

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

C. P. No. D – 626 of 2021

Zulfiqar Ali Shar and another v. Province of Sindh and others

Before:

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

Date of hearing: **23-02-2022**

Date of decision: **23-02-2022**

Mr. Shabbir Ali Bozdar, Advocate for the Petitioners.
Mr. Zulfiqar Ali Naich, Assistant Advocate General Sindh.

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J U D G M E N T

Muhammad Junaid Ghaffar, J. – Through this Petition, the Petitioner has sought the following prayers:

- a) *That this Hon'able Court may be pleased to declare that the act of the official respondents for not removing of illegal encroachment over the said property of graveyard BAGO QUBO, is illegal, unlawful and against the norms of justice, hence the same is liable to be declared null and void.*
- b) *That this Hon'able Court may be pleased to direct the respondents No.2 to 8 to remove the encroachment from the said property of graveyard BAGO QUBO as soon as possible as per provision of Sindh Public Property Act, 2010.*
- c) *To award the cost of the petition.*
- d) *To grant any other relief, which deems to be fit and proper under the circumstances of the instant petition.*

2. It appears that Petitioner No.2 Sikandar Ali had already approached the Anti-Encroachment Tribunal, Sukkur through Misc. Application No.03 of 2020 in respect of the same graveyard and the said Tribunal, vide its order dated 25-02-2020, has issued certain directions to the Assistant Commissioner (Revenue), Taluka Thari Mirwah. In that case, the Petitioners are required to approach the Tribunal for implementation of its order, and we have already passed an order dated 04-11-2021 in C. Ps. No. D-183 and 941 of 2020 deciding the identical issue, which reads as under:

“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 license 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.”

3. In view of such position, this Petition stands **disposed of** by directing the Tribunal to act as above; whereas, the Petitioner is also at liberty, if so advised, to approach the Anti-Encroachment Tribunal, Sukkur, which shall decide the matter in accordance with law.

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Abdul Basit