

THE CIVIL PROCEDURE (SPECIAL PROVISIONS)
ORDINANCE, 1968

(I of 1968)

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'THE CIVIL PROCEDURE (SPECIAL PROVISIONS) ORDINANCE, 1968

(I of 1968)

[12 June 1968]

An

Ordinance

to provide for certain areas of West Pakistan special procedure for the adjudication of disputes on certain matters.

Preamble.- WHEREAS it is necessary to provide for certain areas of West Pakistan special procedure for the adjudication of disputes on certain matters to meet the special requirements of those areas;

AND WHEREAS the Provincial Assembly of West Pakistan is not in session and the Governor of West Pakistan is satisfied that circumstances exist which render immediate legislation necessary;

NOW, THEREFORE, in exercise of the powers conferred on him by clause (1) of Article 79 of the Constitution, the Governor of West Pakistan is pleased to make and promulgate the following Ordinance:—

1. Short title, extent and commencement.— (1) This Ordinance may be called the Civil Procedure (Special Provisions) Ordinance, 1968.

(2) It extends to the areas specified in the First Schedule.

(3) Government may, by notification in the official Gazette, direct that this Ordinance shall, on such date as may be specified in the notification, cease to be in force in any area in which it is in force and, upon its so ceasing to be in force in any area, shall be deemed to have been repealed.

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

(a) "Commissioner" means the Chief Officer-in-Charge of the Revenue Administration of a Division, and includes any other officer who is specially empowered by Government to exercise the powers of a Commissioner under this Ordinance;

(b) "Deputy Commissioner" includes any officer exercising or performing any power or function of a Deputy Commissioner under this Ordinance;

(c) "Government" means the '[Provincial Government];

(d) "Tribunal" means a Tribunal constituted under this Ordinance.

'This Ordinance was promulgated by the Governor of West Pakistan on January 16, 1968 having been approved by the Provincial Assembly of West Pakistan with amendments on May 17, 1968 under clause (3) of Article 79 of the Constitution of the Islamic Republic of Pakistan (1962); assented to by the Governor of West Pakistan on June 11, 1968; published in the Gazette of West Pakistan (Extraordinary), dated June 12, 1968, pp. 2155-A-2155-E.

?Substituted for the words "Government of West Pakistan" by the Federal Adaptation of Laws Order, 1975 (4 of 1975) (w.e.f. 1/1/1974), published in the Gazette of Pakistan (Extraordinary), dated August 1, 1975, pp. 435-466, Article 2(1) read with Schedule

3. Certain disputes to be adjudicated upon under this Ordinance.— (1)

Notwithstanding anything contained in any other law for the time being in force, all disputes of a civil nature, other than any dispute to be determined in accordance with the provisions of the Muslim Family Laws Ordinance, 1961 (VIII of 1961), or the Conciliation Courts Ordinance, 1961 (XLIV of 1961), shall be adjudicated upon in accordance with the provisions of this Ordinance:

Provided that the provisions of this Ordinance shall not apply to a dispute arising in or relating to any area specified in the Second Schedule, unless all the parties to such dispute make an application in writing to the Deputy Commissioner that such dispute be adjudicated upon in accordance with this Ordinance.

(2) Except as otherwise provided in this Ordinance, the provisions of the Evidence Act, 1872 (I of 1872), and the Code of Civil Procedure, 1908 (V of 1908), shall not apply to any proceedings under this Ordinance.

4. Constitution of and reference of dispute to a Tribunal.— (1) Where any

party to a dispute which is required to be adjudicated upon in accordance with the provisions of this Ordinance, not being a dispute arising in or relating to any area specified in the Second Schedule, makes, or all parties to such dispute arising in or relating to any area specified in the Second Schedule, make, an application in writing to the Deputy Commissioner, for the adjudication or settlement of such dispute, the Deputy Commissioner shall constitute a Tribunal in accordance with section 5, and by order in writing, refer the dispute to the Tribunal for a finding on such matters or issues as may be specified in the order.

(2) A dispute shall not be referred to a Tribunal if a civil suit in respect thereof would be barred by the provisions of the Limitation Act, 1908 (IX of 1908).

(3) An application under sub-section (1) for the adjudication of a dispute shall be made—

(a) in the case of a dispute relating to immovable property, to the Deputy Commissioner within whose jurisdiction such property is situate; provided that where the property is situated within the jurisdiction of different Deputy Commissioners, it may be made to any one of the Deputy Commissioners within the local limits of whose jurisdiction any portion of the property is situate; and

(b) in the case of a dispute relating to any other matter, to the Deputy Commissioner within the local limits of whose jurisdiction the cause of action arose.

5. Composition of the Tribunal.— (1) A Tribunal constituted for the purpose of section 4 shall consist of a Government official, not below the rank of Naib-Tehsildar, who shall be its President, and four other members, all to be appointed by the Deputy Commissioner.

