

IN THE HIGH COURT OF SINDH, CIRCUIT COURT,
HYDERABAD

C.P No. D-1964 of 2025

[Usto Muhammad Yaqoob & Others v. Mukhtiar Ahmed & Others]

Before:

JUSTICE ARBAB ALI HAKRO
JUSTICE RIAZAT ALI SAHAR

Petitioners: Usto Muhammad and others
Mr. Muhammad Arshad S. Pathan,
Advocate.

Respondent No.1: Mukhtiar Ahmed through Mr. Mumtaz, Ali
Khushk, Advocate.

Respondents No.2 to 11: The Province of Sindh & others through
Mr. Rafique Ahmed Dahri, A.A.G. Sindh.

Date of Hearing: 12.03.2026.

Date of Judgment: 15.04.2026.

JUDGMENT

RIAZAT ALI SAHAR, J. - Through the instant Constitutional Petition, the petitioners have invoked the constitutional jurisdiction of this Court under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, assailing the legality, propriety and jurisdictional competence of the order dated 19.08.2025 passed by the Anti-Encroachment Tribunal, Hyderabad, in Suit No.79 of 2023. Thus, seeking following reliefs:

"a) To issue writ declaring that order passed by the Anti Encroachment Tribunal Hyderabad, in Suit No.79 of 2023 dated 19.08.2025 being illegal, unlawful, without jurisdiction and without legal, lawful authority and does not create any legal sanctity and is liable to be set-aside and suit of the plaintiff/ respondent No. 1 is liable to be dismissed.

b) To declare that the land for which the suit was filed nowhere found public property nor the plaintiff/respondent No.1 and in the absence of any title

document produced by the plaintiff/respondent No.1 relates to the land being public property or government land and the act of the Trial Court without first deciding the status of the property as provided in Section 13 of Removal of Encroachment Act 2010, the assumption of jurisdiction by the Tribunal and passing the order is without any legal, lawful authority and without any jurisdiction rather outcome of use of power which does not confer upon Tribunal and use of excess of the powers.

c) To declare that the Trial Court miserably failed to follow the Act and without proceedings, recording evidence, exhibition of documents and without providing opportunity of cross examination, framing of issues, relied upon the documents of Revenue Authority that too without any decision of those documents to that of their legality, sanctity and in the absence of non-production of any of title documents viz: Village Form-XV or Village Form-VI, Village Form-VII-A and VII-B, the order of the Trial Court is without any lawful authority.

d) To suspend the operation of impugned order dated 19.08.2025 passed by Anti Encroachment Tribunal Hyderabad, in Suit No.79 of 2023, and restrain the official respondents from taking law in their hands and from illegal act of demolition of Houses of petitioners and other innocent people in any manner whatsoever. Also restrain the respondent No.1 from his illegal, unlawful act in continuation and forcing for demolition in any manner whatsoever.

e) To call detailed report from City Surveyor Matiyari, to produce the relevant Map / Sheet and the conversion of Revenue Survey Numbers into City Survey Numbers.

Ø Any other relief which this Honourable Court deems fit and proper.

g) Cost of the Petition."

2. Briefly stated, the facts of the case are that respondent No.1, claiming himself to be a public-spirited person, instituted Suit No.79 of 2023 before the Anti-Encroachment Tribunal,

Hyderabad, alleging encroachment over certain parcels of land bearing Survey Nos. 86, 87, and 88, situated in Taluka Matiari, District Matiari, purportedly described as graveyard and other public amenities. In the said proceedings, directions were sought for removal of alleged encroachments and retrieval of possession through official respondents. The present petitioners, being residents of the locality and in long, settled possession of portions of the said land, entered appearance and filed their written statements, specifically disputing the very nature of the property and asserting that the land in question is private property (Kabuli land of Syeds and their predecessors), which has never vested in the Government or any public authority, thus ousting the jurisdiction of the Tribunal under the Sindh Public Property (Removal of Encroachment) Act, 2010. It is the case of the petitioners that despite such categorical objections regarding jurisdiction and ownership, and without framing of issues or recording of evidence, the learned Tribunal, through order dated 19.08.2025, allowed the suit in a summary manner and directed removal of alleged encroachments and demolition of structures. Feeling aggrieved by the said order, which according to the petitioners has been passed without lawful authority and in violation of due process, the petitioners have invoked the constitutional jurisdiction of this Court under Article 199 of the Constitution.

