

Order Sheet

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

Constitutional Petition No. D – 1726 of 2012

DATE	ORDER WITH SIGNATURE OF JUDGE
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For orders on MA-1967/21 (U/O 39 R 4 CPC)
For orders on MA-1966/21 (U/O I Rule 10 CPC)
For orders on MA-1772/21
For orders as to non-prosecution of MA-1532/21.
For hearing of MA-1534/21 (U/O I R 10 CPC)
For hearing of MA-2190/15 (Contempt)
For hearing of MA-6064/15 (U/O XXXIX Rules 1 & 2 CPC)
For hearing of MA-6065/15 (U/O XXXIX Rules 1 & 2 CPC)
For hearing of main case

17.03.2021

M/S Ahsan Gul Dahri, Ayaz Hussain Tunio and Zaheeruddin, advocates for the petitioners.

Mr. Irfan Ali Bughio, advocate for HDA.

Mr. Ayaz Ali Rajpar, advocate for HMC a/w Muhammad Ali Shaikh, Municipal Commissioner HMC, Shakeel Ahmed Rajput, Deputy Director Anti-Encroachment HMC.

Naveed Asim Regional Director SBCA present in person.

Mr. Abdul Aziz on behalf of Mr. Imdad Ali Unar, advocate for respondent No.6.

Mr. Muhammad Arshad S. Pathan, advocate.

Mr. Tahir Nisar Rajput, advocate.

Mr. Allah Bachayo Soomro, Addl. A.G. a/w Fuad Ghaffar Soomro Deputy Commissioner Hyderabad, Tabraiz Sadiq Marri ADC-I Hyderabad, Abdul Salam Shaikh SSP Hyderabad, Ghulam Nabi Khoso PDSP Hyderabad, Ali Raza SDPO Tando Yousif, Inspector Saghir Sangi SHO PS Qasimabad and SDPOs concerned.

Mr. Muhammad Hamayoon Khan, D.A.G. a/w Muhammad Yakoob CEO, HESCO and Zahid Pervez, Chief Technical Officer and Sohail Afzal.

Mr. Jangu Khan, Special Prosecutor NAB.

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1, 2 & 3. Notice to all concerned.

4. One week's time is granted for compliance.

5 to 9. As undertaken by him on the last date of hearing, Chief Executive Officer HESCO, who is present in person, has submitted a list of the electric poles and installations that require immediate shifting / relocation by HESCO to facilitate the widening of public roads and thoroughfares and also in order to

ensure that the said roads should be free from all types of obstructions. The above list is taken on record. According to the estimated cost mentioned in the said list, an amount of about Rs.157 million is required by HESCO for the above purpose. He submits that in view of paragraph 3.1.1 of the Consumers Service Manner, the shifting / relocation of the electric poles and installations is to be carried out at the cost of the sponsoring agency i.e. the Government of Sindh. In this context, it was stated on the last date of hearing by the Secretary Finance Government of Sindh, as noted in paragraph 3 of order dated 11.03.2021, that the Government of Sindh is not liable to provide funds for this purpose as HESCO, being an independent entity, is liable to generate the requisite funds from its own resources. It has been pointed out by learned counsel for the petitioners and intervenors that millions of Rupees are being received and collected in Hyderabad by SBCA, HMC, WASA and all TMAs on account of betterment charges. They submit that as huge amounts are being collected in Hyderabad on account of betterment charges, the same should be spent and utilized only for the betterment of the people / city of Hyderabad. The receiving and collection of betterment charges from the public / consumers has not been denied by the Municipal Commissioner HMC, Regional Director SBCA, representatives of WASA and TMAs. However, they have not been able to give a satisfactory reply regarding the utilization of all such amounts received by them on account of betterment charges.

Statement dated 17.03.2021 has been filed by Municipal Commissioner HMC along with photographs and related correspondence, which are taken on record. In his above statement, the Municipal Commissioner has stated that the orders of this Court are being implemented by removing the generators and other encroachments from public properties and the entire exercise shall be completed within the time mentioned in order dated 11.03.2021. He reiterates the contents of his above statement and undertakes that the undertaking given by him and recorded by this Court on 11.03.2021 shall be fulfilled by HMC by removing generators and other encroachments from all public properties within the time mentioned in the said order. Despite the above undertaking, he has not been able to disclose the progress made by him / HMC for retrieval of the properties owned by HMC from encroachers, particularly graveyards, public parks, dispensaries, *musafir khanas*, public wash rooms, playgrounds, amenity plots, hospitals, laboratories and a school for differently abled (deaf and dumb) persons, in pursuance of order dated 11.03.2021.

