

ORDER SHEET  
IN THE HIGH COURT OF SINDH, KARACHI  
C.P. No. D-780 of 2026  
(Malir Development Authority & another v Muhammad Ramzan & others)

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Date Order with signature of Judge

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Before:

Mr. Justice Adnan-ul-Karim Memon

Mr. Justice Zulfiqar Ali Sangi

**Date of hearing and Order: 27.04.2026**

M/s. Ahmed Ali Ghumro, Abdul Samee and  
Sajjad ul Haque, Advocates for the Petitioner.  
Mr. Nazir Ahmed, SharAdvocate for respondent No.1  
Mr. Ghazanfar Ali Abbasi, D.S. BOR  
Mushtaq Ali, Focal Person BOR.  
Mr. Abdul Jalil Zubedi, AAG.

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**ORDER**

**Adnan-ul-Karim Memon, J** Learned counsel for the petitioners submits that the instant constitutional petition has been filed against the impugned order dated 30.09.2024, passed by the learned Anti-Encroachment Tribunal, Karachi, in Suit No. 14 of 2023, whereby the suit filed by Respondent No. 1 was decreed in an unlawful and mechanical manner. Counsel contends that the Tribunal acted wholly without jurisdiction in granting a declaration of title, which falls outside the scope of its authority under the Sindh Public Property (Removal of Encroachment) Act, 2010. It is urged that the impugned order is thus coram non iudice and void ab initio. It is argued that the claim of Respondent No. 1 was based entirely on fake and forged sanads purportedly issued in 1996, which have already been declared illegal through government notifications and public notices, including notice dated 03.06.2009. It is submitted that despite this, the Tribunal failed to examine the legality of such documents. Counsel further submits that the subject land forms part of Deh Joreji, District Malir, which was lawfully declared a controlled area and vested in the Malir Development Authority (MDA) through Gazette Notifications issued in 1996, followed by lawful possession, development schemes, and payment of land cost, thereby establishing the petitioners' lawful title and possession. It is next contended that the learned Tribunal decided the matter ex parte without properly considering the written statement, documentary evidence, or admitted record, even no cross examination was allowed, merely on a technical ground, in violation of principles of natural justice. It is emphasized that even otherwise, the Tribunal was under a legal duty to scrutinize the claim on merits, subject by documentary evidence, which it failed to discharge. Learned

counsel also submits that the proceedings were not properly contested due to inadvertence and professional lapse of previous counsel, who neither informed the petitioners nor defended the case diligently, and the petitioners cannot be penalized for such lapse. On the part of the counsel it is argued that the impugned order suffers from non-application of mind, absence of lawful reasoning, and excess of jurisdiction, resulting in grave miscarriage of justice and adversely affecting public property. In view of the above, learned counsel prays that the impugned order be set aside, the matter be remanded for fresh decision in accordance with law, or alternatively, the suit be dismissed as not maintainable and based on fraudulent documents, with further restraint against interference in the subject land.

2. Learned counsel for Respondent No.1 raised the question about maintainability of the petition and submits that the instant constitutional petition is not maintainable and is liable to be dismissed on multiple preliminary grounds. It is contended that the petition suffers from unexplained laches as the impugned order dated 30.09.2024 was passed after due process of law, whereas the present petition has been filed after an inordinate delay without any plausible justification. It is further argued that the petitioners have failed to avail the alternate and efficacious remedy available under the law against the impugned order passed by the learned Anti-Encroachment Tribunal, Karachi in Suit No.14 of 2023. Moreover, the petitioners have not pointed out any illegality, jurisdictional defect, or procedural irregularity in the impugned order warranting interference under constitutional jurisdiction. Learned counsel submits that the Suit was filed by Respondent No.1 and other villagers claiming lawful status of Village Saboo Baloch, Deh Joreji, as a sanctioned Goth under the Gothabad Scheme, comprising approximately 38 acres of land, in possession of the villagers since 1954. It is stated that despite repeated efforts, demarcation was not carried out due to interference by the petitioners in collusion with land grabbers, and the petitioners were attempting to unlawfully occupy a portion of the Goth land. It is further submitted that the learned Tribunal provided full opportunity of hearing to the petitioners, who filed written statements but deliberately failed to cross-examine the respondent No.1, plaintiff despite ample opportunity. Consequently, the Suit was decreed on merits after recording evidence and considering the material on record, and the allegation of ex parte proceedings is misconceived. Counsel also points out that even thereafter, the conduct of the petitioners reflects continued interference, which led Respondent No.1 and other villagers to seek protection before the learned Civil Court, where interim injunction was granted restraining the petitioners from dispossessing them. It is contended that the Mukhtiarkar concerned has also confirmed the status of Saboo Goth as a notified and sanctioned village, with lawful possession of the residents, thereby supporting the case of Respondent No.1. In view of the above, learned counsel submits that the

petition is devoid of merit, suffers from laches, and is not maintainable in law. Accordingly, dismissal of the petition is prayed for.