3. Learned counsel for the petitioners, while opening his submissions, vehemently contended that the impugned order dated 19.08.2025 passed by the Anti-Encroachment Tribunal, Hyderabad, is patently illegal, without lawful authority and coram non iudice, as the Tribunal has assumed jurisdiction which is not vested in it under the Sindh Public Property (Removal of Encroachment) Act, 2010. It was argued that the very foundation of jurisdiction under the said Act rests upon the existence of "public property" as defined under Section 2 (o) read with the definition of "encroachment" under Section 2 (i), whereas in the present case the subject land comprised in Survey Nos. 86, 87 and 88, Taluka Matiari, admittedly pertains to private ownership (Kabuli land of Syeds and their predecessors), and at no point of

time has the same vested in the Government, local authority, or any statutory body. Learned counsel submitted that without first determining the nature and status of the property as mandated under Section 13 of the Act, the Tribunal could not have assumed jurisdiction, and any order passed without such foundational determination is void ab initio.

4. It was further contended that the proceedings before the Tribunal were conducted in complete disregard of the mandatory procedural safeguards, as no issues were framed, no evidence was recorded, and no opportunity of cross-examination was afforded to the petitioners, despite Section 14(3) of the Act expressly conferring powers of a Civil Court under the Code of Civil Procedure, 1908, including recording of evidence and production of documents. Learned counsel emphasized that the Tribunal has based its findings solely on unproved reports and documents, which were neither exhibited nor tested through evidence, thereby rendering the impugned order a product of conjectures and surmises, devoid of any legal sanctity. He further argued that even the reports on record, particularly that of the SHO, clearly indicate that the residential structures of the petitioners fall outside the boundary wall of the graveyard, thus negating the allegation of encroachment altogether; however, the Tribunal failed to consider such material aspects.

5. Learned counsel also assailed the locus standi of respondent No.1, contending that he is a stranger to the locality, having no nexus, title, or legally recognizable interest in the subject property, and his action in instituting the suit is mala fide, motivated by ulterior purposes of harassment and extortion. It was submitted that the suit itself was not maintainable at the instance of such a person, particularly when no complaint was made by any competent authority or affected party, and the Tribunal ought to have dismissed the same at the threshold. He further contended that the reliance placed by the Tribunal upon irrelevant case law and incomplete demarcation reports, without calling for primary

revenue record such as Village Forms VI, VII-A, VII-B or City Survey record, vitiates the entire proceedings.

6. In culmination, learned counsel submitted that the impugned order, having been passed in violation of due process, without jurisdiction, and in excess of statutory authority, has resulted in grave miscarriage of justice, as it exposes the petitioners, who are in settled possession for decades, to imminent demolition and dispossession without lawful adjudication. He, therefore, prayed that this Court, in exercise of its constitutional jurisdiction under Article 199 of the Constitution, may be pleased to set aside the impugned order, declare the proceedings before the Tribunal as coram non judio, and grant consequential relief to protect the petitioners from illegal dispossession.

7. Conversely, learned counsel for respondent No.1, as well as the learned Assistant Advocate General appearing for the official respondents, opposed the instant petition and supported the impugned order. It was contended that the subject land, as reflected from the revenue record and demarcation reports, comprises graveyard and other public utility areas, thereby falling squarely within the definition of "public property" under the Sindh Public Property (Removal of Encroachment) Act, 2010, and any unauthorized occupation thereupon constitutes encroachment liable to removal. Learned counsel submitted that respondent No.1 had approached the competent forum in the larger public interest, particularly in view of the alleged scarcity of burial space, and the Tribunal, after considering the material placed before it, rightly exercised its jurisdiction to protect public property from illegal occupation.

