

**JUDGMENT SHEET**  
**IN THE ISLAMABAD HIGH COURT, ISLAMABAD**  
**JUDICIAL DEPARTMENT**

**Crl. Revision No. 75/2019**

Abdul Rehman & another  
**Vs**  
Maulana Ishtiaq ul Salikeen, etc

Date of Hearing: 27.07.2020

Petitioner By: Mr. Tanveer Iqbal Advocate

Respondent By: Mr. Babar Shahzad Advocate

State by: Mr. Zohaib Hassan Gondal,  
State Counsel.

\*\*\*\*\*

**Ghulam Azam Qambrani, J:** This Criminal Revision has been directed against the judgment dated 27.06.2019, passed by learned Additional Sessions Judge-VI, East- Islamabad, whereby the objections filed by the petitioners on the demarcation report dated 06.02.2018 submitted by the local commission, were turned down and application filed by respondent No.1 under Section 7 of the Illegal Dispossession Act, 2005 was allowed, hence, the instant Crl. Revision petition.

2. Brief facts as per contents of instant criminal revision are that respondent No.1 during pendency of his civil suit as well as application for initiation of contempt of court proceedings, malafidely filed a complaint under sections 3 & 4 of the Illegal Dispossession Act, 2005, against the petitioners and respondents 2 to 4. Respondent No.1 also moved an application under Section 7 of the Act for restoration of his possession. The learned Trial Court after recording cursory evidence on behalf of the complainant/respondent No.1, called for a report from respondent No.2/SHO, Police Station, Koral, Islamabad, vide order dated 29.03.2001, who submitted the requisite report accordingly and the learned Trial Court vide order dated 28.06.2011 summoned the petitioners and respondents 3 & 4 as an accused. Thereafter, on 29.10.2013, formal charge was

framed under Section 3 of the Illegal Dispossession Act, 2005. After fulfilment of legal formalities and framing of charge, the learned Trial Court dismissed the application filed by respondent No.1 vide order dated 24.05.2014 and required the evidence of complainant who being aggrieved assailed the said order before this Court through Crl. Revision No. 58/2014, which was allowed vide order dated: 12.05.2016. The said order was questioned before the Apex Court in Crl. Petition No. 579/2016, but the same was dismissed on 02.06.2016. Thereafter, Crl. Review Petition No. 113/2016 was preferred, which was allowed on 14.02.2017 and the earlier order 02.06.2016, was recalled and after granting leave, the judgment of the Hon'ble High Court dated 12.05.2016, was set aside and the matter was sent back after giving directions to the learned Trial Court. During pendency of case before the Hon'ble Apex Court, the evidence of complainant was partially recorded on 13.10.2016. After the decision by the Hon'ble Apex Court in Crl. Revision Petition No. 113/2016, the learned trial Court again started proceedings on the application of respondent No.1 under Section 7 of the Act *ibid* and Awais Khan Naib Tehsildar, Islamabad, was appointed as local Commission for measurement and demarcation of the land in question who submitted demarcation report dated 28.09.2017 before the learned Trial Court on 16.10.2017, but the same was objected by both the sides and consequently said report was set aside vide order dated 21.11.2017, whereas after a private surveyor submitted second demarcation report on 05.12.2017. The learned Trial Court turned down the said demarcation report, after giving observation being faulty and vague, vide order dated 23.01.2018. Prior to filing of complaint, respondent No.1 appeared before the Civil Court by way of filing a civil suit, which is pending adjudication before Civil Court at Islamabad. The matter was sent back by the Apex Court. The learned Trial Court vide order dated 23.01.2018, passed a very comprehensive direction qua measurement and demarcation, therefore, the commission was bound to obey the said directions, but commission beyond the mandate of law, invented a novel way by further delegating his authority to a private surveyor who submitted an illegal and vague report dated 06.02.2018, the said report was

set aside by the learned Trial Court, with clear observations keeping in view the law on the subject and specific objections taken by both the parties in this regard. The said order of Trial Court was not challenged by any of the party before the High Court, therefore, the same attained finality. The objections were called for and pursuant to it, the petitioners filed objections on baseless report.

3. Learned counsel for the petitioners has contended that the impugned order is against the law and facts; that the learned Trial Court while passing the impugned order, not only failed to consider facts and circumstances of the case, but also turned down the un-rebutted valid objections on commission's report through a non-speaking order and the impugned order is not sustainable; that the demarcation proceedings were carried out without observing the mechanism and spirit of law. Lastly prayed for setting aside of the report of local commission dated 06.02.2018.

4. Conversely, learned counsel for respondents has opposed the contentions and has contended that the ownership and possession of the complainant/respondent No.1 with regard to the disputed land is supported by the revenue record, as according to the revenue record, the complainant and his brothers are still owners of land measuring 135-kanals. Further submitted that as per police reports and the report submitted by the local commission, it is clear that the accused took over possession of the land owned by the complainant, therefore, the possession of the accused/petitioners and their vendees is not recognized by law; that the complainant never sold his land to any body. Lastly they prayed that the petitioners are influential persons and the revenue staff under their undue influence previously did not submit the correct reports, therefore, the same were set aside by the learned Trial Court.

5. I have heard the arguments of learned counsel for the parties and have perused the material available on record with their able assistance.

