

Order Sheet

IN THE HIGH COURT OF SINDH AT KARACHI

Const. Petition No. D – 5129 of 2022

Date	Order with Signature of Judge
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1. For order on office objection Nos.10 & 31 :
2. For hearing of CMA No.25761/2022 (U/O XVIII R 18 CPC) :
3. For hearing of CMA No.21890/2022 (Stay) :
4. For hearing of main case :

19.12.2022

Mr. Ghulam Rasool Shaikh, Advocate for the petitioners.
Mr. Vivek Khan Advocate, holding brief for
Ms. Nasima Mangrio Advocate for respondent No.4.
Mr. Barkat Ali, Advocate for respondents 5 and 8.
Mr. Miran Muhammad Shah, Addl. A.G. Sindh a/w
Raja Tariq Hussain, Deputy Commissioner East.
Mr. Muhammad Qasim Baig, D.A.G.

Vide orders dated 06.09.2022 and 01.12.2022, the official respondents, particularly respondent No.3 / Deputy Commissioner Karachi East, were directed to remove all the encroachments and illegal construction from public property viz. subject service road, green belt and footpaths. The Deputy Commissioner Karachi East, who is present in person, submits his compliance report dated 19.12.2022 along with several photographs. As per his said report, the anti-encroachment operation was conducted on 17th and 18th December 2022 ; no illegal construction / hard encroachment was found at the subject public property ; and, only soft encroachments in the shape of cabins etc. were found which were removed. The report further states that the encroachments on the subject public property were of temporary nature that are made by the encroachers on daily basis. The report suggests that the DIG Traffic should be directed to ensure that commercial vehicles should not be parked on the subject public property ; and, KMC and DMC concerned should be directed to ensure proper plantation on the green belt to prevent encroachment thereon. The Deputy Commissioner Karachi East points out that the cabins and temporary offices constructed on the subject public property, which are being used as booking and ticketing offices for commercial vehicles, and parking of commercial vehicles are the main sources of encroachment due to which numerous vendors have also encroached upon the subject public property to sell their products. He reiterates the contents of his report and the suggestions made therein. The suggestions made by him appear to be reasonable and in the interest of general public. Learned counsel for the petitioners has submitted a statement dated 19.12.2022 along with several photographs. He also submits that encroachments have re-emerged on the subject public property.

It is clear from the record, particularly from the report and photographs filed today, that the subject public property is under encroachment and such encroachments always reappear whenever they are removed. It is well-settled that public property meant for the use, enjoyment and benefit of general public cannot be used or occupied by any person or authority ; and, the Government and municipal authorities and all their functionaries are duty-bound to keep the public property free from all types of encroachments and claims. It may be observed that encroachment on public property is a crime under the Sindh Public Property (Removal of Encroachment) Act, 2010, and the encroacher of a public property is liable to the punishment provided for in Section 8 of the said Act. This being the position, any crime against the public property is a crime against public. In view of numerous pronouncements by the Hon'ble Supreme Court regarding protection of public property from misuse and or encroachment, all the official respondents, executive and judicial authorities, including this Court, are duty-bound under Article 190 of the Constitution of the Islamic Republic of Pakistan, 1973, to act in aid of the orders passed by the Hon'ble Supreme Court.

Accordingly, all the respondents are jointly and severally directed to restore the entire subject public property viz. service road, green belt and footpaths to their original and actual position as per the master plan, by ensuring that all types of encroachments are removed therefrom without fail within thirty (30) days, and by further ensuring that the entire said public property remains free from all types of encroachments in future. The Inspector General of Police Sindh and Director General Rangers Sindh are directed to ensure compliance of this order in letter and spirit by providing adequate force, support and protection to the officials at the time of removal of encroachment. The Inspector General of Police Sindh is further directed to ensure proper deployment of traffic police force to prevent unauthorized and illegal parking of commercial vehicles on any part of the subject public property. Needless to say the Anti-Encroachment Force established under Section 17 of the Sindh Public Property (Removal of Encroachment) Act, 2010, shall register FIRs against the encroachers under Section 19 of the said Act and shall exercise powers under Section 20 of the said Act. Compliance report in the above terms shall be submitted on the next date of hearing by the Inspector General of Police Sindh, Director General Rangers Sindh and Deputy Commissioner Karachi East. Issue notice to them for compliance.

The petitioner is directed to join KMC and DMC concerned as respondents and to file amended title within seven (07) days. Upon filing the amended title, let notice be issued to the said newly added respondents with direction to file comments before the next date of hearing. Additionally, they shall also submit a report for the expeditious development and beautification of the subject green belt for its actual purpose.

To be listed on **31.01.2023** when the Deputy Commissioner Karachi East shall be in attendance.

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