

**IN THE HONOURABLE SUPREME COURT OF PAKISTAN  
(REVIEW JURISDICTION)**

**Civil Review Petition No. \_\_\_\_\_ of 2021**

In

CMA 549-K of 2021

In

Constitution Petition No.9 of 2010

Naimatullah Khan.....Petitioner

Versus

Federation of Pakistan & Others.....Respondents

1. SHEHRI – Citizen for a Better Environment,  
Through its Authorized Person,  
Having its Registered Office at  
Shehri-CBE, 88-R,  
Block 2, P.E.C.H.S.,  
Karachi
2. Urban Resource Centre (URC),  
Through its Authorized Person,  
Having its Registered Office at  
A-2, 2<sup>nd</sup> Floor,  
West Land Trade Centre,  
Central Commercial Area,  
Block 7 & 8,  
Karachi Administrative Housing Colony  
Shaheed-e-Millat Service Road,  
Karachi
3. Legal Aid Society (LAS)  
Through its Authorized Person,  
Having its Registered Office at  
Spanish Homes Apartment,  
Mezzanine Floor,  
Phase 1, DHA, Karachi
4. Awami Workers Party (AWP),  
Through its Authorized Person,  
Having its Registered Office at  
AWP Secretariat, Rooms 201-204,  
Panorama Centre #1,  
Fatima Jinnah Road,  
Saddar, Karachi
5. Dr. Nausheen Anwar,  
Daughter of Tariq Jamil,  
Muslim, Adult,  
Resident of House No. 15/2,  
Khayaban-e-Ghazi,  
Phase 5, DHA, Karachi

6. Muhammad Rafiq,  
Son of Babu,  
Muslim, Adult,  
Resident of DT-38, Block 19,  
Al-Noor Society, FB Area, Karachi
7. Jamaluddin,  
Son of Momin,  
Muslim, Adult,  
Resident of Plot L-44, Block 12  
FB Area, Karachi
8. Zafar Alam,  
Son of Rooh-Al-Amin  
Muslim, Adult,  
Resident of  
Plot No. 185, Block 5,  
Tayababad, FB Area,  
Karachi
9. Perwaiz Vicky  
Son of Rehmat Masih,  
Christian, Adult,  
Resident of Plot No. 79,  
Block 5, Tayababad,  
FB Area, Karachi
10. Younus Masih,  
Son of Barkat Masih,  
Christian, Adult,  
Resident of Plot No. 85,  
Block 5, Tayababad,  
FB Area, Karachi
11. Mirza Tanzeem Baqar,  
Son of Sarfaraz Mirza,  
Muslim, Adult,  
Resident of  
Plot No. 135, Batha Town No.2,  
Block N, North Nazimabad,  
Karachi
12. Asif Bhatti,  
Son of Mehnga Masih,  
Christian, Adult,  
Resident of  
Plot No. 244-A,  
Punjabi Para,  
Liaquatabad, Karachi
13. Ghulam Ali,  
Son of Muhammad Khan,  
Muslim, Adult,  
Resident of Plot No. 174,  
Tayababad, FB Area, Karachi

14. Syed Iqbal Shah,  
Son of Syed Ghazi Shah,  
Muslim, Adult,  
Resident of 924/03,  
FB Area, Moosa Colony,  
Karachi
  
15. Sikandar,  
Son of Muhib Allah,  
Muslim, Adult,  
Resident of Plot No. 34,  
Block 5, Tayababad,  
FB Area, Karachi
  
16. Gul Zar Dad Khan,  
Son of Hayat Khan,  
Muslim, Adult,  
Resident of  
House No. 925/3,  
Moosa Colony, FB Area,  
Karachi
  
17. Muhammad Shabbir Ahmed,  
Son of Bundo Khan,  
Muslim, Adult,  
Resident of Plot No. 365,  
Arfat Town No. 2,  
North Nazimabad, Karachi
  
18. Faqira Masih  
Son of Ranga Masih,  
Christian, Adult,  
Resident of  
Plot No. 305, Punjabi Para,  
Nazimabad, Karachi
  
19. Mst. Malka,  
Wife of Barkat Ali Bhatti,  
Muslim, Adult,  
Resident of Plot No. 465,  
Haji Mureed Goth,  
Nazimabad, Karachi
  
20. Yousuf Masih,  
Son of Rahmat Masih,  
Christian, Adult,  
Resident of Plot No. 225,  
Punjabi Para,  
Nazimabad, Karachi
  
21. Mst. Anwar Bibi,  
Wife of Ayub Joseph,  
Christian, Adult,  
Resident of Plot No. 303-A,  
Punjabi Para,  
Nazimabad, Karachi

