

**IN THE HIGH COURT OF SINDH, CIRCUIT COURT  
LARKANA**

**Civil Revision No. S-136 of 2023**

Fahad Ali Shah and another

v.

Azfar Hussain Jatoi and others.

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| Applicant No.1   | : | Fahad Ali Shah son of Syed Sabir Shah   |
| Applicant No.2   | : | Syed Sabir Shah son of Syed Haimat Ali Shah through Mr. Imdad Ali Mashori, Advocate   |
|                  |   |   |
| Respondent No.1  | : | Azfar Hussain Jatoi through Mr. Farooq Ali Gaad, Advocate   |
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| Respondent No.2  | : | The SHO, P.S, Waleed  |
| Respondent No.3  | : | The SSP, Larkana  |
| Respondent No.4  | : | The SHO, PS Anti Encroachment Force, Larkana.   |
| Respondent No.5  | : | The Mukhtiarkar Revenue, Taluka and District Larkana.   |
| Respondent No.6  | : | The Assistant Commissioner, Taluka and District Larkana.  |
| Respondent No.7  | : | The Deputy Commissioner, Larkana  |
| Respondent No.8  | : | The Municipal Corporation Larkana   |
| Respondent No.9  | : | The Anti-encroachment Officer, Municipal Corporation Larkana.   |
| Respondent No.10 | : | The Head Master, Government Boys High School, Shaikh Zaid Colony Larkana.   |
| Respondent No.11 | : | The Executive District Officer (EDO), Education, Larkana, now re-designated as Director School Education Elementary, Secondary and Higher Secondary Larkana.                                |
| Respondent No.12 | : | The Director, Anti encroachment Force, Sindh Karachi.   |
| Respondent No.13 | : | The Government of Sindh, through Secretary Revenue, Department at Karachi, through Mr Abdul Waris Bhutto AAG, Sindh a/w SIP Saeed Ahmed Sangi, S.H.O. P.S. Anti-Encroachment Force, Larkana |
|                  |   |   |
| Respondent No.14 | : | Shaman son of Muhammad Akram Mugheri, and   |
| Respondent No.15 | : | Ghulam Murataza Sohoo, both through Mr. Naushad Ali Tagar, Advocate   |

Dates of Hearing : 07.03.2024, 22.03.2024 and 28.03.2024

Date of Judgment : 30.10.2025

### **J U D G M E N T**

**JAWAD AKBAR SARWANA, J.:** Fahad Ali Shah s/o Syed Sabir Shah (Applicant no.1/defendant no.1) and his father, Syed Shah s/o Syed Hikmat Ali Shah (applicant no.2/defendant no.2)(jointly and singly referred to as “father-son applicants”), are aggrieved by the Order dated 28.08.2023 passed by the Presiding Office of the Anti-Encroachment Tribunal, Larkana, in Suit No.07/2023 filed by Azfar Hussain/respondent no.1, dismissing the application under Order 1 Rule 10 CPC filed by father and son to implead/array Shaman s/o Muhammad Akram Mugheri (respondent no.14) and Ghulam Murtaza s/o Ameer Bux Sohoo (respondent no.15) in the aforementioned suit. Counsel for the father-son applicants contends that the presence of the respondent nos.14 and 15 is necessary for the adjudication of the suit.

2. At the outset, it is pertinent to mention here that since 07.10.2023, when the father-son applicants filed this civil revision, this matter has been pending in Court on the ground of maintainability. In the interim, no stay orders have been issued, and no status quo was ordered in the revision. The Presiding Officer has been at liberty to decide the Suit No.07/2023.

3. I have heard Counsel and the learned AAG Sindh, as well as perused the material available, and my observations are as follows:

4. The genesis of an anti-encroachment suit under the Sindh Public Property (Removal of Encroachment) Act, 2010 (“Act of 2010”), is unlike a civil suit as it is governed by the Act of 2010 and its filing and proceedings is regulated under the special statute, i.e. in this case, the Act of 2010. The cause of action

and the recourse of an aggrieved person are regulated by this special law. Therefore, the Presiding Officer must consider the plaintiff's case and the objections raised by the defendant(s) in the background and context of the Act of 2010. This applies equally to an application to implead a party in the suit subsequent to its' institution. At the time when the father-son filed their application to implead respondent nos.14 and 15 as defendants, father-son had already filed their Written Statement and denied the allegation raised by the plaintiff/respondent no.1. They denied the alleged illegal encroachment of quarter no.111 situated from the road side of Shaikh Zaid Colony, Larkana (viz-a-viz public amenity viz-a-viz green belt) and are encroaching public path so also blocking the same.<sup>1</sup> The matter was listed for final arguments before the Presiding Officer when the application to implead respondent nos.14 and 15 was filed. Thus, at this late stage of the proceedings, the father-son's application does not inspire confidence in its timing, which apparently calls into question the genuineness of moving such an application.

