

## IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

C. P. No. D – 1105 of 2018

Date of hearing	Order with signature of Judge
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**Before:**

**Mr. Justice Salahuddin Panhwar,  
Mr. Justice Abdul Mobeen Lakho**

1. For orders on CMA No.1377/2023 (Ex/A)
2. For orders on CMA No.1376/2023 (I Rule 10)
3. For orders on CMA No.1528/2023 (I Rule 10)
4. For orders on CMA No.1127/2023 (Ex/Application)
5. For orders on CMA No.1126/2009 (I Rule 10)
6. For hearing of CMA No.9918/2018 (C/A)
7. For hearing of CMA No.5944/2018 (S/A)
8. For hearing of main case

**Date of hearing : 02.02.2023, 16.02.2023 & 08.03.2023**

**Date of Judgment: 18.05.2023**

### APPEARANCE

Mr. Amir Ali Bhutto, Advocate for the petitioner  
Mr. Sohail Ahmed Khoso, Advocate for Respondents  
M/s. Ghulam Shabbir Shar and Zaheer Minhas, advocates for interveners  
Mr. Ashraf Ali Mirani, Law Officer.  
Mr. Shafi Muhammad Chandio Additional Advocate General, Mr. Noor Hassan Chandio, Addl. Advocate General, Mr. Ahmed Ali Shahani, Asst. Advocate General and Mehboob Ali Wassan, Assistant Advocate General alongwith Umar Farooq Bullo, Director General Mines and Minerals Department, Manzoor Ahmed Kanasro, Director General, Antiquities and Archeology Department, Government of Sindh, Dr. Nasumu Ghani Sahito, Secretary Culture, Tourism, Antiquities and Archives Department, Government of Sindh, Akhter Ali Qureshi, Commissioner SESSI, Muhammad Abid Panhwar, Deputy Director, SESSI, Sukkur, Qasid H. Mallah, Professor, Archeology Department, Shehzad Tahir Thaheem, DC Sukkur, Waseem, Assistant Commissioner, Rohri, Ghulam Sarwar, Regional Director on behalf of Secretary Labour, Ali Hassan Rajpar, Assistant Commissioner, Mines Labour Welfare, Majid Hameed, ADC-II, Ghotki.

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### JUDGEMENT

**Salahuddin Panhwar, J.**:-Through this petition, the petitioner has prayed for following relief(s):-

- a) That this Honourable Court may graciously be pleased to **declare** the **notification** dated: **16-4- 2018** for the grant of mining permit for lime stone over area of **200 acres** at/near **Shahan Ka Khuh** Taluka Nara District Khairpur in favour of private respondent (being a govt. servant) as null and void in the eye of law.
- b) To **direct** the official respondents No: 1 to 4 to entertain the application of the petitioner dated: 23-1-2018 & then after issue the notification for fresh grant of mining permit for lime stone near Shahan Ka Khuh Taluka Nara District Khairpur.

c) That this Honourable Court may be pleased to direct the **police** officials for providing **protection** to the **petitioner** and his villagers from the cruel hands of the private respondents and not to act contrary to law.

2. **Succinct** facts of the case as set out in the instant petition are that petitioner alongwith his family as well as other villagers are living at lime stone/ Jaro Bari site (JaraTakar) since his forefathers more than **100 years** and are indulging in cutting stones for earning *livelihood* for their families. It is next argued that the private **Respondent No.8** is a government official working as **Assistant** Line Man in **SEPCO** at Taluka Kotdiji, hence he is not entitled to get lease of the government land. That an application has been moved by the Petitioner to the Respondents with regard to grant of lease/ permit for *mining lime* stone near *Shahan-Ja-Khuh* District Khairpur, but was not responded; besides official Respondents have granted lease/permit to Respondent **No.8** for mining lime stone over an area of **345.78 acres** near *Shahan Ja Khuh*, which is illegal and liable to be *suspended* as private Respondent No.8, threatened them that he got lease for crushing mountain and they will be *dispossessed* as their whole village will be demolished, hence this petition.

3. At the outset, learned Counsel for the Petitioner contended that notification dated **16.04.2018**, (**impugned notification**) whereby Respondent No.8 was granted lease/permit for mining limestone is illegal and unlawful as Respondent No.8, being a government servant, is not entitled to get lease/permit; besides he does not *fulfill* the **criteria** set under the relevant laws. It is next contended that the petitioner, being resident of **Jaro Bari** site/ limestone (*Jara Takar*) since his forefathers, is in possession of permit for limestone since **1980** and in this regard, he moved the applications to the concerned authorities for grant/renewal of his lease/permit, but all efforts went in vain. Hence, the petitioner has no other remedy, but to approach this Court for suspension of the **impugned notification**; besides for grating/ renewal of permit/lease for mining limestone as he fulfills the criterion in view of relevant laws.

4. Learned Counsel representing the Respondent No.8 mainly contended that as per relevant laws, **impugned notification** issued by the Director, Mines and Minerals Department as the **Respondent No.8**, fulfills the criteria for granting lease/permit for mining limestone; however, the petitioner intends to get such lease/permit on *flimsy* grounds, hence this petition, being non-maintainable, is hereby dismissed.

5. We have considered the arguments advanced by learned Counsel for respective parties and have perused the material available on record.

6. Before proceeding with the earlier orders, it needs to reiterate here, that the crushers may be used to **reduce the size, or change the form, of waste materials, so they can be more easily disposed of or recycled**, or to reduce the size of a **solid mix** of raw materials (*as in rock ore*), so that the pieces of different composition can be *differentiated*; however, **crushing plants** installed are failed to act with the conditions laid down in the mining permit as lease holders have to prevent hazards to human or animal or life or the property of others and the environment as well. Besides, at the site there are activities of **dynamite blasting** and crushing the rocks, which causes respiratory disorders not only to human but animals as well, due to *inhalation* of fine dust particles, so also causing damages to the **historical sites declared as heritage sites**, which are *protected* under relevant laws, lowers agricultural yield as the dust covers the leaf surface of the plants and poor visibility near the crushers. Nevertheless, stone crushing was known to affect both surface and ground water regime.

