

**IN HIGH COURT OF SINDH, CIRCUIT COURT  
HYDERABAD**

**C.P No. D-756 of 2024**

[Muhammad Ashraf & others v. Province of Sindh and others]

**Before:**

**Mr. Justice Arbab Ali Hakro**

**Mr. Justice Riazat Ali Sahar**

Petitioners : Through M/s. Fayaz Ahmed Laghari  
and Ghulam Murtaza Laghari,  
Advocates.

Respondents No.1to8 : Mr. Muhammad Ismail Bhutto,  
Additional Advocate General Sindh  
along with SIP Shahnawaz SHO PS  
Gulab Khan Laghari on behalf of SSP  
Badin.

Respondents No.11&12 : Through Mr. Abbadul Hussnain,  
Advocate.

Respondents No.9&12to14 : Nil.

Date of Hearing : **25.03.2025.**

Date of Decision : **25.03.2025.**

**JUDGMENT**

**RIAZAT ALI SAHAR, J.:-** Through this petition, the petitioners claim that they being residents of Deh Aghamano, Taluka Matli, District Badin, are custodians of the ancestral graveyard known as Makhdoom Ismail Aghamano (Aghamkot), where their elders have been buried for centuries. In recent years, some persons, namely Master Niaz Hussain, Abdul Sattar Dars, Muhammad Abbas

Lanjwani, Yar Muhammad Lanjwani, and others, unlawfully introduced a printed brick inscribed with the name of one “Bibi Maaham” into the graveyard and commenced construction of a room/tomb around it. These persons have allegedly desecrated surrounding graves, exhumed skeletons, and wounded the religious and emotional sentiments of the petitioners and general public. Despite repeated objections and complaints to the local police, Deputy Commissioner and SSP Badin, no effective action has been taken and authorities appear to be colluding with the offenders. It is further alleged that government aid of Rs. 100 million has been wrongfully allocated to support this construction, which is being raised over graves of the petitioners’ ancestors without any lawful authority. The petitioners maintain that this act constitutes a violation of Section 297 PPC and infringes their constitutional rights protecting the dignity of the deceased. They possess photographic and video evidence showing the visible remains and bones of exhumed bodies. The respondents’ actions not only amount to trespass on burial grounds but also threaten further demolition of existing graves for the expansion of the tomb and construction of pathways. The authorities including the Chief Administrator Auqaf, have failed to address the issue and the petitioners now seek the interference of this Court to restrain the respondents from continuing unlawful construction, protect the sanctity of the graveyard and uphold the petitioners’ constitutional and legal rights. The petitioners, therefore, pray for the following reliefs:-

- a). To declare that the respondents No.2, 3, 4 & 9 have no authority under the law to damage the available*

*graves of dead bodies of relatives of the petitioners from the graveyard Aghamano for any purpose in any manner in the name of development.*

*b). That this entire action of respondents No.2, 3, 4& 9 to 14 of trespassing into the graveyard and digging out the graves of relatives of petitioners or anybody else are illegal and it is an offence.*

*c). It is further prayed that the amount of Rs.100 Million if any should be withheld and the construction near the grave of Bibi Maham may be stopped forthwith so that the criminal offence should not be allowed to continue more, and the said amount allotted to dead body may be transferred to poor people of locality and thereby stop any miscreant to trespass in the graveyard and cause any damage to more graves.*

*The allotment of land around the graves of Bibi Maham if any should be cancelled as no one has the authority to grant the graveyard.*

*d). To direct the respondents No.6 to 8 to provide legal protection to the dead bodies / graves buried in Aghamano Graveyard.*

*e). To direct respondent No.7 to take action immediately against the miscreants or official respondents when they act illegally and commit crime.*

*f). Costs of the petitioner may be saddled upon the respondents.*

*g). Any other relief(s) which this Honourable Court deems fit, just and proper in favour of the petitioner.*