(2) In appointing a person as a member, other than the President, the Deputy Commissioner shall have regard to the integrity, education, social status and representative character of such person.

(3) No person shall be appointed as a member of the Tribunal, other than the President, except after giving the parties concerned an opportunity of being heard and considering their objections, if any, to the appointment of such person.

6. Reference of question to a new Tribunal in certain cases.— (1) Where a Tribunal declines or fails to give a finding on any matter or issue referred to it, or misconducts itself, or where, by reason of the death or illness or absence from the country of any member, or for any other sufficient cause, the Tribunal is, in the opinion of the Deputy Commissioner, unable to perform its functions, the Deputy Commissioner shall, unless he proceeds in accordance with sub-section (2), by order in writing, stating the reasons therefor, constitute another Tribunal in accordance with section 5 and refer the matter or issue to the Tribunal so constituted.

(2) If any member of the Tribunal dies, refuses to act, becomes incapacitated from acting, or fails to attend any two meetings of the Tribunal, without sufficient cause to the satisfaction of the President of the Tribunal, the President shall refer the matter to the Deputy Commissioner, who shall, as soon as may be, appoint another member in place of the defaulting member in accordance with the provisions of sub-sections (2) and (3) of section 5.

7. Quorum.— The Tribunal shall not conduct any proceedings unless the President and at least two other members are present.

8. Procedure before the Tribunal.— (1) For the purpose of coming to a finding on a matter or issue referred to it, the Tribunal shall give opportunity to the parties to appear before it and take or hear, in such manner as it may think fit, such evidence as may be adduced on behalf of the parties or as may be called for by the Tribunal:

Provided that the Tribunal may, for reasons to be recorded, refuse to take or hear any evidence which in its opinion is being tendered for the purpose of causing vexation or delay or for defeating the ends of justice:

Provided further that the provisions of sections 121 to 126 of the Evidence Act, 1872 (I of 1872), shall apply to any proceedings before a Tribunal as they apply to proceedings before a Judge or a Magistrate.

(2) The Tribunal shall give the parties an opportunity of cross-examining the witnesses deposing against them.

(3) | The Tribunal may administer oath to a witness in such form or manner, consistently with the religion of the witness, as it deems fit.

(4) In proceedings under this Ordinance, the parties to a dispute shall be entitled to be represented and defended by legal practitioners of their choice.

(5) Rules may be framed, not inconsistent with the provisions of this Ordinance, prescribing the procedure to be followed by the Tribunal for the purposes of the performance of its functions under this Ordinance.

9. Tribunal to have certain powers of a Civil Court.— For the purpose of the performance of its functions under this Ordinance, the Tribunal shall have the same powers as are vested in a Civil Court trying a suit under the Code of Civil Procedure, 1908 (V of 1908), in respect of enforcing attendance of any witness or production of any document or other thing.

10. Action upon the report of the Tribunal.— (1) The finding of the Tribunal on a matter or issue referred to it under section 4 shall be given in accordance with law, or

the custom or usage having the force of law, and shall be submitted to the Deputy Commissioner in the form of a report containing reasons for such finding.

(2) Upon receipt of a report of the Tribunal, the Deputy Commissioner may, if the report does not give a finding on any matter or issue referred to the Tribunal or any substantial part thereof, or if he is of opinion that there has been material irregularity or that the proceedings of the Tribunal have been so conducted as to occasion a miscarriage of justice, remand the matter or issue to the Tribunal or refer the matter or issue to a Second Tribunal constituted in accordance with section 5.

(3) | Where the finding of the Tribunal on the matter or issue referred to it is unanimous or by a majority of its members and the Deputy Commissioner does not proceed under sub-section (2), he shall decide the dispute and pass a decree in accordance with such finding.

11. Appeal.— (1) Any party aggrieved by any decision given, decree passed or order made, by the Deputy Commissioner under this Ordinance may, within sixty days of such decision, decree or order, prefer an appeal to the Commissioner.

Explanation.— In computing the period of sixty days mentioned in this sub-section, the day on which the decision, decree or order sought to be appealed against was given, passed or made, and the time requisite for obtaining a copy thereof, shall be excluded.

(2) |The Commissioner shall not confirm, modify, alter or set aside any decision, decree or order appealed against except after giving the parties an opportunity of being heard.

(3) | The Commissioner may, in deciding an appeal under sub-section (1), exercise all or any of the powers conferred on an Appellate Court by the Code of Civil Procedure, 1908 (V of 1908).

(4) Subject to the provisions of this Ordinance, the decision of the Commissioner on an appeal under this section shall be final.