22. Sarwar Awaiz,  
Son of Umar Sohna,  
Muslim, Adult,  
Resident of Plot No. 386,  
Punjabi Para,  
Nazimabad, Karachi
23. Muhammad Sabir,  
Son of Shaikh Muhammad Din,  
Muslim, Adult,  
Resident of Plot No. 446,  
Arfat Town No. 2,  
North Nazimabad, Karachi
24. Gulzar Patel,  
Son of Ghulam Mustafa Patel,  
Muslim, Adult,  
Resident of Plot No. 87,  
Liaquatabad, Karachi
25. M. A. Rasheed Khan,  
Son of Ilam Din Khan,  
Muslim, Adult,  
Resident of Plot No. 86,  
Liaquatabad, Karachi
26. Mst. Kulsoom Bibi,  
Wife of Muhammad Sultan,  
Muslim, Adult,  
Resident of Plot No. 202,  
Rehmanabad, FB Area,  
Block No.5, Karachi
27. Muhammad Nawaz,  
Son of Nawaz Khan,  
Muslim, Adult,  
Resident of Plot No. 58,  
Wahid Colony,  
North Nazimabad, Karachi
28. Mst. Nasim Akhtar,  
Wife of Saeedullah Khan,  
Muslim, Adult,  
Resident of Plot No. 230-C,  
Wahid Colony, Block-B,  
North Nazimabad, Karachi
29. Mohammad Siddique,  
Son of Umerdin,  
Muslim, Adult,  
Resident of Plot No. H-35,  
Kousar Niazi Colony, Block G,  
Nazimabad, Karachi
30. Hashim Khan,  
Son of Rehmat Khan,  
Muslim, Adult,  
Resident of Plot No. 384,  
Wahid Colony, North Nazimabad,  
Karachi

31. Mohammad Suleman,  
Son of Hashmatullah,  
Muslim, Adult,  
Resident of Plot No. K-447,  
Kausar Niazi Colony,  
Block-F, North Nazimabad,  
Karachi
32. Mistar Uddin,  
Son of Abdul Qadir,  
Muslim, Adult,  
Resident of Plot No. K-166,  
Kausar Niazi Colony,  
Block-F, North Nazimabad,  
Karachi
33. Muhammad Ashraf,  
Son of Charaghdin,  
Muslim, Adult,  
Resident of Plot No. 349,  
Wahid Colony,  
North Nazimabad, Karachi
34. Mohammad Sharif,  
Son of Mohammad Hasan  
Muslim, Adult,  
Resident of Plot No. 1131,  
Kousar Niazi Colony Block-G,  
North Nazimabad, Karachi
35. Shoukat Ali,  
Son of Rehmatullah,  
Muslim, Adult,  
Resident of Plot No A-13,  
Block 5, FB Area, Karachi
36. Riasat Ali,  
Son of Rehmatullah,  
Muslim, Adult,  
Resident of Plot No. 07,  
Rehmanabad,  
FB Area, Karachi
37. Saifuddin,  
Son of Shaikh Sajjad Hussain,  
Muslim, Adult,  
Resident of Plot No. K-389 B,  
Kausar Niazi Colony, Block F,  
North Nazimabad, Karachi
38. Mst Rahmat Mai,  
Wife of Abdul Karim,  
Muslim, Adult,  
Resident of Plot No. K-412,  
Kausar Niazi Colony, Block F,  
North Nazimabad, Karachi

39. Mohammad Sharif,  
Son of Ghesa Khan,  
Muslim, Adult,  
Resident of Plot No. 297,  
Wahid Colony,  
North Nazimabad, Karachi
40. Shabir Ahmed,  
Son of Jam Bago,  
Muslim, Adult,  
Resident of Plot No. 1103,  
Kausar Niazi Colony, Block G,  
North Nazimabad, Karachi
41. Abdul Hakim,  
Son of Muhammad Suleman,  
Muslim, Adult,  
Resident of Plot No. 351,  
Wahid Colony,  
North Nazimabad, Karachi
42. Abdul Waheed,  
Son of Mohammad Bashir,  
Muslim, Adult,  
Resident of Plot No. K-196-G,  
Kausar Niazi Colony, Block-F,  
North Nazimabad, Karachi
43. Muhammad Riaz Khan Awan,  
Son of Boostan Khan,  
Muslim, Adult,  
Resident of Plot No. 229/C,  
Wahid Colony,  
North Nazimabad, Karachi
44. Muhammad Musharaf Hussain,  
Son of Sheikh Tayyab Ali,  
Muslim, Adult,  
Resident of Plot No. 231,  
Rehmanabad, Block 5,  
FB Area, Karachi
45. Mohammad Hanif,  
Son of Ismail,  
Muslim, Adult,  
Resident of Plot No. 105,  
Rehmanabad Block 5,  
FB Area, Karachi
46. Muhammed Maqbool Khan,  
Son of Muhammed Idrees,  
Muslim, Adult,  
Resident of  
House No. 540-K,  
Sector 15/D, Orangi Town,  
Thorani Goth, Dakhana 15/L,  
Karachi

47. Syed Bilal Ali,  
Son of Syed Mushtaq Ali,  
Muslim Adult,  
Resident of  
House No. 612, Street 6,  
Muhalla Junaidnagar,  
Islam Chowk, Sector 11-1/2,  
Orangi Town, Karachi
48. Naseem Ahmed,  
Son of Abdul Rauf,  
Muslim, Adult,  
Resident of  
House No. 547,  
Sector 15/D,  
Muhallah Thorani Goth,  
Orangi Town, Karachi
49. Muhammad Waseem,  
Son of Muhammad Qayyam Uddin,  
Muslim, Adult,  
Resident of  
House No. 16, BN-206,  
Sector 11-1/2,  
Benazir Colony, Karachi.....Applicant Interveners/Petitioners

