

THE [KHYBER PAKHTUNKHWA] PUBLIC PROPERTY (REMOVAL OF
ENCROACHMENT).
ACT, 1977.

*TIKHYBER PAKHTUNKHWA ACT No. V OF 1977.

[Dated Peshawar, the 23rd June, 1977.]

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1 Substituted vide Khyber Pakhtunkhwa Act No. XXXIII of 2021.

2 Inserted vide Khyber Pakhtunkhwa Act No. XXXIII of 2021.

3 Inserted vide Khyber Pakhtunkhwa Act No. XXXIII of 2021.

4 Inserted vide Khyber Pakhtunkhwa Act No. XXXIII of 2021.

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(First published after having received the assent of the Governor of the? [Khyber Pakhtunkhwa], in the Gazette of “[Khyber Pakhtunkhwa]” (Extra-ordinary), dated 23"4 June, 1 977).

AN ACT

to provide for measures for removal of encroachment from public property.

WHEREAS it is expedient to provide for measures for removal of Preamble, encroachment from public property and for matters ancillary thereto;

It is hereby enacted as follows:—

1. (1) This Act, may be called the °[Khyber Pakhtunkhwa] Public Property Short title,

(Removal of Encroachment) Act, 1977. extent and commencement.

(2) It extends to the whole of the °[Province of Khyber Pakhtunkhwa].

(3) It shall come into force at once.

2. In this Act, unless there is anything repugnant in the subject or Definitions. context.---

(a) "autonomous body" means a board, corporation, institution, organization, authority or other body established by Government, or which is incorporated under any Provincial law, and includes a University or Board of Intermediate and Secondary Education established under Provincial law;

'I(a-i) "authorized officer" means any person, appointed or authorized, generally or specially, by Government, a Department of Government or its attached department or subordinate office, an autonomous entity, a public sector company, a local government, a development authority of Government or any other authority of Government, vested with the possession, management or control of a public property, to carry out all or any of the purposes of this Act and rules made there-under;]

. Inserted vide Khyber Pakhtunkhwa Act No. XXXII of 2021.

AUDARWNH

(b)

“building” means a building or the part thereof and the land appurtenant thereto;

“[(b-i) “Department” means a Department, as defined in the Khyber

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Pakhtunkhwa Government Rules of Business, 1985;]

“encroachment” means unauthorized occupation, temporary or permanent, of public property;

“Government” means the Government of the *[Khyber Pakhtunkhwa;]

“Jand” includes any space beneath or on the surface of the earth, including land under water, well, foot-path, road, tunnel, culvert, nullah, bridge, street and anything attached to the earth or temporarily or permanently fastened to anything attached to the earth;]

“Local Council” means a council constituted under the “[Khyber Pakhtunkhwa] Local Government Ordinance, 1972 (*[Khyber Pakhtunkhwa] Ord No. III of 1972), or any law relating to Local Government for the time being in force;

“prescribed” means prescribed by rules made under this Act;

“public property” means a building, land, place or premises, which vests in, or is in the possession or under the management or control of Government, Local Council, autonomous body, *[public sector company] or such other authority;

“[(h-i) “public sector company” means a public sector company as

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defined in the Public Sector Companies (Corporate Governance) Rules, 20133]

“Tribunal” means a Tribunal constituted under section 12;

"unauthorized occupant" means a person who has made encroachment on, or is in occupation of, any public property without the express permission or authority of a competent authority and includes—

(i) a lessee or licensee who after the expiry of the period of lease or licence or on determination of such lease or licence, continues to remain in occupation of any public property;

(ii) a person inducted into any public property by the lessee or licensee thereof; and

1. Inserted vide Khyber Pakhtunkhwa Act No. XXXII of 2021.
2. Substituted vide Khyber Pakhtunkhwa Act No. IV of 2011.
3. Substituted vide Khyber Pakhtunkhwa Act No. XXXIII of 2021.
4. Substituted vide Khyber Pakhtunkhwa Act No. IV of 2011.
5. Substituted vide Khyber Pakhtunkhwa Act No. IV of 2011.
6. Inserted vide Khyber Pakhtunkhwa Act No. XXXIII of 2021.
7. Inserted vide Khyber Pakhtunkhwa Act No. XXXII of 2021.

(iii) | every member of the lessee's or licensee's family [or a member of the family of any person inducted by the lessee or licensee into the public property under sub-clause (i),] who remains in occupation of any public property after the expiry of the period of lease or licence or after the determination of the lease or licence in respect of the same.

