

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

C.P No.D-129 of 2023

[Salahuddin versus Province of Sindh & Others]

Before:

Mr. Justice Muhammad Karim Khan Agha

Mr. Justice Omar Sial

Barrister Fayaz Ali Metlo advocate a/w petitioner

Mr. Farooq H. Naik, advocate for respondent No.13

Mr. Ayaz Hussain Tunio, advocate for respondent No.14

M/s Allah Bachayo Soomro and Muhammad Ismail Bhutto
Additional Advocate Generals of Sindh a/w ADC-I Jamshoro
[Nooruddin Hingorjo] and Mukhtiarkar Thana Bula Khan [Iqtidar
Rasool]

Mr. Muzzamil Khan Bughio, advocate for SBCA

Mr. Ghulam Abbas Sangi Assistant Attorney General a/w Director
Survey of Pakistan Karachi [Asad Ali]

Date of hearing: 16.05.2024

Date of Judgment: 30.05.2024

J U D G M E N T

MUHAMMAD KARIM KHAN AGHA, J.- The petitioner has approached this Court under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 and sought the following reliefs:-

a. This Hon'ble Court may be pleased to:

- (i) Declare that BTK-2 (including extension) situated on Karachi to Hyderabad side of M-9 near Dada Bhoj Interchange (M-9 Exist 6) close to highly sensitive defense installations has seriously undermined and compromised the defense of Pakistan in general and in particular, the safety of the defense installations;*
- (ii) Constitute a Joint Investigation Team comprising of senior officers representing Ministry of Defense, Key Point Installation Division of Ministry of Defense, Ministry of Interior, Pakistan Air Force, Inter Services Intelligence, Military Intelligence, Intelligence Bureau and representatives of any other national security agency to submit a report on grave security threats posed by the,*

BTK-2 (with extension) situated at Thano Bula Khan, Jamshoro;

b. This Hon'ble Court may further be pleased to:

- (i) Declare that the land on which the BTK-2 (with extension) situated in Thano Bula Khan, Jamshoro is being developed is state/public land and the entries shown in the BTK-2 (including extension) of scattered pieces of land are bogus entries;
- (ii) Declare that the scattered pieces of land in Dehs Babar Band, Uth Palan & Hathal Buth, Tapo Hathal Buth and Delh Sari, Tapo Sari of Taluka Thano Bula Khan, Jamshoro being in different dehs and tapas cannot form a single piece of land on which the BTK-2 (with extension) layout plan is wrongly shown and is being wrongly developed;

c. This Hon'ble Court may further be pleased to:

- (i) Constitute a Joint Investigation Team comprising of senior officers of at least BS-21 or above scale of Federal Investigation Agency, National Accountability Bureau, Inter-Services Intelligence, Military Intelligence, Intelligence Bureau, Member Judicial & Land Utilization of Board of Revenue for Sindh, Land Utilization Department of respondent No.1, Survey of Pakistan, land Records Officer, Forest Department of respondent No.1, Key Point Installation Division of respondent No.16, Respondent No.16, Commissioner Hyderabad, National Highway Authority and Ministry of Interior to physically survey and investigate title and ownership of the land on which the BTK-2 (with extension) in Thano Bula Khan, Jamshoro and survey numbers of the BTK-2 (with extension) on which layout plan has been drawn;
- (ii) Direct the FIA/NAB to prosecute the officials involved in issuing the NOCs to the respondent No.14 and making the bogus entries in favour of respondent No.13 as well as private beneficiaries and employees of the respondent No.13 and 14 involved in the scam and submit report;

d. This Hon'ble Court may further be pleased to:

- (i) Direct the respondent No.13 and 14 to submit complete record of any sale and purchase of the BTK-2 (including extension) identifying name, CNIC and complete address of public which has made any purchases/bookings within one week together and deposit with this Hon'ble Court all amounts including all sale proceeds;
- (ii) Immediately restrain the respondents from any sale and/or purchase in the BTK-2 (including extension);

e. This Hon'ble Court may further be pleased to;

- (i) Direct the respondents to provide security to the petitioner who seriously apprehends life threats due to filing of this petition;

- (ii) *Grant costs of the petition; and*
- (iii) *Grant any other relief as may deem appropriate in the circumstances of the case;*

