

THE HIGH COURT OF SINDH AT KARACHI

C.P No.D-2059 of 2024

**Before: Salahuddin Panhwar &
Amjad Ali Sahito, JJ**

Petitioner : Nawaz Jakhro
 Respondents : Province of Sindh and others
 Date of hearing : 13.08.2024.
 Date of judgment : 13.08.2024.

Appearance.

Mr. Faisal Ahmed Memon advocate for the Petitioner.
 Mr. Shabbir Ahmed Kumbhar advocate for Respondent No.7.
 Mr. Shahryar Mehar, AAG a/w. Aijaz Ali Halepoto, Assistant Commissioner,
 Thatta.

J U D G M E N T

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

- (a) ***Directing the respondent No. 2, to 6 to perform their duties legally vested to them and demolish illegal / unauthorized encroachment raised by respondent No. 7 illegally and unlawfully, with direction to submit report of its compliance before this Honorable Court.***
- (b) ***Any other equitable relief (S) as this Honorable Court may deem fit and proper under the circumstances of this constitution petition.***

2. Precisely relevant facts are that the petitioner, a law-abiding citizen of Pakistan residing at the specified address, seeks judicial intervention concerning a government plot of 7700 sq. ft. located between Jungshahi Road and Plot No. 600 in Nareja Village Makli, Taluka & District Thatta. This plot, originally reserved for parking and Namaz-e-Janaza due to its proximity to Jamia Masjid, has been unlawfully encroached upon by Respondent No. 7. Utilizing political influence, Respondent No. 7 constructed on 4200 sq. ft. of the plot up to the plinth level without legal authorization. Despite the petitioner's Human Rights Petition No. 106/2015 and subsequent civil suit No. 50/2015, which confirmed the encroachment and directed the cessation of unauthorized construction,

Respondent No. 7 continues to build illegally, including the erection of a shopping center. The learned District & Sessions Judge Thatta deemed the matter a civil dispute and referred the petitioner to appropriate legal remedies, while the Senior Civil Judge Thatta confirmed the invalidity of the encroachment based on the Gothabad Scheme's reversion of the land to the government pool. Recent reports, including one from the Tapedar Deh Tanka dated 10-11-2023, noted ongoing encroachments. With no alternative remedy available, the petitioner now seeks relief through this constitutional petition to restrain and remove the illegal constructions and restore the plot to its intended use through instant petition.

3. In compliance of order dated 31.05.2024, Deputy Commissioner, Thatta [Respondent No.2] filed compliance report, which are that:

"In compliance of order dated 31.05.2024 passed by this Honorable Court for complete demarcation of total area of Makli graveyard i.e. 912-00 acres as per Gazette Notification of Ministry of Education Karachi dated 13th June, 1955 published in the Official Gazette dated 14 September, 1957. The operative para of the said order is reproduced as under"

"Accordingly, demarcation shall be carried out. However, vacant land shall be secured by the Deputy Commissioner Thatta and inhabitants, if nestled in the land of the Makli graveyard, shall not disturb. This exercise shall be carried out within two month with a compliance report"

On receiving such orders the undersigned constituted a team vide Notification NO.DC/REV/1917/2024, Thatta, Dated 10.06.2024 in order to carried out the demarcation of 912 acres land of Makli Graveyard. Furthermore, to determine/assessment of encroachment within the area of Makli graveyard, the team constituted upon the following members

- ***Assistant Commissioner Thatta (Convener),***
- ***Mukhtiarkar (Revenue) Thatta (Member),***
- ***Curator, Makli Necropolis (Archeology, Antiquities & Archive Department) (Member).***
- ***Station House Officer, Anti-Encroachment Cell (Member),***
- ***Rep: of Director Settlement Survey & Land Records Sindli (Member),***
- ***Revenue Tapedar Concerned (Member).***

(The copy of notification is enclosed herewith as annexure-A).

In this regard, a letter No. DC/lit/2015/2024 dated 24.06.2024 issued to the Director, Settlement Survey and Land Records Sindh Hyderabad with request to depute the Technical Team to assist the demarcation team i.e. Mukhtiarkar (Revenue) Thatta and other members to identify the boundaries and technical assistance to demarcate the graveyard area accordingly. (The Copy of Letter dated 24.06.2024 is enclosed herewith as annexure-B).

