

ORDER SHEET
IN THE HIGH COURT OF SINDH BENCH AT SUKKUR
C.P No.D-268 of 2021
C.P No.D-1109 of 2021

Date	Order with signature of Judge
1.	For hearing of CMA No.837/2022
2.	For hearing of main case.

13.11.2024

Mr. Sohail Ahmed Khoso, Advocate for the Petitioners
Mr. Asif Ali Jatoi, Advocate for Applicant/ Intervener
Mr. Ahmed Ali Shahani, AAG along with Muhammad Hassan, Assistant Litigation
Officer on behalf of Survey Superintendent, Khairpur

Zulfiqar Ahmad Khan, J: The controversy at hand commenced by the Petitioners Zouk Ali and others, filing Constitution Petition No.D-268 of 2021, where the petitioners brought to surface that a large portion of sanctioned graveyard in the name of *Dargah Shah Ladhani* bearing U.A No.492 admeasuring 56-5, acres lying intact in revenue record, have been encroached upon by the various individuals and some of those have acquired even illegal *Sanads* issued for their residences, and through this petition a request was made to the Survey Superintendent to demarcate the area of graveyard to show its actual position as well as direct the authorized officer of Revenue Department as well the Deputy Commissioner Khairpur etc. to remove illegal encroachments from the graveyard *Shah Ladhani* and also to take action against the encroachers and restore the graveyard to its original position and also remove illegal constructed buildings from the sanctioned graveyard land.

When these proceedings were under way, connected petition bearing C.P No.D-1109 of 2021 was filed by two petitioners namely Muhammad Azam Abro and Gulsher Abro upon them having received notices available at page-67 & 69 alleging that the petitioners have unauthorizedly occupied the graveyard land and legal proceedings are being instituted against such illegal occupation. These notices were challenged through the said C.P No.D-1109 of 2021 and this Court vide order dated 29.06.2021, upon the insistence that the petitioners are in possession of *Sanads* issued ordered Anti-Encroachment Department to not to demolish any house till the next date of hearing. Whereafter time and again, matter came up on different intervals however through a detailed order dated 16.08.2022 upon on the basis of inquiry committee

having been constituted by this Court vide order dated 26.10.2021, directions were issued to Additional Deputy Commissioner-I, Khairpur, the Chairman of the Committee, to submit demarcation of Deh / Village Shah Ladhani and Village Garhi and so also submit further report with regards encroachments illegally made on the land of graveyard Shah Ladhani within 30 days.

Time was further extended through various orders however, vide order dated 22.05.2024, Mr. Saleem Hassan, Survey Superintendent, Sukkur Division @ Khairpur was appointed as Commissioner to inspect the entire area tasked to determine actual land of Graveyard Shah Ladhani, the houses built therein, if any, and to detail out what has been constructed over the land of graveyard and to verify the documents, if any, produced before him. The matter thereafter was taken up on 22.08.2024, where this Court was informed that the assignment given through order dated 22.05.2024 could not be accomplished and request for further time was made, which was granted with direction to Survey Superintendent and Mukhtiarkar to be present together along with compliance report as already ordered. Finally, a detailed report was furnished to this Court on 12.09.2024 by said Saleem Hassan Gaddani, Survey Superintendent, Sukkur Division @ Khairpur. After giving background of the case, the report yielded the following facts:-

"The record of this office has been perused/verified regarding status of Sanads/Form-II sent by your good office and details of the same are as under:

The report regarding status of Sanads/ Form-II of Village Garhi and Village Shah Ludhani has already been submitted by this office vide letter No. Muk/SGA/05/2021, dated: 26-08-2021. Copy of the same is enclosed for your kind perusal at Annexure "A".

The status of other Sanads/ Form-II of Village and Shah Ludhani sent by good your office is enclosed at Annexure "B".

However, the record of Sapads/Form-II are not available in record is enclosed as Annexure "C"

The sanctioned area of village Larik as per village directory is 01-10 acres. Copy of the village directory is enclosed at Annexure "D".

