

IN THE HIGH COURT OF SINDH CIRCUIT COURT MIRPURKHAS

Constitutional Petition No.D-16 of 2025

Present:

Mr. Justice Amjad Ali Sahito
Mr. Justice Jan Ali Junejo.

Petitioners:

1. Municipal Corporation, Mirpurkhas
Through its Mayor.
2. Municipal Commissioner,
Municipal Corporation, Mirpurkhas.
3. Taxation Officer,
Municipal Corporation, Mirpurkhas.
4. Officer Incharge, Land Department,
Municipal Corporation, Mirpurkhas.
Through Mr. Abdul Rauf Arain, Advocate.

Respondent No.9: Raja Ishtiaque Ali S/o Raja Abdul Ghani
Through Mr. Tehseen Ahmed H. Qureshi,
Advocate.

Respondents No.1 to 8. Through Mr. Ayaz Ali Rajpar, A.A.G.

Date of Hearing: 25.08.2025.

Date of Decision: 22.09.2025.

JUDGMENT

Amjad Ali Sahito, J. – This Constitution Petition has been filed by the Municipal Corporation, Mirpurkhas, along with its officials (hereinafter referred to as “*the Petitioners*”) under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973. Through this Petition, the Petitioners call into question and seek **setting aside** of the Order dated 10-01-2025 (hereinafter referred to as the “*Impugned Order*”) passed by the learned 1st Additional District Judge, Mirpurkhas (hereinafter referred to as the “*Revisional Court*”) in Civil Revision Application No.64 of 2024, as well as the Order dated 19-12-2024 passed by the learned 3rd Senior Civil Judge, Mirpurkhas (hereinafter referred to as the “*Trial Court*”) in

F.C. Suit No. 164 of 2024. The principal grievance of the Petitioners relates to the de-sealing of a petrol pump, namely M/s. New Raja Umerkot Petroleum Service, being operated by Respondent No. 9, Raja Ishtiaque Ali (hereinafter referred to as “the Respondent”), and the restoration of its possession to him during pendency of the civil proceedings. The Petitioners assert that the subordinate Courts acted without lawful jurisdiction and committed material irregularities in passing the aforesaid orders.

2. The factual matrix leading to the present Constitution Petition can be summarized as follows:

Respondent No. 9, Raja Ishtiaque Ali, is the owner and sole proprietor of M/s: New Raja Umerkot Petroleum Service, a petrol pump located adjacent to Railway Station Mirpurkhas. He claims to have obtained a temporary encroachment license for the municipal land from the then defunct Municipal Committee Mirpurkhas, and subsequently from the Municipal Corporation Mirpurkhas (Petitioner No. 1), for a period of ten years, from July 1, 2022, to June 30, 2032, by paying a license fee of Rs. 150,000/-.

On October 26, 2024, officials from the Municipal Corporation Mirpurkhas, accompanied by police, allegedly entered the licensed premises without prior notice, forcibly took possession, and erected a wall to block the petrol pump’s operations. This action was taken while the Respondent was undertaking masonry repair work and installing paver blocks due to damage caused by heavy rains.

Aggrieved by this action, Respondent No. 9 filed F.C. Suit No. 164 of 2024 before the learned 3rd Senior Civil Judge Mirpurkhas, seeking a declaration, mandatory, and permanent injunction against the Petitioners. During the pendency of the suit, Respondent No. 9 filed three applications seeking: (1) removal of obstructions (the wall) from the licensed premises; (2) suspension of the Municipal Commissioner’s order dated October 21, 2024, canceling the license; and (3) recovery of articles from the licensed premises.

On December 19, 2024, the learned 3rd Senior Civil Judge Mirpurkhas passed a common order, granting all three applications filed by Respondent No. 9. The trial court found that the Respondent had a prima facie case, had been in possession of the premises for a long time under a valid license, and that the Petitioners’ actions of sealing the petrol pump and canceling the license were done without due process and proper notice [3]. The trial court specifically noted that the cancellation order appeared to be ‘managed’

and backdated, and that no proper notice was served upon the Respondent prior to the sealing.

