

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

Civil Misc. Appeal No.02 of 2025

Ghulam Raheem ----- Appellant.

versus

Papoo and others ----- Respondents

Appellant Ghulam Raheem present in person.
Mr. Shawak Rathore, D.P.G.

Date of Hearing: 12.05.2025
Date of Decisions: 12.05.2025

J U D G M E N T

MIRAN MUHAMMAD SHAH, J.- Through this civil miscellaneous appeal, the appellant being aggrieved has assailed the order of learned judge/presiding officer of Anti Encroachment tribunal Hyderabad bearing suit no. 53 of 2023 (Ghulam Rahim vs. Province of Sindh and others) wherein he has prayed that instant civil misc may be allowed and matter may be remanded to the valid executing court with direction to comply with the orders to remove the encroachment over the public property/ land of graveyard and decide the same in accordance with law.

2. The brief facts of the case are:

02. That the Plaintiff is resident of Village Pir Bux Kaloi, Taluka Tando Bago, District Badin and adjacent to the Village there is an old graveyard namely Lanjo Fakeer, Taluka Tando Bago, District Badin is situated since long for the asaish of the Villagers.

03. That since the Government had reserved the land for the graveyard named above for the purpose of facility of local Inhabitants to bury their beloved persons who left this World but the Defendant No. 01 to 03 alongwith their companions had forcibly occupied the land of the graveyard and have been cultivating the same with show of force of weapons.

04. That it is pertinent to mention here that the Defendant No.01 to 03 with show of force of weapons had illegally and unlawfully occupied whole land of the Graveyard Lanjo Fakeer and so also closed the way path towards the graveyard, hence the peoples of the locality had been suffering the agonies and no one can easily took their beloved person's dead body to the graveyard to bury the same. The photographs are annexed herewith.

05. That the Plaintiff and other inhabitants have made protest and procession against the Illegal act of occupying the Graveyard land/public property by the Defendant No.01 to 03 and raising cultivation but they being the influential person supported by the Political party and through their high handedness issued the threats of dire consequences to the Plaintiff and other inhabitants.

06. That the Plaintiff finding no other way approached the official Defendants through the written requests to save the precious public property reserved for the graveyard but on account of influential persons of the Defendant No.01 to 03 no one is ready to take action against them. The photocopy of Application is annexed herewith.

08. That since the illegal and unlawful act of encroaching the public property / land reserved for Graveyard and blocking the way/ path by the Defendant No.01 to 03 and created the hindrance, inconvenience and hardship to the smooth and peaceful lives of the inhabitants by them which is against the law but the Official Defendants are not ready to take action against the Defendant No.01 to 03 and to redress the grievance of the inhabitants as well as to secure the public property from the encroachers, as such the lives of the Plaintiff and other inhabitants have been made as miserable.

09. That on one hand the Defendant No.01 to 03 encroached the public property/land of graveyard and on the other hand they in collusion with the local Police and their companions of Gunda Type persons have been causing harassment to the Villagers to not object over their illegal act and so also they issued threats to involve in false criminal cases.

10. That the Plaintiff being the law abiding Citizen has tried his level best to save the Public property while approached the Official Defendants but the Defendant No.01 to 03 in order to accomplish their nefarious design and create law and order situation have been taking the law into their hands and the official Defendants are not performing their obligatory duty to save the Public property.

11. That looking to the aforementioned conduct of the Defendants No.01 to 03 and unnecessary harassment with the assistance of local Police by them with the malafide intention and ulterior motive, the Plaintiff files instant Suit.

