

# IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD.

Miscellaneous Appeal No. 35 of 2019

Appellant : Mir Hassan Shah through Mr. Naeemuddin Sahito, Advocate

Respondents 6 to 8: Through Mr. Zafar Ahmed, Advocate

Mr. Wali Muhammad Jamari, Asstt: A.G.

Date of Hearing & Decision : 06 .12.2021

## ORDER

**ADNAN-UL-KARIM MEMON J:** Through instant Misc. Civil Appeal, the appellant being aggrieved by the order dated 17.10.2019 passed by learned Anti-Encroachment Tribunal, BOR Hyderabad in Complaint No. 04 of 2019 (Re-Mir Hassan Shah v. Deputy Commissioner Matiari & others) whereby the complaint filed by the appellant / Complainant was rejected under Order VII Rule 11 CPC, has preferred the instant appeal.

2. Brief facts of the case are that appellant filed Complaint No. 04 of 2019 under Section 13 of Removal of Encroachment Act, 2010 against the respondents stating therein that in his village an area of 21270 sq.ft of government land is lying vacant which is encroached upon by the private respondents by erecting boundary wall and further that several trees of Acacia have also been cut down by them without approval from the competent authority; that the appellant for the welfare of villagers filed complaint before ADC-I, Hyderabad on 7.12.1995 which was allowed declaring that private respondents are not entitled for Sanad of possessed plot nor Sanad can be issued to them as the same is against the mandatory provision of Sindh Gothabad Act, 1987 and the area can be used as feasible for any development scheme for villagers; that after passing of above order the private respondents left the government land but in 2017 again they illegally occupied the land, hence the appellant filed F.C. Suit No. Nil of 2017 against private respondents which was dismissed in limine with direction to the appellant to approach Sindh Anti-Encroachment Cell Hyderabad, therefore, the appellant filed the above complaint

wherein learned Anti-Encroachment Tribunal BOR Hyderabad after calling reports from concerned authorities and hearing the appellant rejected the complaint under Order VII Rule 11 CPC vide impugned Order dated 17.10.2019 hence this Misc. Appeal.

3. Mr. Naeemuddin Sahito Learned counsel for the appellant has argued that the trial court has failed to consider the facts of the case and passed by impugned Order without applying judicial mind; that private respondents are in illegal occupation of Village Aashish land but the Anti-Encroachment Tribunal without considering the report of Mukhtiarkar concerned passed the impugned order that the private respondents do not have government land; that the private respondents are highly influential persons thus avoiding to remove the encroachment, just to gain the monetary benefit, out of Aashish land reserved for Village; that the occupied government land can be used for hospital or park, school, etc as it was reserved for Aasaish land. He lastly prayed for allowing the instant appeal.

4. I have heard learned counsel for the appellant and perused the material available on record.

5. The question involved in the present matter is whether the disputed property reserved for villagers as Asaish land or otherwise. The learned Tribunal vide order dated 17.10.2019 rejected the plaint on the premise that the complainant failed to prove that the respondents have encroached upon any area of public property and encroachment of the public is badly affected.

6. Mr. Zafar Ahmed learned counsel for the respondents has referred to the report dated 14.11.2019 of Mukhtiarkar (Revenue) Goathabad Matiari and submitted that in the disputed plot of village Kirir Shah, there is one Otaq of Dhani Bux Shah Son of Juman Shah and various trees are standing thereon. Moreover, the plot lies in Survey No.249 area 6-06 acres of Mataro Shah Son of Bhuro Shah and others. He further submitted that upon visit of the said plot the Mukhtiarkar reported as under:

*“ However, upon visit, it further reveals that the said plot is an ideal one for any public use as Eid gahh, Asaish or Park and could also be utilized for any scheme of public benefit like water supply etc, as the said plot has also been referred / pointed out by the then Additional Deputy Commissioner-I, Hyderabad for such purpose.*

*It is further submitted that the report has called from Tapedar Gothabad / Estate who has reported that there is no any record available for the above said plot.*

*Such report of Tapedar Gothabad / Estate is enclosed herewith for kind perusal of the Honourable Court.”*

7. I have noticed that Mukhtiarkar has submitted compliance report of the order dated 13.01.2020, which explicitly shows the following position of the case:

*“ It is humbly prayed that due absence of any statutory order by the competent Court of law coupled with police assistance due to law and order situation, the Government land admeasuring 21270 sq. fit is still under the encroachment with some miscreants as identified in the report of answering respondent as well as the same is held as illegal vide order dated 07.12.1995 passed by Additional Deputy Commissioner-I Hyderabad (copy enclosed) thereby the land was reserved for village Asaish.*

*It is therefore humbly prayed that this Hon. Court may kindly be pleased to pass an order for vacating the illegal encroachment with the directions to the law enforcing authorities for necessary assistance to face the law and order situation in the interest of Government.”*

8. At this juncture, learned AAG has drawn the attention of this Court towards the compliance report dated 20.10.2021 submitted by Deputy Commissioner Matiari and Assistant Commissioner Taluka Matiari which prima-facie suggests that Government land admeasuring 21270 sq. ft is still under encroachment with some miscreants as identified in the report; and as per Order dated 7.12.1995 passed by Additional Deputy Commissioner-1, Hyderabad.

9. In view of the above facts and circumstances of the case, the order dated 17.10.2019 passed by learned Anti-Encroachment Tribunal; BOR Hyderabad is set-aside, having been passed against the law. In such a situation, I have no option but to direct the Deputy Commissioner, Assistant Commissioner, and Mukhtiarkar Taluka Matiari to restore the boundaries of subject Asaish land, which is alleged to have been encroached upon, after due notice to all concerned; and submit a comprehensive report to that effect through Additional Registrar of this Court. In this endeavor, SSP Matiari shall provide adequate police force for just removal of illegal encroachment strictly in compliance with the judgment of Honorable Supreme Court

as well as this Court, if the law permits; he may get assistance from the law enforcement agencies. The said exercise shall be undertaken within two weeks from the date of receipt of this order; after due notice to all concerned.

10. The instant appeal is allowed accordingly, however, with no order as to costs.

*\*Karar-Hussain/PS \**

**JUDGE**