

Order Sheet

IN THE HIGH COURT OF SINDH AT KARACHI

Constitution Petition No. D – 2041 of 2024

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DATE	ORDER WITH SIGNATURE OF JUDGE(S)
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Present:-  
Mr. Justice Salahuddin Panhwar.  
Mr. Justice Khadim Hussain Soomro.

1. For orders on C.M.A. No.9758/2024.
2. For hearing of main case.

**06.05.2024**

M/s. Arshad Lodhi and Muhammad Arshad Mughal Advocates for the petitioners.

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**ORDER**

**KHADIM HUSSAIN SOOMRO, J.**- Through the instant petition, the petitioner (Trust) has prayed as under:-

- (a) *To issue a writ thereby directing the respondents No.1 & 2 to withdraw their impugned Notice dated 25.04.2024 in which they have claimed and demanded from the petitioner (Masjid Committee/registered Trust) to hand over the management of Jamia Masjid Sakina Sultan (Trust) situated at Plot No.M-202, in Khayaban-e-Shaheen, Phase-VIII, D.H.A. Karachi to the staff of respondents No.1 & 2/ D.H.A. by the 29<sup>th</sup> April 2024 as the impugned Notice is illegal, arbitrary, unheard and without any lawful authority and the respondent No.1 & 2 have no right to forcefully take over the management of such mosque from petitioner.*
- (b) *This Hon'ble Court be further pleased to restrain the respondents, their men, staff, officials, and/or any other authority from forcibly taking over the control and management of Jamia Masjid Sakina Sultan, situated at Plot No.M-202, in Khayaban-e-Shaheen, Phase-VIII, D.H.A. Karachi from the petitioner.*
- (c) *Any other/further relief which this Hon'ble Court may deem fit and proper.*

2. The relevant facts of the case are that the petitioner is a registered trust known as "JAMA MASJID SAKINA SULTAN TRUST", which is constructed on Plot No.M-202, situated at Khayaban-e-Shaheen, Phase-VIII, D.H.A. Karachi, which is being run through the General Secretary and Vice President through a Resolution. Initially, the said mosque was constructed by one Shaikh Abdul Karim Alzarooni, who then handed over the management to one Ghulam Mustafa Shaikh (Malang), who later, on 20.10.2018 handed over the management affairs to the petitioner with permission to amend the Masjid Trust, hence the petitioner got registered Deed of

Declaration of Trust and since then the petitioner's managing committee is administering, running affairs and incurring expenses of such Mosque / Trust. Respondent No.3 wants to get control and management of the said Mosque / Trust illegally and forcibly by moving false complaints against the petitioner management committee, whereupon Respondents No.1 & 2 / D.H.A. called for documents which the petitioners provided but respondent No.3 again moved another complaint dated 28.04.2023 against the petitioners' committee and upon which the Respondents No.1 & 2 issued letter dated 21.06.2023, however, the petitioners duly replied to the aforesaid letter. Respondents No.1 & 2, on the complaints of respondent No.3, have issued a Notice dated 25.04.2024 directing the petitioner management to hand over the control/management of the Petitioner-Trust to Respondents No.1 & 2 immediately by 29.04.2024. Hence, Respondents No.1 & 2 have taken over the management of the Masjid / Trust, which act is quite illegal, arbitrary and without any lawful authority. The impugned Notice dated 25.04.2024 issued by respondents No.1 & 2 to the petitioners is illegal as the same was issued without providing an opportunity to hear. In this regard, the petitioner's committee filed Suit No.Nil/2024 before the VIIIth Senior Civil Judge Karachi South against the Respondents, wherein a pre-admission Notice was issued and thereafter, the said Suit was disposed of as not maintainable; hence, the petitioner filed the instant petition with the above-mentioned prayers.

3. Admittedly, the subject matter of the instant petition is the trust property. Section 92 of the Civil Procedure Code, 1908 (C.P.C.) provides a concise overview of the legal procedure for dealing with the trust properties established for charitable or religious purposes. It covers important details such as the eligibility of the parties to file a suit, the appropriate jurisdiction for filing, and the objective of the legal action. This situation involves a scenario where there is a belief that an individual, such as a trustee, has breached the terms of a trust. A trust is a legal arrangement in which one party, known as the trustee, is responsible for managing assets on behalf of another party, known as the beneficiary. The trustee must adhere to the terms outlined in the trust document. Trusts can be established either through a formal legal document (express trust) or inferred from the actions and circumstances of the parties involved (constructive trust). Within this context, the passage encompasses both varieties of trusts. The trusts discussed in this context are those created to serve the greater good, such as charitable or religious organizations. These trusts typically have defined objectives or missions focused on promoting societal benefits or furthering religious endeavours. This refers to a situation where it is believed that someone (such as a trustee) has violated the terms of a trust. A trust is a legal arrangement where a person or organization (the trustee) holds and manages assets on behalf of another person or entity (the beneficiary) according to the terms specified in the trust document. Trusts can be created explicitly (express trust)

through a formal legal document or implied by the actions and circumstances of the parties involved (constructive trust). In this context, the passage is referring to both types of trusts.

