

IN THE HIGH COURT OF SINDH KARACHI

Criminal Misc. Application No.176 of 2025
Criminal Misc. Application No.177 of 2025
Criminal Misc. Application No.178 of 2025
Criminal Misc. Application No.179 of 2025
Criminal Misc. Application No.180 of 2025
Criminal Misc. Application No.181 of 2025
Criminal Misc. Application No.182 of 2025
Criminal Misc. Application No.183 of 2025
Criminal Misc. Application No.184 of 2025
Criminal Misc. Application No.185 of 2025
Criminal Misc. Application No.193 of 2025
Criminal Misc. Application No.194 of 2025
Criminal Misc. Application No.346 of 2025
Criminal Misc. Application No.347 of 2025

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Mr. Muhammad Ahmed Masud Shariq A. Razzak & Ayesha Nadir,
Advocates for the Applicants.

M/s Ahmed Ali Ghumro a/w Abdul Samee, Advocates for the
Respondent No.6 [MDA].

Mr. Neel Parkash, D.P.G.

Mr. Muhammad Javed, A.A.G.

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Date of hearing **12.05.2025**

Date of order **19.05.2025**

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ORDER

Shamsuddin Abbasi, J. - After a thorough inquiry and fulfilling the mandatory requirement of Section 3(1) of the Sindh Public Property (Removal of Encroachment Act, 2010 [SPP(ROE) Act, 2010] two cases vide FIR No.03 of 2024 and FIR No.05 of 2024 were registered at Police Station Anti Encroachment Force, Zone-II and Zone-II, District (East), Karachi, on behalf of the State through Mukhtiarkar, Gulzar-e-Hijri, Karachi, and Director Estate & Enforcement, MDA, Karachi, on 15.10.2024 and 16.10.2024 respectively for offences under Section 8(1) of Sindh Public Property (Removal of Encroachment) Act, 2010.

2. Facts as disclosed in FIR No.03 of 2024 are that the directors and officers of Maymar Housing Services (Pvt) Limited [the "Company"] have usurped /occupied Government land, measuring 39-34 acres, situated at Deh Bhatti Amri, illegally and unlawfully, grabbing from Na-Qabooli No.95-6 a land of 9-29 acres and from Na-Qabooli No.96-6 a land of 1-17 acres and from Na-Class No.3-19, illegally and unlawfully. It is alleged that

notices in terms of Section 3(1) of SPP(ROE) Act, 2010 were issued to Hashim Muhammad Shamim, Abdul Rahman, Zafar, Zubair Ahmed Khan, Rohan, Abdul Rafay, Muhammad Arshad Khan and Shahid Hameed, out of them Shahid Hameed appeared and showed Form-II vide Jaryan No.38 dated 23.01.1986, measuring 17-7 acres, which was scrutinized and found as blocked by the orders of the Board, which has not been reinstated as none from the Company approached Board of Revenue for reinstatement of the land, hence it was found that the Company has occupied land, measuring 37-19 acres, illegally and unlawfully, out of which 20-12 acres of land belongs to Government, which is in illegal possession of the Company. Hence this FIR.

3. Facts as enumerated in second FIR No.05 of 2024 are that the officials of Maymar Housing Services (Pvt) Limited [the "Company"] have occupied Government land, measuring 128 acres, from Na-Class No.114, & Na-Class No.127, situated in Deh Taiser near Northern Bypass, Scheme No.45, MDA, Karachi, hence notices in terms of Section 3(1) of SPP(ROE) Act, 2010 were issued to Hashim Muhammad Shamim, Abdul Rahman, Muhammad Zafar, Zubair Ahmed Khan, Rohan, Abdul Rafay, Muhammad Arshad Khan and Shahid Hameed, who despite service by way of pasting failed to appear. Hence this FIR.

4. The learned counsels appearing for the applicants have mainly argued that the FIRs have been lodged without any lawful authority and no notice was ever served on the applicants before lodgment of FIRs. It is next submitted that no iota of evidence has been brought on record against the applicants to show their involvement in the commission of offence. It is also submitted that the applicants are directors and officers of Maymar Housing Services (Pvt) Limited and they have been dragged in false cases just to harass and blackmail them, otherwise they have no nexus with the charges leveled in the FIRs. Per learned counsel, no evidence is available with the prosecution in support of its case and if the trial is allowed to be continued, the same would be a futile exercise and only the applicants would suffer agony of trial, hence it is a fit case of quashment.

5. On the other hand, the learned counsel appearing for the respondent No.6 /MDA as well as learned AAG and APP have submitted that the matter relates to Government land, which have been illegally and

unlawfully occupied by the applicants. They have further submitted that allegations are serious in nature and require evidence and no case of quashment has been made out.