8. It was further contended that the petitioners are unauthorized occupants having no lawful title or documentary proof to justify their possession, and mere long possession does not confer any legal right against the State or public property. Learned counsel argued that the proceedings before the Tribunal are summary in nature and strict application of the Code of Civil Procedure is not required, and that sufficient opportunity was afforded to the parties to place their respective versions on record.

It was also submitted that the reports of revenue officials and demarcation carried out at site sufficiently establish the existence of encroachment, and the Tribunal was competent to rely upon such official documents while passing the impugned order.

9. Learned law officer further argued that no case for interference in constitutional jurisdiction is made out, as the impugned order does not suffer from any jurisdictional defect or illegality warranting interference under Article 199 of the Constitution. It was contended that the petitioners have approached this Court with unclean hands in order to prolong their illegal occupation and frustrate lawful action taken by the authorities for removal of encroachments from public land. He, therefore, prayed for dismissal of the petition.

10. Heard learned counsel for the parties at considerable length and with their able assistance have carefully perused the record, including the impugned order dated 19.08.2025 passed by the Anti-Encroachment Tribunal, Hyderabad, the pleadings of the parties, written statements, reports of revenue and police officials, as well as the relevant provisions of the Sindh Public Property (Removal of Encroachment) Act, 2010 and the Code of Civil Procedure, 1908. The controversy emerging from the record essentially revolves around the question as to (i) whether the Tribunal had lawful jurisdiction to entertain and decide the lis in the absence of a prior determination of the status of the subject property as "public property," and (ii) whether the impugned order has been passed in accordance with law after due observance of procedural safeguards, including framing of issues and recording of evidence, or suffers from jurisdictional defect and material illegality warranting interference by this Court in exercise of its constitutional jurisdiction under Article 199 of the Constitution.

11. Upon anxious consideration of the rival submissions and close scrutiny of the record, this Court finds that the controversy in hand could not have been lawfully resolved by the learned Anti-Encroachment Tribunal in the cursory manner adopted through the impugned order dated 19.08.2025. The statutory scheme of the Sindh Public Property (Removal of

Encroachment) Act, 2010 makes it abundantly clear that the entire edifice of action under the Act rests upon the foundational requirement that the property in dispute must answer the description of "public property" and that the occupation complained of must amount to "encroachment" within the meaning of the Act. The expression "encroachment" has been defined to mean unauthorized occupation of or undue interference with public property, whereas "public property" means a building, land, place or premises vesting in, or under the management or control of, Government, local council, autonomous body, registered cooperative society or such other authority. Thus, unless the character of the property as public property is first established in a legally sustainable manner, the jurisdiction under the Act cannot be permitted to operate mechanically or by mere assumption. This flows directly from the definitions clause and the substantive scheme of the Act itself.

12. It is equally significant that Section 13 of the Act confers exclusive jurisdiction upon the Tribunal to adjudicate upon a dispute that any property is not a public property or that any lease or licence in respect of such public property has not been determined for the purposes of the Act. The plain language of Section 13 leaves little room for doubt that where, as in the present case, the very status of the property is seriously disputed by the persons proceeded against, the Tribunal is under a legal obligation to first enter upon and determine that question. The question of jurisdiction and the question whether the land is, in fact, public property are here inseparably interlinked. If the property is not shown to vest in or remain under the management or control of a public authority, the Tribunal cannot proceed to treat the occupants as encroachers under the Act. Therefore, the foundational jurisdictional fact was not a peripheral issue in the lis; rather, it was the central issue requiring adjudication at the threshold.