2. Learned counsel for the petitioner conceded that this petition under Article 199 of the Constitution is based on public interest litigation, accordingly vide Order dated 10.08.2023 this Court had raised two preliminary Issues in the following terms:-

- a) *As to whether the petitioner could invoke jurisdiction of this Court under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 in the public interest and as to whether he is aggrieved in the legal sense that he could maintain a petition?*
- b) *Secondly, there are numerous disputed questions of facts which cannot be adjudicated in proceedings under Article 199 of the Constitution and the petitioner is required to approach relevant forum for redressal of his grievance. Since these questions touch the maintainability of this petition it is agreed that these two questions be addressed first and only then if required the merits of the may be heard.*

3. Learned counsel for the petitioner in addition to arguing on the above two issues spent most of his time arguing on merits as he wanted a decision on merits and contended that the petitioner was an aggrieved person who had locus standi to file the petition under Article 199 of the Constitution as he was a citizen of Pakistan and had a vested interest in the safety and security of Pakistan and BTK II was being developed next to a Pakistan Air force (PAF) base and as such this would effect his security as a citizen of this country as BTK II would interfere with the operation of PAF base and as such he was an aggrieved person who had every right to move the court under Article 199 of the Constitution and as such his petition was maintainable. He also contended that there was no factual dispute to be resolved as his case was made out from the record and there was no need to call any evidence as this case could be decided in the Constitutional jurisdiction of this court and as such the petition was also maintainable on this count. On merits he contended that the land in question which is being used for development by BTK II was state land which belonged to the forestry department and was not private land as alleged by respondent 13 Bahria Town (private),

Limited and respondent 14 Paradise (Real Estate) Private Limited and as such BTK II was illegally encroaching upon state land and that it needed to be stopped from doing so; that BTK II had not received the required NOC's from the concerned departments, that relevant records had been tampered with and fake and forged documents had been produced and managed as such on merits the prayer in his petition be allowed. In support of his contentions he placed reliance on the cases of *Pakistan Tobacco Board and another vs. Tahir Raza and others* [2007 SCMR 97], *Fida Hussain through attorney vs. Executive Engineer Irrigation/Drainage Larkana and 4 others* [2013 PLD (C.S) 106 Sindh], *Ms. Shehla Zia and others vs. WAPDA* [PLD 1994 SC 693], *Watan Party and another vs. Federation of Pakistan and others* [PLD 2011 SC 997], *Malik Allah Ditta and others vs. Member Board of Revenue/(Judicial-V)/Chief Settlement Commissioner/Notified Officer Punjab Lahore and another* [2022 CLC 414 Lahore], *Human Rights Case No.18877 of 2018* [PLD 2019 SC 645] and unreported Order dated 21.03.2019 passed by a Division Bench of this Court in C.P No.D-730 of 2017.

4. Learned counsel for all the respondents contended that the petition was not maintainable under Article 199 of the Constitution as the petitioner was not an aggrieved party as BTK II had nothing to do with him; he was not a member of the military; he had no land which had been encroached on by BTK II; neither his house was nearby and neither was he nor his business adversely effected by the development of BT K II and as such he was not an aggrieved party for the purposes of Article 199 of the Constitution and as such his petition was not maintainable. Even otherwise the controversy raised in the petition revolved around numerous factual disputes based on the petitioners own contentions such as who actually owned the land which BTK II was developing, whether certain land records/entries had been tampered with etc which would require the recording of evidence to get to the bottom of the matter which this court could not determine in its constitutional jurisdiction and as such this petition was also not maintainable on this score;