6. I have given my anxious considerations to the submissions of respective sides and perused the entire material available before me with their able assistance.

7. The captioned Criminal Misc. Applications have been filed under Section 561-A Cr.P.C. seeking quashment of FIR No.03 of 2024 and FIR No.05 of 2024 under Section 3(1) of Sindh Public Property (Removal of Encroachment Act, 2010). Worth to mention here that during pendency of the applications, the Investigating Officer submitted report under Section 173 Cr.P.C. upon which the learned trial Court took cognizance of the offence and accepted the challan, which order has been challenged seeking quashment of the proceedings arisen from the aforesaid FIRs through Criminal Misc. Applications 346 and 347 of 2025.

8. First of all I would take up the set of applications seeking quashment of FIRs. The law is quite settled by now that the jurisdiction of a High Court under Section 561-A, Cr.P.C. can be exercised only in respect of orders or proceedings of a Court and that the provisions of Section 561-A, Cr.P.C. have no application vis-à-vis executive or administrative orders or proceedings of any non-judicial forum or authority. When confronted with the legal position set-out above, learned counsel appearing for the applicants submits that the FIRs were lodged without lawful authority, based on malafide intention and ulterior motives, just to harass and blackmail the applicants, who are directors and officers of Maymar Housing Services (Pvt) Limited and that matter pertains to civil nature and civil proceedings are pending adjudication before competent Court of law. Here I may refer the case of *PIA through Director General, FIA and others v Syed Hamid Ali Shah* (PLD 2023 Supreme Court 265), wherein it has been held as under:-

“First of all, we want to make it clear that a High Court has no power under section 561-A, Cr.P.C. to quash an FIR or an investigation proceeding; therefore, the criminal miscellaneous applications filed under section 561-A, Cr.P.C. by some of the accused persons in the High Court for quashing the FIR and investigation proceeding in the present case were not maintainable. This is because jurisdiction of a High Court

to make an appropriate order under section 561-A, Cr.P.C. necessary to secure the ends of justice, can only be exercised with regard to the judicial or court proceedings and not relating to proceedings of any other authority or department, such as FIR registration or investigation proceedings of the police department. This has been authoritatively held by a five-member bench of this Court in Shahnaz Begum. A High Court, therefore, can quash a judicial proceeding pending before any subordinate court under section 561-A, Cr.P.C., if it finds it necessary to make such order to prevent the abuse of the process of that court or otherwise to secure the ends of justice; however, it should not ordinarily exercise its power under section 561-A, Cr.P.C. to make such order unless the accused person has first availed his remedy before the trial court under section 249-A or 265-K, Cr.P.C. Where before the submission of the police report under section 173, Cr.P.C. to the court concerned, the accused person thinks that the FIR has been registered, and the investigation is being conducted, without lawful authority, he may have recourse to the constitutional jurisdiction of the High Court under Article 199 of the Constitution for judicial review of the said acts of the police officers”.

9. Keeping in view the dictum laid down by the Hon'ble apex Court in the case (supra) and the peculiar facts and circumstances of the case, referred herein above, I am of the view that the case of the applicants does not bring forth any extraordinary circumstances that may convince this Court to quash FIRs in exercise of its jurisdiction under Section 561-A, Cr.P.C. In view thereof, the Criminal Misc. Applications 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 193 and 194 of 2025 seeking quashment of FIR No.03 of 2024 and FIR No.05 of 2024 stand dismissed as not maintainable.

10. Reverting to the applications under Section 561-A, Cr.P.C. against acceptance of police report under Section 173, Cr.P.C., whereby the learned Magistrate took cognizance of the offence, seeking quashment of proceedings arisen from FIR No.03 of 2024 and FIR No.05 of 2024. A bare perusal of the record reveals that the learned Magistrate has rightly concluded that a prima facie case is made out against the applicants, warranting further proceedings. The Hon'ble Supreme Court in the case of *Muhammad Farooq*, has set-aside an order of High Court to quash a private complaint in exercise of its jurisdiction under Section 561-A Cr.P.C. which application had been moved directly to the High Court without resort to the remedy available before the trial Court under Section 249-A or 265-K Cr.P.C. In the said case, the Hon'ble Supreme Court

reiterated the circumstances in which the High Court could exercise inherent jurisdiction under section 561-A Cr.P.C. and held that the remedy thereunder was not an alternate or a substitute of the express remedy provided to the trial Court under the provisions of Section 249-A or 265-K, Cr.P.C., that where two Courts have coextensive or concurrent jurisdiction, then in ordinary circumstances the rule of propriety demanded that jurisdiction of the lower Court be invoked first; and that in such cases the inherent jurisdiction of the High Court should not be exercised as a routine but only in extraordinary circumstances which warrant the exercise of such jurisdiction by bypassing the alternate remedy available.

