

Order Sheet

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

Constitutional Petition No.D – 1726 of 2012

DATE ORDER WITH SIGNATURE OF JUDGE

1. For orders on MA-1533/21 (exemption)
2. For orders on MA-1532/21 (U/O I R 10 CPC)
3. For orders on MA-1534/21 (U/O I R 10 CPC)
4. For hearing of MA-2190/15 (Contempt)
5. For hearing of MA-6064/15 (U/O XXXIX Rules 1 & 2 CPC)
6. For orders on MA-6065/16 (U/O XXXIX Rules 1 & 2 CPC)
7. For hearing of main case

02.03.2021

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

Mr. Irfan Ali Bughio advocate for respondent No.4.

Mr. Ayaz Ali Rajpar advocate for H.M.C. a/w Muhammad Ali Shaikh, Municipal Commissioner H.M.C. Hyderabad, Nasir Lodhi incharge Anti-Encroachment, Tarique incharge Anti-Encroachment H.M.C., and Hatim Ali Mallah Chief Municipal Officer M.C. Qasimabad,

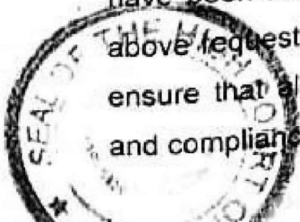
Mr. Allah Bachayo Soomro, A.A.G. a/w Fuad Ghaffar Soomro Deputy Commissioner Hyderabad, Tabraiz Sadiq Marri ADC-I Hyderabad, Gada Hussain Soomro Assistant Commissioner / Administrator Qasimabad, Abdul Salam Shaikh SSP Hyderabad, Ghulam Nabi Khoso PDSP Hyderabad, Sadiq Gaddi SDPO Latifabad, Yaqoob Jatt SDPO Baldia, Ayob Patoli SDPO Hali Road, Masood Iqbal SDPO Phuleli, Inspector Akbar Lund incharge DIB Hyderabad, SIP Mirzo Khan SSP Office Hyderabad and Muhammad Ayob Brohi SDPO Chalgari Hyderabad.

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1. Exemption is granted subject to all just exceptions.

2&3. Notice to all concerned.

4 to 7. In compliance of order dated 28.01.2021, the Deputy Commissioner Hyderabad has submitted a detailed report, which is taken on record. He submits that encroachments on public property have been removed from the areas mentioned in the above report. He requests that further time of at least thirty (30) days is required to remove encroachments from the remaining areas of the City of Hyderabad. Perusal of the above report shows that serious efforts have been made for implementation of the order of this Court, therefore, his above request is allowed with direction to him / his office and all concerned to ensure that all remaining encroachments are removed within thirty (30) days and compliance report is filed immediately thereafter.



[Handwritten signature]

A separate compliance report has been filed by SSP Hyderabad, which is also taken on record.

The Deputy Commissioner Hyderabad has drawn our attention to the fifteen (15) recommendations made at page 42 of his above compliance report. The parties, their learned counsel and all officials present in Court support the said recommendations by agreeing that the same are in the best interest of the City of Hyderabad and the citizens living / carrying on business therein. Accordingly, with their consent the following recommendations are made rule of this Court :

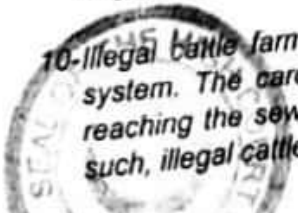
“ RECOMMENATIONS

As the operation under the directions of the Honorable High Court has completed one month successfully, few issues were observed at the operational tier which hamper the progress of anti-encroachment drive and facilitate encroachments. In the view of the above, following recommendations are proposed :

- 1- *A reason for unsuccessful anti-encroachment operations in the long run is the inability of departments to utilize the retrieved land for more suitable purposes. In this regard, it is recommended that District Administration has conducted a feasibility study for expansion of roads, especially in areas where anti-encroachment operation has taken place recently. The proposed development plan 25 year plan for Hyderabad to the tune of 1733 million shall ease the flow of traffic congestion and give a better look to city. It is important to highlight that the city has not been given any major uplift project or large scale development package in the last many years.*
- 2- *The Honorable High Court may kindly direct HESCO authorities to ensure that alignment of electrical poles in the city must be installed at the end of the right of way of the roads. HESCO is not investing in the up-gradation of transmission and the entire network is in shambles. HESCO authorities may be directed to apprise the honorable court regarding Operation & Maintenance (O&M) expenditure in the past 10 years. Further, HESCO should be directed to shift electricity poles at their own expense. In commercial areas, robust mechanism for shifting of electrical lines under-ground in order to avoid encroachments and public hazards must be adopted at the earliest by the company.*
- 3- *The generators placed on pedestrian pathways / green belts pose a major threat to the well-being of commuters apart from being a major source of encroachment. The Municipal Authorities are bound by the Sindh Local Government Act 2013 to remove such encumbrances. Therefore, Hyderabad Municipal Corporation and Municipal Committees of Qasimabad and Tando Jam may be directed to clear and remove all such encroachments including generators within 30 days.*
- 4- *The Departments should be legally bound to report any emerging encroachment within 15 days and in case of failure to report such encroachment, must be held personally responsible.*



