

IN THE HONOURABLE SUPREME COURT OF PAKISTAN
(Original Jurisdiction)

C.M.A. _____ of 2019

In

Constitutional Petition No. 9 of 2010

Naimatullah Khan.....Petitioner

Versus

Federation of Pakistan & Others.....Respondents

1. Mohammad Jibran Nasir,
Son of Nasir Azhar Siddiqui,
Muslim, Adult,
Resident of 9/E, Askari 3,
School Road, Cantt,
Karachi
2. Arif Hassan
Son of Sarwar Hasan,
Muslim, Adult,
Resident of 37-D,
Muhammad Ali Society,
Karachi
3. Tasneem Ahmed Siddiqui,
Son of Zamir Ahmed,
Muslim, Adult,
Resident of KDA Officer Housing Society,
Karachi
4. Dr. Noman Ahmed
Son of Enam Ahmed,
Muslim, Adult,
Resident of House No. E-85/2,
Block 7, Gulshan-e-Iqbal,
Karachi
5. Aquila Ismail,
Wife of Muhammad Masood,
Muslim, Adult,
Resident of Apartment Ground Floor-2,
Building 77, Sea View Township,
Phase-V (Extension), D.H.A.,
Karachi
6. Abdul Hamid Akhund,
Son of Allah Bachaiyo Akhund
Muslim, Adult,
Resident of House No.182,
31st Street, Khayaban-e-Qasim,
Phase VIII, DHA,
Karachi

7. Dr. Nausheen Anwar
Daughter of Tariq Jamil
Muslim, Adult,
Resident of House No. 15/2,
Khayaban-e-Ghazi,
Phase 5, DHA,
Karachi
8. Riaz Ahmed Shaikh,
Son of Rasool Bux Shaikh
Muslim, Adult,
Resident of Flat No. 1403,
Block B, Sea Breaze Apartments,
Main Shahrah-e-Faisal,
Karachi
9. Dr. Kaiser Bengali
Son of (late) Hatim Bengali
Muslim, Adult,
Resident of House No. 89/1
Khayaban Qasim,
Phase VIII, DHA,
Karachi
10. Abdul Raouf
Son of Shireen Jan,
Muslim, Adult,
Resident of House No.18,
Iqbal Arcade Street-3,
Karachi
11. Zarina Ghulam Hassan,
Wife of Ghulam Hassan Shaal,
Muslim, Adult,
Resident of House No. AK-18-29-S/6,
Street No. 1, Muhallah Hassan Lashkari Village,
Siddiqui Wahab Road,
Garden West, House,
Karachi
12. Zainab Bano,
Wife of Muhammad Umer,
Muslim, Adult,
Resident of Muhammad Siddiqui Manzil West,
Yousuf Haroon Road,
House No. E-274/78, Street No. 5,
Muhallah Baghdadi, Lyari,
Karachi
13. Abdul Rasheed Khan,
Son of Abdul Hameed Khan,
Muslim, Adult,
Resident of House No. 155/4, Street No. 16,
G Road Bahar Colony, Lyari,
Karachi
14. Muhammad Siddiq,

Son of Haroon Ahmed,
Muslim, Adult,
Resident of 2 Floor Mariyam Manzil,
Old Kiamari Wara Chakiwara Road,
Flat No. 8, Street No. Middle Way Street,
Karachi

15. Muhammed Naqi
Son of Abdul Haq
Muslim, Adult,
Resident of House No.146/7,
Dubai Mercantile Society,
P.E.C.H.S,
Karachi
16. Sher Khan,
Son of Nazar Muhammad Khan,
Muslim, Adult,
Resident of Bihar Colony Lyari,
House No. 19, Street No. 3,
Muhammad Iqbal Arcade,
Karachi
17. Badruddin,
Son of Noor Muhammad,
Muslim, Adult,
Resident of Nishtar Road,
Flat No. F-15, Muhallah Platinum Society,
Darden West,
Karachi
18. Abdul Aziz Khalpa,
Son of Abdul Rahim Khalpa,
Muslim, Adult,
Resident of House No. R-1023,
Block-17, Muhallah Rahim Abad,
F.B Area,
Karachi
19. Fakhruddin Bashir,
Son of Bashiruddin,
Muslim, Adult,
Resident of UK Square, Flat No. M-34,
Block 16, Muhallah Water Pump Federal B. Area,
Karachi
20. Areb Khan,
Son of Sikandar Azam,
Muslim, Adult,
Resident of House No. 9/7,
Nazimabad-5, Block-5-C,
Karachi
21. Jan Muhammad,
Son of Muhammad Ali
Muslim, Adult,
Resident of Amina Manzil,
Floor-1, Flat No. 15,
Street No. 2,
Muhallah Jonakahar,
Ward Lee Market,
Karachi

22. Shah Muhammad Alvi,
Son of Noor Muhammad Alvi,
Muslim, Adult,
Resident of House No. 6-A,
Shah Apartment Noor Elahi Road,
Karachi

23. Aziz Ullah Khan,
Son of Gul Khan,
Muslim, Adult,
Resident of Ataullah Manzil,
Yousuf Haroon Road,
House No. AK-6-25-32, Street No. 3,
Muhallah Baghdadi,
Karachi