11. Reverting to merits of the case in the background of above settled legal positions, I find that the applicants are directors and officers of Maymar Housing Services (Pvt) Limited and dealing in housing projects, they are nominated in the FIRs, which have been lodged after thorough enquiry and service of requisite notice under Section 3(1) of Sindh Public Property (Removal of Encroachment Act, 2010), attributing specific role that they in connivance with each other have usurped Government land of more than 128 acres, situated at Deh Bhatti Amri and Deh Taiser, Scheme No.45, MDA, Karachi, causing colossal loss to the National Exchequer. Such allegations are of heinous nature and cannot be taken lightly. In like cases the whole transaction and each component part of the scam needs to be viewed in a holistic manner and not in isolation. This is because in most cases the offence could not be committed without the active involvement of all the accused in the chain of events which lead to the commission of the offence. However, notwithstanding this observation, it is settled law that in criminal cases each of the accused needs in some way to be connected with the offence charged with, therefore, it would never be advisable to take the role of investigator thereby deciding the legality or otherwise of a document nor allegation of fraud or otherwise could be determined by this Court. Learned counsel for the applicants have placed bundle of documents for which it would suffice to say that while exercising jurisdiction under Section 561-A Cr.P.C., this Court is not supposed to stamp legality or otherwise to a document or a claim particularly when the matter is subjudice before a Court of competent

jurisdiction. It would, therefore, never be advisable to take the role of investigator thereby deciding the legality or otherwise of a document nor allegation of fraud or otherwise could be determined by this Court. Learned counsel for the applicants have placed bundle of documents for which it would suffice to say that while exercising jurisdiction under Section 561-A Cr.P.C., this Court is not supposed to stamp legality or otherwise to a document or a claim particularly when the matter is subjudice before a Court of competent jurisdiction.

12. It will not be out of place to mention here that now-a-days financial corruption and commission of white collar crimes, corruption in the housing societies and usurpation of land by land grabbers and land mafias are the big issues being faced by our Country are liable to be curbed with iron hands. The Hon'ble apex Court too in its verdicts imposed special duty upon the Courts to perform their duties actively, diligently to eliminate such kind of practice. It is high time that standards are set and system put in place to develop a culture of accountability at all level in order to cleanse over system and institutions from evil of corruption, usurpation of Government land by influential persons through grabbers and land mafia, loot and plunder of national resources by a few irrespective of their status in the system.

13. Insofar as the contention that matter pertains to civil nature and appropriate civil proceedings are pending before the Court of competent jurisdiction, suffice to say that it is by now well settled that civil and criminal proceedings can go side by side and pendency of civil litigation has no bearing on criminal proceedings as held by the Hon'ble apex Court in the cases of *Shaikh Muhammad Naseem v Mst. Farida Gul* (2016 SCMR 193) and *Haji Sardar Khalid Saleem v Muhammad Ashraf & others* (2006 SCMR 1192).

14. Pertinent to note that previously the applicants have invoked the jurisdiction of this Court under Article 199 of the Constitution, which were subsequently withdrawn. The question arises when they have rightly invoked the writ jurisdiction of this Court for quashment of FIRs before submission of challans, why such proceedings were

withdrawn. No plausible explanation and valid reasons has been furnished in that behalf. The filing of these applications if seen in the background of previous litigation shows malafide on the part of applicants.

15. For what has been discussed above and keeping in view the legal position, discussed herein above, I am of the view that the learned Magistrate was fully justified in taking cognizance of the offence under Section 190 Cr.P.C. The impugned order does not suffer from any legal infirmity, misreading of evidence, or non-application of judicial mind. The exercise of discretion by the Magistrate is consistent with settled legal principles and withstands judicial scrutiny. The learned counsel for the applicants have failed to place on record any unimpeachable evidence that may provide a valid ground for quashing the proceedings at this stage. The applicants shall have ample opportunity to substantiate their defence during the trial where they may produce concrete and admissible evidence to disprove the prosecution case. The order, impugned herein, is, therefore, upheld and the Criminal Misc. Applications 346 and 347 of 2025 are bereft of any merit stand dismissed.

16. Before proceeding with this order, it need not to state that the observations recorded herein above are of tentative assessment and meant for the purpose of the instant proceedings, therefore, the learned trial Court, which is seized of the matter, shall not be influenced in any manner whatsoever while deciding the cases on merits.

JUDGE