

**Reforming The W.P. Requisitioning Of Immovable
Property (Temporary Powers)
Act (VII) Of 1956**

Report No.54

Reforming The W.P. Requisitioning Of Immovable Property (Temporary Powers) Act (Vii) Of 1956.

Mr. Ameen Jan Naeem, filed Shariat petition No.1/1 of 1986 before the Federal Shariat Court, challenging the provisions of Section 3(1), Section 7 and Section 11 of the West Pakistan Requisitioning of Immovable Property (Temporary Powers) Act, 1956 that they are repugnant to the injunctions of Islam.

The West Pakistan Requisitioning of Immoveable Property (Temporary Powers) Act 1956 was enacted in 1956 and was made applicable to the whole of province of West Pakistan except the Federal Capital and the Special Area. But later on, by the amending Ordinance XIX of 1962 the words “the Federal Capital and” have been omitted. Now the scope of the Act has been extended to the whole of the country including the Federal Capital, Islamabad.

On the dissolution of the Province of West Pakistan with effect from 1st July, 1970 the Islamabad Capital Territory was excluded from the ambit of the Punjab Province vide Section 4 of the Province of West Pakistan (Dissolution) Order, 1970. (P.O. No. I of 1970)

Section 20 of the said Order of 1970 empowers the President to make other provisions.

“Section 20. Power to make other provisions.—(1) The President may, by order, make such provisions as may appear to him to be necessary or expedient for” –(b) the government and administration of the Islamabad Capital Territory...”.

In exercise of, inter alia, the above power, the President promulgated the Islamabad Capital Territory (Administration) Order, 1971 (President’s Order 12 of 1971) which came into force on 1st July, 1970, empowering the Government of the Punjab to exercise powers in relation to the Islamabad Capital Territory. Section 2 (1) of this Order is relevant and reads as follows:

2. **“Government of the Punjab to exercise powers, etc.,** In relation to Islamabad Capital Territory, until other provision is made in this behalf the Government of the Punjab shall, on behalf of the President, exercise and perform in relation to the Islamabad Capital Territory the same powers and functions as were exercisable in relation to that territory by the Government of West Pakistan immediately before the first day of July 1970.”

After enforcement of the West Pakistan Requisitioning of Immovable Property (Temporary Powers) Act (VII) of 1956, the following enactments were repealed by virtue of Section 14(1)

- 1) The Sind Crown Servants (House Accommodation) Act, 1947.

- 2) The Sind (Requisition of land) Act, 1947.
- 3) The North West Frontier Province Premises (Requisition and Eviction) Act 1953.
- 4) The Bahawalpur Requisitioning of Immoveable property (Temporary Powers) Act, 1955.
- 5) The Punjab Requisitioning of Immovable property (Temporary Powers) Ordinance, 1955.

The main purpose of the Act of 1956 is to invest the Provincial and Federal Government with the power to requisition a building for the use of officers or offices or for an education institution of the Provincial Government on compensation paid to the owner on monthly basis till the building is released from requisition. The details of such requisition are provided in different Sections of the Act 1956.

The petitioner, stated in his petition that said provisions of the Ordinance violate the sanctity of the private ownership which fully recognized, owned and protected by the injunctions of Islam as led down by the Holy Quran and Sunnah. The Federal Shariat Court observed that :-

“it is absolutely clear that mutual consent occupies a very important place in all transactions and it leaves no room for any doubt to hold that according to Islamic injunctions no one can be compelled to make a deal either of the sale or that of the Ijara under coercion, without being mutually agreed to do the same out of one’s own free will. Such contracts are considered void. It is also clear that what has been stated above that the same rule applies to the government as much as it is applicable to the individuals and there is no exceptions to that in the normal day to day life.”

The Federal Shariat Court further observed that .-

“It would be appreciated to note that Islam is a practical dynamic way of life and it takes into account all circumstances and conditions that at time there are certain unavoidable conditions that are to be treated exceptionally. In such inevitable situation, the injunctions that are given for the normal circumstances are slightly parted with to a certain extent and are substituted by others that are from apt to changed conditions. The amended injunctions instead of involving the followers of Islam in difficult testing situations give them permission to utilize the given concession in the urgent requirements to an unavoidable limit. For example, the Holly Quran had forbidden the believers for the eating of meet, blood, flesh of swine and that on which any other name has been invoked besides that of Allah. This is an injunction, which is to be followed

and strictly adhered to in the normal circumstances. However, it has been made quite clear that any exceptional conditions the said injunction is to be made flexible enough to meet the changed situation in a way and to extent it required therein.”

