

**IN THE HIGH COURT OF SINDH, CIRCUIT COURT,  
HYDERABAD**

**C.P No.S-460 of 2025**

(Pir Ghulam Karim Shah v. Muhammad Zakariya and others)

**C.P No.S-461 of 2025**

(Pir Abdul Malik v. Muhammad Zakariya and others)

**Before:**

***JUSTICE RIAZAT ALI SAHAR***

Counsel for Petitioners:

M/s Tahmasp Rasheed Rizvi and Sarang  
Waswani, Advocate in C.P No. S-460 of  
2025

Ms. Razia Zaman Patoli, Advocate in C.P  
No. S-461

Counsels/ Representatives for Respondents:

Mr. Abdul Ghafoor Hakro, Advocate.

Mr. Zafar Iqbal Seenharo, Advocate.

Mr. Allah Bachayo Soomro, AAG. Sindh.

Date of Hearing:

30.01.2026

Date of Order:

11.03.2026

**ORDER**

**RIAZAT ALI SAHAR, J:** - The petitioners have invoked the constitutional jurisdiction of this Court under Article 199 of the Constitution against the impugned orders dated 03.02.2024 passed by the learned 1<sup>st</sup> Senior Civil Judge, Tando Allahyar and dated 30.05.2024 passed by the learned 2<sup>nd</sup> Additional District Judge, Tando Allahyar arising out of proceedings in F.C. Suit No.46/2012, seeking following reliefs:

**C.P. No.S-460 of 2025.**

- A. *That this Honourable Court may kindly be pleased to call R&Ps of civil Revision No.10 / 2024 from the court of the Learned 2nd Additional District Judge, Tando Allahyar, as well as the R&Ps of Civil Revision No.24 of 2022 & Civil Revision No.25 of 2022, which were allowed by the Honourable District Judge / Model Appellate Court Tando Allahyar on 22.08.2023. Additionally, the petitioner requests this Honourable Court to call R&Ps of the application U/S 12 (2) CPC along with FC Suit No.46/2012 from the court of the Learned 1st Senior Civil Judge, Tando Allahyar. Upon perusal of the entire record and after hearing the parties, the petitioner respectfully requests this Honourable Court to set aside both impugned orders dated 03.02.2024 & 30.05.2024 of the lower courts and remand the matter back to the learned trial court with strict directions to comply with the binding order dated*

22-08-2023 passed by the Honourable District Judge / Model Appellate Court Tando Allahyar in Civil Revision No.24 of 2022 & Civil Revision No.25 of 2022. In these revisions, the Honourable District Judge / Model Appellate Court Tando Allahyar issued directions to Respondent No.02 (Defendant No.01 of FC Suit No. 46/2012) to produce the Respondents No. 03 to 05 (Defendant No. 02 to 04 of FC Suit No.46/2012) in person before the learned Trial court within seven days.

- B.** That petitioner respectfully requests this Honourable Court to call for an explanation from the presiding officer of the learned 1st Senior Civil Judge, Tando Allahyar, namely Saleem Khan Keerio, who has since been transferred to Karachi-East. The petitioner seeks clarification as to why he deliberately and knowingly ignored, bypassed, refused, and did not comply with the binding order dated 22-08-2023 passed by his superior court, i.e., the Honourable District Judge / Model Appellate Court Tando Allahyar, in Civil Revision Application No.24/2022 & Civil Revision Application No.25/2022.
- C.** That petitioner respectfully prays for this Honourable Court to direct the learned 1st Senior Civil Judge, Tando Allahyar. If Respondent No. 02 (Defendant No. 01 of F.C Suit No. 46/2012) fails to produce Respondents No. 03 to 05 (Defendant No. 02 to 04 of F C Suit No.46/2012) in person to appear before the learned Trial court within seven days, then all proceedings of the trial court carried out by Respondent No. 02 (Defendant No. 01 of F.C Suit No. 46/2012) through his learned counsels on behalf of the rest of Respondents No. 03 to 05 (Defendant No. 02 to 04 of F C Suit No. 46/2012) without any authority and legal character shall be declared null and void. The petitioner relies on the case law reported as "2017 PLD 219 Lahore..... Unauthorized person could not address a court---No counsel could represent a client or litigant unless and until he was authorized by execution of power-of-attorney".
- D.** That petitioner respectfully prays for this Honourable Court to suspend the operation of both impugned orders dated 03.02.2024 and 30.05.2024 of the lower courts until the decision of the instant Constitution Petition.
- E.** That petitioner respectfully requests that the costs of the instant Constitution Petition be borne by Respondent No. 02 (Defendant No. 01 of F.C Suit No. 46/2012).

