

## **ORDER SHEET.**

### **IN THE ISLAMABAD HIGH COURT, ISLAMABAD.** **JUDICIAL DEPARTMENT.**

**W.P No.1846/2020.**

**Muhammad Suleman Khan**

**Versus**

**Assistant Commissioner (Saddar) and others**

<b>S. No. of order/ proceedings</b>	<b>Date of order/ Proceedings</b>	<b>Order with signature of Judge and that of parties or counsel where necessary.</b>
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<b>01.</b>	<b>16.07.2020</b>	<b>Mr. Umair Majeed Malik, Advocate for the petitioner.</b>
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Through this writ petition, the petitioner has called in question the order dated 16.06.2020, passed by Assistant Commissioner (Saddar)/respondent No.1, whereby the ejectment order dated 08.02.2017 has been withdrawn and possession of the disputed land measuring 200 Kanal situated in Khasra No.616, Mauza Shah Allah Ditta, Islamabad has been restored to Khalid Mehmood Bhatti/respondent No.2 and Muhammad Ibrar Khan/respondent No.3 and the rival parties were directed to approach the Court of competent jurisdiction for their civil dispute/contractual agreement as well as to the Revenue Court with reference to their possession, partition and demarcation qua their respective shares.

2. Learned counsel for the petitioner *inter-alia* contends that the petitioner and his partners namely Ahmed Ibrahim and others purchased land measuring 180 Kanal from Khasra No.616, Mouza Shah Allah Ditta w.e.f 2004 till 2014 and they partially developed the said property with boundary walls, Main Gate, retaining wall, several rooms, roads etc and deployed security guards and entered into land agreement on 22.01.2015 with respondents No.2 & 3 and started developing the land under the agreed terms, whereas on 15.12.2016, the respondents intended

to dispossess the petitioner, which resulted into dispute and finally local police initiated proceedings U/S 145, Cr.P.C through Qalandra submitted by SHO, P.S Golra Sharif, Islamabad; that respondent No.1 has not given due opportunity of hearing, even no one put appearance on behalf of the petitioner to argue the case but the matter was disposed of without hearing; that cross civil suits are pending before competent Civil Courts, which have not yet been concluded and respondent No.1 has not considered true concept of section 145 Cr.P.C, whereby it was legal obligation of respondent No.1 to verify the fact as to which party was in possession of the disputed land two months prior to alleged date of occurrence; that entire record reflects that the petitioner was in possession of the disputed land under the terms of the agreement and the respondents were aggressor but all these facts have not been appreciated; that the petitioner has not filed criminal revision against the impugned order as this Court has concurrent jurisdiction under the law vis-à-vis Session Court to deal with issue in hand. In this regard, learned counsel for the petitioner has relied upon 2012 P Cr. L J 159 (Haji Jamil Hussain vs. Illaqa Magistrate Section 30, Multan and 7 others) & 2014 P Cr. L J 1133 (Abdul Sattar Khan vs. The State and others).

3. Perusal of the record reveals that the petitioner is mainly aggrieved with the order dated 16.06.2020 passed by respondent No.1, whereby the possession of the disputed land measuring 200 Kanals situated in Khasra No.616, Mouza Shah Allah Ditta, Islamabad has been handed over to respondents No.2 & 3 with following observations:-

*"In the light of my discussion above and perusal of available record, arguments and evidence produced, I cannot but reach to this conclusion that Mr. Khalid Mehmood Bhatti and Muhammad*

*Muhammad Ibrar Khan were in lawful possession of the subject 200 kanal piece of land in khasra 616, Mauza Shah Allah Ditta, District Islamabad. The onus of proof in this particular case was on the 2<sup>nd</sup> part, Mr. Suleyman Khan, as he had purchased land from the 1<sup>st</sup> party, Khalid Mehmood Bhatti and Muhammad Muhammad Ibrar Khan. Document exhibited as EX-RB, an agreement between Mr. Muhammad Muhammad Ibrar Khan and Ahmad Ibrahim, states that Mr. Muhammad Muhammad Ibrar Khan was in possession of land in khasra 616, Mauza Shah Allah Ditta. Mr. Suleyman Khan had to prove that he had purchased the subject land and also got the legal and lawful possession from the 1<sup>st</sup> party after completing all legal and required procedures. Mr. Suleyman Khan failed to convince this court in this regard. Mr. Suleyman Khan submitted evidence of possessing 90 kanal piece of land in khasra 616, Mauza Shah Allah Ditta but this specific khasra consists of more than 600 kanal land while 1<sup>st</sup> party, Khalid Mehmood Bhatti and Muhammad Muhammad Ibrar Khan, have possession of 350 kanal in this specific khasra which is more than the subject 200 kanal piece of land. It is more than half of the total land in the subject khasra 616, Mauza Shah Allah Ditta. Khasra Girdawri Document exhibited as EX-PA. Mr. Suleyman Khan might have purchased 90 kanal piece of land and some other pieces of land through an agreement and land access arrangement but that might be in other adjoining khasra of joint share holders. Even the agreement is not owned by the 1<sup>st</sup> party and is already challenged in Courts of competent jurisdiction because non fulfillment. Even if this contention is accepted that the subject 90 kanal piece of land falls in khasra 616, Mauza Shah Allah Ditta, but to prove that it also falls within the subject 200 kanal piece of land within this khasra, proper partition and demarcation as per law is needed first. Only after partition and demarcation, a purchaser of land in any khasra can be given possession of a specific compact piece of land.*

