

**ORDER SHEET**  
**THE HIGH COURT OF SINDH AT KARACHI**

CP No. D-991 of 2019

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Date	Order with signature of Judge(s)
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For orders as to maintainability of instant petition.

**20.01.2021**

Mr. Muhammad Kamra Mirza, advocate for the petitioner.  
Mr. Obaid-ur-Rahman Khan, advocate for the respondent  
No.1.

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Through this petition the petitioner has sought the following  
reliefs:

- a) "Declare that Miran Muhammad Shah Road is a residential Road and no commercial activities can be performed on Miran Muhammad Shah Road.
- b) Declare that only those properties situated on shara-e-faisal and facing shara-e-faisal has been declared commercial as per change of Land Use Policy and Master Planning Byelaws 2003.
- c) Declare that subject plot 12/A facing Miran Muhammad Shah Road cannot be used for commercial purpose.
- d) Declare that the commercial activities by Respondent No.2 & 3 on plot 12/A, facing Miran Muhammad Shah Road is ultra vires and void.
- e) Permanent injunction restraining the Respondents and all persons claiming through or under them from using the Miran Muhammad Shah Road for their commercial activities.
- f) Any other relief deemed fit under the circumstances of this case."

2. Notice was order and thereafter on 10.12.2020, learned counsel for the petitioner was confronted with following order:

"Counter-Affidavit is filed on behalf of Respondent No.1 and a copy whereof is provided to learned counsel for Petitioner. Perhaps the first hurdle, which the Petitioner has to cross, is to satisfy this Court about maintainability of this Petition as the plaint of his earlier Suit No.258 of 2005 was rejected by this Court vide Judgment dated 30.10.2007."

3. Today he has argued that notwithstanding the rejection of plaint in Suit No.258 of 2005 vide **order dated 25.10.2007**, this petition is maintainable inasmuch as now some constructions has been raised and, therefore, this fresh cause of action.

4. On the other hand learned counsel for the respondent No.1 has filed counter affidavit along with copy of the plaint and has raised this objection of maintainability.

5. We have heard both the learned counsel and perused the record. On perusal of the plaint, it appears that the petitioner had sought the same relief in respect of the plot in question which was primarily to the effect that the property in question could not be used for any commercial purposes, but only for residential purposes, being situated in a residential area. We have confronted learned counsel for the petitioner as to filing of any appeal against the order of rejection of plaint; or any effort to file a fresh plaint by curing the defect pursuant to which the plaint was rejected under Order 7 Rule 13, to which he has replied in negative. The settled principles of the *doctrine of election*<sup>1</sup> denote that the election to commence and follow an available course, from concurrent avenues, vests with a suitor, however, once an option is exercised then the suitor is precluded from re-agitating the same *lis* in other realms of competent jurisdiction.

6. In view of above, this petition being misconceived is accordingly dismissed with cost of Rs.5,000/- to be deposited by the petitioner in the account of Sindh High Court Clinic.

JUDGE

JUDGE

Khuhro/PA

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<sup>1</sup> Per *Mushir Alam J* in *Trading Corporation of Pakistan vs. Dewan Sugar Mills Limited & Others* reported as *PLD 2018 Supreme Court 828*