

## IN THE HIGH COURT OF SINDH AT KARACHI

Constitutional Petition No. D-3980 of 2023

(Muhammad Adam Soomro v Province of Sindh & others)

Date	Order with signature of Judge(s)
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Mr. Justice Muhammad Karim Khan Agha  
Mr. Justice Adnan-ul-Karim Memon

### Date of hearing and order:-16.01.2025

Mr. Sabih-UI-Hassan Qureshi advocate for the petitioner.  
Mr. Ghulam Rasool advocate holding brief for Mr. Faisal Memon advocate for respondents No. 5 and 6.  
Mr. Shah Bakht Pirzada advocate for Martin's Wood Pakistan Limited  
Mr. Ali Safdar Depar, AAG  
Mr. Masood Ahmed, Divisional Forest Officer, Tando Muhammad Khan.

## ORDER

**Adnan-ul Karim Memon, J;** Petitioner Muhammad Adam Soomro seeks the following declarations and orders:

- A) *Declare that the allotment of 6 shops on a monthly rental basis to respondents No. 5 and 6 by respondents No. 3 and 4 is sheer violation of law and the law does not permit the respondents Nos. 3 and 4 to allot the shops constructed on state land.*
- B) *To cancel the allotment of shops to respondents No. 5 and 6 by respondents Nos. 3 and 4.*
- C) *To direct the Federal Investigation Agency to probe respondents No. 3 and 4 who are involved in such corrupt practices of allotting the shops to individuals without legal sanctity and register cases against them for such corrupt practices.*

2. We questioned the maintainability of the petition under Article 199 of the constitution, on the premise that the case in hand is unsuitable for complex disputes requiring extensive fact-finding inquiry/evidence. Article 199 of the Constitution is intended for clear cases of unlawful government action, not intricate matters where alternative remedies are more appropriate. This court's jurisdiction primarily addresses clear illegalities, not complex issues so far as the stance of the petitioner is concerned.

3. The learned counsel for the petitioner has submitted that the allotment of six shops to private respondents is illegal. He contends that the Forest land cannot be rented out to any individual, however, the subject land belongs to the petitioner as 'mohag land.' He demands the subject land be allotted to the petitioner, through public auction. He argued that the Forest Department's allotment of shops to private individuals is illegal and should be revoked. He prayed for allowing the petition.

4. Learned AAG argued that the petitioner lacks standing in this case regarding the forest land and therefore, this petition should be dismissed. He pointed out that the petitioner has already filed a separate FC Suit No. 94 of 2015

for similar relief before the Court of Senior Civil Judge Sujawal. He prayed for the dismissal of the petition.

5. Interveners, present in person, filed CMA No. 9781 of 2024 under Order 1 Rule 10 CPC, seeking to join them in the case as necessary parties, claiming inheritance of the landed property, which is claimed to be Forest land. Both the parties seem to be at loggerheads claiming ownership which factum needs to be decided by the court of plenary jurisdiction.

6. The Sindh government's claim that the land is Forest land precludes the petitioner and interveners from occupying it. Therefore, they lack standing to challenge their stance under Article 199 of the Constitution and should pursue their legal remedies under the law.

7. We have reviewed the petitioners' arguments on maintainability, relevant documents, and court orders (including Supreme Court rulings) related to this case.

8. Petitioner claims ownership of a 25,600 sq. ft. plot, purchased by his father in 1986, supported by a registered sale deed and mutation entry in the Revenue Record. After his father's death, the property devolved upon the petitioner and his siblings. It is claimed that respondent No. 4/Divisional Forest Office afforestation Division Tando Muhammad Khan illegally rented out 3 shops to private respondents No. 5 and 6. It is further claimed that the Forest Department neither owns the subject land where the shops are located nor possesses the legal authority to lease them out under the Forest Act of 1927. The petitioner's counsel argues that Forest officials illegally rented out shops, hindering the petitioner's land transfer rights under the land grant policy. The petitioner prayed for allowing this petition.

9. The renting process of subject shops belonging to the Sindh Forest Department located at the concerned Forest Range Office. The shops were previously encroached upon but were vacated in September 2023. As per the Forest Department, to prevent further degradation and generate revenue funds, the Forest Department decided to rent the shops through a public auction. As per learned AAG, renting the shops is authorized under the Sindh Delegation of Financial Powers and Financial Control Rules. We do not agree to the Forest Department's proposition to convert or rent out Forest land for commercial use (shops) as such the action of the respondent Forest Department needs to be probed by the competent authority.

10. In view of the above facts and circumstances of the case, by following the Supreme Court's order in Constitutional Petition No. D-52 of 2018, all forest land in both districts has been officially transferred in land records. Forest land demarcation, also ordered by the Supreme Court, is currently being conducted by Survey of Pakistan since January 2023. The Sindh Forest Department is reviewing survey proofs from the Survey of Pakistan. Learned AAG has informed that 20 FIRs have been registered against 51 individuals for forest encroachments. Learned AAG informed that 51 individuals were identified during forest encroachment retrieval efforts. He further submitted that 4,847 acres of forest land have been retrieved, however, 2,165 acres are under tree cover. He further informed that 630 acres were illegally cropped, and as such Forest protection committees were formed as per court order, headed by District & Sessions Judge. He added that Area clearance and tree planting is underway. He further submitted that encroachment removal operations are ongoing in the Tando Muhammad Khan, and Sujawal districts, and an Anti-encroachment drive is also underway in both districts. Be that as it may, this Court is solely focusing on removing encroachments from the forest land, as directed by the Supreme Court.

11. It appears from the record that this Court has previously issued orders on multiple dates in 2023 and 2024, directing action against forestland encroachers. These orders align with a Supreme Court judgment. Law enforcement agencies must assist the Forest Department in enforcing this court's orders. However, this Court does not endorse the Forest Department's authority to rent out shops to private individuals, as they have failed to clarify the stance backed by law.

12. Foregoing the reasons, this petition is disposed of in terms of orders dated 12.03.2024, 27.05.2024, 21.08.2024, 04.09.2024, 25.09.2024, and 09.10.2024, passed by this court, which must be complied with by the officials respondents without fail. Let a copy of this order be communicated to Chief Secretary Sindh, the Secretary Forest Department, and all concerned to ensure compliance.

JUDGE

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