In support of its observation, the Federal Shariat Court also quoted a Quranic Verse as follows:-

“This day I have perfected your religion for you, completed my favour upon you and have chosen for you Islam as your religion. But if any one is forced by hunger with no inclination to transgression, Allah is indeed Oft-forgiving, Most Merciful.” (5:4)

Quran further ordained:-

“He has explained to you in detail what is forbidden to you except under compulsion of necessity.” (6:119)

The Muslim Jurists have seriously considered the issue of acquiring individual’s property for public good and have declared permissible and lawful to acquire such property in case of emergency and strong compelling circumstances. The principle, stated in Al-Mejalla is as follows:-

“In time of necessity, by command of the Sultan, a man’s property can be taken for its value, and joined to the road. But until the price is paid, his ownership cannot be taken out of his hands.” (Durr-e-Mukhtar- Kitab-ul-Waquf, Vol-II, Page 666)

The Federal Shariat Court, through detailed discussions observed that the property of an individual can be requisitioned on proper rent if it is urgently required in public interest. For this purpose, the following broad principles, however, would be applied:-

- a) It is not permissible to compel anyone to effect an “ijara deed” in the normal circumstances.
- b) Compulsory requisition of property is only permissible at the time of extreme necessity and urgent requirement, includes the condition where without effecting the same the people will be confronted to serve hardship.
- c) Before taking action it is to be confirmed that there is no other way out except resorting to the same measure. Such decision is to be taken after thorough consideration of all possible solutions. It means that a mere vague pretext of “public interest” is not sufficient to resort to use force unless the necessity or general requirement is clearly ascertained. As far

as possible the requirement is to be objectively analysed and assessed so that no undue torture is caused to the citizens of the State.

- d) While giving hearing to the owner, if he is reluctant for the same, his personal present or future requirements are to be duly and compassionately considered.
- e) For acquisition of this nature, the rent of the same is to be justifiedly determined according to the current market value by keeping in view the locality rates in the adjacent areas, covered area, total area, and any other yardstick that is normally applied in such cases. The investments of the owner and his monthly instalments of loan of HBFC/ Banks should also be taken into consideration for a just and fair assessment. The rent must not be arbitrarily fixed in any case. Depending on the nature of the requirement, the rent may be enhanced to provide further incentive to the unwilling owners. The Holy Qur'an says:

“And give not short measure or weight.” (11:84)

“And O my people! Give just measure weight, nor withhold from the people the things that are their due.” (11:85)

“So establish weight with justice and fall not short in the balance.” (55:9)

- f) Besides fixation of the rent according to the market rate, payment of the same is to be done according to the prevalent custom of the locality i.e. lump sum payment of rent for a period of two years etc or in any other manner as the case may be.
- g) The rent is to be periodically indexed to keep it just and fair according to the nearby area.
- h) The payment of such rent is to be done as soon as possible without any unavoidable delay excepting only the delay that is normally required for obtaining the approval of concerned officer and sanctioning/issuing the requisite amount.
- i) The requisitioning is to be done for a fixed period, according to the requirement and the property requisitioned as such must be vacated in accordance with the terms of the contract.

In the result of the petition filed by the petitioner, the Federal Shariat Court held that:-

“Sub-section (1) of the Section 3 of the Act to extent of requisitioning of property for officers and to the extent of the fourth proviso relating to the

ejection of an occupant of a building, Section 7 to the extent of failure of payment of rent as well as subsequent payment of interest thereon, and Sections 11 and 12 to the extent of ouster of judiciary are repugnant to the injunctions of Islam as contained in the Holy Qur'an and Sunnah. To bring these Sections in conformity with the injunctions of Islam,, therefore, we order that all these Sections be amended according to our observations made at paras 30, 31 and 32 stated above. The necessary amendments shall be made by 31st December 1991 whereafter the said Sections/provisions shall cease to be effective and operate as law."