**REVIEW PETITION UNDER ARTICLE 188, CONSTITUTION, 1973,  
READ WITH ORDER XXVI OF THE SUPREME COURT RULES, 1980,  
AGAINST ORDER DATED: 14.06.2021, PASSED IN CMA NO.549-K OF  
2021 IN CP NO.09 OF 2010**

It is most respectfully and most humbly submitted that this Review Petition challenges the Order dated: 14.06.2021, as well as its detailed reasons (hereinafter referred to as the 'Impugned Order'), passed by this Honourable Court in CMA No.549-K of 2021 in CP No.09 of 2010, through which the CMA No.549-K of 2021 was dismissed and it was ordered that the Government of Sindh, NDMA and the Administrator Karachi are to ensure that all lands of both the Gujjar Nullah and Orangi Nullah and the right of way are cleared. Therefore, the consequence of the aforementioned Impugned Order was the continuing demolition of thousands of houses/buildings/structures and dispossession of over 50,000 people, without any immediate substantive compensation or temporary rehabilitation for the purpose of both the clearance of the Gujjar Nullah and Orangi Nullah as well as for the construction of thirty-foot wide road on both sides of the Gujjar Nullah and Orangi Nullah.

## FACTS

1. That the Applicant Interveners/Petitioners No.1 to No.3 are well known civil society organizations which are involved in various struggles for the enforcement of the legal and human rights of the people of Pakistan. Applicant Intervener/Petitioner No.4 is a political party that gains its mandate from the working-class people of Pakistan and is involved in several grass root level awareness programs, initiatives and mobilization drives for various social and political causes. Applicant Intervener/Petitioner No.5 is a globally known activist and technical expert of city and regional planning. In their individual capacities, as well as through the platform of various forums and organizations, the aforementioned Applicant Interveners/Petitioners are engaged in numerous social and welfare activities which include, but are not limited to, the enforcement of the right to due process of law, right to the city, right to property and right to housing. Additionally, they also conduct social awareness campaigns, technical surveys and engage in public interest litigation to provide legal representation to the marginalized segments of the population in an effort to promote justice and equity in society.
  
2. That the Applicant Interveners/Petitioners No.6 to 49 are lease holders whose properties and homes, that had been lawfully leased by Karachi Metropolitan Corporation [hereinafter referred to as 'KMC'], Karachi Development Authority [hereinafter referred to as 'KDA'], and Sindh Katchi Abadi Authority [hereinafter referred to as 'SKAA'], were scheduled to be demolished, under the garb of the implementation of the Order dated: 12.8.2020, passed in the above titled case, by this Honourable Court [hereinafter referred to as 'Order dated 12.8.2020']. The Applicant Interveners/Petitioners No.6 to 49 had neither been given any direct written notice or timetable for the demolition nor have they been afforded any



opportunity for hearing or any explanation as to why their homes and properties are being considered subject matter of the Order dated 12.8.2020.

3. That the National Disaster Management Authority [hereinafter referred to as 'NDMA'] and Sindh Government and its functionaries had been given clear directions through the Order dated 12.8.2020 by this Honourable Court but they intentionally violated the said directions by undertaking the work of demolition in an arbitrary and discriminatory manner under the garb of following the aforementioned Order dated 12.8.2020.
4. That it is most humbly and most respectfully submitted that through Paragraph 1 and 2 of the Order dated 12.8.2020, this Honourable Court had directed that NDMA was responsible for removing encroachments to clean the nullahs and the Government of Sindh and its functionaries were responsible for the rehabilitation of all persons affected by the removal of said encroachments. The relevant part of the aforementioned order is as follow:

*“National Disaster Management Authority (“NDMA”) has taken up the work of cleaning three (03) major nullahs in Karachi City with which the Provincial Government is quite happy. It has been pointed out to us that there are more 38 big nullahs and 540 small nullahs. ... In the circumstances, we direct the NDMA to take over the work of cleaning of nullahs in Karachi City and ensure that such cleaning work of nullahs is completed and all encroachments in and around these nullahs are removed. The Sindh Government shall provide all necessary assistance and support to the NDMA for rehabilitation of the people dislocated on account of removal of said encroachments. In rehabilitating the people, the Sindh Government shall ensure provision of all necessary facilities which is required for rehabilitation of a civilized society. The NDMA will put up its report before the Court ... In addition to removing encroachments and cleaning the nullahs, NDMA is also authorized to undertake all other related and ancillary activities including but not limited to disposal and transportation of silt, slush etc. removed from such Nullahs.*

*2. A specific mention has been made regarding encroachment of Haji Leemo Goth nullah. The Sindh Government through Advocate General,*

*Sindh has given an undertaking assuring removal of encroachments from the nullahs with the proper rehabilitation of the people”*

It is important to note that NDMA had not submitted any report in this regard before this Honourable Court on the subsequent hearings of the above titled case i.e. 13.08.2020, 29.12.2020, 30.12.2020; and 08.04.2021.

