

ORDER SHEET  
THE HIGH COURT OF SINDH AT KARACHI

C.P No.D-5529 of 2021.

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Date: Order with signature(s) of the Judge(s)  
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**Before: Salahuddin Panhwar &  
Amjad Ali Sahito, JJ**

For Orders as to Maintainability of petition.

23<sup>rd</sup> September, 2024.

Mr. Mehmood Hussain advocate for the Petitioner.  
Ms. Nazia Siddiqui advocate for KDA.  
Respondent No.3 Mst. Farhat Ishrat is present in person.  
Mr. Rajendar Kumar, AAG.

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**SALAHUDDIN PANHWAR, J.** Through instant petition the Petitioner has prayed that:

***“In the light of above facts and circumstances, it is prayed on behalf of Petitioner that the Hon'ble Bench of the High Court of Sindh may be pleased to direct the respondent to take strict action against the encroacher exist in front of property of petitioner in response of final show cause notice Dt. 21-12-2020, issued to the encroacher in compliance of Judgment passed by Presiding Officer of Tribunal Anti Encroachment Karachi under section 3, 5 and 8 of Sind Public Property (Removal of Encroachment) Act. 2010’.***

2. Precisely relevant facts are that the petitioner, a law-abiding co-owner of property in Karachi, is facing issues due to encroachment by his sister, Mst. Farhat Ishrat, who built a small house on public land in front of his property. This situation has caused problems for both the petitioner and neighboring residents. After filing a suit in 2018 against the encroachment, the Tribunal Anti-Encroachment Karachi ruled in favor of the petitioner in October 2019, directing the authorities to take action. Despite this decision, the relevant authorities have failed to enforce the judgment or address the encroachment. The petitioner submitted requests for implementation, but after issuing a final show cause notice to the encroacher in December 2020, no further action was taken. The petitioner believes this inaction indicates negligence and possible collusion between

the authorities and the encroacher, as they continue to enjoy their illegal occupation without fear of consequences.

3. It is an admitted fact that the dispute between the Petitioner and Respondent No. 3 (his sister) pertains to the subject property involved in Suit No. 698/2010 concerning Mutation and Permanent Injunction. The Petitioner, being the brother, contends that although his sister, Respondent No. 3, has received her share of the inheritance, she has unlawfully encroached upon public land and constructed a house in a Katchi Abadi. Consequently, the Petitioner instituted Suit No.03/2018 before the Anti-Encroachment Tribunal, Karachi. That suit has been adjudicated. A pertinent issue raised therein, specifically under Issue No. 5, is as follows:

**Issue No.5.**

***9. In the light of above position, it is found that the plaintiff has established his case for the relief[s] as prayed for under prayer clause (a). Accordingly, instant suit of the plaintiff stands decreed to the extent the defendant No.1 has encroached upon public land and is in physical possession of the land without any lease/license/allotment. Accordingly, the Defendant No.2 (KDA) is directed to proceed in accordance with the applicable provisions of law vis-a-vis Section 3, 5 & 8 of Sindh Public Property (Removal of Encroachment) Act, 2010. Orders accordingly.***

***10. Before parting with this judgment, the Defendant No.1 is, however, at liberty to approach the appropriate forum/authority available under the relevant law to get the lease of the encroached public property/land in question and get it regularized, if permissible and if she so desires'.***

4. According to the findings, although the tribunal lacked jurisdiction to adjudicate the matter concerning the lease, it nevertheless recorded adverse findings on Issue No. 5 against Respondent No. 3 (the sister). Despite this, in Paragraph 10 of its judgment, the tribunal granted Respondent No. 3 the relief to approach the relevant Authority for the regularization of the plot in question. In compliance with the judgment, Respondent No. 3 has approached the concerned Authority, and the matter is currently pending for regularization. The Authority, acting under the provisions of the ***Sindh Katchi Abadis Act, 1987***, is directed to decide the application in accordance with the relevant law.