Subsequently, the Petitioners filed Civil Revision Application No. 64 of 2024 before the learned 1st Additional District Judge Mirpurkhas, challenging the trial court's order. The Petitioners argued that the trial court lacked jurisdiction to grant interim possession under Section 94 CPC, that the license was obtained fraudulently, and that it was subject to cancellation. They also contended that the Respondent had violated the terms of the license by undertaking construction work.

On January 10, 2025, the learned 1st Additional District Judge Mirpurkhas dismissed the Civil Revision Application, upholding the trial court's order. The Revisional Court found no irregularity or illegality in the trial court's exercise of jurisdiction and agreed with the trial court's reasoning regarding the lack of proper notice and the apparent mala fide actions of the Petitioners. The Revisional Court emphasized that the trial court's order was an interim measure, subject to the final decision of the suit.

It is against these concurrent findings of fact and law by the learned Senior Civil Judge and the learned Additional District Judge that the present Constitution Petition has been filed.

3. Mr. Abdul Rauf Arain, learned counsel for the Petitioners, vehemently argued that the trial court committed material irregularities and acted without jurisdiction in passing the impugned order. His primary contentions were:

The learned counsel asserted that Section 94 of the Code of Civil Procedure (CPC) does not provide for the restoration of possession as an interim relief. He argued that the trial court, by ordering de-sealing and restoration of possession, effectively granted a final relief at an interlocutory stage, which is impermissible.

It was contended that the license obtained by Respondent No. 9 was invalid from the outset, as it was issued by the Taxation Officer, who is not the competent authority under Section 81 of the Sindh Local Government Act, 2013. He further argued that the license was obtained in collusion with the Municipal Corporation staff and was for an unusually long period of ten years, whereas licenses are typically renewed year to year. The Petitioners claimed that the license was duly cancelled on October 21, 2024, vide order No. 265, after affording Respondent No. 9 several opportunities of notice.

The learned counsel submitted that Respondent No. 9 violated Condition No. 1 of the license by commencing construction work (installing paver blocks) on the suit property, which was not permissible under the temporary encroachment license. He referred to the Respondent's own admission in the plaint regarding the construction work.

It was argued that the proper remedy for Respondent No. 9, if he suffered any loss due to the cancellation of the license, was to seek damages under Sections 63 and 64 of the Easement Act, 1882, and not to seek restoration of possession or declaration through a civil suit. He also suggested that the remedy was available under Section 143 of the Sindh Local Government Act, 2013.

The Petitioners refuted the claim that the cancellation order was managed or backdated, asserting that due process was followed. However, the Revisional Court noted that the notices produced by the Petitioners were issued by an Inspector of the Anti-Encroachment Cell without reference to any license, and did not state that the license would be cancelled for failure to stop construction. He relied on various case laws, including 2009 CLC 406, 2003 SCMR 50, PLD 1971 Peshawar 116, PLD 1965 Supreme Court 83, 2017 YLR 2006, 2008 CLR 348, 1993 CLC 330, and PLD 1961 (W.P) Lahore 418, to support his arguments regarding the revocability of licenses and the limitations of interim relief.

4. Mr. Tehseen Ahmed H. Qureshi, learned counsel for Respondent No. 9, countered the arguments of the Petitioners, asserting the correctness and legality of the impugned orders. The learned counsel argued that the trial court rightly exercised its powers under Section 94 read with Section 151 CPC, specifically relying on clause (e) of Section 94, which allows the court to make such other interlocutory orders as may appear to be just and convenient to prevent the ends of justice from being defeated. It was strongly contended that the Municipal Corporation Mirpurkhas sealed the petrol pump and took possession without serving any prior notice on Respondent No. 9. He alleged that the cancellation order was managed and backdated to defeat the Respondent's claim, as evidenced by the dates of alleged notices (October 22, 2024, and October 25, 2024) being after the cancellation order (October 21, 2024). He emphasized the principle that no one should be condemned unheard. The learned counsel highlighted that Respondent No. 9 had been in peaceful possession of the petrol pump for a long time, even prior to 2006, under a valid temporary

