

IN THE HIGH COURT OF SINDH AT KARACHI

Present:

*Mr. Justice Muhammad Saleem Jessar;
Mr. Justice Abdul Hamid Bhurgri.*

C.P No.D-4978 of 2026

[Malik Mushtaq Ahmed Awan v. Province of Sindh and others]

Petitioner : Through Mr. Maqbool-ur-Rehman, Advocate.

Respondents : Nemo.

Date of Hearing : 11.09.2026

Date of Order : 11.09.2026

ORDER

Abdul Hamid Bhurgri, J.- Through the instant petition, the petitioner, claiming to be an allottee/resident of Shah Latif Town, Scheme 25-A, District Malir, Karachi, has invoked the constitutional jurisdiction of this Court seeking, inter alia, removal of alleged encroachments from four plots situated in Sectors 21-B, 22-A, 22-B and 30-C of the said Scheme, which, according to him, are reserved as amenity/public-use plots in the approved layout plan. He has further sought action against the private respondents, including registration of a criminal case, alleging that they have unlawfully occupied the subject plots and are utilizing the same for commercial activities and for dumping waste and effluent.

2. Learned counsel for the petitioner submits that the subject plots have been earmarked for amenity/public purposes in the approved layout plan and, therefore, cannot lawfully be occupied or utilized for private or commercial purposes. He further submits that the petitioner has already approached the Deputy Director (Encroachment), Malir Development Authority, the concerned Senior Superintendent of Police and the Station House Officer through written applications/complaints seeking removal of the alleged encroachments and action against the persons responsible; however, according to him, no heed has been paid thereto and no effective action has been taken, compelling the petitioner to invoke the constitutional jurisdiction of this Court.

3. We have heard learned counsel for the petitioner and examined the material available on record. The grievance projected in

the petition essentially relates to alleged encroachment upon public/amenity land and failure of the concerned authorities to take action in that regard. The Sindh Public Property (Removal of Encroachment) Act, 2010 is a special enactment providing a mechanism for dealing with encroachments upon public property and for adjudication of disputes falling within its ambit by the Anti-Encroachment Tribunal constituted thereunder.

4. It is a settled principle of law that where the legislature has constituted a special forum and provided an adequate and efficacious remedy for determination of a particular class of disputes, the extraordinary constitutional jurisdiction under Article 199 of the Constitution is ordinarily not to be invoked as a substitute for such statutory remedy. The doctrine of exhaustion of remedies rests upon the salutary principle that a litigant should not ordinarily be permitted to circumvent or bypass the forum and procedure specifically provided by law. Reference in this regard may appropriately be made to **Jameel Qadir and another v. Government of Balochistan, Local Government, Rural Development and Agrovilles Department, Quetta through Secretary and others (2023 SCMR 1919)**, wherein the Honourable Supreme Court reiterated that the extraordinary jurisdiction of the High Court cannot be reduced to an ordinary jurisdiction where an adequate and efficacious remedy is available under the relevant statute.

5. The nature of the controversy before us furnishes an additional reason for declining interference in constitutional jurisdiction. The relief sought concerns four separate parcels of land situated in different sectors and allegedly occupied by different private respondents. Before any direction for demolition or removal could lawfully be issued, it would necessarily require ascertainment, inter alia, of the precise identity and demarcation of each parcel; its status and character under the approved layout plan and official record; the nature and extent of the alleged encroachment; the identity of the persons actually occupying the respective parcels; and the nature or basis, if any, of their possession. Such matters are essentially factual in nature and may require examination of the relevant official record, evidence and an opportunity of hearing to the persons likely to be affected. The constitutional jurisdiction of this Court is not an appropriate substitute for such fact-finding exercise,

particularly when a specialized statutory mechanism exists for determination of the controversy.

6. The record reflects that the petitioner has already approached the Deputy Director (Encroachment), MDA, the concerned SSP and SHO through applications/complaints and alleges that no effective action has been taken thereon. Such alleged inaction, however, neither renders the petitioner remediless nor, by itself, warrants bypassing the forum specifically provided by law and seeking directly from this Court a declaration, in substance, that the subject properties stand encroached upon followed by their demolition or removal.

7. In **Mst. Shahnaz v. Iqbal Hussain and others (2022 CLC 556)**, a Division Bench of this Court, while examining the scheme of the Sindh Public Property (Removal of Encroachment) Act, 2010, held that the Act does not specifically bar or restrict a private person from approaching the Tribunal and that, where the concerned Government functionaries fail to exercise the powers entrusted to them under the Act, a private person adversely affected thereby is not left without a forum and may approach the Tribunal for redressal of his grievance. Thus, the very circumstance relied upon by the petitioner, namely, the alleged failure of the concerned functionaries to act upon his complaints, does not leave him without an efficacious remedy under the statutory framework.

8. We are, therefore, not persuaded to undertake an inquiry into the status of the subject plots or to issue directions for demolition/removal of the alleged encroachments. Issuance of such directions at this stage would necessarily presuppose findings that the subject parcels are, in fact, public/amenity land and that the private respondents are in unauthorized occupation thereof, without such questions first being examined by the forum competent under the special law and without the requisite factual inquiry and due process. Constitutional jurisdiction is intended to ensure legality of public action and cannot ordinarily be employed to displace a statutory authority or specialized forum and undertake, in the first instance, the functions entrusted to it by the legislature.

9. Insofar as the petitioner's prayer seeking registration of an FIR against the private respondents is concerned, the Code of Criminal Procedure, 1898 itself provides a specific remedy under Sections 22-A and 22-B Cr.P.C. before the Ex-Officio Justice of Peace in respect of a grievance relating to non-registration of a criminal case. No exceptional circumstance has been pointed out which may justify bypassing such statutory remedy and invoking the extraordinary constitutional jurisdiction of this Court for that purpose. The petitioner may, therefore, avail such remedy, if so advised, in accordance with law. We express no opinion whatsoever on the merits of the allegations forming the basis of such prayer.

10. For the foregoing reasons, we are not persuaded to exercise the extraordinary constitutional jurisdiction of this Court for determining the status of the subject plots or for directing demolition/ removal of the alleged encroachments. Since the petitioner has already approached the concerned official functionaries and alleges failure on their part to redress his grievance, he shall be at liberty to approach the competent forum. Any proceedings so initiated shall be considered and decided by the competent forum independently, strictly in accordance with law, after affording due opportunity of hearing to all concerned and on the basis of the material placed before it.

11. It is clarified, by way of abundant caution, that we have not expressed any opinion on the status or character of any of the subject plots, the legality or otherwise of the possession of any private respondent, or the existence or extent of any alleged encroachment. All such questions are left open for determination by the competent forum in accordance with law, uninfluenced by any observation contained herein.

12. Consequently, the instant petition is disposed of, along with all pending applications, in the above terms.

JUDGE

JUDGE
HEAD OF CONST. BENCHES

Ayaz Gul