

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

Writ Petition No.2112 of 2020

Syed Zameer Hussain Kazmi
Versus
Chief Commissioner, ICT, Islamabad and others

Petitioner By: Mr. Sajjad Haider Malik, Advocate.

State By: Hammad Saeed Dar, State Counsel.

Applicant By: Mr. Qaiser Imam Ch. Advocate for the applicant in C.M No. 2118/2020 (Under Order 1 Rule 10 CPC) & CM No.2119/2020 and C.M No.2204/2020 and C.M No. 2205/2020 in W.P No. 2076/2020.

Syed Javed Akbar Advocate for applicant in C.M No.2212/2020, C.M No.2213/2020 and C.M No.2173 (Under Order 1 Rule 10 CPC)

Gohar Zaman, Assistant Commissioner-Saddar.

Imran Haider, S.H.O, P.S Sabzimandi.

Date of hearing: 20.08.2020

Ghulam Azam Qambrani, J: Through this single judgment I intend to decide Writ Petition Nos.2112/2020 and 2076/2020.

2. Brief facts of the case as narrated by the petitioner are that he is operating and functioning as Chairman, Saadat-e-Jafria Trust (Rtd), ICT, Islamabad and the Trust is managing the affairs and administration of the Masjid-o-Imam Bargah, Qasra-e-Imam Musa Kazim, AS, in Sector I-10/1, Islamabad under the provisions of Trust Deed registered with the Joint Sub-Registrar, Islamabad vide registration No.7212 dated 09.12.1990. The plot of the said Imam Bargah was allotted by the C.D.A on 01.04.1981 and the same was later on allotted in the name of Anjuman Saadat-e-Jafria on

09.07.1984 alongwith the possession of plot. The said Anjuman was later on converted into a Trust, who is operating all affairs of the Masjid-o-Imam Bargah, Qasra-e-Imam Musa Kazim, AS till date. It is further stated that some people started creating problems to sabotage the affairs of Masjid-o-Imam Bargah, Qasra-e-Imam Musa Kazim, AS and filed frivolous applications, got sealed the premises and lodged the FIRs against the administration, so that they could block the administration/ affairs of the Trust. It is further stated that the petitioner being Chairman of the Trust dismember many members due to default in monthly Chanda, upon which the said members filed their respective suits alongwith the suit of the petitioner, which are pending before the Civil Courts at Islamabad. The respondents succeeded to get imitated proceedings under Sections 107/150 Cr.P.C against the petitioner whereas the petitioner has challenged the said proceedings through WP No.2076/2020, whereby the respondent No.3 & 5 have initiated the proceedings against the petitioner and others.

3. During the pendency of the petition, an application (CM No. 2118/2020) under Section 151 read with Order 1 Rule 10 CPC has been filed by Ch. Qaiser Imam Advocate for impleading Fiaz Hussain Shah s/o Bagh Hussain, Qamar Abbas Hussain s/o Bagh Hussain, Zeeshan Hussain s/o Fiaz Hussain, Husnain Shah s/o Gulzar Hussain Shah , Tabeer Hussain Shah s/o Iqbal Shah and Sibtain Shah s/o Ibrar Hussain Shah as respondents contending that the applicants are members of the management of Imam Bargah i.e. Masjid-o-Imam Bargah, Qasra-e-Imam Musa Kazim, AS, in Sector I-10/1, Islamabad, regarding which the dispute is pending before this Court, that they are party in the proceedings under Section 107/150 Cr.P.C, the application has been contested by the petitioner by submitting written reply to the same stating therein that the said application has been filed with malafide intention just to linger on the proceedings of this writ petition. Further submitted that the petitioner has sought relief against the public functionaries and not against the

applicants, therefore, they are not the necessary parties in the instant case.