3. The learned trial court after hearing all the parties as well as the district attorney while relying upon the report of revenue Mukhtiyarkar (revenue) Taluka Tando Bago District Badin observed :-

6. In present case, there is no Impugned order / action of the Government authority or authorized person, for the reasons that nothing is filed by plaintiff showing that before filing the present case he approached at the competent forums who are competent U/S 3, 4, 5, 8 and 19 of the Act 2010, to remove the encroachment by tendering notice, hearing them and by passing the order U/S 3 (3) of the Act 2010 and even they can make Inquiry and Investigation and may lodge FIR against the encroachers, this Tribunal is an appellate forum of the orders passed by Government, authority or authorized persons and aggrieved persons of above orders may approach this Tribunal U/S 13 and 14 of the Act 2010 for redressal of grievances. The plaintiff annexed an application with the pleadings at page No. 11 addressed to Mukhtiyarkar, Taluka Tando Bago requesting for providing him, the area of Qabaristan only. Private defendants contended through their written statement that Barrage Mukhtiyarkar, Tando Bago has granted them the land in 1980 and such entries are in revenue record, but they neither filed such grant nor entries with their written statement, Mukhtiyarkar, Tando Bago stated that there is no entry in respect of U.A No. 107 in favor of Ghulam Mustafa and Muhammad Moosa in the record of rights. Moreover, nothing is available on record to show that there was any kind of road/thoroughfare/way.

7. Area 2-20 acres of U.A No. 107, Deh Tando Bago, Is on graveyard of Lanjo Fakeer in which graves of different communities are situated, boundaries of graveyard are clear, and no any encroachment found over there, as far as, rest area of 107 admeasuring 2-20 acres of U.A No. 107 and 03-00 acres of said U.A number are concerned, same requires, Inquiry and demarcation, for which Revenue Authorities and Survey: Settlement Department are very competent along with other Departments to carry out demarcation, Inquiry and measurement after going through the relevant record of the suit property and if they found that there is encroachment on public property / state land it may be removed in accordance with law.

4. After the passage of the order in suit No 53 of 2023 following order in the execution was passed dated 12/02/2025.

4. In Suit No. 53 of 2023, the plaintiff sought removal of encroachment from the graveyard known as Lanjo Faeer. The prayer clauses of the suit have been duly satisfied. If any of the parties to the suit have grievances regarding the grant of lease for 03-00 acres In U.A No. 107, Deh Tando Bagho, they may approach the relevant revenue authorities for redressal in accordance with the law.

5. In view of the foregoing, Execution Application No. 67 of 2024 stands disposed of accordingly, along with the application under Order XII, Rule 2, CPC, with no order as to costs.

5. I've heard the appellant who is present in person as well as the DPG for the State and perused the relevant record. Despite clear orders passed in the execution proceedings wherein it was stated that suit was filed for removal of encroachment from the graveyard which was accordingly removed as per the orders passed in the suit no. 53 of 2023. As per the order such removal was made in compliance of the final orders passed in the suit in hand. In fact at the very outset of the arguments of the appellant, he was specifically asked to satisfy on the point of maintainability as to how the present appellant is aggrieved by the impugned order according to which all the encroachments as prayed have been removed and the public property or graveyard has been cleared from all illegal encroachment whereas the appellant was insistent that the encroachment has not been properly removed. Contrary to the fact the Musheernama of the land in question and a joined statement with regard to the status of the land were attached by the appellant himself along with his appeal as annexure C on page 31 and annexure D on page 33. Such musheernamas were duly signed by the anti-encroachment force Badin, Mukhtiyarkar (revenue) Tando Bago and ASI PS Tando Bago. Such Musheernamas clearly indicate that the public land was cleared by them by removing the entire encroachment for which they also stated in their musheernama that they did face resistance at the time of the operation since womenfolk and children came out to protest for which the help of lady police was sought and they were successful in removing the encroachment and implementing the order of the learned executing court as well as the learned trial court. The learned APG also places reliance on the musheernamas filed and impugned order passed by the learned trial court as well as its executing order. In such circumstances I'm of the opinion that the relief sought by the appellant was already granted to him during the proceedings of the civil suit and he could not make out a case of showing as to how he was aggrieved by the very order hence this present civil miscellaneous appeal no S-02 2025 is dismissed as being non maintainable while upholding the order passed by the presiding officer of Anti Encroachment Tribunal Hyderabad dated 12/02/2025 in execution application No. 67 of 2024.

JUDGE