7. Pursuance to order dated **16.02.2023**, the Director General, Mines & Minerals Development Department, Sindh Karachi, files statement, wherein it has been mentioned that in compliance with the directions contained in **para-12** of aforesaid order, the draft **Rules “The Sindh Mines and Minerals Governance Rules 2023”** has been forwarded for vetting to the Law Department. In this regard a letter dated 27<sup>th</sup> February, 2023 has been addressed to the **Secretary** to Government of Sindh, Law and Parliamentary Affairs and Criminal Prosecution Department Sindh Karachi, and annexed. Thus, the Secretary law department shall ensure vetting of the draft rules submitted by the Mines and Minerals department in line of relevant laws including, **The Environmental Protection Agency Act, 1997, The Pakistan Environmental Protection Act 1997**, i.e **National Environmental Quality Standards (NEQS)** and international protocols settled by the international organizations i.e United Nations, UNESCO. Needless to say that the Pakistan being signatory of various UN Conventions including “Convention concerning the protection of the World Cultural and Natural Heritage 1976<sup>1</sup>, and certain rules are framed to rules and principals to governing the protected areas, resources and heritage<sup>2</sup> i.e Rule 136 to 141 which says that the area, land, and its resources are the

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<sup>1</sup> <https://www.unesco.org/en/countries/pk/conventions>

<sup>2</sup> [https://www.un.org/depts/los/convention\\_agreements/texts/unclos/part11-2.htm](https://www.un.org/depts/los/convention_agreements/texts/unclos/part11-2.htm)

common heritage of mankind and the same are bestowed in humans as a whole, on whose behalf the Authority shall act, even the State should not alienate, or lease particularly the raw materials, extracted, mined therefrom, except in accordance the law and rules, regulations and procedures of the Authority. The State is responsible to protect, preserve and save these areas from damage and all the activities ought to be for the benefit of the human beings without discrimination as the right to life is not restrained to biological physical life but more than and as enlightened the scope of Article 09 of the Constitution of Pakistan by the Supreme Court of Pakistan in the case of **Shehla Zia Vs WAPDA** PLD 1994 SC 693<sup>3</sup>

*Article 9 of the Constitution provides that no person shall be deprived of life or liberty save in accordance with law. **The word life is very significant as it covers all facts of human existence. The word life has not been defined in the Constitution but it does not mean nor can be restricted only to the vegetative or animal life or mere existence from conception to death. Life includes all such amenities and facilities which a person born in a free country is entitled to enjoy with dignity, legally and constitutionally.** A person is entitled to protection of law from being exposed to hazards of electromagnetic fields or any other such hazards which may be due to installation and construction of any grid station, any factory, power station or such like installations. **Under the common law a person whose right of easement, property or health is adversely affected by any act of omission or commission of a third person in the neighbourhood or at a far-off place, he is entitled to seek an injunction and also claim damages, but the Constitutional rights are higher than the legal rights conferred by law be it municipal law or the common law.** Such a danger as depicted, the possibility of which cannot be excluded, is bound to affect a large number of people who may suffer from it unknowingly because of lack of awareness, information and education and also because such sufferance is silent and fatal and most of the people who would be residing near, under or at a dangers distance of the grid station or such installation do not know that they are facing any risk or are likely to suffer by such risk. Therefore, Article 184 can be invoked because a large number of citizens throughout the country cannot make such representation and may not like to make it due to ignorance, poverty and disability. Only some conscientious citizens aware of their rights and the possibility of danger come forward.*

Therefore, Director General, Mines and Minerals shall ensure that **no permit/license** for crushing plants is issued *except* fulfilment of the criterion contained under draft rules as mentioned above and the **committees** comprised in view of the **amended rules**, who shall examine all licenses /permits issued to different crushing plants for mining purposes and if any licenses is not fulfilled the criterion of present rules; that shall be considered as cancelled. Suffice it to say, that the **Rule 133** of the amended

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<sup>3</sup> See Page 712 part K

rules, with regard to contribute in corporate Social responsibility shall be complied with in its letter and spirit. Being relevant, **Rule 133** is reproduced as under:-

“133. Corporate Social Responsibilities (CSR): (1) All the large and small scale mineral title or permit holders shall be responsible to pay prescribed amount of CSR fund in the mining area for the welfare of local inhabitants, which include infrastructure development, education, health, social services, environmental up-gradation, beautification, uplifting socio-economic conditions in order to improve quality life and make the mineral title holders responsible to the rights of local inhabitants in the prescribed manner the Government of Sindh may determine from time to time by crafting a CSR policy accordingly.

2) The Mining companies and mineral title/permit holders would contribute an amount as determined by the Government of Sindh, annually, towards the social uplift of the local population through establishment and self-sustained maintenance of community improvement projects and would participate in Government efforts to sustain the development level of mineral bearing areas on depletion of the mineral resource. The Government of Sindh will collect this contribution and spend on the welfare projects prepared in consultation with local representatives of the area/region. Out of such contributions, training and employment opportunities shall be provided to the local employees by foreign and national, mineral exploration and production companies in Sindh.

3). There shall be some arrangements (production bonus) out of the production slab of minerals to be determined through the policy mechanism for the welfare of inhabitants of the mining areas or the proximity areas of the district concerned to be levied by the Government of Sindh through mines and mineral development department.

Besides, Director General shall ensure compliance of paragraph No.3 of order dated 16.2.2023 which reads as under:-

3. It is pertinent to mention that merely providing such class will not serve the purpose, unless those licenses are examined and if same are not falling within criterion at the sites, those mines shall be stopped. DG Mines and Minerals Department also refers Rule 134, which speaks as under:-

“134. Restriction on grant of area for Mining purpose and Stone Crushing activity: (1) There shall be a complete ban on the mining and stone crushing activity in any historical / religious / heritage / Culture /public places including old archeological/historical hills/mountains having historical identity etc. or any vital installation, irrespective of sites of mentioned areas / locations.