3. The learned AAG filed statement on behalf the Senior Member BOR and Secretary Land Utilization Department and submitted that, an area admeasuring 6000 acres in Deh Joreji, District Malir was allotted to the Malir Development Authority for the New Malir Housing Project under government decision dated 04.03.1996. The land was subsequently surveyed and physical possession of approximately 2000 acres, including various survey numbers and NC classes of Deh Joreji, was handed over to MDA on 19.08.1998. He submitted that the area was declared a controlled area through Sindh Government Gazette dated 06.07.1996, thereby placing it under the jurisdiction of MDA for development purposes. Learned AAG pointed out that the Village Saboo Baloch was sanctioned under the Gothabad Scheme vide order dated 20.03.2013 over Na-Class No.309 with an area of about 38-01 acres. However such sanction was issued without compliance of legal formalities and during a period of ban imposed by the Supreme Court, and therefore the Mukhtiarkar concerned had recommended its cancellation, therefore the respondent No.1 had no cause of action to file Suit under Section 13 & 14 of the Act 2010. It is further highlighted that there is a discrepancy in location, as the sanction refers to Na-Class 309, whereas the purported village is situated in Na-Class 310, which falls within the planned MDA scheme area. It is also asserted that no valid allotment or legal title exists in favour of Respondent No.1 or other villagers within the MDA-controlled land. He supported the stance of Senior Member BOR and Secretary Land Utilization Department.

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

5. The controversy essentially turns on the scope of jurisdiction of the Anti-Encroachment Tribunal under the Sindh Public Property (Removal of Encroachment) Act, 2010, and the effect of failure of the petitioners to contest the proceedings before the Tribunal.

6. The Anti Encroachment Tribunal's proceedings show that Respondent No.1 filed suit claiming ownership and lawful possession of Village Saboo Baloch as a sanctioned Goth under the Gothabad Scheme, alleging interference by MDA in possession and demarcation. The petitioners, while filing written statement, asserted that the land forms part of MDA's 6000-acre housing scheme and that the villagers are illegal encroachers relying on forged or irregular documents. The Tribunal framed issues regarding lawful ownership and validity of sanction order dated 20.03.2013. Respondent No.1 led evidence through affidavit and produced documents, including sanads, maps, and utility records,

whereas the petitioner failed to cross-examine the witness or lead evidence despite opportunities, and their side was closed. The Tribunal observed that the evidence of the respondent No.1/plaintiff Muhammad Ramzan remained unchallenged however the Suit filed by one Dolat Khan and that the petitioner failed to discharge their burden to prove encroachment. It further noted that the Mukhtiarkar's own report indicated procedural irregularities in sanctioning the Goth but clarified that such irregularities, if any, could not prejudice the rights of the allottees. Consequently, the Tribunal held that the residents of Saboo Goth were lawful occupants/allottees and not encroachers. Accordingly, the Tribunal decreed the suit in favour of Respondent No.1, declaring them lawful allottees and restraining interference, while also holding the sanction order liable to challenge. The impugned order dated 30.09.2024 was thus passed allowing the suit as prayed.

7. The Anti-Encroachment Tribunal is a forum of limited jurisdiction, primarily empowered to determine questions relating to encroachment upon public property. It is not vested with plenary jurisdiction to adjudicate disputed questions of title or to grant declarations of ownership, which fall within the exclusive domain of a competent civil court. In the present case, the Tribunal, while decreeing the suit, has effectively declared Respondent No.1 and other villagers as lawful allottees/owners of the subject land. Such declaration, by its very nature, travels beyond the statutory mandate of the Tribunal and renders the impugned order, to that extent, coram non iudice and without lawful authority.

8. At the same time, it cannot be overlooked that the petitioners, despite having filed their written statement, failed to avail repeated opportunities to cross-examine the respondent No.1's/ plaintiff's witness or to lead evidence in rebuttal. Consequently, the evidence produced by Respondent No.1 remained unchallenged. Under settled principles of law, un-rebutted evidence carries probative value, and the Tribunal cannot be faulted for drawing an inference in favour of the party who led evidence. The petitioners' omission, whether due to negligence or lapse of counsel, cannot automatically invalidate the entire proceedings.