4. Another application (CM No. 2212/2020) under Order 1 Rule 10 CPC has been filed by Syed Javed Akbar Advocate for impleading Syed Israr Hussain Shah Kazmi s/o Syed Noor Hussain Shah Kazmi as respondent in the instant petition on the ground that he is one of the beneficiaries of the trust; that he has also filed a suit for reconstitution of the trust on the basis of continuous embezzlement in the funds of Trust by the petitioner and others which is pending adjudication before the learned Additional District Judge-West, Islamabad, therefore, he is also a proper and necessary party to be impleaded as respondent in the instant petition. In reply to said application, the petitioner submitted that the instant application has been filed with malafide intention, ulterior motives and in order to linger on the proceedings of the writ petition as the petitioner is not seeking any relief from the respondent. C.M. No.2213/2020 is an application seeking exemption to file certified copies of the documents. The same is allowed subject to all just and legal exceptions.

5. Further another application (C.M No.2119/2020 in W.P No.2076/2020) has been filed on behalf of Ch. Qaiser Imam Advocate under Section 151 read with Order 1 Rule 10 CPC for impleading Fiaz Hussain Shah s/o Bagh Hussain, Qamar Abbas Hussain s/o Bagh Hussain, Zeeshan Hussain s/o Fiaz Hussain, Husnain Shah s/o Gulzar Hussain Shah , Tabeer Hussain Shah s/o Iqbal Shah and Sibtain Shah s/o Ibrar Hussain Shah as respondents in the said writ petition, contending that the applicants are members of the Management of Imam Bargah i.e Masjid-o-Imam Bargah, Qasra-e-Imam Musa Kazim, AS, in Sector I-10/1, Islamabad, regarding which the dispute is pending before this Court and that they are also the party in the proceedings initiated by the Assistant Commissioner under Section 145 Cr.P.C. This application has also been contested by the petitioner submitting that the said application has also been filed with malafide intention just to linger on the

proceedings of this writ petition. Further submitted that the petitioner has sought relief against the public functionaries and not against the applicants, therefore, they are not the necessary parties in the instant case.

6. Syed Javed Akbar, Advocate has also moved an application (C.M. No.2173/2020) under Section 151 read with Order 1 Rule 10 CPC for impleading Syed Israr Hussain Shah Kazmi son of Syed Noor Hussain Shah Kazmi, as respondent contending that the issue mentioned in the writ petition relates to registered Sadaat Jaafria Trust dated 09.12.1990 and the Imam Bargah Qasr-e-Imam Musa Kazim. The dispute between the petitioner and others actually relates to the performance of rituals at the said Imam Bargah and management of the affairs of the Trust; that he is one of the beneficiaries of the Trust and regularly participating in all the rituals, majalis and prayers etc. In accordance with the principles of Fiqha Jaafria, and he wants to assist the Court in reaching a just and fair decision; therefore, he is also a necessary party. The said application was contested by the petitioner by submitting that the said application has been filed with malafide intention just to linger on the proceedings of this writ petition. Further submitted that the petitioner has sought relief against the public functionaries and not against the applicant, therefore, he is not a necessary party in the instant case.

7. Perusal of the record reveals that the applicants one way or the other are related with the affairs of the Trust and Management of Imam Bargah i.e Masjid-o-Imam Bargah, Qasra-e-Imam Musa Kazim, AS, in Sector I-10/1, Islamabad, or they are involved in the proceedings initiated under Section 107/150 Cr.P.C. or they are party to the agreements arrived at between the parties with regard to the affairs of the Management of Imam Bargah i.e Masjid-o-Imam Bargah, Qasra-e-Imam Musa Kazim, AS, in Sector I-10/1, Islamabad, or they are the beneficiaries of the Trust. In this way, they would be effected by the decision of the instant petition, as such, keeping in view the facts and circumstances of the instant

case, all the four applications filed under Order 1 Rule 10 CPC are allowed.

8. Ch. Qaiser Imam, Advocate has also filed an application (C.M. No.2204/2020) for placing on record additional documents, which is supported by an affidavit. For the reasons mentioned therein, the same is allowed subject to all just and legal exceptions. C.M. No.2205/2020 is an application for exemption to file attested copies of the documents. The same is also allowed subject to all just and legal exceptions.