*In light of the above, I hereby order that the order for attachment, dated 08/02/2017 is hereby withdrawn and the possession of subject disputed/attached land measuring 200 kanal, khasra 616, Mauza Shah Allah Ditta, District Islamabad be immediately restored to Khalid Mehmood Bhatti and Muhammad Muhammad Ibrar Khan referred to as 1<sup>st</sup> party. The parties have already referred to the Court of competent jurisdiction for specific performance of the contractual agreement between them. The parties are further directed to file petitions in the Revenue Courts of competent jurisdiction to decide matters of possession, based on partition*

*and demarcation as per law, as per their respective shares.”*

4. While considering the above mentioned observations of respondent No.1, learned counsel for the petitioner has been confronted regarding maintainability of instant writ petition, especially in the light of alternate remedy available in terms of section 439 Cr.P.C read with section 435 Cr.P.C, whereas learned counsel for the petitioner has relied upon 2012 P Cr. L J 159 (Haji Jamil Hussain vs. Illaqa Magistrate Section 30, Multan and 7 others) & 2014 P Cr. L J 1133 (Abdul Sattar Khan vs. The State and others) and contends that this Court has parallel jurisdiction with Court of Sessions and when the order is illegal, perverse and without jurisdiction on the face of record, the same can be assailed in terms of Article 199 of the Constitution of Islamic Republic of Pakistan, 1973.

5. There is no cavil to the proposition that this Court has supervisory jurisdiction to entertain the revision in terms of Section 439-A Cr.P.C on the orders passed by the Lower Courts, but it does not mean to curtail the remedy of the aggrieved person in terms of Section 439-A Cr.P.C, which is exclusively meant to cater the settlement of issues at the Sessions level against the orders passed by the Magistrate.

6. The wisdom behind the incorporation of Section 439-A in the Criminal Procedure Code, 1898 is to remove the burden from the shoulders of the High Courts and these powers have been given to the Sessions Court for the said purpose, although both the Courts have concurrent revisional jurisdiction, even there is no denial that under Article 203 of the Constitution of Islamic Republic of Pakistan, 1973, the High Court shall supervise all Courts subordinate to it. Any person could move High Court on its revisional side or the High Court could even on its own

motion can call any record or proceedings, which otherwise came to its knowledge to inquire into the matter for its satisfaction as to the regularity of such proceedings, but these actions require peculiar circumstances or depend upon the case to case basis. It is not usually allowed to approach the High Court directly against the order of the Magistrate without availing the alternate remedy, which itself is against the norms of constitutional remedies.

7. Petitioner has been confronted regarding illegality of the impugned order passed by the Illaqa Magistrate, whereby possession of the disputed land measuring 200 Kanal was delivered to the respondents, whereby he has argued his case at the strength of available huge record, but this Court feels that if the matter has to be dealt on the basis of merit of the case, the same could not be adjudicated by this Court in Constitutional jurisdiction in terms of Article 199 of the Constitution of Islamic Republic of Pakistan, 1973. The petitioner has not justified that the impugned order is coram non-judice and passed in violation of settled principle of law, but prima facie there is no such jurisdictional defect visible from record, hence it is not appropriate to proceed with this matter in constitutional jurisdiction at this stage. The petitioner has alternate remedy in shape of revision against the impugned order passed by the Magistrate, instead of filing the same, he has invoked extraordinary jurisdiction of High Court, which was not warranted and even it has been conceded by the petitioner himself that the order is revisable and as such the instant writ petition is not competent. Reliance is placed upon the case law reported as 2015 MLD 630 (Sardar Shujat Vs. D.P.O Okara and others). The two case laws referred by the petitioner are

different and distinguishable as the orders passed in these cases by the Courts below are patently illegal and same were declared as such by the Hon'ble High Court but the matter in hand is different and does not fulfill the requirement to invoke the extraordinary constitutional jurisdiction.

8. In view of above discussion, instant writ petition stands *dismissed in limine* without touching the merits of the case. However, petitioner may approach the Competent Court under the law against the impugned order if so advised.

9. Any observation passed by this Court will neither prejudice the case of the petitioner nor effect the jurisdiction of the Competent Court to deal with the proposition in hand.

**(MOHSIN AKHTAR KAYANI)**  
**JUDGE**

R.Anjam