

ORDER SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

Crl. Misc. No.1015/2020

Khalid Mehmood Bhatti & another

versus

Muhammad Suleyman Khan & 04 others

&

Crl. Original No.22/2021

Muhammad Suleyman Khan

versus

Khalid Mahmood Bhatti & others

S. No. of order/ proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	24.03.2021	Mr. Muhammad Ramzan Ch., Advocate for petitioners. Mr. Abuzar Salman Khan Niazi and Mr. Wasim Abid, Advocates for Respondent No.1. Mr. Sadaqat Ali Jahangir, State Counsel. Akhtar, S.I. P.S. Golra Sharif, Islamabad.

MOHSIN AKHTAR KAYANI, J: Through this

single order, this Court intends to decide the captioned Criminal Miscellaneous petition along with Crl. Original arising out of same facts and involving same parties.

2. Through the captioned criminal miscellaneous petition, Khalid Mehmood Bhatti and Muhammad Abrar Khan (*petitioners*) have called in question judgment of the Additional Sessions Judge (West), Islamabad, dated 10.09.2020, whereby revision petition filed by Muhammad Suleyman Khan (*Respondent No.1*) against the order of the learned Magistrate 1st Class / Illaqa Magistrate, Islamabad, dated 16.06.2020, has been

accepted and the order, passed in favour of the petitioners, has been set-aside.

3. Similarly, through the clubbed Crl. Org. No.22/2021 (Muhammad Suleyman Khan v. Khalid Mahmood Bhatti, etc.), Respondent No.1 seeks initiation of contempt of Court proceedings against the petitioners for non-compliance of this Court's order dated 19.01.2021, passed in the captioned criminal miscellaneous petition.

4. Succinctly, S.H.O., P.S. Golra Sharif, Islamabad submitted a Qalandra under Section 145 Cr.P.C. pertaining to a dispute between the petitioners and respondent No.1 over a piece of land, whereupon learned Assistant Commissioner (Saddar), ICT, Islamabad, vide order dated 08.02.2017, directed to maintain status quo till final adjudication before the competent Court. In the meanwhile, the learned trial Court held an inquiry and concluded that since respondent No.1 has failed to establish his possession over any piece of land, therefore, possession was ordered to be restored in favour of the petitioners vide order dated 16.06.2020. Feeling aggrieved thereof, respondent No.1 filed a criminal revision petition, which was later on withdrawn and filed a writ petition before this Court, which was dismissed *in limine*. Thereafter, respondent No.1 again filed a criminal revision petition, which was accepted vide impugned order dated

10.09.2020. Hence, instant criminal miscellaneous petition.

5. During the proceedings of captioned criminal miscellaneous petition, this Court, vide order dated 19.01.2021, directed the parties to maintain status quo but, the petitioners through their front man Maj. (R) Tariq Mahmood (Respondent No.3) continued with carrying on construction activities.

6. Learned counsel for petitioners contended that the learned Additional Sessions Judge failed to appreciate that respondent No.1 has intentionally concealed material facts while filing the revision petition, as such, the learned ASJ exceeded the powers conferred under Section 145 Cr.P.C., per se, respondent No.1 had neither been in physical possession of subject property nor had he proved his possession through cogent evidence but, the learned ASJ has not appreciated all these facts and circumstances of case and passed the impugned judgment in a slipshod manner.

7. Conversely, learned State Counsel as well as learned counsel for respondent No.1 contended that learned Magistrate has acted in excess of jurisdiction vested to it under Section 145 Cr.P.C. as the learned Magistrate cannot adjudicate upon or determine the title or ownership, rather he could only determine the actual possession of the party on the date on which the order regarding said property is passed, as such, the learned

Magistrate has ignored the report of SP Industrial Area, Tehsildar, Islamabad, whereby it has been established that petitioners were not in actual possession of the property on 15.12.2016, per se, the petitioners had admitted execution of sale agreement with respondent No.1 together with the fact that respondent No.1 thereafter had raised construction over the subject property but, the learned Magistrate has not appreciated the case in its true perspective while handing over possession in favour of the petitioners, as such, the learned ASJ has rightly set-aside the same vide the impugned judgment.

