

ORDER SHEET
IN THE HIGH COURT OF SINDH,
CIRCUIT COURT, HYDERABAD.

C.P. No.D-605 of 2011.

DATE	ORDER WITH SIGNATURE OF JUDGE
-------------	--------------------------------------

For hearing of M.A. No.4563/2016.

05-11-2020

Mr. Ahsan Gul Dahri advocate for petitioners/ applicants.
Mr. Allah Bachayo Soomro, Additional Advocate General Sindh.

This contempt application bearing M.A. No.4563/2016 is pending since 30.03.2016. It originates from an order dated 01.12.2015 which is in respect of maintaining Master Plan of Housing Scheme North Qassimabad Phase-II Hyderabad in its letter and spirit. The salient features of the order are as under:-

(i) That the Hyderabad Development Authority/respondent No.3 shall maintain the original Master Plan of the Society and the streets roads shall be maintained to its original width as has been approved originally and shall take all steps as required under the law.

(ii) Any encroachment made by any allottee or lessee or anyone else the same shall be dealt with in accordance with law by respondent No.3, in coordination and collaboration with the Anti-Encroachment Cell who shall remove the encroachment after giving notice to the concerned.

(iii) The functionaries such as Deputy Commissioner, Taluka Municipal Administrator, Anti-Encroachment Cell, shall respond to the request of the respondent No.3 who has to maintain the original Master Plan.

(iv) Once the notices are issued and the concerned are served appropriate action be taken forthwith preferably within a period of two weeks therefrom.

(v) The compliance report be filed within two weeks thereafter.

This is apparently a declaratory order passed with consent of the parties and hence the individual minor or major encroachments and trespasses of any part of the housing scheme cannot be adjudicated

independently in proceedings under Article 204 of the Constitution of Islamic Republic of Pakistan 1973. The petitioners were given a declaratory order that the master plan of the housing scheme under the name and style of North Qasimabad Phase-II Hyderabad shall be maintained. Thus insofar as any individual's alleged encroachment or deviation of the master plan is concerned against which independent rights and entitlements are pleaded, cannot be investigated against an independent claim of those whose are in occupation which may be dealt with in a Court of competent jurisdiction including but not limited to Civil Court as deem fit and proper under the circumstances of the case. These intricate disputes as to the occupation of land on behalf of individuals thus are questions of facts cannot be adjudicated and the contempt application is accordingly disposed of leaving the petitioners at liberty to avail remedy either before Anti-Encroachment Tribunal or Civil Court for its adjudication.

JUDGE

JUDGE

Irfan Ali