

Amended title 15/2021

# IN THE HIGH COURT OF SINDH CIRCUIT COURT HYDERABAD

Constitutional Petition No.D-1726 of 2012

1. Agha Nazimuddin S/O Abdul Karim  
Muslim, Adult, R/O A-19,  
Al-Abbas Housing Scheme Phase-1,  
Qasimabad Hyderabad
2. Muhammad Sulleman S/O Ghulam Nabi  
By caste Lashari, Muslim, Adult,  
R/O House No.A-4 Waqar Town,  
Block-A Qasimabad Hyderabad
3. Muhammad Bacha S/O Khan Muhammad  
by Caste Tunio, Muslim, Adult,  
R/O A-33 Waqar Town,  
Qasimabad Hyderabad
4. Ghulam Muhammad S/O Haji Muhammad  
Hussain by caste Mugheri, Muslim, Adult,  
R/O Waqar Town Block-A,  
Qasimabad Hyderabad
5. Abdul Khalique S/O Jan Muhammad  
by caste Shaikh, Muslim, Adult,  
R/O A-17 Al-Abbas Housing,  
Scheme Phase-1 Qasimabad Hyderabad.
6. Khudadad S/O Haji Shah Murad  
by caste Khatian, Muslim, Adult,  
R/O Al-Abbas Housing Scheme,  
Phase-1 Qasimabad Hyderabad.
7. Abdul Samad S/O Abdul Razaque  
by caste Memon, Muslim, Adult,  
R/O Al-Abbas Housing Scheme  
Phase-1 Qasimabad Hyderabad.
8. Manzoor Ahmed S/O Muhammad Ibrahim  
by caste Soomro, Muslim, Adult,  
R/O Al Abbas Housing Scheme  
Phase-1 Qasimabad Hyderabad.
9. Muhammad Ali S/O Haji Mehardan  
by caste Channar, Muslim, Adult,  
R/O Al-Abbas Housing Scheme  
Phase-1 Qasimabad Hyderabad.
10. Abdul Rasheed S/O Azizullah  
by caste Chandio, Muslim, Adult,  
R/O Waqar Town Block-A,  
Qasimabad Hyderabad.
1. Bashir Ahmed S/O Ghulam Haider  
by caste Pahiyar, Muslim, Adult,  
R/O Waqar Town Block-A,  
Qasimabad Hyderabad.
12. Dr. Khan Muhammad S/O Ghulam Hussain  
by caste Brohi Muslim, Adult,  
R/O Bungalow No.13, Al-Abbas,  
Housing, Society Phase-1,  
Qasimabad Hyderabad.



..... PETITIONERS

VERSUS

1. Government of Sindh  
through Secretary Revenue  
Sindh Secretariat Karachi.

2. Deputy Commissioner  
Hyderabad
3. Assistant Commissioner (Revenue)  
Qasimabad Hyderabad
4. Director General H.D.A Hyderabad.
5. Incharge Encroachment Cell  
H.D.A Taluka Qasimabad Hyderabad.
6. Taluka Municipal Officer  
Qasimabad Hyderabad.
7. Senior Superintendent Of Police Hyderabad.
8. Station House Officer P.S Qasimabad.
9. Government of Sindh  
through Home Department,  
Sindh Secretariat Karachi.
10. Zulfiqar Patoojo S/O not known
11. Khaki Mugheri S/O not known
12. Zulfiqar alias Foji Mugheri S/O not known
13. Ghulab Mugheri S/O not known
14. Abdul Rasool Kalhoro S/O not known
15. Ashique Hussain Bhangar S/O not known
16. Jawad Hussain Bhangar S/O not known
17. Haji Jeo Daidano S/O not known
18. Nazeer Hussain Khanwar S/O not known
19. Manzoor Hussain Lashari S/O not known
20. Umed Ali Chandio S/O not known
21. Ramzan Palh S/O not known
22. Allah Bukhsh S/O not known
23. Nazir Hussain Khunwar S/O not known
24. Gulab Khan Channa S/O not known
25. Naik Muhammad Vistro S/O not known
26. Muhammad Malook Abro S/O not known

All Muslims, Adults, illegal occupants, encroachers  
Over the 60-foot road Waqar Town Qasimabad  
Hyderabad.

