

THE HIGH COURT OF SINDH, CIRCUIT COURT AT LARKANA

Before:

Mr. Justice Riazat Ali Sahar

Mr. Justice Ali Haider 'Ada'

C.P. No. D-552 of 2026

(Sadaruddin Soomro v. Rashid Hussain and others)

Petitioner: None for petitioner Sadaruddin Soomro.

Respondent No.1: Rashid Hussain through Mr. Noor Ahmed Lashari, Advocate.

Respondents No.2to7: Assistant Commissioner/Assistant Director Anti-Encroachment Larkana and others through Mr. Mohsin Ali Khan, Assistant Advocate General Sindh along with Ali Raza Soomro, Superintendent, Anti-Encroachment Tribunal, Larkana.

Date of hearing: 23.09.2026.

Date of decision: 08.10.2026.

ORDER

RIAZAT ALI SAHAR, J. - Through the instant Constitutional Petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, the petitioner has called in question the order dated 29-06-2026 passed by the **Anti-Encroachment Tribunal, Larkana**, in Suit No.04 of 2026. By the impugned order, the suit instituted by respondent No.1, Rashid Hussain, was allowed and the petitioner was directed to vacate Government Quarter No.37, Category-V, Revenue Staff Colony, Larkana, within fifteen days. In the event of non-compliance, the concerned Anti-Encroachment authorities were directed to secure vacation of the quarter with the assistance of the Anti-Encroachment Force.

2. Briefly stated, respondent No.1 claims to be serving as Senior Computer Operator (BPS-16) in the office of the Commissioner, Larkana Division. According to his plaint, Government Quarter No.37 had previously been allotted to Mansoor Ahmed Meerani, who furnished a relinquishment/no-objection in his favour. Respondent No.1 relies upon an allotment order dated 30-05-2025 and maintains that the petitioner continued to occupy the quarter without a lawful allotment. He alleges that, despite repeated approaches, the quarter was not vacated. He consequently

instituted Suit No.04 of 2026 before the **“Anti-Encroachment Tribunal, Larkana”**.

3. The petitioner, in his petition, disputes the maintainability of those proceedings and the **jurisdiction of the Tribunal**. He asserts that he occupied the quarter with permission while serving as Private Secretary to the Commissioner, Larkana, and that the applicable Government policy permitted retention of official accommodation for a specified period. He further states that, following his transfer to the Education & Literacy Department and posting as Section Officer at Karachi, his family continued to reside in the quarter. He also complains of misreading and non-reading of the record, failure to establish encroachment and non-joinder of the previous allottee. These assertions are recorded as the petitioner's case; whether they establish a lawful and subsisting entitlement to the quarter remains disputed.

4. Respondent No.1 has contested the petition through his para-wise comments. He maintains that the impugned order is supported by the allotment order and the official reports concerning possession. According to him, the petitioner was originally an employee of the Education Department, was brought to Larkana as Private Secretary to the then Commissioner, and was never formally allotted the quarter. He contends that permission to reside in Government accommodation cannot be equated with a regular allotment and that, after transfer to Karachi, the petitioner could claim no continuing entitlement to accommodation in the Revenue Staff Colony, Larkana.

5. Mr. Noor Ahmed Lashari, learned counsel for respondent No.1, supported the impugned order and contended that the allotment order dated 30-05-2025 establishes claim of respondent No.1, whereas no allotment order in favour of the petitioner has been produced. He relied upon the official reports confirming the petitioner's possession and submitted that the petitioner's former posting as Private Secretary did not confer a right to retain the quarter after transfer. Mr. Mohsin Ali Khan, learned Assistant Advocate General Sindh, supported the official position and relied upon the departmental record relating to allotment and occupation. None appeared for the petitioner at the hearing.

6. During the course of these proceedings, this Court, vide order dated 16-09-2026, called upon the learned Presiding Officer, Anti-Encroachment Tribunal, Larkana, to furnish an explanation regarding the authority and jurisdiction under which Suit No.04 of 2026 had been entertained and decided and the impugned order

dated 29-06-2026 had been passed. Pursuant thereto, the learned Presiding Officer submitted his **explanation** before this Court, which was taken on record; however, upon consideration, the same was found not to be very promising in addressing the jurisdictional concerns for which it had been called.