1B. Vacation of property and removal of encroachment.—(1) If the authorized officer is satisfied that a person is an unauthorized occupant, he may, by order in writing, direct such person to vacate the public property and to remove the structure at his own risk and cost, if any, raised by him on the public property, within such period as may be specified in the order:

Provided that such period shall not be less than three days:

Provided further that where the encroachment is on a road, a public thoroughfare, a water body, a river or a river bed, the authorized officer shall dispense with the issuing of order and shall forthwith proceed to remove the encroachment or structure at the sole risk and cost of the encroacher.

(2) The order under sub-section (1) may be served by—

(a) giving or tendering it to the unauthorized occupant or any adult male person residing with him; or

(b) affixing it at a conspicuous place on or near the public property to which it relates.

(3) The order, under sub-section (1), may, inter alia, contain—

(a) the date from which the person is in un-authorized occupation of the public property that may be determined, inter alia, by use of technology authorized in terms of section 9A of this Act; and

(b) the recovery of costs, penalties and fine, and the punishment that may be imposed upon the un-authorized occupant as provided under this Act.]

4. (1) Any person aggrieved by an order made under section 3 may, within seven days of the service thereof, prefer a review petition to *[the authorized officer] who has made such order.

(2) “[the authorized officer], may, after considering the review petition filed under sub-section (1) and after giving the petitioner or his duly authorized agent an opportunity of being heard, confirm, modify or vacate the order.

1 Inserted vide Khyber Pakhtunkhwa Act No. XXXIII of 2021.

2 Substituted vide Khyber Pakhtunkhwa Act No. XXXIII of 2021.

3 Substituted vide Khyber Pakhtunkhwa Act No. XXXIII of 2021.

4 Substituted vide Khyber Pakhtunkhwa Act No. XXXII of 2021.

Review.

5. (1) If any person on whom order under section 3 has been served refuses or fails to vacate the public property or remove the structure raised thereon, within seven days of the date of service, of such order, or where a review petition is filed against such order, within three days of the date of dismissal of such review petition, [the authorized officer] may, notwithstanding anything contained in any other law for the time being inforce, enter upon such property by evicting such person and may also demolish and remove the structures, if any, erected or built by that person [at the sole risk and cost of that person].

(2) For the purpose of recovering possession of any public property under the provisions of sub-section (1), *[the authorized officer] may use or cause to be used such force as may be necessary.

(3) If “[authorized officer] requires police assistance, he may send requisition to the officer-in-charge of a police station within whose local jurisdiction the public property is situate and such police officer shall on such requisition render the assistance required.

6. The cost of demolition or removal of structures under section 5 may be recovered as arrears of land revenue from the person in whom the ownership of the structures vested at the time of this demolition and removal.

7. If any rent payable in respect of any public property has been in arrears on the day of recovery of possession of such property the amount due on account of such arrears, with interest, if any, accrued thereon shall be recoverable as arrears of land revenue.

8. *[1] Any person, who has made encroachment, shall, in addition to eviction from the public property and removal of such encroachment at his sole risk and cost, be punished with imprisonment of either description for a term which may extend to three years or with fine of 0.10% per day of the value of the said public property, as determined by the authorized officer while, inter alia, taking into account the valuation of land as notified by the Revenue and Estate Department of Government, from time to time, for the respective area, or with both:

Provided that for determination of fine under this section, the period of unauthorized occupancy shall include the period of any legal proceedings, if any, that may be filed against any order issued under this Act:

Provided further that the imprisonment for the repeated offender under this sub-section may extend to five years but not less than three years.]

(2) The officer appointed for preventing encroachment in any area who directly or indirectly connives at, or assists in, the commission of the offence of encroachment or persistence of such offence, or due to whose negligence of duty such offence is committed or persists, shall be punished as an abettor.

(3) Where the officer-in charge of police station willfully fails or avoids to

1 Substituted vide Khyber Pakhtunkhwa Act No. XXXIII of 2021.

2 Added vide Khyber Pakhtunkhwa Act No. XXXIII of 2021.

3 Substituted vide Khyber Pakhtunkhwa Act No. XXXIII of 2021.

4 Substituted vide Khyber Pakhtunkhwa Act No. XXXIII of 2021.

5 Substituted vide Khyber Pakhtunkhwa Act No. XXXIII of 2021.

Eviction.

Recovery of cost
of demolition
and removal of
structures.

Recovery of
Arrears of rent.

Punishment.

provide the necessary police assistance under sub-section (3) of section 5, he shall be punished as an abettor of the offence of encroachment.

