

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI

Constitutional Petition No. D-2892 of 2024
(*Mushtaq Ahmed Lakhair versus Province of Sindh and others*)

Date	Order with signature of Judge
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Mr. Justice Adnan-ul-Karim Memon
Mr. Justice Muhammad Jaffer Raza

Date of hearing: 20.8.2026

Mr. Ali Asghar Narejo, Advocate for the petitioner
Barrister Zohaib Sarki, AAG
Mr. Dhani Bux, Advocate for SBICA

ORDER

Adnan-ul-Karim Memon, J. Petitioner has filed this Constitutional Petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, with the following prayer: -

- a) *To direct the official respondents to constitute a committee to probe in the matter regarding the establishment of cattle mandi in the society and submit a report before this Hon'ble Court*
- b) *To direct official respondents to immediately remove cattle farm/ mandi established by respondents No. 9 and 10 in Gulshan Dad Rahim Society;*
- c) *To direct respondent No.8 to restore the amenity plots including park to its original position which has been destroyed by the animals of respondents No. 8 and 9 for the use and benefit of the members of the society;*
- d) *To direct SHO PS Al Falah to protect the petitioner at the hands of respondents No. 8 to 10; and*

2. The petitioner, a permanent resident of Gulshan Dad Rahim Society, has invoked the constitutional jurisdiction of this Court in the public interest, complaining of serious violations of the society's approved layout plan and illegal encroachment upon its amenity and residential areas. The society, situated over Survey Nos. 241-242, Deh Digh, Tappo Malir, Karachi, comprises about 13 acres and was approved with designated plots for parks, playgrounds, schools, mosques and other public amenities. The petitioner alleges that Respondent No.8 violated the approved layout plan by reducing road widths, failing to properly install electricity infrastructure and allowing high-tension lines near residences. The society's land has also allegedly been encroached upon by an adjoining slum area, creating security concerns. More importantly, Respondents No.9 and 10, allegedly in connivance with Respondent No.8, have illegally occupied society land and established cattle/dairy farms and a cattle mandi, allowing animals to roam within the society and damage the public park and plantation. The petitioner repeatedly approached the concerned authorities through applications dated 31.10.2023, 13.11.2023, 19.01.2024, 20.01.2024 and 22.01.2024, requesting removal of the

cattle mandi and protection of the residents, but no effective action was taken. The petitioner also approached the Judicial Magistrate and the police; however, instead of taking action, the petitioner alleges that the SHO, in connivance with Respondents No.8 to 10, harassed and detained him and circulated his video on WhatsApp. It is further alleged that the establishment of the cattle farm/mandi amounts to unauthorized commercial use of residential/amenity land in violation of the approved layout plan and applicable law. It is submitted that despite repeated complaints, the official respondents have failed to discharge their statutory duties, compelling the petitioner to invoke the constitutional jurisdiction of this Hon'ble Court as no other efficacious remedy is available. The petitioner therefore seeks directions for an inquiry into the illegal cattle mandi, its immediate removal, restoration of the affected amenity plots and public park, and provision of protection to the petitioner against Respondents No.8 to 10, along with any other appropriate relief.

3. We asked the counsel to satisfy the maintainability of the petition against the private respondents under Article 199 of the Constitution.

4. Learned counsel for the petitioner contends that the impugned acts and omissions of the respondents are without lawful authority and contrary to the approved layout plan, applicable laws and regulations governing residential societies and public amenity spaces. It is submitted that Respondents No.8 to 10 cannot lawfully convert or utilize residential or amenity land for commercial purposes by establishing and operating a cattle farm or cattle mandi, particularly when such use adversely affects the residents, damages public amenities and compromises their safety, security and peaceful enjoyment of their properties. Despite repeated representations and complaints made to the competent authorities, no effective action has been taken, thereby demonstrating failure on the part of the official respondents to perform their statutory and public duties. It is further contended that such inaction, coupled with the alleged encroachments and unauthorized commercial activities, is arbitrary, unlawful and violative of the fundamental rights of the residents, including their rights to life, dignity, property and equal protection of law. The petitioner's counsel further maintains that he has been subjected to harassment for raising these issues, while the concerned authorities have failed to provide protection or take action against the alleged illegal activities. Consequently, in the absence of any other adequate and efficacious remedy, the petitioner has rightly invoked the constitutional jurisdiction of this Court to enforce his lawful and fundamental rights and to issue appropriate directions to the respondents to perform their legal obligations.