2. Subject to sub rule (1) the already granted mineral title and mineral permits shall stand cancelled.

3. Any person who shall carry out illegal mining directly or indirectly which is detrimental to any historical /religious /heritage /cultural /public place or any vital installation shall be punished with an imprisonment which may extend to six month or a fine of rupees up to five hundred thousand or with both”.

8. However, the **modification** as mentioned in paragraph No.8 to the extent that all crushing plants in view of new prescribed rules shall deemed to be sealed until demarcation. It is made clear that in case of operation of the crushing plant in future, the licenses of the plants will be issued after observing all the legal formalities and the crushing site would be at the distance of at least one-kilometer radius from the historical site subject to

NOC Environmental Protection Agency (SEPA). Besides the crushing plants shall adopt wet crushing technology and dust collectors. The Deputy Commissioners, Sukkur, Khairpur and Ghotki shall ensure strict compliance without fail and if any owner or companies found involved in any illegality or issued license without observing the legal formalities, delinquent officer(s) shall expose themselves for contempt of court proceedings. Besides, safety measures shall be adopted by the owners of crushing plants through crushing technology and dust collectors.

9. Pursuance to order dated 16.2.2023, Secretary (Culture, Tourism and Archives Department Karachi has filed the compliance report in view of the directions contained in paragraph No.6 of above referred order. Being relevant same is reproduced as under:-

In compliance of Order dated 16-02-2023 passed in C.P.No: D-1105 of 2018, the Secretary Culture, Tourism, Antiquities & Archives Department, Sindh along with Director Archeology Sindh, Karachi and Deputy Director Archeology Sukkur Region visited Archeological/Heritage sites and report thereof is submitted as under:

1. Sateen-Jo-Aastan, Rohri District Sukkur.

Sateen-Jo-Aastan is located on the left bank of the Indus River near Rohri, Sindh, Pakistan. The place was named as "safae-e-safa" built by Mir Abu al Qasim Namkeen when he was the Governor of the Bakhar. He used this great scenic place as cultural gathering place, particularly in full moon nights. Abu al Qasim died in 1018 A.H and buried here.

According to folklore, seven beautiful unmarried women resided here and veiled (purdah) themselves from all males, also referred to as sattei. A Raja at that time came to know about their beauty and ordered his people to bring those seven sisters in front of him. When the seven sisters came to know about Raja's nefarious designs they became scared and prayed to God for the protection of their chastity. Suddenly, the earth turned around and the sisters disappeared in the cave. The folklore has its origins in the Hindu ritual of sati, where widows burnt themselves on their dead husband's pyre.

**Findings:** There is serious threat of encroachment which needs to be stopped by District Administration. Demarcation is required. No crushing plant was found there and no mining lease is reported.

2. Lakhian-Jo-Daro Sukkur.

Ruins of ancient settlement are located in north of Sukkur city at a distance of app 3 km from main town. Archaeological mound is surrounded from all sides by Industrial units of Sindh Industrial Trending Estate. Sukkur-Shikarpur road is in west of remains about 600 m distance while Pakola drinks factory is on western edge of mound Sukkur Jacobabad railway line is in west about one & half km. The ruins are contemporary to Mohen-Jo-Daro.

**Findings:** This site requires excavation for further studies. This site has been allotted by the S.I.T.E limited to the industrialist resulting into the litigation Civil Suit No: 343/2017 is pending in the court of 3rd Senior Civil Judge, Session Court Sukkur. No crushing plant was found there and no mining lease is reported.

3. Stone Tool Factory, Sukkur

4. Stone Tool Factory (East of Cement Factory), Sukkur

Archaeological site is located in the east of HurKot village about 300m on top of mound. Rohri cement factory is about 1km west of site, Pathan Goth is about 300m in west of site. Shah Maqsood shrine is in south of site about 1.5km. Rohri Loco shed Railway is about 1.5 km in north of site. Rohri town is about 3km in west and Sukkur city about 6km also in same direction.

#### Description

Remains of Stone tool workshop were discovered on the surface of top of hills near HurKot. Small number of stone tools are scattered everywhere. Site is divided in small workshop areas and stone tools were transported from Rohri hill to different Indus valley sites during Harrapan period. Only chert blade and cores are found in reasonable quantity (Source: The Lost Glory of Sukkur by Syed Shakir Ali Shah)

#### Findings

This site was declared as protected Antiquity on 04th April 1993. However, mining leases since 90s and crush plants have damaged the sites. In this regard, reportedly, Dr. Nilofer Shaikh Chairperson Department of Archaeology, Shah Abdul Latif University, Khairpur wrote letter to Deputy Commissioners Sukkur and Khairpur to stop the quarrying of lime stone from the area of Archaeological sites dated 27-07-2000 (Annexure-A) and she also wrote letter to Assistant Director Mines and Mineral Sukkur dated 17-02-2005 (Annexure-B). Despite the letters, mining activities could not be stopped.

### 5. Mir Masoom Shah Minar, Sukkur

The minaret of Ali Abuzar is the most conspicuous structure of Sukkur town, dating back to 1607 during the Mughal Abuzar Empire in the Indian subcontinent. Masum Shah was the governor of Mughal Emperor Akbar who appointed him as the Nawab of Sukkur. The minaret was built in about 1607 the monument, built of red brick, is more or less conical in shape, slightly off the perpendicular and surmounted by a dome to which an internal stone staircase gives an access. It is about 26 metres in circumference and has 84 steps to the top. It is about 31 metres in height and can be seen from miles away. This minaret is believed to have been used as a watch tower.

#### Findings:

This property is under administrative control of Auqaf Department, Sindh and no threat was observed to the Minar (Tower). No crushing plant was found there and no mining lease is reported.

