

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
(JUDICIAL DEPARTMENT)

Writ Petition No. 3707/2013

Mst. Rakhmat Jan and others.
Versus
Additional District Judge and others.

Petitioners by: Mr. Muhammad Izzat Khan, Advocate.
Respondent No.3 by: Mr. Muhammad Younis Bhatti, Advocate.
Respondent No.4 in person.

Date of Hearing: 31.01.2020.

Ghulam Azam Qambrani, I:- Through this writ petition, the petitioner has made the following prayer:-

“In these circumstances, it is, therefore, most humbly prayed that writ petition may kindly be accepted and order of learned lower Court/respondent No.1 dated 31.08.2013 may kindly be set-aside and direction may kindly be issued to the Local Commissioner/respondent No.2 association of representatives of C.D.A & N.H.A at the time of demarcation at the spot in the letter and spirit of order dated 14.12.2010, passed by Trial Court in the interest of justice.”

2. Learned counsel for the petitioners contended that the impugned order passed by the learned Additional District Judge-IV, Islamabad-East, is against law and facts of the case; that the petitioners have constructed a room within the boundary wall of their owned land in khasra No. 666 and not in khasra No. 664 and that some land of khasras No. 666 & 664 is in the new road of C.D.A and old road of N.H.A, therefore, without demarcating the acquired land i.e. in the presence of the representatives of C.D.A and N.H.A, the local Commission/Tehsildar of revenue department cannot come to the just conclusion with regard to the construction of the petitioners whether it falls within khasra No. 666 or khasra No. 664. Further contended that

real controversy between the parties can only be resolved through demarcation of the land by the local commission in presence of representative of the two departments i.e. C.D.A and N.H.A at the spot but this important aspect of the matter has been ignored by the learned first Appellate Court. That the impugned order is suffering from material irregularities as such the same is not sustainable in the eyes of law, hence, the same may be set-aside.

3. Conversely, learned counsel for respondent No.3 supported the order dated 31.08.2013, and contended that the local commission issued notices to the C.D.A and N.H.A but their representative did not appear at the time of demarcation of the disputed land before the local commission and there was no alternative but to proceed accordingly; that two reports of local commission, available on record, confirms that the petitioners violated the undertaking given by them vide order dated 20.09.2008 and constructed a "*Khothri*" over khasra No.664 belonging to the respondent No.3.

4. Respondent No.4 Iftikhar Ahmed Qureshi son of Sabir Hussain appeared before the Court on 31.01.2020 and submitted his affidavit to the effect that he has no objection if the instant writ petition is accepted.

5. Arguments heard, record perused.

6. Precisely, respondent No.3 filed a suit for permanent injunction against the petitioners and respondent No.4 before the learned Civil Judge, Islamabad, pertaining to the land falling in khasra numbers 664/2/1, 664/2/3, 664/2/4, 665/2 and 668 situated in the revenue estate of village Ladheet, Tehsil and District Islamabad. The petitioners filed written statement and made a statement through their counsel on

20.09.2008 that they have no concern with the above stated land of respondent No.3 and they are owners in possession of the land falling in Khasra No.666 and they will not interfere in the land of respondent No.3. In the light of the statement of the petitioners/defendants, the suit was dismissed as having become infructuous vide order dated 20.09.2008. Thereafter, respondent No.3 filed an application under Order XXI Rule 32 CPC read with Section 151 CPC contending therein that the petitioners/defendants have constructed a room in Khasra No.664 belonging to respondent No.3. The petitioners filed reply to the said application taking a stance that they had constructed the room on their own land i.e. Khasra No.666. Thereafter, respondent No.3 moved an application for appointment of local commission, which was accepted and the Tehsildar Islamabad of the concerned area was appointed as local commission with a direction to associate the representatives of C.D.A and N.H.A while conducting the demarcation of the suit land, who submitted his report on 12.12.2012 and came to the conclusion that the then defendants (Mst. Rekhmat Jan etc.) had raised construction in khasra No.664 and stance of the defendants was incorrect. The defendants filed objections thereto upon which the learned Civil Judge directed the local commission to revisit the site and demarcate the property falling in khasras No.664 and 666. The local commissioner/Tehsildar again visited the spot, carried out the demarcation and submitted his same report on 02.04.2013. Once again Rakhmat Jan etc filed objections upon the report of the local commission, which were resisted by Syed Abdul Qadir Jillani. The learned Civil Judge vide order dated 30.04.2013 set aside the report of local commission and once again directed the local commission to visit

