

IN THE HIGH COURT OF SINDH, CIRCUIT COURT,
LARKANA

Constitution Petition No.D-1055 of 2025.

Before:
Mr. Justice Amjad Ali Bohio;
Mr. Justice Ali Haider 'Ada'.

Petitioner:

Asif Hussain son of Muhammad Nawaz Chandio, *through* Mr. Rafique Ahmed K. Abro, Advocate.

Respondents:

Province of Sindh and others, *through* Mr. Liaquat Ali Shar, Additional Advocate General Sindh along with Tarique Manzoor Chandio, Deputy Commissioner Larkana, Raja Darya Khan Qureshi, Assistant Commissioner City Larkana, Dr. Javed Anwar Abbasi, Municipal Commissioner Larkana, Azher Ali Mughal SSP Larkana and Inspector Hubdar Ali Shaikh, on behalf of Chairman Anticorruption Establishment.

Date of Hearing : 30.09.2026.

Date of Order : 30.09.2026.

ORDER

Ali Haider 'Ada', J.- Through this petition, the petitioner seeks, *inter alia*, a declaration that the respondents have failed to perform their statutory and official duties in accordance with law, allegedly in violation of Articles 9, 14 and 25 of the Constitution of the Islamic Republic of Pakistan, as well as Sections 3(1) and 8(1) of the Sindh Public Property (Removal of Encroachment) Act, 2010. The petitioner has further sought directions to the concerned authorities for removal of alleged illegal encroachments from the public properties/areas specifically identified in the prayer clause and for submission of periodic reports before this Court regarding the progress made

in that regard. He has also prayed that a responsible officer be deputed for the purpose of ensuring appropriate disciplinary and accountability proceedings against those found responsible.

2. The petitioner has instituted the present petition with the grievance that various public properties and areas have allegedly been encroached upon by private persons and that, despite the existence of a statutory mechanism for removal of such encroachments, the concerned public functionaries have failed to discharge their respective duties in accordance with law. On such basis, the petitioner has invoked the constitutional jurisdiction of this Court and sought appropriate directions against the respondents.

3. In response, the concerned respondents/public functionaries have filed their respective comments, placing on record their position with regard to the allegations raised in the petition. The learned Additional Advocate General, Sindh, has also filed a statement along with relevant documents on behalf of the respondents. The Deputy Commissioner, Larkana, and the Senior Superintendent of Police, Larkana, have likewise submitted their respective reports/comments, which are taken on record.

4. Heard and perused.

5. At the outset, the primary question requiring consideration is whether, where an efficacious and adequate remedy is expressly available under the law, the extraordinary constitutional jurisdiction of this Court can ordinarily be invoked. It is well settled by the Superior Courts that the availability of an adequate and efficacious alternate remedy ordinarily operates

as a bar to the exercise of constitutional jurisdiction, unless exceptional circumstances warrant interference. Reliance in this regard may be placed upon ***Indus Trading and Contracting Company v. Collector of Customs (Preventive), Karachi and others***, 2016 SCMR 842; ***President, All Pakistan Women Association, Peshawar Cantt. v. Muhammad Akbar Awan and others***, 2020 SCMR 260; ***Commissioner Inland Revenue and others v. Jahangir Khan Tareen and others***, 2022 SCMR 92; and ***Executive Director (P&GS), State Life, Principal Office Karachi and others v. Muhammad Nisar, Area Manager, State Life Corporation of Pakistan, Peshawar Zone***, 2025 SCMR 249.

6. Now, insofar as the question of public property is concerned, it is necessary to examine the provisions of the **Sindh Public Property (Removal of Encroachment) Act, 2010** (hereinafter referred to as the “**Act, 2010**”). **Section 2(o)** of the Act, 2010 defines the expression “public property”. For ready reference, the relevant provision is reproduced herein below:

“Public Property” means a building, land, place or remises vesting, in or under the management or control of Government, local council, autonomous body or registered cooperative society or such other authority;”

7. Furthermore, a perusal of the **Sindh Local Government Act, 2013** reveals that the statute separately defines various categories of public places and facilities. These include “public graveyard” under Section 3(lvii), “public place” under Section 3(lviii), “public ways” under Section 3(lx), “public road” under Section 3(lxi), and “Public Street” under Section 3(lxii). For ready reference, the relevant definitions are reproduced herein below:

(lvii) “Public graveyard” means a place used for the burial of dead which is not a private property and is open to public;

(lviii) “Public place” means any building, premises or place to which the public have access;

(lx) “Public ways” means a way maintained by Government or by a Council or other local authority;

(lxi) “Public road” means a road maintained by Government or by a council or a local authority;

(lxii) “Public street” means a street maintained by Government or by a council or a local authority;

8. The foregoing statutory provisions make it clear that, for the purposes of the relevant laws, public property comprises property falling within the ownership, control, management or administration of the Government or the concerned public authority, as defined under the applicable statutory framework.