similarly the petition was not maintainable as the petitioner had other alternate remedies available to him under the law in order to address most of his allegations e.g. land encroachment, tampering with records etc and as such since the petitioner had an adequate alternate remedy available under the law this also meant that he was prohibited from invoking this court's jurisdiction under Article 199 of the Constitution. Even otherwise the petitioner had no case on merits and the petition ought to have been dismissed on this count as well as BTK II's ownership was proved by the documents on record and the comments filed by the respective parties. In support of their contentions the respondents placed reliance on the cases of **State Life Insurance Corporation of Pakistan vs. Messrs Pakistan Tobacco Company Ltd.** [PLD 1983 SC 280], **Mst. Noor Jehan Begum vs. Dr. Abdus Samad and others** [1987 SCMR 1577], **Ardeshir Cowasjee and 10 others vs. Karachi Building Control Authority (KMC) Karachi and 4 others** [1999 SCMR 2883], **Mst. Kaniz Fatima through Legal Heirs vs. Muhammad Salim and 27 others** [2001 SCMR 1493], **Democratic Workers Union C.B.A vs. State Bank of Pakistan and others** [2002 PLC (C.S) 614], **Suo Motu Case No.13 of 2007** [PLD 2009 SC 217], **Dr. Akhtar Hassan Khan and others vs. Federation of Pakistan and others** [2012 SCMR 455], **Muhammad Yousaf Khan Bugti and another vs. Province of Sindh through Senior Member Board of Revenue and 5 others** [2013 CLC 1155 Sindh] and **Balochistan Medical Association through President vs. Government of Balochistan through Secretary Health and others** [2017 CLC 1195].

5. We have heard the parties, considered the record as well as the case law cited at the bar.

Article 199 of the Constitution

6. Since primarily the controversy revolves around the maintainability of the petition under Article 199 of the Constitution we set out Article 199 of the Constitution in material part for ease of reference.

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"199. Jurisdiction of High Court: (1) Subject to the Constitution, a High Court may, if it is satisfied that no other adequate remedy is provided by law, –

(a) on the application of any aggrieved party, make an order –

- (i) directing a person performing, within the territorial jurisdiction of the Court, functions in connection with the affairs of the Federation, or a Province or a local authority, to refrain from doing anything he is not permitted by law to do, or to do anything he is required by law to do; or
- (ii) declaring that any act done or proceeding taken within the territorial jurisdiction of the Court by a person performing functions in connection with the affairs of the Federation, a Province or a local authority has been done or taken without lawful authority and is of no legal effect; or

(b) on the application of any person, make an order –

- (i)
- (ii); or

(c) on the application of any aggrieved person, make an order giving such directions to any person or authority, including any Government exercising any power or performing any function in, or in relation to, any territory within the jurisdiction of that Court as may be appropriate for the enforcement of any of the Fundamental Rights conferred by Chapter 1 of Part II.

(2) Subject to the Constitution, the right to move a High Court for the enforcement of any of the Fundamental Rights conferred by Chapter 1 of Part II shall not be abridged. (bold added)"

Does the petitioner have another adequate remedy available under the law.

7. The first hurdle to be crossed before Article 199 can be invoked is for the petitioner to satisfy the court that **no other adequate remedy is provided by law for redressal of his grievance.**

8. Now it seems to us based on the contentions of the petitioner that for most of his prayers he does have an alternate remedy available to him under the law. For example, if there has been

meddling in the land records he can move the appropriate forum provided by the BOR; that he can complain to the Chief of Air Staff; that he can refer the matter to an Anti corruption agency etc. Thus this petition is not maintainable on this ground alone.

Is the Petitioner an aggrieved party for the purposes of Article 199 of the Constitution?

9. But supposing that the above alternate remedies were not available as argued by the petitioner the next hurdle which needs to be crossed before the petitioner can invoke Article 199 (1) (a) and (c) of the Constitution is to prove that the petitioner is an aggrieved party.

10. So what is an aggrieved party? Can any citizen of Pakistan for any reason invoke Article 199 because he is aggrieved by some executive action keeping in view that if this was the case the courts would be bogged down with public interest litigation which would interfere with the courts dealing with more pressing work such as hearing appeals against convictions of those who had already been in jail for a substantial period of time who were being deprived of their life and liberty as guaranteed under the Constitution and would seriously undermine the right to an expeditious hearing of their appeals which are a continuation of their trials?

11. The Supreme Court in respect of an aggrieved person held as under in the case of *Ardeshir Cowasjee* (Supra)

"13. We may also refer to the following judgments of this Court in which the concept of locus standi has been dilated upon in relation to a Constitution petition and, inter alia, it has been held that for maintaining a proceeding in writ jurisdiction, it is not necessary that a writ petitioner should have a right in the strict juristic sense, but it is enough if he discloses that he had a personal interest in the performance of the legal duty, which if not performed or performed in a manner not permitted by law would result in the loss of some personal benefit or advantage or curtailment of a privilege in liberty or franchise:-

- (i) *Mian Fazal Din v. Lahore Improvement Trust; Lahore and another* (PLD 1969 SC 223).
- (ii) *Miss Benazir Bhutto v. Federation of Pakistan and another* (PLD 1988 SC 416).

