

ORDER SHEET
IN THE HIGH COURT OF SINDH BENCH AT SUKKUR
Constitution Petition No. D-1264 of 2024
(Sanaullah Khan Shaikh & others Vs P.O Sindh & others)

DATE OF HEARING	ORDER WITH SIGNATURE OF JUDGE
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Before;

Adnan-ul-Karim Memon, J;
Abdul Hamid Bhurgari, J;

Mr. Rukhsar Ahmed Junejo advocate for the petitioner.

Mr. Ghulam Abbas Kumar , Assistant Advocate General, Sindh.

Date of hearing and order: 17 -06-2026.

O R D E R.

Adnan-ul-Karim Memon J:- The petitioners named above are seeking a declaration that the impugned notices dated 30.08.2024 are unlawful, their setting aside, and suspension of their operation until the final decision of the petition.

2. The case of the petitioners is that their ancestors were allotted residential plots under the Sindh Goth Abad Scheme, and SANADS were duly issued in their favour by competent revenue authorities. The relevant lands were subsequently entered in the revenue record through mutation and reflected in Deh Form-II as lawful grantees. The petitioners and their forefathers have been peacefully residing in Village Misri Khan for several decades, constructing houses and transferring properties among themselves with due record maintained by the Revenue Department. They submitted that adjacent to the village lies an old graveyard known as Shaikhan-Jo-Qabrustan, recorded in Survey Nos. 210 to 214 in Deh Umar Kas, UC-22, Badal Bequs, Taluka Rohri, District Sukkur, where ancestral graves also exist. In 2018, a Misc. An application was filed before the Anti-Encroachment Tribunal, Sukkur, regarding alleged encroachment over the said graveyard. The Tribunal, after calling revenue reports confirming the graveyard's existence, directed on 05.11.2018 that demarcation be

carried out through the Survey Settlement Department, Khairpur, and encroachments, if any, be removed.

3. The petitioners' counsel contend that no demarcation was ever carried out, nor was any compliance report submitted by the revenue authorities for several years. After an inordinate delay of almost six years, respondent No.7 issued impugned notices dated 30.08.2024 to the petitioners and other villagers, directing the removal of alleged encroachments within three days, purportedly in compliance with the Tribunal's order. The petitioners' counsel maintains that these notices are illegal, arbitrary, and issued without proper demarcation of land or verification of the revenue record. He asserts that petitioners are lawful owners/occupants of their respective survey numbers under the Goth Abad Scheme and have not encroached upon any portion of the graveyard land. They further allege mala fide intent and political influence behind the issuance of the notices, aimed at protecting actual encroachers elsewhere while targeting innocent villagers. He added that despite approaching the concerned revenue authorities and requesting proper demarcation, no action was taken. The petitioners' counsel, therefore, contend that the petitioners' valuable property rights and constitutional protections are at risk, as the impugned notices threaten demolition of their houses without due process of law. He prayed to allow this petition.

3. The official respondents present in court have jointly submitted that, according to the revenue record, a "Muqam" (graveyard) exists over Survey Nos. 210, 211, 212, 215, and others, measuring about 16-07 acres in Deh Umar Kas, Taluka Rohri, District Sukkur. The said graveyard is duly entered in the revenue record. It is stated that, in compliance with the order dated 05.11.2018 passed by the Anti-Encroachment Tribunal, Sukkur, proceedings were initiated against persons found to have illegally encroached upon the graveyard land. They added that during the demarcation conducted through the Survey Settlement Department, Khairpur, approximately 03-10 acres of the graveyard land were found to be encroached upon, where various individuals had constructed pucca houses.

4. Learned AAG submitted that the Deputy Commissioner Sukkur/Director Anti-Encroachment Force, along with the Assistant Commissioner Rohri, Mukhtiarkar Revenue Rohri, and concerned police officials, initiated steps for the removal of such encroachments. Consequently, notices were issued to all alleged encroachers to vacate the graveyard land in accordance with the law. He further stated that the encroachers initially sought a time of seven days to remove the encroachments, but instead filed the present constitutional petition before this Court. The learned AAG contends that the petitioners are unlawful occupants who have approached this Court with mala fide intentions and without clean hands, and therefore, the petition is not maintainable. The respondents have prayed that the petition be dismissed and that the encroachers be directed to remove the illegal constructions from the graveyard land in the interest of justice.

