

# HIGH COURT OF SINDH, CIRCUIT COURT, MIRPURKHAS

**Before:**

**Justice Arbab Ali Hakro**

**Justice Muhammad Jaffer Raza**

**C.P No.D-68 of 2025**

*[Dhani Bux Charo v. Province of Sindh and 04 others]*

Petitioner by : Mr.Mir Muhammad Nohri, Advocate

Respondents by : Mr.Ayaz Ali Rajper, Assistant Advocate General Sindh a/w Muhammad Salik, AEN Education Works, Mithi and Sajid Ali Rao, Focal Person, Education Department

Interveners by : Mr.Zulfiqar Ali Laghari, Advocate

Dates of Hearing : **08.04.2026**

Date of Decision : **08.04.2026**

## **ORDER**

**ARBAB ALI HAKRO J:-** The petitioner, a resident of Village Warihyar, Taluka Diplo, has invoked the constitutional jurisdiction of this Court under Article 199 of the Constitution, asserting that the students of Government Boys Primary School Vavriyar Chara (SEMIS Code 406020409) are presently being taught in a *Chonra* structure, which is congested, weather-exposed and lacking basic facilities. He seeks the implementation of the order dated 04.12.2024 issued by the District Education Officer (Primary), Tharparkar @ Mithi, whereby permission was granted to shift the school back to its originally constructed building.

2. The petitioner maintains that on 06.11.2024, he submitted an application to the District Education Officer (Primary), which was forwarded to the Taluka Education Officer (Primary), Male, Diplo. The TEO conducted a site inspection and issued a justification report dated 28.11.2024, recording

that the original school building was in good condition, having intact veranda, doors, windows and blackboards, whereas the *Chonra* was structurally inadequate and unsuitable for teaching. The TEO recommended restoration of the school to its original building. Acting upon the said recommendation, the District Education Officer (Primary) issued order No. 979, dated 04.12.2024, granting permission to shift the school to the original building in the best interests of the students in this backward area. However, on 26.12.2024, the DEO withdrew the said order, citing that certain villagers had produced orders passed by this Court in C.P. No. S-237 of 2004, wherein a referendum had been held in 2004 regarding the location of the school.

3. The petitioner asserts that approximately 150 students are presently studying in the *Chonra*, which is cramped, without ventilation and unsafe during extreme weather. He claimed that the original building is structurally sound, vacant, and suitable for immediate use, and that the withdrawal of the order dated 04.12.2024 is arbitrary and detrimental to the welfare of the students.

4. During the pendency of the petition, an application under Order I Rule 10 C.P.C. was filed by a group of villagers seeking impleadment as respondents. In the supporting affidavit, the interveners contend that the *Chonra* is more convenient for the children, that the constructed building is allegedly far from the village and partially damaged and that shifting the school would cause hardship. They rely on the 2004 referendum, in which 83 votes were cast in favour of continuing the school at *Chonra* and 58 in favour of the building. They assert that they are necessary and proper parties, as any order passed in their absence would be ineffective.

5. The respondents No.4 and 5, have filed a joint statement stating there that an application dated 06.11.2024 was received from the petitioner and

another villager seeking shifting of GBPS Vavriyar Chara from the *Chonra* to the original school building, whereupon the matter was referred to the Taluka Education Officer, who, after inspection submitted a justification report on 28.11.2024 recommending restoration of the school to the original premises; acting on this, the District Education Officer issued order dated 04.12.2024 permitting the shift, but subsequently, upon receiving a complaint from the school teacher that certain villagers were obstructing the move and had produced orders of this Court passed in C.P. No.237 of 2004, the DEO withdrew the earlier permission through order dated 26.12.2024, asserting that the withdrawal was made only to avoid conflict with prior judicial directions and that the department awaits guidance of this Court for a lawful resolution.

6. Separately, the Assistant Engineer, Education Works Sub-Division, Diplo, submitted a structural assessment dated 09.03.2025, confirming that upon inspection conducted on 28.02.2025, the original school building was found to be in satisfactory condition, with no critical defects or immediate repair requirements.

