SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:
Mrs. Justice Ayesha A. Malik
Mr. Justice Muhammad Shafi Siddiqui

CPLA NOS.2630 AND 2639 OF 2026
[Against judgment dated 03.07.2026, passed by the Peshawar High Court, Peshawar in RFA No.797-P of 2025]

Mst. Naheed Shah Afridi and another
(in CPLA.2630 of 2026)

Mst. Islam Bibi
(in CPLA.2639 of 2026) ...Petitioner(s)

Versus

Muzaffar Shah Afridi and others (in both cases) ...Respondent(s)

For the Petitioner(s)	:	Mr. Shumail Butt, ASC assisted by Mr. Haris Khan, AHC (in CPLA.2630/2026) Mr. Ali Gohar Durrani, ASC (in CPLA.2639/2026)
For Respondent No.1	:	Sardar M. Nasir Ahmed Aslam Khan, ASC (in both cases)
Respondent No.5 (in CPLA.2630 of 2026)	:	In person and Attorney of Respondent Nos.2 to 4
Respondent No.6 (in CPLA.2630 of 2026)	:	In person
Respondent No.6 (in CPLA.2639 of 2026)	:	In person and Attorney of Respondent Nos.2 to 5
Respondent No.7 (in CPLA.2639 of 2026)	:	In person
For official Respondent(s) (in both cases)	:	Mr. Muhammad Yasir, Assistant Commissioner, Khyber.
Date of Hearing	:	29.10.2026

JUDGMENT

Ayesha A. Malik, J.- The judgment dated 03.07.2026 passed by the Peshawar High Court, Peshawar (**High Court**) in R.F.A No.797-P of 2025 is impugned before us, emanates from the final order dated 02.10.2025 passed by the Khyber Pakhtunkhwa Ombudsperson in Complaint No.6-2022/2024. The essential facts giving rise to the instant proceedings are that the Petitioners, who are the daughters and wife of

late Rehmat Shah Afridi, instituted a complaint before the Ombudsperson under Section 4 of the Khyber Pakhtunkhwa Enforcement of Women's Property Rights Act, 2019 (**Act of 2019**) against Respondent Nos.3 to 6, seeking recovery of possession of a land measuring approximately 39 Kanals situated in Mandai Khas, Ilam Gudar, near Dogra Hospital, Bara, District Khyber (**Disputed Property**). The Ombudsperson initially allowed the complaint vide order dated 22.10.2024, directing the Deputy Commissioner, Khyber, to separate the complainants' shares and hand over physical possession. Pursuant thereto, a notice was served on Respondent No.1's son to vacate the Disputed Property. In response, he filed an application before the Ombudsperson on 02.01.2025 seeking suspension of the execution proceedings, which was dismissed on 06.01.2025. Aggrieved by these orders, Respondent No.1 approached the High Court under Section 8 of the Act of 2019, which, vide judgment dated 17.01.2025, set aside both orders and remanded the complaint to the Ombudsperson. It further allowed the Respondent No.1 to file an impleadment application and directed the Deputy Commissioner, Khyber, to conduct a fresh inquiry, inspect the site, verify the documents in the presence of all parties, and submit a comprehensive report. In compliance with the remand directions, Respondent No.1's impleadment application was accepted on 17.02.2025, followed by the submission of an inquiry report by the Deputy Commissioner on 25.02.2025 and a Local Commission report on 28.02.2025. Upon consideration of these reports, the Ombudsperson passed the final order dated 02.10.2025, directing immediate restoration of possession to the Petitioners. Aggrieved by this final order, Respondent No.1 again approached the High Court which, vide the judgment dated 03.07.2026 **(Impugned Judgment)**, set aside the final order and dismissed the complaint primarily on the ground that the procedure adopted by the Ombudsperson was fundamentally flawed.

