

# IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD.

CP. No. D – 1261 of 2020

**Before:**

**Mr. Justice Adnan-ul-Karim Memon**

**Mr. Justice Adnan Iqbal Chaudhry**

Petitioners : Shamshad Ali and another through  
Mr. Karamullah Memon, Advocate  
  
Mr. Rafiq Ahmed Dahri, Asstt: A.G a/w  
respondent No.11

Date of Hearing & Decision : 14 .12.2021

## **ORDER**

**ADNAN-UL-KARIM MEMON J:** Through this petition the petitioners have prayed as under:-

- a. Modify order dated 5.10.2020 passed by Honourable court of anti-encroachment Tribunal, Mirpurkhas passed in Encroachment Suit No.53 of 2019 ( Re- Shamshad Ali and another v. Ghulam Hussain and others) by directing the respondents No.1 to 10 to remove the illegal encroachment made by the respondents No.11 to 15 on Government land/state land forthwith.
- b. Direct the respondents No.4 to 6 to remove encroachment from road and footpath area and maintain and repair the road and ensure passage for the people without any hindrance and interruption.
- c. Direct the respondents No.9 and 10 to provide protection to the petitioners and ensure that no harassment will be caused to the petitioners, their relatives, supporters and well-wishers.
- d. Direct the respondents Nos. 5 to 12 not to cause harassment of any kind to the petitioners, their relatives, supporters and well-wishers by themselves, through their servants, henchmen, relatives, colleagues in any manner whatsoever.

2. Brief facts of the case are that petitioner No.1 purchased plot bearing CS No. 11891/1 area 133-3 sq.yds through registered sale deed in the year 1976 while the petitioner No.2 purchased the plot which was adjacent to the plot of the petitioner No.1 in the same year through registered sale deed; that as per title documents, there was 20 feet wide road in front of plots of petitioners and then the land of the Highway started which was lying vacant and due to negligence of

Highway department the said land was encroached upon by many people; that in the year 2010 the petitioners started construction over their plots and after completion of work, respondents 11 to 15 who were Journalists started construction work in front of house and shop of petitioners encroaching the land of Highway, resultantly the main gate of petitioner No.1 was almost closed while the shop of petitioner No.2 was totally closed; the petitioners approached them but they did not pay any heed, therefore, they approached SHO PS Kot Ghulam Muhammad as well as respondents 6 to 8 but they did not take any action against them being Journalists and influential persons, hence they filed Suit No. 53 of 2019 before Anti-Encroachment Tribunal for removal of encroachment. Upon notice respondent No.6 filed report dated 17.10.2019 stating that part of the building of press club has been constructed on highway land; while respondent No.8 in his report dated 9.10.2019 claimed the encroached land to be the property of Town Committee; that respondents 11 to 15 filed written statement claiming that the constructed building of Press Club is in the building of TMA and previously there was Chungi Naka wherein TMA had constructed building and handed over to Press Club; that learned Anti-Encroachment Tribunal from the pleadings of the parties framed as many as six issues and thereafter after recording evidence and hearing the parties concluded the suit as under:-

“The plaintiffs prayed in the suit that private Defendants be directed to remove the encroachment according to law. For the above reasons and discussion, plaintiffs are not entitled for relief as prayed but as the private Defendants are in illegal occupation of the Government Property/state land, therefore, it may be vacated.

Deputy Commissioner, Mirpurkhas shall initiate proceedings for recovery of rent from the illegal occupants.

In view of above, suit stands disposed of with no order as to costs.

3. The petitioners/plaintiffs being aggrieved by the aforesaid order have filed the instant Constitutional Petition with the above prayer.
4. Learned counsel for the petitioners argued that learned Anti-Encroachment Tribunal, Mirpurkhas has held that TMA has no authority to rent out the property without proper procedure and law and the building has been illegally handed over to respondents 1 to 15

but learned Anti-Encroachment Tribunal, Mirpurkhas completely failed to order for removal of encroachment and only ordered for vacating the premises as such the order is against the facts, law, and equity as it has closed the entrance of petitioners; that due to illegal and unlawful encroachment not only the entrance of petitioners have been closed but the general public is also facing hardship, therefore, the instant petition may be allowed directing the concerned authorities to remove the encroachment.

