

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI

Constitutional Petition No. D-2940 of 2026
(*Khawaja Muhammad & another versus Government of Sindh & others*)

Date	Order with signature of Judge
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Before:
Mr. Justice Adnan-ul-Karim Memon
Mr. Justice Muhammad Jaffer Raza

Date of hearing and order: 31.8.2026

Syeda Sara Kanwal, Advocate for the petitioners
Mr. Abdul Jalil Zubedi, Additional AG
Mr. Irshad Ali Samoo, Manager Auqaf South

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, with the following prayer: -

- a) To direct the Respondent No.4 to withdraw the said alleged void notice dated 05.11.2024 issued by the Manager, Auqaf, South Circle-II, Karachi, Respondent No.4.*
- b) To cancel /set-aside the letter dated 05.11.2024 issued by Respondent No.4.*
- c) To restrain the Respondent No.2-4 therefrom from carrying out any further construction of the said masjid.*
- d) To restrain the Respondents, their representatives, servants, agents, employees, person or persons, worker or workers from demolition of the said Masjid, Madrassa, Mazar as well as Quarters situated adjacent Pakistan Secretariat, Saddar, Karachi, as such not to demolish the said Masjid, Madrassa, Mazar and Quarters and further be pleased to restrain them from dispossessing the Petitioners from the quarter No.7, adjacent said Masjid, Madrassa and Mazar.*
- e) To Direct the Respondent Nos. 2 and 3 to hand over all the affairs/matters of the subject Masjid, Madrassa and Mazar to Petitioner No. 1, being a real custodian.*

2. The case of the Petitioners is that Petitioner No.1 is the long-standing and lawful occupant/custodian of Waqf Unit No.7 situated adjacent to Allah Wali Masjid and Madrassa, Pakistan Secretariat, Saddar, Karachi, where he and his forefathers have continuously resided and served as attendants/custodians (Mutawallis) of the religious premises. The Petitioners are aggrieved by the impugned notice dated 05.11.2024 issued by Respondent No.4, directing Petitioner No.1 to vacate the subject premises. According to the Petitioners, the property was originally allotted to Baba Syed Akram Ali Shah, who was appointed and recognized as Mutawalli of Allah Wali Masjid and Madrassa in 1953. Subsequently, the Karachi Estate Board, through letter dated 24.08.1957, allotted land comprising 4,385 square feet for the Masjid, Hujra for the Pesh

Imam and Moazzan, while 4,255 square feet was reserved for residential quarters and shops. The original Mutawalli constructed and managed the Masjid and Madrassa, and his status was duly recognized by the concerned authorities.

3. The Petitioners' counsel states that, owing to his old age, the original Mutawalli transferred the management to Petitioner No.1's father, Khawaja Abdul Awal, who was formally appointed Mutawalli in 1973. After his demise, Petitioner No.1 was appointed and recognized as custodian/attendant of the Masjid, Madrassa and Mazar vide letter dated 25.05.2011. Petitioner No.2 is a registered trust constituted for the said religious premises. The Petitioners claim that they and their predecessors have continuously managed, maintained and financed the Masjid, Madrassa and Mazar without financial or administrative assistance from the Auqaf authorities. The Petitioners' counsel contend that despite their repeated complaints regarding unauthorized occupation and interference, the Respondents failed to protect the property. They assert that a civil suit concerning the management and possession of the premises was decreed in 1999 and continues to hold the field. They allege that the present attempt to evict them is motivated by private interests and a desire to remove the existing quarters and undertake commercial construction over the property, which may also damage the Mazar and affect the sanctity of the religious premises. The Petitioners' counsel maintain that the impugned notice dated 05.11.2024 is illegal, arbitrary and without lawful authority, particularly in view of their long-standing possession, documentary record, succession, and recognized role in managing the religious premises. She apprehends forcible dispossession and demolition of the existing quarters and religious structures, causing irreparable loss and prejudice. She further submits that their earlier civil suit was rejected under Order VII Rule 11 CPC on the ground that such proceedings were not maintainable against Waqf, leaving them without an adequate and efficacious alternate remedy. Consequently, the Petitioners have approached this Court under Article 199 of the Constitution seeking withdrawal and setting aside of the impugned notice dated 05.11.2024, protection against dispossession and demolition, restraint against further construction, and restoration/continuation of Petitioner No.1's role as custodian and manager of the Masjid, Madrassa and Mazar.

