SINDH ORDINANCE NO.V OF 2010

SINDH PUBLIC PROPERTY (REMOVAL OF ENCROACHMENT) ORDINANCE, 2010.

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THE SINDH PUBLIC PROPERTY (REMOVAL OF ENCROACHMENT) ORDINANCE, 2010.

[10th June, 2010]

An Ordinance to provide measures for removal of encroachment from public property and to retrieve possession;

Preamble.

WHEREAS it is expedient to provide measures for removal of encroachment from public property and to retrieve possession and for matters ancillary thereto;

AND WHEREAS the Provincial Assembly is not in session and the Governor is satisfied that circumstances exist which render it necessary to take immediate action;

NOW, THEREFORE, in exercise of the powers conferred by Article 128 of the Constitution of Islamic Republic of Pakistan, the Governor is pleased to make and promulgate the following Ordinance:-

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Short title and commencement.

1. (1) This Ordinance may be called the "Sindh Public Property (Removal of Encroachment) Ordinance, 2010.

(2) It shall come into force at once.

Definitions.

2. In this Ordinance, unless there is anything repugnant in the subject or context-

(a) "Ordinance" means the "Sindh Public Property (Removal of encroachment) Ordinance, 2010";

(b) "abetment" means abetment as defined under section 107 of the Pakistan Penal Code (XLV of 1860);

(c) "abettor" means a person who abets an offence as described under section 108 of the Pakistan Penal Code (XLV of 1860);

(d) "autonomous body" means a board, corporation, institution, organization, authority or body established by Government or, by or under law, with the aid, wholly or partly of the revenues of the Province;

(e) "building" means a building or part thereof and includes plinth, wall, steps, platform, covered area of any kind, tent, jhuggi, enclosure and the land

appurtenant thereto;

(f) "Board" means the Board of Revenue, Sindh;

(g) "Council" means a council as defined in the Sindh Local Government Ordinance, 2001;

(h) "Director" means an officer appointed by Government;

(i) "Director General" means the Senior Member of the Board;

(j) "encroachment" means unauthorized occupation of or undue interference with public property;

(k) "Force" means the Anti-Encroachment Force established under section 17;

(l) "Government" means the Government of Sindh;

(m) "Land" means State Land and it includes benefits arising out of land and things attached to earth or permanently fastened to anything attached to the earth and land under water, well, footpath, road, tunnel, culvert, nala, bridge and street;

(n) "prescribed" means prescribed by rules made under this Ordinance;

(o) "Public Property" means a building, land, place or premises vesting, in or under the management or control of Government, local council, autonomous body or registered cooperative society or such other authority;

(p) "Tribunal" means a Tribunal established under section 12.

Removal of encroachment and structures.

3. (1) Government or any authority or officer authorized by Government in this behalf may require the person directly or indirectly responsible for encroachment to remove such encroachment together with the structure, if any, raised by him on the public property, within the period not less than two days as may be specified in the order.

Explanation: Lessee or licensee who after the expiry of the period of lease or licence or on determination of such lease

or licence, continues to retain unlawfully possession of any public property shall, for the purpose of this sub-section, be deemed to be responsible for encroachment.

(2) The order under sub-section (1) may be served by-

(a) giving or tendering it to the person responsible for encroachment or any adult male person residing with him; or

(b) affixing it at a conspicuous place on or near the public property to which it relates or sending it by Registered post, UMS, TCS, or publication.

(3) If Government or any authority or officer authorized by Government under this Ordinance is satisfied that un-authorized construction over the state land or public property is being carried out, it or he may direct the person or persons who raised or are raising the un-authorized construction, to stop the construction and the later shall stop the unauthorized construction forthwith.

(4) Whosoever including abettor disobeys the directives given to him under sub-section(3) shall be punished with imprisonment of either description for a period of six months or with fine not less than fifty thousand rupees or with both.

Review.

4. (1) Any person dissatisfied by the order passed under sub-section (1) of section 3 may, within three days from the service thereof, prefer a review petition to Government or any authority or officer who has passed such order.

(2) Government or, as the case may be, the authority or officer as aforesaid may, after perusing the review petition filed under sub-section(1) and giving an opportunity to the petitioner or his duly authorized agent of being heard, confirm, modify or vacate the order within fifteen days on receipt of petition.

Eviction.

5. (1) If any person refuses or fails to vacate the public property or remove the structure raised thereon after three days from the order under section 3 duly served on him, or if review petition is filed against such order, after such review petition is dismissed, he shall be evicted by such force as may be necessary, by an officer authorized by Government in this behalf and the structure, if any, raised by such person on the public property shall vest in Government, Council,

autonomous body, or registered Cooperative Society as the case may be.

(2) If any officer authorized to take action under sub-section (1) requires police assistance, he may send such requisition to the officer incharge of a police station within the local limits of which the public property is situated and such police officer shall on such requisition render the required assistance.

Cost of demolition and removal of structure.