The Province of Punjab being aggrieved filed an appeal against the Judgment of Federal Shariat Court (PLD 1992 FSC 252) before the Supreme Court of Pakistan. The Supreme Court dismissed the appeal (PLD 1994 SC-141) partly modifying the decision of the Federal Shariat Court as follows:-

"That instead of penalizing any officer, a provision should be made in the law of requisition that if the amount of compensation is not paid within three months, the order of requisition shall be deemed to have been revoked and the requisitioned building shall be deemed to have been released."

"The provisions of the West Pakistan Requisitioning of Immovable Property (Temporary Powers) Act of 1956 are held to be repugnant to the Injunctions of Islam as laid down in the Holy Qur'an and the Sunnah of the Holy Prophet (peace be upon him).

By the judgment of the Supreme Court the following provisions of the Act declared as repugnant to the Injunction of Islam have ceased to effect from June 30, 1993 but the provincial governments have not yet amended the Act as directed by the Supreme Court.

It is, therefore, suggested that the provincial governments may be directed to omit the provisions of the Act of 1956, which are declared repugnant to the Quran and Sunnah and Section 7 of the Act may be amended according to the observations of the Supreme Court.

- 1) The words "who has paid rent for the whole of that period in advance" appearing in Section 2(iii).
- 2) The words "or expedient" in Section 2(1).
- 3) The words "the use of any of the officers" in Section 3(1).
- 4) The whole of clause (e) of Sub-section (1) of Section 6 and the whole of Sub-section (2) of Section 6 as they do not provide for the assessment of compensation on the basis of current market rent, and do not provide

for a periodical increase in the rent or compensation in accordance with the current custom.

- 5) Section 7 to the extent that it provides for interest in case the amount of compensation is not paid within three months, and does not provide that if the amount of compensation is not paid within three months the order of requisition shall be deemed to be terminated and the requisitioned building shall be deemed to have been released.
- 6) Section 11 and Section 12 in so far as they debar an aggrieved person from approaching the Court and prohibit the judiciary from giving a just remedy to an aggrieved person.”

The Commission in its meeting held on 11 October 2003, considered the above proposed amendment in the W.P Requisitioning of Immovable Property (Temporary Powers) Act 1956 and approved the draft Bill as at Annex.

Annex

A Bill

further to amend the West Pakistan Requisitioning of Immovable Property (Temporary Powers) Act, 1956.

Preamble.- Whereas it is expedient to amend the West Pakistan Requisitioning of Immovable Property (Temporary Powers) Act, 1956 , in the manner hereinafter appearing;

It is hereby enacted as follows:-

Short title and commencement.-- (1) This Act may be called the West Pakistan Requisitioning of Immovable Property (Temporary Powers) (Amendment) Act, 2003.

(2) It shall come into force at once.

2. Amendment of Section 2, Act VII of 1956. - In the West Pakistan Requisitioning of Immovable Property (Temporary Powers) Act, 1956 (VII of 1956), hereinafter referred to the said Act, in section 2, in clause (iii), the words “who has paid rent for the whole of that period in advance” shall be omitted.

3. Amendment of Section 3, Act VII of 1956. – In the said Act, in section 3, in sub-section (1), the words “or expedient” and “the use of any of its officers” shall be omitted.

4. Amendment of Section 6, Act VII of 1956. – In the said Act, in section 6,-
(i) in sub-section (1), the clause (e) shall be omitted.
(ii) the sub-section (2) shall be omitted.

5. Amendment of Section 7, Act VII of 1956. – In the said Act, in section 7, after the words “as the case may be” a colon shall be added and the comma and the words “, the Provincial Government shall be liable to pay Interest on the principal amount at the rate of six per centum per annum till the date of deposit or payment, as the case may be.” shall be omitted and thereafter the following proviso shall be added, namely :-

“Provided that if the amount of compensation is not paid within three months, the order of requisition shall be deemed to have been revoked and requisitioned building shall be deemed to have been released.”.

6. Omission of Section 11, Act VII of 1956. – In the said Act, section 11 shall be omitted.

7. **Omission of Section 12, Act VII of 1956.** – In the said Act, section 12 shall be omitted.