Deputy Commissioner Hyderabad, who is present in person, has submitted his detailed report dated 17.03.2021 along with annexures, which are taken on record. He has also submitted a booklet containing photographs and

correspondence relating thereto in respect of the installations of HESCO in the Cattle Colony and Latifabad Hyderabad that require immediate removal / relocation, which is also taken on record. He states that as per his undertaking, he has submitted a proposal to the competent authority for preparation of PC-I for the betterment and widening of roads in Hyderabad. He undertakes that the operation for removal of encroachments shall be completed by him / his office within the time stipulated in order dated 11.03.2021.

SSP Hyderabad / respondent No.7 has submitted compliance report dated 17.03.2021, which is taken on record. He has stated in his above report that in compliance of order dated 11.03.2021 he has directed all SDPOs, / SHOs and District Intelligence Branch (DIB) to provide full assistance and protection to the departments concerned and the teams of HMC and SBCA and the team constituted by the Deputy Commissioner Hyderabad for removal of encroachments from public properties in Hyderabad ; to ensure that encroachments are not made / repeated in future ; and, in case of recurrence, they shall held responsible and will be dealt with departmentally.

In view of the above, it is hereby ordered as under :

- A. The Government of Sindh is directed to provide the requisite amount to HESCO on most urgent / priority basis for shifting / relocating electric poles and installations and to recover / adjust the same from the betterment charges received by SBCA, HMC, WASA and all TMAs in proportion to the amounts received / collected by them on account of betterment charges ; OR in the alternative, to include the said amount in the PC-I to be prepared on priority basis for the betterment and widening of roads in Hyderabad in terms of order dated 11.03.2021.
- B. HESCO is directed to ensure that in future electric poles and other installations are erected / installed only on the sides of the roads and streets and not thereon or in the middle thereof. HESCO is restrained from carrying out the remaining construction / work in respect of the electric poles / installations that are being raised / constructed in the middle of roads in the Cattle Colony and Latifabad Hyderabad, as shown in the photographs filed today by the Deputy Commissioner Hyderabad along with his report, or in any other area. The said Deputy Commissioner and CEO HESCO shall ensure compliance of this order.
- C. As satisfactory progress has not been made by HMC in pursuance of order dated 11.03.2021 for retrieval of its properties from encroachers, particularly graveyards, public parks, dispensaries, *musafir khana*s,

public wash rooms, playgrounds, amenity plots, hospitals, laboratories and a school for differently abled (deaf and dumb) persons, the Deputy Commissioner Hyderabad is directed to ensure that all the above properties are retrieved from encroachers / illegal occupants before the next date of hearing, and SSP Hyderabad is directed to provide additional assistance and protection at the time of implementation of this order. Deputy Commissioner and SSP Hyderabad are directed to submit their respective compliance reports in this behalf on the next date of hearing.

- D. Municipal Commissioner HMC is directed to provide complete record of relevant documents in respect of all the properties owned by HMC, including the properties mentioned in paragraph C above, within seven (07) days to the Deputy Commissioner Hyderabad for implementation of this order, and also to submit copies thereof before this Court on or before the next date of hearing.
- E. The investigation to be made by NAB against the present and former officials of HMC and SBCA in pursuance of order dated 11.03.2021 shall also include the receipt of heavy amounts by HMC and SBCA on account of betterment charges and the utilization / appropriation thereof.
- F. In case any department / official / person fails to implement this order or any of the orders passed by this Court earlier, or does not cooperate with the Deputy Commissioner Hyderabad in any manner for their implementation, the Deputy Commissioner Hyderabad shall immediately report the matter to this Court.
- G. The Deputy Commissioner Hyderabad shall continue to submit his report to this Court on regular monthly basis in the first week of every month regarding implementation of the orders of this Court, including removal of encroachments and thereafter ensuring their prevention in future.
- H. Needless to say that the present Deputy Commissioner, DIG and SSP Hyderabad and the heads of the departments concerned, as well as all their successors, shall be equally responsible and liable to implement and comply with the orders passed by this Court.
- I. It is clarified that the orders passed by this Court shall be applicable to the entire Hyderabad Division.

Let notice be issued to Director General NAB Sindh, Chief Secretary Sindh, Secretary Local Government Department, DIGP Hyderabad and Prosecutor NAB for compliance. By consent, adjourned to **08.04.2021 at 11:00 am.**

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