court in execution of a decree, other than a consent decree, or order; or
- (b) by Government or by an Agricultural Development Bank; or
- (c) at a sale conducted under any law for the time being in force for recovery of any revenue due to Government or of any sum recoverable as an arrear of land revenue; or
- (d) by exchange in accordance with any scheme made or approved by Government:

Provided that in cases falling under clause (c) and clause (d), the court which, or the officer who, ordered the land to be sold, may of its or his own motion or on the application of Government or any party to the proceedings, set aside the sale, if the court or officer is satisfied that the sale was a collusive transaction or was made with a view to defeat or evade the provisions of this Ordinance.

19. Punishment for obstruction in the execution of the project.---Any person who obstructs or abets obstruction to the execution of the project shall be liable to a term of imprisonment which may extend to one year or fine or both.

20. Effect_on_other_enactments.---The provisions of this Ordinance shall take effect notwithstanding anything contained to the contrary in any other enactment for the time being in force.

21. Repeal.---(1) The North-West Frontier Province Gomal Zam Project (Control and Prevention of Speculation in Land) Ordinance, 1971 (N.-W.F.P. Ord. No. VIII of 1971), is hereby repealed.

(2) Notwithstanding the repeal of the Ordinance under sub-section (1), the repeal shall not-

- (a) revive anything not in force or existing at the time at which the repeal takes effect;
- (b) affect the previous operation of the law, instrument, custom or usage or anything duly done or suffered thereunder;
- (c) affect any right, obligation or liability acquired, accrued or incurred under the law, instrument, custom or usage;
- (d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against the law, instrument, custom or usage; or

(e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment;

and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed, as if the law, instrument, custom or usage had not been repealed or ceased to have effect as the case may be.

Peshawar, Lt. Gen. (Rtd.) IFTIKHAR HUSSAIN SHAH

dated the, Governor of the '[Khyber Pakhtunkhwa]

01 August, 2001.

'Substituted vide Khyber Pakhtunkhwa Act No. IV of 2011