

HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD

C.P No.D-1601 of 2025

[Abdul Waheed Chohan vs. Province of Sindh & Ors.]

Before:

Justice Khadim Hussain Tunio

Justice Tasneem Sultana

Petitioner	Abdul Waheed Chohan: through Mr. Ghulam Sarwar Qureshi advocate
Respondents	Province of Sindh & Others: through Mr. Allah Bachayo Soomro Additional A.G Sindh
Date of hearing	26.08.2025
Date of Judgment	26.08.2025

J U D G M E N T

TASNEEM SULTANA, J: The petitioner through the instant petition has invoked the writ jurisdiction of this Court under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 and has assailed the Order dated 20.08.2025 rendered by the learned Anti-Encroachment Tribunal, Hyderabad whereby his suit, seeking declaration, removal of encroachment and permanent injunction in respect of Plots No. 151/C, 152/C and 153/C situated at Labour Colony, Site Area, Latifabad Hyderabad, has been dismissed.

2. The facts in brief as narrated in the petition are that the father of the petitioner namely Abdul Hameed alias Asif, and his close relatives, were allotted the suit plots by the Sindh Workers Welfare Board in July 2007 under its Low-Cost Housing Scheme. It is alleged that in due course of time the said allottees executed sale agreements, first transferring the rights to the petitioner's parents and later through an agreement dated 11.01.2022 vesting all rights in the petitioner. On such basis he claims exclusive ownership and possession of the three plots. He asserts that he has raised construction, is residing with his family therein, and has been paying electricity and gas bills regularly, thereby evidencing his settled possession.

3. The grievance of the petitioner is that the Workers Welfare Board and its officials, acting in excess of their authority, sought to dispossess him by terming his possession an encroachment and by constructing thirty-three shops upon the colony road, thereby narrowing a twenty-five feet road to fourteen feet. It is stated that notices were issued on 21.10.2024 and again on 16.05.2025 requiring him and his relatives to vacate, failing which coercive action under the Sindh Public Property (Removal of Encroachment) Act, 2010 would be taken. According to the petitioner these actions were mala fide, aimed at depriving him of his property and humiliating him before the public.

4. Learned counsel for the petitioner contended that the order passed by the learned Tribunal is opposed to law, facts and equity; that the findings of learned Tribunal to the effect that under Sections 3, 4 and 5 of the Act 2010 the Government or any authority or officer authorized by the Government has right to approach the Tribunal for redressal of his grievance is totally erroneous and lacks in depth analysis, as according to Section 3 of the Act any person can present a plaint or an application before the Tribunal; that learned Tribunal has failed to consider that the suit properties No.1 to 3 were not transferable as per term No.12 of the allotment order; that learned Tribunal also failed to consider that suit of the petitioner was maintainable under the law, it is well settled law that negative declaration can be given under Section 42 but such declaration must relate to status or legal character of the plaintiff; that learned Tribunal also failed to appreciate that petitioner had sought declaration under Section 42 of the Specific Relief Act, which protects the legal right to property; that learned Tribunal also failed to appreciate that a person not in possession can also file a Suit on the basis of right in property; that after allotment of suit properties No.1 to 3 the previous allottees as well as subsequent purchasers time and again approached the Workers Welfare Board to receive the outstanding amount so as to comply with the terms and conditions of the allotment order; that learned Tribunal also failed to consider

that respondent No.8 demanded bribe for withdrawal of the notice. In support of his arguments, the learned counsel for the petitioner relied upon photocopies of allotment orders dated 11.07.2007, site plans of the three plots, sale agreements of 2010, 2011 and 2022, as well as utility bills. He also placed reliance on affidavits asserting that petitioner has been in long and peaceful possession. On the basis of these materials, he sought a declaration that petitioner is the lawful owner of the suit plots, that the impugned notices and anti-encroachment proceedings are without lawful authority; that the Tribunal's order be set aside, and that the respondents be permanently restrained from interference; that possession coupled with documents, even if unregistered, entitled him to protection under Section 42 of the Specific Relief Act, 1877; that construction of shops on the road narrowed the passage and constituted mala fide exercise of authority; that long settled possession itself is a valuable right recognized by Courts.