6. Where any structure is demolished or removed on eviction under section 5 the cost of demolition or removal of such structure shall be recovered as arrears of land revenue from the person responsible for the encroachment.

Recovery of arrears of rent.

7. If arrears of rent are payable in respect of any public property by the person evicted there from, the amount of such arrears with mark-up if any accrued thereon shall be recovered from such person as arrears of land revenue.

Punishment.

8. (1) Any person responsible for encroachment may be punished with imprisonment of either description for a term which may extend to ten years but not less than one year and with fine of rupees equivalent to the market value of the property encroached upon or with both.

Explanation: The market price for the purpose of this section shall be determined by a committee comprising Member Board of Revenue as its convener and Executive District Officer (Revenue), District Officer (Revenue), Deputy District Officer (Revenue), Sub-Registrar and Mukhtiarkar (Revenue) of the concerned area as Members.

(2) An abettor including a public servant who is directly or indirectly involved in assisting or abetting the offence of encroachment, shall be punished with imprisonment for a term which may extend to five years but not less than one year, or with fine which may extend to five lac rupees or with both.

(3) If the officer incharge of police station willfully fails, to avoid to provide the necessary police assistance under sub-section (2) of section 5 the matter shall be reported to the Provincial Police Officer Sindh for his suspension with immediate effect and removal from service.

Delegation of Powers.

9. Government may, by notification in the official Gazette, direct that any power exercisable by it under this Ordinance may be exercised by any officer sub-ordinate to it or council,

autonomous body or such other authority.

Incentive for the Removal of Encroachm-ent.

10. Out of the fines recovered under section 8 of this Ordinance, any Member of the Force, or any officer or official, who has shown outstanding performance in detecting and removing the encroachments, may be given reward as may be fixed by Government.

Bar of jurisdiction and abatement of suits.

11. (1) No Civil Court shall have jurisdiction to entertain any proceedings, grant any injunction or make any order in relation to a dispute that any property is not a public property, or that any lease or licence in respect of such public property has not been determined, for the purpose of this Ordinance, or anything done or intended to be done under this Ordinance.

(2) All suits, appeals and applications relating to, encroachment and dispute that any property is not a public property or, that any lease or licence in respect of such property has been determined, for the purpose of this Ordinance, shall abate on coming into force of this Ordinance.

Provided that a party to such suit, appeal or application may; within seven days of the coming into force of this Ordinance, file a suit before a Tribunal in case of a dispute that any property is not a public property or that any lease or licence in respect of such public property has not been determined.

Tribunal.

12. Government may by notification in the official gazette, establish a Tribunal for each district consisting of a retired District and Sessions Judge or any Advocate of ten years standing.

Exclusive jurisdiction.

13. A Tribunal shall have exclusive jurisdiction to adjudicate upon a dispute that any property is not a public property or that any lease or licence in respect of such public property has not been determined for the purpose of this Ordinance.

Procedure and Powers of the Tribunal.

14. (1) Tribunal shall decide any suit or application in such manner and in accordance with such procedure as may be prescribed.

(2) Any order made by the Tribunal which conclusively determines the rights of the parties with regard to all or any of the matters in controversy shall be final and

binding on the parties.

(3) The Tribunal shall have power of a Civil Court under the Code of Civil Procedure, 1908(Ordinance V of 1908) as to-

(a) summoning and enforcing the attendance of any person and examining him on the oath;
(b) receiving evidence on affidavit;
(c) compelling the production of documents;
(d) issuing commission for examination of witnesses or documents.

(4) The proceedings before the Tribunal shall be judicial proceedings within the meaning of sections 193 and 228 of the Pakistan Penal Code (Ordinance No. LXV of 1860).

Transfer of case.

15. Government may transfer any case from one Tribunal to the other.

Execution of orders through force.

16. The orders passed under sections 3, 4, 5 and 13 of this Ordinance shall, if necessary, be got executed through the Force.

Establishment of Anti-Encroachment Force.

17. Government may for the prevention of encroachment on public property, to retrieve the possession from the land grabbers and trespassers and to enforce the provisions of this Ordinance, establish an Anti-Encroachment Force which shall comprise of the following Senior and junior ranks officers, notified by Government:-

SENIOR RANK

i. Director General of Anti-Encroachment Force.
ii. Director of Anti-Encroachment Force in each district who is preferably a law graduate.

JUNIOR RANK IN EACH DISTRICT

i. Inspector of Anti Encroachment Force, who is atleast a graduate.
ii. Sub-Inspector of Anti-Encroachment Force;
iii. Ten Constables who are atleast matriculate, provided that in the City District Karachi there shall be three Anti-Encroachment Forces.

Superintendence of Administration of Force.

18. (1) The Superintendence of the Force shall vest in Government.

(2) The Director General, who shall exercise in respect of the force all powers of Provincial Police Officer under the Police Order 2002 and this Ordinance.

Functions of the Force.