### **C.P. No.S-461 of 2025**

- A.** That this Honourable Court may kindly be pleased to call R&Ps of civil Revision No.09 / 2024 from the court of Learned 2nd Additional District Judge, Tando Allahyar, as well as the R&Ps of Civil Revision No.24 of 2022 & Civil Revision No.25 of 2022, which were allowed by the Honourable District Judge / Model Appellate Court Tando Allahyar on 22.08.2023. Additionally, the petitioner requests this Honourable Court to call R&Ps of the application U/S 12 (2) CPC along with FC Suit No.46/2012 from the court of the Learned 1st Senior Civil Judge, Tando Allahyar. Upon perusal of the entire record and after hearing the parties, the petitioner respectfully requests this Honourable Court to set aside both impugned orders dated 03.02.2024 & 30.05.2024 of the lower courts and remand the matter back to learned

*trial court with strict directions to comply with the binding order dated 22-08-2023 passed by the Honourable District Judge /Model Appellate Court Tando Allahyar in Civil Revision No.24 of 2022 & Civil Revision No.25 of 2022. In these revisions, the Honourable District Judge / Model Appellate Court Tando Allahyar issued directions to Respondent No.02 (Defendant No.01 of FC Suit No. 46/2012) to produce the Respondents No. 03 to 05 (Defendant No. 02 to 04 of FC Suit No.46/2012) in person before the learned Trial court within seven days.*

- B.** That petitioner respectfully requests this Honourable Court to call for an explanation from the presiding officer of the learned 1st Senior Civil Judge, Tando Allahyar, namely Saleem Khan Keerio, who has since been transferred to Karachi-East. The petitioner seeks clarification as to why he deliberately and knowingly ignored, bypassed, refused, and did not comply with the binding order dated 22-08-2023 passed by his superior court, i.e., the Honourable District Judge / Model Appellate Court Tando Allahyar, in Civil Revision Application No.24/2022 & Civil Revision Application No.25/2022.*
- C.** That petitioner respectfully prays for this Honourable Court to direct learned 1st Senior Civil Judge, Tando Allahyar. If Respondent No. 02 (Defendant No. 01 of F.C Suit No. 46/2012) fails to produce Respondents No. 03 to 05 (Defendant No. 02 to 04 of F C Suit No.46/2012) in person to appear before the learned Trial court within seven days, then all proceedings of the trial court carried out by Respondent No. 02 (Defendant No. 01 of F.C Suit No. 46/2012) through his learned counsels on behalf of rest of Respondents No. 03 to 05 (Defendant No. 02 to 04 of F C Suit No.46/2012) without any authority and legal character shall be declared null and void. The petitioner relies on the case law reported as "2017 PLD 219 Lahore Unauthorized person could not address a court-No counsel could represent a client or litigant unless and until he was authorized by execution of power-of-attorney".*
- D.** That petitioner respectfully prays for this Honourable Court to suspend the operation of both impugned orders dated 03.02.2024 and 30.05.2024 of the lower courts until the decision of the instant Constitution Petition.*
- E.** That petitioner respectfully requests that the costs of the instant Constitution Petition be borne by Respondent No. 02 (Defendant No. 01 of F.C Suit No. 46/2012).*