8. Arguments heard, record perused.

9. Perusal of record reveals that petitioners Khalid Mehmood Bhatti and Muhammad Abrar Khan being partners on one site are locked in property dispute with respondent No.1 Muhammad Suleyman Khan qua the land situated in khasra No.616, Mouza Shah Allah Ditta, measuring 200 kanal, whereby proceedings u/s 145 Cr.P.C. were initiated on the report of SHO P.S. Golra. It is admitted position on record that respondent No.1 entered into agreement with petitioners on 15.01.2014 for land access and thereafter through addendum agreement dated 22.01.2015 for a project known as "North Ridge Scheme" a project proposed by respondent in the area of Shah Allah Ditta, Tehsil & District Islamabad and as such following proceedings

are pending with different courts qua the disputed land:-

- a. Suit for declaration, cancellation of agreements, dated 15.01.2014 and 22.01.2015 and permanent injunction titled Muhammad Ibrar Khan & another Vs. Muhammad Suleman Khan, filed on 12.09.2017 Ex.PN/1-2, pending before Civil Court, Islamabad.
- b. Suit for specific performance, permanent injunction and recovery of damages titled Muhammad Suleyman Khan Vs. Muhammad Abrar Khan & others, filed on 25.09.2017, Ex.PM/1-12, pending before Civil Court, Islamabad.
- c. Application for partition u/s 135 of the Land Revenue Act, 1967, pending before Tehsildar / Assistant Collector, Islamabad titled Muhammad Suleyman Khan Vs. Inayat Ullah Mirza & others, filed on 12.12.2017.
- d. Application for partition u/s 135 of the Land Revenue Act, 1967, pending before Tehsildar / Assistant Collector, Islamabad titled Triquest (Private) Ltd. Vs. Inayat Ullah Mirza & others, filed on 12.12.2017.

10. The above mentioned proceedings before the Civil Court as well as before Revenue authorities are still pending, however, respondent in his pleadings has

categorically taken the stance that he is owner in possession of land measuring 95 kanal, situated in khasra Nos.563, 564, 590, 592 & 594, village Shah Allah Ditta, Islamabad, even 21 kanal of respondent No.1 land situated in khasra No.563 was mutually exchanged with petitioners' land situated in khasra No.616 till 2010 and 08 kanal land was exchanged in the year 2014, whereby respondent also claims that he is Director of Triquest (Private) Ltd., who intends to develop business concern on the said land and an amount of Rs.10/- Million was paid by him to the respondent through pay order at the time of execution of addendum agreement in the year 2015, it has also been alleged that they have agreed to access the land.

11. On the other hand petitioners though acknowledged the execution of land access agreement, dated 15.01.2014 as well as addendum agreement but sought cancellation of those agreements on the ground that respondent has backed out from his commitment.

12. While going through the record with the able assistance of parties, it appears that Register Gardawri has also been appended on record, whereby land measuring 95 kanal is in possession of respondent No.1 through Ex.RA, however, both the parties have alleged that they were in possession of land.

13. In order to resolve the controversy, Executive Magistrate has recorded the evidence of witnesses of

both the parties and have also received different documents which were made basis of the impugned order dated 16.06.2020. The matter was assailed before the Court of Additional Sessions Judge (West), Islamabad through criminal revision, whereby learned Additional Sessions Judge (West), Islamabad while concluding the matter has observed the following:-

All these evidence produced by the both the parties reveals that the petitioner was in actual possession and he also produced Khasra-Girdaver Ex.P-RA showing his possession over land measuring 95 Kanal in Khasra No.616. The learned Magistrate/A.C called the report from the police. The SP Industrial Area submitted the report on 07.03.2017 to the SSP Islamabad, in which he established the possession of the petitioner over the land. The report of SHO as well as SP Industrial Area has been ignored while passing the impugned order. The learned Magistrate/A.C considered the report of ASP dated 27.03.2017. The report of junior officer has no weightage in presence of the report of senior officer. The report of SP Industrial Area as well as SHO shows that the petitioner had raised boundary wall and constructed gate. The learned Magistrate/A.C should have considered the documentary evidence produced by the parties as well as cross-examination even of the Khalid Mehmood Bhatti to determine the actual possession of the parties. The learned Magistrate/A.C ignoring the evidence hold that Khasra No.616 consists of more than 600 Kanal land and the respondent No.2 and 3 have possession of 350 Kanal land in the said Khasra No.616 which is more than a