19. The force shall-

(a) lodge F.I.R., inquire into, investigate and prosecute all offenders relating to, encroachments, unauthorized occupation of any public property including an attempt or conspiracy to commit, or an abetment of any such offence or any offence committed under this Ordinance;

(b) retrieve possession from the encroachers and trespassers;

(c) arrange and coordinate training of staff;

(d) perform any other related functions which may be assigned to it by Government;

(e) use such arms, ammunition and equipments as are supplied to them by Government through the Director General or Director for the purpose of this Ordinance.

Power of the members of the Force.

20. (1) The officers of the Force shall for the purpose of any inquiry or investigation under this Ordinance, have within his jurisdiction, such powers, including the powers relating to search, arrest of persons, seizures of property and such duties, privileges and liabilities as a police officer has in respect of offences under the code or any other law for the time being in force.

(2) Save when the Director General otherwise directs, a officer of the Force not below the rank of an Inspector may, for the purpose of any inquiry or investigation under this Ordinance, exercise all the powers of an officer-in-charge of the Police station in any area in which he is for the time being and, when so exercising such powers, shall be deemed to be the officer-in-charge of police station discharging his functions as such within the limits of his station

including the lodging of the First Information report.

(3) Without prejudice to the generality of the provisions of sub-section (1) and sub-section (2), any officer of the Force not below the rank of Inspector authorized by the Director General in this behalf, may arrest without warrant, any person who has committed or against whom a reasonable suspicion exists that he has committed any of the offences relating to the encroachment referred to in this Ordinance or any other law for the time being in force relating to the offences of encroachment and trespass provided no person shall be kept in police custody for more than 24 hours, unless a remand is obtained from a Judicial Magistrate.

(4) An officer of the Force not below the rank of Inspector, authorized by the Director General may inquire and investigate and trace the person or persons responsible for the encroachment.

(5) Government may, in respect of any case registered by, or under investigation, of police or any other investigation agency or authority, by order in writing, entrust inquiry or such investigation to the Force, and thereupon the Police or other investigation agency or authority shall transfer the record of the case to the force.

(6) Government may establish, as many anti-encroachment force stations, as are required for the efficient functioning for carrying out the purpose of this Ordinance.

Wearing of Uniform.

21. All officers excluding ministerial staff of the force, employed on enforcement duties shall wear such uniform as may be prescribed.

Requiring assistance from the Local Police.

22. Any Member of the force, not below the rank of Inspector, may in performance of his functions, powers and duties, seek assistance from the concerned police and the concerned police shall render all possible assistance.

Liabilities of officers and members.

23. (1) It shall be the duty of every officer promptly to obey and to execute all orders and instructions issued to him by the Director General and the Director of the concerned district.

(2) Every officer shall be liable to serve wherever he is required to serve by the Director General.

(3) Every officer who is guilty of any violation of duty or willful breach or neglect of any of the provision of this

Ordinance or of any rule or regulation or lawful order made by a competent authority, or who withdraws from his duties without permission, or who, being absent on leave, fails, without reasonable cause, to report himself for duty on the expiration of such leave, or on being recalled to duty earlier or who is engaged without authority in any employment other than his duty under this Ordinance, or who is guilty of cowardice, or who applies any unwarrantable personal violence to any person in his custody, shall be liable to be proceeded against departmentally, or, on conviction before a Judicial Magistrate, to imprisonment for a term which may extend to six months, or with fine which may extend to ten thousand rupees, or with both.

(4) No Court other than the Special Court constituted under section 25 shall take cognizance of an offence punishable under this Ordinance except upon complaint in writing made by a person authorized in this behalf by the Director General or the Director.

(5) Any person convicted, under sub-section (3) may within thirty days from the date of his conviction file an appeal to the High Court whose decision thereon shall be final.

Public Servant.

24. Every officer of the Force shall be a public servant within the meaning of section 21 of the Pakistan Penal Code (Ordinance No. XLV of 1860).

Establishment of Special Courts.

25. For the purpose of providing for speedy trial of offences committed under this Ordinance, Government may establish, by notification, a Special Court in each district and a special court for each group of six towns of the City District.

Composition and appointment of Presiding Officers of Special Courts.

26. A Special Court shall consist of a Sessions Judge appointed by Government after consultation with the Chief Justice of the High Court.

Appeal.

27. An appeal against the order passed by a Special Court shall lie to the High Court of Sindh.

Indemnity.

28. No suit, prosecution, or other legal proceedings shall lie against any person in respect of anything which is in good faith done or intended to be done under this Ordinance.

Power to make

29. (1) Government may, by notification in the official

gazette, make rules for carrying out the purposes of this Ordinance. **rules.**

(2) In particular and without prejudice to the generality of the foregoing sections, such rules may provide for all or any of the following matters, namely:-

(a) the terms and conditions of service of the members of the Force and the qualifications for recruitment to various posts;

(b) the powers and functions of the members of the Force in relation to the conduct of inquiries and investigations; and

(c) the manner in which rewards may be given to the members of the Force or to the public or rendering commendable service.

30. The Sind Public Property (Removal of Encroachment) Ordinance, 1975, is hereby repealed. **Repeal.**