13. The record placed before this Court shows that the petitioners had specifically and unequivocally denied that the land in question was public property and had pleaded that the same was private land of their predecessors. Once such a categorical

challenge was raised, the learned Tribunal was not justified in treating the matter as a routine removal of encroachment case on admitted public land. The Tribunal was required to examine the primary revenue and title material, to determine the exact legal status of Survey Nos. 86, 87 and 88, to examine whether the land vested in the Government or any authority contemplated by the Act, and only thereafter to decide whether its own jurisdiction stood attracted. The impugned order, however, reflects that this exercise was not meaningfully undertaken; rather, the matter appears to have been disposed of on the strength of reports and assertions, without a structured adjudication of the basic jurisdictional controversy. Such an approach cannot be sustained in law.

14. Further, this Court is of the considered view that the manner in which the proceedings were conducted by the learned Tribunal falls short of the minimum procedural standards contemplated by the Act itself. Section 14(3) expressly provides that the Tribunal shall have the powers of a Civil Court under the Code of Civil Procedure, 1908 in relation to summoning and enforcing attendance, examining persons on oath, receiving evidence on affidavit, compelling production of documents, and issuing commissions for examination of witnesses or documents. Sub-section (4) further declares that proceedings before the Tribunal shall be judicial proceedings. These provisions are not ornamental; they signify that where disputed questions touching title, status of land, extent of occupation, and location of structures arise, the Tribunal must adopt a judicial approach consistent with fair hearing, proper reception of evidence, and lawful evaluation of the material brought on record.

15. In the present matter, no proper issues appear to have been framed on the real controversies between the parties; no regular opportunity of proving and disproving documents was afforded in the manner known to law; no effective right of cross-examination was made available on the material reports relied upon; and no conclusive adjudication appears to have been made on the foundational objection regarding status of the property. Where one party asserts that the land is a graveyard or public

amenity and the other party asserts that the land is private Kabuli land outside the sweep of public property, such dispute cannot be resolved merely by referring to untested reports or by accepting administrative notings at face value. Judicial determination requires that the documents relied upon be brought on record in accordance with law, that the officials concerned be available where their reports are disputed, and that the parties be afforded meaningful opportunity to contest the same. Absence of such process vitiates the decision-making exercise.

16. The contention raised on behalf of the respondents that proceedings under the Act are summary in nature also does not advance their case. Even if the Act aims at expeditious removal of encroachment from public property, summary procedure cannot be stretched to such an extent as to obliterate the distinction between admitted public land and disputed property, nor can it dispense with the duty to observe due process where civil consequences of the gravest kind, including demolition of houses and dispossession of persons in settled possession, are involved. Expeditious justice is not a substitute for lawful justice. Speed may regulate procedure, but it cannot annihilate jurisdictional safeguards or fair hearing.

17. So far as the bar of civil jurisdiction under Section 11 is concerned, the same rather fortifies the above conclusion. Since ordinary civil proceedings relating to dispute that any property is not public property stand excluded and such matters are to be dealt with by the Tribunal, the Tribunal must exercise that exclusive jurisdiction with full judicial responsibility. It cannot, on the one hand, claim exclusive authority under Sections 11 and 13, and on the other hand decline to undertake the adjudicatory exercise necessary to determine the very dispute entrusted to it by law. The exclusivity of jurisdiction carries with it the duty of proper adjudication.

18. This Court is also not impressed by the submission that mere absence of title documents with the petitioners was sufficient to non-suit them before the Tribunal. In a proceeding under the present Act, the initial and essential burden was upon

the person invoking the statutory machinery, and upon the authorities acting thereunder, to show that the property sought to be cleared was in fact public property within the meaning of the Act. It was only after such foundational fact had been prima facie and then judicially established that the consequences of unauthorized occupation could lawfully follow. The Tribunal was not deciding a simple suit for declaration of private ownership in the ordinary civil jurisdiction; it was exercising a special statutory jurisdiction, the trigger for which lay in the public character of the property itself. Failure to satisfactorily determine that trigger rendered the ensuing order legally vulnerable.