5. It is most humbly submitted that this Honourable Court had given unambiguous directions to NDMA and Sindh Government and its functionaries to:

- i. Firstly, remain within the ambit of the due process of law, and thus not violate the dignity of the people in any manner whatsoever. This Honourable Court had not given any directions to circumvent the due process of law but instead it had reiterated that all residents of the affected areas must be rehabilitated in a civilized manner and necessary facilities must be provided to them;
- ii. Secondly, only clean up the nullahs and remove encroachments for this sole purpose only, if required. It is self-evident that cleaning of nullahs does not encompass the demolition or removal of valid lease holders. It is also clear that if an objective survey of all the residents has not been conducted and a criterion has not been established to differentiate between purported encroachers and valid lease holders, the purpose of the Order dated 12.08.2020 cannot be accomplished;
- iii. Thirdly, fully rehabilitate the encroachers who may need to be removed for the cleaning of nullahs. Sindh Government had been specifically directed to undertake steps and provide all facilities for this purpose. It is only logical that a comprehensive rehabilitation infrastructure must be put in place before carrying out the demolition.
- iv. Fourthly, give ample time to all residents for relocation, where need be, before any demolition can take place. It had been made unambiguously clear in the aforesaid Order dated 12.08.2020 that even the people who, after proper and thorough determination, were proven to be encroachers, must be given alternate housing

and be given time to relocate before the identified encroachments can be demolished.

- v. Fifthly, it is obvious from the above mentioned Order that the Order of this Honourable Court was to rehabilitate with all necessary facilities required for rehabilitation in a civilized society. In short, the current procedure adopted by the NDMA and Sindh Government to give compensation in the form of rent for four years at the rate of Rs. 15000 per month is a gross violation of the above Order. The above mentioned Order of this Court is crystal clear: rehabilitation means resettlement, which means alternative housing.
- vi. Sixthly, as is obvious from the above mentioned Order of this Honourable Court, demolitions could only be conducted for the restoration of the Nullahs but the NDMA and the Government of Sindh have malafidely started clearing 30 feet road on each side of the Gujjar Nullah and Orangi Nullah for road pavement, which had not been directed by this Honourable Court.

It is most humbly reiterated that the present Applicant Interveners/Petitioners No.6 to 49 are legitimate lease holders having vested rights who had only approached this Honourable Court in order to be treated in accordance with the due process of law and for the implementation of the aforementioned Order dated 12.08.2020.

6. That it is most humbly and respectfully submitted that NDMA and Government of Sindh and its functionaries were collectively and individually responsible for the implementation of the Order dated 12.8.2020, in its letter and spirit. However, they misused the aforesaid Order dated 12.08.2021 and abused the process of law. Functionaries of the Sindh Government had issued mass public notices, providing only a few days' time to the residents to evacuate their homes, without providing any clear timelines as to the demolitions and rehabilitation of those who are encroachers and will be uprooted. This was exemplified by their unlawful, unilateral and belated actions in March 2021. It is brought to the notice of this Honourable Court that the Senior Director Land (Anti-Encroachment), KMC, had issued a letter

dated 05.03.2021 titled “Cancellation of Leases of Plots Coming in the Alignment of Gujjar Nullah Project and Orangi Nullah Project (Storm Water Drains) and Other Nullahs in Karachi City”. The said letter comprised of one paragraph only and had illegally directed the cancellation of all leases without providing any hearing or intimation to the lease holders. Additionally, the said letter had dealt with the vested rights of the people in the most cursory manner and had even failed to specify which leases are to be cancelled or which areas are needed for the alignment of the nullahs. It is submitted that following this letter, within 09 days, on 14.03.2021, the Deputy Commissioner, Karachi (Central), had issued a notice which stated that:

*“In pursuance of the mandate assigned by the Honourable Supreme Court of Pakistan and directives from the National Disaster Management Authority, an anti-encroachment drive for removal of encroachments along both sides of Gujjar Nullah in District Central is carry on.*

*To accelerate the pace of work, from **tomorrow i.e. 15-3-2021 at 7:00 A.M.** the anti-encroachment drive will continue simultaneously from the following three sections...*

*In this regard the Metropolitan Commissioner is requested to provide necessary machinery...*

*The Director, Anti-Encroachment, KMC will lead the operation...*

*The Sector Commander, Sachal Rangers Sindh Karachi.... are requested for deployment of sufficient force....”*

7. That it is necessary to elucidate the factual position with regards to the clearing of Nullahs, demolition of alleged encroachments and compensation to the displaced people. The figures given below reflect the factual position as of 5<sup>th</sup> May, 2021.

