

HIGH COURT OF SINDH CIRCUIT COURT, HYDERABAD

C.P. No.D-1980 of 2023

[Syed Sher Muhammad Shah vs. Karam Ali Shah and Others]

BEFORE:

JUSTICE ADNAN-UL-KARIM MEMON
JUSTICE RIAZAT ALI SAHAR

Mr. Imdad Ali Unar, advocate for the petitioner.

Mr. Sajid Ali Gorar, advocate for respondent No.1

Mr. Rafique Ahmed Dahri, Assistant A.G. Sindh

Date of hearing & decision: 27.11.2025

ORDER

ADNAN-UL-KARIM MEMON J.- Through this petition, the petitioner has prayed as under:

- a) *To hold and declare that the filing suit by respondent No.1 having locus standi and entertaining such suit by the Anti Encroachment Tribunal under Anti Encroachment Removal of property Act 2010 as a probono is without lawful authority, corum non judice and further the Anti Encroachment has no authority to remove the Mutawwali from dargah, thus the entire proceedings conducted by the learned tribunal is without lawful authority and the impugned Judgment in consequent thereupon is void-ab-initio is liable to be struck down.*
- b) *To hold and declare that taking cognizance and removal of encroachment are powers by virtue of section 3(1) of the Sindh Public Property (Removal of Encroachment) Act 2010 is exclusive power of the government, nor any private person.*
- c) *That the respondent No.1 should pay cost of the suit to petition.*
- d) *Any other orders as this Honourable Court deems fit and proper in the arisen circumstances of the case.*

2. Brief facts of the case are that Respondent No.1 instituted Suit No.70 of 2022, *Re-Karam Ali Shah v. Province of Sindh & Others*, before the Anti-Encroachment Tribunal, Hyderabad, alleging that plot measuring approximately 4,037 sq. yards, bearing City Survey No. 860/61, situated in Deh Kasero, Mehar Town, District Dadu, reserved as a graveyard namely *Syed Bachal Shah Mukam* (the “Subject Property”), had illegally been occupied by the present petitioner. Respondent No.1 claimed that the petitioner had raised various structures,

including a house and cattle/dairy farm, over the graveyard, allegedly demolishing around 200 graves which caused grave hardship to the surrounding communities; that influential persons were supporting the petitioner and that the official respondents had also failed to take action despite prior directions of this Court regarding protection and demarcation of graveyard. After several applications to the authorities yielded no action, Respondent No.1 filed suit under the Sindh Public Property (Removal of Encroachment) Act, 2010, seeking removal of the alleged encroachment, restraining the petitioner from further disturbance of the graveyard, and directing demarcation and construction of boundary walls. The Tribunal framed issues relating to maintainability, the nature of land as public property, and whether encroachment existed. Upon recording evidence from both sides, the Tribunal passed the impugned order dated 30.11.2023, directing the removal of alleged encroachment. The petitioner now challenges this order through the present Constitutional Petition under Article 199 of the Constitution, asserting that the Tribunal acted without the lawful jurisdiction.

3. Learned counsel appearing for the petitioner contended that the entire suit proceedings were without jurisdiction, null, void *ab initio* and coram non iudice; that the Tribunal failed to appreciate that the subject property does not fall within the definition of public property; that the suit before the Tribunal was neither a pro bono action nor a matter of public interest litigation, and a private person, therefore, had no locus standi to institute such a suit. The learned Tribunal, however, overlooked this aspect; that Section 3(1) of the Sindh Public Property (Removal of Encroachment) Act, 2010, clearly lays down the procedure for removal of encroachments, which is further elaborated under Sections 2 to 8 of the Act; that while rendering findings on Issue No.4 at paragraph 3 of the impugned order, the Tribunal exceeded its jurisdiction by directing Deputy Commissioner to take possession of Dargah Syed Bachal Shah; that the petitioner holds a registered entry in his favour, formed through a valid gift, which is protected under Sections 42 and 52 of the Land Revenue Act, 1967; that Articles 23 and 24 of the Constitution also safeguard the lawful rights of the Petitioner. Therefore, the impugned order, being without jurisdiction is liable to be set aside.

