

JUDGMENT SHEET  
**IN THE PESHAWAR HIGH COURT,**  
**PESHAWAR**  
*(Judicial Department)*

**C.O.C No.85-P/2023**  
**in Cr. A No.911-P/2018**

**Shaheen Shah Vs. The State through A.G and others**

**Present:** **Muhammad Amin Khattak Lachi, Advocate**  
**for Petitioner.**

**Mr. Shakir Ullah Afridi, Advocate**  
**for Respondent No.2.**

Date of hearing: **11.07.2023**

**JUDGMENT**

**MUHAMMAD NAEEM ANWAR, J.-** Shaheen Shah, the petitioner has filed the instant petition under Article 204 of the Constitution of Islamic Republic of Pakistan, 1973 in juxtaposition with the provisions of the Contempt of Court Ordinance, 2003 for initiating the contempt of Court proceedings against the respondents for non-compliance of judgment dated **20.12.2019** rendered by this Court in **Criminal Appeal No.911-P of 2018** titled "**Soorat Shah and another Vs. Abdul Wahab and others**".

**2.** Muhammad Amin Khattak Lachi, Advocate representing the petitioner submitted at the bar that the respondent No.2 namely Abdul Wahab filed a Complaint bearing No.10 of 2017 u/s 3 of the Illegal Dispossession Act, 2005 (**the Act of 2005**) against Soorat Shah, Laiq Shah, Walayat Shah, Fazal Mir and the present petitioner alleging therein that he was forcibly dispossessed by them

from his property; that the accused including the present petitioner were charge sheeted, however, they claimed trial; that after completion of evidence of the prosecution, statements of the accused including the present petitioner were recorded u/s 342 Cr.P.C and after hearing the parties, the *ibid* complaint was decided by the learned trial Court (Sessions Judge, Hangu) through judgment dated 04.07.2018, wherein it was held that complainant (respondent No.2 herein) could not prove his case against Laiq Shah, Walayat Shah and Fazal Mir for dispossession, thus, they were acquitted of the charges whereas, the present petitioner and Soorat Shah were convicted u/s 3 of the Act of 2005 and were sentenced to six months S.I; that they were also fined to the tune of Rs.100,000/ each to be recoverable as arrears of land revenue and that both the convicts were further directed to pay compensation to the complainant to the tune of Rs.500,000/- jointly. He further submitted that the judgment of the learned trial Court was challenged by the convicts before this Court through **Cr. A No.911-P/2018**, wherein on **20.12.2019**, this Court has held that the prosecution could not prove the case against the petitioner and Soorat Shah u/s 3 of the Act of 2005, as such, their appeal was allowed and they were also acquitted of the charges. He also submitted that during pending adjudication

of the complaint, an interim order u/s 7 of the Act of 2005 was also passed for recovery of possession of the house/property in favour of the complainant/respondent No.2, on the strength whereof the possession of the house was taken from the petitioner, which order too has been set aside by this Court in its judgment dated 20.12.2019 but the possession of the house, which was transferred in compliance of the judgment of the trial Court is with respondent No.2. He referred to the order sheet dated 05.06.2023 and submitted that respondent No.2 was directed to appear before this Court in person, hence, representation of respondent No.2 by Mr. Shakir Ullah Afridi, Advocate is not in consonance with the directions of this Court and the law as well. When he was asked about the operative part of the judgment passed in favour of the present petitioner, he submitted that if the possession is handed over to him, he will not press his application for conviction of respondent No. 2 under the provisions of the Contempt of Court Ordinance, 2003.

3. Contrarily, Mr. Shakir Ullah Afridi, Advocate representing the respondent No.2, at the very outset, submitted at the bar that respondent No.2 is in Italy in connection with earning of his livelihood, however, in compliance of the judgment of this Court, whereby the

petitioner alongwith one Soorat Shah were acquitted of the charges u/s 3 of the Act of 2005, a civil suit was filed against the present petitioner and others, wherein Gul Wazir has been impleaded as party later, who has disputed the title of the plaintiff; that in the said suit, temporary injunction was granted in favour of the plaintiff/respondent No.2 against the defendants including the present petitioner and the order of the learned trial Court was upheld by the learned Appellate Court and revision against the order of the appellate Court was also dismissed from this Court being infructuous but now the status quo order has been passed against the defendants by the learned trial Court, which still holds the field. He also submitted that fate of the controversy shall be decided by the Civil Court including that of the defendant Gul Wazir, who considers himself to be owners of the property and that the petitioner who also alleged his possession on behalf of said Gul Wazir, the alleged landlord. He also submitted that no specific order for recovery of possession was passed by this Court in order dated 20.12.2019, which could be implemented rather the judgment of this Court could be enforced. He requested for dismissal of the instant petition.