5. Without prejudice to the above, and in the alternative, based on the tentative assessment, as this bench is conscious not to influence the Presiding Officer on merits, as s/he remains at liberty to decide the case based on such material which is available before her/him, yet as per the Larkana Municipal Corporation, Larkana letter dated 27.06.2019,<sup>2</sup> prima facie arguably according to the plaintiff/respondent no.1 reliance on the said documents and other material, the father-son are alone associated with quarter no.111 situated at Abdul Jalil Al-Fehimi Colony, Larkana, which quarter no.111, situated from the road side of Shaikh Zaid Colony, Larkana (viz-a-viz public amenity viz-a-viz green belt) and is encroaching public path so also blocking the same. As a counterblast, father-son rely on

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<sup>1</sup> See paragraph 13(v) available on page 33 of the Revision Application.

<sup>2</sup> Attachment to Objections on behalf of Respondents 14 and 15 filed in the Revision Application.

another letter dated 18.02.2022,<sup>3</sup> which links quarter no. 111 situated at Shaikh Zaid Colony, Larkana, with the respondent nos. 14 and 15, and not with them. Thus, the defence raised by the father-son is that they are associated with quarter nos.34 and 36 only and not the concerned quarter no.111 (situated at Shaikh Zaid Colony, Larkana, associated with the respondent nos.14 and 15). Be that as it may, the matter of quarter no.111 and related encroachment has to be decided by the Presiding Officer, including, inter alia, the genuineness of the official documents available on record as produced by the parties (which seemingly contradict each other). These issues have to be decided by the Presiding Officer, first, and, at this stage, cannot be made a ground for impleading the respondent nos.14 and 15 as defendants in the suit. Indeed, if it is assumed that the father-son are correct (hypothetically speaking), then they have nothing to fear from the outcome of the case in relation to quarter no.111 as they have nothing to do with it and its related alleged encroachment. As such, if the Presiding Officer passes an adverse order concerning quarter no.111, if father-son have no concern with the subject land, then they do not need to worry about it on behalf of the alleged affectees, presumably respondent nos.14 and 15. Indeed, the matter ought to be left to the interested party of quarter no.111, who are, on the ground, allegedly the proper and correct encroachers. It is not for the father-son to decide who should be impleaded viz. quarter no.111. The encroachment complaint has been lodged by the plaintiff/respondent no.1 under the Act of 2010. It is the prerogative of the plaintiff/respondent no.1 to implead the necessary and proper party, and for the Court to decide who is necessary for complete adjudication of the case based on the material available before it. It is to the detriment of the plaintiff/respondent no.1 and the official defendants if a necessary party is left out. It is the plaintiff/respondent no.1 and the defendant officials who will suffer the consequences, and

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<sup>3</sup> Annexures "B" to the Statement dated 26.01.2024 filed by the father-son applicants in the Revision Application.

this aspect is not any business of the father-son to be worried about at this stage. For the above reasons and those articulated in the impugned Order dated 28.08.2023, the Presiding Officer has rightly declined the application to implead respondent nos.14 and 15 as defendants.

6. There is another aspect of the matter, i.e. if the father-son are aggrieved by the final order passed by the Presiding Officer of the Anti-Encroachment Tribunal, Larkana, both will continue to have the right of appeal under Section 27 of the Act of 2010. The Anti-Encroachment Tribunal is a species of the Act of 2010, and it provides an appeal for persons aggrieved by its final order. This revision is not maintainable on this score, too.

7. Last but not least, and without prejudice to the rights of the parties, as clearly this information was not available to the Presiding Officer when he passed the impugned Order dated 28.08.2023 was passed, and therefore, should not be considered by the Tribunal either, nevertheless, as the information forms part of the record of this revision, the respondent nos.14 and 15, as notice was issued to them have filed their comments controverting the allegations/assertions raised by the father-son viz. quarter no.111 as pleaded in the application under Order 1 Rule 10 CPC and this revision.

8. Given the above, I do not find any defect in the impugned Order dated 28.08.2023 passed by the Anti-Encroachment Tribunal, Larkana. The same suffers neither from any irregularity nor calls for any interference. The impugned Order is upheld for the reasons articulated in the said Order as well as those discussed by me herein above.

9. The revision application stands dismissed in the above terms.

J U D G E