

ORDER SHEET
IN THE HIGH COURT OF SINDH BENCH AT SUKKUR
C.P. No.D-1105 of 2018

Date	Order with signature of Judge
1.	For hearing of CMA No.9918/2018
2.	For hearing of CMA No.5944/2018
3.	For hearing of main case.

02.02.2023

Mr. Amir Ali Bhutto, Advocate for Petitioner
Mr. Sohail Ahmed Khoso, Advocate for Respondents
Mr. Noor Hassan Malik, AAG alongwith Farhan Ahmed Qureshi,
Deputy Director, Mines and Minerals Department, Sukkur and
Sajjad Ahmed, Assistant Director Mines and Minerals, Sukkur
Hajan Ujjan, ADC-II Sukkur on behalf of Commissioner, Sukkur, Gul
Beg Majeedano, ADC-II, Sukkur on behalf of DC, Sukkur and Niaz
Magnejo, Superintendent/ Focal person on behalf of DC Khairpur

Salahuddin Panhwar, J: Pursuant to earlier order dated 24.01.2023, with regard to authorization of crushing plants, Commissioner Sukkur Division, Sukkur submits report showing therein that there are 32 crushing plants out of them 13 are functional and as per visit they have opined as under:-

1. ***Archeologist determined that the crushing plant is situated on a highly valuable and rare Paleolithic period archaeological site in South Asia which is significant for its history and ancient stone tool industry. Unfortunately the site has been subjected to extensive damage. Despite this, stone tools have been uncovered close to the surface in the mining area. In addition, the plant is located near ancient paleo channels of Hakro River.***
2. ***The Plant has NOC from Mines & Minerals Department.***
3. ***The Plant owner does not produce NOC from Industries Department as per the Factories Act, 1934.***
4. ***Stone Crushing Plant is functional without any scientific measures. Hence Eco system has disturbed.***
5. ***The workers do not wear any mask/helmet or any safety dress.***
6. ***The workers are vulnerable to Chest and pulmonary deceases including TB.***
7. ***The Plant has valid EL4 License.***
8. ***The ancient tomb of Duhagan/Suhagan are located within the jurisdiction of Crushing Plant. However the boundaries of the tomb are properly made".***

2. We regard to Khairpur District, it is contended by Focal Person present on behalf of Deputy Commissioner, Khairpur contends that there are many permits for crushing plants; however 57 are functional in view of their survey and Archeology experts opinion **all paleothic ancient historical sites have been completely destroyed**

including historical cave due to these crushing plants allowed by Mines Department; however with regard to *Shahan Ja Khouh*, there are inhabitants having different diseases of chest due to Silicon dust particles. Opinion of committee constituted in this regard is as under:-

Observation of Committee

In this respect, it is informed that the studies on sites have been started from 1960 and the evidences of Archeological tools have been found mostly on western edge Rohri hills. (Which are in books) presently, they have been completely damaged due to Crushing plants. There was a cave located (30) KM from Khairpur Mir's along the right side of Rohri hill by pass but now there is no sign of that cave which had potential Archeological significance, now the cave have been completely demolished by the crushing machines. More ever, 90% of all documented sites have been destroyed and only 10% Archeological sites are available there, if timely measures are not taken then these 10% sites will completely be destroyed by these crushing machines. (It is opinion of chairperson of Archeological Department SALU, Khairpur).

Report Submitted by Dr. Muhammad Rafique Mangi Chest Specialist, KMC Civil Hospital Khairpur, which is as under:

As a member of above committee he has shared his observation about visit of Stone Crush Plants, i.e. visited 13 Functional sites and 7 non-functional sites, among all 20 sites. Only around one site named *Shahan ja khouh* people are living there, about 20 to 25 kacha homes are there in 2 kilometers of Radius, in all 20 to 25 homes and 60 to 70 people are living, they all belong to Bugti tribe. The tribe shared that, there are 03 patients of TB and all are getting TB treatment from Taluka Hospital kotdiji, 02 members are patients of Asthma, 02 members are patients of Hepatitis. More over to diagnose and to know the prevalence of Silicosis (an Intestinal Lung Disease) which can occur due to Silicon dust particles a detail prevalence study will be required.

Because of unavailability of water people do not prefer to live there”.

3. Perusal of above reflects that all crushing plants sites are highly valuable and rear Paleolithic period archaeological site in South Asia, which is significant and ancient stone tool industry as well as these plants are located near ancient paleo channels of Hakro River; besides these crushing plants in District Khirpur, it has come on record that these sites were studied in 1960 with archeological tools and found majority of them at western edge Rohri hills; however, they have been completely damaged due to crushing plants. It has also come on record that ancient tomb of Dohagan/Sohagan located at the site of crushing plant shows boundaries of tomb. It has also brought on record that Mines and Minerals Department in flagrant violation of Antiquities Act, 1975, issued NOCs to these crushing plants; however, they failed to seek requisite permissions in terms of permits granted by mines department. They were required to produce NOC from Industries Department as per the Factory Act, 1934. They were also

required to seek permission from Sindh Environmental Protection Agency (SEPA).