5. Mr. Allah Bachayo Soomro Additional A.G, present in Court, waives the notice and categorically denied issuance of the allotment orders relied upon by the petitioner while contending that the same were fabricated photocopies never emanating from the record of the Workers Welfare Board; that under Clause 12 of the genuine allotment conditions the plots were non-transferable and no allottee could sublet, sell or otherwise dispose of his plot unless construction was completed and previous sanction of the Board obtained; that the petitioner had never sought mutation of the plots in his name, nor had he produced any registered sale deed; that the documents relied upon by the petitioner are not only inadmissible in law but have been marked "fake" in their own record; that in order to protect public property, notices were lawfully issued under Section 22 of the Sindh Land Revenue Act, 1967 read with Section 3 of the Sindh Public Property (Removal of Encroachment) Act, 2010; that allegation of demand of money is nothing but an attempt to malign government officials; that anti-encroachment drives were scheduled on 23.05.2025 and 24.05.2025 pursuant to directions of the

Commissioner Hyderabad Division, and that when the drive was attempted on 26.05.2025 the petitioner along with forty to forty-five men created a serious law and order situation, attacked officials, damaged government vehicles and thereby compelled postponement of the operation, therefore, an FIR No. 79/2025 was registered against him; that no right could be claimed on the basis of forged or fabricated documents. He relied on Section 54 of the Transfer of Property Act, 1882 and Sections 17 and 49 of the Registration Act, 1908 to argue that immovable property can only be sold through a registered instrument, and that an agreement to sell does not create any right or title; that the petitioner produced only photocopies without laying foundation for secondary evidence as required under Articles 73 to 78 of the Qanun-e-Shahadat Order, 1984, hence they are inadmissible; that the 2011 agreement bears no attesting witnesses, which casts further doubt on its execution.

6. The petitioner was directed to identify an infirmity in the order impugned, however, he failed to do so. He was also confronted as to how a writ petition could be entertained in such matters; once again he remained at a loss for any cogent reason.

7. For resolving issue arrived in this writ petition understanding of statute is essential.

8. The Sindh Public Property (Removal of Encroachment) Act, 2010 (the Act) is a special law, it provides for establishment of Tribunal and Special Courts, former for adjudication of matters relating to the determination of status of property that whether a property under alleged encroachment or under lease or license is not a public property and latter for trial of offences under the Act.

9. The Act provides a complete mechanism for removal of encroachment on public property. The aims and objective of the enactment were to remove encroachment from public property and retrieve possession and provide measures for removal of encroachment and prosecute the outlaws encroaching public

property. For the sake of convenience and understanding the relevant provisions of the Act are reproduced below:

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

(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;

3. Removal of encroachment and structures.*(1) Government or any authority or officer authorized by Government in this behalf may require the person directly or indirectly responsible for encroachment to remove such encroachment together with the structure, if any, raised by him on the public property, within the period not less than two days as may be specified in the order.*

Explanation. *Lessee or licensee who after the expiry of the period of lease or license or on determination of such lease or license, continues to retain unlawfully possession of any public property shall for the purpose of this subsection, be deemed to be responsible for encroachment.*

4. Review *(1) Any person dissatisfied by the order passed under sub-section (1) of section 3 may, within three days from the service thereof, prefer a review petition to Government or any authority or officer who has passed such order. (2) Government or, as the case may be, the authority or officer as aforesaid may, after perusing the review petition filed under sub-section(1) and giving an opportunity to the petitioner or his duly authorized agent of being heard, confirm, modify or vacate the order within fifteen days on receipt of petition.*

10. The provisions, reproduced above clarify the terms of illegal occupation/encroachment and the definition of public property as well. Whereas Section 5 of the Act empowers authorized officers to remove encroachment on conclusion of proceedings under Section 3 and 4, while Section 6 prescribes the manner in which cost of demolition is to be recovered.

11. In addition to above, Section 7 requires recovery of rent if any from encroacher as arrears of land revenue while Section 8 provides punishment for an offence of encroachment. Section 9 empowers the Government to delegate

powers to the authorized officers and Section 10 provides for incentives to the officers of anti-encroachment force in case of recovery of fine etc.

12. Perusal of the above provisions of law reveals that removal of encroachment is purely the domain of officers authorized by the Government in this behalf. For removal of any encroachment the officers are not required to obtain the orders of Tribunal or Court, they may proceed against encroachers in accordance with the provisions of Sections 3 and 4 of the Act.

13. The jurisdiction of Tribunal starts when a dispute as to the status of a property arises, Tribunal is assigned exclusive jurisdiction to adjudicate such claims under section 11 and 13 of the Act, which read as under:

11. Bar of jurisdiction and abatement of suits.*(1) No Civil Court shall have jurisdiction to entertain any proceedings, grant any injunction or make any order in relation to 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, or anything done or intended to be done under this Act.*

(2) All suits, appeals and applications relating to, encroachment and dispute that any property is not a public property or, that any lease or license in respect of such property has been determined, for the purpose of this Act, shall abate on coming into force of this Act.

