JUDGMENT SHEET

ISLAMABAD HIGH COURT, ISLAMABAD, JUDICIAL DEPARTMENT

W.P. No. 2921-2019

Raja Tahir Mahmood

versus

Chief Commissioner, Islamabad and another.

Petitioner by:	Nemo for petitioner.
Respondents by:	Ms. Khadija Ali, State Counsel. Naseer Ahmad, Naib Tehsildar. Abbas, Halqa Patwari.
Date of Hearing:	24.01.2023.

MOHSIN AKHTAR KAYANI, J: Through this writ petition, the petitioner has prayed for issuance of direction to the respondents to restrain the land mafia from selling or changing the nature or shape of land in Mouza Tumair, Tehsil & District, Islamabad.

2. Brief facts referred in the instant writ petition are that the petitioner claims that land situated in Kahsra No.5253, 5312, 5924, 6667 & 6668 of Mouza Tumair, Teshil & District, Islamabad, is grazing land / غیر ممکن پہاڑ , as a common land reserved for firewood, animal Chiragah (چراہ گاہ), etc. The status of this land has been settled in Wajib-ul-Arz, where no one can claim possession of the land without proper partition, nor its nature could be changed, but some private individuals / land mafia have changed the common land comprising of forest / Chiragah for development of illegal housing society by force.

3. Notices were issued to Deputy Commissioner & Chief Commissioner, Islamabad, even report has been called which reflects that some portion of land in particular Khasra Numbers is غیر ممکن پہاڑ, even a road has been constructed from the area and portion of land has been permitted to be partitioned among the landlords after Notore (نوتوڑ). Majority of the area has been converted from its

original status and portion of land was already acquired by the Capital Development Authority, where ATS School of the police department was established. Majority of land was already under occupation of different individuals, who have placed their pickets and erected razor wire in order to establish their possession.

4. Learned counsel for the petitioner contends that in terms of Shart Wajib-ul-Arz (شرط واجب الارض), as well as under Land Revenue Act and the rules made thereunder, common land could not be converted contrary to its character as defined in Shart Wajib-ul-Arz (شرط واجب الارض) document unless legal order has been passed in this regard; that suit titled "*Muhammad Irshad and others Vs. Tariq Ijaz and others*" for declaration and permanent injunction was filed on 12.04.1995, in order to declare that Shamlat Deh (شاملات دیہہ), comprising of غیر ممکن پہاڑ and grazing land (چراہ گاہ) is not permitted to be changed in revenue estate Tumair, Tehsil & District, Islamabad, being Shamlat Land, whereby, suit was decreed, but at present revenue officials are not complying with the terms of Shart Wajib-ul-Arz (شرط واجب الارض) , nor the court orders.

5. Conversely, learned State Counsel contends that all the proceedings were carried out in accordance with law, character of land has already been changed by way of Notore / نوتوڑ , and remaining land was already taken over by the respective owners being legally entitled.

6. Arguments heard, record perused.

7. Perusal of record reveals that the entire issue revolves around the issue relating to common land of Revenue Estate of Mouza Tumair, Tehsil & District, Islamabad. In order to settle the question it is necessary to go through the status of Shart Wajib-ul-Arz (شرط واجب الارض) at the first stance which has been placed on

record. While scanning document of Shart Wajib-ul-Arz (شرط واجب الارض) following conditions have been agreed among the landlords at the time of Shart Wajib-ul-Arz (شرط واجب الارض):

