

# HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

C.P No.D-1759 of 2025

[Ali Hassan v. Province of Sindh and 06 others]

**Before:**

**Justice Arbab Ali Hakro**

**Justice Riazat Ali Sahar**

Petitioner by : Mr.Rizwan Akhtar Khanzada, Advocate

Private respondents by : Mr.Ghulam Shabbir Mari, Advocate

Official Respondents by : Mr.Rafiq Ahmed Dahri, Assistant A.G Sindh

Dates of Hearing : **19.02.2026**

Date of Decision : **19.02.2026**

## **ORDER**

**ARBAB ALI HAKRO J:-** Petitioner Ali Hassan, son of Peer Bux Lund, a resident of Village Narwal Lund, District Dadu, has invoked the constitutional jurisdiction of this Court under Article 199 of the Constitution, asserting violation of his fundamental rights guaranteed under the Constitution. His grievance relates to the alleged illegal occupation of Government land reserved for a Muslim graveyard.

2. According to the petitioner, Survey No.244 (earlier mentioned as Survey No.344 in some proceedings), admeasuring 07-34 acres situated in Deh Dubi Rayati, Taluka and District Dadu, is Government na-qabooli land which was formally reserved for a graveyard through an order of the Deputy Commissioner, Dadu, dated 08.02.2000. The petitioner asserts that private respondents have unlawfully encroached upon the said graveyard land with the support of local influential persons. The record shows that the private respondents had earlier instituted F.C Suit No.17 of 2000 before the Senior Civil Judge, Dadu, challenging the reservation of land. The plaint was rejected under Order VII Rule 11 CPC vide order dated 03.05.2001,

declaring the land to be Government property reserved for a Muslim graveyard. Their appeal was also dismissed by the learned Additional District Judge on 29.08.2001. The petitioner thereafter filed Misc. Application No.23 of 2018 before the Anti-Encroachment Tribunal, Hyderabad. The Tribunal, through a detailed order dated 16.04.2019, held that the private respondents and others had encroached upon the land reserved for the graveyard. The Tribunal directed the Assistant Commissioner, Dadu, to remove the encroachments and demolish all constructions within three days, and to submit a compliance report. The Mukhtiarkar, Dadu, in his report dated 09.07.2018, confirmed that Survey No.244 is Government na-qabooli land reserved for the graveyard, and that houses of the Panhwar, Lund, and Syed communities exist within the reserved area. The Deputy Commissioner also endorsed that the land stands reserved for the graveyard as per entry No.316 of VF-VII-B dated 12.02.2000. Despite the Tribunal's order, the petitioner alleges that the official respondents failed to remove the encroachments. He further states that the encroachers obstruct burials and have resorted to violence, as reflected from FIR No.45/2025 registered at P.S. A-Section, Dadu, regarding an incident during a burial on 19.02.2025.

3. The Deputy Commissioner, Dadu, in his compliance report dated 06.01.2026, submitted that both parties were called along with the revenue record but were unwilling to resolve the matter amicably. The report narrates the entire history of proceedings before the Anti-Encroachment Tribunal and confirms that Survey No.244 measuring 07-34 acres stands reserved for the graveyard. The Deputy Commissioner further reported that joint measurement/demarcation was carried out on 19.10.2019 by the Survey Settlement Department in the presence of both parties, and it was found that houses of the Syed, Panhwar, and Lund communities exist within the reserved land. The Assistant Commissioner, Dadu, through various letters, reported that the situation on the ground is volatile, that the encroachers have been residing there for decades, and any demolition operation may

lead to serious law-and-order consequences. He requested the provision of Rangers and heavy police contingents before any operation. The Deputy Commissioner also stated that, despite repeated requests, the Home Department has not provided Rangers support. Without such support, the administration is unable to execute the Tribunal's order due to the likelihood of violent resistance.

4. Respondent No.5 (Senior Superintendent of Police, Dadu), submitted that no specific allegation has been levelled against him. He stated that the matter pertains to the Revenue Department and Anti-Encroachment authorities, but assured that police assistance will be provided whenever required by the competent authority.

5. The In-Charge Anti-Encroachment Force submitted that the Force acts strictly under the Sindh Public Property (Removal of Encroachment) Act, 2010 and can only proceed upon directions of the authorised officer (Assistant Commissioner/Mukhtiarkar). The Force expressed its readiness to assist in removing encroachments once proper directions and a schedule are issued.

6. The private respondents filed a statement enclosing village records, revenue extracts, school records and electricity bills to assert that they have been residing on the land for decades and that their houses are old constructions. They rely on various reports by the Mukhtiarkar and the Assistant Commissioner, suggesting that some houses existed prior to the 2000 reservation order.