The demarcation was completed on 26.07.2024 in respect of actual area of Makli Necropolis 912-00 acres jointly by Revenue team. Technical team of Director, Settlement Survey and Land Records Sindh and also Curator Makli Necropolis (Archeology, Antiquities & Archive Department). The summary of the demarcation of such Graveyard is that prior to recent demarcation, the graveyard was compounded with small wall and fence / grills consisting upon 664-00 acres having joint villages 1. Shah Muhammad Magsi, 2. Karo Sheedi inhabited for more than 50 years, area of both villages is about 40-20 acres. Besides, government offices i.e. District Health Office area 4-08 acres, Agriculture Extension Office area 4-20 acres, Warehouse of Food Department 7-00 acres, and Pakistan Agriculture Research Council Office NISHTRY Office area 4-03 acres are also existing upon that area. After demarcation of the whole site, the actual area traced-out from the adjoining area is 248-00 acres which is part of Deh Makli and Makli Graveyard and also bifurcated to Deh Boundaries of Deh Nareja from Western side and Deh Thatta from Eastern side. The status of discovered area, a Grid Station is existing having 32-00 acres land, after some vacant portion, graves are also available upto the boundaries in which 03 Dargahs i.e. Ibrahim Shah Jilani (RA), Mula Lutir (RA), one other and (Sidha) Mandar in the area of Makli Graveyard are also existing.

It is further submitted that after completing the demarcation and discover/ declaring the area 912-00 acres an exercise was also made at the site in presence of representative of Administration of Makli Necropolis (Archeology. Antiquities & Archive Department) through Mukhtiarkar (Revenue) Thatta and village staff, erected temporary flags sticks (Killas) for assigning and marking boundaries of discovered / declared with total remaining area of the graveyard 912-00 acres, and also wrote a letter to Director General Antiquities & Archeology, Government of Sindh @Karachi, wherein made a request to make permanent/concrete arrangement to secure the area permanently with cemented structure or otherwise. (The copy of letter dated 26.07.2024 is enclosed herewith as annexure-C).

The compliance report alongwith site map duly signed by the team is submitted herewith before the Honourable

Court, further orders of this Honorable Court shall be complied thereof.

4. In view of above, admittedly Makli Graveyard is comprising of 664 acres having boundary wall however, total area is more than 900 acres and old inhabitants are residing and they received sanads; subsequently, same were cancelled. Further some offices have been constructed out of the boundary wall of Makli Graveyard. Villagers are apprehending that they will be dispossessed from their village[s] though they are residing since their forefather on the plea that matter pertains to Makli Graveyard. Whereas, it is also concerned that land can be allotted to anyone by the Government of Sindh.

5. The Learned AAG and the official present in Court contend that this land cannot be allotted to any individual though they are not going to dispossess old villagers. However, with regard to the old villages referenced in the report, the Member of the Gothabad Scheme and the Secretary of the Culture Department shall constitute a committee to determine the appropriate course of action. The committee shall be directed to ensure that the old inhabitants cannot be dispossessed if there is any public scheme in place. In such cases, the old inhabitants must be accommodated in a convenient area of their choice during the first phase of the scheme. The Committee's directive should be to ensure that the old inhabitants are able to enjoy a peaceful life, and that any public scheme implemented enables them to fully avail the rights guaranteed to them under the Constitution of Pakistan, 1973. On one hand, the land cannot be arbitrarily allotted to individuals, as there may be legitimate public purposes that require its utilization. On the other hand, the old inhabitants who have deep-rooted connections to the land must be treated with due consideration and not summarily dispossessed, especially if alternative accommodations can be provided that respect their choices and constitutional rights.

6. A comprehensive list of all existing occupants of the property must be compiled, including their Computerized National Identity Card (CNIC) numbers and information about their family members. However, the Deputy Commissioner of Thatta is responsible for conducting a fresh inspection of the premises to ensure that no unauthorized individuals encroach upon the property except for the old inhabitants who are already settled there. Additionally, the District & Sessions Judge of Thatta shall

designate a Magistrate with jurisdiction over the relevant area. This Magistrate will conduct quarterly inspections and uphold the situation in accordance with decisions made by the committee and the competent authority.

In view of the above directives, the instant petition is hereby disposed of, along with the listed application(s). Secretary, Culture shall file quarterly report on administrative side for any appropriate direction[s] through learned MIT-II.

JUDGE

JUDGE

M.Zeeshan