نمبر شمار دفعہ	تفصیل اندراجات واجب العرض
دفعہ نمبر 1 الف	شاملات۔ طرف یا پتی قابا نوتوڑ ہمارے گاوں میں کوئی نہیں ہے۔ رقبہ شاملات دیہہ جس قدر قابا تردید ہے اس کو ہر ایک حصہ سے اپنے حصہ سے زیادہ آباد کرنے کا مستحق نہیں ہے۔ اپنے کھیت مذروعہ کے ملحق تردد کر سکتا ہے۔ ہاں اگر اس کے مزروعہ کھیت سے متصل بنجر نا قابا تردد نہیں ہے تو دوسری جگہ تردد کرنے ممانعت نہیں ہے اور حصہ وار نوتوڑ کنندہ سے نقدی بروئے پڑتا سر سیری بااضافہ فی روپیہ مالکانہ لیا جاوے گا اور اراضی شاملات تصور ہو کر جملہ حصدل بوقت ڈھال باجھ کھیوٹ اپنے اپنے کھیوٹ میں مجرائی کر لیا کریں گے۔
ب	ہمارے گاوں میں رقبہ شاملات دیہہ مع آبادی بدین تفصیل یہ ہے۔ مضروعہ غیر ممکن وجدید ہے۔ راستہ، غیر ممکن، قبرستان آبادی بن چاہ خانقاہ تقسیم شاملات دیہہ سے واسطے ہر ایک حصہ دار دعوی کر سکتا ہے اراضیات از تقسیم راستہ قبرستان، بن، چاہ، خانقاہ مفید عام میں رہیں گے اور رقبہ 459, 2170, 5253, 5312, 5924, 6667 اور 6668 نمبرات خسرہ۔۔۔۔ جو واسطے گزارہ باشندگان چرائی مویشی لئے ہے وہ تقسیم نہیں کیا جاوے گا۔ باقی زمین مزروعہ وغیرہ مزروعہ کو حسب رسید کھیوٹ بندوبست قانونی تقسیم کریں گے۔ جہاں تک ممکن ہوگا تقسیم کھیوٹ بلالحاظ رکھا جاوے گا کہ اگر بنجر زمین سے کوئی ٹکڑا نوتوڑ ہونے سے کسی خاص کھیوٹ دار قبضہ میں آگیا ہوگا تو بوقت تقسیم قبضہ اس کا بشرطیکہ حد سے زیادہ نہ ہو اور دوسری جگہ اس کے مقابلہ میں بنجر قابا آبادی موجودہ ہو بحال رکھا جاوے گا۔ زمین بنجر جس حصہ دار کے حصہ میں دی جاوے گی بشرطیکہ دوسرے حصہ دار کے واسطے ایسی چست کا بنجر دوسری جگہ موجود ہو۔
ج	کھاتہ مشترکہ عموماً خانگی طور پر تقسیم ہو جاتی ہے اور ہر ایک حصہ دار کو اختیار ہے کہ جب چاہے اپنے حصہ کی زمین تقسیم کرالیوے۔ تقسیم خانگی ہو کر رقبہ الگ الگ ہو جائے تو تقسیم بحال رہے گی اگر قبل از تقسیم کاشت حصہ داران الگ الگ ہو جاوے اور غلہ ڈھیر ہو کر تقسیم ہو نہ ہو یا باسبب کثیر تعداد ہونے رقبہ ہر ایک حصہ دار نے کم و بیش جمع کیا ہو تو قبضہ کاشت ہر ایک حصہ دار کا بقدر حصہ بحال کیا جاوے گا اور کمی بیشی باقی ماندہ رقبہ سے پوری کی جاوے گی اور زائد حصہ قبضہ سے نکالی جاوے گی اور جہاں تک ممکن ہوگا تقسیم کے وقت یہ لحاظ رکھا جاوے گا کہ بنجر زمین میں سے کوئی ٹکڑا نوتوڑ ہو کر کسی خاص کھیوٹ دار قبضہ میں نہیں آگیا ہو تو وقت تقسیم اس کا قبضہ حصہ داروں کا حقدار حصہ تک بحال رکھا جاوے گا بشرطیکہ ویسا ہی اور بنجر قابا نوتوڑ کرنے کے دوسرے حصہ داران واسطے باقی ہو، زمین بنجر جس حصہ دار کے کھیت مزروعہ سے ملحق ہو گی اس حصہ دار کے حصہ میں دی جاوے گی۔
دفعہ نمبر 2	جو رقبہ۔ پہاڑ نمبرات خسرہ 459, 2170, 5253, 5312, 5924, 6667 اور 6668 اس میں سب باشندگان دیہہ بلا تمیز چرانے مویشی اور لکڑی جلانے لانے میں کسی قسم کا حق غیر مالکان سے نہیں لیا جاتا ہے۔

8. The concept of Shart Wajib-ul-Arz (شرط واجب الارض) is to be considered as an agreement among the landlords of concerned Mouza, who by their own free will agreed to settle certain rights while considering the public purpose as a prime importance including but not limited to usage of land for the purpose of grazing animals, firewood, graveyard, forest, water reservoir, etc. which can be utilized by all the residents of that revenue estate including the landlords and such land has been called as Shamlat Deh (شاملات دیہہ) / common land. Its characteristics could

not be changed unless a condition has been stipulated in the Shart Wajib-ul-Arz (شرط واجب الارض), document.