9. The expression “encroachment” is also specifically defined in the Act, 2010. **Section 2(j)** thereof defines “encroachment”. For ready reference, the relevant provision is reproduced herein below:

“encroachment” means unauthorized occupation of or undue interference with public property;

10. Furthermore, the expression “encroachment” is also defined under the Sindh Local Government Act, 2013. Section 3(xxx) of the said Act provides the relevant definition. For ready reference, the same is reproduced herein below:

“encroachment” mean unauthorized occupation of or undue interference with a street, building, land, place or premises vesting in or under the management or control of a Council;

11. From the foregoing statutory provisions, it is clear that any unauthorized occupation or use of public property falls within the scope of “encroachment” as defined under the relevant laws.

12. The question that now arises is as to the manner in which such encroachment is to be dealt with and removed. In this regard, the Act, 2010 prescribes a specific statutory mechanism for the identification and removal of encroachments and the structures raised thereon. **Section 3** of the Act, 2010 provides the relevant procedure, which, for ready reference, is reproduced herein below:

“Removal of encroachment and structures.-(1)
Government or any authority or officer authorized by Government in 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 on the public property, within the period not less than two days as may be specified in the order”.

13. Coming to the remedy available under the Act, 2010 **any person** aggrieved or dissatisfied with an order passed under Section 3 may, within three days of such order, file a review before the Government or the authority which passed the order, as provided under **Section 4** of the Act, 2010. Thus, the Act itself provides a specific statutory remedy against an order passed under Section 3. For ready reference, Section 4 of the Act, 2010 is reproduced herein below:

“Review.-(1) *Any person dissatisfied by the order passed under sub-section (1) or section 3 may, within three days from the service thereof, prefer a review*

petition to Government of any authority or officer who has passed such order”.

14. At this stage, it is further relevant to note that the Act, 2010 also provides a specific mechanism for the execution of an order for removal of encroachment and eviction of the encroacher. **Section 5** of the Act, 2010 expressly provides for taking prompt action for the enforcement and execution of such order. For ready reference, Section 5 of the Act, 2010 is reproduced herein below:

“Eviction.-(1) *if any person refuses or fails to vacate the public property or remove the structure raised thereon after three days from the order under section 3 duly served on him, or if review petition is filed against such order, after such review petition is dismissed, he shall be evicted by such force as may be necessary, by an officer authorized by Government in this behalf and the structure, if any, raised by such person on the public property shall vest in Government, Council, autonomous body, or registered Cooperative Society as the case may be”.*

15. Now, the question arises that when Sections 3 to 5 of the Act, 2010 provide a specific mechanism for removal of encroachment, whether an aggrieved person can invoke the said statutory jurisdiction. There is nothing in the Act, 2010 which restrains a person from approaching the competent authority for initiation of proceedings under the aforesaid provisions. Rather, Section 4 expressly provides that “any person” dissatisfied with an order passed under Section 3 may prefer a review before the Government or the authority which passed such order. The petitioner, therefore, falls within the expression “any person” and cannot be said to be without a statutory remedy merely because the proceedings under

Sections 3 to 5 are required to be initiated or undertaken by the competent public authorities.

16. Coming to the question of the forum available under the Act, 2010. **Section 11** expressly bars the jurisdiction of the civil Court in respect of matters falling within the scope of the Act. In particular, the civil Court is precluded from entertaining any proceedings, granting any injunction, or making any order in relation to a dispute as to whether a property is public property or whether any lien or licence in respect of public property has been determined. **Section 11(2)** further provides that all suits or applications relating to encroachment or disputes concerning whether the property is public property, or whether any lien or licence in respect thereof has been determined, shall abate forthwith.

17. The question, therefore, is whether, in a situation where public property has allegedly been encroached upon and the concerned public functionaries have failed to discharge their statutory duties, a private person is left without any remedy. In this regard, the Anti-Encroachment Tribunal is vested with jurisdiction to adjudicate disputes falling within the scope of the Act, 2010 and the Act, 2010 does not expressly prohibit or restrict a private person from approaching the Tribunal where the competent authorities have failed to initiate proceedings in accordance with law.

