

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

CP No. D-974 of 2021

**BEFORE :**

Mr. Justice Adnan-ul-Karim Memon  
Mr. Justice Adnan Iqbal Chaudhry

Date of hearing  
& decision:

10.11.2021

Petitioner:

Isra Village Housing Scheme through its President  
and others through Mr. Tariq Aziz Memon,  
Advocate

Irfan Ahmed Bughio, Advocate for H.D.A.

Mr. Muzammil Khan Bughio, Advocate for SBCA

Mr. Fayaz Ahmed Leghari, Advocate for HESCO

Mr. Rafiq Ahmed Dahri, Asstt: A.G. along with  
Insp. Sohail Sarwar Jamali for SSP Hyderabad &  
SIP Pahardin Dahanai PS Hatri.

**ORDER**

**ADNAN-UL-KARIM MEMON, J:** - The petitioners in the  
instant petition have prayed as under:-

- “1. To direct the government functionaries to act in accordance with law viz. direction to private respondents to construction the amenity and provide the other facilities which is approved by H.D.A. in the layout plan.
2. That as per NEPRA’s SOP, direct the official respondents of HESCO to provide the electricity in accordance of recovery from the Isra Village Housing Scheme.
3. Direct the official respondents viz. police officials to remove the barriers from the internal roads and streets of Isra Village Housing Scheme, which is encroach and create hindrance for residents.
4. That, direct the official respondents to provide the basic necessities of life in accordance to chapters of Constitution as well as per sanction, provided in the documentation of Isra Village Housing Scheme viz. sewerage, water, electricity, remove encroachment accordingly.
5. That, direct the official respondents to take appropriate action against the private respondents in any violation.

2. Mr. Tariq Aziz Memon learned counsel for the petitioner has argued that petitioners are residents of Isra Village Housing Scheme Hyderabad (IVHS) located at Deh Mirzapur Tappo Shah Bukhari, Taluka Qasimabad, Hyderabad. He has submitted that petitioners have simply prayed for directions to respondents 11 to 18 (builders

and sponsors of the society) to remove encroachment from three streets of the society which is being encroached by them by erecting barriers which create hindrance and harassments to the inhabitants of the society, especially ladies and senior citizens. He has emphasized that as per the approved building plan the builders were required to provide the space for amenities i.e. School, Mosques, community hall of 400 sq. yds, gymnasium, hospital, playgrounds, and other amenities, but except two Mosques no other facility was/is provided; that petitioners approached the builders but no heed was paid, therefore, they are under obligation to provide all the approved as per law; the petitioners have also sought directions to HESCO not to indulge in load-shading; as the inhabitants of the society pay 100% bills of electricity; and further directions to WASA to provide them clean water instead of dirty water; It is asserted that the public functionaries and official respondents are facilitating the builders in violating the rights of the residents of the society. Hence they have filed the instant petition.

3. We have heard the learned counsel for the petitioners. The key question involved in this matter is whether the affairs of the private society could be looked into under Article 199 of the Constitution.

4. Article 199 of the Constitution, inter alia, provides that the High Court may exercise its powers thereunder only “if it is satisfied that no other adequate remedy is provided by law”. It is well-settled that if there is any other adequate remedy available to the aggrieved person, he must avail and exhaust such remedy before invoking the Constitutional jurisdiction of High Court, whether such remedy suits him or not. In our view, the doctrine of exhaustion of remedy envisaged in Article 199 prevents unnecessary litigation before the High Court.

5. The Isra Village Housing Scheme Hyderabad is a privately owned entity. It is well settled that under Article 199 of the Constitution, the power of a High Court to issue an appropriate writ, order or direction is discretionary.

6. In our humble opinion, one of the reasons for the doctrine of alternate remedy is to avoid interference in the jurisdiction of the prescribed lower forum. Moreover, if a person moves this Court without exhausting the remedy available to him under the law at the

lower forum, not only would the purpose of establishing that forum be completely defeated, but such person will also lose the remedy and the right of appeal available to him under the law. Under Article 10-A of the Constitution of the Islamic Republic of Pakistan, 1973, for the determination of civil rights and obligations or in any criminal charge against him, every citizen is entitled to a fair trial and due process. Therefore, it follows that fair trial and due process are possible only when the Court/forum exercises jurisdiction strictly under law. It further follows that this fundamental right of fair trial and due process in cases before this Court is possible when this Court exercises jurisdiction only in cases that are to be heard and decided by this Court and not in such cases where the remedy and jurisdiction lie before some other forum. If the cases falling under the latter category are allowed to be entertained by this Court, the valuable fundamental right of fair trial and due process of the persons/cases falling under the former category will certainly be jeopardized.

7. Prima-facie the petitioners have the legal remedy to approach the court of plenary jurisdiction to file suit for declaration, if they have any legal character or any right in any property, so far as their civil rights are concerned.

8. Before parting with this order, we may observe that respondent-WASA has to provide clean water to the petitioner-society subject to payment of water charges under the law if not earlier provided to them. The said exercise shall be undertaken within a reasonable time. So far as their other amenity issues are concerned on the part of official respondents, they are directed to act strictly under the law and not to cause harassment to the petitioners, subject to all just exceptions as provided under the law.

9. The captioned petition stands disposed of in the above terms along with the pending application(s) with no order as to costs.

JUDGE

JUDGE