9. It has also been observed from the reports submitted by the revenue authorities in this case that the character of land has been changed and they have used the terms Notore / نوتوڑ, which means the characteristics of land was converted to some other purpose by way of construction or deforestation by cutting of trees, or the common land has been converted into cultivatable land. All such phenomenon is called Notore (نوتوڑ), however, at present times due to drastic climate change it is the need of hour to protect the natural forest and such aspect was duly acknowledged by the government where multiple notifications were issued in which restriction was imposed by the Federal Government or the Provincial Government for protection of the forest land.

10. During the course of arguments it has also been highlighted that certain land developers have purchased the land in Mouza Tumair and are establishing the housing societies and in this conversion of land, the character of land has been converted to the residential nature (سکنی). Now the question arises as to whether the condition stipulated in Shart Wajib-ul-Arz (شرط واجب الارض) could have been changed, whereby, this Court has been guided qua status of Shart Wajib-ul-Arz (شرط واجب الارض) and its legal effects through judgment reported as ***2019 MLD 1061 (Alam Sher Vs. Ahmed)***, in which it has been held that if mutation was to be attested on the basis of custom then reference of custom should be made in the order of Revenue Officer on the basis of Shart Wajib-ul-Arz (شرط واجب الارض). It is settled proposition that all the owners of revenue estate had right in Shamlat Deh (شاملات دیہہ) whose names have been recorded in column of cultivation as حصہ دار in

Shamlat Deh (شاملات دیہہ) who could only transfer the property to the extent of their share and not more than that and as such no restriction could be imposed upon the sale of Shamlat Deh (شاملات دیہہ) land or referred in this regard shalmat land could be partitioned if majority of original owners لھیوٹ دار had sought partition of the property owned by them on the basis of *maliah* paid by them, but all these conditions should have been stipulated in Shart Wajib-ul-Arz (شرط واجب الارض) as held in ***2016 YLR 1489 (Syed Azhar Hussain Shah Vs. Member Board of Revenue, KP)***. The conditions stated in the Shart Wajib-ul-Arz (شرط واجب الارض) document has to be honored in all circumstances and if purpose of Shamlat Deh (شاملات دیہہ) has been referred as grazing field of the village and any mutation was sanctioned in favour of any third party in violation of Shart Wajib-ul-Arz (شرط واجب الارض), the same could not be acknowledged as held in ***2016 MLD 568 (Muhammad Nazeer Vs. Ameer Jan)***. There is also a bar on the alienation of Shamlat Deh (شاملات دیہہ) or its specific portion as same was if restricted in Shart Wajib-ul-Arz (شرط واجب الارض), whereby, presumption of correctness is attached in such document, reference has been made to ***2016 YLRN 30 (Dilawar Khan Vs. Sana Ullah).*** In case of any dispute qua any common land of the village where question of eligibility and title is also an issue the Shart Wajib-ul-Arz (شرط واجب الارض) document should have been tendered in evidence in accordance with the law in order to establish ownership in the said document while settlement of Mouza / revenue estate and without submission of this public document no benefit could be drawn or controversy could not be resolved as held in ***2016 CLC Note 79 (Muzaffar ul Malik Khan alias Kaki Khan Vs. Jamshaid Zada and 16 others.)***

11. It is settled law that the entries in Shart Wajib-ul-Arz (شرط واجب الارض) which disclose the purpose of common land except chiragah (چراہ گاہ), could be changed, even common lands subsequently become part of ownership of land owners of the village for their personal use to the extent of their respective shares in *Shamlat* subject to order of District Collector. In such eventuality any entry in Shart Wajib-ul-Arz (شرط واجب الارض) prohibiting the partition of *shamlat* land does not necessarily operates as bar to partition. The duty is casted upon the revenue officer, dealing with the partition to decide whether such clause should prevail or not, Wajib ul Arz drawn up at a point of time, when the land was valued only for the village pasture, but subsequently, it had since been broken up for cultivation and there was reduction in number of cattle kept by the community. In view of drastic change in the society and for the fact that at the time of partition of *shamlat*, none from the community, contested the partition, the revenue officer was justified in sanctioning the mutation as held in ***PLD 2009 Lahore 347 (Safdar Hussain Vs. Muhammad Azam).***

