JUDGMENT SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD

W.P. NO. 3890 OF 2020

AZHAR MEHMOOD

VS

TARIQ MASOOD AND OTHERS

Petitioner by : Mr. Muhammad Safeer Khadim, Advocate.

Respondents by : Ch. Waqas Zamir, Advocate for respondents No.1 to 43.
Mr. Tasawar Iqbal, State Counsel for Respondents No.44 to 47.

Date of hearing : 13.06.2025

MUHAMMAD AZAM KHAN, J.

1. Through the instant Writ Petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 (hereinafter referred to as the **"Constitution"**), Azhar Mehmood **("Petitioner")** has challenged the Order dated 09.03.2020 ("**Impugned Order I**") passed by the Assistant Commissioner/Executive Magistrate, P.S. Sihala, Islamabad (Respondent No.44), whereby the Application under Section 133 of the Code of Criminal Procedure, 1898 ("**Cr.P.C.**") filed by Respondents No.1 to 43 was accepted and directions were issued to the Magistrate (Revenue Officer), S.H.O. Police Station Sihala, and the Halqa Patwari to visit the site, ensure removal of encroachments/obstructions from the path, and submit a compliance report in Court. The Petitioner has also challenged the Order dated 05.12.2020 ("**Impugned Order II**") passed by the learned Additional Sessions Judge, Islamabad-East (Respondent No.45), whereby the Petitioner's Revision Petition filed against Impugned Order I has been dismissed. The Petitioner further seeks direction to Respondent No.44 to decide afresh the Application under Section 133 Cr.P.C. filed by Respondents No.1 to 43, after affording an opportunity of hearing to the Petitioner.

2. The brief facts of the case, as per the memo of Petition, are that the Petitioner is the sole and lawful owner in possession of 24 Kanals and 6 Marlas of land in Village Rawat, Islamabad, secured by a frontal boundary wall. Respondent No.1 filed an application under Section 133 Cr.P.C. before Respondent No.44 on 31.01.2020,

alleging obstruction of a public path. Subsequently, Respondent No.1 filed Writ Petition No.748/2020 on 05.03.2020 against the Petitioner and Respondents No.44, 46, and 47. This Court, vide order dated 05.03.2020, issued notices to Respondents and directed Respondent No.44 to appear on 09.03.2020; however, no notice was served upon the Petitioner. On 09.03.2020, Respondent No.44 appeared and stated the matter would be decided in accordance with law, upon which the writ petition was disposed of. The Petitioner, unaware of the proceedings, came to know about the adverse order when Respondent No.46 visited the property for its implementation. Aggrieved, the Petitioner filed a Criminal Revision on 16.03.2020 before Respondent No.45, challenging the order dated 09.03.2020 on grounds including denial of notice and hearing. Respondent No.45 initially suspended the Impugned Order and issued notices, but eventually dismissed the revision on 05.12.2020, holding that the original order was lawful. Feeling aggrieved by Impugned Order I and II, the Petitioner has filed the instant petition.

3. The learned counsel for the Petitioner contends that the Impugned Orders are contrary to law and facts. The Petitioner, though arrayed as Respondent No.4 in Writ Petition No.748/2020, was never served notice pursuant to this Court's order dated 05.03.2020. On 09.03.2020, Respondent No.44 assured this Court that the application under Section 133 Cr.P.C. would be decided in accordance with law, yet on the same day, without issuing notice or affording a hearing to the Petitioner, passed the Impugned Order I in violation of Sections 133, 134, 136, and 137 Cr.P.C. It is argued that the notice was never served upon the Petitioner, and it only came to his knowledge upon its attempted implementation by Respondent No.46. The Petitioner then filed a Criminal Revision, which was initially entertained and the order suspended, but later dismissed on 05.12.2020 without due consideration of the Petitioner's grounds. The revision order is claimed to be perverse and lacking judicial application of mind. The learned counsel further contends that affidavits filed by Respondent No.1 were later denied by their executants, and contradictory material on record demonstrates that the matter is private, not public, thus requiring full adjudication on merits. It is urged that the principles of natural justice were violated, particularly the right to be heard, and that the conduct of Respondent No.44 is contrary to his own undertaking, which demonstrates arbitrary and prejudicial action. The application under Section 133 Cr.P.C. is described as a retaliatory move to pressurize the Petitioner, who had filed complaints against Respondent No.1's illegal activities. Without an opportunity to be heard, the Petitioner stands to suffer irreparable harm and deprivation of property.

