

**ORDER SHEET**  
**THE HIGH COURT OF SINDH, KARACHI**  
C. P. No.D-2744 of 2023

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Dated: Order with signature of Judge(s)

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- 1.For orders on CMA No.13206/2023.
- 2.For orders on office objection No.19.
- 3.For orders on CMA No.13207/2023.
- 4.For orders on CMA No.13208/2023.
- 5.For hearing of Main Case.

Yousuf Ali Sayeed, J  
Mohammad Abdur Rahman, J

Date of hearing : 05.06.2023:-

Petitioner : Jumman Baloch through Mr. Muhammad Riaz, Advocate.

Respondents : Province of Sindh & Others.

**ORDER**

**Mohammad Abdur Rahman, J.** This Petition has been maintained under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 seeking directions as against the Respondents to remove encroachments which, according to the Petitioners, have purportedly been made by two private respondents i.e. the Respondent No. 2 and 3 by encroaching and renting out a portion of the Petitioner's land for the purposes of parking cars for a fee.

2. The facts on the basis of which this petition is maintained as alleged by the Petitioner, is that he claims to be an owner of a plot of land known as "Jumma Kalmati Goth" which is admeasuring 4 Acres and 6 Ghuntas. He alleges that the Respondent No. 2 and the Respondent No. 3 are encroaching and renting out a portion of his land for the purposes of parking cars for a fee.

3. The Counsel for the Petitioner appeared before us and stated that he has filed a complaint with the office Station House Officer PS Korangi Industrial Area, Karachi and with the Station House Officer Encroachment Cell, Karachi i.e. the Respondent No. 5 and the Respondent No. 6 for the removal of the encroachments each of whom have not taken any action as against the Respondent No. 2 and the Respondent No. 3 and hence they seek the following relief from this Court:

- “i) Direct the Respondent No.5 and 6 to remove the illegal encroachment of vehicle parking which was encroached by the Respondent No.2 and 3 upon the Jumma Kalmati Goth situated at Korangi Industrial Area, Karachi strictly in accordance with law.
- ii) Direct the Respondent No. 2 & 3 to submit/ produce the Sketch Map/Layout plan/ site plan.
- iii) To restrain permanently the Respondent No.2 & 3 not to encroach the land of petitioner without due course of law.
- iv) Direct the official respondents to discharge their duties strictly in accordance with the law.
- v) Award cost of the petition.
- vi) Any other relief or relief(s) which this Honourable Court, may deem fit and proper under the circumstance of the petition.”

4. It is clear that the Petitioner is aggrieved by the actions of two private persons i.e. Respondent No. 2 and Respondent No. 3, who are purportedly encroaching on property owned by the Petitioner. We have examined the entire petition and note that there is no document that has been made available to us which would show what the title of the Petitioner has to his land or as to where that land might be located. We are therefore unable to confirm the Petitioner's contention as to the exact description of his property or as to its location which has led us to the conclusion that disputed questions of fact are involved in this petition.

5. While noting that the Petitioners grievance is in respect of a purported encroachment on his property, we note that the prayer that is being maintained is in fact for giving directions to the Station House Officer PS Korangi Industrial Area, Karachi and with the Station House Officer Encroachment Cell, Karachi i.e. the Respondent No. 5 and the Respondent No. 6, to remove the illegal encroachments that are purportedly being made by the Respondent No. 2 and the Respondent No. 3 on the Petitioner's property.

6. Under Sub- Section (6) of Section 22 A of the Code of Criminal Procedure, 1898 clarifies as under:

“ ... 22A.  
(6) An ex-officio Justice of the Peace may issue appropriate directions to the police authorities concerned on a complaint regarding:  
(i) nonregistration of a criminal case;  
(ii) transfer of investigation from one police officer to another; and  
(iii) neglect, failure or excess committed by a police authority in relation to its functions and duties.”

7. As is the case, where a complaint has been made to the Station House Officer PS Korangi Industrial Area, Karachi and the Station House Officer Encroachment Cell, Karachi who are not acting on such representations, the Petitioner has a remedy before the Ex-Officio Justice of the Peace to seek his intervention to “Issue appropriate directions to the police authorities” under clause (i) of Sub-Section (6) of Section 22A of the Code of Criminal Procedure, 1898 to register a criminal case or under clause (iii) of Sub-Section (6) of Section 22A of the Code of Criminal Procedure, 1898 to remedy an “neglect or failure” committed by the police authorities in the performance of their duties.

8. The Supreme Court of Pakistan in the decision reported as **Rai Ashraf vs. Muhammad Saleem Bhatti**<sup>1</sup> has considered the jurisdiction of this court viz a viz the jurisdiction of an Ex-Officio Justice of the Peace under Sub-Section (6) of Section 22A of the Code of Criminal Procedure 1908. In the matter before the Supreme Court of Pakistan the Ex Officio Justice of the Peace had, after carrying out an inquiry, rejected the contentions of a complainant to give directions to the relevant authorities of the police to take action as against private persons for the removal of an encroachment. The complainant being aggrieved approached the High Court in its jurisdiction under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 and which court granted the petition and referred the issue to the relevant authorities of the police. The decision of the High Court was successfully assailed in appeal before the Supreme Court of Pakistan wherein it was held that:<sup>2</sup>

“ ... it is admitted fact that petitioner have alternative remedies to file private complaint before the competent Court, therefore constitutional petition was not maintainable and the High Court has erred in law to send the copy of the writ petition to the S.H.O concerned. The direction of the High Court is not in consonance with the law laid down by this Court in Jamshaid Ahmed’s Case (1975 SCMR 149). It is also a settled law that the learned High Court had not jurisdiction whatsoever to decide the disputed questions of fact in constitutional jurisdiction. In the case in hand, respondent No. 1 has more than one alternative remedies as alleged by him in the application that has secured restraining orders against the Petitioners from the civil Court, therefore Additional Sessions Judge/Ex-Officio Justice of the Peace observed that respondent No. 1 had to avail appropriate remedy for violation of status quo before the civil Court under the provisions of C.P.C. vid Order XXXIX, Rule 3 and 4 C.P.C. It is also admitted fact that there is a dispute qua property in question between the parties as alleged by the petitioner and observed by the Courts below...”

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<sup>1</sup> PLD 2010 SC 691

<sup>2</sup> *Ibid* at pg. 694

9. We are clear that where disputed questions of fact are involved as to the Petitioner own title, let alone the title of the Respondent No. 2 and the Respondent No. 3, it is necessary for the Petitioner to approach the Ex-Officio Justice of the Peace under Sub-Section (6) of Section 22 A of the Code of Criminal Procedure, 1898 who is empowered, after investigating into the matter, to give directions to the relevant police authorities including but not limited to the Station House Officer PS Korangi Industrial Area, Karachi and the Station House Officer Encroachment Cell, Karachi i.e. the Respondent No.5 and the Respondent No. 6 if he believes it proper to do so in the facts and circumstances.

10. In conclusion, there being disputed questions of fact involved in this petition regarding the Petitioners own title and as to the location of the property and their being an alternative efficacious remedy available to the Petitioner under Sub-Section (6) of Section 22 A of the Code of Criminal Procedure, 1898 this Petition not being maintainable under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 is dismissed along with all listed applications with no order as to costs.

JUDGE

Nasir PS.

JUDGE