(4) Any person who is an abettor within the meaning of sub-section (2) or (3) shall be punishable with the same punishment as is provided in sub-section (1) of this section.

ISA. Recovery of fine.—The fine, imposed upon any person in pursuance of section 8, with prevailing bank rates, if any, accrued thereon, may, in addition to any other mode of recovery, be recovered from such person as arrears of land revenue.

9. (1) No court shall take cognizance of an offence under this Act, except on Cognizance of complaint in writing made by an [authorized officer.] once and mode of trial.

(2) Government may, by notification in the official Gazette, direct that an offence under this Act, shall be tried in summary way in accordance with the procedure prescribed in Chapter XXII of the Code of Criminal Procedure, 1898 (Act No. V of 1898).

5[9A. Use of technology for determination of un-authorized occupancy.— (1) The officer may use or authorize the use of technology, including satellite imagery or mapping, to determine the period of un-authorized occupancy of the public property for the purposes of this Act:

(2) A centralized database of encroachers shall be setup by utilizing the available resources of the Government to curb the menace of encroachment and identify the offender of repeat encroachers. |

10. Government may, by notification in the official Gazette, delegate all or any of Delegation of its powers under this Act, to any officer subordinate to it or any Local Council, power. Autonomous body or other authority.

11. (1) No Civil Court shall have jurisdiction to entertain any proceedings, grant Bar of any injunction or make any order in relation to a dispute that any property is not a Jurisdiction or public property, or that any lease or licence in respect of such public property has not been determined for the purpose of this Act, or anything done or intended or purported to be done under this Act.

(2) All suits, appeals and applications relating to encroachment or disputes referred to in sub-section (1) and pending in any court shall abate on the coming into force of this Act:

Provided that a party to such suit, appeal or application may, within thirty days of the coming into force of this Act, file a suit before a Tribunal in case of a dispute that any property is not a public property or that any lease or licence in respect of such public property has not been determined.

1 Inserted vide Khyber Pakhtunkhwa Act No. XXXIII of 2021.

2 substituted vide Khyber Pakhtunkhwa Act No. XXXIII of 2021.

3 Inserted vide Khyber Pakhtunkhwa Act No. XXXIII of 2021.

12. (1) Government may, by notification in the official Gazette, constitute a Tribunal. Tribunal and specify the area in which such Tribunal shall exercise its jurisdiction.

(2) The Tribunal constituted under sub-section (1) shall consist of a District Judge, or Additional District Judge, or District Magistrate, or Additional District Magistrate with experience of not less than three years as such Magistrate, as Government may appoint.

13. A Tribunal shall have exclusive jurisdiction to adjudicate upon a dispute Exclusive that any property is not a public property or that any lease or licence in respect of jurisdiction. such public property has not been determined for the purpose of this Act.

14. (1) A Tribunal shall decide any suit or application in such manner and in Procedure and accordance with such procedure as may be prescribed. powers of the ul .

(2) Any order made by the Tribunal which conclusively determines the rights of the parties with regard to all or any of the matter in controversy under this Act, shall be final and binding on the parties.

(3) The Tribunal shall have powers of a Civil Court under the Code of Civil Procedure. 1908 (Act No.V of 1908), as to—

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) receiving evidence on affidavits;

(c) compelling the production of documents;

(d) issuing commissions for examination of witnesses or documents.

(4) The proceedings before the Tribunal shall be judicial proceeding within the meaning of sections 193 and 228 of the Pakistan Penal Code (Act No.XLV of 1860).

15. Government may transfer any case from one Tribunal to another Tribunal. Transfer.

16. No suit or legal proceeding shall lie against Government or any authority or Indemnity. person in respect of anything which is in good faith done or intended to be done under this Act.

T16A. Act to override other laws.—The provisions of this Act shall have effect notwithstanding anything to the contrary contained in any other law for the time being in force.]

17. Government may make rules for carrying out the purposes of this Act. Power to make rules.

18. The West Pakistan Autonomous Bodies Immovable Property (Ejectment of Unauthorized Occupants) Ordinance, 1965 (W.P. Ord No. XXXVII of 1965), and the West Pakistan Government Lands and Buildings (Recovery of Possession) Ordinance, 1966 (W. P. Ord. No. IX of 1966), and the '[Khyber Pakhtunkhwa] Public Property (Removal of Encroachment) Ordinance 1977 (?[Khyber Pakhtunkhwa] Ord No. VII of 1977), are hereby repealed.

- Substituted vide Khyber Pakhtunkhwa Act. IV of 2011.

Substituted vide Khyber Pakhtunkhwa Act. IV of 2011.

Repeal.