

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

CP No. D- 63 of 2020

**BEFORE :**

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

Date of hearing  
& decision:

03.11.2021

Petitioner:

Muhammad Amin and another  
through Mr. Muhammad Sachal R. Awan,  
Advocate.

Respondents:  
10, 11, 14 & 15

through Mr. Imtiaz Ali Channa Advocate

Mr. Allah Bachayo Soomro, Addl.A.G. along  
with Syed Abid Ali Shah, Mukhtiarkar Dadu.

**ORDER**

**ADNAN-UL-KARIM MEMON, J:-** Through this petition, the  
petitioners have prayed as under:-

- a. Direct the respondents No. 2 to 7 to take immediate necessary action for removal of encroachment upon the graveyard which is forcibly occupied by the respondents no. 8 to 17 and are removing the graves of relatives of the petitioners and other villagers.
- b. Direct the respondent No. 6 to take legal departmental action against the respondent No.7 who failed to perform his legal / moral duty on the request of the respondents No. 2 to 5 for removal of encroachment.
- c. Direct the respondent No.2 to ensure the existence of graves of the relatives of the petitioners and other villagers in accordance with law.

2. The case of the petitioners is that they are residing in village Yaqoob Pirzada Taluka Sehwan district Dadu and adjacent to their village at Samtani Taluka and district Dadu there is the old graveyard where the people of different villages including the petitioners used to bury their demised relatives but respondents 8 to 17 including others have occupied the area of the graveyard by removing the graves; the petitioners and others restrained them but they did not pay any heed, therefore, they made the complaint in writing to Deputy Commissioner, Dadu who forwarded the same to Mukhtiarkar

concerned to take necessary action according to law. The said Mukhtiarkar requested SHO PS Khudabad to take action against the encroachers but he did not take interest in the matter, hence the petitioners have filed the instant petition.

2. Mr. Allah Bachayo Soomro, Addl. A.G. along with Syed Abid Ali Shah, Mukhtiarkar Dadu has submitted that demarcation of the land Survey no. 119 area(12-18) Acres situated in Deh Kalhora Taluka Dadu was carried out however the private respondent raised hue and cry and demanded that measurement may be carried out by the team of Survey and settlement department as such he requested the Director settlement survey and land record Sindh Hyderabad for providing technical assistance.

3. Mr. Imtiaz Ali Channa learned counsel for the private respondents has submitted that proper demarcation of the subject land may be carried out to ascertain the public amenity, however, they have denied encroaching upon the government land and prayed for dismissal of the instant petition.

4. We have heard the parties at considerable length and also reviewed the record available before us.

5. The allegation in the present case against the private respondents is conversion of land Survey no. 119 area (12-18) Acres situated in deh Kalhora Taluka Dadu reserved for the graveyard for personal use and encroachment thereon. The conversion of an Asaish land/ amenity land reserved for a graveyard is illegal. The encroachment thereof cannot be allowed to sustain under the law. The record reflects that Mukhtiarkar submitted the report in this regard and confirmed the encroachment however he sought the assistance of the Director Settlement survey and land record Sindh Hyderabad to carry out the demarcation and to take action against the encroachers under law.

6. It is suffice to say that what is prohibited by the law cannot be sought to be permitted. Since the relief which is being sought through this petition could only be allowed if in all fairness the demarcation of the subject land is carried out at the first instance with the assistance of Director Settlement survey and land record Sindh Hyderabad. We are of the considered view that the official respondents are under a legal obligation to comply with the directives

of the Honorable Supreme Court passed in the cases of removal of illegal encroachment of amenity plots / public properties from its occupants.

7. This Petition is hereby disposed of with direction to the official respondents to demarcate the subject land and remove the encroachment accordingly within one month without fail. SSP Dadu shall provide necessary protection to the official respondents accordingly.

Copy of this order be sent to Deputy Commissioner Dadu, Director Settlement survey and land record Sindh Hyderabad Assistant Commissioner Dadu, Mukhtiarkar Dadu, and SSP Dadu for immediate compliance.

JUDGE

JUDGE

Karar\_hussain/PS\*