**2.** The controversy originates from a suit for specific performance instituted by Respondent No. 01 on the basis of an alleged agreement to sell dated 15.07.2010. The petitioner asserts that the agreement is forged and legally unenforceable as it was executed with a person namely Muhammad Shafique Baqadar s/o Umer Al-Qureshi, who is neither a party to the suit nor reflected as owner in the revenue record, as confirmed by the Mukhtiarkar's

report. It is thus pleaded that the very foundation of the decree obtained in the suit rests upon a non-existent and fraudulent transaction. The petitioner further claims proprietary interest in the property on the basis that the land is **Waqf-alal-Aulad** property under a registered Waqf deed dated 24.09.1955 and relevant Form VII-B entries were produced along with official witnesses. Despite this, the trial court allegedly ignored the documentary evidence and declined the petitioner's application under section 12 (2) CPC.

3. The principal grievance of the petitioner is that Respondent No.02 and his counsel conducted proceedings on behalf of Respondents No.03 to 05 without lawful authority since the institution of the suit. A power of attorney dated 27.11.2016 was later produced during evidence in 2023 which, according to the petitioner, was executed by persons who are not parties to the suit, contains material discrepancies in identity, and is otherwise unreliable. It is contended that all proceedings conducted on behalf of said respondents are void as an unauthorised person cannot represent a litigant before a court of law.

4. During the pendency of proceedings, the learned District Judge, Tando Allahyar, through orders dated 22.08.2023 in Civil Revision Nos.24 and 25 of 2022 directed Respondent No. 02 to produce Respondents No.03 to 05 before the trial court in person within seven days. The petitioner maintains that the said order attained finality and was never challenged; however, **the trial court failed to implement the binding direction and instead dismissed the petitioner's application under section 12 (2) CPC on 03.02.2024.**

The operative portion of the order dated 22.08.2023 passed in Civil Revision Nos.24 and 25 of 2022 is reproduced hereunder:

*"It is also the scheme of law that, in order to discover the truth and to reach a just and proper conclusion, the Court may call any person to assist the Court, and in the instant case, the appearance of the executants of the subject documents before the learned Trial Court is essential and their evidence would help the learned Trial Court to decide the issue forever on merits. Accordingly,*

*the instant Civil Revision Application stands allowed only to the extent of prayer clause B, in the interest of justice, with no order as to costs.”*

And the prayer clause B that was allowed vide order dated 22.08.2023 in Civil Revision Nos. 24 and 25 of 2022 is reproduced as under:

***“B. That this Honourable Court may be pleased to direct Respondent No. 2 (Defendant No. 1 of F.C. Suit No. 16/2012) to produce/present Respondents No. 3 to 5 (Defendants No. 2 to 4 of F.C. Suit No. 46/2012) in person before this Honourable Court and the learned Trial Court within one week, as Respondent No. 1 (Plaintiff of F.C. Suit No. 46/2012) has failed to mention the address of Respondents No. 3 to 5 (Defendants No. 2 to 4 in F.C. Suit No. 46/2012) in the main suit.”***

5. Aggrieved, the petitioner filed Civil Revision No.10/2024, which too was dismissed on 30.05.2024 by the learned 2<sup>nd</sup> Additional District Judge, allegedly without addressing the illegality arising from non-compliance of the upper forum and without deciding objections regarding unauthorised representation.

6. Learned counsel for the petitioners contended that the impugned orders dated 03.02.2024 and 30.05.2024 are patently illegal, without jurisdiction, and the result of material irregularity, as the learned Trial Court proceeded to adjudicate the matter in blatant disregard of the binding directions issued by the learned District Judge, Tando Allahyar, vide order dated 22.08.2023 passed in Civil Revision Nos.24 and 25 of 2022, whereby Respondent No.02 was expressly directed to produce Respondents No.03 to 05 in person before the Trial Court within one week; it was argued that such direction, having attained finality, was mandatory and the court below was duty bound to implement the same before proceeding further, and its failure to do so rendered the subsequent dismissal of the application under section 12 (2), CPC *coram non iudice*; it was further submitted that the suit for specific performance is founded upon a forged and legally unenforceable agreement dated 15.07.2010 allegedly executed with a person having no title or reflection in the revenue record, as confirmed by the Mukhtiarkar’s report, and thus