2. The Petitioners contend that they were gifted the Disputed Property through a Gift Deed executed on 14.11.2023 by their late father, Rehmat Shah Afridi, in favor of his wife and all his children (the Petitioners and Respondent Nos.3 to 6). Respondent Nos.3 to 6 later agreed verbally to hand over full physical possession to the Petitioners, thereby entitling them to restoration of possession of the Disputed Property. Respondent No.1, Muzaffar Shah Afridi, the brother of the late Rehmat Shah Afridi, controverts the Petitioners' entitlement in its entirety, and claims ownership of the Disputed Property. In this regard, he first instituted Civil Suit No.269/1 of 2025 on 26.09.2025 against the Petitioners and the

Respondents before us. He subsequently withdrew it on 20.07.2026 with permission to file a fresh suit and instituted a second suit on 30.06.2026, which we are informed is pending. As per the prayer in the second suit, Respondent No.1 seeks a declaration of ownership and possession of the Disputed Property, cancellation of the Property Certificate dated 15.03.2015 issued in favour of late Rehmat Shah Afridi, and possession of the Disputed Property through partition, along with permanent and mandatory injunctions. He claims to have inherited the Disputed Property and to be in possession thereof, asserting that his family was residing there when the complaint was instituted. Further, he claims that both the Petitioners and the Respondents base their claims on the legacy of Haji Ghaljai Afridi, the father of Rehmat Shah Afridi and Muzaffar Shah Afridi, therefore the dispute requires adjudication by the Civil Court, wherein evidence can be led to establish the respective rights of the parties.

3. The precise issues arising from the foregoing claims are whether the Ombudsperson exercised her powers in accordance with the Act of 2019 and, more importantly, whether the High Court, in exercising its appellate jurisdiction, remained within the scope of its powers under the Act of 2019. To address these issues, it is necessary to first examine the statutory scheme of the Act of 2019. The Act of 2019 was promulgated to provide a swift and accessible forum for protecting women's ownership and possession rights in property, particularly against unlawful deprivation through harassment, coercion, force or fraud. Under Section 3, the Ombudsperson is vested with the same powers, functions and authority as conferred under the Protection against Harassment of Women at the Workplace Act, 2010. The Act of 2019 provides two distinct procedural mechanisms. The first, under Section 4, where no proceedings concerning the property are pending before a court of law. In such cases, an aggrieved woman may directly lodge a complaint before the Ombudsperson under Section 4(1), after which the Ombudsperson conducts a preliminary assessment and directs the concerned Deputy Commissioner to undertake a summary inquiry and submit a report within fifteen days. If, upon considering the report, the Ombudsperson is satisfied that the complainant has been unlawfully deprived of her ownership or possession, Section 5 empowers her to direct the relevant State functionaries or executive authorities to restore or confer possession. The second mechanism, under Section 7, applies where proceedings concerning the property are already pending before a court of law. In such cases, a complaint may nevertheless be lodged before the Ombudsperson,

who conducts a preliminary inquiry and submits a report to the concerned Civil Court where the proceedings are pending, *recommending* whether they should be stayed or terminated. Section 6 provides an option to the Ombudsperson, where if, at any stage of the proceedings, she concludes that the matter involves intricate questions of law or fact, requires an in-depth inquiry, or necessitates the recording of detailed evidence, she shall refer the matter, along with the reports and material collected, to the Civil Court of competent jurisdiction. The Civil Court is then required to entertain and try the reference as a regular civil suit in accordance with the Code of Civil Procedure, 1908. Finally, as per Section 8 of the Act of 2019, all orders passed by the Ombudsperson are subject to appeal before the High Court within forty-five days.

4. Against this statutory framework, the Ombudsperson may restore possession to a complainant who has been illegally and unlawfully deprived of it, where satisfied that the complainant is the *lawful owner* of the property or was in *possession* of it. This power flows from the object of the Act of 2019, which is a special *enforcement law* whose underlying purpose is to provide effective and swift remedy against the unlawful deprivation of a woman's acquired or inherited holdings by family members through harassment, coercion, force, fraud, fabrication, forgery, or cheating.[1] The Act of 2019 is, in essence, a law for the *enforcement* and *protection* of property rights that are already established or readily ascertainable, and not a mechanism for creating, conferring, or adjudicating disputed rights in property. Where a woman's right is clear and requires no evidence or investigation, the Act of 2019 offers her an easy means of securing it. The jurisdiction under Section 4 of the Act of 2019 is accordingly summary and essentially restorative in nature. To invoke it, the complainant must establish, at the threshold, first her ownership and second her possession or entitlement to possession from which she has been illegally dispossessed. These are the two thresholds that the Ombudsperson must examine as a first step, by way of a preliminary assessment under Section 4(2) or Section 7(2) of the Act of 2019, before passing any order. Meaning thereby that title must be clear, and the complainant should have been in possession or entitled to it. Where this requirement is fulfilled, the Ombudsperson may obtain a summary inquiry through the Deputy Commissioner within fifteen days

