

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

CP No.D-1637 of 2023

PRESENT:

MR. JUSTICE ARBAB ALI HAKRO

MR. JUSTICE RIAZAT ALI SAHAR

Mr. Fayaz Ahmed Laghari advocate for petitioner.

Mr. Muhammad Yaseen Laghari advocate for respondents
No.9 & 10.

Date of hearing & decision: 29.12.2025.

ORDER

RIAZAT ALI SAHAR, J: - Through this Constitutional Petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, the petitioners have sought following reliefs:-

- a) That this Honourable Court may be pleased to issue writ of certiorari and declare the impugned order dated 26-09-2023 passed by learned Special court of Anti- Encroachment Tribunal Hyderabad is illegal, without lawful authority, null and void ab-nitio, and pass any fit in the interest of justice and remand back the case for deciding it after framing issues, site visit and recording evidence.
- b) To issue the directives to the respondents to redress the grievances of Petitioners regarding the removal of encroachment from the aforementioned common katcha Path/road of village Haji Mir Bahar, situated in Deh, Naheki, Taluka Tando Allahyar.
- c) To restrain the respondent No.9&10 from encroaching more land of the common path till the disposal of this petition.
- d) Any other relief which this Honourable Court may deem fit and proper.

e) The cost of petition may be borne by the respondent No.1.

2. The case of the petitioners as per contentions of the petition is that they are residents of Village Haji Mir Bahar (formerly Haji Faqir Jo), Deh Naheki, Taluka Tando Allahyar. They stated that the village, duly reflected in the revenue record, is served by only 20-feet-width common *katcha* road which has existed since before partition and has been used uninterruptedly by the villagers as a public right of way. It is alleged that respondents No.8 and 9, having purchased land in Survey No.433, attempted to encroach upon a portion of the said *katcha* road in 2021 owing to the increase in land value. The petitioners approached various forums including the Deputy Commissioner, the Judicial Magistrate under section 133 Cr.P.C. (Criminal Miscellaneous Application No.8/2021) the District & Sessions Court in revision and thereafter the Civil Court (F.C. Suit No.69 of 2021, but were declined relief on technical grounds with directions to seek remedy under the Sindh Public Property (Removal of Encroachment) Act, 2010. Consequently, the petitioners filed Application No.69/2021 before the Anti-Encroachment Tribunal, Hyderabad, seeking removal of alleged encroachment. The learned Tribunal dismissed the application without ordering any enquiry, site inspection, or recording of evidence, principally on the ground that the *katcha* road was not reflected in revenue record. The petitioners stated that the *katcha* road constitutes public property and falls within the jurisdiction of the Tribunal and that the impugned order is non-speaking, perverse and contrary to the material on record. They therefore seek issuance of writ to declare the order dated 26.09.2023 as illegal and to remand the matter for framing of issues, site inspection and decision on merits, together with directions for removal of encroachment.

3. In response to the notice of this petition, the respondents No.6 and 15 filed their statements whereby stated the matter does not pertain to them. However, respondent No.5 (SHO P.S. A-Section, Tando Allahyar) filed his comments report wherein he stated that no specific allegation has been levelled against him in the memo of petition. He stated that the petition merely challenges the order dated 26.09.2023 of the Anti-Encroachment Tribunal regarding alleged encroachment over a common *katcha* road. He further submits that he will abide by any order passed by this Court. Apart from these respondents, rest of respondents did not file their replies to the petition.

4. Learned counsel submits that the *katcha* road constitutes a long-standing public right of way, acknowledged even by the respondents and its obstruction gravely prejudices the only access available to the villagers. He submits that the Tribunal failed to exercise its lawful jurisdiction, declined relief on hyper-technical grounds and passed the impugned order without enquiry, investigation, or obtaining a mandatory site report despite fact that the jurisdiction of the Civil Court is barred under section 11 of the Sindh Public Property (Removal of Encroachment) Act, 2010 and the Tribunal has exclusive jurisdiction in terms of section 13 of the Act. Counsel further contends that reliance upon an incomplete revenue report, while ignoring the Mukhtiarkar's admission of the road's existence, amounts to misreading and non-reading of material evidence. He contends that the order is neither speaking one nor in conformity with law and warrants interference by this Court in the interest of justice. In support of his contentions, the learned counsel relied upon the decisions reported in 1987 CLC 2126, 2022 CLC 556, 2006 PLD 88, 2018 PLD 47 and 2016 YLR 194.