12. Another important question has been raised as to whether by changing the nature of land especially when the same was converted into residential purpose, the same could have been assessed and jurisdiction of Revenue Officer in terms of the Land Revenue Act, 1967 remained intact? The answer to the proposition has to be seen in the light of definition of term "Land" which has surprisingly been not discussed or referred in the Land Revenue Act though the preamble of the Land Revenue Act states that it is a law relating to the making and maintenance of records-of-rights, the assessment and collection of land revenue, the appointment and functions of Revenue Officers and other matters connected with the Land Revenue Administration, therefore, it is clearly established from external detail of outline of law in question which is the very

purpose behind the enactment and defines the legislative intent, hence, this court while applying the principles of interpretation of statute cannot go beyond the legislative intent when there is no absurdity in the language of statute which only covers the revenue aspect of assessment made by the Revenue officer qua the land in any revenue estate. For the purpose of clarity the term "Estate" referred in sub-section (9) of Section 4 of the West Pakistan Land Revenue Act, 1967 means any area:-

(i) for which a separate record of rights has been made; or
(ii) which has been separately assessed to land revenue; or
(iii) which the Board of Revenue may, by general rule or special order, declare to be an estate;

Hence, there is no cavil that the term "Estate" is a legal expression as defined by the West Pakistan Land Revenue Act, 1967 and forms the unit of revenue assessment and administration in province, even it is different from the word village. It is also settled proposition on the basis of interpretation of statute that when anything has not been defined by the Legislature in the statute, court has to look in to the ordinary dictionary meaning of the words in terms of ***1994 SCMR 2255 (Abdul Hameed vs. Nek Muhammad)***, therefore, plain meaning should be given affect and those ordinary meanings may be derived from dictionary reference in this regard has been made to ***2022 SCMR 25 (Government of the Punjab through Secretary, Schools Education Department, Lahore vs. Abdur Rehman)***, therefore, ordinary meaning of term "Land" has to be derived from Oxford Thesaurus of English where land means *ground, field, open space, open area, landholding, country side, un-built land, rural area, green area, green belt, earth, dirt, clay,* therefore, when there is nothing constructed on any piece of land on the solid portion of earth it is to be called as land, it might be used for the purpose of construction, cultivation or for forestation, therefore, the primary territory which Land Revenue Act, 1967 covers is non-constructed portion of

earth for the purpose of assessment of land revenue, hence, any constructed portion stand excluded from the jurisdiction of Revenue officer for settlement of rights, especially in terms of Section 135 of the Act, which deals with the partition of any joint land and in terms of Section 136 of the Act there was restriction and limitation on partition, notwithstanding the provisions of section 135, the restrictions are as under:-

> *(a) Places of worship and burial grounds held in common before partition shall continue to be so held after partition; and the (b) partition of any of the following properties, namely:--*
>
> *(i) Any embankment, water course, well or tank and any land on which the supply of water to any such work may depend;*
>
> *(ii) Any grazing ground; and*
>
> *(iii) Any land which is occupied as the site of a town or village may be refused if, in the opinion of the Revenue Officer, the partition of such property is likely to cause inconvenience to the co-sharers or other persons directly or indirectly interested therein, or to diminish the utility thereof to those persons.*

13. Similarly, Section 172 of the Land Revenue Act also excludes the jurisdiction of Civil Court viz. a viz. the jurisdiction of Revenue officer which only confers the jurisdiction of Revenue officer to those matters which are enumerated therein, however, any issue which relates to constructed portion and its dispute qua title was not within the jurisdiction of Revenue officer rather falls within the domain of Civil Court to be settled among the parties. Section 2 of the Land Revenue Act extends the powers to the government to exclude the area from the operation of this Act or any provision to a particular area by way of notification but the exclusion of certain land from the operation of the Act has been detailed in Section 3 of the Land Revenue Act, 1967, which is as under:-

> ***3. Exclusion of certain land from operation of this Act.*** *(1) Except so far as may be necessary for the record, recovery and administration of village-cess, or for purposes of survey, nothing in this*

Act applies to land which is occupied as the site of a town or village, and is not assessed to land revenue.

(2) It shall be lawful for the Collector acting under the general or special orders of the Board of Revenue, to determine, for the purpose of this Act, what lands are included within the limits of the same, regard being had to all the subsisting rights of the land-owners.