4. The procedural law viz. C.P.C provides that in the event of an alleged breach of a trust created for public purposes of a charitable or religious nature, or when the Court's direction is necessary for the administration of such a trust, the Advocate-General or two or more individuals with interest in the trust, and with the court's permission, may initiate a suit, whether contentious or not, in the Civil Court or any other Court authorized by the State Government within the jurisdiction where the trust is located, in order to obtain a desired outcome. The C.P.C. provides a complete mechanism for the redressal of grievances. The procedural law guarantees that legal proceedings are conducted fairly and justly. It establishes standards for legal proceedings and is designed to maintain the concept of due process, which is not merely a formality but is to be followed with letter and spirit. The legislature enacted the procedural law on the sound principle of justice. Non-compliance with these rules can lead to disorder, confusion, and inefficiency in the administration of justice.

5. Admittedly, the petitioner has filed a Civil Suit No. Nil of 2024 before the senior civil judge South on the same subject matter between similar parties, which was rejected subsequently. Instead of filing an appeal under Section 96 C.P.C., the petitioner preferred this petition without exhausting the remedy available to him. Hence, the petitioner violated the rule of jurisdictional prudence and procedural law.

6. The legal maxim 'Ubi jus ubi remedium' (wherever there is a right, there is a remedy). The maxim establishes a fundamental legal principle, affirming that an individual has a lawful entitlement to a concomitant recourse to initiate legal proceedings in a court unless the court's jurisdiction is precluded. According to the rule of jurisdictional prudence, the courts usually show the restraint with the directions to the parties first to take the recourse of an alternate and or equally effective mechanism and framework of remedy provided rather than to take departure to surpass or circumvent such remedy. Reliance can be placed in the case of the ***Government of Punjab through the Secretary, Schools Education Department, Lahore and others v. Abdur Rehman and others (2022 SCMR 25)***. The lawmakers' goal behind adopting these remedies is to constrain issues falling within the jurisdiction of the forum that is competent to adjudicate solely upon the matter. Any endeavour to bypass or evade these designated forums is deemed impermissible, as mandated by the provisions of Article 199(1) of the Constitution.

7. The exceptional jurisdiction conferred by Article 199 of the Constitution is fundamentally designed to provide a specific remedy when the illegality and impropriety of an action by an executive or other governmental authority can be demonstrated without protracted inquiry. The term "adequate remedy" denotes a remedy that is effective, attainable, accessible, advantageous, and expeditious. The petitioner has exhausted effective remedy by filing a suit. The dictum laid down by the Apex Court of Pakistan in the Case of **Sana Jamali v. Mujeeb Qamar and another (2023 SCMR 316)** emphasizes the principle that the High Court's writ jurisdiction is not to be used as the first and only solution for addressing grievances. Instead, it should be invoked after the remedies provided by the law have been exhausted. This principle is known as the doctrine of exhaustion of remedies. It ensures that litigants use the legal remedies available within the statutes before seeking relief from higher courts through writ jurisdiction. The Superior Courts are discouraged from engaging in fact-finding missions requiring evidence, which is better suited for lower Courts or tribunals with specific procedures for such matters. The law prescribes certain remedies for specific grievances, and those remedies must be pursued to their full extent before higher judicial intervention is sought through writs. This approach is designed to respect the hierarchy of the legal system and the specific processes established within it, ensuring that all available legal avenues are appropriately utilized before turning to the High Court's writ jurisdiction. It also serves to prevent the unnecessary overburdening of higher courts with cases that can be resolved through the prescribed legal channels.

8. The writ jurisdiction of the High Court should not serve as the exclusive recourse or remedy for rectifying the wrongs, distress, and sufferings endured by a party, especially when an equally efficacious, alternative, and adequate remedy is available under the law. This principle is grounded in the notion that the litigant should not be inclined to bypass or disregard the provisions enshrined in the pertinent statute, which delineate specific procedures for challenging the impugned action. Proceedings under Article 199 of the Constitution are oriented towards enforcing a right rather than establishing a legal right. Therefore, the right asserted by the petitioner must not only be clear and complete but straightforward, and there must be an actual infringement of that right. In the case of **Dr Sher Afgan Khan Niazi v. Ali S. Habib and others (2011 SCMR 1813)**, the apex court has observed as follows:-

"19. In the light of what has been discussed herein above and in view of the various complicated questions of facts availability of alternate/adequate remedies and premature stage, no interference should have been made by the learned High Court in exercise of its Constitution Jurisdiction as conferred upon it under Article 199-A read with section 561-A, Cr.P.C. The Intra Court Appeal has, however has rightly been rejected in view of the dictum laid down by this court in titled Nawazul Haq Chowhan v. State (2003 SCMR 1597)".

9. In light of the foregoing legal and factual matrix, this petition is hereby summarily dismissed at the threshold, together with the listed applications enumerated herein. These are the reasons for our short order dated 06-05-2024.

J U D G E

J U D G E

Dated: .05.2024.