

HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD

C.P.No.D-1367 of 2023
[M/s Modern Textile Mill Tando Jam Sindh]

C.P.No.D-1368 of 2023
[M/s Starko Limited Tando Jam]

DATE	ORDER WITH SIGNATURE OF JUDGE(S)
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Before:

Justice Arbab Ali Hakro
Justice Riazat Ali Sahar

Mr. Ahmed Murtaza A. Arab, Advocate for petitioners

M/s Muhammad Arshad S. Pathan and Safder Hussain
Laghari advocate for the respondent University.

Mr. Ghulam Shabbir, advocate a/w respondent
No.7/Regional Director Katchi Abadies (Muhammad
Jawaid Shaikh)

Mr. Rafique Ahmed Dahri, Assistant A.G Sindh

Date of hearing & Decision: 15.05.2025

ORDER

ARBAB ALI HAKRO J:- Since the identical issue is involved in both
these petitions, the same is being decided through this common Order.

2. In these petitions, assail Notification No. SKAA/NOT/KAR-I/2022/
1135 and SKAA/NOT/KAR-I/2022/1136, both dated 23.11.2022, promulgated
by the Director General, Sindh Katchi Abadies Authority, whereby the land
encompassed within Survey No. 336, admeasuring 2.00 acres, and Survey
No. 340, admeasuring 1.31 acres, situated in Deh Hotki, District Hyderabad,
was designated as ‘Katchi Abadi’ and consequently incorporated into the
Master List of the Sindh Katchi Abadi Authority.

3. At the very outset, learned counsel for respondent No.7, present
alongside the Regional Director, Sindh Katchi Abadies Authority, submits that
the notifications dated 23.11.2022, impugned in the present petitions, have
subsequently been rescinded via Notifications No. SKAA/NOT/KAR-
I/2023/131 & SKAA/NOT/KAR-I/2023/132, both dated 18.01.2023.
Consequently, these petitions have been rendered infructuous and are liable
to be dismissed.

4. Upon being confronted, learned counsel for the petitioners endeavoured to persuade the Court that certain other composite prayers remain, notwithstanding the rescission of the impugned notifications. Consequently, the petitions retain their legal vitality and necessitate adjudication on merits.

5. We have heard the learned counsel for the parties and perused the material on record.

6. A meticulous examination of the record unmistakably establishes that the impugned notifications have been formally rescinded through subsequent Notifications No. SKAA/NOT/KAR-I/2023/131 and SKAA/NOT/KAR-I/2023/132, dated 18.01.2023, issued under the authority of the Sindh Katchi Abadies Authority. This rescission effectively nullifies the legal foundation upon which the present petitions were instituted, rendering them devoid of any enforceable cause of action. As a corollary, the prayer clauses articulated in the petitions, save for prayer clause (c), as delineated infra, are intrinsically linked to the now-vitiated notifications and the apprehensions precipitated. Consequently, in light of the annulment, the petitions' residual substantive content ceases to retain legal relevance, thereby meriting their dismissal for having been rendered infructuous.

7. Notwithstanding the foregoing, prayer clause (c) in Constitutional Petition No. D-1367 of 2023 warrants distinct consideration as it pertains to the issue of possession asserted by the petitioner over the subject land. While possession, as a legal concept, possession often invokes considerations distinct from title and ownership, the present matter is intrinsically entangled with proprietary claims over the subject survey numbers. It is a matter of judicial record that the dispute concerning ownership rights between the petitioners and the respondent University is sub judice before the Supreme Court of Pakistan in Civil Petitions No. 4098 & 4099 of 2022. Given the pendency of adjudication at the apex judicial forum, this Court is circumscribed in its jurisdiction and precluded from rendering any definitive findings or issuing consequential directions that may impinge upon or preempt the determination of proprietary rights by the Supreme Court of Pakistan.

8. Judicial propriety necessitates adherence to the principle of non-interference in matters actively under consideration by a superior judicial forum. Any adjudication or observation by this Court on the issue of possession, when the broader question of ownership remains unsettled before the highest Court of the land, runs afoul of established norms of judicial restraint. It is a well-entrenched principle of law that when a dispute is sub judice before a superior forum, all subordinate courts must exercise deference and abstain from issuing directives that may either contravene or prejudice the ultimate resolution.

9. In view of the aforementioned considerations, the petitions, having become devoid of any enforceable cause, are liable to be dismissed as having been rendered infructuous, except for prayer clause (c) in Constitutional Petition No. D-1367 of 2023, which, due to its interwoven nature with the question of ownership, falls within the purview of the Supreme Court of Pakistan. Accordingly, no findings or directions can be issued in this regard by this Court at this stage, and the matter shall be left for adjudication by the apex Court as per the due process of law.

10. Above are the reasons for our short Order of even date.

JUDGE

JUDGE