

ORDINANCE NO. XVI OF 2021

AN

ORDINANCE

to provide for measures to remove encroachment from immovable public properties

WHEREAS, it is expedient to provide for measures to remove encroachment from immovable public properties and for matters ancillary thereto and connected therewith;

AND WHEREAS, the Senate and the National Assembly are not in session and the President of the Islamic Republic of Pakistan is satisfied that circumstances exist which render it necessary to take immediate action;

NOW, THEREFORE, in exercise of the powers conferred by clause (1) of Article 89 of the Constitution of the Islamic Republic of Pakistan, the President of the Islamic Republic of Pakistan is pleased to make and promulgate the following Ordinance:—

1. **Short title, application and commencement.**—(1) This Ordinance shall be called the Public Properties (Removal of Encroachment) Ordinance, 2021.

(2) It extends to all public properties defined under this Ordinance.

(3) It shall come into force at once.

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

(a) *“attached department”* means the attached department as defined in the Rules of Business, 1973 and shall include any amendment to the nomenclature of attached department;

(b) *“autonomous body”* means a board, corporation, institution, organization, authority or other body established by the Federal Government and includes a university or board of intermediate and secondary education established under any Federal law;

(c) *“authorized officer”* means any person appointed by the Federal Government or a ministry or division, or an attached department or subordinate office or an autonomous body or any other authority of the Federal Government, vested with the possession, management or control of a public property, to carry out all or any of the purposes of this Ordinance or to do anything required by this Ordinance or rules, which are to be done by an authorized officer under this Ordinance;

(d) *“building”* means a building or a part thereof and land appurtenant thereto;

(e) *“division”* means a division as defined in the Rules of Business, 1973;

- (f) "*encroachment*" means un-authorized occupation, whether temporary or permanent, of public property;
- (g) "*Government*" means the Federal Government;
- (h) "*land*" 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;
- (i) "*ministry*" means the ministry as defined in the Rules of Business, 1973;
- (j) "*person*" shall have the same meaning as assigned thereto in the Income Tax Ordinance, 2001 (Ordinance No. XLIX of 2001) and shall also include any division, department, attached department, sub-ordinate office, authority or body of the Federal or Provincial Government or any semi-government or autonomous body;
- (k) "*prescribed*" means prescribed by rules or regulations made under this Ordinance;
- (l) "*public property*" means immovable property, building, land, place, space or premises, which vests in, or is in the possession or under the management or control of the Federal Government or any ministry or division, or an attached department or sub-ordinate office or an autonomous body, public sector company or any other authority of the Federal Government;
- (m) "*public sector company*" means a public sector company as defined in the Public Sector Companies (Corporate Governance) Rules, 2013;
- (n) "*rules*" means rules made under this Ordinance.
- (o) "*subordinate office*" means the "subordinate office" as defined in the Rules of Business, 1973;
- (p) "*Tribunal*" means a Tribunal constituted under section 12; and
- (q) "*unauthorized occupant*" means a person who has made encroachment upon, or is in occupation of, any public property without express permission in writing of competent authority and includes —
- (i) a lessee or licensee, or any person inducted into the public property by them, 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; or
 - (ii) 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, 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. **Vacation of property and removal of structures.**—(1) Where an authorized officer, is satisfied that a person is an un-authorized occupant, he shall issue a show cause notice to the said un-authorized occupant as to why he should not be evicted from the said public property within seven days of the notice:

Provided that if the person fails to respond, another seven days shall be given from the date of expiry of the show cause notice.

(2) Upon receipt of the response against the show cause notice under sub-section (1), the un-authorized occupant shall be given personal hearing within seven days of receipt of the response:

Provided that if the un-authorized occupant fails to appear in the personal hearing, another seven days opportunity shall be given to appear.

(3) Where the un-authorized occupant fails to respond to the show cause notice, or appear for personal hearing within the aforesaid period, or is unable to satisfy that property is lawfully occupied by him, an order in writing shall be made directing such person to vacate the public property and to remove structures, if any, raised by him on the public property.