7. We have heard learned counsel for respondent No.1 and the learned Assistant Advocate General Sindh and have perused the record carefully. **The explanation furnished pursuant to the order dated 16-09-2026 is taken on record. It does not satisfactorily address the jurisdictional question requiring determination.** That question must, therefore, be answered by examining the enabling statute, the nature of the claim instituted before the Tribunal and the relief granted by the impugned order.

8. **The principal point for determination is whether Suit No.04 of 2026, as frame, fell within the jurisdiction conferred upon the Anti-Encroachment Tribunal by the Sindh Public Property (Removal of Encroachment) Act, 2010 ("the Act"). The further question is whether, upon setting aside the impugned order, any declaration concerning the petitioner's continuing entitlement to the quarter is warranted.** The first question concerns the lawful authority of the forum; the second concerns the extent of relief available in these constitutional proceedings. A decision upon jurisdiction does not, by itself, determine the disputed merits of either party's claim to official accommodation.

9. **Government Quarter No.37 is admittedly Government residential accommodation.** Its character as public property is not disputed. Section 2(j) of the Act includes unauthorised occupation of public property within encroachment. Sections 3, 4 and 5 provide for action by Government or an authorised authority or officer, review and eviction. Section 13 assigns the Tribunal adjudication of disputes that property is not public property or that a lease or licence has not been determined for purposes of the Act. Sections 11 and 14 respectively address the exclusion of civil jurisdiction and the Tribunal's procedure and powers. These provisions require a claim to be examined within the statutory scheme; the public character of premises alone does not establish jurisdiction over every form of relief concerning them.

10. The distinction between the statutory machinery for removal of encroachment and the adjudicatory jurisdiction of the Tribunal was examined by a Division Bench of this Court in **Abdul Waheed Chohan v. Province of Sindh and others (2025 SHC HYD 2222)**. The Court explained that action for removal under the Act is

entrusted to the authorised officers and that the Tribunal's jurisdiction must be located in the disputes specified by the enactment. Its discussion of sections 11, 13 and 14 supports the need to identify the statutory controversy before treating the Tribunal as a forum for recovery of possession. Although the facts of that case concerned different allotments and asserted transfers, the distinction between the functions assigned by the Act is relevant here.

11. We are also mindful of *Mst. Shahnaz v. Iqbal Hussain and 10 others (2022 CLC 556)*, which recognises that the Act does not impose an express prohibition upon a private person invoking its machinery, particularly upon failure of the competent authority to act. The mere fact that respondent No.1 is an individual is, therefore, insufficient to defeat proceedings otherwise competent under the Act. The present conclusion rests upon the nature of this suit and the statutory basis of the relief claimed. Access to a special forum remains subject to the jurisdiction conferred upon it. A private complaint concerning an encroachment cognisable under the Act and a claim to enforce a competing entitlement to Government residential accommodation require examination on their respective legal foundations.

12. Here, respondent No.1 sought possession for himself on the strength of the allotment order dated 30-05-2025. The petitioner asserted permission arising from his earlier posting and a right of retention under the **Government accommodation policy**. Resolving that controversy required examination of the authority under which the petitioner entered the quarter, the conditions governing that occupation, the effect of his transfer, the applicable retention provisions and the legal effect of the subsequent allotment. Equally, the dispute cannot be resolved by assuming that a subsequent allotment, without examination of the governing conditions, necessarily answers every question concerning an existing occupant's status.

13. Those matters fall, in the first instance, to the departmental/allotting authority entrusted with the administration of Government residences. That authority must ascertain whether any permission or allotment existed, whether it remained effective, and whether it expired or was lawfully withdrawn. Where the relevant rules provide for automatic expiry, its legal effect must be considered; where cancellation or withdrawal is required, the prescribed procedure must be followed. The resulting determination may warrant lawful steps for recovery of

possession. On the material relied upon here, however, an allotment order in favour of respondent No.1 and reports recording the petitioner's possession have not been shown to supply the statutory foundation for the particular suit and eviction order made by the Tribunal.

14. The argument founded upon the absence of a formal allotment in favour of the petitioner is material to his substantive entitlement. It does not answer the antecedent question of the Tribunal's authority to adjudicate the suit in the form instituted. The same applies to the assertion that the petitioner was no longer posted at Larkana or in the Revenue Department. These circumstances may have consequences under the applicable accommodation rules. They require determination by the authority empowered to administer those rules. A conclusion that an occupant's claim is weak cannot dispense with identification of the lawful forum and the proper procedure and mechanism under Government policy for allotment and cancellation of Government accommodation, through which possession may be recovered.