- a. Gujjar Nullah: It extends for 13 km, of which only 3.5 km is left to be cleared. In total, there are 4058 houses to be demolished of which 1594 have been demolished and 2464 are remaining. 3137 houses are qualified for compensation as compensation is based on

the principle that those houses (whether leased or not) are entitled for compensation whose 30% structure has been demolished. These demolitions are based on the NED university survey in which each structure has been given an ID number/structure number, regardless of the fact that in that structure whether there are one or multiple families living. The houses are being demolished to firstly, clear the Gujjar Nullah and secondly, to build 30 feet road on each side of the Gujjar Nullah. The amount of compensation is to be given in 4 instalments (every six months) with a total amount being Rs. 3 lac 60 thousand (calculated in terms of rent for two years). Only residential houses are entitled for compensation.

- b. Orangi Nullah; It extends for 11.5 km, of which 7.48 km has been cleared. In total, 1703 houses are to be demolished of which 1095 have been demolished. On the above 30% demolition criterion, 1127 houses are entitled for compensation. There is also a 30 feet wide road to be made on both sides, for which demolition is to occur.
- c. Mehmoodabad Naala; Demolition is complete in which 56 to 58 houses have been demolished.

8. That the above mentioned compensation scheme is marred by a number of problems some of which were pointed out along with possible solutions:

- i. Unlike the compensation for the Lyari expressway in which 50,000 rupees plus 80 sq. yards plots were given (in total 20,000 plots were given), in the above case, not only is the compensation for multiple families, on a single structure being measured as only one, is set at Rs. 360000, in total but more importantly, no 80 or 120 sq. yards plots are being given. No separate compensation criterion has been made for leased properties as opposed to non-leased properties.

- ii. Around 6000 plots are required to be given of 120 sq. yards which is around 1.2 sq. km. This is easily possible because Karachi is 3557 sq. km of which only 750 sq. km is urban land and the rest of the land belongs to the Government of Sindh. Malir Development Authority (MDA) and Lyari Development Authority (LDA) have enough land to carve out these 6000 plots.
  - iii. If the road on each side of the Nullah is reduced to 12 feet then a substantial portion of the demolitions can be stopped.
  - iv. There are 38 nallas in Karachi, some of them occupied in posh areas which are not being cleared.
9. That in view of the above, it was most respectfully submitted that grave injustice and violation of the rights of the Applicant Interveners/Petitioners and of the relevant people affected by this demolition was taking place for the following reasons. Firstly, the orders of this Honourable Court were being malafidely misrepresented by demolishing properties which were not encroachments, which was in contempt of this Honourable Court's orders as well as a violation of Article 23, Constitution, 1973. Secondly, half of the demolished houses did not relate to the clearance of Gujjar Nullah and Orangi Nullah but relate to the pavement of 30 feet road on both sides of these Nullahs, which was neither necessary nor had been specifically ordered by this Honourable Court, which actions were in contempt of this Honourable Court's order and were in violation of Article 4, Constitution, 1973. Thirdly, these demolitions were taking place in gross violation of due process of law as guaranteed under Article 10A, Constitution, 1973. Fourthly, if the Applicant Interveners/Petitioners and the affectees had occupied properties, whether leased or not, in violation of the law then it was completely discriminatory to take action only against these affectees and not against the officials who facilitated this possession and gained pecuniary benefit from the affectees and was thus a violation of Article 25, Constitution, 1973. Fifthly, the Applicant Interveners/Petitioners had a fundamental right under Article 9, Constitution, 1973, to right to life which

includes the right to housing and it was also a fundamental duty of the government under Article 38 (d), Constitution, 1973, to provide the basic necessity of housing to the people of Pakistan. Therefore, it was a fundamental violation of the aforementioned provisions when the government was benefitting from the demolition whereas it was the very failure of the government to ensure the right of housing of the affectees which had led to the current demolitions and the obstructions on the Nullahs. Sixthly, depriving the affectees, especially people who had leased properties, of their properties without adequate compensation on the pretext of a public project of restoring Nullahs and constructing roads was a violation of Article 24, Constitution, 1973, and Land Acquisition Act, 1894. Seventhly, it seems that when it comes to demolitions of so-called illegal structures, this term is only assigned to the poor and the powerless whereas the illegal structures constructed by the rich and the elite are easily regularized by the law under the garb of regularization. In other words, demolition is for the poor and regularization is for the rich. It is most respectfully and most humbly submitted that this Honourable Court is under a constitutional duty to rectify this grave discriminatory injustice so that both the rich and the poor are treated equally and the adverse effect of demolition and the beneficial effect of the regularization is equally and without discrimination applied to both sections of society. Eighthly, the Order dated 12.8.2020 of this Honourable Court created a right to rehabilitation, meaning resettlement, for even encroachers. In other words, all individuals dispossessed during this demolition had to be rehabilitated, meaning resettled. Ninthly, the authorities were illegally denying the option of compensation and rehabilitation to structures other than residential properties which was a contempt of the Order dated 12.08.2020 of this Honourable Court. In other words, commercial as well as non-residential properties were entitled to rehabilitation and compensation. Moreover, it is precisely because of the aforementioned provisions of Constitution and law that this Honourable Court had specifically ordered that the affectees were to be rehabilitated

through resettlement and by merely offering trivial compensation, the government has violated the order of this Honourable Court. Therefore, the aforementioned constitutional and legal issues were required to be adjudicated by this Honourable Court for which the presence of Applicant Interveners/Petitioners is necessary to assist this Honourable Court.

