

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

**Writ Petition No.1565/2019**

Syed Zubair Shah

*versus*

Deputy Commissioner, Islamabad & 3 others

Petitioner: In-person.

Respondents by: Mr. Naseem Ahmad Shah, Advocate for  
Respondents No.1 and 2.  
Syed Asghar Hussain Sabzwari, Advocate for  
Respondents No.3 and 4.  
Mr. Muhammad Atif Khokhar, State Counsel.  
Abdul Hameed, S.I., P.S. Koral, Islamabad.

Date of Decision: 16.07.2020.

**MOHSIN AKHTAR KAYANI, J:** Through this writ petition, the petitioner has prayed for issuance of direction to respondents No.1 and 2 i.e. Deputy Commissioner and Assistant Commissioner (Rural)/Magistrate, Islamabad to proceed in accordance with law for removal of illegal cattle sheds established by respondents No.3 and 4.

2. Brief facts referred in instant writ petition are that petitioner being a permanent resident of Ghousia Town, Main Lehtrar Road, near Sardar Wedding Hall, Khanna Dhak, Islamabad has filed an application under Section 133 Cr.P.C. on 24.06.2014 before the Assistant Commissioner (Rural), Islamabad against illegal construction of cattle sheds by respondents No.3 and 4. The said respondents put appearance before the Assistant Commissioner (Rural) on 24.07.2014, who after submitting their written replies never appeared before the said Court and the matter remained pending till 11.06.2015, when petitioner again filed another application before the Magistrate to initiate proceedings under Section 133 Cr.P.C. On 05.08.2015, the DHO, Islamabad visited the area and issued challan under Sections 269 and 273 Cr.P.C. against respondents No.3 and 4, whereafter the Assistant Commissioner passed an order for inquiry to the

Magistrate, which has been concluded after his visit vide report dated 01.09.2015, which confirms the existence of illegal cattle sheds in the area, even the Union Council concerned submitted a report to that effect before the Court, whereas the Assistant Commissioner also visited the area and confirmed all the facts. On 02.10.2015, respondents No. 3 and 4 were directed by Assistant Commissioner for removal of illegal cattle sheds but said order was not complied with, whereafter similar direction was again passed on 05.10.2015 in terms of Section 133 Cr.P.C., however respondents No.3 and 4 challenged the said orders before the learned Additional Sessions Judge, Islamabad through Criminal Revision No.7/2015, which was dismissed vide order dated 13.11.2015, but orders of Assistant Commissioner were not complied with by respondents No.3 and 4. Later on, petitioner approached Assistant Commissioner (Sadar), who after obtaining second report from concerned quarters passed the final order, dated 16.06.2016, in terms of Section 137 Cr.P.C. and directed respondents No.3 and 4 to remove the illegal cattle sheds within 15 days, but said order was also not complied with despite submission of different applications for implementation of said order on 26.10.2016, 29.01.2019, 06.02.2019, 13.02.2019 and 11.03.2019. Hence, the instant writ petition for enforcement of the orders.

3. Learned counsel for petitioner contends that all the necessary requirements have been fulfilled for removal of illegal cattle sheds, which create public nuisance in area due to foul smells and sewage, even the Union Council, DHO and Assistant Commissioner themselves visited the place and different reports were prepared against respondents No.3 and 4, who have also been given due hearing on numerous occasions, but the nuisance has not been removed; that respondents No.3 and 4 have not challenged the final order after dismissal of their criminal revision before this Court or any other court, rather blatantly violated the order of Assistant Commissioner, who failed to implement

the same and petitioner has no other alternate remedy for enforcement of his fundamental rights to life.

4. Conversely, learned counsel for respondents No.3 and 4 contends that Assistant Commissioner has not adopted due course of law as notice under Section 137 Cr.P.C. was not given nor any opportunity was given to respondents No.3 and 4 before passing of final order, even no final order has yet been passed; that after promulgation of Islamabad Capital Territory Local Government Act, 2015 the jurisdiction of Assistant Commissioner in terms of Section 133 Cr.P.C. ceased to exist as relevant subject falls within the domain of Local Government.

