ORDER SHEET

IN THE HIGH COURT OF SINDH, KARACHI

Constitutional Petition No.D-8369 of 2018.
(Jinnah Foundation Memorial Trust vs Province of Sindh and others)

DATE	**ORDER WITH SIGNATURE OF JUDGE**

Present:

Mr. Justice Riazat Ali Sahar
Mr. Justice Ali Haider 'Ada'.

For hearing of CMA No. 36644/2018
For hearing of CMA No. 36645/2018
For hearing of main case

21.10.2026.

Mr. Ghulam Murtaza, Advocate for the Petitioner

Mr. Abdul Jalil Zubedi Addl. Advocate General along with Ghulam Shabbir Solangi, Deputy Director, D.G. Office, Private Schools Sindh, Karachi

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ORDER

Ali Haider 'Ada', J.- The petitioner has assailed the notice dated 27.11.2018, issued by the Mukhtiarkar (Revenue), Sub-Division Korangi, Karachi, under Section 3(1) of the Sindh Public Property (Removal of Encroachment) Act, 2010 (hereinafter referred to as the "Act, 2010"). The principal contention of learned counsel for the petitioner is that the petitioner is a charitable trust engaged in providing educational and healthcare facilities to the underprivileged sections of society. It is submitted that the petitioner has established a school and constructed a building for the said purpose. The petitioner, therefore, maintains that the impugned notice is unlawful, as no encroachment has been made upon any public property.

2. Learned counsel for the petitioner further contends that the petitioner is a charitable trust providing educational and

healthcare facilities to deserving members of society and that the impugned notice has been issued with mala fide intent. He submits that the petitioner is not in occupation of any public property and, therefore, the issuance of the impugned notice under the Act, 2010, is unwarranted and contrary to law.

3. Conversely, learned Additional Advocate General Sindh submits that the law provides a prescribed mechanism for dealing with allegations of encroachment and that the mere issuance of a notice does not, by itself, result in any adverse action against the person concerned. He contends that the petitioner may submit a reply to the impugned notice, along with any supporting documents or material, before the competent authority, which has yet to pass any final or speaking order in the matter. He further submits that interference by this Court at the notice stage would be premature and would unnecessarily impede the exercise of lawful executive authority. Accordingly, he prays for dismissal of the petition as premature and not maintainable.

4. Heard learned counsel for the parties and perused the available record.

5. The petitioner has primarily challenged the notice issued under Section 3(1) of the Act, 2010. A perusal of the statutory scheme indicates that the issuance of such notice is intended to inform the person concerned of the alleged encroachment and to afford an opportunity to submit a reply, together with any relevant documents or material in defence. The issuance of a notice, in itself, neither determines the rights of the parties nor culminates in any final adverse action. The person concerned is, therefore, required to avail the opportunity provided under the law and place all relevant material before the competent authority for its consideration in accordance with law. For ready reference, **Section 3** of the Act, 2010, is reproduced as under:

3. (1) Government or any authority or officer authorized by Government in this behalf may require the person directly or indirectly responsible for encroachment to remove such encroachment together with the structure, if any, raised by him on the public property, within the period not less than two days as may be specified in the order.

Explanation: Lessee or licensee who after the expiry of the period of lease or licence or on determination of such lease or licence, continues to retain unlawfully possession of any public property shall, for the purpose of this sub-section, be deemed to be responsible for encroachment.

(2) The order under sub-section (1) may be served by-

(a) giving or tendering it to the person responsible for encroachment or any adult male person residing with him; or

(b) affixing it at a conspicuous place on or near the public property to which it relates or sending it by Registered post, UMS, TCS, or publication.

(3) If Government or any authority or officer authorized by Government under this Act is satisfied that un-authorized construction over the state land or public property is being carried out, it or he may direct the person or persons who raised or are raising the un-authorized construction, to stop the construction and the later shall stop the unauthorized construction forthwith.

(4) Whosoever including abettor disobeys the directives given to him under sub-section (3) shall be punished with imprisonment of either description for a period of six months or with fine not less than fifty thousand rupees or with both.

6. Furthermore, the statutory scheme provides a mechanism for an aggrieved person to seek redress against an order passed under Section 3 of the Act, 2010. In this regard, Section 4 of the Act, 2010, provides a remedy by way of review before the Government or the authority or officer who passed the relevant order. For ready reference, **Section 4** of the Act, 2010, is reproduced as under:

4. Review-(1) Any person dissatisfied by the order passed under sub-section (1) of section 3 may, within three days from the service thereof, prefer a review

petition to Government or any authority or officer who has passed such order.

(2) Government or, as the case may be, the authority or officer as aforesaid may, after perusing the review petition filed under sub-section (1) and giving an opportunity to the petitioner or his duly authorized agent of being heard, confirm, modify or vacate the order within fifteen days on receipt of petition.

7. It is well recognized that where an adequate, efficacious and appropriate statutory remedy is available, the aggrieved person is ordinarily required to avail such remedy before invoking the Constitutional jurisdiction of this Court. It is a well-settled principle that this Court ordinarily refrains from exercising its Constitutional jurisdiction where an adequate alternative remedy is available, particularly when the proceedings before the competent authority have not culminated in a final order. Reliance in this regard is placed upon the judgments reported as **Indus Trading and Contracting Company v. Collector of Customs (Preventive), Karachi and others (2016 SCMR 842); President, All Pakistan Women Association, Peshawar Cantt. v. Muhammad Akbar Awan and others (2020 SCMR 260); Commissioner Inland Revenue and others v. Jahangir Khan Tareen and others (2022 SCMR 92); and Executive Director (P&GS), State Life, Principal Office Karachi and others v. Muhammad Nisar, Area Manager, State Life Corporation of Pakistan, Peshawar Zone (2025 SCMR 249).**

8. For the foregoing reasons, the instant petition is hereby dismissed, along with the listed applications.

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