24. Syed Muhammad Ali Shah Kazmi,
Son of Syed Muhammad Aslam Shah Kazmi,
Muslim, Adult,
Resident of Ghareeb Abad,
P.I.D.C House,
House No. A-3/35,
Karachi

25. Shadiq Khan,
Son of Hakim Khan,
Muslim, Adult,
Resident of House No. 133,
Ghareeb Abad,
Power House Elender Road,
Karachi

26. Ameena Khatoon,
Wife of Muhammad Afzal,
Muslim, Adult,
Resident of House No.16,
Street/Muhallah,
Near Elender Road,
Railway Camp City,
Karachi

27. Azmat Ali,
Son of Liaquat Ali,
Muslim, Adult,
Resident of Gate No. 3, Power House,
Elender Road, House No. 293,
Muhallah Ghareeb Abad,
Karachi

28. Hunar Din,
Son of Naseeruddin,
Muslim, Adult,
Resident of House No. AS3/30,
Molvi Tameezuddin Khan Road,
Muhallah Ghareeb Abad,
Karachi

29. Muhammad Rasheed,
Son of Allah Dita,
Muslim, Adult,

Resident of House No. 102,
Muhallah Railway Colony,
Karachi

30. Muhammad Safdar,
Son of Wahid Bux,
Muslim, Adult,
Resident of House No. 222,
Muhallah, P.I.D.C.,
Ghareeb Abad,
Karachi

31. Khalid Hussain
Son of Muhammed Deen
Muslim, Adult,
Resident of House 166,
Ghareeb Abad,
Near KESC House,
Elender Road,
Karachi

32. Ali Zar Gul,
Son of Firdos Khan,
Muslim, Adult,
Resident of House No. 16,
Ghareeb Abad,
PIDC Civil Line Cantt.
Karachi.....Applicant Intervenors

**APPLICATION UNDER ORDER 5, RULE 2, READ WITH, ORDER 33, RULE 6,
SUPREME COURT RULES, 1980**

On behalf of the Applicant Intervenors, it is most respectfully and most humbly prayed that this Honourable Court may be pleased to implead the Applicant Intervenors as Respondents in the above titled case for the detailed reasons as disclosed hereunder:

1. That the Applicant Intervener No.1 is a law abiding citizen of Pakistan who is an Advocate of High Court of Sindh, since 2013. He is also actively engaged in advocacy and litigation for protection of constitutional and fundamental rights of the citizens of Pakistan and against extremism, terrorism and the activities of proscribed organization. He also contested the general elections for both the National Assembly and the Sindh Assembly in 2013 and 2018, as an independent candidate. The Applicant Intervener No. 2 is an architect and urban planner based in Karachi. He is consultant and advisor to several national and international NGOs, bilateral and multilateral donor agencies. He has served as the Principal Consultant for the Orangi Pilot Project since 1982 and is currently serving as the Chairman of the

Research and Training Institute of the Orangi Pilot Project. He is also one of the founders of the Urban Resource Centre in Karachi, serving as its Chairman since its inception in 1989. He has also served as the Chairman of the Task Force on Urbanization established by the Government of Pakistan. During his illustrious career, he has taught at Pakistani and European universities, authored numerous books on development and urban planning and has served on multiple UN Committees.

2. That Applicant Intervener No. 3 is a retired civil servant who has served as Chief Secretary of the Government of Sindh. He has also served as the Director General of Hyderabad Development Authority and the Head of the Sindh Katchi Abadi Authority and is the Chairman of the NGO Saiban and the Orangi Pilot Project. He is known for instituting the 'Incremental Housing Development' approach in Pakistan and for initiating the process of regularization and upgradation of squatter settlements in Sindh. For his innovative scheme for the mitigation of the shelter issues of the urban poor, by the name of 'Khuda ki Basti', he was awarded the Aga Khan Award for Architecture in 1995. He was awarded the Ramon Magsaysay Award in 1999 for upgradation of *katchi abadis*. For his meritorious services, he was also given the Sitara-e-Imtiaz by the Government of Pakistan, UN Year for the Shelterless Memorial Award of the Japanese Housing Association and the Prince Clause Award. The Applicant Intervener No. 4 is founder and Dean of the Faculty of Architecture and Planning at the NED University of Engineering and Technology, Karachi. He has been a Faculty Member and Coordinator, Urban Design Graduate Program at the Dawood College of Engineering and Technology, Karachi. He has also published several books, reports, monographs, papers and newspaper articles on developmental and infrastructural issues in Karachi since 1988. He has received multiple awards and honors in his field. The Applicant Intervener No. 5 is Chairperson Orangi Pilot Project (OPP). She is a retired Professor at NED University of Engineering and Technology, Karachi. Moreover, she has authored and translated multiple books. She has remained involved in Karachi's low cost housing issues and has lost her sister, Parveen Rehman (Former Director, OPP) to the same cause.