5. The ***Sindh Katchi Abadis Act, 1987***, was enacted to provide for the development, improvement, and regularization of ***Katchi Abadis***, and to establish an Authority for this purpose. In the interpretation clause, ***"Katchi Abadi"*** is defined as an area declared as such under the Act, including those declared under any other law for the time being in force. Subsection (1) of Section 19 of the Act, 1987, stipulates that, subject to subsections (2), (3), and (4), as well as the directives of the Government, the Authority, after conducting such inquiry as it deems appropriate, may, by notification in the Official Gazette, declare any area, or part thereof, which was partially or wholly occupied without authorization prior to the 23rd of March, 1985 (subsequently amended to the 31st of December, 2011), and continues to be occupied, to be a ***Katchi Abadi***. A plain reading of this provision, in conjunction with Sections 20 and 21 of the Act, reveals that the Authority, established under Section 4 of the Act, is required, after an inquiry, to declare any area or part thereof, whether wholly or partially unauthorizedly occupied before the cutoff date (23rd March, 1985, later amended to 31st December, 2011), as a ***Katchi Abadi*** by publishing a notification in the Official Gazette. This process is subject to the directions of the Provincial Government. The Authority was established with the objective of developing, improving, and regularizing ***Katchi Abadis*** in accordance with the provisions of the Act. It is further noted that ***Katchi Abadis*** declared prior to the commencement of the Act, 1987, shall continue to vest in the respective councils for purposes of improvement, development, or regularization. However, the Authority may, at any time, assume control over such ***Katchi Abadis***. Moreover, Regulation 21 of the ***Sindh Katchi Abadis Authority (Regularisation, Improvement, & Development) Regulations, 1993***, outlines the procedures for the regularization of ***"unauthorized occupiers"***.

6. Accordingly, it is manifest that the present matter constitutes a clear case of malice. The petitioner, acting with ulterior motives, has initiated proceedings both before the Tribunal and by filing the instant petition against his sister, following her assertion of inheritance rights. This conduct amounts to an abuse of the judicial process, as the petitioner has advanced a personal vendetta by filing vexatious and frivolous claims. Such actions not only waste the valuable time of this Court and the

Tribunal but also inflict unnecessary anguish and distress upon the opposing party, resulting in unfair and unwarranted litigation. Consequently, the instant petition stands dismissed, with costs assessed in the amount of Rs.5,00,000/- (Rupees Five Hundred Thousand Only) payable to Respondent No.3. The costs shall be recoverable as arrears of land revenue by the *Nazir* of this Court. It is well-settled that frivolous, vexatious, and speculative litigation places an undue burden on the judicial system, artificially inflating the backlog of cases, thereby hindering the efficient administration of justice and delaying the adjudication of legitimate claims. Such litigation must be firmly discouraged, and one of the most effective deterrents against the filing of frivolous and vexatious claims is the imposition of substantial costs. The imposition of costs in such cases aligns with the right to a fair trial under Article 10A of the Constitution of Pakistan, as it not only deters frivolous claims and defenses but also ensures that valuable judicial time is reserved for the adjudication of genuine disputes. The objective of awarding costs is twofold: first, to compensate the successful party for the expenses incurred in the litigation, and second, to serve as a deterrent against frivolous, vexatious, and speculative claims and defenses, thereby purging the legal system of such unwarranted cases. In essence, the imposition of costs encourages alternative dispute resolution, facilitates settlements between parties, and reduces the unnecessary burden on courts, allowing them to focus on genuine claims. Costs serve as an offensive tool for plaintiffs with meritorious claims and as a defensive shield for defendants who have been unjustly dragged into litigation. The principle of imposing costs to prevent frivolous litigation is supported by the Apex Court of Pakistan in the Case of ***Qazi Naveed-ul-Islam v. District Judge, Gujrat and others (PLD 2023 Supreme Court 298)***.

7. For the reasons articulated hereinabove, the present petition filed by the petitioner is deemed not maintainable and lacking substantive merit. Consequently, the petition is hereby dismissed with costs, as mentioned supra.

JUDGE

JUDGE