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- (iii) *Mrs. Benazir Bhutto and another v. Federation of Pakistan and another* (PLD 1989 SC 661).
- (iv) *Mian Muhammad Nawaz Sharif v. President of Pakistan and others* (PLD 1993 SC 473)
- (v) *Al-Jehan Trust through Raeesul Mujahideen Habib-ul-Wahabb-ul-khairi and others vs. Federation of Pakistan and others* (PLD 1996 SC 324)
- (vi) *Malik Asad Ali and others v. Federation of Pakistan through Secretary Law, Justice and Parliament Affairs, Islamabad and others* (PLD 1998 SC 161)
- (vii) *Mohtarma Benazir Bhutto and another v. President of Pakistan and others* (PLD 199F SC 388) (bold added)

12. Like wise the supreme court in Noor Jehan's case (Supra) whilst citing with approval the case of Fazal Din (PLD 1969 SC 223) stated as under;

"Clearly, it is a sine qua non for invoking the writ jurisdiction of the High Court under Article 199 that the petitioner should be an aggrieved person. He must, therefore, establish a direct or indirect injury to himself and substantial interest in the subject-matter of the proceedings. The stand of the petitioners throughout has been that they were tenants paying rent to the -Evacuee Trust Board and never claimed the- transfer of the property and indeed in law they were not so entitled. Their writ petition was, therefore, rightly dismissed by the High Court and no ground for interference exists." (bold added)

13. Like wise the Supreme Court in the case of Dr. Akhar Hassan Khan (Supra) held as under:

"50. While holding that these petitions are maintainable, we would like to strike a note of caution. The Court has to guard against frivolous petitions as it is a matter of common observation that in the garb of public interest litigation, matters are brought before the Court which are neither of public importance nor relatable to enforcement of a fundamental right or public duty. In Ashok Kumar Pandey v. State of West Bengal (AIR 2004 SC 280) the Court was seized of such a petition when it observed as follows:--

"Public interest litigation is a weapon which has to be used with great care and circumspection and the judiciary has to be extremely careful to see that behind the beautiful veil of public interest an ugly private malice, vested interest and/or publicity seeking is not lurking. It is to be used as an effective weapon in the armory of law for delivering social justice to the citizens. The attractive brand name of public interest litigation should not be used for suspicious products of mischief. It should be aimed at redressal of genuine public wrong or public injury and not publicity oriented or founded on personal

vendetta. As indicated above, Court must be careful to see that a body of persons or member of public, who approaches the court is acting bona fide and not for personal gain or private motive or political motivation or other oblique consideration. The Court must not allow its process to be abused for oblique considerations. Some persons with vested interest indulge in the pastime of meddling with judicial process either by force of habit or from improper motives. Often they are actuated by a desire to win notoriety or cheap popularity. The petitions of such busy bodies deserve to be thrown out by rejection at the threshold, and in appropriate cases with exemplary costs." (bold added)

14. The case of Baluchistan Medical Association (Supra) followed the cases of Ardeshir Cowasjee (Supra) and Dr. Akhtar Hassan Khan (Supra) in the following terms:-