15. Likewise, the question of receipt of house-rent allowance, if established from the relevant official record, may affect eligibility for Government accommodation, liability for recovery or compliance with service conditions. It does not independently vest the Tribunal with power to decide a departmental accommodation dispute. Nor does the continued residence of the petitioner's family establish a permanent right of retention. Both considerations must receive their proper legal effect within the governing rules. The jurisdictional inquiry cannot be replaced by a general assessment that one claimant appears more deserving of the quarter than the other.

16. The official reports concerning the petitioner's possession establish, at most, the factual position observed by the reporting officials and any documents produced before them. The presence of an official report does not, without more, establish that its author exercised the statutory power of an authorised officer or that the steps required for the relief in question were taken. The report, the allotment order and the assertion of unauthorised occupation must each be examined for the legal purpose they serve. The statutory basis of Suit No.04 of 2026 remained to be established notwithstanding those materials. Documentary support for a claim cannot enlarge the subject-matter jurisdiction of the forum considering it.

17. Section 11 does not alter that conclusion. Its exclusion of civil jurisdiction operates within the field covered by the Act.

The provision must be read with the jurisdiction conferred by section 13; exclusion of one forum does not create unlimited authority in another. Similarly, the procedural powers under section 14 facilitate adjudication of competent proceedings. They do not confer a general jurisdiction over all disputes concerning Government buildings. The provision for execution through the Force under section 16 presupposes a lawful order under the relevant enabling provision. Availability of an enforcement mechanism cannot cure the absence of authority to make the order being enforced.

18. The principle concerning absence of jurisdiction was explained by the Honourable Supreme Court in **The Chief Settlement Commissioner, Lahore v. Raja Muhammad Fazil Khan and others (PLD 1975 SC 331)**. An order made by a court, tribunal or authority lacking jurisdiction over its subject matter is a nullity. The relevant inquiry is the existence of lawful power to decide the controversy. Accordingly, neither the perceived correctness of the ultimate result nor the strength of a party's documentary claim can sustain an order made beyond the jurisdiction conferred by law. Applied to these proceedings, the failure to establish the Tribunal's authority to grant the particular relief is sufficient to displace the impugned order.

19. Respondent No.1's objection to the petitioner's *locus standi* also fails to answer this issue. The impugned order directly requires the petitioner to vacate the accommodation he occupies and exposes him to coercive enforcement. He is affected by that order and may question whether it was made with lawful authority. His capacity to raise that objection does not establish that he holds a valid allotment or a subsisting right to retain the quarter. Those are separate questions. The other objections concerning appreciation of the record and non-joinder of Mansoor Ahmed Meerani need not be finally determined once the proceedings, as instituted, are found to lack the requisite jurisdictional foundation.

20. Our intervention under Article 199 is confined to that defect. In **Jameel Qadir and another v. Government of Balochistan, Local Government, Rural Development and Agrovilles Department, Quetta through Secretary and others (2023 SCMR 1919)**, the Honourable Supreme Court emphasised the exhaustion of adequate statutory remedies and the limits upon adjudicating disputed facts in constitutional jurisdiction. Those principles require that the parties pursue their substantive accommodation claims through the competent mechanism. The present proceedings are not

employed to reassess which employee should receive the quarter; they address an eviction order whose statutory foundation has not been established. We consequently refrain from determining the disputed factual conditions of allotment or retention.

21. The administration of Government accommodation must itself remain within the law. In ***Iqbal Hussain v. Province of Sindh through Secretary, Housing and Town Planning, Karachi and others (2008 SCMR 105)***, the Honourable Supreme Court held that public functionaries may deal with public property only through the prescribed procedure and within lawful parameters. Its principle applies to the authority administering the quarter as well as to persons claiming its benefit. Neither an informal permission nor a subsequent allotment may be given an effect beyond that permitted by the governing rules. The competent authority must examine the source, validity and subsistence of the claimed entitlement and record its determination accordingly.

