

HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

Cr. Misc Application No.S-544 of 2024.

Gulshad Ali & others
v.
SSP District Tando Allahyar & others.

Applicants : Gulshad Ali & others through Mr. Sameeullah Rind, Advocate.

Respondent No.4 : Through Mr. Yaseen Laghari, Advocate.

The State : Through Ms. Sana Memon A.P.G a/w SHO Hamid Ali Otho of PS Chamber, District Tando Allahyar.

Date of hearing : 07.05.2025.

Date of Decision : 29.05.2025.

ORDER

Miran Muhammad Shah, J:- Through this Cr. Misc Application, the applicants Gulshad Ali & others have impugned the order dated 13.08.2024 passed by learned 2nd Additional Sessions Judge, Tando Allahyar in Cr. Revision Application No.07 of 2023, whereby Revision filed by present applicants was dismissed.

2. The facts of the case are mentioned in the Cr. Misc Application and the memo of Cr. Revision Application filed before learned trial Court, which is also attached with this Cr. Misc Application, hence, needs not to reproduce the same here.

3. The notices were issued to concerned quarters, who filed their reports/comments respectively, which are taken on record, however, respondent No.4 appeared through Mr. Yaseen Laghari, Advocate.

4. The learned counsel for the applicants argued at some length and contended that the order passed by the learned lower courts are against the law & equity; that it is admitted fact on record that proper demarcation without involving the settlement survey and land record, Hyderabad

cannot be carried out and there is nothing available on record to show that whether the Mukhtiarkar (Revenue) Chamber and SHO Anti Encroachment Tando Allahyar had sought any help from the Settlement Survey and Land record, Hyderabad regarding demarcation process; that both orders passed by the learned trial Courts are not sustainable in the eyes of law and requires interference by this Court; that the learned trial Court even not bothered to issue notice to the concerned department for proper demarcation in order to verify the actual width of the path/passage of Kamal Kario and passed the order in hasty manner; that the respondent No.4 had failed to attach any single document with his application filed before learned Magistrate showing that there is any kind of path leading to village Kamal Kario but despite that, learned trial Court allowed the said application of the respondent No.4 and learned Revisional Court had also not considered the material fact which is also quite surprising; that the learned trial Court failed to consider that respondent No.4 only attached the map of Deh Larh and Dep Kapaho and interestingly in such map there is nothing available on record to show that there is any kind of path pertaining to Kamal Kario besides that the map even does not show the proper width of passage, but all such facts were ignored by the learned trial Courts. Lastly prayed that the order passed by the learned trial Courts may be set-aside and application in hand may be allowed.

5. On his turn, learned counsel for respondent No.4 argued at some length by supporting the impugned orders passed by the learned trial Courts. He further contended that no case for setting aside the impugned order is made out and the application filed by the respondent No.4 before learned Judicial Magistrate was very much competent and under the relevant provision of law, therefore, the learned trial Court had rightly passed the impugned order as well as learned Revisional Court had also passed the impugned order rightly and there is no illegality in the impugned order; that the applicants just to put pressure upon the respondent No.4 are challenging the orders of learned trial Court; that the contentions of respondent's application are supported by the concerned quarters in their comments/reports filed before this Court as well as before learned trial Courts. He prayed that the orders passed by the learned trial

Courts require no interference by this Court, therefore, the application in hand may be dismissed.

6. Learned Assistant Prosecution General supported the arguments made by the learned counsel for respondent No.4 and also supported the impugned orders passed by the learned trial Courts. She prayed that matter may be decided on merits.

7. Heard & perused.

8. After hearing parties and perusal of record, it transpires that the respondent No.4 (Abid Hussain) being applicant had preferred application U/s 133 Cr.P.C before learned Civil Judge/J.M-I, Chamber stating therein that the respondents (present applicants) had raised the wall over path used by general public as well as applicant (respondent No.4) which create nuisance for respondent No.4/applicant as well as general public at large by constructing wall on Government Kamal Kario/path and even not removing such wall. The learned Magistrate after hearing both parties and calling reports from concerned officials had passed order, which was challenged by the applicants before Revisional forum, but remained unsuccessful. The relevant portion of the order passed by the learned Magistrate for the sake of brevity is reproduced as under;

"I have heard the learned counsel(s) for the respective parties and perused the material available on record with utmost care and caution. It transpired from the records and reports of Mukhtiarkar (Revenue) Chamber, Technical Survey team of Director Settlement Survey & Records Sindh Hyderabad and site inspection report of reader of this court coupled with Photographs and video that there is Katcha path at both side of village Mir Hassan Laghari (village of the applicant and private respondents) at Kamal Kario (Government land), where the private respondents and other villagers not have illegally occupied the Government land of Kamal Kario but they have also encroached the way/Katcha Path by constructing walls and have congested the way/Katcha Path, which creates nuisance/problem to the applicant and the public at large as well due to the illegal/unlawful walls which are constructed on the street/pathway of Village Mir Hassan Laghari and general public/villagers including applicant are facing problems. Private Respondents No.4 to 7 have constructed wall on the Katcha Path/street used by the villagers since long and this fact is also transpired from the reports of officials and so also the photographs, video

and maps coupled with the reports. It would not out of place to mention here that Under Section 133 Cr.P.C, empowers the Magistrate to issue appropriate direction for removal of nuisance, in this regard reliance is respectfully placed the case law of (Faiz Muhammad V. Civil Judge and Judicial Magistrate and 2 others duly reported in 2017 Y L R at page No. Note 256).

Bare reading of the supra case law it is very much clear that when there is any public nuisance than order can be passed for its removal. Therefore, I am satisfied with the reports filled by the Mukhtiarkar (Revenue) Chamber, Technical Survey team of Director Settlement Survey & Records Sindh Hyderabad and site inspection report submitted by the reader of this Court. Therefore, the Anti-Encroachment Force Tando Allahyar is directed to demarcate the actual length of the Katcha path/street limits and if any kind of encroachment is formed on the Street/pathway area then it is ordered to be removed forthwith, with the help of the local authorities. The Assistant Commissioner Taluka Chamber, Mukhtiarkar (Revenue) Taluka Chamber and S.H.O P.S Chamber are directed to provide the legal assistance and protection to the Anti-Encroachment department for removal of illegal encroachment over the street/pathway. They are further directed to submit compliance report within 30 days after receipt of this order.

For the foregoing reasons and in view of prevailing position the instant Cr. Misc. Application stands disposed of accordingly".

9. The learned trial Court in my opinion settled the matter articulately by placing his reliance on certain case laws and clearly providing a mechanism for resolving this issue. Subject offence of encroachment is becoming a menace for our cities as well as our small towns. In order to deal with the encroachment especially on public properties not only Anti-Encroachment force has been created, but special laws and especial Courts are also formed just to see that public property is safeguarded. I do not see any misreading in the order of the learned trial Court. Let the survey be conducted by the technical team and if any path/street is found to be encroached, let that be removed forthwith. The learned trial Court is at liberty to decide this matter upon receiving the report by Mukhtiarkar Revenue Chamber.

10. In above circumstances, I do not find any merits in Cr. Misc Application in hand and same is hereby **dismissed** by upholding the order passed by the learned trial Court in Cr. Revision Application No.07 of 2023.

JUDGE

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