

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

C.P No.D-1167 of 2013

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

Petitioners : Through Mr. Ayatullah Khuwaja,
Advocate.

Respondent No.2 : Through M/s. Muhammad Arshad S.
Pathan & Safdar Hussain Leghari,
Advocate

Respondent – NTPS : Through Mr. Muhammad Idrees
Naqshbandi, Advocate

Respondent No.5 : Through Mr. Allah Bachayo Soomro,
Addl. Advocate General, Sindh.

Date of Hearing : 10.11.2021
& order

ORDER

ADNAN-UL-KARIM MEMON, J:- Through this petition, the petitioners have sought direction against the official respondents for demolishing / removing the wall as well as hindrance over the public path constructed by respondent No.2 allegedly without any lawful authority.

2- At the outset, we asked learned counsel for the petitioners as to how this petition is maintainable concerning their easement rights, which rights, if any, ought to have been agitated before the Court of plenary jurisdiction. He has contended that it is the fundamental right of the petitioners under the Constitution to choose the forum; therefore, they have chosen to file this petition.

3- Mr. Ayatullah Khuwaja, learned counsel for the petitioners has submitted that adjacent to the houses of petitioners there has been a road / path leading to the main road which has illegally been closed by the HESCO authority / respondent No.2 by constructing a wall over the said road. He further submits that the said road / path has also been used for drainage of rain water from the vicinity since long and due to the illegal wall constructed by the official respondent No.2 the rain

water could not be drained which has become very painful for the vicinity. He next submits that petitioners have many times approached and sent applications to the concerned authorities / respondents and requested for demolishing / removing the said illegal, unlawful wall over the above said path, but no heed was paid till today, therefore, the private respondents may be directed to demolish / remove the illegal wall over the public path having no right under the law.

4- Learned counsel for respondent No.2 has refuted the claim of petitioners and raised the question of maintainability of this petition on the ground that the petitioners have the efficacious and adequate remedy if they are so aggrieved against the action of respondents. He prayed for dismissal of the petition.

5- We have heard learned counsel for the parties and perused the material available on record.

6- The facts of the case, prima-facie show that, the claim raised by the petitioners in the instant petition is founded on easement right over a wall on public path allegedly constructed by the respondent No.2, which created a situation whereby they are faced with hindrance for going towards main road. It is found that the petitioners could establish an easement right over the subject issue before the competent court of law through cogent evidence. Therefore, in our considered view, the rights and claim made by the petitioners through the instant petition could not be looked into in the constitutional petition. Prima facie the petitioners have brought the lis containing dispute of civil nature between the parties, and there is a remedy available with the petitioners in the Court of plenary jurisdiction.

7- In view of above, this petition is found to be not maintainable under the law and accordingly **dismissed** with no order as to costs; however, the petitioners are at liberty to approach the Competent Court, having jurisdiction in the matter, for redressal of their grievance, if any.

JUDGE

JUDGE