5. Learned counsel for respondents No.9 and 10 contends that the petition is misconceived as the alleged *katcha* road is not recorded as public property in the revenue record,

nor is there any documentary proof establishing a legally enforceable right of way. He contends that the respondents are bona fide purchasers of land from Survey No.433 and are exercising their lawful proprietary rights without encroaching upon any notified public path. He contends that multiple forums have already declined the petitioners' claims and no illegality or jurisdictional defect is shown in the Tribunal's order warranting interference by this Court. He also contends that the petitioners rely merely upon assertions rather than admissible evidence and the extraordinary writ jurisdiction cannot be invoked to determine disputed factual issues. He, therefore, prays for dismissal of the petition.

6. We have heard and perused the material available on record very carefully.

7. From the perusal of record, it is manifest that the controversy essentially revolves around the status, existence and precise alignment of the disputed *katcha* pathway said to be serving as the only access to Village Haji Mir Bahar, as well as the allegation that a portion thereof has been encroached upon by respondents No.9 and 10. Whether the said pathway constitutes a public right of way and falls within the definition of public property under the Sindh Public Property (Removal of Encroachment) Act, 2010, or whether it forms part of the proprietary land of the private respondents, are questions which cannot be conclusively determined without a proper appraisal of the relevant revenue record and other documentary and oral evidence. These are, therefore, disputed questions of fact requiring determination upon evidence, rather than a mere examination of pleadings.

8. The petitioners claimed being uninterrupted user of the pathway since before partition and relied upon the “**Deh Map**” and other entries, while the private respondents negate any

such legally enforceable right of way. In such circumstances, the adjudicating forum is obliged to call for the authentic revenue record of rights, record the evidence of the parties as well as the responsible revenue officials and thereafter render a well-reasoned finding on the basis of the material so produced. The summary dismissal of the proceedings without undertaking such an exercise has resulted in a failure to properly resolve the controversy and has deprived the parties of an opportunity to establish their respective claims in accordance with law.

9. The petitioners earlier had filed a Suit in the year 2021 before the learned 1st Senior Civil Judge, Tando Allahyar; however, the plaint of the suit was rejected vide order dated 15.01.2021 (available at pages-117-121 of the Court file) on the ground of jurisdiction.

10. We would like to reproduce sections 11, 13 and 14 of the Sindh Public Property (Removal of Encroachment) Act, 2010:-

11. **Bar of jurisdiction and abatement of suits.** (1) No Civil Court shall have jurisdiction to entertain any proceedings, grant any injunction or make any order in relation to 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 purpose of this Act, or anything done or intended to be done under this Act.

(2) All suits, appeals and applications relating to, encroachment and dispute that any property is not a public property or, that any lease or licence in respect of such property has been determined, for the purpose of this Act, shall abate on coming into force of this Act:

Provided that a party to such suit, appeal or application may; within seven days of the coming into force of this Act, file a suit before a Tribunal in case of 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.

13. **Exclusive jurisdiction.** A Tribunal shall have exclusive jurisdiction 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 purpose of this Act.

14. Procedure and Powers of the Tribunal. (1) Tribunal shall decide any suit or application in such manner and in accordance with such procedure as may be prescribed.

(2) Any order made by the Tribunal which conclusively determines the rights of the parties with regard to all or any of the matters in controversy shall be final and binding on the parties.

(3) The Tribunal shall have power of a Civil Court under the Code of Civil Procedure, 1908 (Act V of 1908) as to

- (a) summoning and enforcing the attendance of any person and examining him on the oath;
- (b) receiving evidence on affidavit;
- (c) compelling the production of documents;
- (d) issuing commission for examination of witnesses or documents.

(4) The proceedings before the Tribunal shall be judicial proceedings within the meaning of sections 193 and 228 of the Pakistan Penal Code (Act No. XLV of 1860).

11. It is a settled principle that where title, easementary rights, or the status of land as public or private property is seriously disputed, the forum vested with jurisdiction must frame proper issues, permit production of relevant record, allow cross-examination of witnesses and only thereafter adjudicate upon the matter through a speaking order. This course alone ensures transparency, fairness and adherence to the principles of natural justice.

12. For what has been discussed above and in the interest of justice, equity and fair play, impugned order dated 26.09.2023 passed by Judge/Presiding Officer, Anti-Encroachment Tribunal, Hyderabad is set-aside and the matter is remanded to the learned Anti-Encroachment Tribunal, Hyderabad, with direction to frame appropriate issues, summon the concerned revenue record including the deh map and entries of record of rights, record the evidence of both parties as well as the relevant revenue officials, afford them adequate opportunity to produce all supporting material and thereafter decide the

matter strictly in accordance with law through a well-reasoned speaking order. This will enable a proper determination of the true factual controversy and secure the lawful rights of the parties.

13. Petition stands **disposed of** in the above terms.

JUDGE

JUDGE