### 6. Mir Masoom Shah Tomb Sukkur

Mir Muhammad Masoom Shah Bakhri also known as Syed Nizamuddin Mir Muhammad Masoom Shah was a sixteenth-century Sindh Muslim historian, physician and pharmacist from Bakhar, Sindh. He is known for writing a history of Sindh, Tarikh-e-Masumi. He was also a trusted lieutenant of the Mughal emperor Akbar.

#### Findings

This property is under administrative control of Auqaf Department, Sindh and no threat was observed to the Tomb. No crushing plant was found there and no mining lease is reported.

### 7. Cantilever / Lansdowne Bridge Sukkur

An ingeniously designed Lansdowne railway bridge on the River Indus, was completed and opened to traffic on March 27, 1889 and hence it became one of the longest rigid girder bridges in the world. The material was imported from abroad and it began reaching the site in 1879. The bridge was named after Lora Lansdowne, then Governor General. It is notified as protected antiquity dated 09th March 2007 under Antiquities Act 1975 (Annexure-C).

#### Findings:

This bridge needs conservation and regular monitoring. The Irrigation Department along with Works & Services/NHA/ Pakistan Railway can form consortium for maintenance of this bridge. No crushing plant was found there and no mining lease is reported.

8. **Kanayalal Cottage, Sukkur**

Kanayalal Cottage, a seven storeyed building facing Landsdowne bridge is one of the most beautiful building of twin towns of Sukkur and Rohri. Some portions of the building have been left unused and redundant.

Kanayalal, wealthy Hindu merchant built this multi-storied building on the left bank of the river, soon after the opening of Sukkur Barrage. Each floor has a balcony with elegant wood work.

Following the departure of its owner to India accompanying the mass exodus of 1947, the building fell vacant and remained without new occupants for many years. It is regarded as the tallest building of Rohri town. From its top, one is able to have glimpse of the entire town. The building is connected through spiral stairs.

**Findings:** Two shops have been altered along with main gate. This building requires conservation and maintenance by the owners with the technical support of Antiquities & Archaeology Wing of Culture, Tourism, Antiquities and Archives Department, Sindh. No crushing plant was found there and no mining lease is reported.

9. **Bakhar Fort, Sukkur**

Bukkur Fort is an island located in Rohri, Sukkur District, Pakistan. Named Bukkur by Sayyid Muhammad Al-Makki in the seventh century of Hijri, this island is a limestone rock, oval in shape, 800 yards (730 m) long by 300 yards (270 m) wide, and about 25 feet (7.6 m) in height. Presently, it is possession of Pakistan Army.

**Findings:** Heavy rains have damaged the walls of the fort which require restoration. No crushing plant was found there and no mining lease is reported.

10. **Naro Waro Dhoro Mound, Khairpur.**

A large rolling mound of sand measuring 2500 by 1500 feet, which rises about 25 feet above the surrounding level is situated about 12 miles south-west of Khairpur town and 6miles north of Kot Diji. Its surface is littered with potsherds and other minor objects of typical Harappan Culture.

**Findings:** This site requires excavation for further studies and encroachment is a serious threat to the site for which demarcation is required for the removal of encroachment. No crushing plant was found there and no mining lease is reported.

11. **Diji Ji Takri, Khairpur**

KotDiji mound is situated 23 km south of Khairpur city, is the earliest known ruins of the civilization of the Indus Valley. The excavations conducted by Dr. F.A Khan at KotDiji in 1958 proved that the alien pottery below the massive defenses at Harappa in fact belonged to a distinct pre-Harappan culture which certainly inspired and influenced the Harappan culture.

**Findings:** This site requires excavation for further study. No crushing plant was found there and no mining lease is reported.

12. **Kot Diji Fort, Khairpur**

Kot Diji Fon, is an 18th-century Talpur-era fort located in the town of Kot Diji in Khairpur District. This Fort was built by Mir Sohrab Khan Talpur between 1785 and 1795. This fort made from kiln baked bricks a top about 110 feet high semi-circular lime stone hillock.

**Findings:** Heavy rains have damaged the walls of fort at 26 points which require conservation. There is encroachment threat to the foit on eastern side. It was reported by the staff that blasting for mining is made at the distance of 2-3 km from the fort, creating tremors resulting into cracking of walls of fort. No crushing plant was found there and no mining lease is reported.

13. **Momal-Ji-Mari, Ghotki**

The site is famous as a palace of Hindu girl named "Moomal. In the folk stories of Sindh the name of Moomal Rani, daughter of Raja Nind is very famous. Raja Nind who belong to Gujar Rajput tribe rule over upper Sindh with its capital at Mirpur Mathelo during 15th century A.D. as per published records Raja Nind had nine daughters viz Soomal, Moomal, Sahjan, Sodi, Maram, Mardan, Kood, Kawandhi and Markhi, while few researchers have



the opinion that there were only two daughters namely Moomal and Soomal. Among all daughters Moomal was famous for her ability and beauty.

The surface collection from the site reveals the importance of these settlement which consisting copper coins, T.C Pots, T.C figurines, Iron fragments and other miscellaneous artifacts and planned structural remains.

**Findings:** It requires excavation for further studies. Demarcation of the site is also required to stop the encroachment. No crushing plant was found there and no mining lease is reported

#### 14. **Vijnot-Jo-Daro, Ghotki**

Vijnot is a historical site is located in Dahrki. Vijnot site has resemblance to Mohen-Jo-Daro [Indus Civilization]. It is noted that many ancient things are found and collected by locals. After rain, ancient things got appeared and people collected them to sell in market.

**Findings:** Due to lack of security, the site could not be visited by Secretary Culture, Tourism, Antiquities & Archives Department, Sindh along with Director Archaeology Karachi. However, Deputy Director Archaeology Sukkur along with Additional Deputy Commissioner I Ghotki visited the site and found out that the site is facing serious threat of illegal digging which is going unchecked due to poor law and order situation there. No crushing plant was found there and no mining lease is reported.