2. Notices were issued to the respondents as well as Additional Advocate General Sindh.

3. In response to the petition, Respondent No.3 has stated that Agarmano/Aghamkot is a protected heritage site under the Sindh Cultural (Preservation) Act, 1974, and that the Culture Department has not received any application, objection, or complaint from anybody in this regard. Respondents No.4 and 9 have submitted that the possession of Dargah Bibi Maham has been formally taken over by the Auqaf Department and all development and construction work at the site is being carried out in accordance with the law. They confirmed the allocation of Rs.100 million for the development of the Dargah, with due consideration to the surrounding graveyards. It is further asserted that the Auqaf Department is responsible for the maintenance and management of such religious sites as well as for promoting religious education, public harmony and the provision of amenities to Muslims. The respondents have alleged that the petitioners, along with others, created dummy graves with the intention to provoke unrest and promote sectarian tension in the area, a serious allegation requiring evidentiary support from the petitioners. They further stated that the construction was undertaken with respect to the existing graves and was monitored by a committee, constituted in line with the Sindh Waqf Properties Act, 2020. The respondents also clarified that no portion of the graveyard land has been allotted to anybody and they have prayed for dismissal of the petition.

4. Respondents No.5, 7, and 8 have filed their respective comments in the matter. Respondent No.5 submitted that, in view of the sensitive circumstances prevailing at the site, he had

formally requested Respondent No.7 via letter dated 26.10.2021 to establish a police picket at the location to ensure public safety and prevent any untoward incidents. He further stated that, prior thereto, through his letter dated 03.03.2021, he had also approached the Auqaf Department with a request to take over possession of the Aghamano graveyard, in accordance with applicable legal procedures. Meanwhile, Respondents No.7 and 8, in their respective comments, affirmed the existence of a sectarian dispute between two religious communities—namely, the *Ahle Tashi* and *Ahle Sunat*—surrounding the construction of a tomb said to be of Bibi Maham Bint Imam Moosa Kazim, situated at the Dargah Aghamkot in Ghulab Laghari town, Taluka Matli, District Badin. Owing to the potential for conflict arising from the dispute, both respondents confirmed that a police picket has indeed been stationed at the site to maintain peace and uphold law and order.

5. The Respondent No.11 filed his comments wherein he has denied all allegations raised in the petition and termed the petition as false, misconceived, and not maintainable under the law, particularly the Sindh Waqf Properties Act, 2020. He has contended that the petition suffers from laches, having been filed after a delay of over three years from the date of acquisition of the site by the Auqaf Department via a notification issued in the year 2021, which remains unchallenged by the petitioners. He has further stated that the respondents deny any desecration or encroachment upon graves and contended that no grave has been disturbed, asserting instead that the petitioners have erected dummy graves to hinder

construction. He has further alleged that the petition was filed to protect trespassers who are unlawfully benefiting from the land. The shrine of Bibi Maham (Khadijah Bint Imam Musa Kazim R.A.) has existed for centuries and has been recognized both historically and religiously. Her shrine, also referred to as that of “*Medinay Wali Bibi*”, is affirmed as one of the earliest Islamic sites in Sindh. The Auqaf Department has lawfully taken control of the shrine under Section 6 and Section 8 of the Sindh Waqf Properties Act, 2020, and Rs. 120.512 million has been allocated under ADP Scheme 2023–24 for its development. The respondents affirm that construction will not damage any existing graves, and if necessary, the design will be revised to protect the sanctity of the site. The respondent has further contended that petitioner Muhammad Ashraf Lagari himself has acknowledged the existence of the shrine in various public interviews, contradicting the claims in the petition. The respondents rely on video clips, newspaper clippings, and historical records to substantiate the shrine’s authenticity. They contended that the allegations made by the petitioners amount to perjury and seek dismissal of the petition with exemplary costs, as well as possible prosecution of the petitioners for making false statements under oath.

6. To effectively resolve the controversy between the parties and with their consent this Court appointed the Additional Registrar as Commissioner to conduct an inspection of the subject site. The inspection was directed to be carried out in the presence of the concerned parties, with the assistance of the Director,

Settlement Survey Department; the concerned Mukhtiarkar; the Incharge, Archaeology Department; the Deputy Commissioner and the Senior Superintendent of Police, Badin; along with any other relevant officers as deemed necessary by the Commissioner. The Commissioner was tasked to submit a comprehensive report addressing the following issues: (i) whether the proposed construction is being carried out within the boundaries specified in the proposed map, and (ii) whether the respondents have destroyed or encroached upon the graveyard of the petitioners' forefathers, as alleged.

