

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

Suit No. 1414 of 2017

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| Date | Order with Signature of Judge |
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For hearing of CMA No.8923/2017.

23.01.2025

Mr. Ahmed Ali Hussain, Advocate for the Plaintiff.
Mr. Noor Muhammad Dayo, Advocate for Pakistan Rangers along
with SR Zia Arif Junejo Pakistan Rangers.
Mr. Shaharyar Meher. Assistant A.G. Sindh.
Ms. Sara Malkani, Assistant Attorney General.

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It has come on record that after the Nazir’s Report dated 30.09.2023 (at page 569), *inter alia*, Defendant No.2-Pakistan Rangers is in occupation of 05-16 acres of the land of Plaintiff Society, although this is disputed by their Counsel in Court. He states that the land is used for the ‘Operational Purpose’; contended that Defendant No.2 filed Objections to the above Nazir Report [at Page 645].

Firstly, the Nazir Report [*supra*] has been prepared after the physical site inspection, in which besides Official Defendants, including Revenue Authorities, assistance of Survey of Pakistan were also taken.

Secondly, it was observed in the Order dated 24th September 2024, that it is not disputed by the Law Officers of the Province and Federation that five acres of Land has been taken away from the Plaintiff Society for the operational purpose of the Pakistan Rangers / Defendant No.2, and the Government is considering to compensate Plaintiff Society either through monetary compensation or alternate land. This Order was unsuccessfully appealed against in High Court Appeal No.468 of 2024.

Thirdly, a solution was given in the earlier Orders, that either Sindh Government should allot an alternate land or compensate the Society, but, it is not done.

The fact remains that proprietary right of a citizen or entity cannot be violated on the pretext of the alleged ‘operational purpose’ or ‘security issue’. Till date no plausible material is brought on Record to justify the ‘operational purpose.’ In this regard, three reported Decisions of this Court is relevant, viz. **2023 MLD 1222 [Sindh]** [*Uzma Naz and others vs. The Director General Rangers Sindh and others*], **PLD 2022 Sindh 186** [*Shahimah Sayeed vs. Base Commander, PAF and 3 others*] and **PLD 2019 Sindh 697** [*Gulzar Ahmed vs. Province of Sindh through Chief Secretary and 19 others*].

In the above Decision(s), Court has ruled that *“defense and security interests of a country is the foremost priority, particularly, considering the geostrategic location of our Country; but at the same time, the ownership rights, which are guaranteed as fundamental rights in the Constitution, cannot be sacrificed merely on a vague plea of National Security. In a constitutional dispensation, ownership/ proprietary rights of a genuine owner, cannot be sacrificed at the altar of some vague plea of security issue.”*

While acknowledging role of Pakistan Rangers, in *Pakistan Rangers Case* [ibid], it is held, *“No doubt the Respondent No.1 has played a significant role in restoring law and order situation in the Province of Sindh, but at the same time, Government functionaries, particularly those, who are saddled with the responsibility of looking after internal and external security of the Country, it is necessary that they adhere to the laws and should be mindful in formulating their policies, which should not violate fundamental rights, as envisaged in the Constitution of*

Pakistan, 1973. It is already held that from the perspective of human rights and fundamental rights, action based on the security concern is not an ‘absolute defence’, but would be subject to judicial review, when it is ex facie apparent that such action is directly encroaching upon the fundamental rights of citizens. No doubt internal and external security is the foremost priority of every Government and State Institutions, but it is also to be seen and ensured by Courts that the security issue is not misused to the disadvantage of law abiding citizen(s) and the fundamental rights are not sacrificed at the altar of some subjective security issue.”

“.....if their actions results in causing hardship and sufferings for citizens, as seen in the present Case, then even sacrifices given by the Members of the Force would be undermined, besides, such actions would be counterproductive.” [Underlined for emphasis].

Government departments are duty bound to provide administrative justice to persons / citizens, in particular, in a situation where an official act infringes the fundamental rights. Continuous and deliberate inaction [indecisiveness] on the part of state organ or the functionaries to redress a genuine grievance of a person, can be construed as a breach of provisions of the Principles of Policy, as envisaged in our Constitution, which is an official sacrosanct covenant between the State and its Citizens.

The Official Defendants are directed to expedite the above direction or their Senior Officers will face Contempt of Court proceedings.

A Copy of this Order be communicated to the Worthy Chief Secretary, Government of Sindh.

To be listed on **20.02.2025.**

J U D G E