

ORDER SHEET

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

C. P. No. D – 1569 of 2020

Date of hearing	Order with signature of Judge
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Hearing of case

1. For orders on office objections at Flag-A
2. For hearing of main case

15-02-2022

Mr. Muhammad Rehan Khan Durrani, Advocate for the Petitioner.
Mr. Muhammad Asim Malik, Advocate for Respondents No.6 to 9,
13, 15 and 16.
Mr. Mehboob Ali Wassan, Assistant Advocate General Sindh.

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Through this Petition, the Petitioner has sought the following relief(s):

- a) *To direct the respondents No.2 to 5, to remove the illegal and unlawful constructions over the grave yard admeasuring 19-27 acres out of U.A. No.351 situated at Deh Thikrato taluka Pano Akil District Sukkur.*
- b) *To award cost of Petition.*
- c) *To grant any other relief as this Hon'able deems fit in the above circumstances.*

It appears that the Petitioner had already approached the Anti-Encroachment Tribunal, Sukkur by way of Misc. Application No.97 of 2019 in respect of the same graveyard and the said Tribunal, vide its order dated 05-12-2019, has issued certain directions to the Assistant Commissioner (Revenue), Taluka Pano Akil. However, we have already taken note of such orders passed by the Tribunal and have given our opinion that the Tribunal should not pass such orders and shall first determine as to whether there is some encroachment or not and then finally dispose of the matters. The relevant findings of our order dated 04-11-2021, passed in C. Ps. No. D-183 and 941 of 2020, are reproduced as under:-

“6. *Nonetheless, in any case, we do not see that under this Constitutional jurisdiction, we are required to implement and/or execute the orders of the said Tribunal. Encroachment [Section 2(j)] and Public Property [Section 2(o)] have been defined in the*

Act. Similarly, Section 13 vests exclusive jurisdiction upon the Tribunal to adjudicate upon a dispute that any property is not a public property or that any lease or license in respect of such public property has not been determined for the purpose of this Act. Section 14(2) provides that any order made by the Tribunal which conclusively determines the rights of the parties with regard to all or any of the matters in controversy shall be final and binding on the parties. Lastly Section 16 of the Act provides that the orders passed under sections 3, 4, 5 and 13 of this Act shall, if necessary, be got executed through the Force.

7. *The above provision clearly provides that the Tribunal is the final authority to determine all disputes, whereas, it has to conclusively determine the rights of the parties to a dispute. It cannot keep on having demarcation and survey and at the same time order removal of encroachment as well. First the determination is a must. Nonetheless, once it has passed a final order, it has the jurisdiction to have it enforced, even if no specific provision is provided in the Act, as it has to be so read, failing which it would defeat the purpose of enactment of the Act itself. If the Tribunal has the exclusive jurisdiction and is also a competent Court to pass all orders in respect of encroachment on public properties, then it shall be deemed to have the powers of enforcing its own orders. There can't be any implied exception as is being presumed. It can even use force to implement the orders and resultantly the Tribunal can always exercise all enabling provisions for getting its orders implemented. It is not that it can keep on passing orders with directions to the concerned Revenue authorities and at the same time refuse applications for their implementation. As noted earlier, first a clear order has to be passed for determination of the status of the property and the encroachment, if any, and thereafter, orders should be passed so that the Revenue authorities can easily implement the orders without fail and shall not involve into an exercise for determination of the status of the property first; including demarcation and survey, and then proceed to implement the orders. This resultantly causes confusion and as a result thereof petitions are regularly being filed before this Court. This conduct on the part of the Tribunal is deprecated.”*

In view of such position, this Petition stands **disposed of** by directing the Tribunal to act as above; whereas, the Petitioner is also at liberty, if so advised, to approach the Anti-Encroachment Tribunal, Sukkur, which shall decide the matter in accordance with law.

J U D G E

J U D G E

Abdul Basit