

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI

Constitutional Petition No. D-3240 of 2014
(*Muhammad Yousuf Jamal & others versus The Government of Sindh & others*)

Date	Order with signature of Judge
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Mr. Justice Adnan-ul-Karim Memon
Mr. Justice Zulfiqar Ali Sangi

1. For order on Misc. No.2099/2024
2. For order on Misc. No.2100/2024
3. For order on Misc. No.2101/2024
4. For hearing of main case

Date of hearing of order: 02.4.2026

Syed Ziauddin Nasir advocate alongwith Mr. Zulfiqar Ali Shaikh advocate for the petitioners

Mr. Abdul Jalil Zubedi, Assistant AG

Mr. Ghulam Muhammad advocate for respondent No.10

Mr. Khurram Ghayasuddin advocate for the respondent / KDA

Moulvi Iqbal Haider advocate for the intervener

ORDER

Adnan-ul-Karim Memon, J. Petitioners have filed this Constitutional Petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, seeking direction to the respondents take immediate action for removal of the encroachments from the amenity plot No.St/5/1, Block-5, Federal B. Area, Karachi.

2. Learned counsel for the petitioners submitted that Amenity Plot No. ST-5/1, Block-5, F.B. Area, Karachi was reserved for a park/playground as per the approved layout plan, but the same has been illegally encroached upon by unauthorized occupants who have raised hutments and RCC constructions. He submitted that the encroachments have caused serious law and order issues and disturbance for the residents of the locality, including the petitioners, and despite repeated complaints and correspondence with the concerned authorities since 2001, no effective action was taken. He further submitted that even the Metropolitan Commissioner, KMC had directed removal of encroachments in 2014, but the Anti-Encroachment Cell failed to comply with the directions. Learned counsel argued that protection of life, property and enjoyment of lawful property is a fundamental right, and since the respondents failed to perform their statutory duties, the petitioners were left with no alternate remedy except to invoke constitutional jurisdiction of this Court for removal of encroachments from the amenity plot. He prayed to allow this petition.

3. Learned counsel for Respondent No.10 raised legal objections and submitted that under Section 39 of the Sindh Katchi Abadis Authority Act, 1987, the Authority enjoys indemnity for actions taken in good faith under the Act, therefore, the petition is not maintainable. On merits, he submitted that Rehmanabad Katchi Abadi was notified in 1999 over a specific area, however, Amenity Plot No. ST-5/1, measuring approximately 3.5 acres, was/is reserved for park/playground as per KDA layout plan and does not fall within the notified or demarcated area of Rehmanabad Katchi Abadi. He further submitted that during scrutiny it was found that some provisional challans had been issued outside the notified area, which were later cancelled under the SKAA Regulations, 1993, and therefore the Authority has no concern with the encroachment on the amenity plot and the petition is liable to be dismissed against Respondent No.10.

4. Learned counsel for KMC submitted that in compliance with the Court's orders, an enquiry committee was constituted which conducted a survey and found that several RCC structures exist on the amenity plot and some structures had already been demolished. He submitted that as per record, Plot No. ST-5 was allotted by KDA to an educational institution, whereas Plot No. ST-5/1 is reserved for park/playground as per the layout plan. He further submitted that the plot was never formally transferred to KMC and KMC has not leased out the plot to anyone; therefore, the matter primarily pertains to KDA and the Sindh Katchi Abadis Department. However, KMC expressed its commitment to comply with the orders of this Court and to remove encroachments with the assistance of law enforcement agencies due to the sensitive law and order situation at the site.

5. Learned counsel for the interveners submitted that originally Plot No. ST-5 was an amenity plot reserved for a playground, however, in 1993 the Government of Sindh and KDA bifurcated the plot into ST-5 and ST-5/1, and while ST-5 remained an amenity plot, ST-5/1 was converted into residential use and leases were issued to occupants by the Sindh Katchi Abadis Authority. He further submitted that disputed questions of fact are involved, including the status of the plot and validity of the leases, and since a civil suit on the same subject matter is already pending, therefore this Court may not exercise constitutional jurisdiction in the matter. He prayed to dismiss the petition. However we reminded him that earlier the applications maintained by the interveners had already been dismissed by this Court on the premise that that the lease issued in favor of the interveners was found to be void, therefore their application(s) cannot be entertained at this stage.

6. We have heard the learned counsel for the parties and perused the record with their assistance.

7. The objection regarding maintainability has already been overruled by this Court, as it is well-settled in *Ardeshir Cowasjee v. Karachi Building Control Authority* (1999 SCMR 2883) that any resident of Karachi can maintain a petition for prevention or removal of encroachments on amenity plots. The plea of alternate remedy is not considered equally efficacious as a constitutional petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973.

8. From the official perspective, it appears that Amenity Plot ST-5/1 remains reserved for playground/park use. In such circumstances of the case, this court is left with no option but to direct the competent authority of the KMC, with law enforcement, to take pains to remove the encroachments as already ordered by this court vide order dated within three months.

9. The petition is disposed of along with all pending application(s).

JUDGE

JUDGE

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