22. Any departmental determination must also be reasoned and procedurally fair. ***Amanullah Khan and others v. The Federal Government of Pakistan through Secretary, Ministry of Finance, Islamabad and others (PLD 1990 SC 1092)*** requires administrative discretion to be structured and exercised upon relevant considerations. ***The University of Dacca through its Vice-Chancellor and another v. Zakir Ahmed (PLD 1965 SC 90)*** recognises the requirement of a fair opportunity to meet material relied upon to a person's prejudice. The authority concerned shall, therefore, examine the applicable accommodation policy, the allotment and service records, any condition governing permission or retention, and the rival claims after affording the persons affected an appropriate opportunity of hearing. Its decision must disclose the legal basis of any consequential action.

23. It follows that setting aside the impugned order confers no indefeasible right upon the petitioner to continue occupying the quarter. ***In Muhammad Arif through L.Rs. v. District Coordination Officer, Chairman, P. & D. Board, L.D.A. and others (2016 SCMR 2025)***, the Honourable Supreme Court declined to permit use of judicial proceedings to legalise occupation unsupported by a vested right. The present relief similarly cannot be treated as regularisation of occupation or validation of the petitioner's asserted permission. Should the competent authority find, in accordance with the governing law, that the petitioner has no subsisting entitlement, it remains empowered to take the steps legally available for vacation and recovery of possession.

24. For the foregoing reasons, Suit No.04 of 2026 was not maintainable before the Anti-Encroachment Tribunal in the form in which it was instituted. The impugned order dated 29-06-2026 is declared to have been passed without lawful jurisdiction and is hereby set aside. Respondent No.1 may, if so advised, pursue his claim before the competent departmental/allotting authority in accordance with law. That authority shall remain at liberty to examine the petitioner's asserted permission and entitlement to retain Government Quarter No.37 and to take consequential action after following the applicable procedure. No declaration of an absolute or permanent right of retention is granted to the petitioner. The Constitutional Petition is disposed of in the above terms. There shall be no order as to costs.

25. There is yet another aspect requiring consideration. It has been brought to the notice of this Court that, under the prevailing policy of the Government, **a retired District & Sessions Judge** is not eligible to hold or continue to hold such judicial office after attaining the prescribed age of **63 years**. A similar question concerning the appointment and continuation of retired District & Sessions Judges as Judges of the Anti-Terrorism Courts recently came under consideration before this Court in **C.P. No.1917 of 2025, Ubedullah v. Province of Sindh and others, at the Circuit Court, Hyderabad**, wherein the relevant legal and policy considerations were examined.

26. In these circumstances, it would be appropriate for the competent authority to examine, without unnecessary delay, the eligibility and continuation of the learned Presiding Officer in the light of the applicable statutory framework, the prevailing Government policy and the principles enunciated in the aforesaid judgment. While undertaking such exercise, the competent authority may also consider his suitability to continue exercising specialized jurisdiction in the light of the deficiencies noticed hereinabove. **These observations are confined to the material presently before this Court and shall not be construed as a final determination regarding either his capacity or entitlement to hold office, both of which shall independently be examined by the competent authority in accordance with law.** Accordingly, let a copy of this order be transmitted to the Chief Secretary, Government of Sindh, for consideration and an appropriate

decision, strictly in accordance with law, preferably within **45 days**, under intimation to this Court.

27. In view of the above discussion, the impugned order dated 29.06.2026 passed by the learned Presiding Officer, Anti-Encroachment Tribunal, Larkana, in Suit No.04 of 2026, cannot be sustained and is hereby set aside. Respondent No.1 shall, if so advised, pursue his claim before the competent departmental/allotting authority in accordance with law. Likewise, the competent authority shall remain at liberty to examine the petitioner's entitlement/ permission to Government accommodation and, after following due process, pass an appropriate order regarding the quarter. So far as the constitutional petition is concerned, to the extent that it seeks a declaration of an absolute right of the petitioner to retain the Government quarter, no such declaration is warranted in these proceedings. The petition is accordingly **disposed of** in the above terms, with the impugned proceedings before the Anti-Encroachment Tribunal having been found without lawful jurisdiction. There shall be no order as to costs.

28. Let a copy of this order be communicated to Chief Secretary, Government of Sindh, Karachi, Secretary Law, Parliamentary Affairs & Criminal Prosecution Department, Karachi and Member Inspection Team-II, of this Court at Karachi, for information.

JUDGE

JUDGE

Approved for reporting.