5. We have heard learned counsel for the parties, learned A.A.G. Sindh and perused the report of official respondents, and have also reviewed the record available before us. The above-mentioned reports submitted by learned A.A.G. clearly show that the subject matter land of the instant petition is a public property reserved for Highway Department; and, the same has been encroached upon to the extent and in the manner stated in the said report. The precise allegations in the present petition are of conversion of an amenity plot reserved for Highway to personal purposes and encroachment thereon and letting out the said illegally converted/encroached portions of the subject land. In this regard, the deposition of Assistant Engineer, Provincial Highway, Sub-Division, Digri, explicitly shows that 28 feet of Highway land is in illegal occupation of Press Club out of 50 feet and the said land is not granted to anyone. If this is the position of the case, in this context, it is well-settled that conversion of an amenity plot into any other purpose is illegal and encroachment thereon cannot be allowed under any circumstances. This view is fortified by the following authorities of Hon'ble Supreme Court and cases decided by learned Division Benches of this Court, laying down the principles regarding illegal conversion and use of amenity plots/public properties for other purposes, rights of public in respect of amenity plots/public properties and duties of authorities concerned for maintaining the status of amenity plots/public properties:

1. In *Ardeshir Cowasjee and 10 others V/S Karachi Building Control Authority (KMC), Karachi and 4 others*, 1999 SCMR 2883, the Hon'ble Supreme Court was pleased to hold, inter alia, that citizens were entitled to use the park with all amenities as use of park involving enjoyment of life was covered by the word "life" employed in Article 9 of the Constitution, and citizens had the right to ensure that the officials do not grant approval of a plan in respect of the plot which might impinge on their right of

enjoyment of life or is in violation of law ; and, the unauthorized structure from the amenity plot / park was liable to be removed as the same could not be used for any other purposes than for which it was carved out.

2. In Moulvi Iqbal Haider V/S Capital Development Authority and others, PLD 2006 SC 394, it was held, inter alia, by the Hon'ble Supreme Court that public park earmarked in a housing scheme created a right amongst the public and that right included their right of entry in the park without any obstacle being fundamental right as enshrined in Article 26 read with Article 9 of the Constitution ; liberty of a person to have access or utilize a right available to him cannot be taken away by converting such facility into a commercial one for the purpose of extending benefit to a third person ; and, functionaries and authorities exercising statutory power were bound to discharge their functions strictly in accordance with law otherwise the action contrary to law would not be sustainable and such Authority shall expose itself to disciplinary action.

3. In an unreported order passed on 12.03.2012 by the Hon'ble Supreme Court in Civil Petition No.80-K of 2011 (Sikandar & Company V/S Muhammad Rauf Qadri Junaidi and others), it was held, inter alia, that greenbelt / amenity was meant to be used by the residents of the area as a breathing space and not for construction purposes, auction whereof was a farce and sham attempt to rob the greenbelt / amenity plot from citizens of Karachi, which by no means is permissible by law ; and, the said plot being public property meant only for public amenity purposes cannot be converted into building and commercial site.

4. In Muhammad Ashraf and another V/S Faisal Cantonment Board and another, 2017 YLR 2091 and Constitutional Petition No.D-6183/2015 (Mazhar Ali Magsi V/S Province of Sindh and others), this Court has held that a public property meant for the use and enjoyment of general public cannot be leased to any private or third party nor can any type of third party interest be created therein ; and, the government, the relevant municipal authority and all their functionaries are

duty-bound to keep the public property free from all types of encroachments and claims.

6. Today learned A.A.G. has filed statement and submitted that whatever the encroachment be, shall be removed as per the decision of learned Anti-Encroachment Tribunal, Mirpurkhas in encroachment Suit No.53 of 2019 vide order dated 05.10.2020.

