

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Constitutional Petition No. D-1039 of 2024
[Director Anti-Encroachment Sukkur Municipal Corporation, Sukkur vs.
Province of Sindh and others]

Constitutional Petition No. D-1040 of 2024
[Director Anti-Encroachment Sukkur Municipal Corporation, Sukkur vs.
Province of Sindh and others]

Constitutional Petition No. D-1041 of 2024
[Director Anti-Encroachment Sukkur Municipal Corporation, Sukkur vs.
Province of Sindh and others]

Before:-
Mr. Justice Amjad Ali Bohio,
Mr. Justice Ali Haider 'Ada'.

Date of Hearing: 03.03.2026.

Date of decision: 11.03.2026.

M/s Ali Gul Abasi, Khuda Bux Chohan, Muhammad Zohaib Azam Rajput, Advocates for Petitioners.

M/s Khan Muhammad Sangi, and Sikandar Sadar Siddiqui, Advocate for Respondents No.5, 7, 8 and 8 in C.P No.1039 of 2024.

M/S Mehfooz Ahmed Awan and Farhan Ali Shaikh, Advocates for Respondents No.5 to 10 in C.P No.D-1040 and 1041 of 2024.

Mr. Ahmed Ali Shahani, Assistant Advocate General, Sindh.

Ayaz Ahmed Mangi, Secretary, District Regional Transport Authority, Sukkur, Naheed Ahmed Mirani, Additional Deputy Commissioner-I, Sukkur, Mehmood Ahmed Babar Bullo, Mukhtiarkar (City), Sukkur and SIP Dost Muhammad, SHO Police Station 'A' Section, Sukkur.

ORDER

Ali Haider 'Ada' J; By this single order, we intend to dispose of the instant Constitutional petitions whereby the Director Anti-Encroachment Wing of the Sukkur Municipal Corporation (SMC) has challenged the orders dated 12-06-2024 passed by the Anti-Encroachment Tribunal constituted under the **Sindh Public Property (Removal of Encroachments) Act, 2010, (Act-2010)**. Through the

impugned orders, the Tribunal declared the notices issued under Section 3 of the Act, 2010 by the SMC to certain private individuals/Respondents as having become infructuous, primarily on the ground that orders of status quo had already been granted, allowing the occupants to continue in the existing shape and condition. Such orders have been called into question through the present petitions. It may be noted that as many as civil suits had been filed by the private respondents against the said notices.

2. The crux of the matter is that in the year 1996 an agreement/contract was executed between the Sukkur Municipal Corporation (SMC) and the Sindh Road Transport Corporation (SRTC) with regard to an open space plot reserved for public purpose, situated at Sukha Talab, Sukkur, arising out of Survey No. D-1596 and measuring approximately 37,888 square feet. After that said property was handed over to the SRTC and SRTC subsequently leased out the open space plot to one Muhammad Ramzan and Imtiaz Quershi, as they in turn further sub-leased the said property to various private, individuals/respondents. These occupants allegedly started activities that were contrary to the aims and objects of the original lease. Subsequently, the Sukkur Municipal Corporation, through a written communication, cancelled the lease granted to the SRTC and resumed the plot on the ground that the terms and conditions of the agreement had been violated. The said cancellation was challenged by Muhammad Ramzan and Imtiaz before the competent Civil Court; however, their civil suit was dismissed. Thereafter, the Sukkur Municipal Corporation issued several notices to the private respondents. The respondents challenged the said notices before the Anti-Encroachment Tribunal and succeeded in obtaining favorable orders. Consequently, the Sukkur Municipal Corporation has filed the present Constitutional petitions challenging the impugned practice and orders passed by the Tribunal.

3. It is pertinent to note that the civil suit filed by Muhammad Ramzan and Imtiaz against the cancellation of the lease was instituted in the year 2017. It is further observed that neither the sub-lessee nor

the private respondents, who are the beneficiaries of the alleged sub-lease, ever challenged the cancellation order/letter issued by the Sukkur Municipal Corporation whereby the contract/lease granted to the Sindh Road Transport Corporation (SRTC) was cancelled. It is also significant that the said cancellation was not called into question by the SRTC itself. The only persons who assailed the cancellation were Muhammad Ramzan and Imtiaz Qureshi; however, they remained unsuccessful. The said suit was dismissed vide judgment dated 04-12-2021 passed by the learned Senior Civil Judge-I, Sukkur, in F.C. Suit No. 240 of 2017. Admittedly, the said judgment has also not been challenged by Muhammad Ramzan and Imtiaz; therefore, has attained finality.

