

Order Sheet

**IN THE HIGH COURT OF SINDH,
BENCH AT SUKKUR**

C. P No. D – 3481 of 2013

Date	Order with Signature of Hon'ble Judge
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For direction

1. For orders on CMA No.7121/2015 (152 CPC)
2. For hearing of CMA No.6222/2015 (C/A)
3. For hearing of CMA No.42/2018

09-03-2022

Mr. Sajad Muhammad Zangejo, Advocate for the Petitioner
Mr. Khuda Bux Chohan, Advocate for the Respondents 1 & 2
Mr. Shafqat Raheem Rajput, Advocate for Respondent No.8
Mr. Ahmed Ali Shahani, Assistant Advocate General

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On 18-03-2015, the following order was passed;-

“After hearing all the learned Counsel at some length, the instant petition is disposed of with consent in the above manner.

That the respondent No.1 and 2 will look into the grievances of the Petitioner and if there is any illegal encroachment/illegal construction has been made by any concern within the site, the said construction or encroachment would be removed by fulfilling all the legal and codal formalities.

Petition stands disposed of in the above terms.”

Learned counsel for the Petitioner submits that the above order was never complied with strictly, therefore, the Contempt Application was moved and various orders have been passed. He further submits that during pendency of this Contempt Application, the Petitioner had made all efforts for removal of the alleged encroachment including approaching the Anti-Encroachment Tribunal, Sukkur, through Application No.41/2019,

however, the same was dismissed by the Presiding Officer vide order dated 10-10-2019 on the ground that Contempt Application in this matter is pending.

We have perused the said order and are of the view that the learned Tribunal has seriously erred in law by dismissing the Application on such ground. At the most the Tribunal could have adjourned the matter *sine die* but could not have dismissed the same. Moreover, the pendency of a Contempt Application is not an impediment for the Tribunal to proceed further, as admittedly the Contempt proceedings are between the Court and the alleged Contemnor, whereas, the Tribunal is required to decide the matter on merits in accordance with law. Insofar as the order passed by this Court is concerned, we are of the view that it was not only a consent order but does not has any adjudication on merits by this Court, hence no Contempt is made-out, therefore, while dismissing the Contempt Application with other pending Applications, we direct the Petitioner to approach the Tribunal once again either for restoration of the Application so dismissed or by way of afresh Petition / Application in respect of the alleged encroachment.

Judge

Judge

ARBROHI