

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

C.P No.D-4186 of 2025

[Muhammad Saleem. v. The Director Anti Encroachment & 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.17265/2025.
- 2. For orders on office objections No.1 to 11.
- 3. For orders on Misc. No.17266/2025.
- 4. For hearing of main case.

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Date of hearing:- 04.09.2025

Mr. Fazal Mehmood Sharwani, Advocate for petitioner.

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Abdul Hamid Bhurgri, J.- Through this petition, the petitioner seeks removal of illegal encroachment from a public street as also action against respondent No.3 for illegal construction and blockage of public street.

2. The brief facts of the case, as set out in the petition, are that the petitioner, a resident of Rasheedabad, Karachi, states that his children study at the Government Model School situated in the S.I.T.E. area. According to him, the public street -8 feet wide, located between Plots No.5, 6, 7, 8 and 9 is the only direct access route for students and residents. It is averred that this street, as shown in the approved master plan, was earmarked for public use to facilitate school access. The grievance of the petitioner is that Respondent No.3 has unlawfully encroached upon the said public street by raising illegal construction and incorporating the same into his private plot, thereby blocking the passage. Such obstruction, it is alleged, has caused serious hardship particularly to schoolchildren, who are now compelled to take long and unsafe detours. The petitioner further submits that earlier attempts at encroachment in 2011 were removed by intervention of Respondent No.2 (S.I.T.E. Ltd.), but in recent years no effective steps have been taken to prevent fresh encroachment. Despite repeated complaints and representations, neither Respondent No.2 nor Respondent No.1 (Anti-Encroachment Department) has taken remedial measures. The petitioner relies upon directions of the Honourable Supreme Court passed in Const. Petition No.09/2010 prohibiting encroachments on public property,

and alleges that failure of Respondents No.1 and 2 to act against Respondent No.3 amounts to collusion and maladministration. He has, therefore, invoked the constitutional jurisdiction of this Court seeking demolition of the illegal construction and restoration of the public street in accordance with the master plan.

3. We have heard learned counsel for the petitioner and perused the material available on record.

4. It is a settled principle of law that where the legislature has constituted a special forum for adjudication of disputes relating to public property and encroachments thereon, the constitutional jurisdiction under Article 199 is not to be invoked as a substitute for such remedy. The Sindh Public Property (Removal of Encroachment) Act, 2010 provides a complete mechanism, including cognizance by the Anti-Encroachment Tribunal, to redress the very grievance agitated in the instant petition. In the presence of such an efficacious statutory remedy, this petition is not maintainable and liable to be declined in limine. Reliance is placed on the case of **Jameel Qadir and another v. Government of Balochistan, Local Government, Rural Development and Agrovilles 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 an effectual, and remedy" signifies accessible, advantageous expeditious remedy”.

5. Although the petitioner has invoked directions issued by the Honourable Supreme Court in Const. Petition No.09/2010 against encroachment of public property, it must be appreciated that such directions were passed in the nature of public interest litigation for city-wide implementation, and cannot be stretched to confer an individual right to directly seek demolition through constitutional

petition in disregard of the statutory forum. The grievance raised is to be addressed in accordance with the law by approaching the competent authorities or the Tribunal created specifically for this purpose. Nevertheless, it cannot be ignored that Respondents No.1 and 2, being statutory functionaries, are under a continuing duty to safeguard public streets and to prevent their unlawful conversion into private use. The petitioner shall be at liberty to approach the official respondents who shall act in accordance with law and in case of failure, the petitioner may approach the Tribunal, if so advised. The Sindh Public Property (Removal of Encroachment) Act does not impose any express prohibition against a private person invoking the jurisdiction of the Tribunal. Hence, upon failure of the competent authority to act, such jurisdiction may be competently exercised at the instance of a private individual. Reliance is placed on *Mst. Shahnaz v. Iqbal Hussain and others* (2022 CLC 556).

6. For the above mentioned reasons, the petition is disposed of. The petitioner shall be at liberty to approach the official respondents who shall act in accordance with law and in case of failure by the authorities to redress his grievance, he shall be at liberty to approach the Tribunal for his complaint.

JUDGE

JUDGE

Ayaz Gul