encroachment license. He pointed out that the Petitioners themselves admitted the genuineness of the license initially, and that the Respondent had paid the full license fee for ten years. He argued that a license, once granted, cannot be revoked arbitrarily or on the whims of the licensor. He stressed that the relief granted by the trial court was purely interim in nature, aimed at maintaining the status quo and preventing irreparable loss to Respondent No. 9. He argued that such interim orders cannot be challenged under Section 115 CPC through revision, and referred to 2024 SCMR 1385, PLD 1970 SC 288, 2006 SCMR 21, and 1994 SCMR 1991 in this regard. The learned counsel asserted that Respondent No. 9 had a strong prima facie case, would suffer irreparable loss if the interim relief was denied, and that the balance of convenience lay in his favor. He argued that the petrol pump was the source of livelihood for the Respondent and his family, and its sealing without due process caused significant financial and economic disruption. He relied on 1999 MLD 1413 and 1997 CLC 1005 to support the grant of interim injunctions in similar circumstances. He distinguished the case laws cited by the Petitioners, arguing that they were not applicable to the facts of the present case, particularly regarding the existence of an admitted license and the lack of proper notice. Lastly, the learned counsel prayed for dismissal of the present Petition.

5. Mr. Ayaz Ali Rajpar, A.A.G. Sindh supported the arguments advanced by the learned counsel for the Petitioners. He submitted that the subordinate Courts acted without jurisdiction in directing restoration of possession at an interlocutory stage, which amounted to granting final relief under the garb of interim injunction, contrary to Section 94 CPC. Reliance on Section 151 CPC for such relief, he argued, was wholly misconceived. The learned A.A.G. further contended that the license of Respondent No. 9 was void ab initio, having been issued by an incompetent authority under Section 81 of the Sindh Local Government Act, 2013, and was subsequently cancelled on 21-10-2024 after due process. He emphasized that Respondent No. 9 himself admitted to carrying out unauthorized construction, thereby violating the

express conditions of the license. The plea of backdating, according to him, was unfounded, as the record reflected lawful proceedings leading to cancellation. He maintained that the proper remedy, if any, lay in seeking damages under the Easement Act, 1882, or invoking provisions of Section 143 of the Sindh Local Government Act, 2013, and not through restoration of possession. He concluded that the concurrent orders of the subordinate Courts suffered from material irregularity and manifest illegality, warranting interference by this Court in exercise of its constitutional jurisdiction.

6. We have heard the learned counsel for the respective parties and have gone through the material available on record with their able assistance.

7. At the outset, it is imperative to delineate the scope of this Court's constitutional jurisdiction under Article 199 of the Constitution, particularly when confronted with concurrent findings of fact by the lower courts. It is a well-settled principle of law that the High Court, in its constitutional jurisdiction, generally refrains from interfering with concurrent findings of fact recorded by the courts below, unless such findings are perverse, based on no evidence, or suffer from a misapplication of law, leading to a miscarriage of justice. The revisional jurisdiction of the High Court, as well, is limited and does not permit disturbance of concurrent findings of fact unless a question of law is involved or the findings are demonstrably flawed. In the instant case, both the learned Senior Civil Judge and the learned Additional District Judge have rendered concurrent findings based on a thorough appreciation of the material available before them.

8. The Petitioners' primary contention revolves around the trial court's jurisdiction to grant interim possession under Section 94 CPC. Section 94 of the C.P.C deals with supplemental proceedings and empowers the court to make various interlocutory orders to prevent the ends of justice from being defeated. Clause (e) of Section 94 specifically states: *"(e) make such other interlocutory orders as may appear to the Court to be just and convenient"*. This provision grants wide discretionary powers to the civil court to pass any interlocutory order that is just and convenient in the