the site again in presence of all the concerned and submit report after proper measurement of all the adjacent khasras in accordance with the record. Feeling aggrieved thereof, the revision petition was filed by the plaintiff Syed Abdul Qadir Jillani, which was accepted vide order dated 31.08.2013 by setting aside the order passed by the learned Civil Judge dated 30.04.2013, hence, the instant writ petition.

7. On 14.12.2010 the learned Civil Judge passed the following order”-

“Some portion of the suit property is also owned by the C.D.A and N.H.A therefore, local commission is directed to associate the representatives of these two departments during the proceedings of demarcation therefore, in the interest of justice Tehsildar of the concerned area is hereby appointed as local commission to conduct the demarcation of suit land after giving notices to the parties and prepare the site plan, and submit his report.”

In compliance of the said order, the local commission visited the site and submitted his report upon which the parties raised certain objections and the learned Civil Judge passed the following order on 30.04.2013:-

“As per record the main dispute between the parties is that whether the room is constructed in Khasra No.666 or 664, which can be solved by proper demarcation of adjacent khasra Nos. Learned counsel for the respondents/ objectors has pointed out that complete measurement of all the adjacent khasras has not been conducted, hence, the report of local commission submitted on 06.04.2013 is hereby set aside. Tehsildar, Islamabad is hereby directed to visit the site again in presence of all the concerned parties and to submit his report after proper measurement of all the adjacent khasras in accordance with the record.”

8. Against the order dated 30.04.2013, the respondent No.3 Syed Abdul Qadir Jillani filed a Civil Revision No.28/2013 before the learned Additional District Judge-IV, Islamabad-East, which was accepted vide order dated 31.08.2013 with the following observation:-

“the record reveals that the matter of local inspection had been pending since years local commissioner’s were appointed, reports were filed, each one of those was objected to and consequently set-aside which means that the exercise is not proving to be fruitful. The contents of the report were never conclusive evidence. The commissioner can be summoned through and cross-examined as to the contents of his report. As such the exercise of local inspection should have some end and the proceedings merits to be undertaken for the final adjudication of the lis.”

9. To resolve the controversy between the parties that in which khasra number the disputed room is constructed, the detailed report of the local commission is required. Perusal of the record reveals that since some portion of disputed land is owned by the C.D.A and N.H.A and Akas shows that measurement of northern side of khasra No.802 was shown as 24 Karam whereas, admittedly the same is on spot 54 Karam hence, wrong measurement of khasra number was mentioned in the previous report by the local commission, therefore, the learned Civil Judge rightly set-aside the report of local commission dated 12.12.2012, and directed the Tehsildar/local commission to again visit the site and conduct the demarcation of the suit land while associating all the parties concerned and the representatives of the C.D.A and N.H.A.

10. In view of what has been discussed above, the instant writ petition is **accepted** and the impugned order dated 31.08.2013, passed by the learned Additional District Judge-IV, Islamabad-East, is hereby set-aside and the order passed by the learned Civil Judge, 1st class, Islamabad-East, dated 30.04.2013 is upheld.

11. Since, it is an old matter, therefore, the Tehsildar- Islamabad of the concerned area is directed to visit the site, demarcate the disputed piece of land after associating all the concerned including the representatives of the C.D.A and N.H.A and submit his report as per

order dated 30.04.2013, within one month before the learned Trial Court. Parties are directed to appear before the learned Trial Court for further proceedings on **13.02.2020**. The time frame of one month shall run from the said date of hearing. Learned Trial Court shall issue fresh roabkar in the light of this judgment.

(GHULAM AZAM QAMBRANI)
JUDGE

ANNOUNCED IN OPEN COURT ON ____/2020

JUDGE

Approved for reporting

“Rana.M.Ift”