7. On 11.02.2026, this Court directed the District & Sessions Judge, Tharparkar @ Mithi, to nominate a Magistrate to conduct an independent factual assessment of both the *Chonra* and the original school building. In compliance, the Civil Judge & Judicial Magistrate, Diplo, submitted a detailed report dated 18.02.2026. The Magistrate reported that during the visit, 26 students were present at *Chonra*, whereas 45 students were enrolled in the attendance register. The *Chonra* was found to be congested, without windows, and with a hedge-based roof without protective covering, posing a risk of seepage during rains. In contrast, the constructed building comprises two rooms with windows and a corridor, shows no signs of seepage, and has a greater capacity to accommodate students. The distance between the

*Chonra* and the constructed building was approximately 100 feet, both situated within the same village. The Magistrate further recorded that the school was originally established in 1983 in the constructed building, but was shifted to the *Chonra* in 2004 pursuant to orders passed in C.P. No. S-237 of 2004. The school remained closed for several years after the previous teacher's retirement and reopened in 2023. The new building, constructed in 2004–2005, was found to be in good condition, though lacking a bathroom. The SMC funds had remained unutilised due to disputes among villagers. The Magistrate noted that the village comprises approximately 100–200 houses, predominantly of the Charo community, which is internally divided. Some villagers supported shifting the school to the constructed building, while others insisted on continuing in the *Chonra*. The report concludes that both sides are entrenched in positions and that the dispute is rooted in longstanding local divisions.

8. Learned counsel for the petitioner contends that the students of GBPS Vavriyar Chara are presently compelled to study in a *Chonra* structure which is cramped, unsafe and wholly unsuitable for academic activity, whereas the original school building is structurally sound, repaired and capable of accommodating the enrolled strength. He submits that the Taluka Education Officer, after a detailed inspection, categorically recommended shifting the school to the original premises, and the District Education Officer accordingly issued an order dated 04.12.2024, which was subsequently withdrawn without lawful justification. Counsel argues that the withdrawal was premised on a misconceived reliance upon orders passed in C.P. No.237 of 2004, which, according to him, were context-specific and cannot override present-day factual realities, particularly when the Magistrate's report and the Engineering assessment now confirm the suitability of the constructed building. He maintains that the continued functioning of the school in the

*Chonra* violates the fundamental rights of the students guaranteed under the Constitution and

prays that the earlier permission be restored and the respondents be directed to shift the school forthwith.

9. Learned counsel representing the interveners submits that the *Chonra* has been used as the functional site of the school for many years pursuant to the referendum conducted under orders of this Court in 2004, wherein the majority of villagers expressed preference for the present location. He argues that the constructed building is allegedly located at a distance, inconvenient for younger children, and, according to the interveners, not entirely safe. Counsel contends that the interveners are necessary parties because any order affecting the school's location directly affects the community. He asserts that the petitioner has approached the Court with selective facts and that shifting the school would disrupt the settled arrangement and cause hardship to the children whose parents prefer the existing location. He therefore prays for dismissal of the petition.

10. Learned Assistant Advocate General Sindh, appearing for the official respondents, submits that the Education Department initially acted upon the TEO's recommendation and permitted the shifting of the school; however, upon resistance from certain villagers and production of earlier orders passed in C.P. No.237 of 2004, the District Education Officer withdrew the permission to avoid any perceived conflict with judicial directives. He states that the department has no vested interest in either location and seeks only to ensure continuity of education without disturbance. He further submits that, in compliance with this Court's order dated 11.02.2026, an independent factual assessment has now been conducted by the Civil Judge & Judicial Magistrate, Diplo, and the Engineering Wing has also furnished its structural

report. He leaves the matter to the wisdom of the Court to pass appropriate orders in light of the verified factual position and the welfare of the students.

11. Heard. Record perused.

12. The record reflects that the petitioner approached the Education Department on 06.11.2024 seeking restoration of GBPS Vavriyar Chara to its original constructed building. The matter was duly examined by the Taluka Education Officer, who, after a site inspection, issued a justification report dated 28.11.2024, confirming that the original building was structurally sound, intact, and suitable for academic use, whereas the *Chonra* was cramped, lacked ventilation, and was devoid of basic facilities. Upon this verified assessment, the District Education Officer issued an order dated 04.12.2024 permitting the school to be shifted to its original premises.

13. The subsequent withdrawal of the said order on 26.12.2024 was admittedly not based on any fresh technical evaluation, nor on any emergent safety concern, but solely on the ground that certain villagers produced before the Department copies of orders passed in C.P. No.237 of 2004. The reliance placed upon the 2004 proceedings appears misplaced. The 2004 referendum was a fact-finding exercise conducted in the peculiar circumstances prevailing at the time, when the building was alleged to be unsafe, and the village community was divided. The said proceedings did not constitute a perpetual restraint against the use of the constructed building, nor did they foreclose future administrative decisions based on subsequent developments, including repairs, reconstruction or changes in ground realities.

