

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

*Constitutional Petition No.D-614 of 2023
Aijaz Ali Mahesar v. Province of Sindh and others*

Before:-

***Mr. Justice Amjad Ali Bohio,
Mr. Justice Ali Haider 'Ada'***

Petitioner : Aijaz Ali Mahesar, *through*
Mr. J.K Jarwar, Advocate.

Respondents : Province of Sindh and others,
through Mr. Shahrayar Imdad Awan,
Assistant Advocate General Sindh
alongwith Ashique Ali Assistant
Mukhtiarkar (Revenue) Mehrabpur
taluka, SIP Muhammad Hanif
Malik, P.S Halani on behalf of SSP
Naushahro Feroze.

Respondents No.9 & 10 : *through*, Mr. Aqleem Haider Shar,
Advocate.

Respondent No.17 : *through*, Mr. Rehmat Ali Shaikh,
Advocate

Date of hearing : 05.03.2026

Date of Decision : 05.03.2026

ORDER

Ali Haider "Ada" J. By the hands of respondents No.13 to 17, a complaint was filed before the Anti-Encroachment Tribunal, Sukkur. Upon such complaint, the learned Anti-Encroachment Tribunal, Sukkur, vide order dated 13.07.2020, passed the impugned order whereby it was observed that if any encroachment is found upon the Government property, the same shall be removed. The Tribunal further directed the Assistant Commissioner, Taluka Mehrabpur, to verify the revenue record of both parties and thereafter proceed further in accordance with law.

2. The said order has been assailed by the petitioner, who was the respondent before the Tribunal, primarily on the ground that despite the directions regarding verification of the revenue record, the revenue

hierarchy is allegedly proceeding to take coercive action against him without first ascertaining and verifying the relevant record.

3. Learned counsel for the petitioner contended that the petitioner is in possession of relevant documents of title and record of rights in respect of the property in question. According to him, the land is not a public property and the private respondents No.13 to 17 moved a frivolous application before the Tribunal and obtained the impugned order. He further argued that the revenue functionaries, at the instance of the said respondents, are attempting to take stern action against the petitioner without properly verifying the record.

4. Conversely, learned counsel appearing for respondent No.17, one of the private respondents, supported the impugned order and submitted that the Tribunal has passed a justified order which does not suffer from any legal infirmity. He emphasized that the order itself clearly stipulates that any action is to be taken only after verification of the relevant revenue record.

5. On the other hand, learned counsel appearing for respondents No.9 and 10, as well as the learned Assistant Advocate General, submitted that the revenue authorities have not taken any coercive action against the petitioner. It was further submitted that the parties shall be afforded an opportunity of hearing in order to produce and verify their respective record and thereafter the authorities shall proceed strictly in accordance with law. The learned AAG also referred to the statement of the Mukhtiarkar, Estate Goth Abad, Naushahro Feroze, which has been reproduced in the impugned order of the Tribunal at page No.7, wherein it has been stated that the entire record of the Goth Abad Office was burnt to ashes during the riots that occurred on 27th December, 2007. Consequently, verification or authentication of the documents could not be carried out in the absence of the original record. The learned AAG further submitted that efforts are being made to collect and reconstruct the relevant record from the concerned quarters and that no action has been taken so far against any party. He assured the Court that the revenue functionaries, being public office holders, shall act fairly and justly in accordance with law.

6. Heard, learned counsel for the parties and have perused the material available on record.

7. So far as the principal grievance of the petitioner is concerned, the same revolves around the assertion that his record has not been properly verified. However, it is evident from the submissions made by the official respondents that the authorities intend to verify the record of both parties and to collect the relevant material before proceeding further. It is also significant to note that the Tribunal itself has not passed any coercive order against the petitioner. Rather, it has merely directed the revenue authorities to verify the revenue record of both parties and, in the event that any encroachment upon Government land is found, to proceed in accordance with law. Such direction, in itself, does not prejudice either party and is essentially conditional upon verification of the relevant record.

8. Moreover, the official respondents have categorically stated before this Court that no adverse action shall be taken without affording proper opportunity of hearing to the parties concerned and after verifying the available record. In these circumstances, the apprehension expressed by the petitioner appears to be premature.

9. It is also well settled that public functionaries are under a legal obligation to exercise their statutory powers reasonably, fairly and justly. In this regard, reference may be made to **Section 24-A of the General Clauses Act, 1897**, which provides as under:

[24A. Exercise of power under enactments. – (1) Where, by or under any enactment, a power to make any order or give any direction is conferred on any authority, office or person such power shall be exercised reasonably, fairly, justly and for the advancement of the purposes of the enactment.

(2) The authority, office or person making any order or issuing any direction under the powers conferred by or under any enactment shall, so far as necessary or appropriate, give reasons for making the order or, as the case may be for issuing the direction and shall provide a copy of the order or as the case may be, the direction to the person affected prejudicially.

10. The said provision obligates the executive authorities to exercise statutory powers in a fair, reasonable, and transparent manner and to provide reasons for their decisions. Reliance may be placed upon the cases

of *Muhammad Amin Muhammad Bashir Limited v. Government of Pakistan through Secretary, Ministry of Finance and others* (2015 SCMR 630), *Muhammad Ashraf Tiwana and others v. Pakistan and others* (2013 SCMR 1159) and *Habibullah Bhutto v. Collector Customs and another* (2011 SCMR 1504), wherein the Honourable Supreme Court of Pakistan emphasized that public authorities must act fairly, reasonably and within the bounds of law while exercising statutory powers.

11. In view of the foregoing facts and circumstances, and keeping in view the submissions made by the learned counsel for the parties, particularly the statement of the official respondents that the record shall first be collected and verified and that the parties shall be afforded an opportunity of hearing, this Court deems it appropriate to dispose of the instant petition with certain directions.

12. Accordingly, the official respondents are directed that, without prejudice to the rights of either party, they shall first make efforts to collect and verify the relevant revenue records from the concerned quarters. Thereafter, after affording proper opportunity of hearing to both parties and examining their respective documents, they shall proceed strictly in accordance with the parameters of law. If any encroachment upon Government land is found after such verification, the authorities shall be at liberty to proceed under the relevant provisions of the Sindh Public Property (Removal of Encroachment) Act, 2010. Consequently, the instant petition stands disposed of in the above terms.

JUDGE

JUDGE