

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

**Crl. Misc. No.279-M of 2018**

The Defence Housing Authority, etc  
Vs  
The Account Group Officers Housing Society, etc

Petitioners By:	Mr. Muhammad Asif Chaudhry, Iftikhar Ahmad Bashir & Ammad Raza Advocates.
Respondents By:	Syed Zulfiqar Abbas Naqvi & Mudassar Hussain Malik Advocates
State by:	Zohaib Hassan Gondal, State Counsel with Rafaqat A.S.I.
Date of hearing:	13.07.2020

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**Ghulam Azam Qambrani, J:** This petition has been filed with the following prayer;-

“ It is, therefore, respectfully prayed that this Hon’ble Court may be pleased to exercise inherent jurisdiction to declare the impugned complaint under section 145 Cr.P.C made by the police, the proceedings and others on the same by the Assistant Commissioner/Magistrate and finally his order dated 29.09.2017 and thereafter the order dated 20.12.2017 passed by learned Addl. Sessions Judge (East), Islamabad as having been passed illegally, unlawfully, based on misuse and abuse of powers, without lawful authority and competence. It is further prayed that possession of the land khasra no. 292 of village Rawat be kindly restored in favour of petitioner No.1.

Any other additional relief which is deemed just and proper by this Hon’ble Court, the same may also be granted to the petitioners.”

2. Brief facts of the petition are that on 27.11.2016 a Qalandra U/S 145 Cr.PC was prepared and submitted by Zulfiqar Ali ASI Police Station, Sihala, Islamabad before the Assistant Commissioner/Sub-Divisional Magistrate (Rural), Islamabad (Respondent No.7) against the petitioners

as well as respondents 1 to 3 regarding the land situated in khasra No. 292, Mauza Rawat, Islamabad mentioning therein that one of the Security Supervisor of the respondent No.3 has reported to the Police Station that the land in dispute is the property of Petro. Trade Pvt. Ltd. Further alleging that on 14.11.2016, the security personnel of the adjacent AGOCHS Society duly armed with deadly weapons and heavy machinery bulldozers tried to occupy the land. On resistance, they opened fires upon them, but luckily they escaped. It has been further mentioned in the Qalandara that another complaint was lodged by the AGOCHS Society through Sharafat Ali alleging that the security guards of the Petro Trade alongwith 20/25 persons duly armed with deadly weapons tried to occupy the land in dispute. It has been prayed by Zulfiqar ASI in the said Qalandara that there is imminent apprehension of breach of peace and prayed for conduct of proceedings under Section 145 Cr.P.C.

3. That on receiving the Qalandara under Section 145 Cr.P.C, the Assistant Commissioner/respondent No.7 took cognizance under Section 145 Cr.P.C and directed the SHO, Police Station for conduct of proceedings under Section 107/151 Cr.P.C and also passed order for seal of the land in dispute. That the learned Magistrate also sought a report from the revenue officials with regard to ownership and possession of the disputed property. On 27.09.2017, the Revenue Officer submitted complete detailed report after mentioning ownership, possession and khasra gardawari of the disputed land. Upon this respondent No.7, passed the order and de-seal the disputed land in favour of respondent No.1.

4. Feeling aggrieved by the order of the respondent No.7, the petitioners filed Revision Petition before learned Additional Sessions Judge-IV-East, Islamabad which was dismissed vide order dated 20.12.2017 by upholding the order of Magistrate/respondent No.7, hence this petition.

5. Learned counsel for the petitioners contended that the respondents 5 to 7 are public functionaries and as such, are under legal obligation to perform their functions in accordance with law. Further contended that the land owned and possessed by petitioner No.1 (Defence Housing Authority) has neither been associated nor impleaded in any proceedings. The local police entered into connivance with the respondents with intention to change the legal proceedings, disturbed the legal process and filed a

complaint under section 145 Cr.P.C. The local police also requested to the learned Magistrate for sealing the land situated in khasra number 292, i.e Shamlat of village Rawat. Further contended that the impugned order and all relevant proceedings are violative of Article 4,10-A,23 & 24 of the Constitution of Islamic Republic of Pakistan, 1973 and rights of petitioner No.1 have been denied and respondents 1 & 2 did not have any documentary proof to establish title on the said land khasra No. 292 and this aspect of the matter has been ignored by learned Magistrate as well as learned Addl. Sessions Judge, Islamabad. It is next contended that all the proceedings were conducted by the Magistrate with undue hurry and he made attachment of the land, after attachment he delivered possession of the same in flagrant violation of Section 146 & 147 Cr.P.C and he did not bother to require either from petitioners or the respondents to file written statement of their respective claims; that sealing of the said land was made at the behest of respondents 1 to 4 and it was again unlawful to de-seal the land and deliver its possession to the respondents on the bald written report of Patwari dated 25.09.2017. Learned counsel for the petitioners next contended that the impugned orders, proceedings and complaint under section 145 Cr.PC are illegal, unlawful, without lawful authority and as such, the same have no legal effect and consequences. Learned counsel for the petitioners lastly prayed that possession of land khasra No. 292 of village Rawat may be restored in favour of petitioner No.1.