7. In compliance with this Court's order dated 09.01.2025, the Commissioner conducted a site inspection at the Aghamano/Aghamkot graveyard to address whether the proposed construction falls within the mapped boundaries and whether graves of the petitioners' forefathers have been encroached or destroyed. The inspection was carried out in presence of both parties and relevant government officials. The site, located in Survey No. 40 of Deh& Tappa Aghamano, Taluka Matli, was found to be open land under the administrative control of the Auqaf Department and declared protected heritage by the Culture Department. Through joint demarcation by the Revenue and Survey Departments, it was found that ten graves, claimed by petitioners to belong to their ancestors, lie down within the proposed construction boundary (totaling 7966.9 sq. ft.). However, no evidence of destruction or encroachment upon these graves was found. The Auqaf Department, through a written assurance,

undertook to preserve these graves and ensure no harm would come to them. At the time of inspection, no construction activity was ongoing. The Commissioner recommended construction of a boundary wall to prevent possible encroachments, given the open nature of the site.

8. The written statement of Respondent No.4, annexed with the Commissioner's Report, discloses that the subject property was formally taken over by the Auqaf Department through a notification dated 07.04.2021. For the purpose of facilitating Zaireens and beautifying the shrine of Dargah Bibi Maham, an allocation of Rs. 120.512 million was granted under the ADP Scheme 2023–24. The Respondent assured that the construction project would not disturb or desecrate any grave. Specifically, they undertook (i) to avoid disturbing existing graves, (ii) to carefully reconstruct and restore approximately ten graves that may be impacted to their original condition, and (iii) to ensure no harm to any other graves. They further committed to revising the design of the project if, at any stage, it is discovered that any grave may be compromised, reaffirming their respect for the sanctity of the graves and compliance with the Court's directions.

9. The learned counsel for the petitioners has contended that the petitioners are lawful custodians of the ancestral graveyard known as Makhdoom Ismail Aghamano (Aghamkot), situated in Deh Aghamano, Taluka Matli, District Badin, where their forefathers have been buried for centuries. He has further contended that the recent construction initiated by the Auqaf



Department around the shrine of Bibi Maham is being undertaken without proper demarcation and has encroached upon graves of the petitioners' ancestors, causing severe emotional distress and violating the sanctity of the burial site. He has further contended that the petitioners were not consulted and despite raising repeated objections with the authorities, no effective action was taken; however, on the contrary, the officials seem to be favoring one religious' group, leading to a sectarian divide. The counsel emphasized that bones and skeletons of deceased persons have been exposed, and documentary and video evidence has been placed on record to substantiate the claim. He has further contended that the respondents have violated constitutional protections relating to human dignity, religious freedom, and the sanctity of graves. The counsel further contended that the allocation of public funds in millions for construction over disputed land, without safeguarding existing graves, is not only arbitrary but also legally unsustainable. The counsel further contended that this Court may order to restrain the respondents from carrying out any further construction and direct that the graves be protected, restored, and preserved in their original condition, and that any development be undertaken only after proper demarcation and consent of all concerned stakeholders.

**10.** On the other hand, the learned A.A.G. Sindh has contended that the land measuring 74.24 acres comprising Aghamano/Aghamkot graveyard has been validly acquired by the Auqaf Department under Notification dated 07.04.2021, issued in accordance with the Sindh Waqf Properties Act, 2020. He has

confirmed that the site includes a protected heritage shrine of Bibi Maham, and the purpose of the acquisition is to ensure preservation, management, and provision of facilities to Zaireen in accordance with the law. He has further contended that no grave has been desecrated; rather, the official respondents have guaranteed preservation of all existing graves, particularly the 10 graves identified during the Commissioner's inspection. The Auqaf Department has also committed to revising the construction plan, if necessary, to avoid disturbing any grave. He has further contended that the petitioners have not challenged the legality of the acquisition notification or the jurisdiction of the Auqaf Department. He emphasized that the official actions are protected under the special statute, and the petition raises no constitutional or legal violations. Lastly, learned A.A.G. Sindh has by contended that the petition being not maintainable is liable to be dismissed as misconceived and barred under law.