5. Arguments heard, record perused.

6. Perusal of record reveals that the petitioner has filed instant writ petition for enforcement of order dated 16.06.2016, passed by Assistant Commissioner under Section 137 Cr.P.C., for removal of illegal cattle sheds, which have been established by respondents No.3 and 4. As per grievance, the cattle sheds result in foul smells and sewage problem in the area, which otherwise create public health issues and affect the right of way of common people.

7. The matter was proceeded by Assistant Commissioner (Rural)/Magistrate, who issued notices to respondents No.3 and 4 on 24.06.2014 and resultantly the said respondents put appearance before said Court and matter was kept pending till passing of final order on 16.06.2016, whereby the Assistant Commissioner (Rural) has obtained report from Union Council and DHO, Islamabad and even he himself visited the said place, whereafter a show cause notice was given to respondents No.3 and 4, who have filed an application submitting their own point of view, but same was turned down, whereafter respondents No.3 and 4 have challenged the proceedings of Assistant Commissioner (Rural) through Criminal Revision before learned Additional Sessions Judge (East), Islamabad on different legal grounds, including the question of environmental law. However, the learned Additional Sessions Judge

has dismissed the criminal revision filed by Waheed Gul (Respondent No.3) with the following observation:

*"5. Perusal of record reveals that the respondent No.1 had filed the application on 24.06.2014 and the learned Magistrate instead of passing any conditional order as provided in Section 133 Cr.P.C. issued the notices to the petitioners, they put up the appearance on 24.7.2014; they received the copy and were asked to submit the reply to the petition. Somehow the matter remained pending but petitioner did not file the reply and ultimately on 2.10.2015 the respondents appeared before the learned Magistrate and they sought further time to submit that when they would remove the cattle sheds. On next day the learned counsel for petitioners filed Power of Attorney and sought an adjournment but the learned Magistrate passed the impugned order directing the petitioners to remove the cattle shed within 10 days.*

*6. The impugned order has been passed within the mandate of Section 133 Cr.P.C. as it is a conditional order having been passed in the presence of the petitioners; the petitioners were served with the notices under Section 134 Cr.P.C. and they were authorized U/S 135 Cr.P.C. to show cause against the impugned order and the notice but instead of availing their lawful remedy U/S 135 Cr.P.C. they have approached to this Court invoking the revisional jurisdiction. Having considered the contentions of the learned counsel for petitioner and the case law relied upon, it is held that the impugned order is a conditional order for the removal of the cattle sheds; the opportunity to show cause has been provided to the petitioners; that so far they have not availed the said opportunity and that the conditional order passed through the impugned order has not so far been made absolute by the learned Magistrate. The contention of the learned counsel that PEPA Act, 1997 exclude the jurisdiction U/S 133 Cr.P.C. is not tenable.*

*7. In view of above discussion, I have found no material irregularity or illegality in the exercise of the jurisdiction, therefore, the instant petition is hereby dismissed with the observation that if before making the conditional order as an absolute order U/S 136 Cr.P.C., the petitioners submit the show cause to the conditional order before the learned Magistrate, then he would decide the same before passing any order U/S 136 Cr.P.C.. Copy of order be sent to the concerned Magistrate. File be consigned to record room.*

8. While considering the above observations of the learned Additional Sessions Judge, it has been observed that respondents No.3 and 4 have been given due right of hearing and Assistant Commissioner (Rural) has complied with the provision of law accordingly. The respondents No.3 and 4 have given

notices to put their appearance and even they have been confronted with show cause notice in terms of Section 133 Cr.P.C. and they have been directed to remove the cattle sheds within 15 days through different notices. However, for sake of clarity the last notice in terms of Section 137 Cr.P.C. sent to Respondents No.3 and 4 is reproduced as under:

"بذریعہ نوٹس ہذا آپ کو ہدایت کی جاتی ہے کہ قبل ازیں نوٹس زیر دفعہ 133 ضف مورخہ 05-10-2015 جاری کیا گیا لیکن اس ضمن میں کوئی آپ کی طرف سے عمل درآمد نہ کیا ہے لہذا نوٹس ہذا زیر دفعہ 137 ضف آپ کو مطلع کیا جاتا ہے کہ آپ کے بھینسوں کے ہارے واقع ٹاؤن غیر قانونی ہیں جسکو اندر 15 یوم ہٹادیں بصورت دیگر حسب ضابطہ کاروائی عمل میں لائی جائیگی۔"