12. Revision.— (1) Government may, within ninety days of any order passed by the Commissioner on an appeal, either of its own motion or on the application of any party to a dispute, call for and examine the record of any appeal disposed of by the Commissioner, for the purpose of satisfying itself as to the correctness, legality or propriety of any decision, decree or order given, passed or made under this Ordinance, or as to the regularity of any proceedings thereunder and may, when calling for such record, direct that the execution of the decree or order in question be suspended pending the examination of the record:

Provided that nothing herein contained shall be deemed to authorise Government to vary or set aside a finding of a Tribunal on a question of fact where such finding has been accepted by the Commissioner unless it is of opinion that there has been a material irregularity or defect in the proceedings or that the proceedings have been so conducted as to occasion a miscarriage of justice.

(2) Government may, after examining any record called for under sub-section (1) and giving the parties an opportunity of being heard, pass such orders as it may think fit.

13. Execution and enforcement of decree or order.— (1) Subject to the provisions of this Ordinance, a decree or order passed by the Deputy Commissioner shall have the same force and effect as if it were a decree or order passed by a competent Civil Court and shall be enforced by the Deputy Commissioner in the same manner as such decree or order would have been enforced by such Civil Court.

(2) Every order made by the Commissioner in the exercise of his powers under section 11 or by Government in the exercise of its powers under section 12, shall be enforced as if it were an order of the Deputy Commissioner, and the Deputy Commissioner shall do all acts and things necessary to give effect thereto.

14. Jurisdiction of Courts barred. Except as otherwise provided in this Ordinance, no proceeding under this Ordinance, and no decision given, decree passed or order made, in any such proceeding shall be called in question in any Court or before any other authority.

15. Delegation.— The Deputy Commissioner may authorise any officer not below the rank of an Extra Assistant Commissioner to exercise or perform all or any of his powers or functions under this Ordinance, and may specify the areas within which, or the class of cases in respect of which, such powers may be exercised.

16. Power to make rules— Government may, by notification in the official Gazette, make rules for carrying out the purposes of this Ordinance.

17. Pending proceedings. Nothing in this Ordinance shall affect any proceedings relating to any dispute pending in or before any Court or other authority immediately before the commencement of this Ordinance, and such proceedings shall be continued and disposed of as if this Ordinance had not come into force.

18. Repeal— The Quetta and Kalat (Civil and Criminal Law) Ordinance, 1965 (West Pakistan Ordinance No. III of 1965), in so far as it relates to the adjudication and settlement of civil disputes, is hereby repealed.

THE FIRST SCHEDULE

[See section 1(2)]

The Division of Quetta except the Tribal Areas.

The Added Areas of Hazara District specified in the First Schedule to the North-West Frontier Province (Enlargement of the Area and Alteration of Boundary) Order, 1952 (G.G.O. No. 1 of 1952).

The Added Areas of Mardan District specified in Schedule A to the North-West Frontier Province (Increase of Area and Alteration of Boundary) Order, 1953 (G.G.O. No. 7 of 1953).

The Added Areas of Hazara District specified in the First Schedule to the North-West Frontier Province (Enlargement of the Area and Alteration of Boundary) Order, 1955 (G.G.O. No. 13 of 1955).

The former Excluded Areas of Upper Tanawal and the Baluch Area of Dera Ghazi Khan specified in the Schedule to the Excluded Areas (Cesser of Exclusion) (West Pakistan) Order, 1961 (P.O. No. 3 of 1961).

District

1. Sibi District

2. Loralai District

3. Chagai District

4. Quetta-Pishin
District.

THE SECOND SCHEDULE

[See section 3(1)]

Tehsil

(i) Sibi

(ii)

g

Shari

Duki

Nushki

Quetta

Pishin

Chaman

Area

1. Sibi town excepting Gullu Shahr, Kurk and Khajjak villages but including all the railway quarters on the West side of the Railway line in Sibi, the Military Supply Depot, Public Works Department inspection bungalow and office and quarters.

2. Ziarat.

3. Harnai.

The whole of Duki Tehsil.

Nushki Town

1. Quetta City and Cantonment.

2. Quetta Saddar—

The following Mauzas, etc., of the Quetta Tehsil, exclusive of the area lying within the limits of the Police Stations of Quetta City, Quetta Cantonment and Quetta Railways:—

(i) The entire area with appurtenant mahals and _ killis of mauza_ Sirki, Khushkaba Shalदारas Kansi, Trikha Kamsi, Shebo and Kotwal.

(ii) Mahal Karez Lwar and Killi Lwar in Mauza Ahmad Khanzai.

(iii) Mahals Karez Sultan and Karez Khair Ullah with their Killis in Mauza Karez at Beleli.

(iv) The Military Camp at Beleli.

(v) The area of the Beleli Spur comprising the area inhabited and used for any purpose by Hindustan Construction Company, Limited.

(vi) Baluchistan Textile Mills Sariab.

(i) Pishin Town.

(ii) Bostan Bazar.

Chaman Cantonment and Town. All Railway Stations and lines in Quetta-Pishin District.