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SIND ORDINANCE NO.II OF 1975

THE SIND PUBLIC PROPERTY (REMOVAL OF ENCROACHMENT) ORDINANCE, 1975

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SIND ORDINANCE NO.II OF 1975

THE SIND PUBLIC PROPERTY (REMOVAL OF ENCROACHMENT) ORDINANCE, 1975

[20th January, 1975]

An Ordinance to provide measures for removal of encroachment from public property.

Preamble.

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

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

NOW, THEREFORE, in exercise of the powers conferred by clause (1) of Article 128 of the Constitution of the Islamic Republic of Pakistan. The Government of Sindh is pleased to make and promulgate the following Ordinance: -

Short title and commencement.

1. (1) This Ordinance may be called the Sind Public Property (Removal of Encroachment) Ordinance, 1975.

(2) It shall come into force at once.

Definitions.

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

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

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

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

(d) "Government" means the Government of Sind;

(e) "land" includes land under water, well, foot-path, road and street;

(f) "local council" means a council constituted under the Sind People's Local Government Ordinance, 1972 (Sind Ordinance II of 1972);

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

(h) "public property" means a building, land, place or premises vesting in, or under the management or control of, Government, local council, autonomous body, or such other authority.

Removal of structures.

3. (1) Government or any authority or officer authorized by Government in this behalf may, on being satisfied, after such inquiry as may be deemed necessary that any person is responsible directly or indirectly for encroachment, require such person, by order in writing to remove such encroachment together with the structure, if any, raised by him on the public property, within the period specified in the order.

Explanation.— Lessee or licencee who after the expiry of the period of lease or licence or on determination of such lease or licence, continues to retain 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 the encroachment or any adult male person residing with him in the same house;

(b) affixing it at a conspicuous place on or near the public property to which it relates.

Appeal.

4. (1) Any person aggrieved by the order passed under section 3 may, within seven days from the service thereof, prefer an appeal in writing to Government or any authority or officer authorized by Government in this behalf:

Provided that no appeal shall lie from the order made by Government but the aggrieved person shall be entitled to file, within the same period, review petition to Government in respect of such order.

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

Eviction.

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

(2) If any officer authorised to take action under sub-section (1) requires police assistance he may send such requisition to the officer in-charge of a police-station within the local limits of which the public property is situate 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 may 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 therefrom, the amount of such arrears with interest, 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 six months or with fine which may extend to three thousand rupees or with both.

(2) The officer appointed for preventing encroachment in any area who directly or indirectly connives at, or assists in, the commission of the offence of encroachment or persistence of such offence or due to whose negligence of duty such offence is committed or persists shall be punished as an abettor.

(3) If the officer-in-charge of police station willfully fails or avoids to provide the necessary police assistance under sub-section (2) of section 5 he shall be punished as an abettor of the offence of encroachment.

Cognizance of offence and mode of trial.

9. (1) No court shall take cognizance of an offence under this Ordinance except on a complaint made by an officer authorized by Government in this behalf.

(2) Government may by notification direct that an offence under this Ordinance shall be tried in summary way in accordance with the procedure prescribed by Chapter XXII of the Code of Criminal Procedure 1898 (Act V of 1898).

Delegation of Powers.

10. Government may, by notification in the official Gazette, direct that any power exercisable by it under this Ordinance may be exercised by any office subordinate to it or any local council, autonomous body or such other authority.

Jurisdiction of courts barred.

11. No court shall have jurisdiction to grant any injunction or make any order or entertain any proceedings, in relation to anything done or intended to be done under this Ordinance.

Provided that a Civil Court may adjudicate upon the dispute that property is not a public property but it shall have no power to issue injunction in a suit or proceeding relating to such dispute.

Indemnity.

12. No suit or legal proceeding shall lie against Government or any authority or person in respect or anything which is intended to be, or has been, done under this Ordinance.

Power to make rules.

13. Government may make rules for carrying out the purposes of this Ordinance.

Repeal.

14. The West Pakistan Government Lands and Buildings (Recovery of Possession) Ordinance, 1966 and the West Pakistan Autonomous Bodies Immovable Property (Ejectment of Unauthorised Occupants) Ordinance, 1965, are hereby repealed.