10. That in view of the abovementioned facts, the affectees of the demolition in relation to the Gujjar Nullah and Orangi Nullah and the construction of 30 feet wide road approached the Tribunal established under Section 12 of the Sindh Public Property (Removal of Encroachment) Act, 2010, as well as by institution of Civil Suits and constitution petitions before the Honourable High Court. It is submitted that the aforementioned Courts granted stay orders restraining demolition of the leased houses on the ground that it was a violation of the abovementioned Supreme Court orders. It is further most respectfully submitted that the present Applicant Interveners/Petitioners also approached this Honourable Court by filing CMA No.549-K of 2021 in CP No.09 of 2010 seeking the intervention of this Honourable Court with the prayer that it may be directed that only demolitions necessary for restoration of the Gujjar Nullah and Orangi Nullah may be carried out and demolitions may be stayed until the government pays the compensation and gives a concrete plan for an immediate temporary resettlement and expeditious long term resettlement of the affectees.
11. That the abovementioned CMA No.549-K of 2021 came up for hearing before this Honourable Court on 14.06.2021 and this Honourable Court through Short Order dated: 14.06.2021, as well as detailed reasons, dismissed the aforementioned Application, and it was ordered that the Government of Sindh, NDMA and the Administrator Karachi were to ensure that all lands of both the Gujjar Nullah and Orangi Nullah and the right of way are cleared. Therefore, the consequence of the aforementioned Impugned Order was the continuing demolition of thousands of houses/buildings/structures and



dispossession of over 50,000 people without any immediate substantive compensation and temporary rehabilitation, for the purpose of both the clearance of the Gujjar Nullah and Orangi Nullah as well as for the construction of 30 feet wide road on both sides of the Gujjar Nullah and Orangi Nullah.

12. That it is most respectfully and most humbly submitted that the Applicant Interveners/Petitioners being aggrieved by the abovementioned Impugned Order dated; 14.06.2021, as well as the detailed reasons, passed on CMA No.549-K of 2021 in CP No.09 of 2010, submit this Review Petition, inter alia, on the following Grounds:

### **GROUND**

- A. That it is most respectfully and most humbly submitted that the Impugned Order has completely failed to give any finding on the issue of whether any demolitions could be conducted by the Government and its relevant authorities, for building a 30 feet wide road on each side of the Gujjar Nullah and Orangi Nullah. An absence of finding on this critically important issue is an error apparent and floating on the face of the record, for the following reasons: Firstly, neither this Honourable Court's Order dated: 12.08.2020, nor any subsequent Orders, allowed or directed the Government to demolish any house/building/structure for constructing a 30 feet wide road. In other words, this omission to determine this issue has legitimized the contemptuous and illegal demolitions carried out by the Government and its agencies, for construction of illegal roads. Secondly, the Government has neither disclosed nor presented any plan, based on law, on the basis of which the Government is demolishing houses/buildings/structures for such road construction. Thirdly, in view of the fundamental rights guaranteed under Article 23 & 24, Constitution, 1973, no acquisition of property through demolition, for purposes of a public project, like a public road, could take place, except in accordance with the law i.e. Land Acquisition Act, 1894. Therefore, for the

aforementioned reasons, the Impugned Order suffers from errors apparent and floating on the face of the record.

B. That it is most respectfully and most humbly submitted that although the Impugned Order makes reference to this Honourable Court's earlier Order dated: 12.08.2020, and it appears from the Impugned Order that the Impugned Order is mainly in execution of the earlier Order, as both, the earlier Order dated: 12.08.2020 as well as the Impugned Order, direct the removal of encroachments and nothing else. However, the Impugned Order fails to give any finding on the central point raised by the Applicant Interveners/Petitioners in their CMA No. 549-K of 2021, which is that the Order dated: 12.08.2021, neither directed the Government and its agencies to demolish any houses/buildings/structures for the construction of roads, nor did it allow the demolition of leased properties without a determination as to whether they were illegal leased on Nullah Land or not, which alone would lead them to be declared as encroachments. Therefore, for the aforementioned reasons, the Impugned Order suffers from errors apparent and floating on the face of the record.

C. That it is most respectfully and most humbly submitted that the Impugned Order is based on unverified presumptions, which are presumed to be true without any verification and judicial determination, based on evidence. These unverified presumptions are: Firstly, a general Order is passed regarding the clearance of land for both Gujjar and Orangi Nullah, and its right of way, without any finding or determination as to the length and breadth of such Nullahs and their right of way. This determination was critical because without an authentic mapping of the exact dimensions of Gujjar and Orangi Nullah and its right of way, no general order could be passed for the wholesale demolition of houses/buildings/structures, leading to demolition of thousands of houses/buildings/structures and dispossession of over fifty thousand people. In other words, only those houses/buildings/structures could

