

JUDGMENT SHEET

**IN THE PESHAWAR HIGH COURT,
MINGORA BENCH (DAR-UL-QAZA), SWAT
(Judicial Department)**

**W.P No. 965-M/2021
With Interim Relief (N),
C.M Nos. 15/2022 and 47/2023**

Muhammad Sherin and others

Vs.

Ziarat Khan and others

Date of hearing: 14.10.2024

**Petitioner(s) by: M/S Ikram Ullah Khan and Akhtar
Munir Khan, Advocates.**

**Respondent(s) by: M/S Qazi Rafiq-ul-Islam, Ihsanullah
(Tajik) and Zia-ul-Haq, Advocates.**

JUDGMENT

IJAZ ANWAR, J.- This writ petition has been filed by the petitioners under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, with the following prayer:-

"It is therefore, most humbly prayed that on acceptance of this writ petition, the impugned order dated 07.07.2021 of the learned Additional District Judge, Samarbagh, dismissing the revision petition as well as the impugned order dated 08.03.2019 of the learned Civil Judge Samarbagh, respectively, may kindly be set aside and the application filed by petitioner for return of plaint, may kindly be accepted with cost throughout. Similarly, the application filed by respondents No. 32 to 34 may also kindly be dismissed with cost. Any other remedy which may be deemed fit and proper by this honorable Court, may also be graciously granted in favour of petitioners."

2. Brief but essential facts of the case are that respondents No. 1 to 12/plaintiffs filed a suit against the petitioners and others, for declaration coupled with permanent injunction and possession, to the effect that they are ancestral owners in possession of the disputed mountain including forest, shown at point-A in the site plan annexed with the plaint, while the proforma defendants are owners in possession to the extent of the properties shown at points-B, C & D, whereas, the petitioners/defendants No. 1 to 22 have got no legal share therein, as such, they have no right to interfere in the disputed property.

3. On being noticed, the petitioners/defendants No. 1 to 22 appeared and instead of filing written statement, they filed an application for rejection/return of the plaint, for want of jurisdiction of the civil Court. Similarly, three persons, Badshah Khan, Muhammad Gul and Pass Munir, filed an application for their impleadment in the array of defendants. After hearing arguments of learned counsel for the parties, the learned trial Court accepted the impleadment application vide order dated 08.03.2019, while appointed a local commission over application of the petitioners, so as to ascertain whether the

disputed property fell within its territorial jurisdiction or otherwise. The petitioners challenged the aforesaid order before the learned Revisional Court, who vide the impugned judgment/order dated 07.07.2021, dismissed the same, hence, the instant petition.

4. Arguments heard and record gone through.

5. It transpires from the available record that the respondents/plaintiffs brought the suit before the learned Civil Judge/Illaqa Qazi, Samarbagh Dir Lower, for declaration, etc., wherein, they claimed the disputed property, shown at point-A in the site plan annexed with the plaint, as their ancestral property. When the petitioners/defendants No. 1 to 22 appeared, they questioned the territorial jurisdiction of the civil Court, Lower Dir at Samarbagh, by filing an application for rejection/return of the plaint. Their contention is that the disputed property is situated outside the territorial jurisdiction of the civil Court, of Lower Dir and in this regard, made reference to certain proceedings taken earlier on a complaint filed under section 145 Cr. P.C.

6. The record further shows that the disputed property is situated at the boundary of two Districts,

i.e., Dir Upper and Dir Lower, wherein no revenue record is available, so as to ascertain the exact location of the disputed property. The learned trial Court has, after hearing arguments on the application, rightly resorted to appoint a local commission for the purpose. It is astonishing to note that the learned trial Court vide order dated 08.03.2019, has neither dismissed nor accepted application of the petitioners for rejection/return of the plaint rather has appointed a local commission but despite of it, the petitioners challenged the aforesaid order before the learned Revisional Court and now before this Court through the instant petition.

