

THE HIGH COURT OF SINDH, CIRCUIT COURT,
HYDERABAD

Cr. Misc. Application No. S - 620 of 2025

[Mst. Subhan versus The Secretary Irrigation Department and others]

Applicant : Mst. Subhan wife of Khair Muhammad through M/s. Ghulam Shabbir Mari and Arbab Ali Jinjh, Advocates.

Respondents 1-3 : Province of Sindh through Secretary Irrigation Department and two others through Ms. Rameshan Oad, Deputy Prosecutor General Sindh.

Proposed Accused 1-6 : Nemo.

Date of hearing : 21-09-2026

Date of order : 14-10-2026

Date of Announcement : 19-10-2026

ORDER

Zulfiqar Ali Sangi J. - Through the instant Criminal Miscellaneous Application, the applicant has called in question the legality and propriety of the order dated 27.08.2025, passed by the learned Additional Sessions Judge-I/Ex-Officio Justice of Peace, Dadu in Criminal Miscellaneous Application No.2060 of 2025, whereby the application filed by the applicant under Section 22-A(6), Cr.P.C. was dismissed; *however, while doing so, the learned Justice of Peace proceeded to issue a further direction to the Irrigation Department to ensure equal exercise of removal of encroachments against all persons, including its own officials who were alleged to have occupied Irrigation Department land.*

2. Learned counsel for the applicant contends that the learned Ex-Officio Justice of Peace exceeded the jurisdiction vested in him under Section 22-A (6), Cr.P.C. The grievance raised before the Justice of Peace was essentially with regard to the alleged non-registration of

a criminal case concerning the demolition of the applicant's house and the alleged acts attributed to the proposed accused. According to learned counsel, no prayer whatsoever was made before the Justice of Peace seeking a direction to the Irrigation Department for removal of encroachments, nor could such a direction validly be issued in proceedings under Section 22-A(6), Cr.P.C. Learned counsel submits that the question whether any person is in occupation of Irrigation Department land, whether such occupation constitutes an encroachment, and whether such encroachment is liable to be removed, falls within the domain of the competent authority dealing with the subject property and cannot be adjudicated upon or enforced by an Ex-Officio Justice of Peace in exercise of the limited jurisdiction conferred by Section 22-A(6), Cr.P.C.

3. Learned State Counsel has been heard, who has fairly conceded that the impugned order is not sustainable, and the record has been carefully examined.

4. The controversy, therefore, is required to be examined in the light of the statutory jurisdiction conferred upon an Ex-Officio Justice of Peace. Section 22-A (6), Cr.P.C. authorizes an Ex-Officio Justice of Peace to issue appropriate directions to the police authorities concerned in specified matters, namely, non-registration of a criminal case, transfer of investigation from one police officer to another, and neglect, failure or excess committed by a police authority in relation to its functions and duties. The jurisdiction is thus circumscribed by the statutory provision itself and cannot be enlarged to adjudicate or regulate matters which fall outside the functions and duties of the police.

5. The legal position in this regard is no longer *res integra*. In *Mir Muhammad Shaikh v. The State and others*, PLD 2020 Sindh 556, this Court examined the scope of Section 22-A (6), Cr.P.C. and held that the powers of an Ex-Officio Justice of Peace under the said provision are limited and are intended to aid, assist and facilitate the criminal

justice system. It was specifically held that Section 22-A (6), Cr.P.C. does not confer jurisdiction upon an Ex-Officio Justice of Peace to entertain a complaint or application seeking a direction to a person or public official concerning his duties in relation to a dispute regarding immovable property. The Court further held that where the controversy does not fall within the defined domain of the Ex-Officio Justice of Peace, the application ought to be dismissed at the threshold for want of jurisdiction. Likewise, in *Mujahid Ali v. The State and others*, 2023 MLD 645, the scope and ambit of Sections 22-A and 22-B, Cr.P.C. were examined by this Court, wherein it was reiterated that the jurisdiction vested in an Ex-Officio Justice of Peace under Section 22-A(6), Cr.P.C. is circumscribed by the matters specifically enumerated therein and is primarily confined to matters relating to the performance of statutory functions and duties by the police authorities. The Court also considered an order whereby directions had been issued by the learned Ex-Officio Justice of Peace beyond the limits of the jurisdiction conferred by law and held such exercise to be without lawful authority and jurisdiction. Significantly, in *Mujahid Ali's case, the Ex-Officio Justices of Peace in the Province of Sindh were specifically restrained from passing orders of such nature, and the said judgment/order was also circulated amongst all Ex-Officio Justices of Peace functioning throughout the province for strict compliance*. Notwithstanding the said authoritative pronouncement and the specific restraint imposed therein, the Ex-Officio Justice of Peace, in the present case, proceeded to pass an order of substantially similar nature, thereby exercising jurisdiction beyond the limits prescribed by Sections 22-A and 22-B, Cr.P.C.