4. Learned counsel for private respondent contended that the Anti-Encroachment Tribunal possesses the jurisdiction of Civil Court to examine and adjudicate the title of an individual; that the petitioner failed to establish his title before the Tribunal; that the Sindh Public Property (Removal of Encroachment) Act, 2010, does not preclude a private person from seeking removal of encroachments on public property. Therefore, the impugned order being well-reasoned, does not warrant any interference by this Court. He prayed for dismissal of the petition.

5. Learned AAG supported the impugned Order and prayed for dismissal of this petition.

6. We have heard learned counsel for the parties and perused the material available on record.

7. On Issue Nos. 1 and 2, the Tribunal found that the petitioner/plaintiff had submitted applications and evidence, including Rubkari and maps from City Surveyor, establishing that City Survey Nos. 860 (205-3 sq-yards) and 861 (4037 sq-yards), Ward-B, Mehar, are government property reserved for graveyard (Qabristan/Mukam). The respondent/defendant's attorney had also filed complaints regarding encroachments. The Tribunal noted that its jurisdiction under Sections 12 to 14 of the Sindh Public Property (Removal of Encroachment) Act, 2010, is limited to determine whether the property is public or whether a lease/licence has been validly determined. It further clarified that civil courts are barred from interfering in the matters concerning public property under Sections 11 and 13, and the Tribunal's jurisdiction is exclusively confined to a questions of public property and lease/licence determination. On Issue No.3, the evidence showed that both the Plaintiff and Defendant No.9 had encroached upon the graveyard land. The City Surveyor confirmed that portions of the graveyard were in the physical possession of Defendant No.9 (house and tomb construction) and portions under the control of plaintiff (Mutawali). The Tribunal held that any entries filed by Defendant No.9 claiming ownership had no legal effect, as the land is reserved for graveyard. The Tribunal ultimately held that the lands in City Survey Nos. 860 and 861 are public property reserved for a graveyard, and both parties had unlawfully occupied it. While the Tribunal cannot adjudicate broader civil disputes, it may issue directions to protect public property. Emphasizing that public property cannot be converted into private use, the Tribunal directed the parties to demolish and remove all unauthorized structures within 60 days. If they fail, the Assistant Commissioner, Mehar, will effect removal and recover associated costs. The Deputy Commissioner, Dadu, was directed to assume control and management of Dargah Syed Bachal Shah, with Police and Anti-Encroachment Force aid. Proceedings were also directed to be initiated for the recovery of government dues as rent from those illegally occupying the property.

8. The Act, 2010, establishes a special regime for the removal of encroachments on "public property" and vests exclusive jurisdiction in the Tribunal. Under Sections 11, 13 and 14, the Tribunal alone can adjudicate whether a property is public and exercise powers equivalent to Civil Court, including examining title, summoning parties and compelling documents. The petitioner's contention that a private person lacks locus standi or that the suit must be a public interest litigation is not supported by the Act, which allows any person

to challenge encroachment on public property. If the property qualifies as public property, encroachments may be challenged, and rights restored.

9. The petitioner's claim of a valid entry by gift, protected under Land Revenue Laws and Articles 23/24 of the Constitution. Since the tribunal only ordered the removal of encroachment on public property, as such, no prejudice shall be caused to the petitioner as his purported proprietary rights, if any, can be examined by the competent revenue forum in accordance with law if the petitioner approaches the Mukhtiakar concerned and settlement and survey records department for proper demarcation. Alleged excess of jurisdiction by directing Deputy Commissioner to take possession is only challengeable if outside powers are conferred under the Act, which provides mechanism for recovery of possession of the public property. Courts have consistently held that the Anti-Encroachment Tribunal, once properly constituted and seized of a matter, may determine disputes regarding encroachment. The Act was designed as a complete code to avoid multiplicity of litigation and ensure speedy adjudication on the subject issue. Therefore, challenges based on locus standi or the nature of litigation are generally untenable.

10. Prima facie, the Tribunal rightly entertained the suit under the Act, 2010, which vests it with exclusive jurisdiction. The petitioner's claims of lack of jurisdiction, coram non judice, or lack of locus standi are without merit, as the Act allows any person to challenge encroachments on public property. The direction to the Deputy Commissioner for taking possession of public property falls within the Act's execution mechanism, subject to all just exceptions as provided under the law.

11. In the absence of any manifest violation of procedure or denial of fair hearing, the impugned order does not warrant interference. The petition is dismissed, and the Tribunal's order dated 30.11.2023 in Suit No. 70 of 2022 stands affirmed.

JUDGE

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