

IN THE HIGH COURT OF SINDH AT HYDERABAD

M.A 6 of 2023 : Province of Sindh & Others Vs. Mst. Saba
For the appellant : Mr. Wali Muhammad Jamari, A.A.G
Date/s of hearing : 18.12.2023.
Date of announcement : 18.12.2023.

ORDER

Agha Faisal, J. This is an appeal, filed under Section 27¹ of the Sindh Public Property (Removal of Encroachment) Act, 2010 (“Act”), against an order dated 30.01.2023 rendered in Suit 73 of 2022 by the Anti Encroachment Tribunal Hyderabad.

At the very outset, learned counsel is confronted with the office objection pertaining to maintainability hereof; since *prima facie* section 27 of the Act only contemplates an appeal against an order passed by the Special Court²; and not by the Tribunal³. The objection memo also denotes that the appeal, if considered maintainable, is *prima facie* barred by limitation.

Learned counsel articulated no arguments in so far as the issue of limitation was concerned, however, argued that section 27 ought to be read to include the provision of appeal against orders of the tribunal as well and that in the absence of any such statutory provision, the same must be presumed. An order of a Single Bench of this Court in *Dildar*⁴ was cited in support.

Appellant’s counsel has been unable to demonstrate any law⁵ providing for an appeal against the order impugned and the said circumstances squarely attract the observations of the Supreme Court, in the case *Gul Taiz Khan Marwat*⁶, reiterating settled law that an appeal is an creation of statute and in the absence of any such remedy being provided none can be presumed.

Notwithstanding the non-binding nature of *Dildar*, the judgment appears to have adjudicated a controversy on a factual plane, without any findings having been rendered upon the *primary* issue of maintainability. No persuasive exposition of law arising therefrom could be identified by the appellant’s learned counsel, hence, reliance upon the citation did not augment the appellant’s case.

Therefore, in mutatis mutandis application of the binding edict of the Supreme Court in *Gul Taiz Khan Marwat*, this appeal is found to be misconceived, hence dismissed along with pending applications.

Judge

¹ 27. An appeal against the order passed by a Special Court shall lie to the High Court of Sindh.

² 25. For the purpose of providing for speedy trial of offences committed under this Act, Government may establish, by notification, a Special Court in each district and a special court for each group of six towns of the City District.

³ 12. Government may by notification in the official gazette, establish a Tribunal for each district consisting of a retired District and Sessions Judge or any Advocate of ten years standing.

⁴ Per *Adnan ul Karim J* in *Dildar vs. Faizan Hanif Soomro (MA 29 of 2022)*; order dated 21.10.2022.

⁵ Since the statute, Sindh Public Property (Removal of Encroachment) Act, 2010, admittedly contains no provision in such regard.

⁶ Per *Ijaz ul Ahsan J* in *Gul Taiz Khan Marwat vs. Registrar Peshawar High Court* reported as *PLD 2021 Supreme Court 391*.