6. The distinction between the powers under Section 22-A and the duties contemplated by Section 22-B, Cr.P.C. also requires to be kept in view. In *Mst. Bhaitan v. The State and others*, PLD 2005 Karachi 621, this Court explained that Sections 22-A and 22-B operate in their respective fields and that the powers under Section 22-A are to be exercised within the framework prescribed therein, whereas the

duties under Section 22-B are to be performed within the framework of that provision. Even if the provisions of Section 22-B, Cr.P.C. are taken into consideration, the same cannot be construed as conferring upon an Ex-Officio Justice of Peace a general or supervisory jurisdiction over public departments so as to direct them to undertake an anti-encroachment operation upon their property. The preventive duties contemplated by Section 22-B concern an incident involving breach of peace or commission of an offence, preservation of the place of occurrence in cases of cognizable offences, and assistance to the police in an investigation. Such statutory duties cannot be converted into an independent jurisdiction to determine proprietary or possessory rights over immovable property or to command a government department to remove alleged encroachments.

7. In the present case, the Ex-Officio Justice of Peace, after considering the application, reports of the police and the material available on record, arrived at the conclusion that the applicant's house had already been demolished during the anti-encroachment drive of the Irrigation Department and, therefore, no prima facie case requiring registration of an FIR was made out. To that extent, the order may be examined within the parameters of Section 22-A (6), Cr.P.C. However, the learned Justice of Peace thereafter proceeded to direct the Irrigation Department "*to ensure equal exercise of removal of encroachment against all including their own officials who have occupied the land of Irrigation Department.*" Such direction was plainly beyond the scope of the application and beyond the jurisdiction conferred by Section 22-A (6), Cr.P.C.

8. A significant aspect of the matter is that *no such relief was sought by the applicant in the application before the learned Justice of Peace.* The prayer was for a direction to the SHO, Police Station 'A' Section, Dadu, to register the FIR in respect of the alleged occurrence. There was no prayer seeking adjudication of the alleged encroachments upon Irrigation Department land, nor was there any prayer seeking a direction to the Irrigation Department to conduct an

anti-encroachment operation against its employees or any other occupants of the land. It is a settled principle of judicial adjudication that a Court or statutory authority is required to confine its determination to the controversy brought before it and to the relief legally available within its jurisdiction. A Court cannot grant a relief which is neither sought nor falls within the statutory field entrusted to it. The impugned direction, therefore, suffers from a two-fold jurisdictional defect: *firstly, the subject matter of removal of encroachment from Irrigation Department land was outside the jurisdiction conferred by Section 22-A (6), Cr.P.C.; and secondly, no such relief had even been prayed for before the learned Justice of Peace.* The nature of the direction is also material. The question whether a particular person is an encroacher upon government/Irrigation Department land, whether his occupation is authorized or unauthorized, and whether such occupation is liable to be removed, necessarily involves determination and implementation of matters relating to immovable property and administrative authority over the land. Such matters are to be dealt with by the competent department/authority in accordance with the applicable law. An Ex-Officio Justice of Peace exercising limited criminal jurisdiction under Section 22-A (6), Cr.P.C. cannot assume the role of an authority vested with power to administer, manage or clear government land.

9. The Ex-Officio Justice of Peace appears to have been motivated by the allegation that similar encroachments existed upon Irrigation Department land and that the anti-encroachment action was allegedly discriminatory. Even if such an allegation was brought to the notice of the Court, the same could not enlarge the statutory jurisdiction of the Justice of Peace. *A perceived need to secure equality in administrative action cannot confer jurisdiction where the statute does not provide it.* If any person is aggrieved by discriminatory treatment in the matter of removal of encroachments, the appropriate

remedy lies before the competent forum and in accordance with the law governing the relevant property and administrative action.