7. It appears from the record that due to the illegal construction of Press Club, Kot Ghulam Muhammad City, which is originally Naka of Kot Ghulam Muhammad Town and situated in 1082 in City Survey Department Form-B and now such building is converted into press club, such entries have been made. The Town Officer, Town Committee Kot Ghulam Muhammad has also submitted that the said plot/premises is the property of Town Committee, Kot Ghulam Muhammad; however, the same was given to Press Club, Kot Ghulam Muhammad for betterment/improvement of journalism. The deposition of Town Officer shows that due to suspension of Octroi tax in the year 1999 to 2000 the then Council vide Resolution No.09 dated 10.03.2004 approved to allot the said property to Press Club, Kot Ghulam Muhammad, and the same is constructed on about 47 square yards and the same land is of Town Committee, Kot Ghulam Muhammad.

8. From the above facts and circumstances of the case and the evidence brought on record prima-facie, show that the encroachment over the government property is liable to be removed.

9. In view of the foregoing, the well-established legal position that has emerged is, use of an amenity/public property by the public for enjoyment of life is covered by the word "life" employed in Article 9 of the Constitution ; such right to enter into and use of amenity/public property without any obstacle is fundamental right as enshrined in Article 26 read with Article 9 of the Constitution ; amenity/public property cannot be used for any purpose other than for which it was carved out, earmarked or reserved ; liberty and right of a person to have free access to amenity/public property or to utilize and enjoy the same cannot be taken away by converting such amenity into commercial one and/or for any other purpose for extending benefit to a third person ; an amenity/public property meant for the use and enjoyment of general public cannot be leased to any private or third party nor can any type of third party interest be created therein; any violation in respect of rights relating to the access, use or enjoyment of

amenity/public property or change in the use thereof, whether temporary or permanent, by any individual, Government, functionary or agency is illegal; even the Government or Municipal authorities have no right to change the use of an amenity/public property; the Government, the relevant municipal authority and all their functionaries are duty-bound to keep the amenity / public property free from all types of encroachments and claims; such functionaries and authorities exercising statutory powers are duty-bound to discharge their functions and duties strictly in accordance with law otherwise any action by them contrary to law would not be sustainable and such authority shall expose itself to disciplinary action; and, if any unauthorized construction or encroachment is made on any amenity/public property, the same, being illegal, has to be removed.

10. The principles laid down in the above-cited cases would apply with full force to the present case as it appears that the Government and Municipal Committee concerned have encouraged encroachments on the subject land by allowing certain class of people to establish a press club. It may be observed that in these days when the trend and habit of reading and exercising have declined to an alarming extent, the combination of library and park at one place is unique, useful and healthy as both these facilities not only complement each other, but each of them also act as an incentive for the other.

11. In view of the law laid down by the Hon'ble Supreme Court, we are of the clear view that a press club cannot be deemed to be an amenity/public property by any stretch of imagination as it is used as a platform by politicians, political parties, unions, workers, associations, agitators and/or other individuals and entities to raise their voice and to record their protest/demands/statements generally for their benefit. Such activities because of press club are detrimental to the peaceful and relaxing environment of the subject park. Moreover, if it is assumed for the sake of argument that a press club is an amenity/public property, even then it cannot be allowed on land reserved and earmarked for the use of Highway. Therefore, the permission, if any, for establishing and constructing the press club, and shops, on the land of highway department, was void abinitio. Accordingly, all remaining encroachments on the subject land are liable to be removed forthwith. Deputy Commissioner Mirpurkhas is directed to remove the encroachments from the subject land within two months and submit compliance report to the Additional Registrar

of this Court. Issue notice to Chief Secretary, Government of Sindh, to ensure compliance of this order in letter and spirit and to submit his separate compliance report to the Additional Registrar of this Court within the period stipulated above.

12. Petition stands disposed of in the above terms.

**JUDGE**

**JUDGE**

*\*Karar\_Hussain/PS \**