9. Learned counsel for the petitioner contended that the respondents are public functionaries and as such, are under legal obligation to perform their functions in accordance with law. Further contended that the respondents are acting illegally, as respondent No.5 never sent any recommendation to the remaining respondents for initiating proceedings under Section 145 Cr.P.C, but respondent No.3 illegally sealed Masjid-o-Imam Bargah, Qasra-e-Imam Musa Kazim, AS, whereas no nuisance or quarrel have taken place but respondent No.3 in ahasty manner sealed the said mosque mere on the basis of presumption; that the petitioner and others are facing agony due to the illegal order passed by respondent No.3, whereby, the petitioner and other cannot perform their religious obligations which is contravention to the fundamental rights of the petitioner and others guaranteed under the constitution of Islamic Republic of Pakistan, 1973. Further submitted that the petitioner moved an application on 04.08.2020 to the Assistant Commissioner-Saddar, ICT, Islamabad, for de-sealing Masjid-o-Imam Bargah, Qasra-e-Imam Musa Kazim and handing over possession of the said mosque to the petitioner which is still pending.

10. Reports and parawise comments were called from the respondents. Learned State Counsel submits that a written agreement was executed between the petitioner group and Syed Fiaz Hussain Shah regarding administration of Masjid-o-Imam Bargah, Qasra-e-Imam Musa Kazim with their mutual consent and in

presence of the witnesses. It is further submitted as per the said agreement, the administration of said Imam Bargah was to be handed over to each party for a period of one / two years and as a result of the said agreement, possession of the Imam Bargah was handed over to the petitioner, but after expiry of the settled period, the petitioner did not hand over the possession of the Imam Bargah to the second group, which is creating nuisance and law and order situation, therefore, the S.H.O/ respondent No.5 submitted a report to respondent No.3 for taking action under Section 145 Cr.P.C upon which the Assistant Commissioner has sealed the said Imam Bargah vide order dated 31.07.2020, while initiating proceeding under Section 145 Cr.P.C and a Qalandara under Section 107 and 150 Cr.P.C was prepared for taking preventive measures against both the parties and forwarded the same to the concerned Magistrate in order to bound both the parties to submit surety bonds of good behaviour.

11. The Assistant Commissioner Saddar ICT, Islamabad appeared and submitted that both the parties are in conflict with each other for the last many years in order to take the control of the said Imam Bargah. He further submitted that he called both the parties again and again but on every occasion, the petitioner did not appear. He further submitted that upon receiving the report dated 18.07.2020 and Qalandara under Section 145 Cr.P.C, whereby, it was informed that there is serious threat to the public peace pertaining to the management of the Imam Bargah. He issued notices to all the concerned, but the petitioner did not appear again. He also received a report from the Superintendent of Police, Industrial Area, ICT, whereby it was requested that the Masjid-o-Imam Bargah, Qasra-e-Imam Musa Kazim, may be sealed on 31.07.2020 and finding no other option, he sealed the premises in the greater interest of peace. He further stated that Syed Fiaz Hussain Shah and others who are necessary party in the instant case but they have not intentionally been impleaded by the petitioner, but said Syed Fiaz Hussain Shah has joined the

proceeding before him and executed the surety bond of his good behaviour, whereas the petitioner and his allies have neither appeared nor submitted the surety bond on any date of hearing before him.

12. I have heard the arguments of learned counsel for the petitioner, learned counsel for interveners, learned State counsel and have perused the material available on record.