6. Conversely, learned counsel for respondents opposed the contention of learned counsel for petitioner and contended that the respondent No.1 is recorded owner with possession of the land in dispute. Further contended that in suit filed for possession by the respondent No.2, khasra no. 292 is not included. There was no apprehension of imminent breach of peace and there was no occasion, for filing of complaint under Section 145 Cr.P.C and the learned Magistrate has acted in accordance with law. The learned Magistrate as well as learned Additional Sessions Judge-IV-East, Islamabad has passed the impugned order strictly in accordance with law which needs no interference, hence the petition may be dismissed.

7. I have heard the arguments of learned counsel for the parties and have perused the material available on record.

8. For convenience and ready reference Section 145 Cr.P.C is reproduced hereunder:-

Procedure where dispute concerning land etc., is likely to cause breach of peace.--- (1) Whenever a District Magistrate, or Sub-Divisional Magistrate or an Executive Magistrate especially empowered by the Provincial Government in this behalf is satisfied from a police report or other information that a dispute likely to cause a breach of the peace exists concerning any land or water or the boundaries thereof, within the local limits of his jurisdiction, he shall make an order in writing, stating the grounds of his being so satisfied, and requiring the parties concerned in such dispute to attend his Court in person or by pleader, within a time to be fixed by such Magistrate, and to put in written statements of their respective claims as respects the fact of actual possession of the subject of dispute.

(2) For the purposes of this section the expression 'land or water' includes buildings, markets, fisheries, crops or other produce of land, and the rents or profits of any such property.

(3) A copy of the order shall be served in manner provided by this Code for the service of a summons upon such person or persons as the Magistrate may direct, and at least one copy shall be published by being affixed to some conspicuous place at or near the subject of dispute.

(4) Inquiry as to possession. The Magistrate shall then, without reference to the merits or the claims of any such parties to a right to possess the subject of dispute, pursue the statements so put in, hear the parties, receive all such evidence as may be produced by them respectively, consider the effect of such evidence, take such further evidence (if any) as he thinks necessary, and, if possible, decide whether any which of the parties was at the date of the order before mentioned in such possession of the said subject: Provided that, if it appears to the Magistrate that any party has within two months next before the date of

such order been forcibly and wrongfully dispossessed, he may treat the party so dispossessed as if he had been in possession at such date: Provided also, that if the Magistrate considers the case one of emergency, he may at any time attach the subject of dispute, pending his decision under this section.

9. Perusal of the record reveals that the learned Magistrate after receiving the Qalandara sought a report from the revenue officials. That the condition precedent for the restoration of possession is that the Magistrate has to ascertain from the evidence as to which of the rival parties was in possession of the disputed land two months prior to passing of the preliminary order. The report of Halqa Patwari dated 25.09.2017 was submitted which shows that khasra number 292 is under complete possession of the respondent No. 1 (Society AGOCHS-II) and the same report has been prepared on the basis of khasra girdawri. The said report further reveals that it has been prepared after consulting the khasra girdawri of Mauza Rawat, Tehsil & District Islamabad. The said khasra girdawri is an official document and presumption of truth is attached to it. It is the contention of learned counsel for the petitioners that in fact, the respondent No.1 (DHA) the sole owner, has neither been associated nor impleaded in any proceedings nor given any opportunity of hearing by the learned Magistrate despite the fact that the land in dispute is owned and possessed by the respondent No.1, therefore, the impugned orders are in sheer violation of the Article 4 & 10-A of the Constitution. I have carefully gone through the available record i.e Qalandara under Section 145 Cr.P.C, report of Halqa Patwari prepared on 25.09.2017 and copies of register girdawri (attached at page No. 43 & 44 of the file). The perusal of Qalandara depicts that petitioners No.2 to 5 are the first party in the Qalandara and respondents 2 to 4 are the second rivalry party in the said Qalandara and further in register girdawri at serial No. 07 the possession of respondent No.1 over the khasra number 292 min has been shown as 'Hissadar/qabza' on the basis whereof the Halqa Patwari submitted report that the respondent No.1 (AGOCHS -II) is in possession over the entire khasra number 292.

10. Keeping in view all the facts and circumstances of the case, the learned Magistrate has rightly concluded the case in favour of respondent No.1, which was upheld by the learned Addl.Sessions Judge-IV-East, Islamabad. Further it is admitted by the petitioner No.1 in their application before the Additional Deputy Commissioner/Collector, Islamabad dated 31.05.2017 that the land measuring 789-Kanals, 12-Marlas situated in khasra number 292 is mutated in the name of the respondents (Agochs Pvt. Ltd. & others) which fact confirms that prior to the initiation of proceedings under Section 145 Cr.P.C neither the petitioner No.1 was the recorded owner nor in possession of the land in dispute situated in khasra number 292.

11. In view of what has been discussed above, I find no illegality or irregularity in the impugned orders dated 20.12.2017 & 29.09.2017, calling for interference by this Court. This petition being without merits is, therefore, **dismissed**.

~~Ghulam Azam Qambrani/~~  
Judge

Announced in Open Court, on this 16th day of July, 2020.

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~~Judge~~

S.Akhtar