disputed land measuring 200 Kanal. The respondents have themselves admitted the actual possession of the petitioner and his partner over the land measuring 95 Kanal in Khasra No.616 and land measuring 65 Kanal in same Khasra in lieu of purchaser and exchange vide written agreements. Furthermore, the evidence also establish that the petitioner and his partner were allowed by the respondents No.2 and 3 to raise construction and development work. In this situation the learned Magistrate/A.C should have remained within the parameter and scope of section 145 Cr.P.C. only to the extent to determination of actual/physical possession. At-least while restoring the possession of land and withdrawing the order dated 08.02.2017, admitted the possession of the petitioner should have also been restored, but the learned Magistrate/A.C restored the possession of the respondents No.2 and 3 on entire dispute land measuring 200 Kanal. The learned Magistrate/A.C has ignored the evidence available on record and passed the impugned order, hence committed illegality and irregularity which is not sustainable. The impugned order is set aside revision petition is accepted and case is remanded back to the learned Magistrate/A.C to decide it afresh by considering the following point of determination in light of the evidence produced by the parties:

Whether the petitioner or respondents No.2 and 3 were in actual/physical possession of disputed land, if so to what extent.

If the learned Magistrate/A.C will reach the conclusion to withdraw the order dated 08.02.2017 and to restore the possession of land then shall consider the respective actual /physical possession of each party. Both the

parties are expected to assist the learned civil court to expedite the civil cases to determine their right and title of the disputed land. Copy of this judgment be sent to learned Magistrate/A.C for information. The parties are directed to appear before the learned Magistrate/A.C on 25.09.2020. file be consigned to record room after due completion and compilation.

14. While considering the above judgment, it appears that revisional court has come to the conclusion that actual/physical possession of disputed land has not been settled on the basis of available record, detailed reasons have been given in this regard, therefore, at this stage, I have confronted both the parties to demonstrate their actual possession or dispossession or dispute so that it could easily be deducted from record that which party was in possession on the day of dispute i.e. 15.12.2016 or two months prior to the said date and as such this aspect is missing in the order of Assistant Commissioner, Islamabad. In such eventuality, learned Revisional Court has framed a question to that effect *whether the petitioner or respondents No.2 and 3 were in actual/physical possession of disputed land, if so to what extent?*

15. The above referred question clearly spells out that evidence available on record is insufficient and on the basis of said evidence the court is not in possession to conclude the matter, therefore, the order passed by

the Revisional Court is considered to be a remand order, whereby nothing is conclusive.

16. The above referred background clearly spells out that remand of case is necessary but the present petitioners have assailed the said order, therefore, I have confronted learned counsel for the petitioners to demonstrate from record their lawful possession on particular date especially when they themselves acknowledged executed agreements known as land access agreement and its addendum dated 15.01.2014 and 22.01.2015 respectively, which are subject matter of the civil court and even matter qua partition of land in question is pending in terms of Section 135 of Land Revenue Act, 1967. In this backdrop no justiciable evidence has been referred. In such like disputed facts, learned revisional court has no other option but to remand the matter with particular question. In this regard, I am fortified by 2019 SCMR 1079 (Abdullah Jan Vs. State) and 2018 SCMR 511 (Shakeel Ahmed Siddiqui Vs. Muhammad Nauman Siddiqui), whereby it has been settled by the Apex Court that when the court felt handicapped to objectively verify the points of determination as well as contentions raised by the accused and therefore considered it best to remand the matter to lower court in the fitness of thing.

17. I have confronted all these facts and proceedings to the learned counsel for the petitioners who could not

demonstrate from record as to whether they were in possession of property in question despite the fact that respondent No.1 has already taken over the same through agreement for its development. It has not been denied by the petitioners' side in their civil suit that they have allowed the respondent to raise construction and develop access gate. This aspect *prima facie* reveals that the remand order is within four corners of law and no illegality has been committed by the learned Revisional Court, in such eventuality the powers u/s 561-A Cr.P.C. could not be exercised when nothing conclusive has been settled by the lower court, as such no illegality has been observed in the impugned order, hence, instant criminal miscellaneous is not made out and no interference is required in the impugned order, therefore, the same is hereby **dismissed** alongwith criminal original.

(MOHSIN AKHTAR KAYANI)
JUDGE

Zahid.