HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

C.P. No.D-42 of 2025

[Muhammad Saleem vs. The Province of Sindh and others]

Before:

JUSTICE ADNAN-UL-KARIM MEMON
JUSTICE MUHAMMAD JAFFER RAZA

Petitioner:	Through Mr. Muhammad Aslam Khan advocate
Respondents No.1to5&9:	Through Mr. Rafique Ahmed Dahri Additional A.G Sindh
Respondents 6to8:	Through Mr. Zulfiqar Ali Durrani advocate
Respondents No.10to13:	Through Mr. Hadi Bux Zardari advocate
Date of hearing & Decision:	17.11.2026

O R D E R

ADNAN-UL-KARIM MEMON, J. - The petitioner has challenged the order dated 27.11.2024 passed by the Judge, Anti-Encroachment Tribunal, Hyderabad in Suit No.50 of 2024, whereby his execution proceedings concerning alleged encroachment over Plot No.1263, Iqbal Colony, Unit No.12, Latifabad, Hyderabad, were dismissed.

2. The case of the petitioner is that he resides at House No.1249, adjacent to Plot No.1263, and that private respondents No.10 to 13 have illegally encroached upon the adjoining public street by raising construction, thereby obstructing the common passage. He approached Deputy Commissioner, Hyderabad, whereupon the matter was referred to Assistant Commissioner and Assistant Director, Katchi Abadi, HMC. The latter, through reports dated 05.07.2024 and 12.09.2024, allegedly confirmed encroachment over portions of street and recommended its removal and registration of an FIR against the private respondents.

3. The Anti-Encroachment Tribunal, vide order dated 23.09.2024 directed the Mukhtiarkar Revenue, Assistant Director, Katchi Abadi and SHO, Anti-Encroachment, to examine the relevant record, measure the properties of both parties and remove any encroachment found during such exercise. The petitioner alleges that although the authorities visited the site on 09.10.2024, the requisite measurement of both plots was not properly conducted. He further contends that the subsequent report dated 17.10.2024 submitted by the Assistant Director, Katchi Abadi, was contradictory to his earlier reports and was found incomplete by the Mukhtiarkar, who sought a detailed report vide letter dated 23.10.2024, followed by a reminder dated 19.11.2024. However, no satisfactory report was submitted.

4. Learned counsel for the petitioner maintains that the Tribunal failed to examine these contradictory reports, the original record and approved site plan, and erroneously dismissed his execution proceedings without determining the actual extent of encroachment. He alleges that the private respondents continued construction, including stairs over the street, and seeks setting aside of the impugned order, fresh inquiry through an independent authority, and departmental and legal action against the concerned Assistant Director, Katchi Abadi.

5. Respondent No.9 submits that the Anti-Encroachment Force operates under the Sindh Public Property (Removal of Encroachment) Act, 2010, and is required to take action under Section 9 thereof upon directions of the competent authorized officer, namely, the Assistant Commissioner or Mukhtiarkar concerned. It is contended that no specific allegation has been levelled against the answering respondent, who is always willing to provide necessary assistance and maintain law and order during removal operations in compliance with lawful directions of the competent authority or the Court.

6. The Assistant Director, Katchi Abadi, submits that, pursuant to the directions of this Court, a fresh site inspection was conducted on 09.10.2024 by the concerned planning officer along with Mukhtiarkar and other staff. It was observed that the locality comprises old and closely constructed houses with narrow streets, and that the houses of the petitioner and private respondents are separate and do not obstruct each other's access, ventilation or entrance. According to the report, Plot No.1263 measures 84 square yards at the site, whereas the original office record reflects an area of 95 square yards, duly approved by the Chairman, Katchi Abadi, on 15.06.1989, pursuant to an application submitted in 1989 by the previous owner, Khursheed Ahmed. The report further states that the earlier surveyor incorrectly depicted a portion of the plot as encroached upon the street. It is maintained that the private respondents are occupying an old constructed property and have not made any additional encroachment upon the street. The department asserts that the dispute appears to have arisen from a personal disagreement between the neighbours and that the HMC shall deal with the municipal land in accordance with the applicable rules and planning requirements.

