

THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA

BEFORE:

Justice Arbab Ali Hakro

Justice Muhammad Osman Ali Hadi

Const. Petition No. D-129 of 2021

[Muhammad Shah Vs. Province of Sindh & others]

Petitioner : Through M/s. Dur Muhammad Shah & Quratul-Ain Haroon, Advocates

Respondents No.1 to 7 : Through Mr. Liaquat Ali Shar, Additional Advocate General, Sindh Shoukat Ali Bhangwar, Mukhtiarkar, Garhi Yasin

Respondents No.8 to 10 : Through Mr. Ali Bux Mashori, Advocate

Respondent No.11 : Nemo

Date of Hearing : **28-10-2026**

Date of Order : **28-10-2026**

O R D E R

ARBAB ALI HAKRO, J.- The petitioner, a resident of Mashwani Muhalla, Madeji Town, Taluka Garhi Yasin, District Shikarpur, invokes Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973. He prays that the official respondents be directed to retrieve and protect an amenity plot of about half an acre located in front of and on the sides of Rehmani Masjid in Survey No. 102, Deh Jindodero, Madeji Town, and that respondents Nos. 8 to 11 be restrained from holding a jirga for its allotment or from interfering with its possession.

2. His case is that the plot is government land reserved for amenity, used by residents as a passage and by young people as a playground; that respondents Nos. 8 to 10, who are brothers, with the connivance of the official respondents, raised a wall on one side and intend to enclose the rest; that an application signed by 26 residents was given to the SHO, Madeji, on 12.06.2020; that his own application dated 01.03.2021 to the Deputy

Commissioner, Shikarpur (respondent No.3), for removal of the encroachment remains undecided; and that the official respondents have asked the private respondents to settle the matter through a jirga.¹

3. The official respondents were directed to ensure that the plot, if reserved for amenity or playground, was not converted to any other use, and respondent No.5, the Mukhtiarkar, was directed to produce the record of the plot showing the purpose for which it is reserved.²

4. Respondent No.5 states that, according to the revenue record, Survey No.102 is uncultivable Government land measuring 39-18 acres in Deh Jindodero. He further states that the then Mukhtiarkar reported that the subject plot was reserved for amenity and lay vacant in front of the masjid; that residents use it as a passage and for parking; and that no construction or encroachment is presently found. Collusion on the part of the officials is denied. In his earlier report to the civil court, he recorded two Form-II entries for a plot at the same place: Entry No.452 dated 10.11.2008 (10,180 sq. ft.) in favour of one Qadirdad Shah on a possession certificate of the Town Municipal Officer, and Entry No.174 dated 24.10.1996 (6,049 sq. ft.) in favour of one Naseer Muhammad Shah on a property certificate of the Town Committee, Madeji. Neither entry refers to Survey No.102. The SSP, Shikarpur, reports that the dispute is over a plot and that FIR No.29/2020, registered by one Mst. Balqees Shah against persons from the petitioner's side, is pending trial.³

5. Mr. Ali Bux Mashori, Advocate, has filed Vakalatnama on behalf of Respondents No.8 to 10, which is taken on record. Respondents Nos. 8 to 10 deny that the plot is government or amenity land. They say that it is owned by Dr. Syed Qadirdad Shah under Entry No. 452 of Form-II, does not fall within Survey No. 102, and that the construction was carried out by the owner and his sister, who are in possession. They further contend that the petitioner has no locus standi; that the petition is collusive, with respondent No. 11 being a planted party; and that F.C. Suit No. 124 of 2020, filed by the

¹ Memo of petition, paras 3 to 8, and Annexures P to P/7.

² Order dated 10.03.2021.

³ Comments of respondent No.5 dated 24.03.2022 with Annexure A (Form VII, Entry No.378); report of the Mukhtiarkar, Garhi Yasin, No.SR-528 of 2020 dated 24.06.2020; statement of the SSP, Shikarpur, dated 08.08.2023.

petitioner's maternal uncle in respect of the same plot, was dismissed as withdrawn on 18.03.2021, a fact the petitioner has concealed.⁴

6. We have heard learned counsel for the parties and the learned Additional Advocate General, and have perused the record. Learned counsel for the petitioner relied on **2020 SCMR 111**.⁵

7. The principle is settled in law. Land reserved for amenity cannot be used for any other purpose; it cannot be leased, allotted, or sold to a private person or body, and any grant made in disregard of that is void ab initio.⁶ The decision relied upon by the petitioner proceeds on the same footing.⁷