be ordered to be demolished which were encroaching on the Nullahs, as well as their right of ways, on the basis of an authentic mapping of the actual dimensions of such Nullahs and their right of way, as determined under some law. Secondly, general observations are made in the Para 1 and 5 of the Impugned Order, regarding the damage caused by last year's rain due to the choking of most of the Nullahs by occupied and Pakka construction, as well as the width of the Nullahs being critically diminished by such construction, and Nullahs being blocked, causing flooding and having no space for allowing Nullahs to drain the water. It is respectfully submitted that the aforementioned observations may be true but a wholesale demolition of thousands of houses/buildings/structures and dispossession of over fifty thousand people could not be ordered without a judicial determination, based on verifiable evidence, as to which specific houses/buildings/structures relating to the Gujjar and Orangi Nullahs led to last year's flooding or diminishing of the width of the Nullahs or choking of the Nullahs. It is most respectfully and most humbly submitted that apart from such general observations and unverified presumptions, the Impugned Order omits to give such determinations. Thirdly, the Impugned Order clearly states that there are thirty-eight (38) big Nullahs and five hundred and forty (540) small Nullahs that are apparently encroached upon, but fails to note that the Government and its agencies have acted in a discriminatory manner, by conducting hardly any demolitions for clearance of Nullahs in posh areas like DHA, and unlike the Gujjar and Orangi Nullah, where thirty-feet wide road is being built, the road built along the Mehmoodabad Nullah is twelve-feet (12) wide, which has saved hundreds of houses from demolition. In other words, the violations of Article 25 in the clearance of Nullahs fails to find mention in the Impugned Order. Therefore, for the aforementioned reasons, the Impugned Order suffers from errors apparent and floating on the face of the record.

D. That it is most respectfully and most humbly submitted that in view of the reasons stated in the above Paras A to C, there is a contradiction between the

short Order and detailed reasons, of the Impugned Order, because on the one hand the short Order directs the clearance of all lands of both the Nullahs and their right of way, whereas the detailed reasons, in conformity with the earlier Order dated: 12.08.2020, directs the removal of only encroachments. It is most respectfully and most humbly submitted that it is precisely because of the vagueness of the determinations in the Impugned Order, without any detailed consideration of all the relevant facts and documents, that the Impugned Order has given rise to such contradictions. Therefore, for the aforementioned reasons, the Impugned Order suffers from errors apparent and floating on the face of the record.

E. That it is most respectfully and most humbly submitted that the Impugned Order contains a number of erroneous findings regarding the issue of compensation and rehabilitation, which are errors apparent and floating on the face of the record. These are as follows: Firstly, the counsel for the Applicant Interveners/Petitioners had not only emphasized the issue of compensation and rehabilitation but had also challenged the illegal demolitions itself/per se, for the reasons as stated in the above Paras. Even otherwise, it was categorically prayed for, in the Intervener Application, that if demolitions are legally and practically necessary, then at least reasonable compensation and temporary rehabilitation should be ordered immediately. Secondly, the Impugned Order fails to consider that since over fifty thousand people are being displaced, this Honourable Court should have at least directed the Government to submit details regarding the compensation and rehabilitation plan immediately. For example, whether a list of all persons has been prepared who will be dispossessed, whether a list of all properties (with their valuation) has been prepared which will be demolished, whether fifteen thousand rupees have been paid to each household or (illegally) only in relation to each structure (which may contain multiple households), what is the timeline for rehabilitating these dispossessed people, and whether land has been identified for such a rehabilitation, etc. Such omissions have led to the violation of

fundamental rights of life, property and dignity of thousands of people. Therefore, for the aforementioned reasons, the Impugned Order suffers from errors apparent and floating on the face of the record.

F. That it is most respectfully and most humbly submitted that the Impugned Order is violative of Article 10-A and Article 184(3), Constitution, 1973. Firstly, the abovementioned omissions and violations could have been avoided if a detailed hearing and consideration of the aforementioned contentions would have been conducted by examining the required evidence, but the hearing of the said Application and the fate of thousands of people was decided in a short and single hearing. It is settled law that since the proceedings under Article 184(3), Constitution, 1973, are original jurisdictional proceedings and no appeal lies against such Orders passed thereon, therefore extreme caution should be exercised in conferring due process on the affected persons as such affected persons neither have the right of appeal nor have the right of a full-fledged civil trial as such matters begin and end at the Honourable Supreme Court. In other words, the observance of due process rights in such proceedings have the highest fundamental right priority and trump all other rights. Secondly, no proceedings under Article 184(3), Constitution, 1973, can take place unless there is a determination whether this is a case involving the enforcement of fundamental rights and this is a matter of public interest. Regardless of whether these two conditions were present in this particular case or not, it is a fact that the Impugned Order itself is completely silent about why and how the clearing of the Nullahs as well as the dispossession of thousands of people is a case of enforcement of fundamental rights and is in the public interest, and whether there are conflicting fundamental rights involved and conflicting issues of public interest involved (Government goals versus affectees rights), which required the Court to balance such rights and public interest. It is most respectfully and most humbly submitted that the Impugned Order omits to give any finding on this particular mandatory jurisdictional requirement. Therefore, for the

aforementioned reasons, the Impugned Order suffers from errors apparent and floating on the face of the record.

