

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

1<sup>st</sup> Appeal No.12 of 2020.

Abdul Ghaffar ----- Appellant.

Vs.

Muhammad Aalam & others ----- Respondents

Date of hearing & decision: 07.09.2020

Mr. Omparkash H. Karmani, advocate for appellant.

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ORDER

ADNAN-UL-KARIM MEMON, J. - Through this 1<sup>st</sup> Appeal, Appellant is asking for setting aside the Judgment dated 24-08-2020 passed by learned Presiding Officer, Anti Encroachment Tribunal, Mirpurkhas in Suit No. 37 of 2020 (Re-Muhammad Alam v. Abdul Ghafoor & others) filed by Respondent No.1, whereby the learned Judge decreed the aforesaid suit as prayed by directing Respondents No.2 to 4 to remove construction from public street within (01) week.

2. Mr. Omparkash H. Karmani learned Counsel for the Appellant has mainly contended that the judgment of trial Court is against the law and facts; that the trial Court without recording evidence of either party passed the impugned judgment, which is not warranted under the law; that the impugned judgment is based upon misreading and non-reading of facts, as such, is liable to be set-aside and matter may be remanded back for recording evidence of both the sides; that the impugned order dated 24.8.2020 is against the basic spirit of law thus liable to be set-aside; that learned trial Court has no jurisdiction to adjudicate the matter under Sindh Public Property (Removal of Encroachment) Act, 2010; that the evidence of the parties has not been recorded and the impugned order is passed without ascertaining the factual position of the case; that learned Tribunal failed to appreciate the documentary evidence brought on record in favour of appellant. He lastly prayed for allowing the instant appeal.

3. I have heard learned counsel for the appellant at considerable length and also reviewed the record available before me.

4. The allegation against the appellant is encroachment over Public Street. I have noticed that Mukhtiarkar Mirpurkhas submitted report before Anti-Encroachment Tribunal that he visited the site and found that the disputed street is blocked by the committee members of Madrsa Dar-ul-uloom Farooqia by constructing bathroom and kitchen and as per map of Raheemabad, Colony the same is shown as street.

5. To understand the rule position of the case, it is expedient to have a glance over various Sections of the Act, 2010. Section 11(1) provides that no Civil Court shall have jurisdiction to entertain any proceedings, Bar of jurisdiction and abatement of suits, 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 license 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 license 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 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 license in respect of such public property has not been determined. Section 13 provides that a Tribunal shall have exclusive jurisdiction to adjudicate upon a dispute that any property is not a public property or that any lease or license in respect of such public property has not been determined for the purpose of this Act. Section 14 (1) provides that 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). (4) The proceedings before the Tribunal shall be judicial proceedings within the meaning of sections 193 and 228 of Pakistan Penal Code (Act No. XLV of 1860), Section 27 provides an appeal against the order passed by a Special Court shall lie to the High Court of Sindh.

6. I have perused the findings of learned Tribunal, which explicitly show the following factual position of the case:-

“ Heard, the parties and their counsel, Mukhtiarkar (R), Mirpurkhas and Tapedar of the beat, the ground extended by the private defendant to block the public street is not justifiable, Assistant

Mukhtiarkar, Mirpurkhas and Tapedar of the beat are in attendance, they are directed to remove the such construction from the public street, within (1) one week, time start after Muharram-UI-Harram, if any hindrance is created in way of removing of encroachment, an strict action be taken against such persons, S.H.O, Anti-Encroachment, Force District Mirpurkhas and S.S.P, Mirpurkhas shall provide assistance to the Assistant Mukhtiarkar (R), Mirpurkhas and Tapedar of the beat at the time of Anti-Encroachment drive.”

7. In my view the issue of conversion of an amenity plot into personal use had already been discussed and adjudicated by the Honorable Supreme Court in the case of Ardeshir Cowasjee vs. Karachi Building Control Authority (1999 SCMR 2883) wherein it was held that conversion of an amenity plot is illegal. The encroachment of amenity plot cannot be allowed to sustain under the law, which aspect, the official respondents have to look into and restore its position in accordance with law. The encroachment of an amenity plot to another use is treated as an abuse of discretion and therefore is unlawful for the simple reason that the paramount object of modern city planning is to ensure maximum comforts for the residents of the city by providing maximum facilities and that a public functionary entrusted with the work to achieve the above object cannot act in a manner, which may defeat the above objective and deviation from the planned scheme will naturally result in discomfort and inconvenience to others.

8. In the light of above, I am of the considered view that the official respondents are under legal obligation to comply with the directives of Honourable Supreme Court passed in the cases of removal of encroachment over amenity plots / public properties from its occupants.

9. The appeal stands dismissed in the above terms.

**JUDGE**