8. The difficulty lies elsewhere. Before the principle can be applied, it must be shown that the subject plot is an amenity plot, and nothing on the record establishes that. No layout plan, master plan, notification, or other instrument reserving the plot has been produced, although respondent No.5 was directed on 10.03.2021 to produce the record. Form VII of Survey No.102 describes a large parcel of uncultivable Government land; it does not mark out the half-acre claimed by the petitioner within it. The statement of the Mukhtiarkar that the plot is reserved for amenity is not backed by any document, and his own report shows that two Form-II entries exist for a plot at the same place, in favour of persons who are not before this Court. The private respondents deny that their plot lies in Survey No.102 at all. Whether the two are the same land and what the Form-II entries are worth, resting as they do on certificates of the local body and carrying only a rebuttable presumption and no title, can be determined only after demarcation on the ground and with the claimants heard.

9. That determination cannot be made in proceedings under Article 199. Disputed questions of fact and title, which call for evidence, fall outside this jurisdiction, and a High Court cannot hold land to be public property or those in occupation to be encroachers unless that is first determined after hearing the persons affected. The Federal Constitutional Court has set aside a writ judgment on that very ground, leaving title, possession and the lawfulness of

⁴ Comments of respondents No.8 to 10 dated 28.10.2026 with Annexures A to C.

⁵ *Abdul Karim v. Nasir Salim Baig* 2020 SCMR 111.

⁶ *Report on behalf of Shehri-Citizens v. Federation of Pakistan* 2022 SCMR 253 (paras 12, 14 and 16).

⁷ *Abdul Karim* (n.5 above).

construction to the competent forum.⁸ The persons said to hold Entry Nos. 452 and 174, and the local body whose certificates are in issue, are not parties here. A direction to retrieve the plot or to restrain its claimants would operate against them unheard. The petition, therefore, cannot be allowed on the terms prayed.

10. That does not leave the petitioner's grievance unanswered. Under the Sindh Public Property (Removal of Encroachment) Act, 2010 (hereinafter referred to as '**the Act of 2010**'), the Government or an officer authorised by it may order the removal of an encroachment on public property, which includes land under the control of the Government or a local council. A dispute as to whether property is public property lies exclusively with the Tribunal, the civil courts being barred.⁹ The question raised by the petitioner thus has a statutory forum, which can hear every claimant and call for the revenue and planning record. What the petitioner can legitimately ask in these proceedings is a direction, in the nature of mandamus, that his application dated 01.03.2021 be decided in accordance with law. A resident who uses the plot as a passage need not show a proprietary right to seek that, and the objection as to locus standi does not defeat this limited relief. The allegation of collusion is unsupported by any material. The failure to mention F.C. Suit No.124 of 2020, filed by another person and withdrawn without adjudication, does not disentitle the petitioner to ask a public authority to perform its duty.

11. The allegation of a jirga is general; no date, participant or decision has been given, and respondent No.5 and the SSP deny any official involvement. We record no finding of fact on it. It must nonetheless be said that a jirga has no power to adjudicate civil rights and none to allot or dispose of public land; at best, it may mediate between willing parties, and what it arrives at has no legal force of its own.¹⁰ Any such arrangement over the subject plot, if it is public land, would be of no effect.

12. For the foregoing reasons, the petition is **disposed of** in the following terms:

⁸ *Muhammad Ashraf Rana v. Rehmat Ali* F.C.P.L.A. No.423 of 2025, decided on 17.07.2026.

⁹ Sindh Public Property (Removal of Encroachment) Act, 2010, ss.2(o), 3(1), 11(1) and 13.

¹⁰ *National Commission on the Status of Women v. Government of Pakistan* PLD 2019 SC 218 (paras 13 and 14).

- (a) Respondent No.3 shall decide the application dated 01.03.2021 by a speaking order within sixty days of receipt of this order, after notice to the petitioner, respondents No.8 to 10, the persons claiming under Entry Nos.452 and 174 of Form-II, and the concerned local body, and after calling for the revenue record, any layout plan, master plan, or notification relating to the plot, and a demarcation report of the plot with reference to Survey No.102, to be prepared by respondents No.4 and 5 after notice to the claimants.
- (b) If the plot is found to be public land, the competent officer shall proceed in accordance with the Act of 2010. If it is found to be privately held, the order shall so state, and the petitioner shall be free to pursue any remedy available to him in law.
- (c) Nothing in this order constitutes a finding on the ownership, title, possession or nature of the plot. The observations above are confined to the disposal of this petition, and the rights of all concerned are left to be determined by the competent forum.

13. The petition and the pending application (s), if any, stand **disposed of** accordingly. Office shall send a copy of this order to respondent No.3 for compliance.

JUDGE

JUDGE

Zulfiqar