4. The learned counsel for the Respondents defended the Impugned Orders, submitting that due process was followed, that the Petitioner has failed to demonstrate any substantial illegality or procedural irregularity, and that the matter was one affecting the public at large. The writ petition is misconceived and liable to be dismissed.

5. I have heard learned counsel for the parties and perused the available record.

6. The Respondents No. 1 to 43 filed application under Section 133 Cr.P.C**.** for the removal of the obstruction in the path constructed by the Petitioner, before the learned Assistant Commissioner, P.S. Sihala/Respondent No. 44. The private Respondents No. 1 to 43 allege in their petition that Petitioner has constructed a wall upon the 22 feet wide path which is leading towards the houses of Respondents No. 1 to 43**.** The Respondent No. 44 sought report from Halqa Patwari and vide order dated 09.02.2020 directed Magistrate Revenue and S.H.O. P.S. Sihala to remove the said wall and restore the path.

7. The report of Halqa Patwari dated 31.01.2020 reveals that according to "*akas shajra kistawar*" and Revenue record pertaining to year 1956-57, Khasra No.2166 is "*ghair mumkin rasta*", and along with this Khasra Number, attached Khasra Nos. 2088 to 2091, 2187 and 2188, are having a passage of 22 feet through it having length of approximately 800 feet. This passage is connected through Khasra No.2200 and along with the house of one Zafar Hanif in Khasra No.2186 having width of 22 feet whose length is approximately 400 feet which exist in Khasra Nos.2182, 2183, 2185 & 2227. A mutation No.13578 in Khasra No.2186 is entered by Tariq Masood to the tune of two marlas for the passage and that mutation was accepted on 31.07.2018. The report further reveals that there are approximately 50 number of houses constructed on the said passage and there is also a Mosque constructed along with graveyard and the said passage has been blocked towards East in Khasra No.2186 through temporary wall. The report of Halqa Patwari confirms that the passage has been temporarily blocked by erecting a wall on it towards the Eastern side of Khasra No.2186 and keeping reliance on the said report of Halqa Patwari, the learned Assistant Commissioner, P.S Sihala/Respondent No. 44 issued the Impugned Order dated 09.03.2020 to the Magistrate Revenue for its removal in order to restore the passage which leads towards the houses of the Respondents No. 1 to 43.

8. The learned counsel on behalf of the Petitioner contends that he has not been heard by the learned Assistant Commissioner, P.S. Sihala/Respondent No. 44, as no

notice was issued to him while deciding the application of the Respondents No. 1 to 43**,** and prayed for sending the same for afresh decision. In this regard, the report of the Assistant Commissioner Rural ICT Islamabad dated 09.03.2020, addressed to the Deputy Registrar Judicial of this Court, which is placed on file, reveals that a notice was issued to the Petitioner under Section 133 Cr.P.C, thus the report shows that a notice was issued to the Petitioner by the learned Assistant Commissioner. Moreover, the report of the Halqa Patwari is very much clear that the passage towards the Eastern side in Khasra No.2186 has been blocked by erecting a temporary wall, which leads towards the houses of the Respondents No. 1 to 43, establishing that the said passage has been blocked. The learned Assistant Commissioner, P.S. Sihala/Respondent No. 44 has rightly ordered that the blockage be removed in order to restore the passage leading towards the houses of the Respondents No. 1 to 43. Furthermore, the learned counsel on behalf of the Petitioner has failed to point out any illegality or irregularity in the Impugned Order passed by the learned Additional Sessions Judge, vide which his Criminal Revision was dismissed.

9. For what has been discussed above, the instant Writ Petition being devoid of any merit is **dismissed**.

(MUHAMMAD AZAM KHAN)
JUDGE

Announced in the open Court on this _____day of June 2025.

JUDGE

//Sajid//*