27. Hyderabad Electric Supply Company  
Hyderabad through its Chief Executive Officer,  
Shahbaz Building Hyderabad
28. Regional Director,  
Sindh Building Control Authority,  
Hyderabad

..... RESPONDENTS



Order Sheet

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

Constitutional Petition No. D – 1726 of 2012

DATE

ORDER WITH SIGNATURE OF JUDGE

For orders on MA-1772/21

For hearing of MA-1534/21 (U/O 1 R 10 CPC)

For orders as to non-prosecution of MA-1532/21.

For hearing of MA-2190/15 (Contempt)

For hearing of MA-6064/15 (U/O XXXIX Rules 1 & 2 CPC)

For orders on MA-6065/15 (U/O XXXIX Rules 1 & 2 CPC)

For hearing of main case

11.03.2021

M/S Ahsan Gul Dahri, Ayaz Hussain Tunio and Zaheeruddin Sahito,  
advocates for the petitioners.

Mr. Irfan Ali Bughio advocate for HDA.

Mr. Ayaz Ali Rajpar advocate for HMC a/w Muhammad Ali Shaikh,  
Municipal Commissioner HMC Hyderabad, Rafique Khan Legal Advisor  
HMC and Tauheed Ahmed Assistant Director Anti-Encroachment HMC.

Mr. Allah Bachayo Soomro, Addl. A.G. a/w Syed Hasan Naqvi Secretary  
Finance, Fuad Ghaffar Soomro Deputy Commissioner Hyderabad, Gada  
Hussain Soomro Assistant Commissioner / Administrator Qasimabad,  
Tabraiz Sadiq Marri ADC-I Hyderabad, Aftab Ibrahim XEN Provincial  
Highways Division Hyderabad, Abdul Salam Shaikh SSP Hyderabad,  
Ghulam Nabi Khoso PDSP Hyderabad, Ali Raza SDPO Tando Yousif,  
Inspector Saghir Sangi SHO PS Qasimabad and Abdul Latif SDPO  
Qasimabad.

Mr. Muhammad Hamayoon Khan, D.A.G. a/w Muhammad Yakoob CEO,  
HESCO and Irfan Shaikh Liaison Officer HESCO.

Naveed Asim Regional Director SBCA is present in person.

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NADEEM AKHTAR, J. In compliance of the orders of this Court, the Deputy  
Commissioner Hyderabad, who is present in person, has submitted the  
following :

- a. The proposed mechanism (12 points comprising 4 pages) for  
implementation of the orders of this Court regarding removal of  
encroachments in the City of Hyderabad and also for their  
prevention in future.
- b. Details of all the properties owned by Hyderabad Municipal  
Corporation (HMC) that are under encroachment along with  
relevant documents.
- c. Details / list of poles installed by HESCO on the right-of-way /  
main roads in Taluka Latifabad and Qasimabad along with  
photographs.



- d. Google map of Hyderabad City showing encroachments and the proposed roads.
- e. Google map showing removal of encroachments and widening of road from Poonam petrol pump to Bypass via Nasim Nangar Chowk under the directions of Hon'ble Supreme Court and this Court.
- f. Undertaking dated 11.03.2021 that he shall move the proposal to the Works and Services Department within three (03) days for preparation of PC-I for betterment and extension of roads from which encroachments have been removed.

2. The Chief Executive Officer HESCO present in Court undertakes that he shall examine the details, list and photographs submitted today by the Deputy Commissioner Hyderabad in respect of the poles and other installations installed by HESCO on the right-of-way / main roads in Taluka Latifabad and Qasimabad, as well as in other areas of Hyderabad. He further undertakes to submit before this Court on the next date of hearing a definite timeframe for relocating all such poles and installations and the cost to be incurred for such exercise so that the orders of this Court are implemented expeditiously for widening of roads and smooth flow of traffic. He states that the funds for this purpose will have to be provided by the Government of Sindh.