7. Learned counsel for private respondents deny having encroached upon the public street and contend that they are constructing their house on Plot No.1263, which has remained in their possession since long. They submit that, pursuant to the Tribunal's order dated 23.09.2024, the concerned authorities inspected and measured the properties and found that the respondents were occupying 84 square yards, within the area recorded as 95 square yards, whereas the petitioner himself had encroached upon approximately 4 to 5 feet of the street in front of his house. He further contends that the petitioner's house is separate from their property and that no obstruction to access or ventilation has been caused by their construction.

The respondents allege that the petitioner is pursuing repeated false complaints and litigation to harass and pressurize them, with the ulterior motive of compelling them to sell the disputed property to him. He maintain that the Tribunal rightly dismissed the execution application after considering the reports submitted by the concerned authorities and that the present petition is misconceived, not maintainable and liable to dismissal.

8. We have heard learned counsel for the parties and perused the available record.

9. The controversy essentially relates to the alleged encroachment upon a public street adjoining Plot No.1263, Iqbal Colony Unit No.12 Latifabad Hyderabad, by private respondents No.10 to 13.

10. It is pertinent to observe that the Tribunal, while passing the order dated 23.09.2024, had specifically directed the concerned revenue and municipal authorities to examine the record, measure the properties of both parties and remove any encroachment found during such exercise. The Mukhtiarkar, however, expressed reservations regarding the report submitted by the Assistant Director, Katchi Abadi, vide letter dated 23.10.2024, describing it as incomplete and not based on the actual facts, and called for a detailed report. In these circumstances, the subsequent report, without satisfactory reconciliation of the earlier findings and the objections raised by the Mukhtiarkar, could not, by itself, constitute conclusive evidence to determine the disputed boundaries or establish the absence of encroachment. Similarly, the earlier reports, being departmental assessments, cannot be treated as conclusive proof of encroachment without verification through proper demarcation and examination of the original record.

11. We are, therefore, of the view that the actual position could only be determined through a proper joint measurement and demarcation of Plot No.1263, the petitioner's property and the adjoining street, with reference to the original allotment / lease record, approved layout plan, relevant municipal record and the existing physical features at the site. Any construction found beyond the lawful boundaries of the respective properties and falling within the public street or municipal land would necessarily be liable to removal in accordance with law, irrespective of the identity of the encroacher. No private individual can claim a right to occupy or obstruct a public street merely on the basis of long-standing possession or an unverified departmental entry.

12. In view of the conflicting reports and the apparent failure of the concerned authorities to furnish a comprehensive and reconciled report, we find that the matter requires fresh consideration by an independent and competent authority. The impugned order, to the extent that it brings the execution proceedings to an end

without resolving the material discrepancies in the departmental reports, cannot be sustained. At the same time, this Court would refrain from recording any definitive finding regarding the alleged encroachment or directing departmental or criminal action against any particular official at this stage, as such matters require independent verification and proceedings in accordance with law.

13. Consequently, the instant petition is allowed to the above extent. The impugned order dated 27.11.2024 passed by the learned Judge, Anti-Encroachment Tribunal, Hyderabad, is set aside, and the matter is remitted to learned Tribunal for fresh consideration. The Tribunal shall obtain a comprehensive report through a competent officer/technical team independent of the officials whose earlier reports are in question, after conducting a joint demarcation of the properties of both parties and the adjoining street in presence of the parties or their authorized representatives. The exercise shall be undertaken on the basis of original municipal and revenue record, approved layout plan and relevant measurement documents. The parties shall be afforded an opportunity to produce their respective documents and raise objections to the proposed demarcation. In case any encroachment upon public land or street is established, the competent authority shall proceed for its removal strictly in accordance with law, after providing due notice and opportunity to the affected person.

14. The learned Tribunal shall thereafter decide the matter afresh, through a speaking order, preferably within a period of sixty days from receipt of this order. The competent authority shall also examine the apparent discrepancies between the earlier and subsequent reports of the Assistant Director, Katchi Abadi, and, if any deliberate misrepresentation is established, pass appropriate order in accordance with law. Needless to observe that all observations made herein are tentative and shall not prejudice the final determination by the Tribunal.

15. The petition stands disposed of in the above terms.

JUDGE

JUDGE

Sajjad Ali Jessar