19. At the same time, this Court is of the view that the objection regarding locus standi of respondent No.1, by itself, is not sufficient to dispose of the matter in favour of the petitioners. If an allegation is made that land meant for graveyard or public use is under encroachment, the Tribunal may certainly examine such grievance when brought before it, particularly when official agencies are also before the Court. However, even assuming that respondent No.1 was competent to agitate the matter, the proceedings still had to culminate in a lawful adjudication based upon evidence and determination of the statutory ingredients. Thus, the defect in the impugned order is not cured merely by invoking public interest; jurisdiction must still be exercised according to law.

20. The impugned order, viewed in the above perspective, suffers from material illegality and jurisdictional infirmity. It does not demonstrate a prior and reasoned determination of the disputed status of the land as public property; it does not reflect observance of the procedural discipline inherent in Sections 13 and 14 of the Act; and it visits the petitioners with serious civil consequences without a full-fledged adjudicatory exercise commensurate with the nature of the dispute. In such circumstances, this Court, in exercise of constitutional jurisdiction under Article 199 of the Constitution, is fully justified in intervening, not for the purpose of deciding disputed title finally in writ jurisdiction, but to ensure that the statutory forum acts within the bounds of law and affords due process to the parties.

Accordingly, this petition is allowed to the extent that the impugned order dated 19.08.2025 passed by the Anti-Encroachment Tribunal, Hyderabad, in Suit No.79 of 2023 is set aside. The matter is remanded to the learned Tribunal for decision afresh strictly in accordance with law. The learned Tribunal shall, before passing any final order, specifically frame and determine the foundational question whether the property in dispute, wholly or partly, answers the description of "public property" within the meaning of Section 2(o) of the Act; shall call for and examine the best available primary revenue and title record, including such village forms, survey record, city survey material, maps, sheets, mutation entries and other official documents as may be necessary for proper adjudication; shall afford fair opportunity to all contesting parties to adduce evidence, to produce and prove documents, and to cross-examine where required; and shall thereafter record clear findings, supported by reasons, on each material controversy including jurisdiction, nature of the property, extent and location of alleged encroachment, if any, and entitlement to relief.

21. It is further directed that till such fresh decision by the learned Tribunal, no coercive action in the nature of demolition or dispossession shall be taken against the petitioners solely on the basis of the impugned order dated 19.08.2025, which has now been set aside. However, the petitioners shall also maintain status quo with regard to the nature, character and possession of the property and shall not raise any further construction, alienate any portion, or alter the existing position so as to prejudice the fresh adjudication before the Tribunal.

22. Before parting, this Court deems it appropriate to observe that proceedings under the Sindh Public Property (Removal of Encroachment) Act, 2010, particularly where residential structures or long-settled possession are involved and the public character of the property is disputed, must be handled with utmost care. The Act undoubtedly aims at protecting public land from land grabbers and unauthorized occupants, yet its beneficent object cannot be achieved by sidestepping the very safeguards which the statute itself has built into the adjudicatory

framework. The stronger the power of summary removal, the greater the obligation to ensure that such power is exercised only after the foundational jurisdictional facts are properly established.

23. In the above terms, the instant petition is allowed and case is remanded to the tribunal for *de novo* trial, the impugned order dated 19.08.2025 passed by the Anti-Encroachment Tribunal, Hyderabad in Suit No.79 of 2023 is set-aside. There shall be no order as to costs. Pending miscellaneous applications, if any, stand disposed of.

Sd/- **Riazat Ali Sahar**, Judge

Sd/- **Arbab Ali Hakro**, Judge

Announced by:

Sd/- **Adnan Iqbal Chaudhry**, Judge

15.04.2026

Sd/- **Riazat Ali Sahar**, Judge

15.04.2026