C.P.No.D- 385 of 2008.

Mian Khuda Bux Qureshi. . . . . .Petitioner.

Versus.

Province of Sindh and ors…. . . . . Respondents.

1.For orders on CMA 787/09.
2.For katcha peshi.
3.For hearing of CMA 976/08.

-

21.05.2009. Mr.Mukesh Kumar G. Karara, advocate for the petitioner.
Mr.Imtiaz Ali Soomor, Assistant A.G for respondents Nos.1 to 4.
Mr.Abdul Qadir Shaikh, advocate for respondent Nos.5 to 15.

-

ARSHAD NOOR KHAN, J.- By this constitutional petition, the petitioner has challenged the notification dated 03.01.2008 issued by the chief administrator auqaf, whereby shrine of Sadaruddin Shah has been taken over under management and control of auqaf deparment.

The facts necessary for disposal of the present petition in brief are that the petitioner is the sajjada nasheen/mutawali of dargah hazrat Syed Sadaruddin Shah Badshah and the forefathers of the petitioner remained as mutawali/gadi nasheen of the aforesaid shrine since 1725 till the issuance of the notification dated 03.01.2008. The petitioner and his forefathers being gadi nasheens/mutawalis of the shrine were maintaining the said shrine and the chief administrator auqaf vide notification dated 09.03.2006 de-notified the earlier status of the property acquired by the department vide its notification dated 16.1.2006 and ordered to release the said shrine of dargah hazrat Sadaruddin Shah Badshah situated in deh bakhar taluka rohri, district Sukkur to mutawali/gadi nasheen, Mian Khuda Bux Qureshi with immediate effect. It is further stated in the petition that after issuance of this notification, the chief administrator auqaf again issued another notification under section 7(1) of the Sindh Waqf Properties Ordinance, 1979 (hereinafter shall be referred to as the Ordinance, 1979), thereby the administration, management and control of dargah was retaken over to the department. The petitioner being aggrieved and dis-satisfied against the notification dated

03.1.2008 has filed the present petition seeking therein declaration to the effect that the notification issued by the chief administrator auqaf dated 03.01.2008, is void, illegal, inoperative and is of no legal effect against the petitioner. The respondents have resisted the petition and private respondents have filed counter affidavit against the petition.

We have heard Mr.Mukesh Kumar G. Karara, learned counsel for the petitioner, Mr.Imtiaz Ali Soomro, learned Assistant A.G for respondent Nos.1 to 4 and Mr.Abdul Qadir Shaikh, learned counsel for respondent Nos. 5 to 15.

The learned counsel for the petitioner vehemently contended that the notification impugned herein has been issued by the respondent No.2 without affording of an opportunity of being heard to the petitioner, as such the principle of natural justice have been violated and the petitioner have been condemned unheard. He further contended that the petition under article 199 of the constitution, is maintainable even if remedy is provided under the specific statute and the High Court can examine and adjudicate upon controversy amongst the parties irrespective of the availability of forum provided under the statute and that the provisions of section 11 of the ordinance, 1979 are inapplicable in view of the fact that grievance of the petitioner may be solved by examining the impugned notification in the constitutional jurisdiction of this Court, as such the notification issued by the respondent No.2 may be declared as void, illegal and is of no legal effect. In support of his contention he has relied upon the cases reported in PLD 1963 SC 322, PLD 1972 SC 279, 1999 CLC 1568, 2001 MLD 1013, PLD 1997 SC 401 and PLD1966 SC 536.

Mr.Imtiaz Ali Soomro, learned Assistant A.G and Mr.Abdul Qadir Shaikh, learned counsel for the respondents contended that the management and control of the shrine has been taken over by the auqaf department and the said notification could only be challenged under section 11 of the ordinance, 1979 and whenever specific forum has been provided by the statute, the resort may be had from the said forum and the petition under article 199 of the constitution, is not maintainable, as such the petition having no merits, is liable to be dismissed.

We have considered the arguments advanced on behalf of the parties and have gone through the material available before us.