3. That Applicant Intervener No. 6 is serving as Secretary, Endowment Fund Trust for Preservation of the Heritage of Sindh since 2009. He has served as Secretary for Culture, Sports and Tourism, Mines and Minerals, Inter Provincial Coordination, and Information for the Government of Sindh. He has also served as Director General Department of Culture and established Department of Culture, Sports and Tourism. He has also served as Director Pakistan National Centre, Ministry of Information for Government of Pakistan. He has been involved in the establishment of the Sindh Archives, the Textile Museum, the Sindh Language Authority, and Mohatta Palace Museum at Karachi.
4. That Applicant Intervener No. 7 is the Director of Karachi Urban Lab at IBA. She is Associate Professor City & Regional Planning, Department of Social Sciences & Liberal Arts (SSLA), Institute of Business Administration (IBA), Karachi, Pakistan. She received her PhD from the Graduate School of Architecture, Planning, and Preservation (GSAPP), Columbia University and also holds a MIA from the School of International and Public Affairs (SIPA), Columbia University. She has also been a post-doctoral fellow at Harvard University, Senior Research Fellow at the Asia Research Institute (ARI), National University of Singapore. Her work focuses on urban/infrastructural development and the role policymaking and planning processes play in sustaining urban and regional inequality. The Applicant Intervener No. 8 is Dean of Faculty of Social Sciences and Education at Shaheed Zulfikar Ali Bhutto Institute of Science and Technology (SZABIST), Karachi. He is the Editor of Quarterly *Tareekh* Journal and was Managing Editor of Asia Journal of Global studies, Osaka, Japan. He has authored six books and several research papers which have been published in internationally reputable journals. He is actively engaged in political activism and invested in the welfare of the people of Karachi.
5. That Applicant Intervener No. 9 is the Chairperson for '*Shehri – Citizens for a Better environment*' and is the current Dean of Management Science at Zulfikar Ali Bhutto Institute of Science and Technology (SZABIST). He is an economist with decades of experience in policy advice in Pakistan, Switzerland, UK, Afghanistan, Saudi Arabia, Eritrea and Kenya. He has served as the Managing Director of Social Policy Development Centre (SPDC). He has served as the Head of Chief Minister's Policy Reform Unit,

Government of Balochistan, and as the Advisor to Chief Minister of Sindh for Planning & Development. He was the first head of Benazir Income Support Programme and designed the programme. He has authored eight books and 35 research publications concerning unemployment, inequality and poverty, education, water, gender, regional development, land tenure, and development issues.

6. That Applicant Intervenors No. 10 to 16 are amongst the affectees of the demolition of Ali Dina Watercourse Road Market, part of which is known as 'Lighthouse Market Landa Bazaar', which was established by Karachi Metropolitan Authority [hereinafter after referred to as 'KMC'] in 1952. Collectively these two markets included 300 shops allegedly built on the Lighthouse *Nulla*. It is submitted that the Applicant Intervenors No. 10 to 16 include elderly men and women, including widows, who are tax paying citizens and have leases from KMC since as early as the year 1957. It is further submitted that the Applicant Intervenors No. 10 to 16 i.e. shopkeepers of Lighthouse Market and/or Ali Dina Watercourse Road Market, began removing their wares on 19.11.2018 and the said demolition took place on 20.11.18.
7. That Applicant Intervenors No. 17 to 20 are amongst the affectees of the demolition of Zoological Garden Market which was established by KMC in 1960. The Applicant Intervenors No. 17 to 20 are tax paying citizens who were issued KMC documents for their shops as early as in the year 1962. It is respectfully submitted that the Applicant Intervenors No. 17 to 20 were issued notices on or around 21.12.2018 and demolition of their shops began on 05.01.2019.
8. That Applicant Intervenors No. 21 to 23 are amongst the affectees of the demolition of Lea Market which was constructed in the year 1927. It is submitted that Applicant Intervenors No. 21 to 23 acquired their shops in Lea Market from KMC. It is further submitted that on or about 03.01.2019, Applicant Intervenors No. 21 to 23 and other shopkeepers at Lea Market received notice of impending demolition from KMC, and the said demolition took place three days later.

9. That Applicant Intervenors No. 24 to 32 are residents of Gharibabad Colony adjacent to Elander Road, near Railway Colony, Saddar. It is submitted that Applicant Intervenors No. 24 to 32 are apprehending evictions from their homes as their colonies have been identified, amongst 50 other *katchi abadis*, as obstructing the path of the Karachi Circular Railway. It is further submitted that in the absence of any concrete resettlement scheme, Applicant Intervenors No. 24 to 32 apprehend the violation of their rights to shelter, to housing, to community, to dignity, to safety, to be protected from discrimination, to have access to due process and to compensation for their losses.
10. That it is most respectfully and most humbly submitted that Constitution Petition No. 9 of 2010 was filed primarily for the removal of encroachment and restoration of public lands and amenity plots and thereafter through Order dated: 07.04.2018, passed by this Honourable Court, various other Civil Petitions, Criminal Original Petitions and Criminal Miscellaneous Applications were clubbed together with Constitution Petition No. 9 of 2010 [hereinafter referred to as 'CP No.9 of 2010']. As a result of the Orders passed by this Honourable Court in CP No.9 of 2010, Criminal Original Petition No.11-K of 2016 [hereinafter referred to as 'CrI.O.P. No.11-K of 2016], Criminal Original Petitions No. 7-K of 2017 [hereinafter referred to as 'CrI.O.P. No.7-K of 2017], Criminal Original Petition No. 19-K of 2017 [hereinafter referred to as 'CrI.O.P. No.19-K of 2017] and other applications, an 'anti-encroachment drive' was initiated against constructions on the following lands: Firstly, the amenity plots that are being used for commercial purposes or for residential purposes. Secondly, the public spaces such as footpaths that are illegally occupied for commercial or residential purposes. Thirdly, the public parks and other amenity plots that are illegally occupied or illegally converted for commercial or residential purposes. It is submitted that as a result of the previous Orders of this Honourable Court, numerous commercial and residential settlements that have flourished for decades and have strong communities and livelihoods associated with them are being removed without a resettlement plan and/or without due notice to their residents. The Applicant Intervenors No.1 to 9 are public spirited individuals engaged in social activism and have been striving hard for the welfare of the citizens of Pakistan and share a common commitment towards the ideals of rule of law and protection of fundamental rights as embodied in Chapter I of