7. It is noted with concern that the contesting respondents have filed a civil suit, claiming declaration regarding the disputed property as their ancestral one, against the petitioners, the suit was filed on 06.10.2017 and in para-3 of the suit, it was specifically mentioned that the petitioners belong to Tehsil Barawal, Dir Upper, while the disputed property situates within the territorial jurisdiction of Dir Lower and referred to certain proof regarding the ground position of the property in question. After the service of summons on the petitioners, firstly, they sought adjournment for submission of written statement and, then they filed an

application for rejection/return of plaint on the ground of territorial jurisdiction, the learned Civil Judge vide the impugned order dated 08.03.2019, while considering the objection of the petitioners, has merely appointed Teshildar Samarbagh, as local commission with direction to ascertain about the ground position of the disputed property as to whether it situates in Tehsil Samarbagh, Dir Lower or Dir Upper. This order was then questioned in revision petition before the learned Additional District Judge, Samarbagh, Dir Lower, and after about 2 years and 4 months, the revision petition was dismissed vide judgment/order dated 07.07.2021. The matter should have ended there *albeit* the petitioners choose to file this writ petition and got suspended the judgments/orders of both the Courts below on 05.11.2021. When I asked learned counsel for petitioners that whether there is any adverse order against them that prompted them to have filed firstly revision petition before the Revisional Court and then writ petition before this Court, they have no convincing answer except that earlier a complaint u/s. 145 Cr. P.C., was filed in the Courts in the territorial jurisdiction of Dir Upper.



8. Unfortunately, after lapse of about five years, the main suit is still at an initial stage and written statement is not yet filed. It is observed that it is high time that the Courts should stop the practice of frivolous claims and efforts of the parties to prolong the litigations. Recently, the superior Courts have come very hard on such practices and have imposed heavy cost on filing such vexatious claims or petitions before the higher forum. The apex Court held that "it is high time that Courts and tribunals should regularly exercise their powers to impose reasonable costs to curb the practice of instituting frivolous and vexatious cases by unscrupulous litigants, which has unduly burdened their dockets with a heavy pendency of cases, thereby clogging the whole justice system. The possibility of being made liable to pay costs is a sufficient deterrence to make a litigant think twice before putting forth a false or vexatious claim or defence before Court. The imposition of these costs plays a crucial role in promoting fairness, deterring frivolous lawsuits, encouraging settlement, and fostering efficient use of resources: (i) promoting fairness: imposing costs in litigation helps to create a level playing field for both plaintiffs and defendants. By requiring both parties to bear the financial burden



of litigation, the system encourages parties to consider the merits of their case before initiating legal action. This helps to ensure that only those with legitimate grievances pursue legal recourse, reducing the possibility of abuse; (ii) deterring frivolous lawsuits: imposing costs can discourage parties from filing baseless or frivolous claims, as the risk of incurring significant financial losses may outweigh any potential gains. This helps to protect defendants from having to defend themselves against meritless claims, reducing strain on the Court system and preserving judicial resources; (iii) encouraging settlement: when parties are aware of the potential costs associated with litigation, they may be more inclined to engage in settlement negotiations or alternative dispute resolution methods. This can result in more efficient resolution of disputes, lower costs for all involved, and a reduced burden on the Court system; (iv) fostering efficient use of resources: imposing costs in litigation incentivizes parties to focus on the most relevant and important aspects of their case, as both parties will want to minimize their expenses. This can lead to more efficient use of legal resources, including Court time and the expertise of legal professionals, and may result in more focused and streamlined proceedings. The



practice of imposing costs would thus cleanse the Court dockets of frivolous and vexatious litigation, encourage expeditious dispensation of justice, and promote a smart legal system that enhances access to justice by taking up and deciding genuine cases in the shortest possible timeframe¹". Similarly, the apex Court in an another judgment held that "this is yet another prime example of frivolous litigation being initiated by a provincial government. The petitioners had advertised in the year 2018 for the selection of two computer teachers in basic pay scale of 12 and had prescribed the minimum qualification as Intermediate with one year diploma in computer sciences. The respondent No.1 held a B.Sc. and M.Sc. degree in computer science and came on the top of the merit list but still was not appointed for the reason that he was over-qualified. It appears that those in charge of educating the children of the province were bereft of common sense by disqualifying a person who was more qualified and thus better placed to impart computer science education and favoured one less qualified. Not only the respondent No.1 was made to suffer but the children, who would have benefited from

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¹ Zakir Mehmood Vs. Secretary, Ministry of Defence (D.P), Pakistan Secretariat, Rawalpindi and others (2023 SCMR 960).