**4.** Arguments heard and record perused.

5.            C.M No.358-P/2023: This application has been filed by respondent No.2 for placing on file the copy of plaint, written statements of Gul Wazir, the defendant and rest of the defendants, order dated 27.10.2020, copy of the order of the appellate Court dated 06.04.2021, memorandum of C.R No.636-P/2021, order dated 29.05.2023 and order of the learned Family Court-II, Peshawar dated 30.05.2023. Not only the documents annexed with the instant C.M are attested copies from judicial record but same are also pertaining to a suit, which is pending adjudication before the Civil Court in respect of the same property, thus, in view of the above in juxtaposition with the affidavit of the deponent, this application is allowed and the documents annexed therewith are hereby considered as part and parcel of the instant C.O.C application.

6.            Certain facts are admitted by both the parties i.e., the petitioner and respondent No.2, pertaining to filing of Complaint No.10 of 2017 by respondent No.2 against the present petitioner and others, wherein after completion of trial, except Soorat Shah and the present petitioners, all other accused were acquitted of the charges whereas, the present petitioner and Soorat Shah were convicted and sentenced as mentioned above. It is also admitted that after filing of Cr. A No.911-P/2018, same came up for hearing

before this Court in presence of the respondent No.2 and appeal of the petitioner and Soorat Shah was allowed, consequently, the judgment of the learned trial Court was set aside and they both were acquitted of the charges and the order, vide which, the possession of the house was taken from the petitioner during pendency of complaint was also set aside. It is also not disputed that earlier the present petitioner approached to this Court through W.P No.1319-P/2020 with C.M No.210-P/2021 for an appropriate order directing the respondent No.2 for returning/handing over the possession of the house to him, which was heard by this Court on 02.11.2022 and was disposed of in the following terms:

**“After hearing the learned counsel for the petitioner at some length, he requested for withdrawal of the instant Writ Petition in order to file C.O.C for the implementation of the judgment rendered by this court in Criminal Appeal No.911-P/2018. Order accordingly. The petitioner is at liberty to file proper petition before the competent forum.”**

Apart from the above, scrutiny of record reveals that on 20.12.2019, Cr. A No.211-P/2018 was allowed, wherein this Court has observed the factual aspect in its Para No.8, which reads as under:

**“8. The revenue record produced in evidence might establish the joint ownership of complainant/respondent but it could not be considered in isolation to prove the factum of his illegal dispossession from the suit property. At best, his**

contentions could be considered in proceedings before the civil Court because his ownership is not disputed and when an illegal dispossession is alleged, then commission of offence has to be proved through unimpeachable evidence that rings true and sufficient to award any sentence to the accused. In a case of mere allegation of illegal dispossession notwithstanding that the accused is land-grabber or not, it must be inevitably proved that the complainant was in possession at such and such time and dispossessed at such and such time. So, the learned trial Court while convicting the accused appellant on the basis of evidence available on record has failed to appreciate the evidence in its true perspective.”

7. In order to seek the proper redressal, respondent No.2 filed civil suit on 20.01.2020 whereas, the judgment in the *ibid* criminal appeal was passed by this Court on 20.12.2019 i.e., within a period of one month, wherein he has sought a declaration to the effect that he is the owner in possession of considerable portion of property bearing  *khasra Nos.1531, 1534, 1536, 1533, 1532 & 1530*  measuring 19-kanal and 01-marla, with which, the defendants including the present petitioner have got no concern or interest, as they are not owners of the property, therefore, their assertion of their ownership or interference in his possession is ineffective upon his rights. It was alleged that he was dispossessed by the defendants, however, possession was restored to him on 18.07.2018, regarding which, a compliance report was submitted by the SHO. It was also alleged that from the other owners he has also purchased the property vide

mutation No.2753 whereas, the present petitioner alongwith others defendants have got no possessory or proprietary rights in respect of the property. This suit was resisted by the defendants through their written statement filed on 16.6.2020. They have averred in Para No.2 of the factual objection of the written statement that their possession is at the instance of Gul Wazir and during pending adjudication of the suit, Gul Wazir has been impleaded as defendant No.4 in the suit on 13.07.2020, who has also resisted the suit through his separate written statement on different legal and factual objections. In view of the submissions of learned counsel for the petitioner that he does not intend to prosecute respondent No.2 under the provisions of the Contempt of Court Ordinance rather would be satisfied if the possession is returned to him on the directions contained in the judgment of this Court dated 20.12.2019, the present application is an application for implementation or execution of the judgment of this Court. He contended that the petitioner was tenant at will but his landlord was Gul Wazir. The significant aspect for disposal of the instant petition is that the instant C.O.C was filed on 07.02.2023 for specific order in terms of the judgment of this Court in Cr. A No.911-P/2018 dated 20.12.2019. It appears from the record that earlier he has filed a W.P No.1319-P/2021