11. In contrast to the arguments of petitioners' counsel, learned counsel for Respondents No.11 and 12 has contended that the land in question, measuring 74.24 acres, has been lawfully acquired by the Auqaf Department through a notification dated 07.04.2021 under the Sindh Waqf Properties Act, 2020, and its status as waqf property is undisputed. The petitioners have not challenged the said notification, nor have they filed a rejoinder to the counter affidavit, which includes historical, legal, and documentary proof of the shrine's legitimacy and the department's authority. He has further contended that the petitioners themselves

admitted in past interviews that Bibi Maham's shrine exists and that the appearance of bones in the area, if any, was on account of natural phenomena but not desecration. The respondents are members of a lawfully constituted Religious Purpose Committee and cannot be termed trespassers. The Auqaf Department has assured that no grave will be harmed, and if necessary, the construction plan will be revised accordingly. He has further contended that the learned counsel emphasized that prayer clauses B to F have already been relinquished by the petitioners, and the remaining prayer does not raise any triable legal or constitutional issue. The petition is thus barred by law, suffers from laches and is an interference in official duties protected under special law, and therefore, liable to be dismissed with costs.

12. We have heard learned counsel for the petitioner and the learned A.A.G. Sindh and perused the record.

13. Upon thorough and meticulous examination of the record, inclusive of the factual background, the submissions advanced by learned counsel, and all material placed before this Court, it transpires that the petitioners seek protective relief concerning the graves of their relatives and other individuals interred in the Aghamano Graveyard. They apprehend potential damage or unauthorised activity at the site and have accordingly sought, inter alia, the withholding of the Rs.100 million allegedly allocated for the development of the Dargah of Bibi Maham. Furthermore, the petitioners request cancellation of any purported land allotments surrounding the graves, asserting that no person or

authority is legally competent to alienate graveyard land. Additionally, they seek directions to respondents No.6 to 8 to ensure legal protection and preservation of the graves at the site in question. However, after evaluating the matter in its entirety, this Court is constrained to hold that the petitioners have not demonstrated any cogent or legally sustainable grounds to justify the reliefs sought in the present proceedings. Nor have they succeeded in establishing that the respondents' actions impinge upon any of their enforceable legal or constitutional rights. The assertions made by the petitioners regarding desecration, unlawful encroachment, and unauthorised construction within the ancestral graveyard of Makhdoom Ismail Aghamano (commonly known as Aghamkot) remain unsubstantiated. These allegations have not been corroborated by any compelling evidence. To the contrary, a neutral inspection was conducted by the Commissioner of the area, with the active cooperation of all relevant stakeholders, including the petitioners. The inspection report categorically reflects that there is no material on record to support the claim that any graves belonging to the petitioners' ancestors were desecrated or unlawfully disturbed. It is evident from the report that while ten graves, allegedly belonging to the petitioners' family, fall within the zone identified for the proposed development project, there exists no proof to suggest any of these graves have been damaged, dismantled, or encroached upon. Importantly, the respondents, through their written submissions before this Court, have provided solemn undertakings to the effect that the sanctity of the graves

will be preserved throughout the course of any construction work. Moreover, the respondents have stated that, should the need arise, the design of the project will be modified or altered to ensure that the graves are safeguarded and respected in their entirety. Insofar as the objections raised by the petitioners to the Commissioner's inspection report are concerned, it has been contended that the evidence of dismantled graves was purportedly removed prior to the inspection and thereby deliberately concealed. However, such assertions remain speculative in nature and lack any tangible basis or evidentiary backing. In fact, the very nature of the objections, which are devoid of material proof, reinforces the conclusion that the allegations are not substantiated by the facts on record.

