

IN THE HIGH COURT OF SINDH, KARACHI

C.P. NO. D- 6562 OF 2016

PRESENT:

MR. JUSTICE NADEEM AKHTAR

MR. JUSTICE ARSHAD HUSSAIN KHAN

Petitioner Through Mr. Saleem Khan, Advocate

Date of Hearing 15.12.2016

ORDER

ARSHAD HUSSAIN KHAN, J. The petitioner through the instant constitutional petition has prayed as follow:-

- “(i) To declare that “without issuance of show cause/prior notice” the act and conduct of official Respondents in respect of dispossession of the Petitioner from the subject property is quite illegal, unlawful and against the Law.*
- “(ii) To direct the respondents No.1 to 3 to provide protection and security to the Petitioner, and property i.e., Open Plot bearing No.L-2039, admeasuring 80 Square yards, situated at Sector-11-E, North Karachi Township, Karachi from the clutches of some official of respondents No.4 & 5 and their companions because they are trying to dispossess the petitioner from the subject property through demolition of entire property and intend to reduce the space of the Petitioner’s Property.*
- “(iii) To further direct the official Respondents to arrange alternate Plot in the same locality (in similar condition) and to compensate the Petitioner and other family members if the Respondents No. 1 to 5 shall dispossess the petitioner from the afore mentioned property adopting due process of law.*
- “(iv) To restrain the Respondents No. 3 to 7 and their companions/persons or persons not to dispossess the property i-e. Open Plot bearing No.L-2040, admeasuring 80 Square yards, situated at Sector-11-E, North Karachi Township, Karachi of the petitioner in any manner or whatsoever in nature and without adopting due process.*
- “(v) To direct the Respondents No.1 to 5 (jointly and severally) to pay a sum of Rs.50,00,000/-(rupees fifty lacs only) to the Petitioner on account of cost of the afore mentioned Plot, because the Petitioner had invested huge amount for purchasing,*

transferring and paid amount to official Respondents.

(vi) Any other or additional relief as this Honourable Court may deem fit and proper under the circumstances of the case.

(vii) Cost of the proceedings.

2. On 01.12.2016 when the present petition first time came up for hearing this Court directed the counsel for the petitioner to satisfy the Court about maintainability of the present petition. Relevant part of the said order for the sake of ready reference is reproduced as under:

“3 & 4. It is case of the petitioner is that respondents 1, 2, 3 are attempting to dispossess him from his Plot No.L-2039, admeasuring 80sq.yards, situated in Sector-11/E, North Karachi Township, Karachi, and for this purpose, they are causing harassment to him. He sought declaration and direction against the respondents and has also claimed damages against them. It is our tentative opinion that relief sought by the petitioner through this petition can be sought by him in a suit for declaration, injunction and damages which is the actual and proper remedy available to him under the law. Counsel for the petitioner is put on notice to satisfy the court on the next date about maintainability of this petition in view of above. Subject to question of maintainability, let notice be issued to respondents 1, 2, 3 and 5 as well as to the Advocate General Sindh for 08.12.2016. Respondents are directed to conduct themselves strictly in accordance with law.”

3. On 08.12.2016 a request for adjournment was made on behalf of the petitioner upon which following order was passed:

“A request for adjournment has been made on behalf of the petitioner’s counsel on the ground of his illness. To come up on 15.12.2016, when counsel for the petitioner shall address the question of maintainability in view of the observation made on 01.12.2016. Let intimation notice for the next date be issued to the petitioner and his counsel.

4. The counsel for the petitioner, on the next date i.e. 15.12.2016, made his submission, however, this Court was not satisfied with the submissions made by counsel for the petitioner as in the present case the petitioner raised disputed question of facts which cannot be decided except through proper trial and evidence, which exercise cannot be gone into writ jurisdiction of this Court.

5. It may also be stated that the Article 199 of the Constitution casts an obligation on the High Court to act in the aid of law and protects the rights within the framework of Constitution and this extraordinary jurisdiction of High Court may be invoked to encounter and collide with extraordinary situation and non-availability of any alternate remedy under the law where the illegality of the impugned action of an executive or other authority can be established without any elaborate enquiry into complicated or disputed facts. Controverted questions of fact, adjudication on which is possible only after obtaining all types of evidence in power and possession of parties can be determined only by the courts having plenary jurisdiction in matter. Reliance can be placed on the case of Anjuman Fruit Arhtian and others vs. Deputy Commissioner, Faisalabad and others (2011 SCMR 279).

6. The upshot of the above, we are of the considered view that since reliefs sought by the petitioner through this petition are based on disputed question of fact, which cannot be decided in the present constitutional petition, hence the same is dismissed being not maintainable in law. However, the petitioner is left at liberty to seek his remedy before the proper forum in accordance with the law.

JUDGE

JUDGE