3. The Secretary Finance, Government of Sindh, who is present on Court notice, submits that HESCO, being an independent entity, is liable to generate the requisite funds for the above purpose from its own resources, hence the Government of Sindh is not liable to provide funds to HESCO for this purpose. Regarding allocation and disbursement of the funds for execution of the proposals submitted before this Court on the last date of hearing, which were made the rule of the Court on the same day with the consent of all concerned, he has submitted the following statement dated 11.03.2021

*" The DC Hyderabad has informed that he will furnish proposal regarding anti-encroachment to Works and Services department. The department will need to carry out surveys and costing for the scheme, within shortest possible time, preferably within 15 days time ; without compromising on quality and cost effectiveness. Once PC-I is furnished to P & D department, it will take it up at appropriate forums of TC & PDWP immediately. The scheme will then be submitted to the competent authority for inclusion either as ADP or non-ADP scheme. Finance department will ensure funding of the scheme, without fail, as per approved plan."*

Compliance report dated 11.03.2021 has been filed by Municipal Commissioner HMC, who is present in Court. In the third paragraph of page 1 of the aforesaid report, he has stated that heavy electric generators have been installed by banks, hotels, restaurants, marriage halls, franchises of mobile



*[Handwritten signature]*

phone companies, private schools, etc. outside their premises, however, the same have not been installed on footpaths or green belts nor are they causing any hindrance. He has further stated in the said paragraph that fee / tax has been levied / imposed by HMC on the owners / occupiers of the above mentioned premises and businesses in view of the gazette notification published on 04.12.2014, copy whereof has been filed by him along with his above report. Though he has made the above statement that the generators are not causing any hindrance, he has conceded before us that the same have been installed on the footpaths / green belts / open spaces outside the premises of the above mentioned businesses. We have noticed that it is clearly mentioned in the above mentioned notification filed by HMC that new tax / fee has been purportedly imposed on generators installed "on open public spaces outside the premises of the banks / hotels / restaurants / marriage halls / Franchise / private schools / colleges" and on such private business places as mentioned in the schedule thereto. In this context, it is well-settled that public property cannot be used for any personal or commercial activity nor can it be granted on lease or license, and the person claiming any such lease or license in respect thereof does not acquire any right, title or interest therein, even if any document is executed in this behalf in his favour and he has paid any consideration pursuant to such arrangement. Thus the above notification dated 04.12.2014 purportedly empowering HMC to levy / impose new tax / fee on generators installed on any public property is void ab initio, and consequently all permissions purportedly granted in pursuance thereof by HMC are also void. In view of this legal position, Municipal Commissioner HMC undertakes that all generators installed on public properties within the jurisdiction of HMC shall be removed within fifteen (15) days and compliance report shall be placed before this Court.

5. Municipal Commissioner HMC has candidly conceded before us that removal of encroachment from public properties and other properties owned by HMC falls within the jurisdiction of HMC. In addition to the removal of generators from public properties, Municipal Commissioner HMC further undertakes that all types of encroachments on public properties shall be removed by HMC within thirty (30) days. He requests for police assistance for this purpose.

6. The Municipal Commissioner HMC, has also conceded before us that the properties belonging to HMC, listed in the document filed today by Deputy Commissioner Hyderabad, are under encroachment. It is indeed alarming to note that a large number of properties including, *inter alia*, bus and tonga stands, graveyards, public parks, meat / fish / chicken / fruit markets,