Part II of the Constitution of Islamic Republic of Pakistan, 1973, whereas Applicant Interveners No. 10 to 32 are the affectees of the aforesaid 'anti-encroachment drive'. It is submitted that the Applicant Interveners have filed this present Intervener Application because although the Applicant Interveners greatly appreciate the efforts and actions of this Honourable Court to restore public spaces but due to the 'anti-encroachment drive', the Applicant Interveners No. 10 to 32 and other residents or occupants of these commercial or residential lands are being deprived of their fundamental rights to housing, to shelter, to livelihood, to dignity, to property, to due process, to being protected from discrimination and to compensation.

11. That it is most respectfully and most humbly submitted that this Honourable Court vide Order dated: 27.11.2017 and 29.11.2017, passed in CrI.O.P. No.7-K of 2017 and CrI.O.P. No.11-K of 2016, directed that all allotments of and encroachments on amenity plots on University Road, North Nazimabad Road, Kashmir Road etc. be cancelled and resumed by KDA. It further ordered that all boundary walls of such allotments and encroachments be demolished and the same be reported to this Honourable Court. It is further submitted that vide Order dated: 03.02.2018, this Honourable Court acknowledged the Reports submitted by the KDA and KMC, whereby KDA reported that through the 'anti-encroachment drive' various illegal structures had been removed and this Honourable Court directed that the Orders dated 27.11.2017 and 29.11.2017 be extended to all of Karachi. It is also submitted that this Honourable Court vide Order dated: 14.06.2018, passed in CP No. 9 of 2010 and CrI.O.P. No. 7-K of 2017, directed the Advocate General Sindh to conduct enquiries against such public officials who not only allowed the encroachment on public land but also claimed profit for unlawful occupation from illegal occupiers. The Chief Secretary, Government of Sindh, was also directed to initiate disciplinary proceedings and criminal and civil action against the aforementioned public officials within two months.

12. That it is most respectfully and most humbly submitted that almost all of the shopkeepers, hawkers and kiosk owners have either been paying rent on the property to KMC or have leased the property from KMC under the garb of legality, most often without any knowledge of the purported illegality of the documents provided to them by KMC. Many of these

markets had been established decades ago, in the 1960s, 1970s or even earlier. Since shop owners had been allowed to operate their shops across generations and build communities around the markets, the presumption of legality solidified further. It is further submitted that KMC had been found to be distributing purportedly illegal Challans to the shopkeepers who had been paying the same accordingly for numerous years. However, till date not a single inquiry or disciplinary proceeding has been initiated against the officers responsible for defrauding the public into occupying and therefore allegedly encroaching the subject land.

13. That allegedly in pursuance of the Order dated 27.11.2017, passed by this Honourable Court, the Sindh Katchi Abadi Authority (SKAA) issued Notification No. PS/DG/SKAA/2018 dated: 21.05.2018, halting the regularization process of 80 *katchi abadis*. It is submitted that out of these 80 *katchi abadis*, the regularization process of 23 of these *katchi abadis* had been completed up to 50% or more, till date. It is pertinent to note that according to their own list, these 80 *katchi abadis* encompass 50,605 households.

14. That it is most respectfully and most humbly submitted that this Honourable vide Orders dated 26.10.2018 and 27.10.2018, passed in CP No.9 of 2010 and CrI.O.P. No.7-K and 19-K of 2017, took notice of encroached footpaths, parks and public places across Karachi and ordered KMC to clear Empress Market, its adjacent areas, including Saddar, and all public parks of encroachments, within three weeks' time, which shall serve as a model for the purposes of curbing the general menace of encroachment in Karachi. However, this Honourable Court warned the authorities that no unnecessary law and order situation be created while removing such encroachments.

