

HIGH COURT OF SINDH CIRCUIT COURT, HYDERABAD

C.P No.D-3422 of 2022

[Riaz Hussain Shaikh vs. Province of Sindh and Others]

C.P No.D-689 of 2023

[Aijaz Hussain Shaikh vs. The Learned Anti-Encroachment Tribunal Hyderabad and Others]

BEFORE:

JUSTICE ADNAN-UL-KARIM MEMON

JUSTICE RIAZAT ALI SAHAR

None present for the petitioner in C.P. No.D-3422 of 2022

Mr. Irfan Ahmed Qureshi, advocate for the petitioner in C.P. No.D-689 of 2023

None present for the private respondent in C.P. No.D-689 of 2023

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

Date of hearing & decision: 27.11.2025

ORDER

ADNAN-UL-KARIM MEMON J . - Both petitions pertain to the same property, namely Plot No.5, located in Waqar Town, Qasimabad Phase-II, Hyderabad (hereinafter referred to as the subject property); therefore, they are being decided through this single order.

2. Constitutional Petition No. D- 3422 of 2022 was filed by Riaz Hussain Shaikh seeking demarcation of subject property on the ground that the property is owned by his brother, Aijaz Hussain Shaikh, who resides abroad and had authorized him to manage the property. However, the property has allegedly been encroached upon, and the official respondents have reportedly been unwilling to carry out the demarcation. The connected CP No. D- 689 of 2023 has been filed by Aijaz Hussain Shaikh himself, contending that his brother, Riaz Hussain Shaikh, instituted Suit No. 25 of 2022 before the Anti-Encroachment Tribunal Hyderabad against the encroachers, and that the Tribunal passed certain orders; however, according to the counsel, this understanding is a misconception.

3. No one is present on behalf of the petitioner in C.P. No. D-3422 of 2022. However, Mr. Irfan Ahmed Qureshi, Advocate, submits that the connected CP No. D- 689 of 2023, has been filed by the owner himself in respect of the subject property, and he seeks to argue both petitions. Mr. Qureshi further submits that both the petitions involve the same issue of demarcation; that earlier CP. No. D- 3422 of 2022, was filed for demarcation of the subject property, and during its pendency, Suit No. 25 of 2022 was instituted before the Anti-Encroachment Tribunal. Although the Tribunal passed an order, but it was without conducting

Site Inspection or Demarcation, resulting, according to counsel, in a misconception. The report submitted by the Mukhtiarkar before the Tribunal specifically noted encroachments by respondent No.9 and others on the subject property as well as on amenity plots; however, no demarcation was carried out. Instead, the Tribunal observed that the petitioner had constructed shops on public street. Mr. Qureshi submits that, in the interest of fairness, the order passed by the Tribunal may be set aside, and directions may be issued to the official respondents to carry out demarcation at the site in accordance with law, so that the true facts may be ascertained. He prayed to allow the petitions.

4. No one is present on behalf of the private respondent. Learned A.A.G, however, submits that carrying out demarcation of the site in accordance with law would not cause any prejudice to any party; rather, it would help to ascertain the truth and place the actual position on record. Accordingly, he has no objection if these petitions are disposed of with directions to the official respondents to carry out demarcation of the site and act in accordance with law.

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

6. Both petitions concern Plot No.5, Waqar Town, Qasimabad Phase-II, Hyderabad (the “subject property”). CP. No. D-3 422 of 2022, filed by Riaz Hussain Shaikh, seeks demarcation on behalf of his brother, Aijaz Hussain Shaikh, alleging encroachments and inaction by official respondents. The connected CP. No. D-689 of 2023, filed by Aijaz Hussain Shaikh, contends that the Anti-Encroachment Tribunal’s orders in Suit No. 25 of 2022 are based upon misconception, as no site inspection or demarcation was conducted. Both petitions raise identical issues of ownership, encroachment, and demarcation. The Tribunal’s order, issued without demarcation, is thus unreliable. The Mukhtiarkar Report confirms encroachments, but boundaries remain unverified. Since demarcation is a statutory function of revenue authorities and learned A.A.G has no objection, therefore, it will be in the interest of justice that proper demarcation be carried out.

7. Accordingly, the order passed by the Anti-Encroachment Tribunal Hyderabad in Suit No. 25 of 2022 is suspended insofar as it relates to the subject property. The official respondents, including the Mukhtiarkar and Survey/Land Record authorities Hyderabad, are directed to carry out full demarcation and survey of Plot No.5, Waqar Town, Qasimabad Phase-II, Hyderabad, after payment of usual fees, within 30 days, including verification of ownership documents, boundary marking, mapping of encroachments, if any, and submission of detailed report with maps/field notes to the trial Court. Upon completion, parties may file objections, and thereafter, ownership, possession, and relief (including removal of

encroachments or regularization) shall be determined based on the demarcation report. Interim status quo regarding construction, occupation, or encroachments shall be maintained by the Tribunal in accordance with law within a reasonable time.

8. Both petitions are disposed of in the above terms. A compliance report regarding demarcation shall be filed within 30 days before the trial court.

JUDGE

JUDGE

Karar_Hussain/PS*