the decree obtained thereon is a nullity, particularly when the property in question is Waqf-alal-Aulad under a registered Waqf deed dated 24.09.1955 supported by Form VII-B entries and official evidence which were unlawfully ignored; learned counsel also assailed the proceedings on the ground that Respondent No.02 and his counsel had been conducting the case on behalf of Respondents No.03 to 05 without lawful authority, the belated power of attorney produced in 2023 being defective, unreliable, and executed by persons of doubtful status, thereby vitiating all proceedings undertaken on their behalf; lastly, it was contended that the revisional court failed to rectify these jurisdictional errors and dismissed Civil Revision No.10/2024 in a perfunctory manner without addressing the non-compliance of the superior court's order, resulting in grave miscarriage of justice warranting interference under Article 199 of the Constitution.

7. Conversely, learned counsel for the respondents vehemently opposed the petitions and contended that the impugned orders are lawful, reasoned, and based upon proper appreciation of the record, therefore calling for no interference in constitutional jurisdiction. It was argued that the petitioners have attempted to convert the constitutional forum into a substitute for appeal or revision, whereas the questions raised pertain purely to factual controversy already examined by the courts below. Learned counsel submitted that the agreement to sell dated 15.07.2010 is genuine and duly proved in accordance with law, and the suit for specific performance was rightly decreed after recording evidence; the subsequent application under section 12 (2), CPC was merely an afterthought devised to reopen concluded proceedings and frustrate the decree. It was further contended that the allegation of fraud is vague, unsubstantiated, and unsupported by cogent evidence, as no material contradiction in execution of the document was established before the Trial Court. Regarding the plea of Waqf property, learned counsel argued that the petitioners failed to prove exclusive ownership or lawful management rights in a manner sufficient to invalidate the transaction, and the revenue entries relied upon were

neither conclusive nor determinative of title in the circumstances of the case.

8. On the question of representation, learned counsel submitted that Respondent No. 02 was duly authorised to pursue the proceedings and the power of attorney produced during evidence sufficiently established lawful authority; any alleged discrepancy therein was minor in nature and did not affect the merits of the case, particularly when the executants never denied the transaction. It was also contended that the order dated 22.08.2023 did not nullify earlier proceedings nor did it mandate automatic dismissal of the suit in case of non-production of the respondents, rather it was a procedural direction intended to assist the court, and the learned Trial Court, after considering the available evidence, was competent to decide the matter on merits. Learned counsel further argued that the revisional court independently examined the legality of the order and rightly dismissed the revision, finding no jurisdictional defect or material illegality. In sum, it was prayed that the petitions, being misconceived and an abuse of process of law aimed at prolonging litigation and avoiding the consequences of a lawful decree, be dismissed with costs.

9. I have heard the learned counsel for the parties at considerable length and have carefully perused the material available on record as well as the impugned orders passed by the courts below. The controversy primarily revolves around whether the learned Trial Court, in the presence of a binding direction issued by the superior court vide order dated 22.08.2023 requiring personal appearance of Respondents No.03 to 05, could legally proceed to adjudicate and dismiss the application under section 12 (2), CPC, and whether the alleged defect in authority of representation and plea of fraud affecting the very foundation of the decree were properly examined in accordance with law.

10. The scope of constitutional jurisdiction under Article 199 of the Constitution is neither that of an appellate forum nor of a regular revisional court; nevertheless, where a subordinate court exercises jurisdiction in disregard of binding legal directions, acts in

excess of authority, or fails to exercise jurisdiction vested in it, the constitutional court is not powerless. The distinction between re-appraisal of evidence and correction of jurisdictional illegality must be maintained. In the present case, the grievance of the petitioners does not merely relate to appreciation of evidence but to the competence of the learned Trial Court to proceed further in the face of a subsisting command of a superior court. Such a defect strikes at the root of adjudicatory authority and therefore falls within the recognised parameters of constitutional interference, as the Court is obliged to ensure that judicial power is exercised according to law and within the bounds of hierarchy.

