

HIGH COURT OF SINDH, CIRCUIT COURT, MIRPURKHAS

Before:

Justice Arbab Ali Hakro-J

Justice Muhammad Jaffer Raza-J

C.P No.D-1219 of 2024

[Anees-ur-Rehman v. Muhammad Hussain and 08 others]

Petitioner by : Mr.Muhammad Yousif Laghari, Advocate

Respondent No.1 by : Mr.Mumtaz Ali Jarwar, Advocate

Official Respondents by : Mr.Muhammad Sharif Solangi, Assistant A.G

Date of hearing : 22.04.2026

Date of Decision : 22.04.2026

ORDER

ARBAB ALI HAKRO J:- The petitioner has assailed the order dated 16.08.2022, passed by the learned Presiding Officer, Anti-Encroachment Tribunal, Mirpurkhas, whereby Execution Application No.27 of 2022 was disposed of on the premise that the earlier directive dated 03.08.2021 stood complied with.

2. The petitioner's case is that a ten-foot-wide public path situated on the boundary between Deh 128 and Deh 129 was encroached upon by private respondent No.1. The Survey Superintendent's report confirmed the existence of the path and the encroachment thereon. On 03.08.2021, the Tribunal directed the Assistant Commissioner, Taluka Sindhri, to remove the encroachment within thirty days with the assistance of the Survey Superintendent and SHO concerned.

3. The petitioner thereafter filed Execution Application No.27 of 2022, asserting that the order remained unexecuted. The Assistant Commissioner submitted a compliance report dated 26.07.2022, claiming that the encroachment had been removed. The petitioner filed detailed objections, asserting that the Assistant Commissioner acted without the Survey Superintendent, shifted the path into Deh 129 and marked land contrary to the

sanctioned map. Without addressing these objections or reconciling the contradictions in the compliance report, the Tribunal held that the order stood executed and that the execution application was disposed of.

4. Learned counsel for the petitioner submits that the Tribunal failed to exercise jurisdiction vested in it under Sections 13, 14 and 16 of the Sindh Public Property (Removal of Encroachment) Act, 2010. It is argued that the execution was not carried out in accordance with the Survey Superintendent's demarcation and that the Tribunal ignored material evidence.

5. Learned counsel for respondent No.1 supports the impugned order and submits that the Assistant Commissioner acted in good faith and that the petitioner is seeking repeated demarcations.

6. Learned A.A.G. submits that although the Assistant Commissioner claims compliance, the presence of the Survey Superintendent is ordinarily required for demarcation, and any deviation must be justified through proper record.

7. We have examined the record, including the original order dated 03.08.2021, the Survey Superintendent's report, the compliance report dated 26.07.2022, the petitioner's objections and the impugned order.

8. The Tribunal's order dated 03.08.2021, required removal of encroachment strictly in accordance with the Survey Superintendent's demarcation. The compliance report dated 26.07-2022, however, reveals that the Assistant Commissioner proceeded without the Survey Superintendent or any competent survey staff capable of identifying boundary marks. It is confirmed by the Assistant Commissioner's own correspondence.

9. The Tribunal did not address the petitioner's objections, nor did it examine whether the execution was carried out in conformity with the sanctioned map. The impugned order is therefore the result of non-reading of material evidence and failure to exercise jurisdiction.

10. However, the question whether the encroachment has been removed in accordance with the sanctioned demarcation is a factual matter requiring examination of the Survey Department's record and supervision by the Tribunal.

This Court, in its constitutional jurisdiction, does not undertake factual determinations of this nature. In these circumstances, the appropriate course is to set aside the impugned order and remand the matter to the Tribunal for fresh consideration, with directions ensuring that the execution is carried out strictly in accordance with law.

11. Accordingly, for the reasons recorded hereinabove, the impugned order dated 16.08.2022 is set aside. Matter is remanded to the learned Anti-Encroachment Tribunal, Mirpurkhas, which shall reconsider the matter afresh strictly in accordance with law, direct the Survey Superintendent Mirpurkhas to conduct a fresh demarcation of the public path in the presence of both parties and the relevant revenue and police officials and thereafter supervise and ensure execution of its original order dated 03.08.2021, with adequate police protection during demarcation and removal of encroachment and the entire exercise shall be concluded within thirty days of receipt of this order.

The petition stands disposed of in the above terms.

JUDGE

JUDGE

Adnan Ashraf Nizamani