

## **JUDGMENT SHEET.**

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

**W.P. No. 244/2019.**

Zahid Ullah, etc.

*Versus*

Deputy Commissioner, Islamabad, etc.

**Petitioners by:** Mr. Aziz Ullah Marwat, Advocate.

**Respondents by:** Mr. Naseem Ahmed Shah, Advocate.  
Mr. Aman Ullah, Advocate.  
Mr. Tariq Mehmood Tarrar, Advocate.

**Date of Decision:** 22.08.2019.

**MOHSIN AKHTAR KAYANI, J:** Through this Writ Petition, the petitioners have assailed the order dated 13.12.2018, whereby Assistant Commissioner (Rural)/Sub Divisional Magistrate, Islamabad has directed the petitioners to remove the building material in the residential area in the territorial jurisdiction of P.S. Koral, Islamabad.

2. Learned counsel for the petitioner has assailed the impugned order passed by Assistant Commissioner (Rural) Islamabad on the complaint of Wajahat Sami, who has filed an application to the Assistant Commissioner (Rural), Islamabad that petitioners are running illegal building material store in the residential area, which cause public nuisance in terms of Section 133 Cr.P.C.; that Assistant Commissioner has not given proper opportunity of hearing to the petitioners and passed the impugned order.

3. Notices were issued where-after a written report has been submitted by the SHO P.S. Koral, Islamabad alongwith photographic evidence on record.

4. Conversely, learned counsel for the respondents contends that due to illegal dumping of construction material on right of way/roads of Ghouri Town Phase 4/B and 5/ A between Sharifabad road is converted into sewage waste and

general public is not able to move on the roads due to the smell and waste as well as construction material.

5. Arguments heard, record perused.

6. Perusal of record reveals that respondent No.4 has filed an application being resident of Ghouri Town that present petitioners are running their commercial business of construction material and they have started dumping the said construction material including the bricks, sand and gravel due to which the main roads and streets have been blocked and there is no sewerage lines resultantly sewerage water and waste has been blocked and right of way and general public has been restricted. Report submitted by SHO P.S. Koral further confirms the stance of respondent No.4. Relevant portion of the report is reproduced as under:-

جس پر ٹھہر جات کے مالکان نے مجاز عدالت سے Stay حاصل کیا بر موقع غوری ٹاؤن فیز 4B اور 5A کے درمیانی شریف آباد روڈ پر  
ملاحظہ موقع کیا گیا ہر دو فیز کے درمیان سیوریج کا بندوبست نہ ہے چوہدری عباس اور زاہد اللہ نامی نے سیوریج گٹر کو بلاک کیا ہوا ہے جن کا  
موقف ہے کہ پانی ان کے پلازہ کے اندر داخل ہوتا ہے نکاسی آب و ٹھہر جات کی وجہ سے علاقہ مکینوں کو مشکلات درپیش ہیں۔

7. The above referred report as well as photographic evidence clearly spells out that it is a case of public nuisance where public at large is suffering at the hands of petitioners who have not managed their business affairs in proper manner, even the construction material dumping on site caused further physical discomfort to the community, therefore, Assistant Commissioner (Rural)/Sub Divisional Magistrate, Islamabad has rightly observed and verified the position at site.

8. I have confronted learned counsel for the petitioners, who candidly conceded that all the petitioners are running business of construction material storage in the rented premises and as such the area in which business activity is under way is residential area in which general public is suffering due to the acts of petitioners. The report as well as photographic evidence placed on record confirms the stance of respondent No.4.

9. Besides the above referred position, learned counsel for the petitioner has been confronted regarding the maintainability of instant writ petition as order passed U/S 133 Cr.P.C. could be assailed by way of criminal revision in terms of Section 435 Cr.P.C. read with Section 439-A Cr.P.C., whereby learned counsel contends that order impugned, passed by Assistant Commissioner/Sub Divisional Magistrate is illegal, therefore, the same has been assailed through writ petition in terms of Article 199 of the Constitution of Islamic Republic of Pakistan, 1973. The stance taken by the learned counsel for the petitioner on the maintainability of instant writ petition is not legally valid as revisional jurisdiction is much wider viz. a viz. constitutional jurisdiction and by entertaining the writ petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, it amounts to circumventing law and defeating the real intent of the legislature. Reliance is placed upon PLD 1981 SC 522 (Aqdul Rehman Bajwa Vs. Sultan and 9 others).

10. Keeping in view the above background, instant writ petition is not maintainable and the same is hereby dismissed.

(MOHSIN AKHTAR KAYANI)  
JUDGE

Zahid