

**HIGH COURT OF SINDH, CIRCUIT COURT AT  
HYDERABAD**

C.P No.D-437 of 2016

*[Mst. Hawa and Others versus National Highway Authority & Others]*

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<b>DATE</b>	<b>ORDER WITH SIGNATURE OF JUDGE</b>
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*Before:-*

**Mr. Justice Adnan-ul-Karim Memon**  
**Mr. Justice Adnan Iqbal Chaudhry**

Petitioners	:	Through Mr. Khadim H. Soomro advocate
Respondent No.1	:	Through Syed Kamran Ali advocate
Province of Sindh	:	Through Mr. Allah Bachayo Soomro, Additional Advocate General Sindh
Federation of Pakistan	:	Through Mr. Ashfaque Nabi Qazi Assistant Attorney General
Date of hearing	:	26.10.2021
Date of Decision	:	26.10.2021

**ORDER**

**ADNAN-UL-KARIM MEMON, J:-** Through this petition, petitioners have challenged the letter dated 28.12.2015 issued by respondent No.3, whereby, respondent No.4 was directed to look into the matter and take necessary steps for removal of encroachment under the Sindh Public Property (Removal of Encroachment) Act, 2010 [SPPREA).

2. At the outset, we asked the learned counsel to satisfy this court about the maintainability of this petition on the premise that the impugned letter dated 28.12.2015 was/is addressed to respondent No.4 to initiate action against illegal encroachment, and an order / notice under Section 3 of the SPPREA has yet to be issued to the petitioners.

3. Mr. Khadim H. Soomro learned counsel for the petitioners has replied to the query and submitted that respondents have no authority and jurisdiction to interfere with the peaceful possession of the property of the petitioners; that impugned letter dated 28.12.2015 is illegal, void, and malafide; that the petitioners are not liable to be ejected from the property in question; that the petitioners are not encroachers of their property and have

constitutional right to defend their property rights. He lastly submitted that the respondents are abusing their power and authority under the removal of the encroachment Act. He prayed for allowing the instant petition.

4. In principle, the encroachment of public property cannot be allowed to sustain under the law, and the official respondents are bound under the SPPREA, 2010 to take action against the encroachment over public property.

5. Without prejudice to the above, at this juncture, we would like to refer to the order dated 11.9.2009, passed by the honorable Supreme Court of Pakistan in Suo Moto case No.14 of 2009 wherein it is held that:

“No one in authority, whosoever high office such person in authority may be holding, has any power, jurisdiction or discretion to distribute any public property or asset and in these cases extremely valuable lands, on nominal consideration, which land or asset essentially belong to the People of Pakistan. It was a patently malafide exercise of power. This Court further ordered that the grants of lands to the petitioner especially in the manner, the same was done are prima facie violative of Article 3 (elimination of exploitation) Article 25 (equality clause), and Article 31 of the Constitution of the Islamic Republic of Pakistan which requires the State to endeavor to promote the observance of Islamic moral standards and Article 38 of the Constitution which inter alia requires the State to secure the well-being of the people by preventing the concentration of wealth in the hands of a few to the detriment of general interest. The grant of lands to the petitioner in these cases were reprehensible acts on the part of the highest executive authority in the province, totally alien to the concepts of Islam.”

6. In another case, reported as 2014 SCMR 1611, it was held concerning the manner of exercise of powers by an authority regardless of its status.

7. It is suffice to say that what is prohibited by the Honorable Supreme Court of Pakistan cannot be sought to be permitted by any other Court or authority, whosoever, it may be. Furthermore, since the relief which is being sought in all senses shall amount to curbing the exercise of jurisdiction under the SPPREA, 2010 when no cogent reason has been given for restraining them from doing so, we are not inclined to interfere when an order / notice under section 3 of the SPPREA, 2010 has yet to be issued to the petitioners. If and when such notice is issued to the petitioners,

they are provided a remedy under Section 4 of the SPPREA, 2010. Therefore, the petition is premature and misconceived. Same is dismissed.

**JUDGE**

**JUDGE**

Sajjad Ali Jessar