**11.** At the very outset, it needs to be stated with clarity, and in unambiguous terms, that the directions of a superior Court are not advisory suggestions, to be obeyed at convenience and ignored at will. They are commands of law, emanating from the judicial hierarchy, and they bind courts below in letter and spirit. A Trial Court is duty-bound to implement such directions first, and only thereafter to proceed further, for the reason that judicial discipline is the spine of institutional justice; once that spine is fractured by defiance, the administration of justice collapses into arbitrariness. In this context, it may be noted that the petitioners have described the relevant superior-court order as dated 22.08.2025. Either way, the controlling fact remains unchanged: a binding order of the learned District Judge existed and was required to be implemented before taking any final step.

**12.** The operative portion of the said order, as reproduced before this Court, leaves no room for any interpretative manoeuvre. It explicitly proceeds on the scheme of law that, to discover the truth and reach at just and proper conclusion, the appearance of the executants/persons concerned is essential, and that their evidence would assist the Trial Court in deciding the issue “forever on merits”; consequently, the revision was allowed to the extent of the prayer whereby Respondent No. 2 was required to produce Respondents No.3 to 5 in person within a stipulated period. The legal import of this direction is plain: the Trial Court was commanded to secure the

appearance of the opponents/defendants first, and only thereafter to proceed to decide the matter. This was not an empty formality; it went to the root of jurisdictional propriety, because the authority of representation and the authenticity of the alleged power of attorney and related documents were central to the lis.

13. Yet, notwithstanding the above, the learned Trial Court, instead of complying with the binding direction and ensuring the appearance of Respondents No.2 to 5, proceeded to finally adjudicate the matter vide order dated 03.02.2024. Such a course is not merely an “irregularity” capable of being brushed aside as an error of procedure; it constitutes a direct affront to the supervisory control of the superior judiciary, a blatant disregard of hierarchical discipline, and a distortion of due process. When a superior court directs that a foundational step be taken—namely securing personal appearance to test authority and authenticity—the subordinate court cannot lawfully bypass that step and pronounce a final order as though the superior court’s command never existed. To do so is to substitute personal inclination for binding command, which the law does not tolerate.

14. Once a court is required by a superior forum to first determine a foundational fact, any adjudication made without deciding that foundational requirement becomes legally premature. Jurisdiction is not merely the authority to decide a matter but the authority to decide it in the manner prescribed by law. Where the condition precedent to exercise of jurisdiction is ignored, the resulting order does not become merely erroneous; it becomes unsustainable in law because the court assumed authority it had not yet lawfully acquired. Therefore, the question is not whether the conclusion of the Trial Court may ultimately be right or wrong, but whether the Court was competent to reach that stage at all prior to compliance of the earlier directive.

15. **This Court is constrained to observe that such conduct, on the face of the record, *prima facie* amounts to gross misconduct, judicial impropriety and defiance of binding directions of a superior court. The District Judge is**

**the administrative and judicial head of the district judiciary. His orders, passed in exercise of judicial powers, are entitled to due obedience by the courts subordinate to him. A subordinate Judge cannot sit in appeal over those directions by the device of “proceeding further” and “finally deciding” the matter in a manner that renders the superior court’s directions nugatory. Such defiance corrodes public confidence, undermines the institutional chain of command, and invites anarchy in judicial administration. If this tendency is not arrested with firmness, it shall reduce superior court supervision to a ceremonial exercise and convert binding orders into disposable paper.**

**16.** It is equally necessary to emphasise that the duty to comply with a superior court’s operative direction is not diluted by perceived inconvenience, docket pressure, or the passage of time. Compliance is mandatory unless stayed, modified, or set aside by a competent forum. No such stay or modification has been shown. Therefore, the Trial Court’s decision to proceed to final adjudication on 03.02.2024, without first securing the appearance of the opponents/defendants as directed, is prima facie indefensible.

