

**ORDER SHEET**  
**IN THE HIGH COURT OF SINDH AT KARACHI**  
**CP.No.S-177 of 2021.**

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Date	Order with signature of Judge
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- 1) For orders on office objection at "A".
- 2) For hearing of main case.

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**Date of hearing 18 March 2020**  
**Date of decision 18<sup>h</sup> March 2020**

Mr. Abdul Ghaffar Kalwar, advocate for petitioner.

DSP Waqar Jadoon, SDPO, Preedy and SIP Naeem-ud-din, P.S. Arambagh.

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Mr. Dur Muhammad Shah, advocate files vakalatnama on behalf of respondent No.3 as well as file counter affidavit, which are taken on record. Respondents No. 1 and 2 also file their comments; taken on record.

2. Precisely relevant facts are that petitioner is claiming ownership of subject matter property on the basis of Registered Sale Deed, however, it is contended by the petitioner that matter was adjudicated by the Ombudsman, who directed the Member Board of Revenue to remove the encroachment from footpath.

3. According to counsel for the petitioner, respondents have no legal authority to disturb the business of petitioner and that petitioner has got nothing to do with the 'cabins', so erected on footpath but he possessed the shop on basis of the title document (registered Sale Deed), therefore, his lawful business as well property can't be disturbed, being included into fundamental rights.

4. On the other hand, the learned counsel for the respondent No.3 while placing on record certain documents with photographs hotly contested the case on the plea that petitioner has misused the order dated 02<sup>nd</sup> March 2021. Further, learned counsel contends that petitioner by taking benefit of that order has raised a shop in front of his shops, he has placed sketch as well as

complaint regarding encroachment on footpath in front of shops addressed to the Deputy Commissioner South/Administrator South, Director Anti-Encroachment, DMC South and Director General Sindh Building Control Authority. Learned counsel also contends that respondents were not aware with regard to pendency of captioned petition, however, against that petitioner, they have filed petition [CP.No. D- 1726/21], which is pending for adjudication.

5. At this juncture, it is conducive to add that through instant petition, the petitioner while referring to his title documents had prayed as:-

“a) To direct respondent No. 1 & 2 to produce FIR lodged against the petitioner at P.S. Aram Bagh, by invoking jurisdiction vested with Hon’ble Court vide provisions of section 561-A Cr.P.C. and if any such FIR is lodged against the petitioner, interim/protective bail may also be granted to the petitioner in connection to instant apprehension.

b) To direct respondent No. 1 & 2 to ensure that the respondent No.3 may not interfere in the repairs & affairs of the subject shops of the petitioner.

c) To restrain the respondent No. 3 and his agents/Gunda Element not to interfere in the peaceful possession of petitioner over the subject shops and not create obstacles/hindrances in the repairing work/rehabilitation of the said shops of petitioner being lawful property.

d) Any other relief(s) which this Hon’ble Court may deem fit and proper under the circumstances of this case.

6. Since, every owner has a legal right to exercise right of ownership, subject to law and rules therefore interim order gave nothing *extra* to petitioner except that to do lawful things as such right was made subject to *‘legal character of petitioner’* so is evident from order itself which is reproduced hereunder:-

“Learned counsel for the petitioner, inter alia, contends that petitioner is owner of subject matter property and intends to erect its structure but police officials at the instance of respondent No. 3 and 4 causing harassment; they are interfering in the lawful business of petitioner. Issue notice to the respondents as well as A.G. Sindh. Meanwhile, SSP District South shall direct the SHO/ respondent No.2 that he shall not interfere in the repair/construction of subject property by the

**petitioner within his legal character** and shall provide complete protection to the petitioner at the site.”

7. When confronted to respondent, the learned counsel for the respondent was fair-enough while contending that they have no concern with the shops constructed by the petitioner within his legal character, however, their construction in front of his shop is completely illegal.

8. I would say that what came on surface today, *prima facie*, shows that the parties are at serious disputes while claiming and referring to their respective title documents. Such disputes, *prima facie*, can't be decided while exercising constitutional jurisdiction as the same would directly or *least* indirectly cause effect upon the rights and entitlement of parties, raising their respective claims with reference to title document's, particularly when, per the petitioner, he (petitioner) has nothing to do with cabin, ordered to be removed from footpath and claims his property as *lawful*. At this juncture, it would be conducive to refer relevant paragraphs of order of Ombudsman, Sindh, which are that:-

**“CONCLUSION:**

13. The investigation conducted and the site inspection revealed that the ventilator of the shop of the complainant was closed due to construction of cabin shop by the interveners. It was also found that the interveners and other shopkeepers had encroached upon the footpaths which belong to the Board of Revenue Sindh. There was no justification for any encroachment on the footpath that was meant for the pedestrians it by erecting structuring.

**DECISION:**

14. I, therefore, in exercise of powers vested in me under Section 11 of the Establishment of the Office of the Ombudsman for the Province of Sindh Act, 1991, hereby direct the Senior Member, Board of Revenue to immediately get the encroachment including cabin/shop etc. removed from the footpath by using the Anti-Encroachment force working under him and ensure that no such permanent structures are erected on the footpaths meant for pedestrians traffic.”

8. *Prima facie*, the above order also speaks of removal of encroachment of cabin / shop from footpath and not speaking about removal of one, holding title document's, therefore, any further comments into matter might cause

prejudice to rights and entitlement of the parties therefore it is in all fairness to leave things open for legal fora to decide after examination of legal documents possessed by the parties as well hearing of respective claims. Accordingly, parties would be at liberty to approach proper and legal forum i.e Civil Court, which is ultimate court to decide the civil controversy between the parties however, parties shall ensure that things are done in accordance with due process of law and not by harassment. Needless to mention that '*acting in accordance with due process of law*' shall always include approach to all legal fora and legal execution of such orders. Needless to add that any decision, passed by the Division Bench of this court, shall have its own effects.

Instant petition stands disposed of.

Sajid

**J U D G E**