

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Crl. Misc. Application No. S-133 of 2024

Applicant: Sain Rakhio son of Muhammad Uris bycaste Khoso, Resident of Haji Siddiqu Solangi, P.O Dhull, Taluka and District Naushahro Feroze, **through** Mr. Abdul Hafeez Bandhani Advocate.

The State **Through** Mr. Muhammad Raza Katohar, Deputy Prosecutor General, Sindh.

Date of hearing: 19-08-2026.

Dated of order 19-08-2026.

ORDER.

Suresh Kumar, J.--- Through the instant Crl. Misc. Application, the applicant, Sain Rakhio Khoso, has assailed the order dated 28-02-2024, passed by the learned Sessions Judge Naushahro Feroze in Cr. Revision Application No. 07/2024, Re. Muhammad Iqbal v. Sain Rakhio and others, whereby the revision was allowed and the order dated 11-01-2024, passed by the learned IInd Civil Judge & Judicial Magistrate Naushahro Feroze in the application under Section 133 of the Cr.P.C. filed by the applicant was set aside. Therefore, the applicant has preferred the instant Crl. Misc. Application.

2. The facts as depicted in the application are that the applicant has a plot for a shop on the main road in Moro, Naushahro Feroze, and there is a common street with a width of 17 feet in front of the applicant's shop. There are houses of other neighbors, including Iftikhar, Zahid Siyal, Din Muhammad, and others, which access the main road in Moro City, Naushahro Feroze. The private respondent No. 1 has constructed his sanitary shop over the common street and has encroached upon an area of 3 feet of the common street and an area of 10 feet of the main road for his shop. As a result of this encroachment, the width of the street has been

reduced to 14 feet instead of the original 17 feet. Additionally, he has installed a large gate, and throughout the day, his loader vehicles occupy the street for taking and loading sanitary articles in the remaining area of 14 feet. Thereafter, the applicant filed an application under Section 133 before the II Civil Judge and Judicial Magistrate Naushero Feroze, which was allowed; however, respondent No. 1 assailed the said order by filing a criminal revision, which was allowed. Hence, the applicant filed a Criminal Miscellaneous Application.

3. After the filing of the instant application, notices were issued to the respondents as well as to the Additional P.G.

4. I have heard the learned counsel appearing on behalf of the applicant, as well as the learned DPG for the State, while the counsel for respondents No. 1 and 4 chose to remain absent.

5. Counsel appearing on behalf of the applicant contended that the impugned order dated 28-02-2024, passed by the learned Sessions Judge Naushahro Feroze, is against the law and equity; therefore, it is liable to be set aside. He argued that the learned Sessions Judge has not appreciated the material placed before him and that under the Sindh Public Property (Removal of Encroachment) Act 2010, a private person does not have a direct statutory right to file a complaint for the removal of encroachments, as the power to remove encroachments lies with the government-authorized officer, as described in Section 10 of the above Act. He lastly contended that the learned Sessions Judge has erred in passing the impugned order; therefore, it may be set aside.

6. The learned DPG for the State has conceded that only the government or an authorized officer, such as a Mukhtiarkar or Assistant

Commissioner, can invoke the remedy for the removal of encroachments, while a private person has the remedy under Section 13 of the Cr.P.C. Hence, he has not supported the impugned order passed by the learned Sessions Judge Naushahro Feroze.

7. Having given due consideration to the arguments advanced by the learned counsel appearing on behalf of the respective parties, I have perused the material available on record. It is revealed from the perusal of the impugned order that the learned Sessions Judge has been pleased to pass the following order while allowing the revision and dismissing the application under Section 133 of the Cr.P.C.:

“The perusal of the provision of the Sindh Act. No.XVIII of 2010 has a complete Model of the enforcement of its procedures to attend the goal for which the law has been enacted and thereby special Tribunal has been established, which is existing.

The prayer clause if the application under section 133 Cr.P.C reveals removal of encroachment and order of the trial court also speaks of the removal of the encroachment but the Special Law Prevails and these are the sole powers of the Special Tribunal established under the said Act 2010.

In view of such circumstances, impugned order dated 11.1.2024 is set aside and application of the under section 133 Cr.P.C is dismissed.”