circumstances of the case. The learned counsel for the Petitioners argued that restoring possession amounts to granting a final relief at an interim stage. However, the trial court's order, as affirmed by the Revisional Court, explicitly states that the interim possession of the suit property has been ordered to be restored, and the ultimate fate of the possession shall be decided at the time of the final decision of the suit. This clearly indicates that the relief granted is ad-interim and subject to the final adjudication of the rights of the parties. The object of granting interim injunctions under Order 39 CPC, read with Section 94 CPC, is to maintain the status quo and prevent irreparable harm to a party during the pendency of the suit. The trial court, in this case, found that Respondent No. 9 had been dispossessed without due process and that his livelihood was at stake. Therefore, the order for de-sealing and restoration of possession was a measure to preserve the subject matter of the suit and prevent further prejudice to the Respondent, which falls squarely within the ambit of the court's powers under Section 94(e) CPC. Case law supports the view that courts have inherent powers to pass appropriate orders necessary for the ends of justice. The argument that Section 94 CPC does not provide for restoration of possession is too restrictive and ignores the broad equitable powers vested in the court to ensure justice. The power to restore possession, even on an interim basis, can be inferred from the general power to make such orders as may appear to be just and convenient, especially when a party has been dispossessed illegally and without due process. The Civil Court, being a Court of plenary jurisdiction, is empowered to restore the status quo ante if an exceptional situation arises during the pendency of the suit, where a party, with intent to defeat the very purpose of the proceedings or to frustrate an interlocutory application, creates a new situation altering the subject matter of the *lis*. Such jurisdiction is inherent and may be exercised to preserve the substratum of the dispute and to restrain a litigant from deriving benefit out of its own wrongful act, thereby safeguarding the due administration of justice. Reliance is placed on the case of ***Government of Pakistan through Secretary, Cabinet Division and another v. Dr. M.***

Akbar Rajput (2011 SCMR 1298), wherein the Honourable Supreme Court of Pakistan observed that:

“The intent and purpose of the afore-referred letters, therefore, was to reinstate the respondent with all back benefits and the interpretation accorded to it by the learned Tribunal in the judgment dated 15-3-2003 is correct as the status quo ante in terms of Black's Law Dictionary means “the situation that existed before some thing else (being discussed) occurred”. In any case, the afore-referred judgment attained finality as it was never challenged by the petitioner-government before this Court and any contrary interpretation of a departmental correspondence cannot offset the judicial pronouncement”.

9. The Petitioners contended that the license was invalid and duly cancelled. However, both the trial court and the Revisional Court meticulously examined the evidence regarding the license and its alleged cancellation. The courts found that Respondent No. 9 had been in possession of the petrol pump for over two decades, initially under a license from the defunct Municipal Committee and subsequently under a renewed license from the Municipal Corporation Mirpurkhas. The payment of the license fee for ten years was also acknowledged. Crucially, the lower courts found that the alleged cancellation order dated October 21, 2024, appeared to be a “managed cancellation order” and that no proper notice was served upon Respondent No. 9 prior to the sealing of the premises. The discrepancies in the dates of the cancellation order and the alleged notices further supported the finding of mala fide on the part of the Petitioners. The principle of *audi alteram partem* (hear the other side) is a cornerstone of natural justice. No adverse action can be taken against a person without affording him a reasonable opportunity of being heard. The findings of the lower courts clearly indicate a violation of this fundamental principle by the Petitioners. Even if a license is revocable, it must be revoked in accordance with the law and after due notice to the licensee, unless the terms of the license explicitly provide otherwise. The case law cited by the Petitioners regarding revocability of licenses often emphasizes the requirement of notice, which was found to be absent or improperly served in this instance.

10. The Petitioners argued that Respondent No. 9 violated the license conditions by undertaking construction work. The trial court, however, noted that the Respondent was merely undertaking masonry repair work and installing paver blocks due to damage caused by heavy rains, and that the petrol pump had been in existence at the same location with a *pacca* structure for many years. The courts found no evidence that the Respondent had changed the nature of the structure or undertaken any activity prohibited by law. The minor repair work, undertaken to maintain the existing structure, cannot be construed as a violation warranting such drastic action as sealing the premises without notice.

11. The concurrent findings of fact by the trial court and the Revisional Court are well-reasoned and based on sound evidence. The trial court, in its order dated December 19, 2024, articulated ten grounds for granting the interim relief, which were upheld by the Revisional Court. These grounds include:

- The genuineness of the license issued by the Petitioners to Respondent No. 9.
- The payment of the entire license fee for ten years by Respondent No. 9.
- The long-standing peaceful possession of the licensed premises by Respondent No. 9 since 2006.
- The finding that the cancellation order was managed and that no proper notice was served upon Respondent No. 9.
- The clear violation of Section 24-A of the General Clauses Act, 1897, in the cancellation of the license.
- The fact that Respondent No. 9 learned about the cancellation during the pendency of the suit, not at the time of the sealing.
- The admitted license creating rights in favor of Respondent No. 9, making the suit maintainable.
- The principle that a license, once granted, cannot be arbitrarily revoked.
- The serious prejudice caused to Respondent No. 9 by the hasty and unlawful actions of the Petitioners.