13. Perusal of the record reveals that the learned Assistant Commissioner after receiving the Qalandra, wherein it was informed that there is a serious threat to the peace pertaining to the management of Masjid-o-Imam Bargah, Qasra-e-Imam Musa Kazim. He issued notices to all the concerned for 31.07.2020 and after hearing the parties, it was found that there is a serious threat of public peace. The record shows that the petitioner did not appear before the learned Assistant Commissioner on each date of hearing before him, whereupon he ordered both the parties to submit sureties upon which Syed Fiaz Hussain Shah submitted the surety of good behaviour, whereas the petitioner did not do so. Record further shows that the Superintendent of Police, Industrial Area, ICT, also sent a report to the Assistant Commissioner for sealing the said Imam Bargah.

14. It transpires from the record that an agreement was executed between the petitioner group and Syed Fiaz Hussain Shah group whereby it was settled between the parties that the administration of Imam Bargah would be handed over to each party for a period of one/two years and as a result of said agreement, possession of the said Imam Bargah was handed over to the petitioner but after the expiry of the stipulated period the petitioner is not willing to hand over possession to the other party.

15. 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.

16. The above mentioned provision reveals that the dispute endangering breach of peace must be regarding any land or water, which has been explained to be a building, markets, fisheries, crops or other produce of land, and the rents or profits of any such property. In the situation in hand, the Imam Bargah (Mosque) does

not fall in any of the above mentioned categories. Furthermore, for passing an order under Section 145 of Cr.P.C., a Magistrate should mention the reasons for passing the order of sealing a mosque/ Imam Bargah, but as highlighted above, the Assistant Commissioner had apprehension that second group of Syed Fiaz Hussain Shah will try to take over the possession of the said Imam Bargah forcibly from the petitioner on 31.07.2020, as such law and order situation would be created. The said reason has been found totally false and incorrect, because the Imam Bargah or mosque has been built for worship. The Imam Bargah/ mosque do not belong to the petitioner or any other group. Therefore, the conclusion reached at by the learned Assistant Commissioner that as the petitioner is not handing over possession of the Imam Bargah, the other group may try to take the possession forcibly, is totally unjustified and unreasonable.

17. It is very strange that on the basis of unjustified and unreasonable order, the Assistant Commissioner has directed seal of the Imam Bargah. The learned Assistant Commissioner has failed to consider that he was going to seal the Imam Bargah/Masjid, which admittedly is holy place of worship, hence one should not dare to seal such a House and deprive the concerned from worship according to their sect. In this regard, reference can be made to the cases reported as "Abdul Majeed v. The State and others" (1968 PCr.LJ 659) and "Abdul Razzaq v. The State etc." (2013 PCr.LJ 718). The relevant portion of the above mentioned citation (1968 PCr.LJ 659) reads as under:--

"The house of God cannot be possessed by any individual. It vests in God and as such cannot be sealed under Section 145, Cr.P.C. Even a prohibitory order under Section 144, Cr.P.C. was held to be illegal and undesirable by a Division Bench of the Calcutta High Court. That order is also based on the principle that no Muslim can be prohibited from saying his prayers in a mosque. The entire case law in the Indo-Pak sub-continent regarding the use of mosque is also on the same line that any Muslim can go and say his prayers in a mosque, of course without disturbing the congregation even if the congregation is led by another sect. Surely, two congregations cannot be held in a

mosque and nobody can claim to introduce a congregation of his own choice in the mosque. It is the right of the Mutwali to make arrangements for the congregation and the control in the mosque. However, if there is any dispute regarding the use of the mosque and there exists an apprehension of breach of peace, in such a case the Magistrate under Section 147 Cr.P.C. can only prohibit interference with such a user. On the other hand if the dispute is regarding the control and management of a mosque and there is an apprehension of breach of peace, a Criminal Court under Section 145, Cr.P.C., cannot decide such a dispute."

18. The Constitution of the Islamic Republic of Pakistan, 1973 also gives a right to every citizen to profess, practice and propagate his religion. In this regard, the relevant Article is 20, which is as under:--

"20. Freedom to profess religion and to manage religious institutions-- Subject to law, public order and morality--

(a) every citizen shall have the right to profess, practice and propagate his religion; and

(b) every religious denomination and every sect thereof shall have the right to establish, maintain and manage its religious institutions.