The field visit photographs are enclosed herewith as (Annexure-D) With regards to cultural activities, following are planned subject to vacation of stay by the High Court of Sindh, Bench Sukkur.

- I. Centenary celebration of Mohen-Jo-Daro at Paris-France, Mohen-Jo-Daro, Karachi and Islamabad.
- II. Urs of Hazrat Lal Shahbaz Qalandar (R.A) at Sehwan, Jamshoro.
- III. Urs of Hazrat Sachal Sarmast (R.A.) at Daraza Shairf, Khairpur Mir's
- IV. Urs of Hazrat Qadir Bux Bedil at Rohri, Sukkur
- V. Urs of Hazrat Pir Mian Essa Taluka Gambat, Khaimur Mir's
- VI. Death Anniversary of Dr. Atta Muhammad Hami at Khairpur
- VII. Participation in Pakistan Day Parade on 23rd March at Islamabad
- VIII. Seminar on Morirro - The Founder of Karachi at Karachi
- IX. Larkana Literature Festival at Larkana
- X. Sukkur Literature Festival at Sukkur
- XI. Mirpurkhas Literature Festival at Mirpurkhas
- XII. Rashid Morai Literary Conference & Mushairo at Naushahro Feroze
- XIII. Women's Art Exhibition at Karachi
- XIV. Calligraphy Exhibition at Hyderabad
- XV. Mahfil-e-Sama at Karachi
- XVI. Sufi Gala at Karachi
- XVII. Sindh Sculpture Exhibition at Karachi
- XVIII. Handicrafts Exhibition at Hyderabad.

10. In compliance of the directions contained in paragraphs No. 7,8 and 9 of order dated 16.2.2023, the Deputy Commissioner Sukkur submitted compliance report, wherein it has been *mentioned* that a **committee** has

been **notified** vide notification dated 22<sup>nd</sup> February, 2023 along with the terms of reference. Being conducive, same is reproduced as under:-

**NOTIFICATION**

In Compliance to the Para No.07 and 08 passed by the Honourable High Court of Sindh Bench at Sukkur vide order dated 16.02.2023 in C.P No.D-1105 of 2018. A committee is hereby constituted with the following members:-

01. Deputy Commissioner Sukkur
02. Assistant Commissioner Rohri
03. Survey Superintendent Khairpur
04. Deputy Director Culture Department Sukkur
05. Deputy Director Archeology Sukkur
06. Assistant Director Environmental Protection Agency Sukkur
07. Deputy Director Mines and Minerals Department Sukkur

**TERMS OF REFERENCE (TORs) ARE AS UNDER:-**

1. All members of committee shall jointly visit the heritage sites falling in District Sukkur especially where crushing plants are operating.
2. Committee. members shall ensure that all historical sites falling in District Sukkur are not destroyed in any manner.
3. Committee members shall submit the present status of all the sites especially status of Bakhar Fort.
4. Survey Superintendent Khairpur alongwith his technical team in coordination with Assistant Commissioner Taluka Rohri and Mukhtiarkar (Revenue) Taluka Rohari shall demarcate the heritage sites and shall submit report to Deputy Commissioner Office Sukkur for further submission to the Honourable High Court Sindh Bench at Sukkur.
  - (a) Representative of Archeology Department, Culture Department and Antiquities Department shall provide list and exact position/coordination of Heritage and Cultural sites to the survey Superintendent team for demarcation purpose and to the Deputy Commissioner office Sukkur for information
  - (b) Committee members shall ensure that after demarcation of Heritage, Cultural and historical sites, all crushing sites must be placed at a distance of one Kilo meters in radius.
  - (c) All owners and operators of crushing plants subject to the compliance of all directions given by the Honourable High Court Sindh Bench at Sukkur after fulfilling all codal formalities shall adopt wet crushing technology and dust collectors.

11. In view of aforesaid **notification**, a meeting was held and subsequently, the **committee** members visited heritage sites and opined as under:-

Sr. No.	Name of Heritage Site	Remarks
01.	Shrine Known as Styan-Jo-Tham Rohri	No crushing plant on site
02.	Lakhiyan-Jo-Daro New Sukkur	No crushing plant on site
03.	Mir Masum Shah Minar and Tomb City Sukkur	No crushing plant on site
04.	Cantilever Bridge Rohri	No crushing plant on site
05.	OM Kaniya Lal Cottage Rohri	No crushing plant on site
06.	Entire area of Bukhar Fort including the wall and Tomb of Hazrat Khatib Sadaruddin Shah Rohri	No crushing plant on site, currently under the occupation of Pakistan Army
07.	Stone Tool Factory (East of Cement) Rohri	Apparently crushing plants are 200-400 feet's away from stone factory as observed by the committee. Though demarcation has not yet done due to non-provision of exact location by the Archeology Authorities.
08.	Stone tone Factory (Pre-Historic) Rohri	

12. With regard to **registration** of labour workers with **SESSI**, the Deputy Commissioner, Sukkur has written letters to the **Commissioner** **SESSI** and Regional Director (**EOBI**) Sukkur, which are annexed with the **compliance** report. Deputy Commissioner, Sukkur shall ensure that no worker shall remain **unregistered**.