7. Learned counsel for the petitioner contended that the land in question is undisputedly Government na-qabooli land reserved for a Muslim graveyard. He submitted that the Anti-Encroachment Tribunal has already adjudicated the matter and directed the removal of encroachments, yet the official respondents have failed to implement the order for several years. He

argued that the continued occupation of graveyard land violates religious sentiments and fundamental rights of the petitioner and the community.

8. Learned counsel for the private respondents argued that the houses of the respondents are old structures existing long before the reservation order of 08.02.2000. He relied on the Mukhtiarkar's 2010 report and subsequent correspondence, suggesting that the reservation was made without proper site inspection. He further submitted that the Government of Sindh's Notification dated 21.11.2008 entitles long-standing occupants of built-up units to 99-year leases, and therefore, the demolition of houses is neither lawful nor feasible.

9. Learned A.A.G. adopted the stance of the official respondents and submitted that the land stands reserved for the graveyard as per the revenue record and the Tribunal's order. However, due to the volatile situation and longstanding habitation, the administration requires adequate security support from Rangers to execute the Tribunal's directions. He submitted that the District Administration has repeatedly sought such support but has not yet received it.

10. We have heard learned counsel for the petitioner, learned counsel for the private respondents and the learned A.A.G. We have also examined the material placed on record.

11. The petitioner has invoked the constitutional jurisdiction of this Court under Article 199 seeking, in essence, implementation of the order dated 16.04.2019 passed by the learned Anti-Encroachment Tribunal, Hyderabad, whereby the Tribunal directed removal of encroachments from Survey No.244, Deh Dubi Rayati, Taluka and District Dadu, reserved for the Dubi graveyard. The petitioner asserts that despite the Tribunal's unequivocal findings, the official respondents have failed to restore the land to its reserved purpose.

12. At the very outset, it is necessary to delineate the legal boundaries within which this Court may exercise its writ jurisdiction. The Anti-Encroachment Tribunal is a statutory forum constituted under the Sindh Public Property (Removal of Encroachment) Act, 2010. The Act not only empowers the Tribunal to adjudicate encroachment disputes but also vests it with the authority to execute its own orders through the authorised officer. The statutory scheme is self-contained and provides a complete mechanism for enforcement. It is therefore a settled principle that where a statute creates a right, provides a remedy and designates a forum for enforcement, this Court ordinarily refrains from assuming the role of an executing Court.

13. The petitioner's grievance, though genuine in its emotional and communal dimensions, is fundamentally a matter of execution of a Tribunal's order. The petitioner has not approached the Tribunal for execution nor invoked the Tribunal's coercive powers under the Act. Instead, he has directly approached this Court seeking implementation through constitutional jurisdiction; such a course is impermissible. This Court cannot be converted into a forum for execution of orders passed by statutory tribunals, nor can it be asked to supervise operational aspects of demolition, removal of encroachments or deployment of Force.

14. The record, however, reveals that the official respondents themselves acknowledge the correctness of the Tribunal's order and the reserved status of Survey No.244. The Deputy Commissioner, Mukhtiarkar, and Assistant Commissioner have repeatedly affirmed that the land is reserved for the graveyard as per the revenue entries. The demarcation conducted by the Survey Settlement Department also confirms encroachments. Yet, despite such acknowledgements, the order has remained unexecuted for years, primarily due to apprehended law and order issues and a lack of Rangers support.

15. While this Court cannot execute the Tribunal's order, it cannot remain oblivious to the fact that the continued inaction of the executive has resulted

in a prolonged violation of the petitioner's religious and communal rights. The right to bury the dead with dignity is an integral component of Article 20 of the Constitution. Encroachment upon graveyard land, coupled with obstruction of burials and incidents of violence, constitutes a continuing infringement of fundamental rights. The State is under a constitutional obligation to safeguard graveyards and ensure their accessibility.

16. Nevertheless, the constitutional jurisdiction cannot be stretched to assume functions expressly vested in the Tribunal. The proper and lawful course for the petitioner is to approach the Tribunal for execution of its order. The Tribunal, being the statutory executing forum, is fully empowered to requisition the police, the Rangers, the Anti-Encroachment Force, and all necessary administrative support. If any official respondent fails to comply with the Tribunal's requisitions, the Tribunal may proceed against them in accordance with the law.

17. The jurisprudence of the superior courts is consistent that a writ of mandamus does not lie to execute a decree or order of a tribunal. The High Court may intervene only where an authority refuses to perform a statutory duty. In the present case, the petitioner has not exhausted the statutory remedy of execution before the Tribunal. The petition is therefore premature and not maintainable.

18. For the reasons recorded above, this petition is **dismissed**, however, with liberty to the petitioner to approach the learned Anti-Encroachment Tribunal, Hyderabad, for execution of its order dated 16.04.2019.

**JUDGE**

**JUDGE**

Ali Haider