**17.** It must also be observed that the direction requiring personal appearance of the concerned respondents was not a procedural technicality but a safeguard of natural justice. When representation of a litigant itself is disputed, adjudication without verifying authority carries the inherent risk that a party may be bound by proceedings conducted without consent or knowledge. Courts exist not merely to decide disputes but to decide disputes between proper parties. The law therefore insists that identity, authority and participation of litigants be established before rights are finally determined. The omission to secure such verification undermines the fairness of the adjudicatory process itself.

**18.** In these circumstances, and in order to maintain institutional discipline and to uphold the majesty of law and the sanctity of superior court directions, explanation is called from the learned Trial Judge (1<sup>st</sup> Senior civil Judge, Tando Allahyar, posted

on 22.08.2023) through MIT-II, explaining why he defied, ignored, and/or failed to implement the binding order dated 22.08.2023 in Civil Revision Nos.24 and 25 of 2022 of the learned District Judge, Tando Allahyar (being the Revisional Authority) requiring production/appearance of Respondents No. 2 to 5 prior to further adjudication and how the matter came to be finally adjudicated vide order dated 03.02.2024 in the teeth of such operative directions. The explanation shall be comprehensive, shall address the record position candidly, shall disclose whether any judicial order of stay/modification existed and shall further clarify who was responsible for compliance, what steps were taken to secure appearance and on what legal basis the Trial Court considered itself competent to proceed to final adjudication despite a subsisting superior-court command.

**19.** The matter also reveals serious questions regarding representation of Respondents No.2 to 5 through an attorney and the validity, execution and authority of the alleged Special Power of Attorney. Since the legitimacy of representation is foundational and cannot be presumed, the attorney of Respondents No.2 to 5 is directed to submit the Special Power of Attorney within 15 days from today. Upon receipt, the said document shall be sent to the Ministry of Foreign Affairs for verification, so that the Court may be satisfied that the instrument is genuine, duly executed, and lawfully authenticated and that the alleged attorney possesses valid authority to act and plead.

**20.** The record further discloses serious questions regarding the representation of Respondents No.2 to 5 through an alleged attorney and the validity, execution and authority of the purported Special Power of Attorney. Since the legitimacy of representation goes to the very root of the proceedings and cannot be presumed, it would be appropriate that the matter be examined by the learned Trial Court itself upon remand. Accordingly, the learned Trial Court shall require the attorney of Respondents No.2 to 5 to submit the original Special Power of Attorney within 15 days of receipt of this judgment, whereafter the learned Trial Court shall transmit the

same to the Ministry of Foreign Affairs for verification so as to satisfy itself that the instrument is genuine, duly executed and lawfully authenticated and that the alleged attorney possesses valid authority to act and plead on behalf of the said respondents.

21. In the meanwhile, Respondents No.2 to 5 shall appear before the learned Trial Court on the date to be fixed by it, enabling the Court to verify, at the very least, the contents, execution and voluntariness of the power of attorney and to ensure that no litigant is proceeded against or represented without lawful authority. Their appearance shall be mandatory and the learned Trial Court shall secure their presence through lawful process, as such exercise is necessary for discovery of truth, prevention of fraud upon the Court, and faithful compliance of the earlier binding directions issued by the superior court before proceeding to decide the matter strictly on merits.

22. In view of the foregoing discussion, this Court consciously refrains from examining the merits of the rival claims relating to title, Waqf character of property, or genuineness of the agreement to sell. Any observation on those aspects at this stage would prejudice the adjudication which the Trial Court is required to undertake after curing the foundational defect identified above. The proper course, therefore, is restoration of the proceedings to the stage where compliance of the superior court's directive ought to have been ensured, so that the matter may thereafter be decided afresh strictly on merits and in accordance with law. This Petition is **disposed of** in above terms.

23. Let this order be transmitted to learned MIT-II of this court with regard to comply with directions, given in para-18 [supra] of the order.

**JUDGE**

“Approved for reporting”