- The fact that the petrol pump is the source of livelihood for Respondent No. 9 and his family, and its sealing without due process caused irreparable loss.

12. The Revisional Court, after hearing both parties and perusing the record, found no material irregularity or illegality in the trial court's order. It specifically noted that the Petitioners failed to point out any such irregularity while discussing the merits of the case. The conduct of the Petitioners, in preparing backdated documents and failing to serve proper notices, was also highlighted as indicative of mala fide intent. In the well-known case of ***Shaukat Ali and others v. Government of Pakistan through Chairman, Ministry of Railways and others (PLD 1997 SC 342)***, the Honourable Supreme Court of Pakistan, while dealing with a matter relating to a license, was pleased to observe that:

“However, we may observe that even in case of a licence if the action of the State functionary concerned is prompted with malice/mala fide, the Court may interfere with”.

13. This Court finds no compelling reason to deviate from these concurrent findings. The Petitioners have failed to demonstrate that the findings of the lower courts are perverse, arbitrary, or based on a misreading or non-reading of evidence. The arguments raised by the Petitioners in this Constitutional Petition are essentially a re-agitation of the same points that were thoroughly considered and rejected by both the trial court and the Revisional Court. The constitutional jurisdiction of this Court is not meant to be a forum for re-appreciation of evidence or to sit as an appellate court over concurrent findings of fact, especially when those findings are well-reasoned and supported by the material on record.

14. It is a well-settled principle of law that non-interference with an interim order passed by a Court of competent jurisdiction is the rule, and interference therewith is only an exception. Reliance is placed on the case of ***Messrs Fazal Vegetables Ghee Mills (Pvt.) Limited, Industrial Area, Islamabad v. Ghee Corporation of Pakistan (Pvt.) Ltd. and others (2004 SCMR 1758)***, wherein the Honourable Supreme Court of Pakistan held that:

“In view of well-reasoned judgment of the High Court, the principle laid down by this Court that non-interference with the interim order passed by a Court of competent jurisdiction is a rule and interference is an exception as reported in Ramzan Sugar Mills Ltd. and others v. Mian Miraj-ud-Din and others 1994 SCMR 2281 is fully attracted to the instant case”. Reference may also be made to the case of **Khawaja Adnan Zafar v. Hina Bashir and others (2024 SCMR 1295)**.

15. In similar circumstances, in the case of **Rashid Baig and others v. Muhammad Mansha and others (2024 SCMR 1385)**, with regard to interference with lawful interim orders passed by competent Courts, the Honourable Supreme Court of Pakistan held that:

“When a party challenges any interim order during the pendency of a suit under revisional jurisdiction or constitutional jurisdiction vested in the revisional court or the High Court, we are of the view that the court has to exercise the jurisdiction keeping in view that it is an interim order, as every interim order need not to be challenged at that stage because it is now settled that when a suit is finally decided by the trial court, all the interim orders become open in appeal, if there is a defect in the interim order that is open to scrutiny at the stage of final appeal, as the first appeal is continuation of a trial and first appellate court is a court of fact and law. But, if a party to the suit opts to challenge an interim order when it is passed through appellate jurisdiction, revisional jurisdiction or constitutional jurisdiction, while exercising such jurisdiction the scope of jurisdiction vested in the Court must be in the view of the party challenging the same and we expect that while dealing with the interim order the court must also keep in view the scope of jurisdiction to scrutinize the interim orders”.

16. For the foregoing reasons, this Court finds no merit in the present Constitutional Petition. The impugned orders passed by the learned 1st Additional District Judge Mirpurkhas in Civil Revision Application No. 64 of 2024 and the learned 3rd Senior Civil Judge Mirpurkhas in F.C. Suit No. 164 of 2024 are found to be in accordance with law and based on a sound appreciation of facts

and legal principles. The concurrent findings of fact by the lower courts are not shown to be perverse or without evidence, and thus, do not warrant interference in the constitutional jurisdiction of this Court.

17. In view of the foregoing discussion, Constitutional Petition No.D-16 of 2025 is hereby dismissed. The parties shall bear their own costs. Office is directed to transmit a copy of this judgment to the learned trial Court for information and compliance.

JUDGE

JUDGE

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