14. The plain reading of above referred section if placed in juxtaposition with land which has not been defined in the Land Revenue Act clarifies that this Act is not applicable to constructed building or site of town or village and if any area has been occupied for such purpose of commercial or residential nature same stand excluded from the purview of agriculture land. The land which is kept as a site of town or village and is not assessed to land revenue as held in ***2005 MLD 814 (Dr. Jalal Khan vs. Qazi Naseer Ahmed, District Deputy Officer, (Revenue), Kharian, District Gujrat), 2009 MLD 930 (Muhammad Muneer vs. Member Board of Revenue, Punjab, Lahore)***, therefore, any land which later on becomes *Abadi-Deh* stands excluded from the assessment of Revenue officer and jurisdiction of Civil Court comes into play due to construction of any building by virtue of ***PLD 1999 Lahore 31 (Parvez Ahmad Burki vs. Assistant Commissioner)***, therefore, Revenue officer does not have any jurisdiction to entertain the application for partition of properties which had ceased to be land notwithstanding the fact that such properties continued to be assessed to land revenue. Similar view has also been taken on the strength of ***1997 SCMR 1635 (Muhammad Ramzan and others vs. Member (Rev.)/CSS and others), 2007 SCMR 707 Muhammad Sharif vs. Settlement Commissioner and others)***. Similarly the properties which have been constructed and the character of agricultural land stand converted, it is the obligation of Board of Revenue as well as revenue officials of the area to notify the same as (آبادی دیہہ) in terms of section 3 of the Land Revenue Act, 1967, as all those constructed properties are to be treated as urban property for all intent and purposes, which could be settled by way of inspection of revenue officials who

shall submit report to the Members of revenue for the purposes of notification under section 3 of the Land Revenue Act, 1967, on the touch stone of guidance referred in **2004 YLR 834 [Lahore]** ***(Muhammad Ishaq Vs. Member (consolidation), Board of Revenue, Punjab)***.

15. While considering the above discussion, this court has also posed certain question to the respondent with reference to change of status of *shamlat* land viz. a viz. the concept of *notore* (نوتوڑ), consequently, following answers have been placed on record:-

سوال نمبر	سوالات	جوابات
1۔	کیا اراضی قسم چراگاہ، شاملات دیہہ جس کے استعمال کی شرائط و قواعد شرط واجب العرض میں جدید مالکان یا اعلیٰ مالکان اراضی نے با وقت تقرری محال بعد از باہمی رضامندی تحریر کیے تھے کو بغیر کسی قانون حکم یا مالکان کی مرضی و منشا تبدیل کیا جا سکتا ہے؟	مطابق لینڈ ریونیو ایکٹ کی دفعات 141 کی دفعہ 2 کی شق (ج) میں تحریر ہے کہ جب واجب الارض میں کوئی شرط درج ہو تو یہ اس بندوبست کی میعاد تک حاوی ہوگئی۔ جب بندوبست کی معیاد ختم ہوجائے تو ایسے اندراج کا اطلاق نہیں ہوتا اور یہ ختم ہو جاتا ہے - **(PLD 1955WP (REV) 56)** جب واجب الارض میں یہ اندراج ہو کے شاملات اراضی کی تقسیم نہیں کی جائے گی تو ایسا اندراج تقسیم کرنے پر لازمی طور پر پابندی نہیں سمجھا جائے گا۔ کیونکہ ریونیو آفیسر کا فرض ہے کہ تقسیم کی کارروائی کے دوران اس امر کا فیصلہ کرے کہ ایسی پابندی پر عمل کیا جائے یا نہ کیا جائے ۔**PLD1950 P6.(REV) 887)** جب کسی موضع کی واجب العرض اس وقت کے حالات کے مطابق تیار کی گئی تھی جبکہ اراضی کی قدر و قیمت محض اس کے چراگاہ ہونے پر منحصر تھی۔ لیکن اس کے بعد اراضی نوتوڑ ہوگئی اور گاؤں کی مویشیوں کی تعداد میں بھی بہت کمی ہوگی تو یہ قرار دیا گیا کہ چونکہ حالات بدل چکے تھے۔ اور اہل دیہہ کی اکثریت واجب الارض کے اندراج پر معترض ہے لہذا ریونیو آفیسر تقسیم کرنے میں حق بجانب تھا۔ **PLD 1950 P6. (REV) 887)** اور دو بندوبستوں کی درمیانی معیاد زیر دفعہ 86 (ج) ہدایت نامہ بندوبست میں 40 سال مقرر کی گئی ہے۔ مندرجہ بالا حقائق کی روشنی میں ہمیں حکم تبدیلی ممکن ہے۔
2۔	اگر کسی اراضی شاملات دیہہ کو بغیر کسی قانونی حکم کے / نوتوڑ تبدیل برخلاف مقصد درج شدہ شرائط واجب العرض کر دیا جائے تو کلکٹر /بورڈ آف ریونیو اس تبدیلی کو کیسے قانون کے دائرہ کار میں لاسکتا ہے اور اراضی کا اصل مقصد دوبارہ بحال کیا جائے؟	**دفعہ 175 لینڈ ریونیو ایکٹ مشترکہ زمین پر تجاوز کو روکنا** (1)جب کسی زمین پر جو اس موضع کے سکونتی اشخاص کے مشترکہ مقاصد کے لیے مخصوص کی گئی ہو جہاں ایسی زمین واقع ہو کسی شخص نے تجاوز کر لیا ہو اور ایسی تجاوز کردہ زمین اس طرح مخصوص کردہ ظاہر کی گئی ہو تو افسر مال مجاز ہوگا اس موضع کے کسی دیگر شخص کی درخواست پر اور اس شخص کو پیش ہونے کا موقع دیکر جس پر اس اراضی پر تجاوز کرنے کا الزام ہے کہ وہ مجوزہ کاروائی کے خلاف وجہ بیان کرے۔ (الف)۔اس شخص کو اس اراضی سے بے دخل کرے دے جس نے اس پر تجاوز کیا ہوا ہے۔