his knowledge, were condemned. There is no reason to interfere with the impugned judgment. Leave to appeal is declined and this petition is dismissed with costs incurred by the respondent No.1, that is two hundred thousand rupees to be paid to the respondent No.1 on or before 31st December 2023²". Likewise, the Hon'ble Supreme Court of Pakistan in the case of *Javed Hameed* held that "Courts must be vigilant that the process of the Court is not abused, and ensure that legitimate owners are not deprived of their properties. From the date of filing of the suit till date 14 years have elapsed, and petitioners who were not entitled to the said land continue in possession of it, probably thinking there would no consequences for their actions. This impression must be corrected. Courts must impose costs whenever it is required, stem frivolous litigation and stop the abuse of the process of the court in perpetuating wrongdoing³". In another identical matter, it was held that "this is a classic example of frivolous litigation, and that too by those whose salaries are paid by the taxpayers of the country. It appears that the ability to take a decision, whether to

² Government of Khyber Pakhtunkhwa through Secretary, Elementary and Secondary Education Department, Peshawar and others Vs. Amjad Ur Rahman and others (2024 SCMR 424).

³ Javed Hameed and others Vs. Aman Ullah and others (2024 SCMR 89).

assail or not a decision does not exist in senior officers. They deemed it fit to challenge a matter of little financial significance and do so contrary to the provisions of the Constitution of the Islamic Republic of Pakistan which guarantees as a fundamental right the right to acquire, hold and dispose of property (Articles 23 and 24), and being oblivious to the fact that a person can only be compulsorily deprived of property provided compensation therefor is paid. This is the fourth Court before which the Government of Punjab is a party, and it pleads by disregarding the Constitution and the law. Not only have public resources been wasted, but also Court time, both of which are a trust held on behalf of the people. The respondents who were deprived of their land must have spent money and time with regard to a case which should have never seen a Court of law, provided the petitioners had abided by the Constitution and the law. Whilst counsel of private parties are accountable to them, and may resort to unnecessary litigation, this is not expected from the petitioners. The Government of Punjab and every employee of it, including those in the office of the Advocate-General run on public funds, therefore, one expects a much higher standard from them. The government and its servants are there to



serve the people. In this case, land was taken without compensating the respondents. Therefore, whilst declining leave and dismissing this petition, we direct the Government of Punjab to pay to the owners of the land, requisite compensation, within a period of thirty days from the receipt of this order and in addition also pay to them one million rupees as costs⁴. In a recent judgment, the august Supreme Court gave similar remarks about frivolous litigation in the following words:-

"Rule A (3) of Order XXVIII of Part VI of the Supreme Court Rules, 1980 (Rule) provides that this Court may impose costs on a party who files a false or vexatious appeal or other proceedings and thereby wastes the time of the Court. This Court has imposed such costs, to curb frivolous litigation, in the cases of *Syed Iqbal Haider v. Federation of Pakistan* (1998 SCMR 1318), *Muhammad Akbar v. Major Tajjuddin* (2007 SCMR 140) and *Commissioner of Inland Revenue v. Packages Limited* (2022 SCMR 634) for prolonging the agony of the respondents and wasting the time of this Court which could have been spent in resolving legitimate disputes⁵".

Recently, the Hon'ble Supreme Court of Pakistan in the case of **Mst. Asma Haleem vs. Abdul Haseeb Chaudhry and others**, while dismissing a CPLA No. 3300 of 2024, also imposed a heavy cost of

⁴ Province of Punjab through the Deputy Commissioner, Collector District Gujranwala and others Vs. Zulfiqar Ali and another (2024 SCMR 22).

⁵ Capital Development Authority, CDA through Chairman, CDA, Islamabad Vs. Ahmed Murtaza and another (2023 SCMR 61).

Rs. 50,000/- and has circulated the judgment to all the High Courts.

9. This case is also a classic example of dragging the contesting respondents unnecessarily through frivolous petitions up till this Court with a calculated effort to delay the matter unnecessarily for more than five years while the suit is still at a very initial stage. As such, I dismiss this writ petition but with a cost of Rs. 50,000/-, to be paid to the respondents/ plaintiffs. The learned trial Court is directed to consider the suit as a target case and make every effort to decide the same expeditiously as far as it is possible.

Announced
Dt: 14.10.2024



Senior
Puisne Judge

Office
17/10/2024