5. We have heard the learned counsel for the parties and perused the record with their assistance.

6. The Anti-Encroachment Tribunal, Sukkur, disposed of a miscellaneous application filed by Shamsuddin and others seeking removal of alleged encroachments over Shaikhan-Jo-Qabrستان, a graveyard situated at Survey Nos. 210 to 214 in Deh Umar Kas, Taluka Rohri, District Sukkur. The applicants claimed that they were being prevented from burying their deceased and that influential persons had illegally occupied portions of the graveyard despite repeated complaints to authorities. During preliminary proceedings, notices were issued to all concerned parties, including private respondents and revenue and police officials. The Mukhtiarkar Revenue Rohri submitted a report confirming that several individuals had encroached upon the graveyard land and constructed permanent and semi-permanent structures. The private respondents, however, denied illegal occupation and alleged that the complaint was motivated and disputed the facts regarding burial and encroachment. After examining the record and hearing all sides, the Tribunal observed that the primary jurisdiction of the Anti-Encroachment Tribunal under the Sindh Public Property (Removal of Encroachment) Act, 2010 is limited and that the actual removal of encroachments from public property is the responsibility of the authorized executive officers, namely the

Deputy Commissioner/Director Anti-Encroachment Force, who must act in accordance with law after proper demarcation by the Survey Settlement Department. While noting that disputes regarding encroachment on graveyard land fall within the administrative domain for enforcement rather than adjudication, the Tribunal held that the matter required proper demarcation of the graveyard land. Accordingly, it directed the Deputy Commissioner Sukkur/Director Anti-Encroachment Force to remove any illegal encroachments from Shaikhan-Jo-Qabrustan, if found, after carrying out demarcation through the Survey Settlement Department Khairpur, and to report compliance to the Tribunal. The order was accordingly issued on 05.11.2018.

7. The accompanying revenue statement further confirms that graveyard land measuring approximately 16-07 acres in Deh Umar Kas includes Survey Nos. 210, 211, 215, 217, and others, recorded as “Muqam” in the revenue record. It states that encroachments were identified over about 03-10 acres of the graveyard by different local persons who constructed houses thereon. It also notes that the revenue authorities, along with police officials, initiated proceedings for the removal of such encroachments in compliance with the Tribunal’s order. However, nothing could be done in the intervening period.

8. The main dispute between the parties is essentially factual in nature, relating to identification, demarcation, and alleged encroachment over land recorded as “Muqam” (graveyard) in the revenue record bearing Survey Nos. 210 to 214 and adjoining numbers in Deh Umar Kas, Taluka Rohri, District Sukkur.

9. It is an admitted position that the subject land is recorded in the revenue record as a graveyard and that the Anti-Encroachment Tribunal, Sukkur, through its order dated 05.11.2018, had already directed the concerned Deputy Commissioner/Director Anti-Encroachment Force to ensure removal of encroachments, if any, after proper demarcation through the Survey Settlement Department, Khairpur. The said order has attained legal sanctity and remains binding upon the executive authorities for its lawful implementation.

10. The petitioners, on the other hand, assert their rights under the Sindh Goth Abad Scheme and claim lawful possession over their respective survey numbers. They allege that the impugned notices dated 30.08.2024 have been issued without prior demarcation and verification of the revenue record, thereby affecting their civil and constitutional rights, including protection against deprivation of property without due process of law.

11. It is well-settled that while encroachment upon public property, particularly graveyard land, cannot be protected in law, equally the removal of alleged encroachments must strictly adhere to due process, proper demarcation, and compliance with the principles of natural justice. Any executive action taken without first determining the exact boundaries through lawful demarcation would be premature and susceptible to judicial scrutiny.

12. In the present case, although the respondents rely upon the revenue record and the Tribunal's order dated 05.11.2018, it is also evident that effective and final demarcation, as directed by the Tribunal, has not been conclusively demonstrated to have been carried out before issuance of the impugned notices. Since the liability of the petitioners to be treated as encroachers can only be determined after precise identification of the graveyard boundaries vis-à-vis their respective holdings, the issuance of coercive notices without completion of this foundational exercise appears to be procedurally deficient.

13. Accordingly, without expressing any opinion on the merits of the rival claims regarding title or possession, it is held that the impugned notices dated 30.08.2024 cannot be sustained in law in their present form unless and until proper demarcation of the subject graveyard land is carried out in accordance with the directions of the Anti-Encroachment Tribunal, Sukkur dated 05.11.2018, and due determination is made regarding alleged encroachments in accordance with law.

14. Resultantly, the petition is disposed of with directions to the concerned revenue authorities to ensure strict compliance of the order dated 05.11.2018 by carrying out proper demarcation through the Survey Settlement Department, Khairpur, within two

months, and thereafter proceed strictly in accordance with law. It is further clarified that upon completion of demarcation by the competent revenue authorities/Survey & Settlement Department, Khairpur, if any encroachment over the subject graveyard is found, the same shall be removed forthwith by the concerned illegal occupants. In case of resistance, the Mukhtiarkar concerned shall proceed in accordance with law for the removal of encroachments from the public property as directed by the Tribunal.

15. This petition stands disposed of in the above terms, along with pending application(s).

Let a copy of this order be communicated to all concerned for compliance in time.

Judge

Judge

Nasim/P.A