13. Deputy Commissioner, Ghotki has also submitted compliance report in view of above referred **paragraphs** of order dated **16.02.2023**, wherein he has submitted, that there are **two declared/notified Archaeological** sites by the Culture, Tourism and Antiquities Department, the Government of Sindh, in Districts **Ghotki** i.e. **Moomal Ji Marhi** Taluka Ghotki and **Venjhot Jo Darho** Taluka Daharki. Whereas, during visit, it was observed that **no mining** and stone crushing activity is being carried out in or adjacent to these **two sites**; besides regarding registration of the workers with **SESSI**, it has been submitted, that there were no crushing workers. In compliance of paragraphs No.4, 7 & 8 of earlier order dated **16.02.2023**, Deputy Commissioner Khairpur has also submitted compliance report. Being relevant, same is reproduced as under;-

**COMPLIANCE REPORT.**

In compliance of the order dated, 26.02.2023 passed in the above petition by this Honourable Court, it is respectfully submitted as under:

i. That, in the compliance of Para No: 4 of the order, the crushing plants owners have been directed to ensure registration of the employees who are working at their crushing plants. The employee shall be registered in **SESSI**, **EOBI** and **Factories Act** in the light of this Honourable Courts' order in letter and spirit. .

ii. That, in compliance of Para No: 7 of the order, the Committee has been constituted with directions to re-inspect the sites and ensure that historical sites are not destroyed in any manner, the Committee shall focus and submit monthly report to this office under the supervision of the Additional Deputy Commissioner-I, Khairpur, Survey Superintendent Khairpur, Representative of Archeology Department, Khairpur, Representative of Culture Department and Representative of Mines & Mineral Department, Khairpur (member) vide this office order No: DC/JB/-35/2023, dated, 20.02.2023 copy whereof is (annexed at annexure "B").

iii. That, in response to Para No: 8, Committee has been constituted and members are Assistant Commissioner Nara, Survey Superintendent Sukkur Division at Khairpur, Director, (Archeology) Shah Abdul Latif University, Khairpur, and Deputy Director, Mines & Minerals Development Department Khairpur. The Committee has visited the crushing plant sites and measured the distance of the plant from the archeological sites.

iv. That, in compliance of Para No: 9 of the order, the undersigned will visit the crushing plants working in the District Khairpur on monthly basis regularly and submit such compliance reports before this Honourable Court".

14. Learned Counsel representing the **owners** of the crushing plants, in compliance of paragraph-5 of **order** dated 16.02.2023, filed a statement annexed with certain letters issued by Deputy Director, SESSI and Regional Director EOBI regarding registration of their workers with SESSI and EOBI and submits that workers of their companies have been registered with SESSI and EOBI. Besides, in compliance thereof, Secretary Labour & HR Department, Government of Sindh, has filed statement, which is reproduced as under:-

STATEMENT

That the Hon'ble High Court of Sindh, Bench at Sukkur passed following order in C.P No.D-1105 of 2018 in the hearing on 16.02.2023.

"Counsel of owners of crushing plants undertake that they will submit details of employees on the next hearing with assurance for taking further steps by them in SESSI, EOBI and Factories Act, beside contend that they will seek permission Act from the Labour Department Concerned Secretary Labour shall be in attendance and submit details of permission, if granted and criterion to verify the sites with regard to permits and violation".

That it is submitted that the above operative para of the order refers to the following two actions to be taken by the Administrative Department of Labour & HR, Sindh.

- (a) Issue permits to owners of the stone crushing units (SCU) and.
  - (b) (Registration under Sindh Factories Act, 2015) and violation if any.
- Comments on these two points are submitted as under:

(a) Permits/Registration

That the Department of Labour & HR, Sindh does not issue permits to the owners of the Industrial or commercial establishments. However, the law requires the owners shall get their respective factories and the commercial establishments registered with the Directorate General of Labour of Labour Department under section II of the Sindh Factories Act, 2015 and Section 24 of the Sindh Shops & Commercial Establishments Act 2015, respectively, before commencing operation. However, it may be pertinent to mention that the 'mines' are excluded from the definition of "factory" as is provided under section 2(e) of the Sindh Factories Act 2015 (Annex-I). Therefore, the provisions of the Sindh Factories Act 2015 are not applicable to the establishments that are declared as 'mines' in the Mines Act, 1923.

That however, if the Labour Department is legally mandated to issue permits to the owners of the Stone crushing plants, it may cover them -4 under section II of the Sindh Factories Act, 2015 (Registration of Factories).

- (b) Devise criterion for verification of sites of SCU with regard to permits and violations:

That the procedure including the criteria of the requirements for the registration of factories is already provided under section I 1 of the Sindh Factories Act 2015 and the Sindh Factories Rules 2021.

That the violations of law committed by the owners, occupiers, managers or the employers in factories or the commercial establishments are dealt with in accordance with the provisions of law and the standing administrative directives. The legal procedure in above respect is provided elaborately under the Sindh Factories Act 2015 and the Sindh Factories Rules 2021.

That the above provisions of law are implemented through a team of 'Inspectors' declared as such under section 12 of the Sindh Factories Act 2015. The violations of the law are brought before the Sindh Labour Courts (SLC) as is established under section 45 of the Sindh Industrial Relations Act, 2013".

15. With regard to compliance of paragraph No.11 of order dated 16.02.2023, Assistant Commissioner, Mines Labour Welfare Organization

has provided complete breakup of welfare amount received for last five years and utilization thereof for the welfare of the workers in the entire area of Sindh Province, which is taken on record.

16. With regard to the registration of the workers of the crushing plants, Commissioner **SESSI** has filed a **compliance** report, wherein he has submitted that the **workers** of the **crushing** plants have been **registered** by concerned **Regional Directors** of Sukkur, Hyderabad, Kotri and Landhi, respectively, and now there is no worker remaining to be registered. In case, any crushing plant ought to be *established*, their workers will be registered forthwith. **Commissioner** SESSI shall ensure registration of the workers, if any, still remains without fail and ensure, that if any crushing plant establishes, their workers will be registered as per rules without any delay.

