

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

C.P No.D-4398 of 2025
[Hazrat Umar Khan v. Province of Sindh & others]

DATE	ORDER WITH SIGNATURE OF JUDGE(S).
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Before;
Mr. Justice Yousuf Ali Sayeed;
Mr. Justice Abdul Hamid Bhurgri.

- 1. For orders on Misc. No.18221/2025.
- 2. For orders on office objections No.1 to 6.
- 3. For orders on Misc. No.18222/2025.
- 4. For orders on Misc. No.18223 /2025.
- 5. For hearing of main case.

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Date of hearing:- 08.09.2025

Mr. Zameer Ahmed Kalhoro, Advocate for petitioner.

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Abdul Hamid Bhurgri, J.- Through this petition, the petitioner seeks removal of illegal encroachments, constructions, boundary walls, shops, and markets from beneath Bacha Khan Flyover (Banaras Bridge), Karachi, as well as action against the encroachers.

2. The brief facts of the case, as narrated in the petition, are that the petitioner, a resident of Pir Abad Colony No.1, Orangi Town, Karachi, states that numerous complaints and applications have been filed by local residents, including the "Public Aid Committee Jamaat Islami West Karachi," regarding illegal constructions and allotments allegedly made by the so-called Qabza Mafia in collusion with certain official respondents under and around Bacha Khan Flyover (Banaras Bridge), Karachi. It is averred that despite repeated complaints, protests, and public demands, no effective action has been taken by the official respondents to remove the illegal constructions, shops, markets, and boundary walls erected beneath the flyover. The alleged involvement and support of certain private and official respondents in these activities have facilitated unlawful encroachments, thereby depriving the public at large of their right to utilize public spaces. According to the petitioner, the Apex Courts have, in several judgments, strictly prohibited allotments and constructions beneath flyovers and on public spaces, yet the respondents have failed to comply with the law. Such inaction, it is contended, not only contravenes Articles 9 and 24 of the Constitution of the Islamic Republic of Pakistan (right to life, safe environment, and right to property), but also amounts to a breach of statutory duties imposed

under the Sindh Local Government Act, 2013, the Easements Act, 1882, and the Anti-Encroachment Laws. Being aggrieved, the petitioner has approached this Court under Article 199 of the Constitution, seeking redress against the illegal encroachments and the failure of the official respondents to perform their lawful duties, in order to protect the fundamental rights of citizens and safeguard the public interest.

3. We have heard learned counsel for the petitioner and examined the material placed on record.

4. The grievance raised by the petitioner relates to alleged encroachments under Bacha Khan Flyover. Such matters fall squarely within the Sindh Public Property (Removal of Encroachment) Act, 2010, particularly sections 3 and 4, which empower the competent authority to take cognizance of encroachments and to seek adjudication before the Anti-Encroachment Tribunal. Where the statute provides a complete and efficacious remedy, this Court will not ordinarily exercise its constitutional jurisdiction under Article 199 of the Constitution as a substitute.

5. It is a well-settled principle that the High Court will refrain from interfering in matters involving disputed facts or where a specialized statutory forum exists. Entertaining such petitions in constitutional jurisdiction would bypass the legislative scheme and reduce the Tribunal to redundancy, which the law does not permit. Reliance is placed on the case of **Jameel Qadir and another v. Government of Balochistan, Local Government Rural Development and Agroviles Department, Quetta through Secretary and others (2023 SCMR 1919)**, wherein the Honourable Supreme Court has held as under:-

“13. The writ jurisdiction of the High Court cannot be worn out as a solitary way out or remedy for aerating all sufferings and deprivations. The doctrine of exhaustion of remedies stops a litigant from pursuing a remedy in a new court or jurisdiction until the remedy already provided under the law is exhausted. The underlying principle accentuated in this doctrine is that the litigant should not be encouraged to circumvent or bypass the provisions assimilated in the relevant statute. The extraordinary jurisdiction of the High Court under Article 199 of the Constitution cannot be reduced to an ordinary jurisdiction of the High Court. It is a well settled exposition of law that disputed questions of facts cannot be entertained and adjudicated in the writ jurisdiction. The expression "adequate remedy" signifies an effectual, accessible, advantageous and expeditious remedy”.

6. Although framed in the language of public interest, the dispute is in essence a localized encroachment issue requiring factual inquiry, which cannot be undertaken in writ proceedings. The proper course for the petitioner is to pursue his remedy before the competent authority and, if necessary, before the Tribunal as provided under the Sindh Public Properties (Removal of Encroachment) Act, 2010. As the Act does not contain any express bar, a private person may, upon failure of the competent authority to act, competently invoke the jurisdiction of the Tribunal. Reliance is placed on ***Mst. Shahnaz v. Iqbal Hussain and others (2022 CLC 556)***.

7. This petition is accordingly disposed of, leaving it open to the petitioner to approach the competent court of law.

JUDGE

JUDGE

Ayaz Gul