The status of Sanads/ Form-II as per record of this office is given at point one above. So far as issue of countersign of competent authority ie Collector, is concerned it may be verified/confirmed by seeing original Sanads, since the original Sanads were issued to occupants of houses and its duplicate copy is not lying in this office.

(P.S copy of report of Mukhtiarkar Gothabadis annexed as "C").

..... Therefore, it is recommended that learned Member (Gothabad) Board of Revenue, Sindh, may be directed to constitute a committee to scrutinize the original record of Gothabad Khairpur in respect of above-mentioned villages and committee shall submit its findings on the following points:

1. To verify the record of Sanads, entries in VF-II, allotments orders etc and to submit findings regarding legality and authenticity of existing entries in VF-IL.
2. To identify the illegal occupants/allotees within the sanctioned areas of Villages.
3. Any other recommendations as deems fit to the committee.

Finally, date for the demarcation was fixed on 04-09-2024, the Assistant Commissioner Khairpur was directed to bound Mukhtiarkar Revenue Khairpur, his village staff and concerned parties to be present at site, also Mukhtiarkars Estate Khairpur and Gothabad Khairpur were also directed to be present at site vide this office letter No. SSK/- 978 dated 30-08-2024. The demarcation of sanctioned/ reserved area of Graveyard Shahladhani (admeasuring 56-05 acre), and sanctioned area of Village Larik was carried out and its actual boundaries were fixed/cleared at the site by the Survey Team in presence of Mukhtiarkar Revenue Khairpur, Mukhtiarkar Gothabad Khairpur, representatives of the Mukhtiarkar Estate Khairpur under the supervision of the undersigned on the fixed date ie 04-09-2024, the outcome of the demarcation is submitted as under:

Sr. No.	Area	Details
01.	15-00 acres	Open space
02.	03-00 acres	Pond
03.	02-20 acres	Mohsin Shah Leased
04.	09-00 acres	Pirzada Graveyard and tomb of Shah Ladhani
05.	01-10 acres	Village Larik
06.	02-00 acres	Graveyard Larik Community
07.	01-08 acres	BHU Shah Ladhani
08.	00-19 Ghuntas	Houses of Ghangra
09.	04-15 acres	Houses of Larks and Mahar Community and Government High School and Primary School
10.	03-00 acres	Houses of Abra, Shaikh and others and Primary Girls School and Boys Primary School
11.	00-32	Stadium
12.	2-00 acres	Houses of Pirzada
13.	00-15 Ghuntas	Eid Gah
14.	04-00 acres	Wastage area of roads
Total	48-39	

(P.S copy of joint statement of demarcation, pictorial pieces of evidence of demarcation proceedings and report of Survey Team and site sketch is annexed "D").

In view of above, it is respectfully submitted the following further recommendations before the Honourable Court are made in the interest of justice:

1. Illegal encroachments over the reserved area of Graveyard made by private persons may be ordered to be removed
2. Auqaf Department, Sindh, may be directed to take over the possession and manage the affairs of Tomb and Graveyard of Shah Ladhani. Also a committee under the provisions of the West Pakistan Graveyards (Preservation and Maintenance) Act, 1958, may be ordered to be constituted in order to ensure that encroachments do not emerge in future.
3. Local Government Department Sindh, may be directed to construct a boundary wall separating the sanctioned areas of villages and reserved area of Graveyard.

There are Survey Charges Rs.500 per acre and T.A/D.A charges Rs. 300 per acre amounting to Rs.39200/- as per the government of Sindh Notification No. DD(E&I) HQ/BOR/2016/242, dated: 30-06-2014 (copy attached) that needs to be paid by the plaintiff(s), for which the necessary orders/directions may kindly be passed.