From the perusal of the above impugned order, it appears that the learned Sessions Judge has observed that the removal of encroachments is the sole power of the special tribunal established under the Sindh Public Property (Removal of Encroachment) Act, 2010. However, only a government-authorized officer can file such a complaint before the Special Tribunal established under the Sindh Public Property (Removal of Encroachment) Act, 2010. In this regard, Section 3 of the said Act is relevant; therefore, the same is reproduced as follows:

“Government of any authority or officer authorized by Government on this behalf may require the person directly or indirectly responsible for encroachment to remove such encroachment together with the structure, if any, raised by him in

the public property, within the period not less than two days as may be specified in the order. ”

8. From the bare perusal of the above section, it is crystal clear that only the government or any authorized officer, such as a Mukhtiarkar or Assistant Commissioner, can issue directions for the removal of encroachments. Additionally, Section 26(5) of Sindh Public Property (Removal of Encroachment) Act 2010 is also relevant to resolve the issue in question, therefore, the same is reproduced as under:

“That no court other than the Special Court (Anti-Encroachment Tribunal) can take cognizance of an offense punishable under the Act, and it can only do so upon a written complaint made by a person authorized by the Director General or Director”

9. The above section has also clarified that a government-authorized person on behalf of the Director or General Director can file a complaint before the Special Tribunal established under the Sindh Public Property (Removal of Encroachment) Act, 2010. This means that the applicant cannot approach the Tribunal for the removal of encroachments upon the street. Now, the question arises what remedy is available with a private person for the removal of encroachments upon the street or thoroughfare which causes public nuisance.

10. The Sindh High Court has recently clarified that the existence of specialized encroachment laws does not automatically paralyze the Magistrate’s powers under the Criminal Procedure Code to ensure public convenience. In this regard, reliance is placed on the case of Gulshad Ali and others v. SSP Tando Allahyar (Cr. Misc. Application No. 544/2024), in which the order passed by the Magistrate for the removal of

encroachments on a village path under Section 133 of the Cr.P.C. was upheld despite the existence of the 2010 Act.

11. A similar view has been taken by the High Court of Sindh in the case of *Syed Affar Ali and another v. Chief Minister, Secretary & I.G. Sindh* (2019 PLJ 170) Sindh. Even otherwise, both laws address encroachment, but they serve different functions, as Section 133 of the Cr.P.C. applies to any way “which is or may be lawfully used by the public.” This includes streets that may not be officially declared as public in revenue records but are used as thoroughfares by the community. Under Section 133 of the Cr.P.C., a private person can provide “other information” to the Magistrate to trigger action. In contrast, under the 2010 Act, a private person has no right to file a criminal complaint in the Special Court (Section 26(5)). If the street is a clear public thoroughfare and the obstruction is causing immediate hardship, filing a complaint under Section 133 of the Cr.P.C. is the most efficient remedy for a private person. If the government fails to act under the 2010 Act, this summary criminal procedure remains a viable alternative.

12. In such circumstances, the jurisdiction under Section 133 of the Cr.P.C. and the Sindh Public Property (Removal of Encroachment) Act, 2010, operate in distinct spheres. Section 133 of the Cr.P.C. is a summary, preventive remedy aimed at removing public nuisances (such as obstructions to a street) to protect the public’s right of way. The Sindh Public Property Act, 2010, is an administrative and punitive framework for the State to retrieve its land. A private person has the locus standi to move the Magistrate under Section 133 of the Cr.P.C., whereas only authorized government officers can initiate proceedings under the 2010 Act. However, if a genuine dispute arises as to whether the land is “public

property,” the exclusive jurisdiction to decide that status lies with the Special Tribunal under Section 3 of the 2010 Act.

13. For the reasons stated above and the guidelines taken from the above case laws, I am of the considered view that the order dated 28-02-2024, passed by the learned Sessions Judge Naushahro Feroze, is not sustainable under the law; therefore, the instant Crl. Misc. Application is allowed. Consequently, the impugned order dated 28-02-2024 is set aside, and the order passed by the IInd Civil Judge and Judicial Magistrate Naushahro Feroze is restored with a direction to further proceed according to the law.

J U D G E