15. That in C.M.A No. 242-K/2018 filed in CP No.9 of 2010, the Additional Attorney General of Pakistan has submitted that an estimated 100,000 persons will be affected in residential settlements identified as encroached and/or illegally allotted land. However, the list issued by the Sindh Katchi Abadi Authority recognizes that 50,605 households stand affected, and according to the Provisional Census Results the average household size is 6.5 persons per household. Even discounting the fact that population density tends to be higher in irregular settlements in urban areas, the projected numbers of affected persons is more than 328,933

persons. Furthermore, a consensual statement between the Federal Government, the Sindh Government and the Mayor of Karachi, was submitted before this Court as C.M.A No. 243-K/2018 filed in CP No.9 of 2010 and CrI.O.P. No. 7-K and 19-K of 2017, which included a list of affected commercial entities attached as Annexure 'A'. The said list enumerated 11 markets and provided the total tally of units demolished and to be demolished as 3,575 units in District South, Karachi. A proposed rehabilitation plan for 1,470 of the demolished units is also submitted. The aforesaid CMA also attached a note from the Mayor of Karachi to the Chief Minister of Sindh as Annexure 'B', seeking resettlement of the displaced shopkeepers of the remaining 2,105 units in District South. Accordingly, the Government of Sindh pledged to resettle the displaced shopkeepers but neither the KMC in specific nor the Government of Sindh in general has finalized any resettlement policy or plan. Therefore, it is clear and apparent that a grave social and humanitarian issue has arisen due to indiscriminate demolition and the Government of Sindh in non-compliance of the aforementioned order has failed to avert the law and order situation.

16. That it is further submitted that this Honourable Court has also been pleased to revive the Karachi Circular Railway Project [hereinafter in after referred to as 'KCR'] vide Para 3 of the Minutes of the Meeting of the Building Committee dated: 10.11.2018. It is also submitted that this Honourable Court was pleased to direct Divisional Superintendent, Pakistan Railways and Karachi Urban Transport Corporation (KUTC) to devise an action plan for the removal of encroachments from the Right of Way [hereinafter in after referred to as 'ROW'] of the KCR Project, and further directed Deputy Commissioners to assist therein.

17. That it is further submitted that there are 28 irregular settlements and around 40,000 people living or working in informal settlements along the railway tracks, which will now have to be relocated. It is also submitted that different requirements are being set for KCR Right of Way at different locations i.e. in some areas 100 ft clearance is being made, in other, often valuable highly built up areas, even a 5 ft clearance is being allowed. Furthermore, Chapter 7 of the independent Environmental Impact Assessment (EIA) which was produced for the KCR project clearly lays out a resettlement policy (this had been produced before 2014

while KCR was commissioned to a Japanese company named JICA). The aforesaid resettlement policy, although not comprehensive, was the result of multiple public hearings, an extensive survey and data analysis of the affected communities, in accordance with international standards and best practices. However, no resettlement policy is presently in place, which is a regressive step backwards due to which over 40,000 lives are likely to suffer. Therefore, this is a violation of the law and customary best practices and the Commissioner's Office stands in non-compliance by not maintaining law and order, in letter and in spirit, as instructed by this Honourable Court.

18. That in response to the identification of these problems, this Honourable Court has been pleased to direct, vide Order dated: 12.12.2018, passed in CP No.9 of 2010 and Crl.O.P. No. 7-K and 19-K of 2017, that six weeks' notice will be provided for any demolition. Furthermore, this Honourable Court again reiterated that in none of its previous Orders, it directed that the Government of Sindh or KDA or any other authority to carry out demolition without observing the law or in breach thereof and further observed that whenever any demolition is required by the concerned authority, the law shall be followed in letter and spirit. Moreover, according to the agreement between the Government of Sindh and Federal Government it has been settled that no residential building will be demolished in pursuance of the earlier Orders dated 26.10.2019 and 27.10.2019 of this Honourable Court.

19. That it is most respectfully and most humbly submitted that in view of the aforementioned the Government of Sindh pledged to provide resettlement to everyone made homeless through the present 'anti-encroachment drive', however, no standard resettlement or compensation procedure has been identified as yet. The said inhabitants, including minors, women, the old and the infirm, live in constant fear of losing their homes, communities and family histories. Moreover, Karachi is a megacity that hires a vast amount of labor and 70% of its labor force lives in irregular settlements. Therefore, they need to be resettled and rehabilitated in order for the city to continue functioning.

20. That in pursuance of all the above mentioned Orders, a total of 14,719 commercial units and 80 residential units had been demolished till 01.01.2019. All demolitions were made without

the payment of compensation and/or a resettlement plan. According to the primary data collected by Applicant Intervenors including Applicant Intervenor's Organizations namely Karachi Urban Lab (KUL), no market or residential place, except one, was given due written and timely notice or provided with a specific date of demolition. It is submitted that most of the localities received notice via loudspeaker announcement, a few days prior to the demolition and many were unable to remove the contents of their shops or hawkers before they were demolished. Furthermore, the demolition process has been conducted in an ad hoc and haphazard manner. A prime example of the aforesaid is evident from the fact that the Zoological Garden Market received approximately a 30 day notice, but Lea Market was only given a 3 day notice. It is also submitted that in the face of protest, a fact finding committee was allowed to be formed for Urdu Bazaar and adjacent markets, *after* demolition was announced. However, no fact finding operation was afforded to any other market or residential area. Moreover, in some cases, the shop owners were not allowed to vacate their premises properly and suffered the additional loss of contents of their shops.