		(2)شرح اس دفعہ کے تحت ریونیو آفسر کو اختیار دیا گیا ہے کہ وہ کسی شریک کھاتہ کی درخواست پر کسی دیگر شریک کھاتہ کو اس کے ناجائز تجاوز قبضہ سے محروم کر دے۔ایسی صورت میں کہ جب کوئی چراہ گاہ، قبرستان، راستہ، تالاب، یا شاملات پر کوئی شخص ناجائز طور پر قبضہ کر لے یا تجاوز کر کے درخواست دینے پر اسے بے دخل کیا جا سکتا ہے اس دفعہ کا اطلاق ان معاملات میں نہ ہو گا۔جبکہ اراضی کی اصل نوعیت ایسی کاروائی سے قبل تبدیل ہو چکی ہو AUIR 1927 LACH. 615 مندرجہ بالا دفعہ کی روشنی میں ریونیو آفیسر کو اختیار دیا گیا ہے کہ مطابق قواعد اراضی کو دوبارہ اصل مقصد کے لیے دوبارہ بحال کر سکتا ہے۔
3۔	شاملات دیہہ اور دیگر ملکیتی اراضی موضع جو کہ زرعی اراضی کے طور پر استعمال ہو رہی ہے کو سکنی جائیداد میں منتقل کرنے کے لئے کس قانون کے تحت اجازت یا محکمہ مال کس حکم سے حیثیت اراضی تبدیل کی جا سکتی ہے؟	پٹواری حلقہ سال میں دو مرتبہ خریف/ربیع کے بوقت گرداوری مطابق موقع رجسٹر گرداوری میں اندراج کرتا ہے جسے چار سال کے بعد بوقت تحریر رجسٹر حقدران زمین میں مطابق گرداوری اندراج کیا جاتا ہے اس کے لیے کسی اجازت کی ضرورت ہے۔
4۔	اگر تمام زرعی اراضی موضع کو سکنی جائیداد میں تبدیل کر دیا جائے تو مکانیت سڑک، عمارتوں کی تعمیرات کی وجہ سے خسرہ نمبر، کھیوٹ، لھتونی کا تعین نہ ہو سکے تو یونین کونسل / میونسپل کارپوریشن اسلام آباد کیپیٹل ٹیریٹری لوکل گورنمنٹ ایکٹ 2015 کے تحت اراضی کی شناخت رجسٹری منتقل ٹیکس وغیرہ کے معاملات کیسے کرنے کی مجاز ہے اور متعلقہ پٹواری افسران محکمہ مال کے اختیارات کیسے استعمال ہوں گے؟	مطابق قانون معاملہ زمین جتنی دیرینہ مواضیات کی حدود قائم رہینگی اور نمبران خسرہ کو شامل آبادی کر کے ختم نہ کر دیا جائے بوقت منتقلی جائیداد ڈسٹرکٹ کلکٹر کے منظور شدہ ویلوایشن ٹیبل پر عملدرآمد ہو گا۔
5۔	بغیر اجازت نوتوڑ سے شاملات دیہہ کو استعمال اراضی کرنے پر متعلقہ افراد کے خلاف کاروائی کیسے کی جا سکتی ہے اور متعلقہ افسران مال کے خلاف محکمہ مال کی کارروائی بھی ممکن ہے۔	اگر مالک نے مطابق واجب العرض شاملات دیہہ نوتوڑ کی ہے اور حق رکھتا تھا اس کے خلاف کاروائی نہیں کی جا سکتی اگر اس نے خلاف قوانین نوتوڑ کی ہے تو اس کے خلاف کاروائی زیر دفعہ 175 لینڈ ریونیو ایکٹ کی جا سکتی ہے اور مالک اراضی ضابطہ دیوانی اور ضابطہ فوجداری کے تحت بھی قانونی کاروائی کر سکتا ہے۔اگر محکمہ مال کے کسی افسر کے خلاف قواعد کی بے ضابطگی ثابت ہو جائے تو اس کے خلاف محکمانہ کاروائی کی جا سکتی ہے۔

