

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

M.A No.29 of 2022

[Dildar versus Faizan Hanif Soomro & Ors]

Date of hearing & Order:

21.10.2022

Mr. Kamran Bhatti, advocate for appellant

ORDER

ADNAN-UL-KARIM MEMON, J.- Captioned Miscellaneous

Appeal has been directed against the Order dated 02.08.2022 passed by learned Presiding Officer Anti-Encroachment Tribunal Mirpurkhas in Suit No.102 of 2021 [*Re: Faizan Hanif versus Dildar & Ors*], whereby, learned Judge has held as under:

“6. The 4 shops are made up on public property, constructed by the defendant No.1 opposite to his plot/house and near to Eid-Gah Satellite Town Mirpurkhas, hence, defendant No.1 shall remove 4 shops from public property within thirty (30) days from the date of order, if within stipulated time he fails to remove the encroachment from public property, Chief Municipal Officer, Municipal Corporation with the help of Assistant Commissioner Mirpurkhas and S.H.O Anti-Encroachment Force, Mirpurkhas shall remove the encroachment forthwith and recover cost of demolition and removal of encroachment from the defendant No.1 as arrears of Land Revenue.”

2. Facts in brief are that respondent No.1 had filed Suit No.102 of 2021 before learned Anti-Encroachment Tribunal Mirpurkhas, alleging therein that there is a place reserved for Eid-Gah near Chandni Chowk and defendant No.1/appellant is living adjacent to said Eid-Gah and had constructed four shops illegally on the land reserved for Eid-Gah/public property; that the Tribunal perusing the reports submitted by official respondents in the matter and hearing the parties disposed of the suit in the above manner, hence defendant No.1/appellant preferred this Miscellaneous Appeal.

3. Mr. Kamran Bhatti learned counsel for the appellant has argued that the appellant is an old aged person and has since long resided just behind the Eid Gah Road where many people are residing and even though there is a Road of 100 Sq. feet, hence no question of Jamm of Road; that Eid Gah is situated 50 feet away from the property of appellant but respondent No.1

just created grounds to get undue advantage while he is not resident of the same area; that the people of locality are still silent and nobody objected against the appellant even no any official appeared at site to measure the actual place and just due to influence of respondent No.1, a false report was submitted and learned Tribunal passed the impugned Order, hence it is passed, without providing opportunity of hearing to the appellant and to lead evidence on the subject issue; that impugned order is a result of misreading and non-reading of material available on record as there is no any material available on record except false and formal reports, submitted by Mukhtiarkar concerned.

4. I have heard learned counsel on the maintainability of the appeal and perused the material available on record.

5. The appellant has assailed the vires of the order dated 02.08.2022 passed by learned Anti-Encroachment Tribunal, Mirpurkhas, and suit No. 102 of 2021. However, learned Tribunal disposed of the suit with the following findings:

Admittedly, 4 shops have been constructed by defendant No. 01 but he failed to file documents whereof in the case and through his attorney/son stated that if the shops are made up on public property he will remove the same. The stance of the plaintiff is supported by the Municipal Corporation Mirpurkhas and conversely, defendant No. 01 failed to submit title documents of their suit property/shops. It is the law and held by the Hon'ble Superior Court of Law that person who failed to submit title documents or does not have the title documents of the property, the same property shall deem to be state land.

The 4 shops are made up on public property, constructed by defendant No. 01 opposite his plot/house and near to Eid-Gah Satellite Town Mirpurkhas, hence, defendant No. 01 shall remove 4 shops from public property within thirty days from the date of order, if within the stipulated time he fails to remove the encroachment from public property, Chief Municipal Officer, Municipal Corporation with the help of Assistant Commissioner Mirpurkhas and SHO, Anti-encroachment Force, Mirpurkhas shall remove the encroachment forthwith and recover the cost of demolition and removal of encroachment from the defendant No. 01 as arrears of Land Revenue.

6. Primarily findings of facts, arrived by the Tribunal could not be discarded for the simple reason that appellant failed to substantiate to prove the documentary evidence with regard to ownership of the subject shops constructed on the government land; therefore, this court has no option but to rely upon the report of Mukhtiarkar and order passed by the learned Anti-Encroachment Tribunal.

7. In the light of the findings of learned tribunal, no case for reevaluation of evidence is made out, this appeal stands dismissed in limine.

JUDGE

Sajjad Ali Jessar