

HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

CP No. D- 533 of 2025

[Noor Ahmed v. Naveed Razzaque & Others]

BEFORE:

JUSTICE ADNAN-UL-KARIM MEMON

JUSTICE RIAZAT ALI SAHAR

Petitioner: Through Mr. Parkash Kumar, Advocate

Respondent-1: Through Mr. Arshad Ali Keerio, Advocate

Mr. Rafiq Ahmed Dahri, Asstt: A.G.

Date of hearing:

& Decision:

18.11.2025

ORDER

ADNAN-UL-KARIM MEMON, J - Petitioner has prayed as under :-

- (i) Declaration that the order dated 12.02.2025 is without jurisdiction and void.
- (ii) Permanent injunction restraining demolition proceedings.
- (iii) Any other appropriate relief and costs.

2. Background of the case is that Respondent No.1 applied under Section 13 of the Removal of Encroachment Act, 2010, before Respondent No.13, alleging that he is the owner of Survey No.191, Deh Jamshoro, near Usmaniya Masjid, Soomra Market Qasimabad Hyderabad; that the petitioner and Respondents 9 to 12 had encroached upon the public road in front of Survey No.191 causing obstruction. He sought directions for the removal of alleged encroachments and restoration of Wadhu Wah road. The petitioner and Respondents 9 to 12 filed written statement raising objections to maintainability, asserting that Respondent No.1 acted through an unauthorized person and submitting that the claim was time-barred due to previous judgments dated 25.07.2016 passed in F.C. Suit No.252/2010 and Judgment dated 02.09.2022 in 2nd Appeal No.67/2019. They also claimed that Respondent No.1 had fraudulently obtained mutation in VF-VII and concealed the dismissal of his father's earlier suit regarding ownership of S.No.191.

After hearing the parties, Respondent No.13 dismissed Respondent No.1's suit observing that the plaintiff himself occupied the state land and had not approached the Tribunal with clean hands. Respondent No.1 then filed Execution Application No.70/2024, which the petitioner opposed on the ground that no execution lies after dismissal of the main application and Respondent No.13 has no jurisdiction. However, Respondent No.13, without conducting any hearing, inquiry, measurement or report, allowed the Execution Application on 12.02.2025 and ordered removal of encroachment. The petitioner claims no other efficacious remedy and challenges the order on the grounds that the impugned order is illegal, arbitrary, non-speaking and passed without jurisdiction; that no decree exists to execute, thus execution proceedings are void; that Respondent No.13 misread the record, ignored dismissal of the main case, acted beyond powers and passed an order based on conjectures; that no official complaint exists alleging petitioner's occupation over state land; that the order does not fall under Sections 3 to 5 of the Act.

3. Pursuant to order dated 02.08.2022 of the Anti-Encroachment Tribunal in Suit No.75/2021, a committee was constituted for demarcation. A joint demarcation was conducted in S.No.191 & 191/1 and Wadhu Wah area, confirming alleged encroachments by Noor Ahmed, Muhammad Umar, and Muhammad Moosa (12–17 feet into Wadhu Wah). Reports and “Dasti Sooratehal” were submitted to the Tribunal; however in the intervening period, the parties approached the Supreme court in Civil Appeal No.3147/2022, the Supreme Court on 15.03.2024 set aside the previous judgments and remanded the case to the civil court. Only one issue was directed to be decided whether the disputed 2450 sq.ft. possessed by respondents falls within Survey No.191 (14 ghuntas) partitioned in favour of the appellant. Both parties may produce evidence within six months.

4. In view of the order dated 15.03.2024 passed by the Supreme Court of Pakistan in Civil Appeal No.3147/2022, whereby the earlier judgments including those relied upon by Respondent No.1 regarding Survey No.191 were set aside and the matter was remanded to the civil court for fresh determination of only one issue, i.e. “Whether the disputed 2450 sq. ft. area allegedly possessed by the respondents falls within Survey No.191 (14 ghuntas) partitioned in favour of the appellant.” It is clear that the title and exact boundaries of Survey No.191 are now sub- judice before the competent civil court, to be decided afresh on the basis of evidence to be produced by

both sides. Until that determination is made, no adverse action, demolition, or removal of alleged encroachments can be undertaken, because the foundational question of ownership, location and extent of Survey No.191 remains undecided. Respondent No.13, therefore, lacks jurisdiction to execute any order relating to alleged encroachment on the disputed land, particularly when the main application under Section 13 of the Removal of Encroachment Act, 2010 was dismissed; no decree exists for execution; and the Supreme Court has ordered a complete re-examination of the land's status. Any execution proceedings initiated by Respondent No.1 after dismissal of his main application, especially during pendency of remanded civil proceedings; are premature without lawful authority and contrary to the Supreme Court's directions. This petition stands disposed of in the following terms.

1. The impugned order dated 12.02.2025 passed by Respondent No.13, allowing the execution application without jurisdiction, inquiry, measurement or decree is therefore illegal, void and contrary to the Supreme Court's mandate.

5. Accordingly, the petitioner is entitled to the reliefs prayed for, as no demolition or encroachment-removal action can legally proceed until the civil court, in compliance with the Supreme Court's order finally determines whether the disputed 2450 sq. ft. area forms part of Survey No.191.

JUDGE

JUDGE