Provided that a party to such suit, appeal or application may: within seven days for the coming into force of this Act, file a suit before a Tribunal in case of 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.

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 public property has not been determined for the purpose of this Act.*

14. Intent of the Legislature behind these provisions of law is crystal clear that a suit shall lie before Tribunal for seeking a negative declaration that a property

subject matter of encroachment is not a public property. Review of the above provisions of law leaves no any doubt that Tribunal established under the Act is vested with an exclusive jurisdiction for determination of status of the property and nothing else. The Tribunal if approached may adjudicate the claims with regard to the status of property to the extent that it is ***not a public property***. The jurisdiction of Tribunal shall commence when an authorized officer gives a notice under Section 3 of the Act to the alleged encroacher for removal of encroachment within specified time, if he fails to respond the action shall follow as laid down under section 5, 6, 7 and 8 of the Act, but if the alleged encroacher files a review petition under section 4 of the Act with a claim that the property is not a public property, the authorized officer shall decide the review petition within 15 days of application. If the alleged encroacher claims that subject matter of the encroachment is not a public property and authorized officer decides that review petition is without force, he shall make decision and proceed further in accordance with law. In case of dismissal of claim of alleged encroacher in review petition, the aggrieved person may bring a suit seeking determination of status of property by Tribunal.

15. Section 14 of the Act prescribes the procedure and powers of the tribunal, if a suit is filed before the Tribunal seeking determination of property, it shall proceed with the matter as a Civil Court. This provision of law confers Tribunal powers of Civil Court to summon and examine witnesses and ensure the attendance of any person, examine witnesses and receive evidence on affidavit, compel production of document and issue commission for examination of witnesses. Section 14 reads as under:

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).

16. The Tribunal is conferred exclusive jurisdiction to adjudicate dispute whether a property is not a public property. Section 13 empowers the Tribunal to give a negative declaration in respect of a property under lease or license or encroachment. This provision of the Act, attaches sanctity to the determination made by an authorized officer with regard to the status of property under encroachment or the lease or for a license. A party disputing such a determination may seek a declaration that the property adjudicated under Section 4 is not a public property by filing a suit before Tribunal. Wisdom of legislature behind this provision of law is that public officers are custodian of record of rights and have adequate information regarding the status of a property and, in case of encroachment, the property is retrieved without any delay. The provisions of law make it clear that Tribunal lacks jurisdiction to entertain a suit for declaration that a public property, the Tribunal cannot entertain a suit seeking order for removal of encroachment. Tribunal under this Act is established to check if the orders passed by an authorized officer under section 3 and 4 of the Act are within four corners of law and party under allegation of encroachment may not suffer due to the acts of officials.

17. Sub-section (2) of Section 14 makes it clear that any order made by the Tribunal while conclusively determining the rights of the parties with regard to all or any of the matters in controversy shall be final and binding on the parties. It is settled law that an appeal is a creation of statute and in the absence of any such remedy being provided none can be presumed. Automatic recourse to writ jurisdiction in matters where appeal is precluded has been deprecated by the Supreme Court as it could be construed as defeating manifest legislative intent. Constitutional jurisdiction is equitable and discretionary in nature and should not be exercised to defeat or bypass the purpose of validity enacted statutory provisions. Reliance is placed on the case of *Arif Fareed vs. Bibi Sara & Others* reported as 2023 SCMR 413.

18. In the case of *M. Hamad Hassan vs. Mst. Isma Bukhari and 2 others* reported as 2023 SCMR 1434 the Apex Court held as under:-

“The right to appeal is a statutory creation, either provided or not provided by the legislature; if the law intended to provide for two opportunities of appeal, it would have explicitly done so. In the absence of a second appeal, the decision of the appellate court is considered final on the facts and it is not for High Court to offer another opportunity of hearing, especially in family cases where the legislature's intent to not prolong the dispute is clear. The purpose of this approach is to ensure efficient and expeditious resolution of legal disputes. However, if the High Court continues to entertain constitutional petitions against appellate court orders, under Article 199 of the Constitution, it opens floodgates to appellate litigation.”

19. The above case laws leave no room to hold that Constitutional jurisdiction cannot be invoked as a substitute for revision or an appeal and the interference is on limited grounds as an exception and not the rule.

