

ORDER SHEET  
IN THE HIGH COURT OF SINDH AT KARACHI

**CR. MISC. APPLICATION NO.331/2021**

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Date                                  Order with signature of Judge  
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1.     For order on office objection.
2.     For hearing of main case.

**04.03.2022**

Mr. Muhammad Arif advocate for applicant.

Mr. Manzoor Hameed Arain advocate for respondents No.3 and 7.

Mr. Iftikhar Ahmed Bhutto advocate for respondents No.3, 4 and 5.

Mr. Talib Ali Memon, APG.

**ORDER**

Heard learned counsel for respective parties. Learned counsel for applicant has challenged order dated 06.05.2021 passed in Criminal Miscellaneous Application No.1092/2021 by the Ex-official Justice of Peace under section 22 'A' and 'B' of the CrPC. Being relevant paragraph No.4 of the complaint is reproduced herewith:-

“That thereafter on 28-03-2021 at about 08:00 p.m. the above said accused persons alongwith some other persons came at the above said property of the applicant demolished the articles and also demolished the wall & small bridge constructed in between Plot No.D-295 & D-64/B-12 and also demolished the tandoor/kitchen of the tenant of applicant, and they also took away the iron cemented pillars, motors & other articles from the above said property forcibly, illegally & unlawfully. The applicant requested the said persons not to demolish & damage the above said property and not to remove the above said articles of the applicant and not to violate the court order but the said persons have not accepted the request of applicant and threatening the applicant for the dire consequences. The said persons have caused loss of about Rs.850,000/-. The applicant immediately moved application to the SHO for legal action but no action has been taken by the SHO. The applicant also moved the said application to SSP Keamari Karachi West through TCS but no action has been taken by the police.”

2.     Perusal of above reflects that applicant's plea is that despite of court orders, respondents violated the same and committed criminal offence. Admittedly civil litigation is pending between the

parties. Besides, applicant filed complaint under the Illegal Dispossession Act wherein replies were filed. For the sake of brevity, paragraph No.5 of that order dated 26.05.2018 is reproduced herewith:-

“Admittedly, the complainant is claiming to be lawful owner of the Plot No. D-295, situated at Shershah, SITE Karachi leased out to him through lease alongwith regularization letter dated 10.09.2013, which was illegally and unlawfully occupied by the proposed accused, but during trial of the case, proposed accused challenged his ownership right over the subject property by saying that it is an open Plot and not belonging to the complainant. Learned defense counsel drawn attention of the court to an Office Order dated 22.02.2018, issued by Industrial Trading Estates (guarantee) Limited, whereby consequent upon report of the Engineering Section of SITE Limited, the land measuring 264 sq. yards, as plot No. D/295, SITE Area, Karachi regularized in favour of complainant vide letter No.4388 dt: 10.09.2013 being erroneously earmarked on the road side being inconsonant with SITE Rules was cancelled. The complainant denied the existence of such document, therefore, in order to ascertain the veracity of the office order referred above, verification was called from SITE, whereby Director Administration of SISR through a letter No.2059 dated 05.04.2018 verified that letter bearing No.1141, dated 22.02.2018 in respect of Plot No. D/295, SITE Area, Karachi issued by the Competent authority of SITE Ltd was "Genuine one". Meaning thereby, the subject plot was cancelled by the concerned authority. Learned counsel for the proposed accused also drawn attention of the Court to CP No.D-3553/2017 filed by the complainant in the Honourable High Court of Sindh seeking directions to the authority concerned to execute the lease of the said plot in his favour, apart of other prayers. Meaning thereby, at this moment the complainant is not a registered bonafide and lawful owner of the subject land, therefore, I feel no hesitation to hold that at the moment, the complainant is not a legal and lawful owner of the subject property, as admittedly such matter is subjudice before the Honourable High Court of Sindh in this respect.”

3. Learned counsel for applicant inter alia contends that though civil suit is pending, applicant has legal remedy to bring the law in motion with regard to criminal offence. Learned Ex-official Justice of Peace in view of Younus Abbas PLD 2016 SC 581 rejected

the plea of complaint relating to offence and decided the same.

Relevant paragraph of findings are that :-

“I have carefully considered the arguments advanced by both the sides and perused the record. It is reflected from the record that there is civil litigation pending on the subject plot which was with record to the subject plot. The contention of the applicant was that he was the lawful owner of the subject plot bearing No.D-295 and it is alleged that the proposed accused persons on 28.03.2021 had demolished the wall and small bridge constructed between Plot No.D-295 & D 84/B-12 and further demolished Tandoor/Kitchen of the tenant of the applicant and the other property was taken away as such directions may be given to the SHO for lodging of the FIR. Furthermore it is observed from the record that in the year 1997 S.I.T.E vide their letter dated: 04.06.1997 had granted permission to the respondents to construct Car Parking Shade which was later on renewed vide letter dated: 18.08.2002. It is also found that the applicant is claiming ownership of the greenbelt/footpath which was not available in SITE Master Plan and the official Maps do not contain Plot No.D-295. It is reflected from the record that previously the applicant had also filed Direct Complaint bearing No. 14/2018 under the Illegal Dispossession Act, 2005 with the same plea against some other persons which had resulted in acquittal of the accused under section 265-K Cr.P.C.”

4. While considering the plea of learned counsel for respective parties in juxtaposition of impugned order, admittedly civil litigation is pending and learned Ex-official Justice of Peace being quasi-judicial proceedings, adjudicated the issue between the parties and decided that this is not a case of lodgment of FIR; that is also supported by the order passed by the Sessions Court in complaint under the Illegal Dispossession Act, hence present criminal miscellaneous application is dismissed.

**J U D G E**