9. However, the matter does not end there. Even in the absence of rebuttal, a court or tribunal is under a legal obligation to confine itself within the limits of its jurisdiction and to independently assess whether the relief claimed is legally tenable. The Tribunal, in the present case, failed to undertake a proper jurisdictional analysis and proceeded to grant a declaration of title, which it was not competent to grant. Furthermore, the record reflects serious and substantial disputes regarding the nature and classification of the land, the effect of Gazette Notifications vesting the land in MDA, the legality of the Gothabad sanction dated 20.03.2013, and the discrepancy in location (Na-Class 309 versus Na-Class

310). These are complex questions involving title, legality of allotment, and competing claims of public authority versus private occupants, which could not have been conclusively determined in a summary manner by the Tribunal.

10. Additionally, the Tribunal itself noted procedural irregularities in the sanction of the Goth, including absence of codal formalities, yet failed to examine the legal consequences thereof. The principle that “fraud or illegality vitiates all proceedings” required a deeper scrutiny, particularly when public land and statutory rights of a development authority were involved. The failure to address these material aspects reflects non-application of mind.

11. Insofar as the objections regarding laches and alternate remedy are concerned, it is settled that such objections are not absolute bars where the impugned order is without jurisdiction. A jurisdictional defect goes to the root and renders the order a nullity; therefore, delay becomes immaterial, particularly where public property is involved. In the present case, the learned Anti-Encroachment Tribunal acted beyond its statutory mandate by granting a declaration of title, which it was not competent to do under the Sindh Public Property (Removal of Encroachment) Act, 2010. The impugned order is thus coram non iudice and liable to be set aside.

12. The objection regarding alternate remedy is equally untenable, as constitutional jurisdiction can be invoked where the order is without jurisdiction, suffers from patent illegality, or violates principles of natural justice all of which are attracted in the present case. Contrary to the respondent’s stance, the petitioners have specifically pointed out serious infirmities, including non-consideration of material documentary evidence such as Gazette Notifications, possession record, and revenue documents, as well as failure to examine the legality of the alleged sanads, reflecting clear non-application of mind.

13. Prima facie, the claim of Respondent No.1 is itself contradictory as the record prima facie shows that the land forms part of a 6000-acre controlled area vested in MDA. It is urged that subject Goth sanction dated 20.03.2013 is tainted by procedural irregularities, issued during a ban, and also prima facie suffers from location discrepancies, with even the Mukhtiarkar recommending its cancellation. However on that basis no declaration could be issued by the Tribunal for the reason that lawful right can arise from such defective title if any subject to final sya by the learned Civil Court. Furthermore, mere failure to cross-examine does not relieve the Tribunal of its duty to act within jurisdiction and examine the legality of the claim. A Tribunal cannot grant relief beyond its competence, even if evidence remains unrebutted. Reliance on subsequent proceedings is irrelevant, as such proceedings cannot cure a jurisdictional defect. Likewise, selective reliance on the Mukhtiarkar’s report is misplaced, as the same record highlights

some discrepancy in the sanction order if any, which factum needs to be thrashed out by the Civil Court. In view of the above, the objections raised by Respondent No.1 are misconceived. The impugned order suffers from jurisdictional defect, non-application of mind, and misreading of record, resulting in miscarriage of justice, and is therefore liable to be set aside.

14. In these circumstances, the impugned order dated 30.09.2024 cannot be sustained in its present form. The Tribunal exceeded its jurisdiction by granting declaratory relief, and at the same time, material questions of fact and law remained unaddressed due to improper adjudication.

15. Resultantly, the impugned order is set aside, and the matter is remanded to the learned Anti-Encroachment Tribunal, Karachi, for fresh decision strictly in accordance with law. The Tribunal shall confine itself to its statutory jurisdiction, frame proper issues, allow both parties full opportunity to lead evidence, and decide the matter after examining all relevant documents, including the status of land, legality of the Gothabad sanction, and applicability of relevant notifications by obtaining necessary documents from Senior Member Board of Revenue and Land Utilization department even by summoning them to produce the record of the subject land, through officer of the Board of Revenue. Even the Tribunal can inspect the site.

16. It is clarified that the findings recorded hereinabove is tentative and shall not prejudice the case of either party, and all questions, including that of title and legality of possession, shall be decided afresh on merits by the competent civil Court in accordance with law where the Civil Suit No.3812 of 2025 filed by the respondent No.1 as a attorney of the villagers for Declaration and Permeant Injunction is pending adjudication. Besides the observation recorded in the preceding paragraph for fresh decision the learned Anti-Encroachment Tribunal, Karachi on merits within one month after providing meaningful hearing to all concerned.

17. These are the reasons for our short order whereby the captioned petition was allowed and the judgment of the learned tribunal was set aside.

JUDGE

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