West Pakistan Requisitioning Of Immovable Property (Temporary Powers)Act 1956

COMPERATIVE TABLE

EXISTING PROVISIONS	PROPOSED AMENDMENTS
<p>Section 2, Clause (iii) “Owner” includes the successor-in-interest of an owner, a mortgagee in possession and a lessee for a fixed period who has paid rent for the whole of that period in advance;</p>	<p>Section 2, Clause (iii) “Owner” includes the successor-in-interest of an owner, a mortgagee in possession and a lessee for a fixed period;</p>
<p>Section 3, Sub-section (1) If in the opinion of the Provincial Government it is necessary or expedient to requisition any building for the use of any of its officers or offices, the Provincial Government may by order in writing requisition any building and may make such further orders as appear to it to be necessary or expedient in connection with the requisitioning.</p>	<p>Section 3, Sub-section (1) If in the opinion of the Provincial Government it is necessary to requisition any building for offices, the Provincial Government may by order in writing requisition any building and may make such further orders as appear to it to be necessary in connection with the requisitioning.</p>
<p>Section 6, Sub-section (1), Clause (e) The arbitrator in making his award shall take into consideration the following factors— (i) in the case of a building which was in existence before the 1st January 1939, the rent of the same or of similar accommodation in similar</p>	<p>Section 6, Sub-section (1), Clause (e) shall be omitted.</p>

<p>circumstances prevailing in the locality during 12 months prior to the 1st January 1939;</p> <p>(ii) in the case of a building which was constructed after the 1st January 1939, the rent at which such building was let out for the first time after its construction or the rent of similar accommodation in similar circumstances prevailing in the locality during 12 months prior to the construction of that building;</p> <p>(iii) if the building was constructed after the 14th August 1947, the initial cost of construction of that building.</p>	
<p>Section 6, Sub-section (2)</p> <p>If the building was constructed after the 14th August 1947 August 1947, the compensation awarded shall in no case, after deducting the taxes and insurance premium for insurance against fire and earthquake, be less than five per centum or exceed in amount six per centum per annum of the initial cost of the construction of that building.</p>	<p>Section 6, Sub-section (2) shall be omitted.</p>
<p>Section 7</p> <p>Payment of compensation.— As soon as possible after an order of requisition is passed, the Provincial Government shall determine the amount of compensation payable monthly to the owner for the use and occupation of the requisitioned building and deposit by the 5th of each succeeding month such compensation in the Court and if the amount of compensation assessed is enhanced by the</p>	<p>Section 7</p> <p>Payment of compensation.— As soon as possible after an order of requisition is passed, the Provincial Government shall determine the amount of compensation payable monthly to the owner for the use and occupation of the requisitioned building and deposit by the 5th of each succeeding month such compensation in the Court and if the amount of compensation assessed is enhanced by the arbitrator or by the High Court</p>

<p>arbitrator or by the High Court on appeal, the excess amount shall also be similarly deposited. In case the amount is not deposited within a period of three months from the date of requisitioning or the date of the order of the arbitrator or of the High Court, as the case may be, the Provincial Government shall be liable to pay interest on the principal amount at the rate of six per centum per annum till the date of deposit or payment, as the case may be.</p>	<p>on appeal, the excess amount shall also be similarly deposited. Provided that if the amount of compensation is not paid within three months from the date of requisitioning or the date of the order of the arbitrator or of the High Court, as the case may be, the order of requisition shall be deemed to have been revoked and requisitioned building shall be deemed to have been released.</p>
<p>Section 11 Exemption from legal processes.—(1) No injunction or an order for ejectment, delivery of possession or appointment of a receiver in respect of any building which has been requisitioned under this Act shall be granted or made by any Court or by any other authority. (2) No order made in exercise of any power conferred by or under this Act shall be called in question in any Court. (3) Where an order purports to have been made and signed by any authority in exercise of any power conferred by or under this Act it shall be presumed that such an order was so made by that authority.</p>	<p>Section 11 shall be omitted.</p>
<p>Section 12 Protection of actions under this Act.—(1) No suit, prosecution or other legal proceedings shall lie against</p>	<p>Section 12 shall be omitted.</p>

any person for anything which is, in good faith, done or intended to be done in pursuance of this Act any order made thereunder.

(2) Save as otherwise expressly provided under this Act no suit or other legal proceedings shall lie against the Government for any damage caused or likely to be caused by anything, in good faith, done or intended to be done in pursuance of this Act or any order made thereunder.