18. The statutory bar against civil proceedings contained in Sections 11 and 13 of the Act, 2010 cannot, therefore, be construed to mean that a private person is left remediless or placed entirely at the mercy of the concerned officials, particularly where the grievance relates to alleged

encroachment upon public property and the statutory authorities have failed to exercise the powers vested in them by law. The concerned public functionaries are, in the first instance, required to exercise their statutory powers under Sections 3 and 4 of the Act, 2010. However, where such powers are not exercised in accordance with law, the aggrieved person is not thereby deprived of the right to approach the competent Tribunal under the Act, 2010, and it is for the Tribunal, within the scope of its jurisdiction, to determine the dispute in accordance with law. In this regard, reliance may be placed upon the judgment of the Division Bench of this Court in ***Mst. Shahnaz v. Iqbal Hussain, 2022 CLC 556.***

19. It is primarily the domain of the executive authorities, rather than that of this Court, to undertake factual determination and implement the statutory mechanism prescribed by law. The petitioner has alleged that a substantial area of the city has been encroached upon; however, such allegations, particularly when they affect the rights and interests of persons allegedly occupying or claiming an interest in the subject properties, cannot be adjudicated in the abstract or behind their back. The persons who may be affected by any order for removal of encroachment are required to be dealt with in accordance with the principles of due process and fair hearing. In this regard, Section 3 of the Act, 2010 itself provides a specific mechanism whereby a person against whom proceedings for removal of encroachment are proposed is required to be issued notice and afforded an opportunity of hearing within the prescribed period. Thus, the statute has provided a complete mechanism for identification of encroachment, determination of the rights of the affected

persons and, thereafter, removal of the encroachment in accordance with law.

20. The present petition, however, seeks directions in respect of a substantial area of the city on the general allegation that the same has been encroached upon. Such an exercise cannot appropriately be undertaken in constitutional jurisdiction without first determining, in accordance with the statutory provision, the status of the respective properties and the rights, if any, of the persons likely to be affected. If any person claims an interest in the property or disputes the allegation of encroachment, such person must have an opportunity to approach the competent statutory authority and establish his claim in accordance with law.

21. At the same time, the respondents, being public functionaries, are under a legal obligation to discharge their statutory duties fairly, justly, reasonably and strictly in accordance with law. They are required to act without arbitrariness, favouritism or prejudice and to enforce the applicable law in its true letter and spirit. In this regard, **Section 24-A of the General Clauses Act** embodies the principle that an authority exercising statutory or administrative powers is required to act reasonably, fairly, justly and in accordance with law. For ready reference, the relevant provision is reproduced herein below:

[24A. Exercise of power under enactments.—(1) Where, by or under any enactment, a power to make any order or give any direction is conferred on any authority, office or person such power shall be exercised reasonably, fairly, justly and for the advancement of the purposes of the enactment.

(2) The authority, office or person making any order or issuing any direction under the powers conferred by or under any enactment shall, so far as necessary or appropriate, give reasons for making the order or, as the case may be for issuing the direction and shall provide a copy of the order or as the case may be, the direction to the person affected prejudicially.

22. The said provision obligates the executive authorities to exercise statutory powers in a fair, reasonable, and transparent manner and to provide reasons for their decisions. Reliance may be placed upon the cases of ***Muhammad Amin Muhammad Bashir Limited v. Government of Pakistan through Secretary, Ministry of Finance and others (2015 SCMR 630), Muhammad Ashraf Tiwana and others v. Pakistan and others (2013 SCMR 1159) and Habibullah Bhutto v. Collector Customs and another (2011 SCMR 1504).***

23. In view of the foregoing discussion, the instant petition is disposed of with a direction to the respondents to strictly act in accordance with the provisions of the Act, 2010 and to discharge their respective statutory functions in accordance with law. In case any violation of the applicable law or any encroachment upon public property is found, the concerned authorities shall proceed against the persons responsible in accordance with the procedure prescribed under the Act, 2010. It is, however, clarified that the present order shall not be construed as conferring upon the petitioner any right to initiate contempt proceedings merely on the allegation of non-compliance with the above direction. Any grievance arising from failure of the concerned authorities to exercise their statutory powers or from any dispute relating to encroachment shall be addressed before the competent forum provided under the Act,

2010. The petitioner, may avail the remedy of approaching the Anti-Encroachment Tribunal in accordance with law.

24. Consequently, the instant petition stands disposed of in the above terms.

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