

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

M.A.No.05 of 2023

DATE

ORDER WITH SIGNATURE OF JUDGE

For orders on office objection
For order on CMA-601/2023
For hearing of main case.

06-11-2023

Mr. Mazhar Hussain Kalwar, Advocate for appellants.

This is an appeal filed under Section 27¹ of the Sindh Public Property (Removal of Encroachment) Act, 2010 (“Act”) against the order dated 07.02.2023 rendered by the Anti-Encroachment Tribunal, Hyderabad in Suit No.03 of 2021.

At the very outset, learned counsel is confronted with the office objection pertaining to maintainability hereof; since *prima facie* section 27 of the Act only contemplates an appeal against an order passed by the Special Court²; and not by the Tribunal³.

Learned counsel submits that section 27 ought to be read to include the provision of appeal against orders of the tribunal as well and that in the absence of any such statutory provision, the same must be presumed. Respectfully, this Court finds itself unable to sustain the said submission.

Appellants’ counsel has been unable to demonstrate any law providing for an appeal against the order impugned and the said circumstances squarely attract the observations of the Supreme Court, in the case of *Gul Taiz Khan Marwat*⁴, reiterating settled law that an appeal is a creation of statute and in the absence of any such remedy being provided none can be presumed.

Therefore, in *mutatis mutandis* application of the binding edict of the Supreme Court in *Gul Taiz Khan Marwat*, this appeal is found to be misconceived, hence, dismissed *in limine* along with pending applications.

Judge

Ahmed/Pa

¹ 27. An appeal against the order passed by a Special Court shall lie to the High Court of Sindh.

² 25. For the purpose of providing for speedy trial of offences committed under this Act, Government may establish, by notification, a Special Court in each district and a special court for each group of six towns of the City District.

³ 12. Government may by notification in the official gazette, establish a Tribunal for each district consisting of a retired District and Sessions Judge or any Advocate of ten years standing.

⁴ Per *Ijaz ul Ahsan J* in *Gul Taiz Khan Marwat vs. Registrar Peshawar High Court* reported as *PLD 2021 Supreme Court 391*.