

**IN THE HIGH COURT OF SINDH,  
CIRCUIT COURT, HYDERABAD**

*C.P No.D-442 of 2021*

**BEFORE: Mr. Justice Adnan-ul-Karim Memon  
Mr. Justice Adnan Iqbal Chaudhry**

Petitioner(s) : Through Mr. Ali Khan Leghari, Advocate.  
Respondents : Through Mr. Ashfaqe Nabi Qazi, Assistant  
2 to 5 Attorney General for Pakistan.  
Respondent No.6 : Through Mr. Nadeem Hyder Tareen, Advocate

*Date of Hearing & Decision: 26.10.2021*

**ORDER**

**ADNAN-UL-KARIM MEMON, J.** - Through instant constitutional petition, the petitioner seeks direction from respondents 2 to 5 to restrain respondent No.6 from demolishing the house of the petitioner as he is their tenant since partition.

2- Brief facts of the case as stated in the memo of the petition are that the petitioner is tenant of respondents 2 to 5 / Evacuee Trust Property at House No.2673/8 (upper portion) situated at Cheetal Chari Khata Chowk Near Cloth Market Hyderabad since partition; and is paying rent regularly without any default. It is further stated that respondent No.6 being private builder has got the ground portions of the said house bearing Nos. 2673/5, 2673/13, and 2673/19, however, the said respondent No.6 being influential intends to damage/usurp the portion of the petitioner, hence this petition.

3- We directed learned counsel to satisfy this court concerning the maintainability of the instant petition because of disputed questions of fact, and the dispute is between the private parties and no government interest is involved to take cognizance.

4- Mr. Ali Khan Leghari Learned counsel for the petitioner has contended that the petitioner and private respondent are the tenants

of Evacuee Trust Board, thus direction could be issued to them to restrain the private person not to demolish his portion of the property.

5- Mr. Nadeem Hyder Tareen learned counsel for respondent No.6 has refuted the claim of the petitioner and submitted that his client has not caused any damage to the portion of petitioner; however, he submits that he has neither caused harassment to the petitioner nor intends to do so in future. He prayed for dismissal of the instant petition.

6- Learned Asst. Attorney General for Pakistan contends that the dispute is between private parties and respondent-Evacuee Trust Board has nothing to do with that.

7- We have heard the arguments and perused the material available on record.

8- Now the question before us is as to whether in the present proceedings, we can enlarge the scope of Article 199 of the constitution and dilate upon the alleged dispute between the private parties as discussed supra.

9- The dispute between the parties is concerning damage/ usurping the portion of the petitioner by the private respondent and without recording evidence of the parties; this Court can't ascertain the fact of actual dispute. It is a settled principle of law that contractual obligation cannot be enforced through writ petition as it is the mandate of ordinary jurisdiction to interfere in the contents, variations, and applicability of terms & conditions of the tenancy.

10- In view of the above discussion, prima facie, the claim of the petitioner which calls for enforcement of contractual obligation is not amenable to the constitutional jurisdiction. We are of the considered view that writ jurisdiction under Article 199 of the Constitution of Islamic Republic of Pakistan is not meant for resolving disputes relating to private affairs and the government functionary is under the realm of private law and there is no element of public law, the normal course for the aggrieved party is to invoke the remedies provided under ordinary civil law rather than approaching this Court under Article 199 of the Constitution and invoking its extra-ordinary jurisdiction. It is well settled now that if an action is taken by the private individual against the private person, the same cannot be enforced under Article

199 of the Constitution. This Court cannot direct the private respondent to oblige the petitioner as he demands.

11- In view of the above facts and circumstances of the case and for the reasons as discussed, we are satisfied that no case for indulgence of this Court is made out. Thus the instant petition having no merits is dismissed along with pending application(s) with no order as to costs leaving the petitioner to approach the competent forum for redressal of his grievances if any under the law.

**JUDGE**

**JUDGE**

**\*Hafiz Fahad\***