

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

C. P. No. D – 257 of 2021

Dildar Ali Chijjan v. Province of Sindh and others

Before:

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

Date of hearing: **12-04-2022**

Date of decision: **12-04-2022**

Mr. Muhammad Asim Malik, Advocate for the Petitioner.

.....

J U D G M E N T

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

- a) *To declare the act of respondent No.2 to 6 avoiding to remove encroachment made by respondent No.7 and 8 upon graveyard / place around survey No.123 & 842 Deh Mando Dero, Taluka Rohri, District Sukkur as illegal malafide and without lawful authority.*
- b) *To direct the respondent No.2 to 7 to remove the illegal encroachment made by respondent No.8 forthwith, in accordance with law.*
- c) *To restrain the respondent No.7 & 8 from carrying out further work of construction upon graveyard, further restrain the respondent No.7 and 8 not to violate the dignity and honour of graveyard and not to flow the dirty water towards the graveyard.*
- d) *To grant compensatory cost of this petition.*
- e) *To grant an other relief(s) as deem fit in the circumstances of this case.*

2. It appears that the Petitioner had already approached the Anti-Encroachment Tribunal, Sukkur through Misc. Application No.86 of 2020 in respect of the same graveyard and the said Tribunal, vide its order dated 01-12-2020, has issued certain directions to the Assistant Commissioner (Revenue), Rohri. In that case, the Petitioner is 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.

J U D G E

J U D G E

Abdul Basit