THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA

C. P. No. D – 283 of 2021

[Mukhtiar Ahmed Jhatial v. Presiding Officer Anti-Encroachment Tribunal, Larkana)

Before:
Justice Arbab Ali Hakro
Justice Muhammad Osman Ali Hadi

Petitioner	:	Mukhtiar Ahmed son of Ahmed Bux Jhatial Through Mr. Bahadur Ali Shahani, Advocate
Respondents	:	Through Mr. Abdul Waris Bhutto, Assistant Advocate General, Sindh.
Date of Hearing	:	**28.10.2026**
Date of Decision	:	**28.10.2026**

O R D E R

ARBAB ALI HAKRO, J. – Through this petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, the petitioner calls in question the order dated 10.04.2021 (**the impugned order**) passed by the learned Presiding Officer, Anti-Encroachment Tribunal, Larkana (**the Tribunal**), in Suit No. 19 of 2020, whereby his suit against respondent No.2 was dismissed.

2. The petitioner sought a declaration that a Government plot of 10/12 ghuntas near Village Bahoo Jhatial, intended for a girls' school, was encroached upon by respondent No. 2 and for its recovery. Respondent No. 2 pleaded that he inherited Survey No. 628 (0-38 ghuntas, Deh Butta Kalhora) and denied any encroachment. The record of rights shows that Survey No. 628 stands in the names of six khatedars, of whom the first is the grandfather of respondent No. 2.

3. During the proceedings, after demarcation with the Mukhtiarkar's staff in the presence of the parties, the Survey

Superintendent reported that 0-30 ghuntas pertained to Survey No. 628 and that 0-04½ ghuntas "is part of village Jhatiyals".[1] The Tribunal accepted both findings in the impugned order but concluded that no encroachment was found. No issues were framed, and no evidence was recorded.

4. After the impugned order, the Mukhtiarkar filed a statement in this petition that 0-04½ ghuntas is entered in the name of no khatedar, appears in the Deh map, and is in the possession of respondent No. 2, who has cultivated paddy on it.[2] That statement was not before the Tribunal and has not been put to respondent No. 2.

5. Learned counsel for the petitioner submitted that the impugned order is illegal and perverse. He contended that the Tribunal dismissed the suit without framing issues or recording a single statement, despite the Survey Superintendent, after demarcation in the presence of the parties, reporting that 0-04½ ghuntas forms part of the village; that, having accepted this, the Tribunal could not have held that no encroachment was found; that respondent No. 2 is only one of six khatedars of Survey No. 628 and was wrongly treated as its sole owner; and that the discrepancy between 0-30 and 0-38 ghuntas was never looked into. He added that the land in dispute lies in the midst of a village of about five hundred houses, served by a single co-educational boys' school, and that its recovery is in the public interest. He prayed that the impugned order be set aside.

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[1] Report of the Survey Superintendent, Larkana, No. ZB/84 of 2021 dated 26.03.2021, with sketch.
[2] Statement of the Mukhtiarkar Bakrani on behalf of the Assistant Commissioner, with affidavit dated 13.10.2023, filed under order dated 17.10.2023.

6. Learned Assistant Advocate General, appearing for the official respondents, submitted that the revenue record, the Deh map and the report of the Survey Superintendent speak for themselves, and relied on the statement filed by the Mukhtiarkar, according to which the 0-04½ ghuntas is entered in the name of no khatedar and is in the possession of respondent No. 2. He submitted that the official respondents have no interest in the matter except to ensure that public property is protected and that any action is taken in accordance with law after due notice, and that they would abide by such directions as this Court may deem fit to issue.

