

JUDGMENT SHEET

IN THE PESHAWAR HIGH COURT,
ABBOTTABAD BENCH.

JUDICIAL DEPARTMENT

W.P No. 911-A of 2014

JUDGMENT

Date of hearing_____

Appellant(s)/Petitioner (s)_____

Respondent (s) _____

QALANDAR ALI KHAN, J:- Muhammad Yaseen kalwar, petitioner, has filed the instant writ petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, read with Section 561-A Cr.PC, impugning thereby order dated 16.12.2014 of the learned Additional Sessions Judge-II, Haripur, whereby complaint of respondent No.2, Alamzeb, against him under Illegal Dispossession Act relating to Hydal Power Project, Khanpur Dam, Haripur, was accepted for regular hearing and process was issued against the petitioner.

2. In his application/complaint to the Sessions Judge, Haripur, under the Illegal Dispossession Act, respondent No.2 claimed that he entered into a lease agreement with SHYDO, Government of Khyber Pakhtunkhwa for construction of Hydal Power Project Khanpur dam Left Bank Canal (RD 3700) on 11th January 2005, and obtained possession of the site under the lease agreement, which was still with him for his Company M/S Bismillah Co, and that he secured loan of Rs.13600000/- for construction of civil structure of the project and had also constructed ice factory etc by mortgaging his shops situated in satellite town, Rawalpindi, with Pakistan Council of Renewable Energy Technology, Government of Pakistan, but for the purpose he had to associate with him the registered Company of Mst Qadeera Yaseen and Obaid Ullah, which, otherwise, had no concern, whatsoever, with the project. The respondent alleged that the petitioner committed fraud in the accounts of the Company, therefore, he disassociated himself from the Company. He also alleged that when

he visited the project at Khanpur on 23.06.2014, he found police guards of Sind House deployed there by the petitioner, who prevented him from entering the project. The respondent further alleged that while taking advantage of his position as a police officer, the petitioner got him and staff of the project bound down under Sections 107 and 151 Cr.PC through local police of Police Station Khanpur.

3. The learned Additional Sessions Judge-II Haripur, after hearing arguments on maintainability of the complaint under the Illegal Dispossession Act, held that SHYDO had confirmed lease agreement with the respondent/complainant and that Bismillah Company and Bismillah Power Company were two different entities and further that the respondent/petitioner herein could not produce any lease agreement in respect of the project in question in favour of Bismillah Power Company, therefore, allegations of both the parties and subsequent dispossession of the complainant/respondent could only be proved and/or disproved through production of pro

and contra evidence. The complaint was, accordingly, held maintainable and after providing copies to the respondent/petitioner herein under Section 265-C Cr.PC, the complaint was posted for framing of charge on 02.01.2015, vide order dated 16.12.2014, which is impugned herein.

4. Arguments of the learned counsel for the parties heard, and record perused.

5. The learned counsel for the petitioner argued that though the original lease agreement dated 11.01.2005 was entered into between respondent No.2 and SHYDO but respondent No.2 had acted on behalf of M/S Bismillah Company, which was later on converted into Bismillah Power (Pvt) Limited on the application of respondent No.2, who subsequently resigned from Bismillah Power (Pvt) Limited and was, thus, no more Director in the Company or having anything to do with the possession or operation of the project. The learned counsel referred to several documents showing payment of lease amount by the major share holder in the company i.e. 60 shares,

namely, Qadeeran Yaseen Kalwar, wife of the petitioner. The learned counsel maintained that respondent No.2 was neither in possession nor, as such, dispossessed illegally, therefore, the complaint/application under Section 34 of Illegal Dispossession Act, 2005, was not maintainable.

6. The learned counsel for the respondent, on the other hand, contended that the lease agreement would clearly show the respondent as a leasee of the leased area, who was authorized under the lease agreement to enter upon the lease area from the day of commencement of the lease. The learned counsel further contended that the respondent associated himself with Bismillah Powers (Pvt) Limited only for the limited purpose of securing loan, while the lease agreement remained intact with M/S Bismillah Company, which was never dissolved or converted into Bismillah Power (Pvt) Limited. The learned counsel urged that resignation of the respondent from Bismillah Power (Pvt) Limited had, therefore, no effect, whatsoever, on the lease or possession of the respondent, and that illegal dispossession of the

respondent from the leased area by the petitioner, having no concern, at all, with either of the companies, accrued a cause of action in favour of the respondent to approach the Court of competent jurisdiction under the relevant provision of law for appropriate legal action against the petitioner.

7. The respective claims and counter claims of the parties have been enumerated above with the only aim to demonstrate that there are factual controversies between the parties giving rise to several issues relating to the lease agreement and rights of the parties there-under, besides the main controversy of possession or otherwise of the respondent and his dispossession therefrom; which, indeed, could not be resolved either through writ petition; or without recording pro and contra evidence.

8. Apart from the impugned order being interim in nature, the framing of charge was by no means proof of guilt of the petitioner, rather the same provided him the opportunity to put forth his case, besides

proving the falsehood of the complaint, and thus avail the chance of proceeding against the complainant under the relevant provision of law. **(2009 SCMR 1066, 2012 SCMR 229, PLD 2010 S.C 725, 2010 SCMR 1254, 2012 MLD 1652, PLD 2011 Karachi 624, PLD 2013 Islamabad 121 and PLD 2011 Peshawar 86).**

9. The above referred inbuilt remedies, available to the petitioner under the law, would make the writ petition not maintainable. Therefore, the writ petition is dismissed.

Announced:
01.10.2015

J U D G E

J U D G E