21. That it is most respectfully and most humbly submitted that another proceeding on a similar matter, specifically addressing the issue of *katchi abadis*, is also proceeding before this Court in Constitutional Petition No. 41 of 2015 [hereinafter referred to as CP No. 41 of 2015]. Through its Order dated 31.08.2015, passed in CP No. 41 of 2015, this Honourable Court took cognizance of the grave issues pertaining to the right to shelter, as envisaged in Article 38 (d) of the Constitution of Pakistan. Through the said Order dated: 31.08.2015, this Honourable Court was pleased to implead all four provinces into the proceedings and vide Para 2 of the said Order dated 31.08.2015, it took cognizance of the need for a coordinated housing policy between the Federation and the four provinces. It is further submitted that through Order dated 30.11.2018, passed in CP No. 41 of 2015, this Honourable Court constituted a Committee under the auspices of the Law and Justice Commission of Pakistan with the Additional Advocate Generals of all four provinces and Islamabad, Syed Nayab Hasan Gardezi, Learned DAG, and Bilal Hassan Minto, ASC, as members. It is most humbly submitted that the finding under these proceedings and the expertise of this Committee may kindly be utilized by this Court in order to arrive at a holistic resettlement policy.

22. That it is most respectfully and most humbly submitted that it is an admitted fact that as a result of the anti-encroachment drive several people have been made homeless, which is evident from the fact that the Additional Attorney General of Pakistan estimated that 100,000 people will be affected in residential settlements, identified as encroached and/or illegally allotted land. However, the Sindh Katchi Abadi Authority's list recognizes that 50,605 households stand affected, and according to the Provisional Census Results, the average household size is 6.5 persons per household. Even discounting the fact that population density tends to be higher in irregular settlements in urban areas, the projected numbers of affected persons is more than 328,933 persons. It is further submitted that right to life entails adequate living standards i.e. right to secure accommodation, right to food, right to clothing, and right to a healthy environment. Hence, shelter is an essential element of right to life, the right to adequate housing i.e. residence and settlement, are fundamental rights of every citizen. Furthermore, without prejudice to the aforementioned, in many cases the *katchi abadis* were partly regularized before the aforesaid 'anti-encroachment drive' started. In light of the aforesaid the inhabitants of these residential settlements have detrimentally relied on the regularization process of the *katchi abadis*, consequently, they have acquired a vested right to continue to reside in these residential settlements. It is also submitted that the right to property is a fundamental right. Therefore, the demolition of residential settlement, without providing a resettlement scheme and an alternate accommodation for the Applicant Intervenors No. 24 to 32, and the other affectees, is a sheer violation of their fundamental rights as guaranteed under Article 9, 14 and 24, Constitution, 1973.

23. That it is most respectfully and most humbly submitted that the procedure animating the present 'anti-encroachment drive' and the demolitions and evictions taking place in pursuance thereof are rendering hundreds of thousands without livelihood, which is evident from the fact that a consensual statement between the Federal Government, the Sindh Government and the Mayor of Karachi, submitted before this Court, enumerated 11 markets and provided the total tally of demolished units as 3,575 units in District South, Karachi. It is further submitted that a proposed rehabilitation plan for 1,470 of the demolished units is

also submitted by KMC and a note from the Mayor of Karachi to the Chief Minister of Sindh, requested for the resettlement of the displaced shopkeepers of the remaining 2,105 units in District South. Accordingly, the Government of Sindh pledged to resettle the displaced shopkeepers but neither the KMC in specific nor the Government of Sindh in general has finalized any resettlement policy or plan. It is further submitted that right to earn livelihood and own property is a fundamental right and each commercial unit has suppliers, employees and distributors, therefore, on an average, even if it is assumed that each commercial unit sustained 5 people, the demolition of 3,575 unit, without resettling them, will result in loss of livelihood of 17,875 people, which is a bare minimum number. Furthermore, without prejudice to the aforementioned, almost all of the shopkeepers, hawkers and kiosk owners have either been paying rent on the property to KMC or have leased the property from KMC under the garb of legality, most often without any knowledge of the purported illegality of the documents provided to them by KMC. Moreover, many of these markets had been established decades ago, in the 1960s, 1970s or even earlier. In light of the aforementioned, the owners of these commercial unit have detrimentally relied on the documents provided to them by KMC and acquired a vested right to continue to earn their livelihood by operating their businesses through these commercial units. Therefore, the demolition of these commercial units, without resettling the displaced Applicant Intervenors No. 10 to 23 and the other shopkeepers and occupants of these commercial units, is a sheer violation of their fundamental rights as guaranteed under Article 4, 18 and 24, Constitution, 1973.

24. That it is most respectfully and most humbly submitted that the aforesaid indiscriminate demolition of the residential settlements and commercial establishment has been carried out without providing a timely notice and the public hearing to the affectees. The aforesaid is evident from the fact that neither notices were issued for a public hearing nor the affectees were consulted before the initiation of the 'anti-encroachment drive'. Moreover, according to the primary data collected by Applicant Intervenors and Civil Society Organizations namely Karachi Urban Lab (KUL), Urban Resource Centre (URC) and Orangi Pilot Project (OPP), no market or residential place, except one, was given due written and timely notice or provided with a specific date of demolition, as directed by this Honourable Court vide its

aforementioned Order dated: 12.12.2018, which is evident from the fact that Zoological Garden Market received approximately a 30 day notice but Lea Market was only given a 3 day notice. It is submitted that most of the localities received notice via loudspeaker announcement, a few days prior to the demolition and many were unable to remove the contents of their shops or hawkers before they were demolished. Furthermore, in the face of protest, a fact finding committee was allowed to be formed for Urdu Bazaar and adjacent markets, after demolition was announced. However, no fact finding operation was afforded to any other market or residential area. Moreover, the present 'anti-encroachment drive' has progressed without any planning, data collection, impact assessment or alternative resettlement plan, despite the large scale of the operations, the large number of affectees, and the volatile law and order situation of the megacity of Karachi. Therefore, the arbitrary and indiscriminate demolition without providing public hearing and adequate notice is a violation of due process, natural justice and fundamental rights of the Applicant Intervenors No. 10 to 32 and other affectees as guaranteed under Article 4, 10-A and 14, Constitution, 1973.