5. The grievance of the petitioner principally relates to the alleged establishment of cattle/dairy farms and a cattle mandi over the land of Gulshan Dad Rahim Society, alleged encroachment upon amenity plots and the public park,

and the failure of the official respondents to take action in accordance with the approved layout plan and applicable law.

6. At the outset, the maintainability of the petition against Respondents No.8 to 10 requires consideration. The jurisdiction under Article 199 of the Constitution is essentially a public-law jurisdiction. It is ordinarily exercised against an act or omission of a public functionary or authority amenable to such jurisdiction. A private person cannot, merely on account of an allegation of illegality or violation of private rights, be subjected to a writ proceeding unless the matter involves a clear public-law element or enforcement of a fundamental right for which the constitutional jurisdiction is otherwise attracted.

7. In the present case, however, the allegations regarding unauthorized occupation, establishment of cattle farms/mandi, misuse of residential or amenity land and damage to the public park are not purely private in nature. If established, such activities may constitute violations of the approved layout plan and may adversely affect public amenities, the environment, safety and peaceful enjoyment of the society by its residents. The corresponding obligation of the competent public authorities to examine such complaints and, where a violation is found, to proceed in accordance with law, is unquestionably a matter falling within the sphere of public duty.

8. Nevertheless, this Court cannot, in exercise of Article 199 jurisdiction, straightaway record factual findings that Respondents No.8 to 10 have illegally occupied the land or that the cattle mandi has been established in violation of law, particularly when such questions require determination of disputed facts, verification of the approved layout plan, identification and measurement of the land in question, and ascertainment of the nature and legality of the alleged commercial activity. Such matters are appropriately examined in the first instance by the competent statutory authorities.

9. The petitioner has admittedly approached the concerned authorities through various representations, alleging encroachment, unauthorized commercial use and destruction of amenity areas. The official respondents are under a legal obligation to consider such complaints objectively and to take action in accordance with the applicable law, irrespective of the status of the persons against whom the complaint is made. Administrative inaction cannot be justified merely because the alleged violators are private persons. At the same time, the constitutional jurisdiction of this Court cannot be invoked as a substitute for the statutory process for investigation and determination of disputed factual matters.

10. As regards the allegation of harassment and threats to the petitioner, the police authorities are likewise bound to act strictly in accordance with law. If the petitioner approaches the competent police authority with a genuine complaint

disclosing a cognizable offence or apprehension of unlawful harm, the same shall be dealt with in accordance with the relevant provisions of law, without harassment, discrimination or extraneous consideration.

11. In view of the above, we are of the view that the petition, insofar as it seeks direct adjudication of disputed private claims against Respondents No.8 to 10 and their immediate removal through a writ of mandamus, is not maintainable in its present form. However, the public-law grievance regarding alleged encroachment upon amenity land, misuse of the approved layout and failure of the competent authorities to discharge their statutory functions cannot simply be ignored.

12. Consequently, without expressing any opinion on the merits of the allegations or declaring the alleged cattle farm/mandi to be illegal, this petition is disposed of with the direction that the competent official authority, after providing reasonable opportunity of hearing to all concerned, shall inspect and verify the site, examine the approved layout plan and relevant record, determine whether any amenity/residential land has been encroached upon or put to unauthorized commercial use, and, if any violation is found, shall take appropriate action strictly in accordance with law. The authority shall pass a reasoned order within a reasonable period and communicate the same to the petitioner.

13. It is clarified that the competent authority shall act independently and without being influenced by any observations contained herein, and that this order shall not be construed as conferring any right upon Respondents No.8 to 10 to continue any activity found to be unauthorized under the applicable law. Likewise, nothing contained herein shall prejudice the lawful rights or remedies of any party before the competent forum.

14. As regards the prayer for restoration of the amenity plots/public park, the same shall also be considered by the competent authority in the light of the approved layout plan and the factual position found upon inspection. In case any encroachment or unauthorized use of an amenity plot is established, the authority shall proceed in accordance with law for restoration of the amenity area.

15. With the above observations and directions, the constitutional petition stands disposed of.

JUDGE

JUDGE

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