

THE ¹[KHYBER PAKHTUNKHWA] PUBLIC PROPERTY(REMOVAL OF ENCROACHMENT).ACT, 1977.

²[KHYBER PAKHTUNKHWA]ACT,No. V. OF 1977.

[23rd June, 1977.]

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¹Substituted vide Khyber Pakhtunkhwa Act No. IV of 2011.

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(First published after having received the assent of the Governor of the ³[Khyber Pakhtunkhwa], in the Gazette of⁴[Khyber Pakhtunkhwa] (Extra-ordinary), dated 23rd June, 1977).

**AN
ACT**

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

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

It is hereby enacted as follows:—

1. (1) This Act, may be called the ⁵[Khyber Pakhtunkhwa] Public Property (Removal of Encroachment) Act, 1977. Short title, extent and commencement.
(2) It extends to the whole of the⁶[Province of Khyber Pakhtunkhwa].
(3) It shall come into force at once.
2. In this Act, unless there in anything repugnant in the subject or context. Definitions.
 - (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;

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⁴Substituted vide Khyber Pakhtunkhwa Act No. IV of 2011.

⁵Substituted vide Khyber Pakhtunkhwa Act No. IV of 2011.

⁶Substituted vide Khyber Pakhtunkhwa Act No. IV of 2011.

- (b) building means a building or the part there of and the land appurtenant thereto;
- (c) “encroachment” means unauthorized occupation, temporary or permanent, of public property;
- (d) “Government” means the Government of the ¹[Khyber Pakhtunkhwa];
- (e) “land” includes land under water, well, foot-path, road, tunnel, culvert, nala, bridge and street;
- (f) “Local Council” means a council constituted under the ²[Khyber Pakhtunkhwa]Local Government Ordinance, 1972 (³[Khyber Pakhtunkhwa]Ord No. III of 1972), or any law relating to Local Government for the time being in force;
- (g) “prescribed” means prescribed by rules made under this Act;
- (h) “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, or such other authority;
- (i) “Tribunal” means a Tribunal constituted under section 12;
- (j) “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

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- (iii) every member of the lessee's or licensee's family 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.

3. (1) If Government, or any authority or officer authorized by Government in this behalf, is satisfied that any person is an unauthorized occupant, it or he may, by order in writing, direct such person to vacate the public property and to remove the structure, 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.

Removal of structures.

(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.

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 Government or any authority or officer who has made such order.

Review.

(2) Government or, as the case maybe, the authority or officer as aforesaid, 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.

5. (1) If any person on whom order under sections 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, any officer authorized in this behalf by Government may, notwithstanding anything contained in any other law for the time being in force, enter upon such property by evicting such person and may also demolish and remove the structures, if any, erected or built by that person.

Eviction.

(2) For the purpose of recovering possession of any public property under the provisions of sub-section (1), an officer authorized by Government in this behalf may use or cause to be used such force as may be necessary.

(3) If any officer authorized to take action under sub-section (1) 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 owner-ship of the structures vested at the time of this demolition and removal. Recovery of cost of demolition and removal of structures.

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. Recovery of Arrears of rent.

8. (1) Any person who has made encroachment shall be punished with imprisonment of either description for a term which may extend to six months or with fine which may extend to three thousand rupees or with both. Punishment.

(2) The officer appointed for preventing encroachment in any area who directly or indirectly connives at, or at 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 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.

9. (1) No court shall take cognizance of an offence under this Act, except on complaint in writing made by an officer authorized by Government in this behalf. Cognizance of offence 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).

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

11. (1) No Civil Court shall have jurisdiction to entertain any proceedings, grant any injunction or make any order in relation to 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 for the purpose of this Act, or anything done or intended of purported to be done under this Act. Bar of jurisdiction of abetment of suits.

(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.

12. (1) Government may, by notification in the official Gazette, constitute a 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 that any property is not a public property or that any lease or licence in respect of such public property has not been determined for the purpose of this Act. Exclusive jurisdiction.

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

(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 person in respect of anything which is in good faith done or intended to be done under this Act. Indemnity.

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 North- West Frontier Province Public Property (Removal of Encroachment) Ordinance 1977 (North- West Frontier Province Ord No. VII of 1977), are hereby repealed. Repeal.