

**IN THE HIGH COURT OF SINDH,
CIRCUIT COURT, HYDERABAD**

C.P. No.D-229 of 2011

Present

Mr. Justice Muhammad Iqbal Kalhoro
Mr. Justice Adnan-ul-Karim Memon.

Muhammad Aslam ----- Petitioner

Vs.

Province of Sindh through
Chief Secretary & others ----- Respondents

Date of Hearing: 28.02.2019

Mr. Naimatullah Soomro, advocate for petitioner.
Mr. Imran Qureshi, advocate for HMC alongwith Syed Afaque Ahmed
Rizvi Director (Land) HMC.
Mr. Zaheer-ud-Din Sahito, State Counsel.

ORDER

ADNAN-UL-KARIM MEMON, J. - The instant petition was disposed of
vide order dated 20.12.2012 with following observation:-

*“In pursuance to earlier order Syed Afaque Ahmed Rizvi
T.O.R, is present in Court. He says that if fifteen days’ time is
allowed to him he will provide a space having area about 5.6 x 5.6
feet for setting up a cabin within the area from where Petitioner
was ejected for accommodating others.*

*Learned counsel for Petitioner is present alongwith
Petitioner. The offer made by T.O.R is acceptable to them.*

*By consent, this petition is disposed of with direction to
T.O.R. present in Court today to provide a space having area about
5.6 x 5.6 feet for setting up a cabin within the area from where
Petitioner was ejected up to 15.01.2013. If commitment made by
T.O.R is not honored by the aforesaid date the Petitioner side shall
be free to file contempt application.*

Pending applications also stand disposed of.”

2. On 29.01.2013, petitioner filed application (MA No.989 of 2013) under
section 3 & 4 of the Contempt of Court Act r/w Article 204 of the Constitution of

Islamic Republic of Pakistan for initiating contempt proceedings against the alleged contemnor.

3. Mr. Naimatullah Soomro, advocate for petitioner has argued that by consent this Court vide order dated 20.12.2012 had disposed of the petition with direction to contemnor to provide a space having area about 5.6 x 5.6 feet for setting up a Cabin with the area from where the petitioner was ejected upto 15.01.2013, that till now neither the contemnor visited the site to provide a space to the petitioner so offered nor set-up a Cabin within the area from where petitioner was ejected which is clear violation of the order passed by this Court. He lastly prayed for taking strict action against the alleged contemnor.

4. We have heard learned counsel for the parties on the listed application and perused the material available on record.

5. Mr. Imran Qureshi, learned counsel representing HMC Mr. Imran Qureshi, learned counsel representing HMC has stated at the bar that the order dated 20.12.2012 passed by this court is complied with in its letter and spirit. He relied upon the statement dated 4.2.2019 filed on behalf of respondent No.3.

6. We have noticed that the petitioner was offered the space of 5.5 x 5.6 ft. for setting up cabin in terms of order passed by this court.

7. We queried from learned counsel for HMC that respondent No.3 agreed to provide requisite space to the petitioner after removing the gate and erecting proper wall thereon why it has not been done so. He in reply has filed statement and had placed on record the photographs, which explicitly show that the wall has been erected before a closed gate for providing required space to the petitioner for the aforesaid purpose.

8. We asked from learned counsel for the petitioner as to whether he would agree to the proposal given by learned counsel for HMC. He has submitted that the cabin which was originally available at the location has not been provided to the petitioner, he, therefore, prays for compliance of original order passed by this court.

9. Needless to say, we cannot enlarge the scope of disposal order dated 20.12.2012 passed by this Court. It is a settled principle of law that for the purpose of maintaining a case for contempt of Court under Article 204 of the Constitution read with Sections 3 & 4 of contempt of court ordinance 2003, there must be involved some act done or writing published calculated to bring a Court

or judge of a Court into contempt or to lower his authority of something calculated to obstruct or interfere with the due course of justice or lawful process of the Court or disregard an order, direction or process of Court which a person is legally bound to obey; or willful breach of an undertaking given to a Court; or any act intended to or which tends to bring the authority of Court or the administration of law into disrespect or disrepute and to obstruct, interfere, or prejudice the process of law or the due course of any judicial proceedings falling within the category of contempt of Court. Petitioner has failed to point out that the action of the alleged contemnor falls within the aforesaid categories.

10. The respondent has submitted compliance report as discussed supra. We have also gone through the Contempt Application, the reply of the alleged Contemnor. We are convinced that the respondents have substantially complied with the order passed by this court and has prepared the required space for providing to the petitioner as contemplated in the order dated 04.02.2019 and which the petitioner had agreed to take; therefore, no action for contempt of court is required. Besides this, we do not see any fundamental right of the petitioner to claim certain space except the one already offered for setting up his cabin on government land. Thus, we are not inclined to proceed any further on the listed application bearing (MA No.989 of 2013 having no merits, is accordingly dismissed.

JUDGE

JUDGE