16. In view of above instant writ petition stands ***DISPOSED OF*** with the following observations:-

(i) *By virtue of notification dated 24.02.2022 any land which has been declared as chiragah (چراہ گاہ) in the entire ICT is not permitted to be changed for its character, nor notore (نوتوڑ) is permissible and*

District Administration is bound to implement and protect its character as defined in Shart Wajib-ul-Arz (شرط واجب الارض).

(ii) Any land which has been converted from land to built-up property in shape of building, house, factory, same could not be considered for the purpose of assessment of land revenue and jurisdiction of Revenue Officer ceased to exist if those properties fall within the defined limits of abadi-deh.

(iii) The Board of Revenue after seeking a report from Revenue officer in any mouza/estate shall identify and pass order for separation of agriculture land from abadi-deh in terms of powers envisaged in Section 3 of the Land Revenue Act, 1967, where-after all the constructed portion be identified and marked by MCI by way of number under ICT Local Government Act, 2015, for the purpose of identification and property tax.

(iv) The constructed building, house, etc. of abadi-deh of the village shall be considered for the purpose of revenue record if issued by Revenue officer of the Estate but mutation should not be sanctioned for a constructed house or building rather the Sub-Registrar should only notify that these buildings should be transferred, alienated, gifted by way of waqaf or trust through registered sale deed/instrument under Registration Act, 1908 to avoid any litigation among the co-sharers/land owners of the mouza as the property could not be identified by way of demarcation.

(v) No khasra-girdawri document be issued for any abadi-deh.

(vi) The Registrar ICT shall only register deed instrument of sale, transfer of land after verification of built-up property at site through his officials by appointing local commission before registration of instrument under the law.

(vii) The constructed properties after notification of Board of Revenue become urbane properties for all intent and purposes, even its subsequent transfer could only be made through registered deed only with reference to property number as per Register of MCI.

17. Keeping in view the above instructions for future guidance, the claim submitted by the petitioner qua khasra numbers which have allegedly been converted by different housing schemes and individuals, when considering the law, shall be dealt by the Member Board of

Revenue / Chief Commissioner Islamabad, and all kinds of *chiragah* (چراہ گاہ) should have been given protection. The Chief Commissioner, Islamabad can exercise its powers to protect such land and any housing scheme which is encroaching upon the *chiragah* (چراہ گاہ), action should have been taken against such individual or housing society under law. It is expected from the Chief Commissioner office to restore the status of *chiragah* (چراہ گاہ) by all means. Similarly Board of Revenue shall issue notification of *Abadi-Deh* (آبادی دیہہ) within Islamabad Capital Territory after adopting procedure under the law within six months and M.C.I shall complete the survey of each property with specific number for its registration purpose within next six months accordingly.

(MOHSIN AKHTAR KAYANI)
JUDGE

Announced in the Open Court on: **20.03.2022.**

JUDGE

Approved for reporting.

Zahid.