20. Now turning to the arguments advanced by the learned counsel for the petitioner, it appears that the petitioner's entire case rests upon allotment orders

and sale agreements which are not proven in accordance with law. The allotment orders themselves contain Clause 12 which prohibits sub-letting or sale without sanction of the Board. No such sanction or lease deed has been produced. Therefore, even assuming the allotment orders to be genuine, which is doubtful, the subsequent private transfers are legally void.

21. Further the sale agreements relied upon are unregistered. It is trite law that under Section 54 of the Transfer of Property Act, sale of immovable property valued at more than rupees one hundred can only be effected through a registered instrument. The Registration Act further bars an unregistered document from affecting immovable property. Thus, the agreements of 2010, 2011 and 2022 cannot create ownership in favour of the petitioner. At the highest, they could confer a contractual claim, but such claim could not be enforced against the State or the Workers Welfare Board in a constitutional petition for declaration.

22. The evidentiary deficiencies are equally fatal. The documents filed are mere photocopies. Article 73 of the Qanun-e-Shahadat Order, denotes that the primary evidence is the original document, and secondary evidence is admissible only after proving loss or destruction of the original. No such foundation was laid. The Workers Welfare Board on the contrary has placed official record before the learned Tribunal, which demonstrates that such allotments were never issued, and even marked one as “fake.” Public documents carry a presumption of correctness, and the burden was upon the petitioner to rebut, which he has not discharged.

23. The 2011 sale agreement is further tainted by the absence of attesting witnesses. While not required by law to be attested, the existence of columns for attestation left blank renders its execution doubtful. No scribe, notary or marginal witness was produced to prove its execution. When execution is denied, it is the burden of the party relying upon it to prove it strictly. The petitioner has failed to do so.

24. On these facts, the petitioner has not proved any legal title or character in the property. Under Section 42 of the Specific Relief Act, a plaintiff must establish a legal character or right to property to maintain a declaratory suit. The petitioner, lacking a registered instrument or sanctioned mutation, has no such legal character. The proviso to Section 42 further bars a bare declaration when further relief could be sought. The petitioner could have sought specific performance against his vendors or approached the competent authority for regularization, but instead sought a negative declaration against statutory authorities, which is not maintainable.

25. The allegation that thirty-three shops were raised on the colony road by the respondents is unproved. The Tribunal already directed that the matter be inquired into by the competent authority. Such course is appropriate for this Court in constitutional jurisdiction cannot enter into factual controversies or undertake fact finding on disputed encroachment of roads.

26. The allegation of demand of rupees five million is likewise unsubstantiated. No independent witness, complaint, or documentary proof was produced. In the absence of cogent evidence, the allegation is rejected. The notices issued on 21.10.2024 and 16.05.2025 were under statutory provisions. They merely required the petitioner and his relatives to produce title documents within three days, failing which action would be taken. Such notices are inconsonance with Section 22 of the Sindh Land Revenue Act and Section 3 of the Sindh Public Property (Removal of Encroachment) Act, 2010. They cannot be termed illegal or without jurisdiction.

27. The record of anti-encroachment drives scheduled for 23.05.2025 and 24.05.2025 shows that these operations were inter-departmental, involving Commissioner Hyderabad, municipal corporations, police and anti-encroachment cell. This demonstrates that the action was not arbitrary or targeted against the

petitioner, but part of a policy to clear public property. The petitioner's conduct during the drive of 26.05.2025 is highly relevant. It has been established that he resisted the lawful operation, created law and order disturbance, attacked officials and damaged government vehicles. FIR No. 79/2025 was registered against him. Such conduct disentitles him to equitable relief. The principle that he who seeks equity must come with clean hands applies in full force.

28. Fraud vitiates even the most solemn proceedings. The reliance on fabricated and forged allotment orders is itself sufficient to non-suit the petitioner. Courts cannot lend their discretionary jurisdiction to a party which bases its case on forged documents. The learned Tribunal carefully examined the materials, applied correct principles of law, and dismissed the suit. We find no illegality, misreading or non-reading of evidence in the impugned judgment. On the contrary, it is fully supported by statutory provisions, rules of evidence and equitable considerations.

29. The petitioner sought a declaration of ownership without any valid instrument, mutation or sanction from the Board. He relied on inadmissible photocopies and unregistered agreements lacking witnesses. He failed to rebut the respondents' record marking his documents as fake. He leveled scandalous allegations of bribery without proof and obstructed lawful anti-encroachment operations.

30. Above are the reasons of our short Order dated 26.08.2025, whereby this petition was dismissed in limine.

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Sajjad Ali Jessar