

## IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

**Before:**

Mr. Justice Muhammad Junaid Ghaffar  
Mr. Justice Zulfiqar Ali Sangi

**C. P. No. D – 183 of 2020:**

**Ali Bux Chohan & another v.  
Province of Sindh & others**

**C. P. No. D – 941 of 2020:**

**Shamsuddin v. The Director,  
Anti-Encroachment Force & others**

Date of hearing:

**04-11-2021**

Date of decision:

**04-11-2021**

Mr. Abdul Qadir Shaikh, Advocate for the Petitioner in C. P. No. D-941 of 2020.

Mr. Khuda Bux Chohan, Advocate for Respondents No.6 and 7 in C. P. No. D-183 of 2020.

Mr. Muhammad Aslam Gadani, Advocate for Respondent No.14 in C. P. No. D-183 of 2020.

Mr. Ahmed Ali Shahani, Assistant Advocate General Sindh.

### **ORDER**

**Muhammad Junaid Ghaffar, J.** – Both these Petitions seek execution and/or implementation of orders passed by the Anti-Encroachment Tribunal, Sukkur (“the Tribunal”). In C. P. No. D-941 of 2020, the operative part of the Tribunal’s order reads as under:

*“Therefore, keeping forth the above discussed position, it is concluded that the issue regarding illegal encroachment over the graveyard Shaikh-jo-Qabrustan is genuine one and important issue, hence, the Deputy Commissioner Sukkur/Director Anti Encroachment Force is directed to get the illegal encroachment removed from graveyard (if found) after getting the demarcation of graveyard through Survey Settlement Department Khairpur, under intimation to this Tribunal. Let the copy of this order be sent to Director Anti Encroachment Force Sukkur for compliance.”*

Similarly, in C. P. No. D-183 of 2020, the operative part of the order reads as under:

*“Keeping forth the above discussed position and reports of official respondents I am of the humble view that demarcation between the private survey numbers and government property/graveyard is liable to done through survey department Khairpur and after doing so illegal encroachment (if any) found upon the government property/graveyard shall be removed in accordance with law after proper procedure of The Sindh Public Property (Removal of Encroachment) Act and Rules 2010, under intimation to this Court.”*

2. Petitioner’s Counsel has been confronted as to maintainability of these Petitions in view of the fact that this Court is not an Executing Court or for that matter a Court for implementation of the orders passed by the

Anti-Encroachment Tribunal constituted under the Sindh Public Property (Removal of Encroachment) Act, 2010 (“the Act”), and to this, it has been jointly prayed that time and again they have been approaching the Tribunal for implementation of the orders, therefore, directions be given to the Tribunal to implement its own orders.

3. Learned AAG, while assisting the Court, has referred to Section 16 of the Act, and submits that the Tribunal is competent to use force and to get the orders implemented.

4. We have heard the learned Counsel as well as learned AAG and perused the record.

5. Insofar as the orders passed by the Tribunal in these matters and so also in various other matters coming before us are concerned, we have noticed with concern that the Anti-Encroachment Tribunal is passing orders and is disposing of the complaints apparently in a slipshod manner inasmuch as on the one hand, certain directions are given to carry out demarcation and survey of the property, and at the same time, the complaints are being disposed of with further directions to remove the encroachments, if any. This is perhaps not the proper course of action which ought to have been adopted by the Tribunal. First and foremost, it has to come on record in clean terms that there is encroachment and that should be on Government property as defined in the Act. If that is not so, then perhaps, no final order could be passed and first a determination, if deemed fit, should be made regarding the status of the property and the encroachment, if any. Once it is done, only then an order for removal of the encroachment has to be passed. Both directions at the same time and final disposal of a complaint are unwarranted as it creates further complications

6. Nonetheless, in any case, we do not see that under this Constitutional jurisdiction, we are required to implement and/or execute the orders of the said Tribunal. Encroachment [Section 2(j)] and Public Property [Section 2(o)] have been defined in the Act. similarly, Section 13 vests exclusive jurisdiction upon the Tribunal to adjudicate upon a dispute that any property is not a public property or that any lease or licence in respect of such public property has not been determined for the purpose of this Act. Section 14(2) provides that 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. Lastly Section 16 of the Act provides that the orders passed under sections 3, 4, 5 and 13 of this Act shall, if necessary, be got executed through the Force.

7. The above provision clearly provides that the Tribunal is the final authority to determine all disputes, whereas, it has to conclusively determine the rights of the parties to a dispute. It cannot keep on having demarcation and survey and at the same time order removal of encroachment as well. First the determination is a must. Nonetheless, once it has passed a final order, it has the jurisdiction to have it enforced, even if no specific provision is provided in the Act, as it has to be so read, failing which it would defeat the purpose of enactment of the Act itself. If the Tribunal has the exclusive jurisdiction and is also a competent Court to pass all orders in respect of encroachment on public properties, then it shall be deemed to have the powers of enforcing its own orders. There can't be any implied exception as is being presumed. It can even use force to implement the orders and resultantly the Tribunal can always exercise all enabling provisions for getting its orders implemented. It is not that it can keep on passing orders with directions to the concerned Revenue authorities and at the same time refuse applications for their implementation. As noted earlier, first a clear order has to be passed for determination of the status of the property and the encroachment, if any, and thereafter, orders should be passed so that the Revenue authorities can easily implement the orders without fail and shall not involve into an exercise for determination of the status of the property first; including demarcation and survey, and then proceed to implement the orders. This resultantly causes confusion and as a result thereof petitions are regularly being filed before this Court. This conduct on the part of the Tribunal is deprecated.

8. In view of hereinabove facts and circumstances of this case, both these Petitions are **dismissed** as not maintainable with pending application(s), if any, however, with directions to the Tribunal to get its orders implemented in accordance with law, and if such orders are not implemented by the authorities, it shall not refuse but entertain applications of the aggrieved persons for implementation of its orders. Office is directed to place a signed copy of this order in the captioned connected Petition. A certified copy of this order be issued by the Additional Registrar to the Presiding Officer(s) of Anti Encroachment Tribunals falling within the jurisdiction of this Bench.

J U D G E

J U D G E

Abdul Basit