

IN THE HIGH COURT OF SINDH AT KARACHI

Constitution Petition No.D-2896 of 2024

[Mst. Bilquis Bano Memon v. Federation of Pakistan and others]
and

Constitution Petition No.D-2759 of 2024

[Mst. Afsheen Tabish and another v. Federation of Pakistan and others]

Before;

Mr. Justice Zulfiqar Ali Sangi;

Mr. Justice Abdul Hamid Bhurgri.

Petitioners : through Mr. Bahzad Haider, Advocate.

Respondents : Through Ms. Zehrah Sehar Veyani,
Assistant Attorney General and
Mr. Kamran Khan, A.A.G.

Date of Hearing : **27.08.2025**

Date of Decision : **11.09.2025**

J U D G M E N T

Abdul Hamid Bhurgri, J. The petitioners in above petitions have approached this Court under Article-199 of the Constitution of the Islamic Republic of Pakistan stating therein that the respondent No.5 has allotted a residential plot of land bearing No.R-34 measuring 91.25 sq. yards out of survey No.193 and 194 measuring 16.11 acres at Deh Gujro, Tapo Songal, District Karachi East to petitioner in C.P. No.D-2896/2024 and plot of land bearing No.R-38 measuring 95 sq. yards to petitioners in C.P. No.D-2759/2024. They further stated that respondent No.5 acquired the subject property on lease from respondent No.2 in 1963. According to petitioners, the Respondent No.1 approved the land in the year 1975 and initially lease deed for a period of 30 years was executed on 12.05.1976 between the petitioners and the Respondent No.2. They further asserted that the lease of respondent No.5 was extended for a period of 69 years on 02.05.1990. The respondent No.5 after obtaining approval/NOC, initiated the housing project namely "Waseem Bagh". It is further contended in the petitions that the possession was handed over to the petitioners and that at present thousands of families including petitioners are residing in the subject property for several years without any hindrance from any quarter. Subsequently in the month of April, 2024, when some of the allottees tried to sell their units located in Waseem Bagh project, it was revealed that Respondent No.4 addressed a letter to Respondent No.6/Deputy Commissioner

East Karachi requesting cancellation of subleases allegedly granted by Respondent No.5. Grievance of the petitioners is that the said letter, though written in March, 2024, may at some extent be kept open by the official respondents. Accordingly, the petitioners in both petitions prayed for the following relief:-

- i. Declare that the Impugned letter dated 05.03.2024 has been issued against the principles of natural justice and without hearing the Petitioners who are the lawful owners in possession of the property located in the Project;**
- ii. Declare that the Impugned Letter dated 05.03.2024 is illegal and has been issued without lawful authority;**
- iii. Permanently restrain the Respondents from taking any adverse action against the Project "Wasim Bagh" in pursuance of the Impugned Letter dated 05.03.2024;**
- iv. Till pendency of the instant Petition, operation of the Impugned Letter may be suspended and Respondents may be restrained from taking any adverse action against the Project "Wasim Bagh" in pursuance of the Impugned Letter dated 05.03.2024 without providing right of hearing to the Petitioners.**

2. Learned counsel for petitioners contended that the letter of Respondent No.6 casts a cloud upon petitioners' title and possession and that they may be divested of their rights without due process of law and the official Respondents take action thereupon.

3. Conversely, learned D.A.G submits that no order adverse to the petitioners has been passed, nor has any action been initiated on the impugned letter, hence petitions are misconceived.

4. We have heard the learned counsel for petitioners and learned D.A.G and perused the material available on record.

5. It is manifest that the present petitions rest entirely on apprehension and presumption; the official Respondents have not acted upon the letter in question for more than a year.

6. The law is settled that this Court in exercise of its Constitutional Jurisdiction, does not issue writs on the basis of speculative or hypothetical grievance, unless a concrete cause of action arises; therefore, no mandamus or prohibition can be issued.

The Honourable Apex Court, in numerous authoritative pronouncements has reiterated that writ jurisdiction cannot be moved on mere apprehension. Reliance is placed on the case of National Steel Rolling Mills and others v. Province of West Pakistan (1968 SCMR 317).