19. As regards Writ Petition No.2076/2020 is concerned, the petitioner through the said petition is seeking quashment of the proceedings initiated under Qalandra dated 18.07.2020 under Section 107/150 Cr.P.C. Police Station Sabzi Mandi, Islamabad, pending before the learned Assistant Commissioner, Saddar, ICT, Islamabad.

20. The record shows that both the parties were summoned by the learned Assistant Commissioner, respondent No.3, again and again, but on every date of hearing, the petitioner did not appear. Whereas as per report dated 18.07.2020 and Qalandara under Section 145 Cr.P.C submitted by the S.H.O Police Station Sabzi Mandi, whereby it was informed that there is serious threat to the public peace pertaining to the management of the Imam Bargah, notices were issued to all the concerned, but the petitioner did not appear again. It further transpires from the record that there is a

report of the Superintendent of Police, Industrial Area, ICT, whereby it was requested that the Masjid-o-Imam Bargah, Qasra-e-Imam Musa Kazim, may be sealed on 31.07.2020; as such, when the petitioner did not join the proceedings before the learned Assistant Commissioner, sealed the premises. Syed Fiaz Hussain Shah and others who is the other group of the agreement, but he has not been impleaded by the petitioner, but said Syed Fiaz Hussain Shah has joined the proceeding before the learned Assistant Commissioner and executed the surety bond of their good behaviour, whereas the petitioner and his allies have neither appeared nor submitted the surety bond on any date of hearing before him.

21. Further, the scope of quashing of proceedings under Section 107/150 Cr.P.C. or interfering in the investigation by this Court is limited while exercising powers in jurisdiction under Article 199 of the Constitution of the Islamic Republic of Pakistan. Resorting to the provisions of Section 561-A Cr.P.C, or to the provisions of Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, seeking quashment of a criminal case, is an extraordinary remedy, which can be invoked only in exceptional circumstances and the said provisions can never be exploited as a substitute for the prescribed trial or to decide the question of guilt or innocence of an accused. Determination of correctness or falsity of the allegations levelled against the petitioner is an obligation cast upon the Court prescribed by the Code of Criminal Procedure after a proper opportunity to both the parties to plead their causes. No such extraordinary circumstances have been mentioned in the instant case, which can permit this Court to deviate from the normal course of law and to quash the proceedings under Section 107/150 Cr.P.C. by exercising extraordinary constitutional remedy under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 read with Section 561-A Cr.P.C and is not supposed to enter into a factual controversy, unless it is established that certain facts are not disputed between the parties and keeping in view the controversy between the parties, it is not fair to quash the impugned

proceedings, at this stage. Therefore, Writ Petition No.2076/2020 having no force is, hereby dismissed.

22. As a result of the above discussion, the Writ Petition No.2112/2020 is **accepted**, the impugned orders dated 31.07.2020 passed by the respondent No.3/ learned Assistant Commissioner sealing the masjid/ Imam Bargah, is set-aside and the proceedings under Section 145 of Cr.P.C. are quashed/dropped, whereas Writ Petition No.2076/2020 is hereby **dismissed**. The Assistant Commissioner/ respondent No.3 is directed to de-seal Masjid-o-Imam Bargah, Qasra-e-Imam Musa Kazim, AS, in Sector I-10/1, Islamabad, forthwith subject to furnishing of sureties by the petitioner group, Syed Fiaz Hussain Shah group, the newly added applicants or any other related persons with the affairs of the said Imam Bargah, as the proceedings under Section 107/150 Cr.P.C dated 18.07.2020 initiated by the S.H.O. Police Station Sabzimandi, Islamabad, still holds the field, as a result of dismissal of Writ Petition No.2076/2020.

23. It would not be out of place to mention here that this order would not affect the proceedings pending before other forums.

Ghulam Azam Qambrani
Judge

Announced in Open Court, on this 21st day of August, 2020.

Judge

*R.M. 9ft **