10. The distinction between an order directing the police to perform a statutory duty under Section 22-A (6), Cr.P.C. and an order directing a separate government department to undertake an anti-encroachment exercise is fundamental. The former may fall within the specifically enumerated jurisdiction of the Ex-Officio Justice of Peace; the latter does not. The authority of an Ex-Officio Justice of Peace is derived from the statute and is necessarily limited by its terms. It is also pertinent that the Supreme Court has recognized that the functions of an Ex-Officio Justice of Peace under Section 22-A (6), Cr.P.C. are quasi-judicial in nature and require the exercise of discretion and judgment. Such jurisdiction, however, remains statutory and cannot be extended beyond the limits prescribed by the legislature. The exercise of judicial or quasi-judicial functions does not itself create jurisdiction over every grievance brought before the Court.

11. The comments were called for from the learned Justice of Peace with reference to the principles enunciated in *Mir Muhammad Shaikh* and *Mujahid Ali, supra*. The comments furnished by the learned Additional District Judge-II, Kandhkot, setting out the rationale and basis for issuance of the impugned direction, have also been duly considered. The explanation proceeds on the premise that the direction was issued with a view to ensuring uniformity and consistency in the anti-encroachment operation and in purported exercise of the functions contemplated under Section 22-B, Cr.P.C. The manner in which the impugned order came to be passed, particularly in disregard of the earlier orders and directions of this Court, prima facie reflects an improper exercise of judicial discretion and raises serious concerns regarding the propriety and legality of the proceedings. The Ex-Officio Justice of Peace was required to confine himself strictly within the parameters of the jurisdiction vested in him under Section 22-A(6), Cr.P.C. and to act consistently with the

binding directions already issued by this Court. Any departure therefrom, notwithstanding the absence of an allegation of personal mala fides, cannot be sustained merely on the premise that the order was passed bona fide. It is a settled principle that bona fides cannot confer jurisdiction where none exists, nor can an otherwise unlawful exercise of power be validated by the subjective good faith of the officer exercising it. *Thus, an order passed in excess of jurisdiction and in disregard of the earlier judicial directions is legally unsustainable and liable to be set aside.* It is, therefore, once again manifest that where the governing statute does not confer upon an authority the requisite jurisdiction, competence, or lawful power to issue a particular direction, such direction cannot acquire legal validity merely on the premise that it was issued bona fide or in the purported furtherance of the object and purpose of the law. Jurisdiction must emanate from the statute itself, and an authority cannot assume, exercise, or arrogate to itself a power which has neither been expressly conferred upon it nor can be said to arise by necessary implication from the statutory scheme.

12. Consequently, while the learned Justice of Peace was competent to consider the applicant's grievance regarding the alleged non-registration of an FIR within the parameters of Section 22-A (6), Cr.P.C., he was *not competent to issue a direction to the Irrigation Department for removal or equal application of an anti-encroachment drive upon Irrigation Department land.* That part of the impugned order, therefore, is without lawful authority and jurisdiction.

13. For the foregoing reasons, this Criminal Miscellaneous Application is *partly allowed.* The order dated 27.08.2025, passed by the learned Additional Sessions Judge-I/Ex-Officio Justice of Peace, Dadu in Criminal Miscellaneous Application No.2060 of 2025, is *set aside to the extent whereby the Irrigation Department was directed to ensure equal exercise/removal of encroachments against all persons, including its officials allegedly occupying Irrigation*

Department land. The remaining portion of the order, whereby the application under Section 22-A (6), Cr.P.C. was dismissed after consideration of the applicant's grievance concerning registration of the FIR, shall remain unaffected, subject to the applicant's right to avail any other remedy available to her under the law.

14. It is clarified that this Court has expressed no opinion, and shall be deemed to have expressed none, with regard to the title, possession, legality of occupation, or alleged encroachment upon any portion of the land belonging to the Irrigation Department. All such questions are expressly left open and shall be determined, if and when required, by the competent authority/forum strictly in accordance with law and upon the basis of the material and evidence available before it. It is, however, observed that the Ex-Officio Justice of Peace, while exercising jurisdiction under the law, proceeded in a manner inconsistent with the directions and legal principles enunciated by this Court in the cases of *Mir Muhammad Shaikh* and *Mujahid Ali*, supra. In view thereof, the MIT-II of this Court is directed to collect and compile all orders passed by the said Judicial Officer in his capacity as Ex-Officio Justice of Peace during the period of his postings at different stations. The orders so collected shall be scrutinized with a view to ascertaining whether any other orders of a similar nature, particularly those involving directions beyond the lawful jurisdiction of a Justice of Peace or contrary to the settled position laid down by this Court, have been passed. Upon identification of any such order, the same shall be placed before the Hon'ble Chief Justice of this Court for such further orders as may be deemed appropriate.

15. The application stands disposed of in the above terms along with all pending applications (if any).

JUDGE