17. That procedure regarding **installation** of a crushing units/plants nearly at all the stone quarries in Sindh is given by this Court vide order dated 20<sup>th</sup> April, 2021 in the case of **Rindz Mari Vs. Province of Sindh through Secretary Mines and Mineral Development Department, Karachi and 08 others** (2021 CLD 1195). Being relevant, paragraph-10 of the same is reproduced as under:-

“10. **Now we would like to address the installation of crushing units nearly at all the stone quarries in Sindh.** These mechanized crushers crushed the huge rocks into the aggregate of small fragments locally known as crush and used as an important building material. These fragments of rocks are made with mechanized crushers, which produce a lot of air and noise pollution while working. It is unfortunate indeed that these crushers are usually installed within or nearby the stone quarries and on some within the vicinity of a highway or human settlements. Through wet-crushing, the dust produced could be minimized while the manufacturers of these crushers have also introduced different types of Dust Collectors to be attached with the crushing machines so that pollutants may not spread in the atmosphere but in the country, all these crushing machines are being used without Dust Collector installed or attached with them. Besides, **it is necessary that before allocating a site for stone quarry, and initial Environment Examination (IEE) and subsequently an Environment Impact Assessment (EIA) should be done by SEPA after the public hearing but the said procedure has never been followed. It is also necessary that the area allocated to the operators of quarries should be properly demarcated for which the revenue authorities should also be involved and without NOC from the Board of Revenue, no new quarry for surface mineral should be given to prospective operators. Consequently, we crystalized the entire matter in the following terms.**

i. The permit/license issued in favour of respondent No.9 by the Mines Department regarding the limestone quarry adjacent to

*the village of the petitioners is set aside by declaring that the same was established without fulfilling the necessary codal formalities.*

- ii. *The crushing machine/plant functioning at or nearby the said quarry is also declared as illegal, as the same falls under the definition of a factory and it was also working without proper permission obtained according to sections 5 and 5-A of the Factories Act, 1984, as such the respondent No.9 is directed to remove the same **within 15 days** and in case of failure the Deputy Commissioners concerned is directed to remove the same on the expenses of respondent No.9.*
- iii. **The Deputy Commissioners of all the districts in Sindh are directed to issue notices to all the crushing plants and machines installed and operating in their jurisdiction within or nearby a some quarry and with directions to get relevant permits/licenses issued by the relevant department of the ministry of industries within three months thereafter no crushing plant/machine should be allowed to function without permit and license and all such plants and machines should be removed by district administration.**
- iv. *Nevertheless, installation of such crushers or crushing plants may only be done keeping in view of the requirements of sustainable development as envisaged under the **Sindh Environmental Protection Act, 2014** and rules made thereunder but under the permits/licenses issued as provided **under sections 5 and 5-A of the Factories Act, 1934** after **fulfilling all the codal formalities, rules and regulations.***
- v. *The Government of Sindh is **directed** to issue directions/notification under section 5 read with **Section 16 of the Factories Act, 1934** for making it mandatory that all the Crusher, Crushing Machines, **Crushing Plants operating/Operating within the province of Sindh should make proper arrangements for removing or minimizing dust by using wet-crushing technology or installing proper Dust Catcher within a period of six months.***
- vi. *The Deputy Commissioners of all the Districts in Sindh are **directed** to submit a **list of all the surface minerals mines and quarries in their districts to the Director-General, Sindh Environment Protection Agency (SEPA), who shall conduct Environment Impact Assessment and furnish a report to Deputy Commissioner and Mines Department with suggestion regarding the operation of such mines and quarries.** In case of a negative EIA, the Deputy Commissioners are directed to close such activities immediately. The Mines Department is directed to cooperate with the Deputy Commissioner and SEPA.*
- vii. *The Mines department is directed to allocate the surface minerals mining permits to prospective mine and quarry operators for surface minerals by auction while all those mining permits for stone quarries and mines pertaining to any sorts of surface minerals should be canceled, if not allocated to mines and quarry operations without any open auction or bit.*

viii. *The Mines department is directed to get the area of Mines and Quarries of surface mining demarcate with the help and assistance of Revenue department while Deputy Commissioners are directed to make sure that no mine or quarry operator is allowed to operate beyond allocated areas.*

*[Emphasis added]*

18. Had, the above candid directions have been complied with, in its later in spirit, further proceedings would have not been warranted, rather the situation has become more aggravated, therefore, the concern quarters are liable to be prosecuted owing to their careless, contemptuous attituded. Be, that as it may, the mining activity of **limestone** is limited to the upper surface of the earth for which no deeper excavation and proper formations of underground mines are needed. Although, limestone is not a precious or semi-precious stone; yet the same is not a valueless item. It is an important raw material for cement manufacturing, while it is also used in some other industries. We consider that when gravels and other stones are available for concrete aggregates, the Mining Department should be careful while giving leases and preference should be given to limestone mining for industrial purposes; besides it does not require any exploration as the limestone can easily be detected and estimated without applying any sophisticated equipment.

19. Moreover, the power to grant Exploration License and its renewal in respect of "**Granite**" is governed by the Sindh Mining Concession (Granite) Order, 2007 read with The Regulation of Mines and Oil fields and Mineral Development (Government Control) Act, 1948 & Sindh Mining Concession Rules 2002 (Now the Sindh Mines and Minerals Governance Rules 2023). Thus, while grant or renewing Exploration License, the aforesaid Laws/Rules/Order shall be strictly followed especially by inviting **competitive** bids through **publication** newspapers having wide circulation.

20. **Besides**, this Court in CP.No.D-133 of 2015 by judgment dated 27.09.2017 directed that "*while full force of the 1975 Act and other applicable laws be deployed to preserve the protected antiquities subject matter of the Notification dated 23.03.2007, but all further acts or proceedings taken by the respondent pursuant to the Notification issued under section 10 shall be conducted and carried out in strict compliance of the provisions of said 1975*

*Act and if any case of a compensation is made by the land owners, it should also be dealt with under the provisions of the said 1975 Act.”*

21. Perusal of above reflects that these directions were passed while deciding the petition pertaining to the **Lakhan-jo-Daro** and in similar way this Court in petition No.D-2973 of 2016, while dealing with same **nature case** i.e. **heritage** issue observed are held that:-

“12. There had been number of enactments for preserving and protecting the antiquates etc, but we would not discuss other laws enacted from time to time for preservation of *antiquates* etc but will confine to **Sindh Cultural Heritage (preservation) Act, 1994** being involved in the petitions. The *preamble* of an enactment is always *important* for understanding the *object*, thereof hence let's have a direct reference to preamble of the Act which reads as:-

“**Preamble.** Whereas it is expedient to preserve and protect ancient places and objects of architectural, historical, archaeological, artistic, ethonological, anthropological and national interest in the Province of Sindh.”

