

Judgment Sheet

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

C.P. No. D-3609 of 2022

Before :

Mr. Justice Nadeem Akhtar

Mr. Justice Khadim Hussain Tunio

Petitioner : Abdul Waheed Dangar through Mr. Mazhar Hussain Kalwar advocate.

Respondent No.1 : Dr. Sajid Rafee Memon through Mr. Asadullah H. Memon advocate.

Respondents 2 to 9 : Through Mr. Ayaz Ali Rajper Assistant Advocate General, Sindh, and SIP Malik Faheem PS Naseem Nagar Hyderabad.

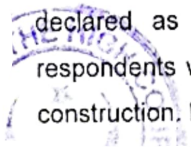
Date of hearing and decision .: 26.01.2023.

ORDER

Statement dated 26.01.2023 has been filed by respondent No.8, which is taken on record.

Suit No. 96 of 2021 was filed by respondent No.1 before the Anti-Encroachment Tribunal Hyderabad against the official respondents under Sections 13 and 14 of the Sindh Public Properties (Removal of Encroachment) Act, 2010, for removal of encroachment from the street / road in front of his house. The Suit was decreed by the learned Tribunal vide judgment and decree dated 28.02.2022 with direction to the official respondents to remove the alleged encroachment and demolish the construction allegedly raised on the public property. The present petitioner, who was not a party in the Suit, filed an application under Section 12(2) CPC for setting aside the said judgment and decree on the ground that the same were obtained by respondent No.1 through fraud, misrepresentation and concealment of facts. His said application was dismissed by the learned Tribunal vide impugned order dated 19.11.2022.

It is contended on behalf of the petitioner that he did not encroach upon any part of the public property and the construction was raised by him on a plot to which he is legally entitled. His main grievance is that his name has been mentioned by the learned Tribunal in the judgment whereby he has been declared as an encroacher and in view of such declaration, the official respondents were directed by the learned Tribunal to demolish and remove his construction. Perusal of the judgment shows that the same was delivered on the



basis of reports, sketch and a map submitted before the learned Tribunal by the official respondents wherein the construction / property of the petitioner was also included. We are of the view that after examining the above reports / sketch / map, if the learned Tribunal was of the view that the petitioner and other persons, who were not parties to the Suit, had encroached upon the public property, all such persons, including the petitioner, ought to have been impleaded in the Suit whereafter an opportunity of hearing ought to have been afforded to them before deciding the Suit. Needless to say no order for demolishing the properties of such persons, including the petitioner, could be passed by the learned Tribunal without providing opportunity of hearing to them. In such circumstances, the application filed by the petitioner for setting aside the judgment and decree ought to have been allowed. Since the proper course was not adopted by the learned Tribunal, the judgment and decree as well as the order impugned herein are not sustainable in law or on facts.

In view of the above, the order impugned herein is hereby set aside and the application filed by the petitioner under Section 12(2) CPC is allowed. Resultantly, the judgment and decree passed in Suit No. 96 of 2021 are hereby set aside. The matter is remanded to the learned Tribunal with direction to implead all the persons whose names and or properties are mentioned in the judgment, including the petitioner, and to decide the Suit afresh expeditiously after providing opportunity of hearing to them.

The petition and listed application are allowed in the above terms with no order as to costs.