4. Learned counsel for the petitioners contended that the property in question/open space, now belongs to the Sukkur Municipal Corporation by virtue of the cancellation order/letter, as the Sindh Road Transport Corporation violated the terms and conditions of the lease. He submitted that the said plot was allotted only for a public purpose, namely to establish a parking area; however, due to the failure of the SRTC to adhere to such conditions, the citizens of Sukkur, being a major city of the Province, have been deprived of the intended public facility. He further argued that the officials of the SRTC, with mala fide intent, leased out the said property to one Muhammad Ramzan and Imtiaz, who subsequently sub-leased the same to the private respondents. The respondents were accordingly called upon through legal process by issuance of notices to vacate the premises, as the sub-lessees had started running their own private businesses instead of utilizing the plot for the purpose for which it had originally been allotted. Learned counsel maintained that the notices were lawfully issued, as the plot in question had been declared for a public purpose and, therefore, the same could only be utilized for that specific purpose. He finally prayed that the impugned orders be set aside and the private respondents be directed to vacate the public plot in question. During the course of arguments, learned counsel for the petitioners produced certain documents of the Partition Book for the year 1920-21, wherein it has been reflected that the Sukkur Municipal

Corporation holds ownership and title of the property in question since the pre-partition era, and the same has been recorded as **“Municipal Open Space.”** The said documents were produced under the cover of a statement and the same were taken on record.

5. On the other hand, learned counsel appearing on behalf of the private respondents/individuals contended that the plot in question was not reserved for a public purpose; rather, according to them, the same had been reserved for commercial activities. They further argued that the registered documents in the shape of sub-leases executed between Muhammad Ramzan, Imtiaz, and the respondents could not be cancelled except through due process before a competent civil court. Learned counsel submitted that the notices issued by the petitioners were arbitrary in nature and without lawful justification. Therefore, according to them, the learned Tribunal rightly set aside the said notices. Learned counsel for the private respondents in C.P. Nos. D-1040 of 2024 and D-1041 of 2024 filed opening notes on similar footing and maintained that the lease agreement executed in favour of the Sindh Road Transport Corporation (SRTC) is still intact. It was further contended that the SRTC had rightly auctioned the property in question. Along with the opening notes, certain documents were also filed, which were taken on record. While the learned counsel in C.P. No. D-1039 of 2024 filed objections under the cover of a statement, annexed with certain documents, the same were taken on record.

6. Learned Assistant Advocate General submitted that the practice adopted by the Tribunal is not sustainable in the eye of law, as the Tribunal could not have interfered in proceedings which were still pending and had not yet been finalized by the concerned department. According to him, such interference on the part of the Tribunal is not in accordance with law and, therefore, the impugned orders are liable to be set aside. He further submitted, on the other hand, that the cancellation letter issued by the Sukkur Municipal Corporation is also not strictly in accordance with law, as the same required prior approval from the competent authority before such cancellation could have been effected.

7. The submissions of the Secretary, District Regional Transport Authority, Sukkur, dated 03-03-2026, were also placed on record. In the said statement, it was clarified that after the closure of the operations of the Sindh Road Transport Corporation (SRTC), its properties were taken over by the Transport and Mass Transit Department, Government of Sindh. It was further stated that the Transport Department has the right to retain the property in question, as a bus stand and bus terminal constitute essential public requirements, and that the Sukkur Municipal Corporation has no authority in this regard. However, the said statement is noticeably silent with regard to the sub-lease of the property to the private respondents/individuals, particularly as to whether such sub-leases were executed in violation of the terms and conditions of the original lease or otherwise.