[1] Report of the Senate Standing Committee on Law and Justice on 'The Enforcement of Women's Property Rights Bill, 2020' (Report No.20); UN Women, 'Women now have legal protection in asserting their property rights, Ombudsperson' (Press Release, 8 December 2021)

and decide the complaint, preferably within sixty days, granting relief under Section 5 for the expeditious restoration of the complainant's property rights. However, the summary jurisdiction of the Ombudsperson is neither intended nor designed to substitute the ordinary jurisdiction of a competent Civil Court. Where the controversy involves intricate questions of title, or complex questions of law and fact requiring detailed investigation, an elaborate inquiry, or the recording and appreciation of evidence, the matter falls beyond the scope of summary adjudication. In such circumstances, Section 6(1) provides by way of relief for a reference to be filed by the Ombudsperson, accompanied by the relevant record, to the competent Civil Court for adjudication in accordance with law. This saves time and effort of the complainant and ensures that her claim is investigated as per law. The Act of 2019 is therefore an enforcement law, concerned with giving effect to ownership and possession that are clear and readily established, and not with resolving intricate disputes of fact related to property rights.

5. In light of the foregoing, the Ombudsperson's conclusion declaring the Petitioners as owners of the Disputed Property could not have been validly reached through the summary procedure contemplated under the Act of 2019, for the following reasons:

i) According to the Deputy Commissioner's report, which included the verification of documents and the spot inspection, the Petitioners were not in possession of the Disputed Property, which was held by the family of Respondent No.1. Furthermore, the only title document produced was the Property Certificate dated 15.03.2015, issued in the name of Rehmat Shah Afridi, the father of the Petitioners. Neither the gift deed dated 14.11.2023 nor any inheritance document, through which title could have passed to the Petitioners, was before the Ombudsperson;

ii) The Petitioners claim that a verbal agreement was reached between them and Respondent Nos.3 to 6, whereby the latter agreed to hand over the entire Disputed Property to the Petitioners. This verbal agreement had to be established especially since there was another claimant namely, Respondent No.1. In this regard, Respondent No.5, on behalf of himself and his brothers (Respondent Nos.3, 4 and 6), stated before the Deputy Commissioner that they were willing to give the Petitioners their respective shares in the Disputed

Property, however, they took no subsequent steps to give effect to this, and more importantly, the suit of Respondent No.1 disclosed that the claim of the Petitioners was against Respondent No.1, who was in possession of the Disputed Property and not against the brothers (Respondent Nos.3 to 6) who were not in possession of the Disputed Property;

iii) The Petitioners, who seek restoration of possession, reside at different locations. Possession could not have been restored to three persons residing separately without partition of the Disputed Property and a determination of their respective shares; and

iv) The Disputed Property is located in the FATA area, where there is no revenue record of ownership or possession on which either side could rely.

Therefore, we are of the opinion that neither title nor possession was clearly established before the Ombudsperson. The absence of any property document establishing the Petitioner's claim, the fact that the available property document stood in the name of the late Rehmat Shah Afridi, and the competing claim raised by Respondent No.1, cumulatively necessitated adjudication of the controversy by a Civil Court of competent jurisdiction after recording evidence, thereby placing the matter beyond the scope of the summary jurisdiction vested in the Ombudsperson under the Act of 2019.

