

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
C. P. NO. D-171 / 2010

Date _____ Order with signature of Judge _____

FOR DIRECTION.

For hearing of CMA No. 2409/2020.

14.10.2020.

Mr. Muhammad Ahmed Pirzada Advocate for Petitioners.
Mr. Abdul Jalil Zubedi AAG.

Through this application under Article 204, the Petitioners had prayed for initiating contempt proceedings against the alleged Contemnors; however, vide order dated 21.02.2020, it has been treated as an application under Section 151 CPC.

Learned Counsel submits that this Petition was disposed of vide order dated 24.05.2010 with certain directions for removal of encroachment from the land in question and such directions are yet to be complied with, whereas, several applications for contempt were filed and on the assurance of Respondents have been disposed of. He submits that the encroachment is still there and in the compliance report the concerned official has shown his inability to do so for the fact that it would create law and order situation.

On the other hand, learned AAG has referred to the compliance report and submits that the application is misconceived.

We have heard the learned Counsel as well as the learned AAG and perused the record. Instant Petition had sought directions against Respondents No. 3, 4, 5, 6, 8 & 9 to remove illegal construction on the Petitioners land and put the Petitioners in peaceful and physical possession and the same was disposed of vide order dated 24.05.2020 which reads as under:-

“1) Granted.

2) Mr. M. Ahmed Pirzada, learned Counsel for the Petitioners, submits that he is satisfied with the comments filed on behalf of respondent No. 6 wherein the respondent No. 6 has admitted the title of the petitioners to the subject land and has further stated that appropriate action shall be taken against the encroachers over the land. Mrs. Haleema Khan, learned A.A.G., verifies the above position. We would, therefore, dispose of this petition in terms of the comments, as filed by respondent No. 6, with direction to the respondent No. 6 to act in accordance with law. We may, however, clarify that such is without prejudice to the rights, if any, of any other party not before us.”

It appears that thereafter, 12(2) application was filed bearing CMA No. 32167/2016 by some of the Applicants and the said application was disposed of on 23.08.2016 through the following order:-

Learned Counsel for the applicants after arguing the application at some length, does not press the same subject to the condition that an order may be passed that the applicants may not be dispossessed from the land in question save in accordance with law. Learned Counsel for the Petitioner has extended no objection to the aforesaid proposition.

Accordingly, the listed application stands disposed of by consent in the terms that the applicant shall not be dispossessed from the land in question save in accordance with law.

Perusal of the order dated 24.05.2010 reflects that the Petition was disposed of on the satisfaction of the Petitioners pursuant to comments of Respondent No. 6 and the Court observed that the Petition stands disposed of pursuant to comments of Respondent No. 6 with further directions to act in accordance with law; however, the order was clarified ***that the same is without prejudice to the rights, if any, of any other party not before us.*** The order is very clear and though it contains directions for removal of the encroachment; however, at the same time, it had protected the rights of all others who were not before the Court at the relevant time. Subsequently, the 12(2) application of the Applicants was disposed of on the conditions that they shall not be dispossessed from the land in question save in accordance with law and to that effect consent was given on behalf of the Petitioners and therefore, the people if any, on the land in question cannot be dispossessed through contempt application or any other application filed by the Petitioners. Record further reflects that earlier the Petitioners had also filed CMA No. 5969/2017 for contempt and the same was dismissed on 06.09.2018 but surprisingly thereafter, another application has been filed as listed today. After perusal of the orders passed as above, it appears to us that on an application under Section 151 CPC no further proceedings could be undertaken by this Court and if there are any person(s) who according to the Petitioners are either encroachers or in possession without lawful authority, the appropriate remedy as may be available in law has to be adopted and not through Misc. Applications in this disposed of Petition way back in 2010.

Accordingly, the listed application is dismissed.

J U D G E

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Arshad/