4. The learned AAG representing/Auqaf Department submits that the petitioners have no lawful right, title, interest or entitlement in the subject property, as the entire Waqf property comprising Allah Wali Masjid and Madrassa was taken over by the Auqaf Department on 14.11.1972 under the Waqf Properties Ordinance, 1961 and is presently governed by the Sindh Waqf Properties Act, 2020. He added that under Section 8 of the Act, the Waqf property vests in the Chief Administrator Auqaf, and no private person can claim ownership or hereditary rights therein. The learned AAG maintains that the

original allotment of Government land to Baba Syed Akram Ali Shah was exclusively for religious purposes, namely construction of the Masjid and Madrassa, and did not create any private proprietary rights. According to the respondents, the petitioners have concealed material facts and are unauthorized occupants of the Waqf premises. Unit No.7 was originally allotted on tenancy basis to Mst. Noor Jehan, who is now deceased, and Petitioner No.1, Khuwaja Muhammad alias Munna Bhai, has no lawful right to occupy the same. The AAG further assert that there are several residential units attached to the Masjid which were originally let out by the Auqaf Department, but most original tenants have either left, died or unlawfully transferred possession, while the present occupants are unauthorized and, in many cases, have defaulted in payment of rent. The Department has therefore initiated proceedings for their eviction under Section 10 of the Sindh Waqf Properties Act, 2020. The AAG further rely upon the order dated 09.08.2024 passed by the Provincial Ombudsman (Mohtasib) Sindh in Complaint No. POS/1381/2023/J, whereby Petitioner No.1 was declared an unauthorized person and was directed to be excluded from the management of the Waqf property. Pursuant thereto, a Religious Purpose Committee was constituted and permission was granted for reconstruction of Allah Wali Masjid. The AAG contends that the alleged Will, appointment letters, trust deed and other documents relied upon by the petitioners cannot override the statutory vesting of the Waqf property in the Auqaf Department. Likewise, the alleged Civil Suit No.432 of 1998 and its ex-parte decree are not binding upon the Auqaf Department, as it was not a party to those proceedings. The respondents deny that the petitioners have any hereditary or vested right to manage the Masjid, Madrassa, Mazar or adjoining residential units. They assert that the alleged succession of the Mutawalli and the private trust created by the petitioners have no legal effect upon property already vested in Auqaf. The respondents also allege that Petitioner No.1 has been unlawfully collecting rent from occupants of the Waqf units and Nazrana through private collection boxes, thereby causing loss to the Government and interfering with the administration of the Waqf property. It is further the case of the respondents that the Masjid is old, dilapidated and requires reconstruction, and that such reconstruction is a statutory responsibility of the Auqaf Department under Section 17 of the Sindh Waqf Properties Act, 2020. The proposed reconstruction has also been approved by the Chief Administrator Auqaf pursuant to the directions of the Provincial Ombudsman. The respondents deny any intention to demolish or damage the Mazar and maintain that all development activities are being undertaken for the betterment and preservation of the Waqf property and religious purposes. The learned AAG therefore contends that the impugned notices dated 05.11.2024 were lawfully issued by the competent authority under Section 10 of the Sindh Waqf Properties Act, 2020, after Petitioner No.1 had already been declared an unauthorized occupant. He maintains that no fundamental right of the petitioners has been violated, that the

petitioners have approached the Court with unclean hands and without lawful title or locus standi, and that their claim is contrary to the statutory scheme governing Waqf properties. Accordingly, the AAG prays for dismissal of the petition with costs and for permission to proceed against all unauthorized occupants and to undertake the approved reconstruction of Allah Wali Masjid in accordance with law.