- 5- Hyderabad Development Authority and Sindh Buildings Control Authority have failed to check unbridled expansion of city. The expansion has been in an unorganized manner and there is a need for declaring and limiting the zones of high rise buildings and commercial activities in the city. There is a dire need to impose complete ban on multistory building on Wadhu Wah road and many other roads. A detailed study needs to be undertaken in this context, till then a complete ban should be ban on ground plus three floors. Under no circumstances approval should be given to more than ground plus 5 storey building on less than 150 feet road. An oversight committee comprising of HDA, WASA, HESCO, Traffic management authority, District administration must be devised to formulate plan for sustainable development and expansion of the city.
- 6- Non-availability of parking plazas in the city pose a major traffic problem and cause inordinate delays and inconvenience for the public. The Honorable High Court may direct SBCA and HDA to ensure that no commercial project be approved unless it has sufficient parking space and parking must be incorporated in the building plan. It should be the responsibility of that plaza owner that no roadside parking occurs.
- 7- It has been observed that after anti-encroachment operation, the debris is left at site causing hurdles and merely convert the form of encroachment from constructed encroachment to encroachment via debris. The authorities of HMC, MC may be directed to ensure removal of debris within 48 hours.
- 8- The Cooperative housing Societies form a substantial part of the residences in Hyderabad City, however, due to complete negligence or deliberate connivance of the Cooperatives Department, encroachments within the premises of a society abound. At the writing, around 23 cooperative societies exist in Hyderabad. Thus, it is recommended that Cooperative department must take lead in identification and removal of all such encroachments. The District Administration shall provide all out support for the same.
- 9- A major chunk of the betterment charges goes to SBCA with 40 percent for no contribution towards the city as far as infrastructure development is concerned. HMC gets 40 percent that also has seldom invested in the road infrastructure or beautification of the city. It leaves WASA getting a meager share of 20 percent of the total pie of betterment charges. In order to improve the sanitation and sewerage system, a re-appropriation through a new sharing formula may be initialized. It is recommended that WASA should get 60 percent of the total share instead of 20 percent of the betterment charges and HMC to get 30 percent with a condition that the amount shall be spent in half km radius of the approved project. And SBCA to get 10 percent of the betterment charges.
- 10-Illegal cattle farms are a major source of blockages in the sewer system. The carcass and the dung produced by such farms after reaching the sewer lines causes choking of lines. In order to avoid such, illegal cattle farms must be removed at earliest.



11-The law enforcement agencies do not provide adequate support often, which leads to delays in the operation and increased resistance, which in turn leads to a demoralized workforce. The Honorable High Court may please direct the law enforcement agencies, Police and Rangers to provide all-out assistance to the District Administration and allied departments to the completion of task as direction by the Honorable High Court.

12-Concurrent anti-encroachment operations on the directions of Honorable Supreme Court of Pakistan and Honorable High Court of Sindh have exposed the limited capacity of LEAs especially Police to provide adequate security cover to the executing agencies. In view of this, the Honorable High Court may give directions to the concerned authority for placing the Anti-encroachment force, currently under the Board of Revenue, at the disposal of respective Deputy Commissioner of Sindh for operational purposes.

13-Private Schools in areas of Hyderabad have encroached upon green-belts outside their school's boundary wall. During the time for picking / dropping students, the already congested roads are further choked, resulting in disrupted flow of traffic.

14-Various restaurants / dhabas / Piyala Hotels encroach the premises outside their hotels, sometimes, extending to more than 100 feet and establish sitting area further encroaching pedestrian walk ways and roads. In order to resolve the issue, directions must be given to HMC and concerned Municipal authorities for clearance of same within 48 hours.

15-It is suggested that Honorable High Court may direct immediate stoppage of conversion of plots from domestic to commercial purposes. Large scale conversions have wreaked havoc with the fragile and old infrastructure of water supply and sewerage system. It also changes the demography of an area and causes immense nuisance in domestic areas with passage of time. Once a scheme is approved with proper proportion of land use conversion, any subsequent conversion augments problems further. Massive conversion of land by HDA and HMC has adversely impacted the quality of life. DHAs do not allow any use in land usage then why it goes unabated by HDA and SBCA. It needs to be stopped forthwith."

By consent, petitioners are directed to join SBCA Hyderabad and HESCO as respondents in this petition and to file amended title within three (03) days from today. Upon filing the amended title, let notice be issued to Regional Director SBCA Hyderabad and the Chief Executive Officer HESCO, to appear before this Court in person on the next date of hearing along with their respective written strategies for implementation of the above recommendations / order of this Court.

As implementation of the above recommendations / order of this Court depends upon the provision of funds mentioned in recommendation No.1, the Secretary Finance, Government of Sindh, is directed to appear before this



Court in person on the next date of hearing to disclose the time frame within which the said funds shall be arranged and disbursed to the relevant departments for implementation of the order of this Court. Issue notice to Secretary Finance, Government of Sindh, for compliance.

By consent, adjourned to 11.03.2021 at 11.00 a.m.

Sd/- Nadeem Akhtar, Judge
Sd/- Arshad Hussain Khan, Judge

CERTIFIED TO BE TRUE COPY

Assistant Registrar (Writ) *4/3/2021* 1352 THROUGH UMS & FAX ALSO
C.P. No. D- 1726 of 2012 No. Dated 04th of March, 2021
Copy forwarded for information and necessary compliance of the above noted Court's order to:-

- X. The Learned Additional Advocate General Sindh, Hyderabad.
- X. The Secretary Finance, Government of Sindh, Karachi.
- X. The Regional Director SBCA Hyderabad.
- X. The Chief Executive Officer, HESCO, Hussainabad, Hyderabad.

2305/3/22

The matter is again fixed in Court on 11.03.2021 @ 11:00 am.



Assistant Registrar (Writ)

4/3/2021