25. That it is most respectfully and most humbly submitted that the procedure animating the present 'anti-encroachment drive' and the demolitions and evictions taking place in pursuance thereof are rendering hundreds of thousands without livelihood and without shelter. It is further submitted that right to life entails adequate living standards i.e. right to secure accommodation, right to food, right to clothing, and right to a healthy environment. Hence, the right to shelter and right to a livelihood are essential element of right to life, the freedom of trade and, the right to adequate housing i.e. residence and settlement, are fundamental rights of every citizen. Furthermore, the detrimental reliance of the Applicant Intervenors No. 10 to 32 and other affectees on the documents provided to them by KMC and/or the regularization process of the *katchi abadis*, created a vested right to reside or occupy these residential settlements and commercial establishment. It is further submitted that any purported illegality, whether through occupation or detrimental reliance for residential or commercial purposes, must be corrected; however, it is imperative that the welfare of affected persons must be taken into account in the interest of their rights to life, shelter, livelihood and dignity. Therefore, the Applicant Intervenors No. 10 to 32 and other

affectees must be compensated for the demolition of their residential settlements and commercial establishment. Hence, the demolition of the aforesaid residential settlements and commercial establishment without compensation to the Applicant Intervenors No. 10 to 32 and the other affectees is the violation of their fundamental rights as guaranteed under Article 9, 14, 18, 23, 24, 25 and 38 of the Constitution of Pakistan, 1973.

26. That it is most respectfully and most humbly submitted that the ongoing 'anti-encroachment drive' is disproportionately targeting the poorest and most marginalized inhabitants of Karachi. The demolitions and evictions being carried out in pursuance of the 'anti-encroachment drive' are pushing the socio-economically disadvantaged segments of society further into austerity and leaving them significantly disenfranchised. It is pertinent to note, that on the other hand, the Government of Sindh and the Federation of Pakistan are concurrently allowing the affluent segments of society to regularize their illegal encroachments, which is evident from the fact that Bahria Town Limited, Karachi (BTLK) has successfully negotiated the regularization of land measuring 16,896 acres (sixteen thousand eight hundred and ninety six acres) at Malir District in Karachi for PKR 460 Billion, as noted in the Order dated: 21.03.2019, passed by the Honourable Supreme Court of Pakistan, in S.M.C No. 34 of 2018 and other connected proceedings. Additionally, Grand Hyatt Tower at 1 Constitutional Avenue, Islamabad, has also been granted regularization. Moreover, as evident from the maps produced by Orangi Pilot Project (OPP), the important buildings such as the Tughlaq House in Sindh Secretariat are also constructed on amenity plots and/or *nullas*. Moreover, the right of way of a 100 ft is not being claimed for KCR when it comes to high value buildings such as Avari Towers. It is further submitted that the manner in which the ongoing 'anti-encroachment drive' is proceeding is discriminating against the poor and socio-economically disadvantaged segments. Therefore, the Applicant Intervenors and other affectees are witnessing and suffering from grave violations of Articles 25, Constitution, 1973.

27. That it is most respectfully and most humbly submitted that the procedure animating the present 'anti-encroachment drive' and the demolitions and evictions taking place in pursuance thereof are rendering hundreds of thousands without livelihood and without

shelter, which is in contravention of principles of public policy in favor of the welfare, shelter, livelihood, dignity and safety of the citizens as reflected by the Constitution of Pakistan. Moreover, the abovementioned 'anti-encroachment drive' and the resultant destruction of livelihood and shelter is also in contravention of international customary best practices. Furthermore, it is pertinent to note that the Government of Sindh in respect of public policy had also legislated Sindh Special Development Board Act, 2014, whereby a board was to be set up to facilitate and undertake low cost housing schemes, rehabilitation of *katchi abadis*, slums areas, gothabad schemes, multi-stories and high rise buildings in Province of Sindh. However, till date the Government of Sindh had failed to implement the aforesaid law. It is further submitted that the Government of Sindh pledged to resettle the affectees of the demolition but neither the KMC in specific nor the Government of Sindh in general has finalized any resettlement policy or plan. It is also submitted that any purported illegality, whether through occupation or detrimental reliance for residential or commercial purposes, must be corrected. However, it is imperative that the welfare of affected persons be taken into account with respect to public policy in the interest of their rights to life, shelter, livelihood, equality, non-discrimination, dignity, and safety. Therefore, the demolition of the residential and commercial settlement without providing a resettlement scheme and an alternate accommodation for the Applicant Intervenors No. 10 to 32 and other affectees, is a sheer violation of their fundamental rights as guaranteed under Article 9, 14, 18 and 25 of the Constitution of Pakistan, 1973.