6. Perusal of the record reveals that respondent No.1 is owner of land measuring 135-Kanals situated in Mauza Tarlai Khurd, Tehsil &

District Islamabad which was illegally occupied by the petitioner. Respondent No.1 approached the learned Sessions Judge by filing a complaint against the petitioners, but thereafter the accused persons restored the possession of respondent No.1. But on, 06.03.2011 the petitioners again illegally occupied the land of respondent No.1. He filed a complaint under Section 3 & 4 of the Illegal Dispossession Act, 2005 alongwith an application under Section 7 of the Act *ibid* which was dismissed vide order dated 24.05.2014. Being aggrieved, the complainant/respondent No.1 filed a Crl. Revision Petition No. 58/2014 before this Court which was accepted vide Judgment dated: 12.05.2016. The petitioners being aggrieved challenged the said judgment through Crl. Petition No. 579/2016 before the Apex Court of the country whereby the judgment of this Court dated: 12.05.2016 was upheld vide order dated: 02.06.2016, but the said order was re-called by the Hon'ble Supreme Court in Crl. Review Petition No. 113/2016 vide order dated: 14.02.2017 with direction to the learned Trial Court for decision afresh on the basis of a fresh demarcation report of the disputed property subject matter of the case.

7. After remand, the learned Trial Court directed the revenue department as well as the police to get fresh demarcation of the disputed property in the light of observations of the Hon'ble Supreme Court of Pakistan in Criminal Review Petition No.113 of 2016. On the remand order of the Hon'ble Supreme Court, the learned trial Court vide order dated 23.01.2018 directed the commission for measurement and demarcation of the property forming subject matter of the dispute in this case and the property contiguous thereto and also to prepare the map of the encroached area by fixing the permanent point after giving proper notice to the parties of this case as prescribed under Rule 67-A of the Land Revenue Rules, 1968. The commission was further directed to issue notice to the parties on the day of receiving Robkar and after conducting the proper demarcation, submit his report, but the commission contrary to the direction of the learned trial Court, appointed a private surveyor for demarcation of the property, who relying on GPS surveyor submitted a report on 06.02.2018. It is clear from perusal of

record that second report of the commission dated 21.12.2017 was also submitted by the same private surveyor which was set-aside by the learned trial Court. The local commission submitted his report on 06.02.2018. Perusal of the report shows that proper demarcation of the subject matter of the case has not been made as per the directions of the Apex Court. That measurement of Khasra Nos. 494, 496, 527, 535, 531, 530, 528, 491, 489, 488 & 487 was made through GPS machine, but no picture or topographical map is available on record with regard to any piece of land which is allegedly under the illegal possession of the petitioners. It is further submitted in the report that the petitioners, Raja Ali Akbar and others, after illegally occupying the land of the complainant have established the different housing projects i.e. Ghouri Town and Fazal Town and it is not clear from the report that who is in illegal possession and of which part of the property. In the report it has been submitted that unknown persons have constructed their houses over the disputed land subject matter of the instant case and have clearly stated that the land have been transferred on the names of occupants by the petitioners, it means that some other persons are in possession of the land, who have constructed their houses thereon. In such circumstances, it would not be possible for the learned trial Court to direct the petitioners to handover the possession of the property which is under the possession of other unknown persons. On the one hand, it is stated that the land has been transferred on the names of occupants in the record of rights but on the other hand, still in the report mentioned them unknown, as such, no clear report has been submitted by the local commission mentioning therein that on which particular khasra number and to what extent, the petitioners are in illegal possession. The local commission was required to make measurement and demarcation of the disputed property in accordance with the Land Revenue Rules, 1968, but no permanent point was fixed or ascertained to demarcate the disputed property. The disputed khasra number are in scattered position and every khasra was to be measured by fixing permanent points from all sites of the said khasra number. Further the said report also does not contain accurate area, detail of development or

construction, name of the occupants of the built-up area, roads and bridges etc. The local commission has also failed to measure the area of Ghouri Town and Fazal Town and also failed to mention the names of the encroachers. Therefore, it is clear that the local commission has not submitted the report in letter and spirit of the order of the Hon'ble Apex Court dated 14.02.2017. The land has to be measured and demarcated in the light of directions made by the Hon'ble Supreme Court of Pakistan but the same has not been done, rather the report submitted by the local commission is based upon presumptions and assumptions. As the Illegal Dispossession Act contained penal provisions, therefore, without ascertaining which land is under the illegal possession of the petitioners, the learned trial Court would not be in a position, at the final stage of the trial without identification of the property, to pass any order against the petitioner declaring them that they have illegally occupied that particular property of the respondent and any order passed by the learned trial Court for restoration of the property in dispute without its proper measurement and demarcation, would be inexecutable.

8. In view of what has been discussed above, this petition is **accepted** and the impugned order dated 27.06.2019 passed by learned Additional Sessions Judge-VI, Islamabad-East and the demarcation report dated 06.02.2018, are set-aside. The case is remanded to the learned Additional Sessions Judge-VI, Islamabad-East, with the direction to appoint a Senior Revenue Officer as local commission for measurement and demarcation of the property forming subject matter of the dispute in hand, in the light of the directions issued by the Hon'ble Apex Court vide order dated 14.02.2017.

**Ghulam Azam Qambrani**  
Judge

Announced in Open Court, on this 30<sup>th</sup> day of July, 2020.

**Judge**

S. Akhtar