G. That it is most respectfully and most humbly submitted that the Impugned Order has omitted to consider that the issue as to whether a particular house/building/structure is an encroachment comes within the jurisdiction of the Tribunal established under Section 12 of the Sindh Public Property (Removal of Encroachments) Act, 2012, and such determination in most cases requires the recording of evidence as to determine whether the particular title documents, including lease etc., and the possession is legal or not. It is most respectfully and most humbly submitted that the Impugned Order declares all leases issued by the various land authorities, namely, KDA, KMC, and SKAA, as illegal, without examining any of the leases and laws under which they have been issued. Moreover, it is most respectfully and most humbly submitted that it is settled law that this Honourable Court should have left these evidential issues to the determination of the Tribunal established under the law. Therefore, for the aforementioned reasons, the Impugned Order suffers from errors apparent and floating from the face of the record.

H. That in view of the above, it is most respectfully submitted that grave injustice and violation of the rights of the Applicant Interveners/Petitioners and of the relevant people affected by this demolition took place for the following reasons. Firstly, the orders of this Honourable Court were being malafidely misrepresented by demolishing properties which were not encroachments, which was in contempt of this Honourable Court's orders as well as a violation of Article 23, Constitution, 1973. Secondly, half of the demolished houses did not relate to the clearance of Gujjar Nullah and Orangi Nullah but relate to the pavement of 30 feet road on both sides of these Nullahs, which was neither necessary nor had been specifically ordered by this Honourable Court, which actions were in contempt of this Honourable Court's order and were in violation of Article 4, Constitution, 1973. Thirdly, these demolitions

were taking place in gross violation of due process of law as guaranteed under Article 10A, Constitution, 1973. Fourthly, if the Applicant Interveners/Petitioners and the affectees had occupied properties, whether leased or not, in violation of the law then it was completely discriminatory to take action only against these affectees and not against the officials who facilitated this possession and gained pecuniary benefit from the affectees and was thus a violation of Article 25, Constitution, 1973. Fifthly, the Applicant Interveners/Petitioners had a fundamental right under Article 9, Constitution, 1973, to right to life which includes the right to housing and it was also a fundamental duty of the government under Article 38 (d), Constitution, 1973, to provide the basic necessity of housing to the people of Pakistan. Therefore, it was a fundamental violation of the aforementioned provisions when the government was benefitting from the demolition whereas it was the very failure of the government to ensure the right of housing of the affectees which had led to the current demolitions and the obstructions on the Nullahs. Sixthly, depriving the affectees, especially people who had leased properties, of their properties without adequate compensation on the pretext of a public project of restoring Nullahs and constructing roads was a violation of Article 24, Constitution, 1973, and Land Acquisition Act, 1894. Seventhly, it seems that when it comes to demolitions of so-called illegal structures, this term is only assigned to the poor and the powerless whereas the illegal structures constructed by the rich and the elite are easily regularized by the law under the garb of regularization. In other words, demolition is for the poor and regularization is for the rich. It is most respectfully and most humbly submitted that this Honourable Court is under a constitutional duty to rectify this grave discriminatory injustice so that both the rich and the poor are treated equally and the adverse effect of demolition and the beneficial effect of the regularization is equally and without discrimination applied to both sections of society. Eighthly, the Order dated 12.8.2020 of this Honourable Court created a right to rehabilitation, meaning resettlement, for even encroachers. In other words, all individuals dispossessed during this

demolition had to be rehabilitated, meaning resettled. Ninthly, the authorities were illegally denying the option of compensation and rehabilitation to structures other than residential properties which was a contempt of the Order dated 12.08.2020 of this Honourable Court. In other words, commercial as well as non-residential properties were entitled to rehabilitation and compensation. Moreover, it is precisely because of the aforementioned provisions of Constitution and law that this Honourable Court had specifically ordered that the affectees were to be rehabilitated through resettlement and by merely offering trivial compensation, the government has violated the order of this Honourable Court. Therefore, the Impugned Order has omitted to consider the aforementioned consideration and for this reason also, it suffers from an error apparent and floating on the face of the record.

- I. That it is most respectfully and most humbly prayed that the Petitioners may graciously be allowed to urge further grounds in addition to the above at the hearing of this present case.

### **PRAYER**

It is most respectfully and most humbly submitted that in view of the abovementioned, inter-alia, facts and grounds, this Honourable Court may, in the interest of justice, kindly and graciously review and set aside the Order dated: 14.06.2021, to the extent of its dismissal of CMA No. 159-K of 2021, in C.P. No. 9 of 2010, and consequently, allow CMA No. 159-K of 2021, in C.P. No. 9 of 2010, by impleading the Applicant Intervenors/Petitioners in these present proceedings



Drawn and Settled by:

Filed by:

FAISAL SIDDIQI  
Advocate Supreme Court

SYED MEHMOOD ABBASS  
Advocate on Record

**CERTIFICATE**

This is the first Review Petition filed by the Petitioners against the Impugned Order dated: 14.06.2021, before this Honourable Court.

Advocate on Record