9. The abovementioned proceedings clearly spell out that each and every stage of law referred in Sections 133, 134, 135, 136 and 137 Cr.P.C. together with the final order in terms of Section 140 Cr.P.C. have been observed. The respondents No.3 and 4 were well aware of all proceedings on each and every stage but despite this legal position the matter was not settled and absolute order of removal was not complied with, which shows the lack of interest on the part of Illaqa Magistrate, who could not enforce his own order and as such, it amounts to denial of right to life of petitioner as well as of other residents of the locality, who have been deprived of their legitimate right, as such the allegations against respondents No.3 and 4 fully attract the concept of public nuisance. Though the trade/occupation of selling milk by respondents No.3 and 4 is not illegal, but it requires to be regulated in a manner not injurious to health or physical comfort of the community.

10. I have gone through the Islamabad Capital Territory Local Government Act, 2015, which also explains the concept of nuisance in terms of Section 2(gg) that, "any act, omission, place or thing which causes or is likely to cause injury as may be specified, danger, annoyance or offence to the sense of sight, smell or hearing or which is or may be dangerous to life or injurious to health or property". As such, the case of respondents No.3 and 4 regarding establishment of cattle sheds also falls within

said definition of nuisance, which is confirmed from the report of DHO, Union Council and Magistrate concerned.

11. It has not been denied that such kind of nuisance also falls within the concept of Islamabad Capital Territory Local Government Act, 2015 and action could have been taken under the said law and same has been referred under heading of "Dangerous and Offensive Articles and Trades" in First Schedule appended with law in terms of Sections 70 and 73 of the Act, at Serial No.15, *"keeping animals likely to create nuisance"* and at Serial No.32, *"any other article or trade declared by the Government to be dangerous for life, healthy or property or likely to cause nuisance"*. As such, it also falls under the functions of the Union Council of the said area, who have already submitted their report against respondents No.3 and 4 and same could be considered as an offence in terms of Section 105 of the said Act read with the 5<sup>th</sup> and 6<sup>th</sup> Schedule and said respondents may also be prosecuted under the relevant law, however the Islamabad Capital Territory Local Government Act, 2015 does not exclude the application of Criminal Procedure Code, 1898 and as such, the proceedings in terms of Section 133 Cr.P.C. shall run concurrently against respondents No.3 and 4 in addition to any other action taken under the Islamabad Capital Territory Local Government Act, 2015.

12. In view of above position, it is important to mention here that the petitioner has initially filed his complaint to the Assistant Commissioner (Rural) on 24.06.2014 i.e. much prior to promulgation of Islamabad Capital Territory Local Government Act, 2015, which was implemented on 05.08.2015, therefore, the action could not be taken under the said law in this case, although at this stage the Local Government Act is applicable and concerned Union Council may initiate the proceedings under the Local Government Act for any future public nuisance in the area and the proceedings already undertaken by Assistant Commissioner (Rural) have no effect on the future illegalities of respondents No.3 and 4.

13. This Court had also directed the Assistant Commissioner (Rural) to submit the reasons for non-compliance of order dated 16.06.2016, passed under Section 137 Cr.P.C., whereby it has been contented that there is no legal impediment while implementing the said order and compliance report has been submitted by the Assistant Commissioner before this Court on 14.07.2020 along with report of S.H.O., Police Station Koral, Islamabad, dated 15.07.2020, that illegal cattle sheds established by respondents No.3 and 4 have been removed and as such, the order, dated 16.06.2016, has been complied with and no illegality has been observed. The grounds raised by the respondents are not justified under the legal parlance and same has been rejected. The instant writ petition is, therefore, **DISPOSED OF** as having borne fruit. Respondents No.3 and 4 are permanently de-bared from raising their cattle sheds in violation of law.

(MOHSIN AKHTAR KAYANI/  
JUDGE

Khalid Z.