4. At this juncture, Mr. Sohail Ahmed Khoso, advocate for Respondent, while referring list of protected sites/monuments under Antiquities Act, 1975, contends that these sites are already declared as ancient properties under Ancient Monuments Preservation Act, 1904 and Antiquities Act, 1975 where crushing plants are working. Being relevant, declared sites are reproduced as under:-

Sukkur District			
92.	Shrine known as Styam-jo-Than	Taluka Rohri	
93.	Lakhian-jo-Daro Site	Site Area Sukkur, 20 K.M from Sukkur City	
94.	Stone Tool Factory (Prehistoric)	Rohri Hill range from Rohri to Sukkur	
95.	Mir Masum's Minar	Minara Road, Sukkur at Sukkur City	
96.	Mir Masum Shah tomb and Minar	Sukkur City	
97.	Cantilever Bridge	On Indus river Between Sukkur and Rohri	
98.	OM KanhiyaLal Cottage	Bunder Road, Rohri	
99.	Entire Area of Bakhar Fort including the Wall and Tomb of Hazrat Khatib Sadaruddin Muhammad	Between Rohri and Sukkur	
100.	Stone Tool Factory (East of Cement)	Rohri, District Sukkur	
District Khairpur			
101.	Naro Waro Dhorro Mound	Deh Naro Dhorro, Two miles east of Tando Masti, District Khairpur	
102.	Diji-ji-Takari	Near KotDiji Fort, District Khairpur	
103.	Fort at KotDiji	Deh Ghaunro, Taluka KotDiji, District Khairpur	

When the above aspect was controverted to the learned AAG and relevant officers present in Court including Deputy Director, Mines, they admitted that all crushing plants are working at the historical sites of Bakhar having history of 4000 years. They have also admitted that these antiquities sites/ properties have been damaged completely in District Khairpur whereas in Sukkur partially sites have been damaged due to blast(s) and excavation(s).

5. In above given circumstances, it is astonishing and dreadful to see these crushing plants are working without permission from relevant authorities on specific sites already declared/protected under Ancient Monuments Preservation Act, 1904 and Antiquities Act, 1975.

6. Since these properties were declared ancient despite of that Deputy Commissioner, Sukkur, issued permits to Mines and Mineral

department. Resultantly, history of Bakhar by these crushing plants despite of protection since more than 100 years through legislation have been destroyed by these crushing plants Mafias and officials, who issued permissions and who remained silent and have failed to protect the same on the contrary they are in league with regard to commission of this crime, hence this Court directs Chief Secretary, Sindh to constitute a committee to conduct inquiry and fix criminal liability upon delinquent persons including departmental action against them.

7. Suffice to say that it can *now* safely be concluded that culture is a *collective* thing and an *integral* part of life hence whenever a question of *preservation* of culture or otherwise is involved, the objection towards *legal character* would be of no legal value unless it is shown that person has some *sinister* motives; besides it would be added that whenever it comes to a *collective* thing then in a *civilized* society it becomes the duty and obligation of the State to step forward to *own* it. The *term* cultural *heritage* is much stronger than *culture* because once a thing is *declared* as '**cultural heritage**' it becomes quite obvious that there remains no *dispute* towards '**it being of all**' which *however* has to be protected and preserved by the State.

8. We hereby direct to Deputy Commissioners, Sukkur and Khairpur to stop all crushing plants from today and DIGP Sukkur shall ensure police patrolling over the cultural and antiquities areas and lodge FIR(s), if any illegality is committed despite of this direction.

9. Health Secretary, Government of Sindh, shall constitute a team of competent doctors having expertise in chest diseases and they shall establish camps nearby areas of crushing plants and provide complete treatment of various ailments of chest and respiratory system by taking special steps for inhabitants nearby crushing plants of District Sukkur and Khairpur Mirs.

10. Accordingly, we hereby issue show cause notices to Secretary (Culture), Government of Sindh and Deputy Commissioners (Sukkur and Khairpur) as to why contempt proceedings shall not be initiated against them as they have failed to discharge their duties diligently.

11. Chief Secretary, Sindh shall ensure inquiry is completed within one month as referred above. Particularly, Deputy Commissioner, Sukkur shall ensure that all crushing plants are removed from 13 sites as highlight in the report, which admittedly available on the sites already declared under Sindh Antiquities Act and Ancient Monuments Preservation Act. This exercise shall be completed within 15 days and shall protect these areas. Cultural department shall ensure protection of areas by providing fencing to save them in future.

Adjourned; to come up on **16.02.2023**; to be taken up at **11:00 a.m.** Office to facsimile copy of this order today to all concerned for compliance in its letter and spirit; besides copy of this order be provided to learned AAG for information and compliance. Additional Registrar shall ensure compliance.

JUDGE

JUDGE