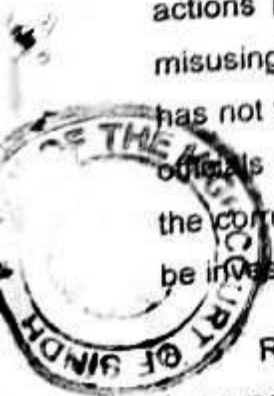


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dispensaries, *musafir khanas*, public wash rooms, playgrounds, amenity plots, hospitals, laboratories and a school for differently abled (deaf and dumb) persons, meant for the benefit of general public, are under encroachment ; and, despite being fully aware of this fact, HMC has not taken any step for their retrieval. The Municipal Commissioner HMC states that the above properties are under encroachment since last many years. He has not been able to explain as to why in the first instance the said properties and other properties were allowed to be encroached upon by HMC, and why prompt and effective measures were not taken by HMC for retrieval of the said properties from the encroachers. Despite repeated directions by this Court to HMC for removal of encroachments, HMC has still not taken any action for retrieval of the said properties from encroachers, and due to such criminal negligence on their part, the public at large has been deprived of exercising their valuable fundamental rights i.e. the use, benefit and enjoyment of basic needs and facilities of health, education and recreation. Moreover, due to encroachment on the said properties, HMC has deprived itself from the income therefrom that could have been easily utilized by HMC for its objects for the benefit of the general public. There appears to be no other reason for the above criminal negligence except that the encroachment was allowed to be made deliberately with the connivance of the officials of HMC. Regarding grant of public property by HMC for the use of generators belonging to private parties and receiving consideration in lieu thereof, we have already held above that such action is based on a void notification.

7. In addition to the above illegal actions taken and criminal negligence committed by the officials of HMC, they have also allowed the change of land use from residential to commercial in respect of numerous properties indiscriminately and illegally, causing multiple complications such as illegal commercial activity in residential areas, unmanageable burden on all civic amenities, congestion on public thoroughfares and footpaths, unrealistic inflation in the value of properties, etc. Needless to say all the above illegal actions have been taken by the officials of HMC for their personal gain by misusing their authority. It is unfortunate that the Local Government Department has not taken any action against the any of the above illegal actions and/or the officials who were/are responsible for the same. In the above circumstances, the corruption and corrupt practices committed by the officials of HMC need to be investigated thoroughly by NAB.

Respondent No.28 / Regional Director SBCA Hyderabad, who is present in person, has submitted comments dated 11.03.2021 along with annexures, which are taken on record. He concedes that SBCA was solely responsible for



*[Handwritten signature]*

ensuring that construction in the city is made strictly in accordance with the building plan approved by SBCA. He further concedes that the encroachment / construction on public properties could have been easily prevented if timely action had been taken by SBCA. On our query, he states that even after the action taken by the Deputy Commissioner for removal of such encroachment in pursuance of the orders of this Court, he has not taken any step for preparing a list of all such properties that were illegally extended to encroach upon public properties, which encroachments have now been or are being removed. This clearly shows that SBCA is not interested at all in preventing recurrence of illegal construction on public properties in future. In addition to the above, SBCA has also failed to take action against illegal and unauthorized construction such as construction in the open compulsory space, additional floors, deviation from the approved plan, etc. in respect of hundreds of properties due to which the general public has suffered immensely and courts have been unnecessarily burdened with litigation. The above illegalities could not have been committed by the land owners and builders without the support and connivance of the officials of SBCA, who have certainly misused their authority for their personal gain. Thus, the corruption and corrupt practices committed by the officials of SBCA also need to be investigated thoroughly by NAB.

9. In view of the above, it is hereby ordered as under :

- A. The Deputy Commissioner Hyderabad shall head the anti-encroachment drive and after completing the same as ordered by this Court, shall submit compliance report to this Court within thirty (30) days.
- B. The Municipal Commissioner HMC shall be equally responsible for implementing the orders of this Court regarding removal of encroachments from all public properties. As undertaken by him, he shall ensure that all generators installed on public properties within the jurisdiction of HMC are removed within fifteen (15) days, and all types of other encroachments on public properties are removed by HMC within thirty (30) days. Compliance report in these terms shall be submitted by him before this Court within thirty (30) days.

SBCA shall also assist the Deputy Commissioner in identifying illegal construction / encroachment and also in removing the same. Regional Director SBCA shall submit compliance report in these terms before this Court within thirty (30) days.

- D. The DIGP and SSP Hyderabad and the SHOs concerned are specifically directed to ensure that police assistance and protection is provided to the



*[Handwritten signature]*

team of Deputy Commissioner and the staff of HMC and SBCA at the time of removal of generators and encroachments from public properties.