before this Court, which was dismissed as withdrawn on 02.11.2022 whereas during the contest before the Civil Court an application for grant of temporary injunction was also moved, with the prayer that the defendants may be restrained from interference in the disputed property, alteration thereof and alienation of the same through any means. This application was heard by the Civil Court on 27.10.2020 and was allowed by confirming the order of ad-interim status quo for a period of six months. The said order was also repeated against Gul Wazir on 13.07.2020 after his impleadment in the suit. The order of the Civil Court was assailed before the Court of appeal by Gul Wazir etc., however, same was dismissed on 06.04.2021 and the order of the trial Court dated 27.10.2020 was upheld. Then the petitioner alongwith Gul Wazir, Soorat Shah and Wilayat Shah approached to this Court through C.R No.636-P/2021 but same too was dismissed being infructuous on 29.05.2023. No doubt, this Court has allowed Cr. A No.911-P/2018 of the petitioner on 20.12.2019 and has set aside the order of the trial Court and it is also reflected from the record that even the interim order passed u/s 7 of the Act of 2005 for recovery of possession in favour of complainant/respondent No.2 was also set aside but the intricate question of law and facts was the observation of this Court regarding

the remedy for respondent No.2/ complainant qua determination of his proprietorship against the petitioner and others in juxtaposition with the version of the petitioner that he was tenant at will of Gul Wazir. There is a question mark in view of the stance of petitioner alleging himself to the tenant at will of Gul Wazir on the date, on which, the possession was taken from him. The suit has also been resisted by Gul Wazir, after his impleadment as defendant. The petitioner has nothing to do with the proprietorship and if he is not the owner of the property then determination of the rights of Gul Wazir shall be determined by the civil Court after conclusion of the trial. Undeniably, the contention of the petitioner that when the interim order passed by the learned trial Court during pending adjudication of the complaint against the petitioner has been set aside by this Court, he was entitled for restoration of possession but with the able assistance of learned counsel for the parties, I have gone through from the judgment of this Court in the referred to above Cr. A No.911-P/2018, where no such specific order was made except the observation that the parties may get resolve their issue pertaining to the determination of their rights from the Court of competent jurisdiction. This was the reason, which constrained the petitioner to file a writ petition before this

Court for an appropriate order but same was dismissed as withdrawn later on. In such an eventuality, the contention of the petitioner to the extent of restoration of possession could be considered at the earliest i.e., just after decision of the appeal before filing of any suit before civil Court or decision thereon but earlier he has filed the writ petition before this Court which was dismissed as withdrawn and subsequently the instant C.O.C was filed but the bulky record reveals that prior to that, suit of respondent No.2 had not only been instituted before the Civil Court but certain findings were also rendered which even came up before this Court through the earlier civil revision filed by the petitioner and others, however, same was dismissed being infructuous.

**8.** Keeping in view the prayer of the petitioner through instant petition, whereby he has confined himself to the extent of restoration of possession without any interest in conviction of respondent No.2 who is living abroad in Italy in juxtaposition with the facts (i) the status of the petitioner, which as per his narration, is to be tenant of Gul Wazir; (ii) the finding of this Court in the criminal appeal ibid for proper redressal from the Civil Court; (iii) filing of a civil suit u/s 42 of the Specific Relief Act, 1877, pending adjudication thereof before the civil Court; and (iv) impleadment of Gul Wazir therein and confirmation of

*the status quo order in favour of the plaintiff/ respondent, dismissal of the appeal of petitioner from appellate Court and revision from this Court,* are the points, which lead me to the conclusion that the petitioner, whose status was nothing more than that of the alleged tenant of Gul Wazir, shall be resolved by the Civil Court where the matter is still pending adjudication because the restoration of the possession to petitioner and dismissal of his suit from the civil Court will provide no justification of possession of the petitioner and in such an eventuality, his possession would be unjustified, unwarranted and nothing but as that of a trespasser. Insofar as the contention of the learned counsel for the petitioner that if the possession of the house is not restored to the petitioner the judgement of this would be rendered nullity in law is concerned, no doubt that the order of handing over the possession to respondent No.2 has been set aside but since the Civil Court was seized with the matter of title, possession, and the status of present petitioner then the matter requires to be finally decided by the Court of competent jurisdiction as this Court has recorded no findings pertaining to the entitlement of possession, title or the status of the possession of the petitioner, thus, the findings of civil Court will have

primacy over the findings of criminal Court, which could only decide the afore mentioned questions.

9. In the above state of affairs, any order for restoration of possession in view of the judgment of this Court, though without any specific order for restoration, would further amalgamate the controversy, which is still pending adjudication and would complicate the matter. In such circumstances, when the petitioner and respondent No.2 are the parties before the Civil Court in the pending suit, then appropriate mode for decision of the instant petition would be in terms of the directions to the learned Civil Court to decide the fate of the suit of respondent No.2, which was filed in the year 2020, wherein Gul Wazir has also been impleaded as party and written statements of all the concerned have been filed, to decide the main suit within a period of six months, if not earlier.

10. With above observations, this petition is disposed of accordingly.

**Announced**  
**11.07.2023**

  
**JUDGE**