28. That it is most respectfully and most humbly submitted that every human being is entitled to a standard of living adequate for the well-being of himself and of his family, including housing and the right to security in the event of unemployment or other lack of livelihood in circumstances beyond his control as per Article 25 of Universal Declaration of Human Rights, Article 11(1) of the International Covenant on Economic, Social and Cultural Rights (1976), Articles 6 and 17 of the International Covenant on Civil and Political Rights (1976), and General Comments No. 4 (1991), particularly when read with General Comments No. 3 (1990), of the Committee on Economic, Social and Cultural Rights. Moreover, the General Assembly Resolution 43/181 of 20.12.1998 on Global Strategy for Shelter for the year 2000 urged Governments to be concerned about their respective shelter needs. Furthermore, the

Convention on the Elimination of all Forms of Discrimination Against Women (1979), Convention on the Rights of the Child, (1989), and the International Convention on Elimination of Racial Discrimination (CERD) also require that these groups be safeguarded with respect to adequate housing and/or living conditions. It is further submitted that, as delineated by the United Nations Human Rights Office of the High Commissioner, the right to housing encompasses protection against forced evictions and the arbitrary destruction and demolition of one's home, and entitles a person to security of tenure, equal and non-discriminatory access to adequate housing, and participation in housing-related decision-making at the national and community levels. Therefore, the ongoing 'anti-encroachment drive' is a violation of the rights of the Applicant Intervenors and other affectees as codified in, inter alia, Universal Declaration of Human Rights and International Covenant on Economic, Social and Cultural Right, both of which have been signed and ratified by Pakistan, and as explained above, the aforementioned rights as guaranteed by these international conventions, are also recognized as fundamental rights under the Constitution of Pakistan, 1973.

29. That in view of the abovementioned contentions, it is imperative that unless this Honourable Court directs the inquiry against the arbitrary and indiscriminate demolition of the residential settlements and commercial establishments, especially of the poor and the powerless citizens and residents, through a supervisory mechanism like a Court sanctioned Commission, the grievance of the Applicant Intervenors and affectees will not be address. It is further submitted that this Honourable Court has the jurisdiction and power to form a Commission for supervising inquiry in view of the various precedents laid down by this Honourable Court. Therefore, to ensure the implementation of the fundamental rights of the Applicant Intervenors and affectees under Article 4, 9, 10A, 14, 18, 24 and 25, Constitution, 1973, Universal Declaration of Human Rights and International Covenant on Economic, Social and Cultural Right, this Honourable Court may kindly appoint a broad base independent Commission to conduct a detailed inquiry, and submit a report within three month, on the following issues: Firstly, whether the residential communities and commercial establishments, which were demolished as a result of 'anti-encroachment drive' were settled on the encroached areas and were demolished in accordance with law.

Secondly, if all or any of these residential communities and/or commercial establishments that have been demolished or anticipate demolition were or are settled on encroached areas, then in cases where they were unduly demolished, what administrative and penal action should be taken against the concerned officer, thirdly, identify the civil servants, including but not limited to the Karachi Metropolitan Corporation, who not only allowed the encroachment on public land but also profited for purported unlawful occupation from purportedly illegal occupiers and defrauded the public into occupying and therefore encroaching upon the subject land. Fourthly, determine whether any affectees, including but not limited to Applicant Intervenors No.10 to 32, are entitled to any compensation from the government and whether such compensation should be recovered from the concerned officers found involved. Fifthly, determine if all or any of these affectees are entitled to the compensation, and then determine that compensation. Sixthly, determine whether the affectees, including but not limited to Applicant Intervenors No.10 to 32, are entitled to resettlement. Sixthly, if all or any of these affectees are entitled to resettlement, then identify the minimum standard and procedure for this purpose. Seventhly, suggest measures to prevent future encroachments from taking place and recommend procedure for conducting 'anti-encroachment drive' in future. It is important to note here that this Honourable Court, through Orders dated: 16.01.2013 and 24.01.2013, in this present CP No. 9 of 2010 has already recognized the need for the constitution of such a Commission.

30. That in view of the above, it is most respectfully and most humbly submitted that the present application has been filed to bring the aforementioned facts on record and unless the Applicant Intervenors are not made party to the present petition, not only will the personal and proprietary rights of the Applicant Intervenors be affected but it will greatly affect the residents and/or occupants of these commercial and residential lands as these affectees are being removed without any resettlement plan and/or without due notice to their residents. The Applicant Intervenors are not only fighting for their fundamental rights under Article 4,9, 10-A, 14, 18, 24, 25 and 38 but also for the right of affectees of these commercial and/or residential settlements. Therefore, for the aforementioned reasons, the Applicant Intervenors are a necessary and proper party and their presence and assistance is essential

in order to enable this Honourable Court to effectively and completely adjudicate upon and settle all the questions involved in this present Constitution Petition 9 of 2010.

PRAYER

In view of the above, it is most respectfully prayed that this Honourable Court may be pleased to implead the Applicant Intervenors, as a Respondents, in the present Constitution Petition in order to enable this Honourable Court to effectually and completely adjudicate upon all the questions involved in the present Constitution Petition.

Karachi
Dated: ____ 2019

Advocate on Record
For the Applicant Intervenors