7. Furthermore, underlined controversy pertains to the lease terms between respondents No.2 and 5 and respondent No.5, in a letter addressed to the Respondent No.6, alleged breach of conditions by Respondent No.5. Such assertions necessarily require probe and recording of evidence, which cannot be undertaken in writ proceedings. Constitutional jurisdiction is not the substitute for ordinary civil remedies. It is also pertinent to note that the official respondents being custodian of a public property, are expected to act strictly in accordance with law and after affording due opportunity of hearing to all concerned stakeholders. There is nothing on record to suggest that any unilateral arbitrary action is presently contemplated against the petitioners. The judicial intervention at a premature stage, particularly when no administrative or executive decision has crystalized into an enforceable order, amounts to unwarranted interference in executive discretion.

8. Moreover, lease disputes, allegations of violation of lease conditions, and question of subletting fall within the domain of civil adjudication under ordinary law. Such issues necessarily require evidence and determination of contractual obligation, which cannot be undertaken in writ jurisdiction. Article-199 of the Constitution is not meant to substitute ordinary remedies where questions of fact are involved. The petitioners, if aggrieved by any eventual order against them, shall have efficacious remedy of assailing the same before the competent court. Reliance is placed on Muhammad Shamim Ali v. Mst. Asma Begum and others, 2024 SCMR 1642, wherein the Honourable Supreme Court has held as under:-

9. Since the legislature has conferred exclusive jurisdiction upon the Family Courts, by virtue of section 5 of the Family Act, to expedite family cases and tried to cordon off family litigation to the extent of a single family appeal, it would not reflect well on a Constitutional Court to interfere with the exclusive jurisdiction of the Family Courts under the Writ Jurisdiction as provided under Article 199 of the Constitution, unless the jurisdiction exercised

by the Family Courts was contrary to law and/or findings reached in exercise of said jurisdiction are perverse and without proper appreciation of evidence that non-interference would lead to a grave miscarriage of justice or for that matter injustice. It is pertinent to state here, at the expense of reiteration, that the learned Counsel for the Petitioner's assertions about supposedly fake and fabricated receipts of dowry articles is a factual inquiry, which was undertaken by the Family Court and the Appellate Court and could not have been done by the High Court in its jurisdiction under Article 199 of the Constitution, or this Court under its jurisdiction under Article 185 (3) of the Constitution. Therefore, the High Court, in the impugned judgment, dated 28.02.2024, rightly declined to interfere in the findings of the two fora below.

Reliance is also placed on Messrs T & N Pakistan Private Limited v. The Collector Customs and others, 2022 SCMR 1119, wherein the Honourable Supreme Court has held as under:-

8. *The letters of the law envisions that under section 196 of the Customs Act, Reference Application is a remedy meant for deciding and answering a question of law which should arise from the order passed by the Customs Appellate Tribunal. The fact findings recorded by the Tribunal, unless wrong-headed or unjustified in fact and law the same could not be interfered in referral jurisdiction. The precise intent of remedy of reference provided under section 196 to resolve and adjudicate only the question of law originating and stemming from the order passed by the Appellate Tribunal. The High Court cannot embark upon factual aspects or controversy. Here throughout the proceedings, only factual question was involved with regard to the production of certificate of origin. The authorities had not denied or disputed the provision of exemption flowing from the document of S.R.O but they were merely asking the petitioner to produce the certificates of origin as mandatory compliance but despite various opportunities provided by the lower fora, the petitioner failed to fulfill the requisite formalities, even the judgment of the learned High Court depicts that an opportunity was also afforded to the petitioner at the time of hearing of reference to produce the original certificate of origin, but they failed to produce and ultimately the learned High Court reached to the conclusion that no question of law raises in the reference to consider under section 196 of the Custom Act but the entire focus was on factual controversy which could not be agitated as question of law.*

9. For the foregoing reasons, these petitions being premature and based on mere apprehension and also involves factual disputes, are held to be not maintainable and are hereby ***dismissed***. However, it is clarified that dismissal of these petitions shall not prejudice the petitioners' right to challenge any adverse order if and when the same is passed by the competent authority.

JUDGE

JUDGE

Ayaz Gul