5. Learned counsel for the Petitioners, in rebuttal, submits that the Respondents have failed to establish any lawful basis for treating Petitioner No.1 as an unauthorized occupant or for disturbing his long-standing possession and recognized role as Mutawalli/custodian of the subject Masjid, Madrassa and Mazar based on the lease documents. She contends that the mere vesting of Waqf property in the Auqaf Department does not extinguish the lawful rights, status and settled possession of a duly recognized Mutawalli, particularly where such status is supported by historical allotment records, appointment letters, succession documents and the decree passed in the civil proceedings. She further argues that the Respondents cannot rely upon the alleged tenancy in the name of Mst. Noor Jehan to dislodge Petitioner No.1 without first determining his lawful status and succession through due process, nor can the order of the Provincial Ombudsman, which is disputed by the Petitioners, be treated as conclusive adjudication of their civil rights. Counsel maintains that the impugned notice dated 05.11.2024 is arbitrary and has been issued without providing the Petitioners a fair opportunity of hearing or properly determining their objections and documentary claims. She submits that the proposed reconstruction cannot be used as a pretext for dispossession, demolition of the adjoining quarters or alteration of the existing religious premises, particularly when the Petitioners apprehend that the real object is commercial development of the valuable property. She denies the allegations of unauthorized rent collection and mismanagement as unsupported and submits that the Petitioners have continuously maintained and served the religious premises without assistance from the Auqaf Department. Counsel further contends that the Respondents' assertion regarding the dilapidated condition of the Masjid does not authorize them to forcibly dispossess the Petitioners or demolish the Mazar and adjoining structures without following the prescribed legal procedure and safeguarding the sanctity and character of the Waqf property. She therefore submits that the Petitioners have demonstrated a genuine and longstanding claim requiring judicial protection, that the impugned notice is without lawful authority and violative of due process, and that the Respondents should be restrained from taking coercive action, dispossessing the Petitioners or undertaking any construction or demolition until their rights and objections are lawfully determined.

6. In view of the arguments advanced by learned counsel for the parties at considerable length, and upon being confronted with the legal position governing the subject Waqf property, it has emerged that the parties have raised serious and competing claims regarding the status, possession, management and lawful entitlement of Petitioner No.1 in respect of the Masjid, Madrassa, Mazar and adjoining Quarter No.7. The Petitioners rely upon the historical allotment, succession, appointment letters, trust documents, previous civil proceedings and other documents in support of their claim, whereas the Auqaf Department relies upon the statutory vesting of the Waqf property, the alleged tenancy record, the proceedings before the Provincial Ombudsman, the declaration of Petitioner No.1 as an unauthorized occupant and the provisions of the Sindh Waqf Properties Act, 2020. These disputed factual and documentary matters require proper examination by the competent authority rather than determination in constitutional jurisdiction at this stage.

7. In these circumstances, and particularly as the parties, after hearing at length and upon being apprised of the legal position, have agreed to have their respective claims and counter-claims examined by the competent authority of the Auqaf Department, the impugned notice/order dated 05.11.2024 is not being adjudicated upon on its merits. The matter is accordingly remitted to the competent authority of the Auqaf Department, who shall issue notice to all concerned parties and provide them a fair and reasonable opportunity of hearing. The competent authority shall examine the entire relevant record and documents produced by both sides, including the historical allotment and tenancy record, alleged appointment/succession documents, trust deed, previous orders/decrees, proceedings before the Provincial Ombudsman and the record relating to vesting and administration of the Waqf property.

8. After hearing both sides and considering their respective claims and counter-claims in accordance with the Sindh Waqf Properties Act, 2020 and other applicable law, the competent authority of the respondents shall pass a reasoned and speaking order dealing with the material contentions and documents of both parties. Such exercise shall be completed within thirty (30) days from the date of receipt of a copy of this order. The decision shall be made strictly in accordance with law, without being influenced by any observation contained herein, as no opinion is being expressed by this Court on the merits of the rival claims. Until the aforesaid proceedings are concluded and the speaking order is passed, the parties shall maintain the status quo regarding the possession and existing structures, subject to any action that may be strictly necessary for preservation of life, safety or the Waqf property in accordance with law. The Auqaf authorities shall ensure that no demolition is undertaken merely based on the impugned notice during the aforesaid period, except with due authority of law.

9. The petition is accordingly disposed of in the above terms, by consent of the parties, leaving all questions of law and fact open for determination by the competent authority. The competent authority shall independently apply its mind to the record and shall not treat this order as conferring any right, title, ownership or permanent entitlement upon either party.

JUDGE

JUDGE

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