7. Under the Sindh Public Property (Removal of Encroachment) Act, 2010 (**the Act**), the Tribunal has exclusive jurisdiction over disputes as to whether property is public property (sections 13 and 14), and civil courts are barred (section 11). Rule 5 of the Sindh Public Property (Removal of Encroachment) Rules, 2010, relied upon by respondent No. 2 before the Tribunal, governs only the verification of pleadings and is no ground to refuse a suit. The Supreme Court has upheld the exclusive jurisdiction of the Tribunal under the corresponding statute of Khyber Pakhtunkhwa and has relied on a revenue officer's demarcation[3] and has held that, to decide whether land is public property, the Tribunal must determine its status and to whom it is vested[4]. The plea that only a civil court can look into title is therefore misconceived. Nothing in the Act bars a private person from approaching the Tribunal where the officials do not act[5].

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[3] *Chief Engineer, Irrigation Department v. Mazhar Hussain* PLD 2004 SC 682.
[4] *Mian Yamin ul Haque v. Municipal Committee Abbottabad* PLD 2003 SC 307.
[5] *Mst. Shahnaz v. Iqbal Hussain* 2022 CLC 556 (Karachi).

8. The petitioner was the plaintiff before the Tribunal and is aggrieved by the dismissal of his own suit; he is entitled to challenge that order in this Court[6]. He claims no title to the land, and nothing in this order confers any right on him in relation to it.

9. A writ is not a substitute for an appeal. Against a final order of a special tribunal (section 14(2) of the Act), interference is warranted only for want of jurisdiction, misreading or non-reading of evidence, or patent legal error[7]. The question is whether any of these is shown on the record before the Tribunal on 10.04.2021.

10. The Tribunal found that 0-04½ ghuntas belongs to the village, yet held that there was no encroachment without deciding whether that area is public property, who is in possession of it, and whether it lies outside Survey No. 628. It treated Survey No. 628 as the exclusive property of respondent No. 2, though the record shows six khatedars, and left the difference between 0-30 and 0-38 ghuntas unexplained. The issues were not framed, and no evidence was recorded. This is a failure to read material on the record, not a different view of it.

11. Equally, this Court cannot itself declare an encroachment or order recovery. The State's duty to protect communal land is unquestionable, but it does not displace evidence and due process; revenue entries carry a rebuttable presumption of correctness, the right to a hearing is an independent requirement, and title and encroachment are to be decided by the competent forum after a

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[6] *Mst. Shahnaz v. Iqbal Hussain* (n.5 above).
[7] *M. Hamad Hassan v. Mst. Isma Bukhari* 2023 SCMR 1434.

hearing[8]. Relief under Article 199 should direct the authority to act in accordance with law and should not prescribe executive measures[9]. The Education Department chooses the school site, and the petitioner has no right to the allotment of the plot.

12. Remand is called for because the essential material was not considered, no inquiry was held, and respondent No. 2 has yet to be heard on the report of the Mukhtiarkar.

13. For the foregoing reasons, the petition is **allowed** on the following terms:

i. The impugned order is set aside, and Suit No. 19 of 2020 is restored to the file of the Tribunal for decision afresh, preferably within three months.

ii. The Tribunal shall frame issues, call the revenue record and the Deh map, and direct the Mukhtiarkar, with the Survey Superintendent, to demarcate Survey No. 628 and the adjoining 0-04½ ghuntas in the presence of the parties and to report.

iii. Respondent No. 2 shall be given notice of the Mukhtiarkar's statement filed in this petition and of the demarcation reports, and shall be afforded a fair opportunity to rebut them; both sides shall lead evidence.

iv. The Tribunal shall decide, by a speaking order, whether any area is public property in unauthorised occupation and, if so,

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[8] *Muhammad Ashraf Rana v. Rehmat Ali* F.C.P.L.A. No. 423 of 2025 (Federal Constitutional Court, 17.07.2026).
[9] *Munir Samo v. Peer Bux* F.C.P.L.A. No. 2010 of 2026 (Federal Constitutional Court, 02.10.2026).

proceed, or direct the authorised officers to proceed, under sections 3 to 5 and 16 of the Act after notice and hearing.

14. Nothing in this order is an expression of opinion on the merits, on the title of the co-sharers of Survey No. 628, or on the alleged personal enmity between the parties. The Tribunal shall decide independently of these observations. The petition stands disposed of accordingly.

J U D G E

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Manzoor