(Saleem Hassan Gaddani)
Survey Superintendent Sukkur Division
@Khairpur"

First of all, the said report shows that the area in fact is 48 acres and not 56.5 acres, which claim has denied by the Counsel for the Petitioners in C.P No.D-268 of 2021 who states that certain houses illegally constructed were not included by the said Commissioner. With regard to the said area, the report (as above) depicts that a major portion of area has been put under residential / public houses, Eid Gah and commercial ponds, where as far as petitioners are concerned, it has been identified that three acres are occupied by the houses of Abra, Shaikh and other communities and girls and boys primary schools. The report as evident from the above, concluded with the findings that illegal encroachments over the reserved area of the Graveyard made by the private persons may be ordered to be removed as well as Auqaf Department, Sindh to take over the possession and manage the affairs of Tomb and Graveyard of Shah Ladhani and also a committee under the provisions of the West Pakistan Graveyards (Preservation and Maintenance) Act, 1958 be ordered to be constituted in order to ensure that encroachments do not emerge in future. Further it is suggested that the Local Government Department may be directed to construct a boundary wall separating the sanctioned areas of villages surrounding the Graveyard area.

The claim of the petitioners in C.P No.D-1109 of 2021 is that they were granted *Sanads* by the concerned Mukhtikar Goth Abad Scheme. A report is furnished to this Court through a communicated made to Deputy Commissioner Khairpur under cover of letter dated 26.08.2024, where a number of individuals are included with *Sanads* where the petitioners fall at Serial No.43 and 44, occupying 2400 and 2130 sq. feet of land for their houses. No other claimant has come forward to this Court while a question posed with challenge to submit a copy of *Sanads*, which not attached with the petitioner however, counsel insisted that the statement filed by the concerned Mukhtiarkar Goth Abad since includes the names of petitioners, therefore, their claim lends certain legitimacy, to which this Court's attention is drawn towards the Commissioner Report which has considered this aspect and yielded as under:-

"it is clear from the report submitted by Mukhtiarkar Gothabad, that some areas of the villages Larik, Garhi and Shah Ladhani have been shown as sanctioned in the "Village Directory", but perusal of Deh Map of Deh Shah Ludhani has shown that boundary of village Larik has connected/adjoining boundary with sanctioned area of Graveyard Shah

Ludhani. Furthermore, Mukhtiarkar Gothabad Khairpur has clearly reported that counter folio/duplicate copy of some of the "Sanads" produced by the parties are not available in his office record and also entries in respect of some of the "Sanads" are not available in VF-II.

Counsel for the Intervener as well as Counsel for the Petitioner in C.P No.D-268 of 2020 suggests that the report furnished in furtherance of this Court's order referred hereinabove has clearly stated that those *Sanads* were not reflected in Village Form-II, meaning thereby these are fake.

Counsel for the Petitioners however, re-agitates his claim by stating that legitimacy is attached to the case of these two petitioners as their forefathers have been farming in the neighbourhood, which stance is of no benefit to these petitions as this is not the subject matter of these petitions.

Be that as it may, petitioners are directed to present their *Sanads* to Member Goth Abad, Board of Revenue, who to scrutinize the original record and to check the veracity of those *Sanads* and (any) legitimacy attached to those coupled with the fact that the land used in these *Sanads* is a graveyard land as well while referring to the Dictionary of approved Goths under the Sindh Goth Abad Scheme maintained by the Commissioner, Sukkur Division, and for rest of the encroachers, detailed in the report dated 12.09.2024 by Mr. Gaddani, Deputy Commissioner concerned is directed to remove all the encroachments as well as encroachers from the subject graveyard land as listed being at Sr. No.1 to Sr. No.14, except roads, however subject to the outcome in favour of the petitioners namely Muhammad Azam Abro and Gulsher Abro with regard any authenticity of their *Sanads*, their portions or houses not to be removed till any adverse findings are given against these two petitioners by the Member Goth Abad.

Petitions stand disposed of in the above terms. Let copy of this order be communicated to learned AAG for compliance.

JUDGE

JUDGE