(4) The notices or order under this section may be served by any of the following modes, namely:

- (a) personally or electronically on the un-authorized occupant or any adult male person occupying the public property; or
- (b) by sending it through registered post and courier service to the address of the public property in the name of the un-authorized occupant; or
- (c) through service on the un-authorized occupant in the manner prescribed for service of summons under the Code of Civil Procedure, 1908 (Act V of 1908);
- (5) The order under sub-section (3) shall, *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 9; 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 Ordinance.

4. **Eviction and removal of structures.**—(1) Where a person, on whom the final order under sub-section (3) of section 3 has been served, refuses

or fails to vacate the public property or to remove the structure raised thereon within the time period specified in such order, any authorized officer may notwithstanding anything contained in any other law for the time being in force, enter upon such property evict any unauthorized occupant, demolish or remove any structure, erected or built on the public property by un-authorized occupant.

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

(3) If any authorized officer requires assistance from police, he may send a requisition to the officer-in-charge of a police station within whose local jurisdiction the public property is situated and such police officer shall, upon such requisition, render the assistance as required.

5. **Recovery of cost of demolition and removal of structures.**—The cost of demolition or removal of structures under section 4 may be recovered as arrears of land revenue from the un-authorized occupant responsible for raising the un-authorized structures.

6. **Recovery of cost of demolition and removal of structures.**—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 un-authorized occupation of the structures vested at the time of serving the notice for eviction or removal of the said demotion and removal.

7. **Punishment.**—(1) An unauthorized occupant, in addition to eviction from the public property, shall, be punished with imprisonment of either description for a term which may extend to six months and with fine of 0.10% per day of the value of the said public property, as notified by the Federal Board of Revenue or the valuation of land notified by the revenue department, from time to time, for the respective area, whichever is higher:

Provided that for determination of fine under this section, the period of un-authorized occupancy shall include the period of appeal or further proceedings, if any, that may be filed against any order issued under this Ordinance.

(2) An officer who willfully connives or assists in the commission of the offence under sub-section (1) shall be punished as an abettor with the same punishment as is provided in sub-section (1) of this section.

(3) Where the officer-in-charge of police station willfully fails or avoids to provide necessary police assistance under sub-section (3) of section 4, he shall be punished as an abettor of the offence under sub-section (1).

8. **Recovery of fine.**—The fine imposed upon any person or persons in pursuance of section 7, with markup if any accrued thereon, shall be recovered from the un-authorized occupant as arrears of land revenue.

9. **Use of technology for determination of un-authorized occupancy.**—The authorized 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 Ordinance.

10. **Cognizance of offence and mode of trial.**—(1) No court shall take cognizance of an offence under this Ordinance, except on a complaint made in writing made by an authorized officer.

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

11. **Bar on jurisdiction and transfer of suits.**—(1) No 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 Ordinance, or anything done or intended or purported to be done under this Ordinance.

(2) All suits, appeals and applications relating to encroachment or disputes referred to in sub-section (1) and pending in any court of first instance shall be transferred to the Tribunal under section 12 and shall be treated and decided as an appeal before the Tribunal.

12. **Appellate Tribunal.**—(1) The President may, by notification in the official Gazette and in consultation with the Chief Justice of Pakistan, establish one or more Appellate Tribunals throughout the country and appoint as many members therein as he thinks fit.

(2) No person shall be appointed as member of the Appellate Tribunal unless—

- (a) he has been a Judge of a High Court or has been a District Judge or Additional District Judge; or
- (b) he is a retired civil servant not below BPS-21 and has experience of not less than twenty years in the field of revenue, administration, law or public administration.

(3) The President shall appoint one of the members of the Appellate Tribunal to be the Chairman thereof.

(4) A member of the Appellate Tribunal shall be appointed for a period of three years on such terms and conditions as may be prescribed.