From above, it is quite obvious that it is *aimed* to preserve and protect ancient places as well objects of architectural, historical, archaeological, artistic, ethnological, anthropological and national interest. Here, we would insist that the '**Sindh**' has got its own *old* history (**Indus civilization**) hence the historical importance of this *land* (Sindh) cannot be denied. It is known of its own *culture* which is not limited to *religion* alone but more than that. It is *known* of typical way of living, *ancient* places, including **Mohin-jo-Daro**; artistic works in shape of *writing*. *Shrines* describing typical *features* of architectural touch and history; typically *built* buildings with *classic* touch of fine-arts as well *architectural* which are witnesses of richness of our *ancestors* in all fields of life. The soil of Sindh is *rich* in having objects of *archaeology*, architecture, historic etc, but as already said that when it comes to a *collective* thing, it is pertinent to mention that this is responsibility of the State to determine and declare, notify the status of a *particular* thing as **protected property** or otherwise *within* the criterion. It may also be added that *cultural heritage* being a matter of *collective-nature* hence **despite the wishes of individuals to have every single loved thing to be notified would not matter unless it is so declared notified by the quarter concerned as per Commandment of law.** At this point, it would be relevant to refer the term “**protected heritage**”, which per Section 2(vi) of the Act is:

“vi. **protected heritage**” means any premises or objects of archaeological, architectural, historical, cultural or national value declared as such by Government by notification that would include the land externally appurtenant such thereto and the outer walls thereof;

From above, it is quite obvious that it is the Government which has the *competence* and *jurisdiction* to notify and premises or objects as '**protected heritage**' however, since such premises or objects may be owned by an *individual* therefore, the Act itself provides



mechanism to file objection within one month from date of publication thereof (notification). However, as per section 6(4) of the Act, a notification under this section, unless and until is withdrawn, shall be conclusive evidence of the fact that premises or objects is a **protected heritage**. The section, for ease, is referred directly as:

“(4) A notification under this section shall, unless and until it is withdrawn, **be conclusive evidence** of the fact that premises or objects to which it relates is a **protected heritage** within the meaning of this Act.”

22. In view of above discussion and directions, instant petition stands disposed of. We, however, for easy compliance of all directives, reiterate the same in brief, as under:-

- (i) **Director General, Mines and Minerals** shall **ensure** that no permit/license for crushing plant is issued unless **fulfilling** the criterion of amended rules coupled with international standards (SOP) prescribed by international organization i.e UN, UNESCO, etc;
- (ii) Director General, Mines & Minerals shall send all the licenses/permits for their *examination* by the **committee formed** in view of Mines Act, 2021, who shall examine all the aspects including **SEPA** and if any **license** is not **fulfilling** the criterion; the same shall be **considered as cancelled**;
- (iii) **Chief Secretary** shall ensure **compliance** of paragraphs-6 & 11 of **order** dated **02.02.2023** without fail;
- (iv) **Deputy Commissioners** Sukkur, Khairpur & Ghotki shall ensure that **historical sites** are not **destroyed** further, in any manner; besides in view of **paragraph-8 of order** dated **02.02.2023** to the extent, that all crushing plants in view of new prescribed rules shall be deemed to be sealed until demarcation is completed;
- (v) Also **Deputy Commissioners** **ensure** that **crushing** site would be at the distance of **at least one kilometer radius** from the historical site(s) and **Mining** activities in the **area shall not be carried out** without **calculating** and **restricting** to the **optimum** quantity of **blasting** material vis-a-vis seismic response in the historical site(s);
- (vi) Owners of crushing plants shall ensure adoption of wet crushing technology and **dust collectors**; besides ensure registration of their workers with **SESSI & EOBI respectively**. Deputy Commissioners in this regard shall ensure **compliance**;
- (vii) **Secretary Labour** shall ensure **verification** of permits granted in view of **criterion** and shall take an action in case of any violation;

- (viii) Deputy **Commissioners** along with **Survey** Department shall ensure **demarcation** of **declared** sites and submit their reports within one month without fail;
- (ix) **Secretary (Culture)** & concern SSP shall ensure safety of declared sites as they are **protected** under relevant laws; besides ensure that no rushing plant is working to devastate the declared sites;
- (x) Secretary Culture shall conduct seminars not only physically but electronically, social media, with participation of experts in the field, on the historical sites of **Lakhan-jo-Daro** within three months by ensuring that all stakeholders are invited and shall draw road map to maintain this historical site, which is contemporary of **Moen-jo-Daro**;
- (xi) **Director General, Antiquities** shall visit all **antiquities** and heritage sites personally on **quarterly** basis and yearly progress report shall be published available to the common citizen.
- (xii) Secretary Health shall **ensure** that **Pulmonologist** will visit the sites near to **crushing** plants on quarterly basis along-with **SEPA officials**; besides they will provide other treatment to the villages adjacent to the crushing plants;
- (xiii) Secretary Law shall ensure that new rules of the **Mines Act** will be **examined** and vetted in accordance with law without fail within one month;
- (xiv) **Chief Secretary**, Government of Sindh shall **constitute** a **committee comprising** of **Secretary Culture**, Secretary Revenue, Secretary Labour, Mr. **Shahab Usto**, advocate, Intellectual Mr. **Inamullah Shaikh** to ensure compliance of this judgment as well as judgments passed in in CP.No.D-2973 of 2016 and CP.No.D-133 of 2015 and other connected petitions and terms of references, reference shall be outlined by the committee in view of these three judgments as well as according to available laws, such notification shall be issued within one month.

23. Taking stock of the above discussion and **directions**, let copy of this order be **communicated** to all concerned authorities including, Chief Secretary Sindh; accordingly learned **MIT-II** of this Court shall ensure strict compliance.

JUDGE