6. As to the Impugned Judgment, we find that the High Court also erred in several material aspects, namely: **(i)** the High Court held that, given the pending suit, the Ombudsperson could not issue directions to the Deputy Commissioner. This misreads Section 7 of the Act of 2019, which permits a woman to file a complaint even where court proceedings are pending, and allows the Ombudsperson to refer the matter to the Deputy Commissioner for further inquiry; **(ii)** the High Court also found it contrary to the Act of 2019 that the Ombudsperson had simultaneously sought a report from the local commission, while also directing the Deputy Commissioner to nominate staff to assist the commission. However, the local commission was constituted by order dated 17.02.2025 on Respondent No.1's application of the same date, whereas the Deputy Commissioner was already acting under the High Court's own judgment dated 17.01.2025 in FAO No.8-P of 2025. The two exercises were therefore not parallel and were as per the mandate of the Act of 2019, and the

conclusion by the High Court was misplaced; and **(iii)** while hearing the appeal, the High Court had both civil proceedings before it, the first suit having been withdrawn and a second suit instituted, and both developments were brought on record and specifically placed before it. In accordance with the statutory scheme, the High Court ought to have taken these facts into account and referred the matter to the competent Civil Court, rather than dismissing the complaint altogether. It is a well-settled principle of law that an appeal is a continuation of the original proceedings. Sitting in appeal, the High Court was thus vested with the same powers as the Ombudsperson under the Act of 2019, and it ought to have examined those powers in light of the pending civil litigation. Faced with an actively sub judice title dispute involving intricate and contested questions of fact that required the recording of evidence, the High Court grossly erred in dismissing the complaint outright. Under Section 6 of the Act of 2019, where a complaint under Section 4 requires detailed judicial inquiry, the statutory mandate commands that the matter be transmitted via a formal reference to the competent Civil Court to be tried as a regular civil suit. Further, Section 7 also confirms that the existence or pendency of civil proceedings calls for statutory coordination between the Ombudsperson and the Civil Court, not the automatic dismissal of the complaint. Under either provision, the statutory scheme requires that the case be referred to the competent Civil Court, rather than driving the Petitioners back to fresh litigation.

7. Upon hearing counsel for both sides with the aforementioned aspects, it becomes clear that the matter before us involves intricate questions that fundamentally preclude summary adjudication, namely: **(i)** whether the Disputed Property constitutes ancestral property jointly inherited by all legal heirs or is the exclusive property of an individual; **(ii)** the absence of relevant revenue records within the local jurisdiction where the Disputed Property is situated; **(iii)** the fact that the only document produced before the Ombudsperson is a Property Certificate in the name of the late Rehmat Shah Afridi; and **(iv)** the existence, genuineness and legal validity of the gift deed relied upon by the Petitioners. These questions can be resolved only through the recording and appreciation of evidence, which lies beyond the summary jurisdiction of the Ombudsperson. In such circumstances, we are of the view that both the Ombudsperson and the High Court were statutorily bound under the Act of 2019 to refer the matter to the competent Civil Court. Had the Ombudsperson undertaken a preliminary assessment at the outset, the intricacy of the dispute would

have been apparent and the matter could have been referred without delay. Its omission has instead given rise to further litigation and fresh grievances, ultimately frustrating the very object of the Act of 2019.

8. In view of the aforesaid, these Civil Petitions are converted into appeals and allowed, and the judgments of the High Court and the Ombudsperson are set aside with the following directions:

(i) The Ombudsperson shall, on receipt of this judgment, send the complaint, accompanied by all applications, documents, reports and material relied upon before her to the court of Mr. Sami Ullah, Civil Judge-I, Bara, District Khyber, where the civil suit instituted by Respondent No.1 against the Petitioners and Respondents Nos.2 to 6 concerning the Disputed Property and other connected properties and rights is presently pending where it shall be treated as a reference under Section 6 of the Act of 2019. Consequently, the Reference may be treated as a suit of the Petitioners and be decided by Civil Court as per law;

(ii) In the alternate, the Petitioners may, if they wish, seek any other appropriate remedy to assert their rights in the Disputed Property.

(iii) On receiving a copy of the Reference, along with a copy of our judgment, the Civil Court shall issue notices to all parties to appear before it within fifteen days; and

A copy of this judgment be sent to the District Judge, Khyber for onward transmission to the Court of Mr. Sami Ullah, Civil Judge-I, Bara, District Khyber where the civil suit is currently pending. A copy of the judgment be also sent to the Ombudsperson. We are sanguine that the Civil Court shall decide the matter within a reasonable time.

JUDGE

JUDGE

Islamabad
29.10.2026
'APPROVED FOR REPORTING'
*Azmat/Rahima Khurram (LC)**