- E. The Gazette Notification published on 04.12.2014, whereby HMC was purportedly authorized to levy / impose new tax / fee on generators installed "on open public spaces outside the premises of the banks / hotels / restaurants / marriage halls / Franchise / private schools / colleges", is hereby declared as void ab initio.
- F. As undertaken by him, the Deputy Commissioner shall submit the proposal to the competent authority / Works and Services Department within three (03) days for preparation of PC-I for the betterment and extension of roads in Hyderabad.
- G. After submission of the above proposal by the Deputy Commissioner, all the officials / departments of the Government of Sindh shall ensure that the matter is dealt with and decided in accordance with law, and the requisite funds are sanctioned expeditiously on most urgent basis keeping in view the order passed by this Court on 02.03.2021 whereby the proposals mentioned therein were made the rule of the Court. The Secretary Finance, Government of Sindh, shall submit compliance report in these terms before this Court within thirty (30) days.
- H. In view of the admitted position discussed in paragraphs 4, 6 and 7 above and the observations made therein, the matter of HMC is hereby referred to NAB to investigate, inter alia, the illegal grant of public properties by HMC to private parties for installing generators and receiving heavy amounts towards consideration ; for allowing encroachment on its properties meant for the use, benefit and enjoyment of general public and for not taking any action for retrieval thereof from the encroachers ; and, for allowing the change of land use from residential to commercial in respect of numerous properties indiscriminately and illegally. NAB shall proceed against all the present and former officials of HMC and the Local Government Department in accordance with law in case they are found involved in any corruption or corrupt practice.

The matter of SBCA Hyderabad is also referred to NAB to investigate, inter alia, the illegalities discussed in paragraph 8 above. Needless to say NAB shall proceed against all the present and former officials of SBCA Hyderabad in accordance with law in case they are found involved in any corruption or corrupt practice.



*[Handwritten signature]*



10. Let notice be issued to Director General NAB Sindh, Chief Secretary Sindh, Secretary Local Government Department and DIGP Hyderabad for compliance. By consent adjourned to 17.03.2021 at 12:00 noon.

Sd/- Nadeem Akhtar, Judge  
Sd/- Arshad Hussain Khan, Judge

CERTIFIED TO BE TRUE COPY

Assistant Registrar (Writ)

C.P. No./D- 1726 of 2012 No.

13/3/2021  
1575

THROUGH UMS & FAX ALSO

Dated 13<sup>th</sup> of March, 2021

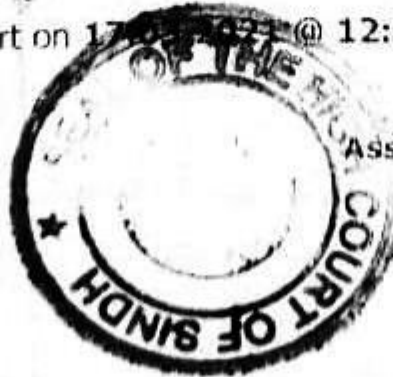
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13/03/22

Copy forwarded for information and necessary compliance of the above noted Court's order to:-

- \* The learned Deputy Attorney General for Pakistan at Hyderabad.
- \* The learned Additional Advocate General Sindh, Hyderabad.

1. The Director General National Accountability Bureau Sindh, Dr. Dawoodpota Road, Karachi.
2. The Chief Secretary Sindh, New Sindh Secretariat, Karachi.
3. The Secretary Local Government Department, New Sindh Secretariat, Karachi.
4. The Deputy Inspector General of Police, Hyderabad.
5. The Chief Executive Officer, HESCO, Hyderabad.
6. The Secretary Finance, Department, Government of Sindh, New Sindh Secretariat, Karachi.
7. The Municipal Commissioner, HMC, Hyderabad.
8. The Senior Superintendent of Police, Hyderabad.

The matter is again fixed in Court on 17.03.2021 @ 12:00 noon.



Assistant Registrar (Writ)

OK