14. Furthermore, we have noted that the land in question, measuring 74.24 acres was formally acquired by the Auqaf Department under the Sindh Waqf Properties Act, 2020, through a notification issued on 07.04.2021. This acquisition is undisputed and the petitioners have not challenged the legality of this notification in any manner and the failure of the petitioners to challenge the validity of the acquisition or the jurisdiction of the Auqaf Department significantly weakens their position. The legal framework under which the Auqaf Department operates is clear and the respondents' actions in taking control of the land including the development of the shrine and associated infrastructure are protected by this special statute. The established principle of this Court is that judicial interference in the affairs of statutory bodies is unwarranted when such bodies act strictly within the bounds of

their legal authority. Courts have consistently refrained from intervening unless there is compelling and concrete evidence indicating malfeasance, abuse of power, or actions taken in contravention of the law. Additionally, Section 13 of the Sindh Waqf Properties Act, 2020 provides a remedy of appeal before the District Court against actions taken under the Act. No such appeal has been preferred. Further, in view of the statutory ouster of jurisdiction contained within the Act, constitutional intervention is impermissible in the absence of mala fides, which has not been demonstrated in the present case, even nothing has been brought on the record to substantiate any claim of illegality or misconduct on the part of the concerned statutory authorities. Accordingly, in the absence of demonstrable wrongdoing, the invocation of the Court's extraordinary jurisdiction is not justified.

15. As far as claim of the petitioners with regard to exposition of bones or skeletons of deceased persons due to construction activity is concerned, they have also failed to provide convincing evidence to support such claims. The photographs and video evidence presented by the petitioners do not conclusively demonstrate any wrongdoing or illegal activity on the part of the respondents. The suggestion that the respondents are intentionally desecrating graves for construction purposes is speculative at best. More so, the respondents have repeatedly assured that the construction will not disturb any graves and these assurances are strengthened by the written undertaking from the Auqaf

Department. The construction is being conducted with the goal of preserving and improving the shrine, which has religious and historical significance as stated and the steps taken by the respondents to ensure that no harm is caused to the graves are credible and reasonable.

16. In relation to the allocation of funds for the development of the Dargah of Bibi Maham, the petitioners have raised concerns about the misappropriation of public funds amounting to Rs.100 Million. However, the respondents have provided a clear explanation of the purpose of these funds, which are allocated under the ADP Scheme 2023-24 for the development of the shrine and the provision of necessary facilities for Zaireen (pilgrims). This allocation is in line with the government's objective to preserve religious heritage sites and the respondents have assured the Court that the funds will be used responsibly and for their intended purpose. The respondents have also committed to revising the construction plans, should it be found that any grave may be compromised and to ensuring the continued preservation of the graveyard in its entirety.

17. The petitioners' assertion that the actions of the respondents are part of a larger scheme to provoke sectarian unrest is an unfounded and baseless accusation. The respondents have provided a detailed response, including the involvement of relevant authorities such as the police, to ensure law and order at the site. The establishment of a police picket at the site is a clear indication that the authorities are taking the necessary steps to maintain

peace and security in the area. The allegations of sectarian tension and the creation of dummy graves by the petitioners to provoke unrest are not supported by any tangible evidence. In fact, the petitioners' own admission in public interviews that the shrine of Bibi Maham exists contradicts their claims of desecration.

18. It is also important to note that the petition was filed after a significant delay of over three years from the date of the acquisition of the site by the Auqaf Department, and there has been no challenge to the validity of the acquisition notification. The petitioners have not presented any reasonable explanation for this delay and as such the petition suffers from laches, which also bars any relief at this stage. A petition filed after an unreasonable delay cannot be entertained especially when it concerns the execution of official duties that are protected under the law. We have also noted that the respondents have acted within their statutory authority and their actions are in compliance with the Sindh Waqf Properties Act, 2020. The petitioners have failed to provide any credible legal or factual basis for interfering with the actions of the Auqaf Department or for halting the construction of the shrine and associated facilities. The respondents have consistently demonstrated a willingness to respect the petitioners' concerns and have undertaken steps to protect the graves and the sanctity of the graveyard.

19. For what has been discussed above, we are of the humble view that the petitioners have failed to prove any legal violation or harm caused by the actions of the respondents and they



have acted in accordance with the law and the petition is, therefore, **dismissed** with no order as to costs. These are the reasons for our short order dated 25.03.2025.

JUDGE

JUDGE