

Order Sheet

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

C.P. No.D-1453 of 2023

DATE	ORDER WITH SIGNATURE OF JUDGE(S)
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For orders on office objection
For hearing of main case

01.08.2024

Mr. Asif Ali Buledi advocate for petitioner.
Mr. Muhammad Ismail Bhutto, Addl: A.G along with Inspector Manzoor Ali on behalf of SSP, Hyderabad and ASI Mubarak on behalf of SHO PS Hali Road, Hyderabad.

Syed Noor-e-Mustafa advocate files power on behalf of respondent No.3, which is taken on record.

Briefly stated, the petitioner and others filed Suit 33 of 2019 before the Anti-Encroachment Tribunal, Hyderabad, the same was determined inter alia on the following terms:

“For the forgoing discussion and peruse the available record, I am of the humble view that the defendants No.8 and plaintiff himself has encroached by constructing staircase and eave (Chajjal) / Galary upon the street. Therefore they are hereby declared as "Encroachers". It has also come to the knowledge of this Court through official defendants that inhabitants have also encroached in the street. Therefore they are also declared as "Encroachers". Hence, the suit of the plaintiff is hereby decreed in the above terms accordingly, and further directed to the Authorized Officers to remove and demolish all the above mention illegal encroachment from the said street and restore on its original position.”

The petitioner was declared as encroacher, however, he opted not to assail such findings. Subsequently Execution Application No.16 of 2023 was filed and the same was disposed of as follows:

2. Heard the learned counsels for the parties at length and gone through the pleadings and record of the R&P of Suit No. 33 of 2019, wherein written statement of the Mukhtiarkar is on record which states that respondent No. 08 has constructed house in front of plaintiff's house one year back in the western side, there is Chajja which is located in front of applicant wherein 2.5 feet Chajja is available, during visit no new construction found.

3. Assistant Director KatchiAbadi Municipal Corporation Hyderabad through report stated that House No. 278 is over the Railway Lane / Railway Colony and same plot and its construction is not on encroachment, and the construction area is under alignment of approved site plan of KatchiAbadi of HMC according to law.

4. Nothing is available in R&P showing the width and length of the street, the applications attached with the plaint of the plaintiffs showing only the grievance for plaintiffs for raising chajja by the private defendants, for which this Tribunal lacks the Jurisdiction, this Tribunal has only jurisdiction of cases

fall within the ibid of sub-section (m) and (o) of Section-2 of the Act 2010, Act under sub-section (j) of section-2 defines encroachment, means un-authorized occupation of or undue interference with public property. Actual dispute between the parties is raising the chajja / eave over their houses. For emphasizing purpose sub-section “j”, “m” and “o” of Section-2 of Act 2010 are under:-

(Section-2):

(j) “Encroachment” means unauthorized occupation of or undue interference with public property;

(m) “Land” means State Land and it includes benefits arising out of land and things attached to earth or permanently fastened to anything attached to the earth and land under water, well, footpath, road, tunnel, culvert, nala, bridge and street;

(o) “Public Property” means a building, land, place or premises vesting, in or under the management or control of Government, local council, autonomous body or registered cooperative society or such other authority;

5. Nothing is available on the file / R&P and execution application showing that there is any encroachment interferable U/S 13 and 14 of the Sindh Public Property (Removal of Encroachment) Act 2010, for ready reference Section 13 and 14 is as under:-

Section-13.Exclusive

Jurisdiction

A Tribunal shall have exclusive jurisdiction 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.Procedure and Powers of the Tribunal.-----

(1) Tribunal shall decide any suit or application in such manner and in accordance with such procedure as may be prescribed.

(2) 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.

(3) The Tribunal shall have power of a Civil Court under the Code of Civil Procedure, 1908 (Act V of 1908) as to :-

(a) Summoning and enforcing the attendance of any person and examining him on the oath;

(b) Receiving evidence on affidavit;

(c) Compelling the production of documents;

(d) Issuing commission for examination of witnesses or documents.

(4) The proceedings before the Tribunal shall be judicial proceedings within the meaning of sections 193 and 228 of the Pakistan Penal Code (Act No. XLV of 1860).

6. As stated the above, the order dated: 23-12-2022, is not a executable plaintiffs may approached before proper forums for their grievances, hence, application stands dispose of accordingly, with no order as to costs.”

The present petition assails both respective orders, however, office note rightly demonstrates that to the extent of initial judgment the petition

is barred by laches. The memorandum of petition has been perused and there is no apparent challenge to the petitioner having been declared as encroacher.

Notwithstanding with the fact that the learned counsel remained unable to articulate any manifest infirmity in the subsequent order, the exercise of writ jurisdiction could not be considered to be available to an encroacher in the present facts and circumstances. The petition is found to be misconceived, hence dismissed.

JUDGE

JUDGE

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