It is not disputed that initially, the chief administrator auqaf assumed the management and control of the shrine in question vide notification dated 16.01.2006 but after some time the management and control of the said shrine, was handed over to its mutawali/gadi nasheen Mian khuda Bux Qureshi from whom, the management and control of the shrine was taken over vide notification dated 16-01-2006, as such after the issuance of the notification dated 09.03.2006, the management and control of the dargah was handed over to Mian Khuda Bux Qureshi mutawali/sajjada nasheen after the vacation of the status-quo by the High Court. It is also not disputed that on 03.01.2008 the chief administrator auqaf again issued a notification under Section 7(1) of ordinance, 1979 whereby the management, administration and control of the dargah was again taken over by the auqaf department. The petitioner is aggrieved against this notification and has preferred the present petition under article 199 of the constitution of the Islamic Republic of Pakistan.

Admittedly, the management, control, administration and maintenance of the shrine have been taken over by the auqaf department by notification under section 7(1) of the Ordinance, 1979 and the ordinance, 1979 provides specific remedy for redress of the grievance to the affected party by way of filing a petition under Section 11 of the ordinance, 1979 before the district court thereby seeking declaration to the effect that the property is not waqf property or that the property is waqf property within the limits stated in the petition. The statute therefore conferred the power to district court, who being persona designata have all the powers to entertain and adjudicate upon the petition against the notification issued by the auqaf department under section 7(1) of ordinance, 1979. There could be no cavil to the proposition that whenever statute provides a specific forum for redressal of the grievance of the litigants, the dispute must be brought before the said forum provided under the statute and the said forum or tribunal or court who assigned the power by the statute, is competent to adjudicate upon such dispute. In the present case as discussed above, the forum has been identified by the statute to be the district court for the purpose of challenging the notification and that too for the limited purpose and direction regarding declaration of the notification illegal or otherwise, as such the district court concerned has all the powers to entertain and adjudicate upon the matter under section 11 ibid.

The contention of the learned counsel for the petitioner that the high Court in its constitutional jurisdiction under article 199 of the constitution is competent to entertain and adjudicate upon the dispute amongst the parties irrespective of the fact that the forum is available to redress such grievance and in support of his contention, he has relied upon the aforesaid case law, but in our humble opinion, the case law relied upon by him, is not touching the controversy involved in the present case as the statute itself has provided specific forum to challenge the notification issued by the chief administrator auqaf and whenever

the specific remedy is available to the parties, constitutional petition is not maintainable. There are so many authorities on this aspect of the matter wherein the honourable Supreme Court has observed that whenever the forum is available, the grievance may be put forward before the said Court or tribunal and the said Court and tribunal have all the rights and powers to adjudicate upon the said lis rightly and wrongly and mere wrong decision would not oust the jurisdiction of the Court or tribunal which have been created by the specific statute. In the present case, as discussed above, the remedy for the petitioner lies under section 11 of the ordinance, 1979 and same point also came for consideration before a single judge by this Court in the case of Haji Abdullah v/s Mst. Gohar Sultana, reported in NLR 1985 Civil 87, wherein under similar circumstances involved in the present case, learned single judge was pleased to observe that the district court being persona designata was competent to entertain and adjudicate upon the matter under the Ordinance 1979 and the district court being persona designata created by the statute could not delegate or transfer its powers to any other person. The dictum laid down in the case of Haji Adullah is also attracted to the circumstances of the present case.

For all the aforesaid reasons and circumstances, we are of the opinion that whenever the forum has been provided by the statute for the redress of the grievance of the litigants, said forum is competent to entertain and adjudicate upon the lis amongst the parties and constitutional petition could not be maintained for the reasons that alternate remedy is available and the petition under Article 199 of the constitution is only maintainable when no other alternate or efficacious remedy is available to the parties for redressal of their grievance.

At this stage, the learned counsel for the petitioner states that he will file the petition before the learned district court and district court may be asked to entertain his petition but in our humble opinion, it is statutory obligation on the part of district court, as envisaged under section 11 of the ordinance, 1979 to entertain and adjudicate upon the matter brought before him and we can only observe to the extent that, in case, if the petitioner is filing petition under section 11 of the ordinance, 1979, the learned district court may entertain and adjudicate upon all the points and objections legal as well as factual available to the parties under the law on its own merits.

In view of the aforesaid circumstances we are of the opinion that the petition is not maintainable, which is hereby dismissed in limine alongwith all the listed applications.

JUDGE

JUDGE