14. In the present case, the independent factual assessment ordered by this Court on 11.02.2026 has now placed the matter beyond controversy.

The Civil Judge & Judicial Magistrate, Diplo, has categorically recorded in his report dated 18.02.2026 that the *Chonra* is congested, without windows, and covered with a hedge-based roofing prone to seepage, posing a safety risk to students. Conversely, the constructed building comprises two rooms with windows and

a corridor, shows no signs of seepage and has a greater capacity to accommodate students. The distance between the *Chonra* and the constructed building is approximately one hundred feet, both situated within the same village. These findings are further corroborated by the Engineering Wing, whose report dated 09.03.2025 confirms that the building is in satisfactory condition and requires no immediate repairs.

15. The interveners' contention that the building is "far away" or "damaged" stands contradicted by the Magistrate's inspection, the Engineering report and even the TEO's own justification. The argument that the 2004 referendum binds the present situation is equally untenable, as administrative decisions concerning public education must be guided by current factual conditions and the welfare of students, not by historical disputes or factional divisions within the village.

16. The constitutional obligation of the State under Article 25-A to provide education in a safe, dignified and conducive environment cannot be diluted by local disagreements. The continued functioning of a government school in a structure admittedly lacking ventilation, space and weather protection offends the dignity and safety of the children and undermines their fundamental rights under Articles 9 and 14 of the Constitution. Once the competent authorities themselves have verified that the constructed building is suitable and the *Chonra* is inadequate, the withdrawal of the earlier permission cannot be sustained.

17. We are, therefore, satisfied that the petitioner's grievance is well-founded, that the administrative withdrawal dated 26.12.2024 was not based on objective considerations and that the welfare of the students unequivocally requires restoration of the school to the original building.

18. Before parting with the matter, it is necessary to address the application filed by certain villagers under Order I Rule 10 C.P.C. seeking their

impleadment as respondents. The interveners assert that they are necessary and proper parties, as the dispute concerns the location of the school within their village, and that any order passed in their absence would not be effective. Their stance is essentially that the school should continue to function in *Chonra* and that the petitioner deliberately did not implead them.

19. The scope of Order I Rule 10 C.P.C. is well-settled. A party may be added only if its presence is necessary for the Court to effectively and completely adjudicate upon the questions involved in the *lis*. The present proceedings are like public interest litigation concerning the discharge of statutory duties by the Education Department and the constitutional rights of school-going children. The core issue before this Court is whether the administrative withdrawal of the order dated 04.12.2024 was lawful and whether the students' right to a safe and adequate educational environment is being violated. These questions are to be answered on the basis of official records, technical assessments, and constitutional obligations, not on private preferences or factional divisions within the village.

20. The interveners do not claim any legal right in the school building, nor do they assert any proprietary or statutory entitlement that would be affected by the adjudication. The presence of the interveners is therefore not necessary for the effective adjudication of the matter. At best, they are persons interested in the

outcome, but not persons whose absence would render the proceedings defective.

21. In these circumstances, the application under Order I Rule 10 C.P.C. does not meet the threshold of necessity or propriety required for impleadment. The Education Department, being the competent statutory authority, is already before the Court and fully capable of representing the public interest involved. Accordingly, the application under Order I Rule 10 C.P.C is **dismissed**, as the

proposed interveners are neither necessary nor proper parties for the adjudication of the present constitutional petition.

22. For the foregoing reasons, this petition is **allowed** in the following terms:

- i. The order dated 26.12.2024 issued by the District Education Officer (Primary), Tharparkar @ Mithi, withdrawing the earlier permission, is hereby set aside. Consequently, the order dated 04.12.2024 permitting the shifting of Government Boys Primary School Vavriyar Chara (SEMIS Code 406020409) to its original constructed building is restored and shall be implemented forthwith.
- ii. The respondents shall ensure that the school is shifted to the constructed building within **fifteen (15) days** and shall provide all basic facilities necessary for its proper functioning, including drinking water, seating, and sanitation, in accordance with the law.
- iii. The School Management Committee shall be reactivated, and its funds shall be utilised strictly in accordance with applicable rules for the improvement of the school premises.

- iv. . The District Education Officer and Taluka Education Officer shall file a compliance report before the Additional Registrar of this Court within **twenty (20) days**.

Petition stands **allowed** in the above terms.

**JUDGE**

**JUDGE**

“Adnan Ashraf Nizamani”