8. The report submitted by the Mukhtiarkar/City Survey Officer, Sukkur City, was also placed on record. In the said report, the concerned functionary stated that the property in question was initially leased out to the Transport Department; **however, the Sukkur Municipal Corporation subsequently cancelled the said lease vide letter No. SMC/LGB (L.I)-28 dated 30-04-2012 under the directions of the Local Government Department. In this regard, the Government of Sindh had also issued an order bearing No. SO-IV (LG) 4-2/2012 dated 26-03-2012 for cancellation of the lease agreement in favour of the Sindh Road Transport Corporation (SRTC).**

9. The report further indicates that the **Deputy Commissioner, Sukkur, vide letter No. CS/492 of 2015 dated 18-12-2015, also cancelled the relevant entries in respect of the sub-lease holders/private respondents/individuals.** Such action was duly communicated to the said sub-lease holders through proper correspondence vide letter No. CS/241 of 2017 dated 28-07-2017. It is pertinent to note that even at that stage the private respondents/individuals did not knock the door of the competent court to challenge the aforesaid actions.

10. In the said report, the Mukhtiarkar has further stated that possession of the property remains with the Sukkur Municipal

Corporation, except for the portion which had been under occupation of the private respondents. It was also reported that steps were taken to restore the property to its original form and to utilize it for its intended purpose, namely the establishment of a parking plaza. In this regard, a scheme under **ADP No. 2105 for the financial year 2022-2023 was approved for the "Construction of Parking Plaza," and the same was continued under ADP No. 1766 for the financial year 2025-2026 with an estimated cost of Rs. 599.240 million.** However, due to the hurdles arising from the present dispute, the work could not proceed and presently stands halted.

11. Heard and perused the material available on record thoroughly.
12. First and foremost, it is necessary to examine the terms of the document, namely the lease agreement executed in favour of the Sindh Road Transport Corporation (SRTC), to determine whether the property was granted solely for a public purpose or for other purposes as well. Upon thorough examination of the record, it appears that the lease agreement required the SRTC to establish a building on the plot. Specifically, on page No. 3 of the lease agreement, at paragraph No. 2, it is clearly mentioned that the SRTC shall erect the building in accordance with the Building Bye-Laws and the plan duly approved by the Sukkur Municipal Corporation. It was further stipulated that the lessee (SRTC) shall use the plot for SRTC/commercial purposes. This position was also reiterated in the communication vide letter No. SMC/ESST/L.G-273 dated 18-03-1996, addressed to the Chairman of SRTC, Hyderabad, wherein it was clarified that the building to be erected on the leased land shall conform to the approved bye-laws of the SMC and shall be utilized solely for the Sindh Road Transport Corporation, i.e., **transport and parking purposes**, at agreed rates. The said letter has been annexed as Annexure "A" at page 13 of the statement dated 23-02-2026 filed by the petitioners' counsel.
13. Furthermore, the letter dated 07-10-2025, issued by the Transport and Mass Transit Department, Government of Sindh, and annexed as Annexure "G" at page 59 of the said statement, was addressed to the Municipal Commissioner, Sukkur. In the said letter, the Transport

Department admitted that the amenity space/area can only be used and utilized for its original purpose. However, it was also claimed that the Transport Department had initiated certain support-related development schemes.

14. It is now quite clear that the property in question was originally reserved for a public purpose and not for undertaking commercial activities. The nature of the property, as further clarified by the material on record, shows that it was intended solely for the establishment of a parking area, which is one of the basic requirements of the city. It has been pointed out that there is no recognized parking facility elsewhere in the city, and development scheme involving millions of rupees was subsequently approved for this purpose after the cancellation of the lease. Therefore, it is evident that the property in question was handed over only for the public interest, and the said plot clearly falls within the purview of amenity plots reserved for public or civic use.

15. The matter pertains to the year 1996, whereas the lease was cancelled in April/May 2012. At the relevant time, the governing law was the **Sindh Local Government Ordinance, 1979**. It is noteworthy that, under the Sindh (Repeal of the Sindh Local Government Ordinance, 2001 and Revival of the Sindh Local Government Ordinance, 1979) Act, 2011, the Sindh Local Government Ordinance, 2001 was repealed, and the Sindh Local Government Ordinance, 1979 was revived. Thus, during April/May 2012, when the impugned cancellation order was passed, the field was governed by the Sindh Local Government Ordinance, 1979. Subsequently, in September 2012, the **Sindh Peoples Local Government Act, 2012** was promulgated. Therefore, considering the relevant period of the dispute, the applicable law was the Sindh Local Government Ordinance, 1979. Upon perusal of the said law, particularly about the functions and powers of the Municipal Corporation, **Section 45(5)** of Sindh Local Government Ordinance, 1979 is especially pertinent. For ready reference and to elaborate on the issue at hand, the section may be read as follows:

Section 45 (5) Notwithstanding anything contained in sub-section (4) its council may grant, sell, or lease out land at rates to be fixed in consultation with Government, to –

(i) associations, organizations, individuals or any department or institution of the Federal or a Provincial Government for establishing, maintaining or extending educational, religious and charitable institutions or for such other purposes for the benefit of the public, subject to the condition that if the land is not used for the purpose it was granted, the council may, after affording such association, organization, individual or department or institution, as the case may be, an opportunity to show-cause against the proposed action, resume such land alongwith structures, if any, without any compensation; (Underline emphasized)

16. This provision underscores the authority of the Municipal Corporation to manage, regulate, and preserve municipal property, including amenity plots, and to ensure that such properties are used strictly in accordance with their designated public purpose. It further empowers the Corporation to resume possession of such land in the event it is not being used for its intended purpose.

17. Now, in order to further explain and understand the issue, the subsequent lease granted to Muhammad Ramzan and Imtiaz Qureshi must be examined to determine the purpose for which the Transport Department leased out the property to these individuals. The said subsequent lease deed, at page No. 5, clearly reflects that the sub-lessees, Muhammad Ramzan and Imtiaz Qureshi, had agreed that they would not undertake any acts to alter the title, claims, estates, or status of the property in any manner. However, the record indicates that they not only attempted to alter the title in favour of the private respondents but also changed the status of the property. Such actions are directly contrary to the original purpose for which the property in question was reserved, namely for public use and for establishing a parking area. This practice, therefore, stands in clear violation of the original terms and designated purpose of the property.

18. The nature of the property, as per the old periodical records presented by the petitioners, indicates that the property in question was an open space belonging to the Sukkur Municipal Corporation. To understand the legal basis and criteria for such open spaces under municipal law, **Section 55 of the Sindh Local Government Ordinance,**

1979 is particularly relevant. The said section defines open space and provides that the purpose of such open space is to serve the convenience and benefit of the public. This provision clarifies that open spaces are designated for public use, and their utilization for any private or commercial purpose contrary to the original intent is impermissible under municipal law. For ready reference, **Section 55** reads as follows:

55. Open spaces A corporation, municipal committee or town committee may provide and maintain within the local area such open spaces as may be necessary for the convenience of the public, and such spaces shall be grassed, hedged, planted and equipped with such amenities and in such manner as the bye-laws may provide.

19. In the case of **Ardeshir Cowasjee v. Karachi Building Control Authority** (1999 SCMR 2883), it was held that the conversion of an amenity plot for purposes other than its designated use is illegal. The Court observed that encroachment on an amenity plot cannot be allowed to subsist under the law. It is the duty of the official respondents to take notice of such encroachments and restore the property to its lawful status in accordance with the law. The Court further held that the use of an amenity plot for a purpose other than that for which it was reserved constitutes an abuse of discretion and is therefore unlawful. The reasoning is based on the principle that the paramount objective of modern city planning is to ensure maximum comfort and facilities for the residents of the city. A public functionary entrusted with safeguarding public property cannot act in a manner that defeats this objective, and any deviation from the planned scheme will naturally result in inconvenience and discomfort to the citizens. Further support is also drawn from the case of **MALL DEVELOPMENT (PVT.) LTD Versus WALEED KHANZADA and others 2022 SCMR 2080**.

20. Now, addressing the plea of the private respondents /individuals that they held a valid lease for the property in question/open space and, therefore, cannot be treated as encroachers, the record indicates otherwise. The private respondents have failed to demonstrate under what authority of law or rules the purported leases were granted. They have also been unable to establish that any scheme

was floated by the Provincial Government, or the relevant Municipal Corporation providing public notice or allotment of the property for personalized or commercial use. This position finds support from the case of **Shehri - Citizens for a Better Environment v. Federation of Pakistan (PLD 2021 Supreme Court 743)**, wherein it was held that:

5. We do not tend to agree with the submissions of the learned counsel for the interveners. The interveners have failed to show under what authority of law and rules the purported leases have been given. Learned counsel was also unable to establish from the record that any Scheme was floated by the Sindh Government or by KDA or by KMC or by the City District Government making public announcement of allotment of Nallahs' land to the people. We note that width of the Nallahs had been critically diminished by making constructions. By doing so, whole area from which the Nallahs were to receive the rain water have been blocked causing flooding/accumulation of water and secondly, the very capacity of the Nallahs are brought to a state where there was no space for allowing the Nallahs to drain the water. Measures were, therefore, adopted, as noted in the order of this Court dated 12.08.2020, to which learned counsel for the interveners has no cavil. His only emphasis was that the occupants, who will be ejected from the Nallahs' land, are provided reasonable compensation and also a reasonable rehabilitation.

21. Now, as regards the action of the Sukkur Municipal Corporation in issuing the notices, it is evident that the occupants/private respondents have been declared illegal occupants, as they have been using the property in question/open space contrary to its original purpose. Due to their actions, the Government and the national exchequer have suffered losses, as development schemes involving millions of rupees under the ADP were duly approved but could not be executed. The work under these schemes remains non-functional solely because of the obstruction created by the private respondents.

22. The law, however, provides a clear mechanism to address such unlawful occupation. In this regard, the **Act of 2010** specifically empowers the authorities to take action against illegal occupants. **Sections 3 and 4** of the Act lay down the procedure for the issuance of notices and the removal of encroachments. These provisions provide a statutory framework for the SMC to serve notices to illegal occupants and, in case of non-compliance, to take lawful steps to repossess the

property and restore it to its intended public use. For ready reference, both sections are reproduced below:

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 licence or on determination of such lease or licence, continues to retain unlawfully possession of any public property shall, for the purpose of this sub-section, be deemed to be responsible for encroachment.

(2) The order under sub-section (1) may be served by-

(a) giving or tendering it to the person responsible for encroachment or any adult male person residing with him; or

(b) affixing it at a conspicuous place on or near the public property to which it relates or sending it by Registered post, UMS, TCS, or publication.

(3) If Government or any authority or officer authorized by Government under this Act is satisfied that un-authorized construction over the state land or public property is being carried out, it or he may direct the person or persons who raised or are raising the un-authorized construction, to stop the construction and the later shall stop the unauthorized construction forthwith.

(4) Whosoever including abettor disobeys the directives given to him under sub-section(3) shall be punished with imprisonment of either description for a period of six months or with fine not less than fifty thousand rupees or with both.

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.

23. The Act further provides a stipulated time period within which the concerned functionaries are required to follow the prescribed procedure, including serving notices and ensuring compliance, to vacate the premises, even in respect of lease or license holders. In this context, it is clear that any person claiming title over the property, who fails to maintain the legal sanctity of such title or whose claim is

otherwise invalidated is to be treated as an illegal occupant and encroacher. Thus, the Act provides a complete and structured mechanism to identify illegal occupants, serve them notices, and take lawful steps for recovery and restoration of public property in accordance with its designated purpose.

24. Now, in the present case, it has been observed that notices were issued by the Sukkur Municipal Corporation to the private respondents/individuals. However, instead of complying with the statutory process, the respondents challenged the said notices before the Tribunal. It appears that the Tribunal entertained the notices without awaiting the conclusion of the proceedings required under Section 3(1) of the Sindh Public Property (Removal of Encroachments) Act, 2010, as mandated under Section 4 of the Act-2010.

25. The law provides a clear statutory remedy in the form of filing a review petition or application against the decision of the authorized functionaries. In the present matter, the notices were prematurely challenged, and the Tribunal entertained the matter although the functionaries had not finalized their proceedings. However, the statutory remedy under Section 4 had not been exhausted, and the proceedings before the functionaries were still ongoing.

26. After considering the foregoing reasons, discussions, facts, and circumstances of the case, **the instant petitions are allowed. Consequently, the impugned orders passed by the Anti-Encroachment Tribunal are set aside.** The Sukkur Municipal Corporation shall proceed in accordance with the mechanism prescribed under the Sindh Public Property (Removal of Encroachments) Act, 2010. It is clarified that the status of the notices issued by the Sukkur Municipal Corporation remains intact, and the process shall be further implemented strictly as prescribed under the said Act to ensure compliance with law and the original purpose of the property in question.

JUDGE

JUDGE