

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

1<sup>st</sup> Appeal No. 13 of 2019

**Lachman Das & others**

Appellants: through Mr. Abdul Razzak Leghari,  
Advocate.

**Tano Lal and Harji**

Respondents: In person.

Date of hearing: 04.11.2019

Date of decision: 18.11.2019

**ORDER**

**ADNAN-UL-KARIM MEMON, J.** - Basically the allegations against the appellants are that they have encroached upon the basic amenities i.e. Graveyard and Aasaish land situated at Survey No.130 admeasuring 3-30 acres and Survey No.308 admeasuring 3-22 Deh 108, Taluka Hussain Bux Mari, District Mirpurkhas. Learned Anti-Encroachment, Tribunal Mirpurkhas, vide order dated 24.01.2019 in Encroachment Suit No.46 of 2018 directed them to vacate the aforesaid land and remove the encroachment within thirty (30) days. They being aggrieved by and dissatisfied with the said order has approached this Court. For convenience sake an excerpt of the order dated 24.01.2019 is reproduced as under:-

“The private respondents are directed to vacate and demolish encroachment made by them on Qabrstan and Aasaish land being Survey No.130 admeasuring 3.30 acres and Survey No.308, admeasuring 3.22, Deh 108, Taluka Hussain Bux Mari, District Mirpurkhas within 30 days from date of this order and if failed to do so, after stipulated period, Assistant Commissioner / Deputy Director Anti-Chairman/CMO Municipal Committee, Mirpurkhas shall demolish said encroachment and retrieve its possession from private defendants / encroachers, whoever may be, and recover cost of demolition and removal of structure from defendants / encroaches as arrears of land revenue.”

2. Case of the parties, as per pleadings is that the private respondents filed suit No.46 of 2018 against the appellants and others under Section 3 of Sindh Public Property (Removal of Encroachment) Act, 2010, on the premise that they belong to Hindu community/minority; that there is old graveyard over an area of 3-22 acres situated behind the Bus Terminal of Mirpurkhas at Survey No.308 of Deh 108, Taluka Hussain Bux Mari, District Mirpurkhas and is reserved for Hindu Community. The appellants have encroached upon the land of graveyard. Mukhtiarkar Revenue Taluka

Hussain Bux Mari vide report dated 18.09.2017 submitted that from S.No.308 (3-22 acres) Deh 108, Massan is situated at some portion and there is encroachment and he requested for removal of such encroachment. Learned Anti-encroachment Tribunal, in order to adjudicate the matter between the parties framed following issues:-

- i. Whether the plaintiffs have filed this case with malafide intentions and ulterior motives?
- ii. Whether the plaintiffs and other Hindu Community suffer due to houses of the private defendants on alleged land?
- iii. Whether the private defendants are encroachers and since how much long time they are residing on said land?
- iv. What should the order be?

3. Learned Tribunal after careful examination of the parties and evidence decided the aforesaid issues in favour of private respondents by passing the impugned order.

4. Mr. Abdul Razzak Leghari learned Counsel for the appellants has mainly contended that the judgment of learned trial Court is contrary to law and facts; that learned trial Court did not consider that the land in question is Aasaish land and the appellants are residing over it since hundreds of years and are also looking after / taking care of the Massan / Graveyard and Mandir; that the judgment of learned trial Court is based upon misreading / non-reading of evidence, as such, instant appeal may be allowed and the judgment of trial Court may be set-aside. In support of his contentions he relied upon the statement dated 16.4.2019 and argued that the entire story has been cooked up by the private respondents in order to usurp the subject land which is used for the rituals of their community, thus the subject land is not encroached upon as portrayed by the Private respondents.

5. Conversely, respondents 1, 2 & 5 present in person have supported the impugned judgment of learned Tribunal and prayed for dismissal of the instant appeal; that there are findings recorded by the competent forum under the special law and the grounds raised in the instant appeal are untenable; that instant appeal is frivolous, misleading as this Court has limited jurisdiction under Sindh Public Property (Removal of Encroachment) Act, 2010, to dilate upon the evidences led by the parties; that the aforesaid actions of the appellants were absolutely illegal, therefore, private Respondents filed

complaint under Section 3 of Sindh Public Property (Removal of Encroachment) Act 2010, which was allowed vide impugned order; that learned Tribunal after hearing the counsel for the parties passed the Judgment; however, the appellants have now approached this Court. They lastly prayed for dismissal of the instant appeal.

6. I have heard both the parties and perused the record. This appeal is directly hit by the directions of Hon'ble Supreme Court given in the order passed on 12.12.2018 in Petition No.9/2010 and others. Para 5 of the decision reads as under:-

“With respect to the cases pending before the courts below (list whereof has been provided by Mr. Waseem Akhtar, Mayor of Karachi) including the learned High Court regarding the amenity plots in which some interim relief has been granted, the Registrar of the Court is directed to fix such matters within ten days from now and we are sanguine that the learned High Court shall decide the cases expeditiously as and when those are fixed. Regardless of the dates fixed, the cases which are pending before the subordinate courts shall be decided within 15 days from today. It maybe pertinent to mention here that if these cases are not disposed of, as has been directed, the files of such cases be requisitioned from the concerned courts and all the matters be listed before this Court for decision and notices be issued to all the plaintiffs 3 of those cases to appear before this Court on 05.01.2019 . Any violation of the order passed by this Court shall be considered to be disobedience and disregard of the Court's order carrying serious repercussions.”

7. Record reflects that the appellants were directed to vacate and remove the encroachment made by them on Qabrustan and Aasaish land being Survey No.130 admeasuring 3-30 acres and Survey No.308, admeasuring 3-22, Deh 108, Taluka Hussain Bux Mari, District Mirpurkhas. Assistant Commissioner / Deputy Director Anti-Encroachment, Chairman/CMO Municipal Committee, Mirpurkhas have submitted their reports that the subject land is reserved for Massan/Graveyard and Aasaish land. The only plea, which has been taken up by the appellants is that they are residing on the subject land since hundred years and are also looking after/taking care of the Massan / Graveyard and Mandir. This ground can hardly be taken into consideration to justify the encroachment on the amenity plots reserved for the above purpose only. The statement dated 16.4.2019 prima-facie shows that they have no title documents of the subject land, which is reserved for Massan/Graveyard and Aasaish and the same cannot be encroached upon under the law and liable to be vacated.

8. In somewhat similar law point in respect of a plot which was carved out within a park area, the Hon'ble Supreme Court has been pleased to hold that an amenity plot cannot be used for commercial

purposes. On the aforesaid proposition, I am fortified by the decision rendered by the Honorable Supreme Court in the case reported as **Ardeshir Cowasjee and 10 others v. Karachi Building Control Authority (KMC), Karachi and 4 others (1999 SCMR 2883)**.

9. In view of above facts and circumstances of the case, apparently the property in question being a public amenity cannot be encroached upon and as per the dicta laid down by the Hon'ble Supreme Court, an area earmarked and reserved for an amenity like Massan/Graveyard and Aasaish, cannot be used for any other purposes. No satisfactory response has been given by the appellants on the aforesaid points therefore; the appellants have failed to make out a case for indulgence.

10. This being the position of the case, the instant appeal is found to be meritless and is dismissed accordingly along with pending applications with no order as to costs.

**JUDGE**

*\*Fahad Memon\**