"8. Admittedly, the constitutional jurisdiction of this Court could be invoked by all citizens when there is infringement of any fundamental rights. Thus, in like case it is the duty of Court to protect Fundamental Rights, guaranteed by the Constitution. Thus the powers available under Article 199 of the Constitution this Court could issue appropriate directions for enforcement of a Fundamental Right. To invoke the 'constitutional jurisdiction' of this Court one is required to first qualify the test of being 'aggrieved person' and then to show that his case falls in any of the categories, so defined by the Article 199 of the Constitution, that there is no alternate legal remedy else the petition. To satisfy the requirements of an 'aggrieved person' in public interest litigation under Article 199 of the Constitution, the petitioner needs to disclose a person interest in the performance of legal duty owed to him which if not performed would result in the loss of some personal benefit or advantage or curtailment of a privilege in liberty or franchise. Reliance is placed on decision given in the case of Ardeshir Cowasjee and 10 others v. Karachi Building Control Authority (KMC) Karachi reported in 1999 SCMR 2883. It has also been stated that to establish locus standi in the Context of public interest litigation, the petitioner would have to show that he belongs to class of affected persons who are unable to access the Court for the protection of their rights. Reliance is placed on judgment in case of Dr. Akhtar Hassan Khan and others v. Federation of Pakistan and others reported in 2012 SCMR 455. It is also a settled legal proposition that a person who does not fall within the ambit of aggrieved person have no right to invoke the jurisdiction under Article 199 of the Constitution. Except for relief in the nature of Habeas Corpus or Quo Warranto a petitioner has as to show that he is an aggrieved person and it is also imperative for him to show that any of his proprietary or personal right as recognized by law has been invaded or denied. Any person who fails to demonstrate the above pre-requisites as recognized by the law has no locus standi or any cause of action to seek any relief under Article 199 of the Constitution. The petitioner in

the instant case remained unable to meet the requirement, thus, have no locus standi to file the instant petition. (bold added)

15. Keeping in view the above authorities, even if the definition of aggrieved person has been whittled down over time, the petitioner must at least have a sufficient interest in the matter.

16. In this case the petitioner is an out of work son of a tea shop owner; he is not a member of the military whose base might be effected by BTK II (in fact learned DAG for the Ministry of defence stated in open court that the Ministry of Defence had no issue with the development of BTK II as its base was over 45 KM's away and other housing authorities were equally close by which they had no objection to), he owns no land near BTK II, his home, business and profession are not near BTK II and have not been effected by the development of BTK II, he has no claim over the land which BTK II is occupying; none of his fundamental rights are being effected by the development of BTK II. He has not been able to disclose that he had a personal interest in the performance of a legal duty, which if not performed or performed in a manner not permitted by law would result in the loss of some personal benefit or advantage or curtailment of a privilege in liberty or franchise. In short he has no interest at all in BTK II which development has had no effect on him as such we find that he is not an aggrieved person under Article 199 of the Constitution and his petition is not maintainable on this score.

Can Declarations be made against Private Companies under Article 199 of the Constitution?

17. Even if by some stretch of the imagination the petitioner was an aggrieved party he has sought relief (declarations/directions) against respondent No.13 (Bahria Town (Private) Limited) and respondent 14 (Paradise Real Estate (Private) Limited) both of whom are private companies and as such his petition would not be maintainable under Article 199 (1) (a), (b) and (c) because they are private companies and as such are not performing functions in connection with the affairs of the Federation, a Province or a local authority and with regard to (c) no fundamental right of the

petitioner has been infringed. Thus, the petition is also not maintainable on this count. In fact we are sorry to say that the motive of the petitioner in filing this petition appears to fall more for the reasons cited above in the case of **Dr. Akhar Hassan Khan** (Supra) which do not appear to be bona fide as for example, he has not filed any petition in respect of three other developments within the vicinity of the PAF base but has for his own reasons singled out BT K II only. It may be that Bahria Town (private) Ltd has had its own legal issues from time to time in the past and is an easy target for unscrupulous elements but this does not mean that every project which Bahria Town (Private) Pvt develops should be subject to unwarranted legal attack by strangers to the law. In fact many property developments bring jobs to the local community and help to stimulate Pakistan's economy which is in the doldrums these days.

Does the Petition involve factual controversies which preclude this court from hearing this petition under Article 199 of the Constitution?

18. According to the petitioner there are no factual controversies in this petition so this court is free to decide the same in its Constitutional jurisdiction. This seems to us to be a strange argument as according to the petitioner in his own arguments there are disputes over the ownership of the land in question, the fact that the land is scattered and that entries in the land record have been changed. These are clearly factual controversies which require the recording of evidence and cannot be decided by us in our Constitutional jurisdiction and as such this petition is also not maintainable on this score. In this respect reliance is placed on the cases of **Ms Kaniz Fatima** (Supra), **State Life Insurance Corpn** (Supra), **Muhammed Yousaf Khan Bugti** (Supra) and a plethora of other authorities and in particular **Suo Moto case No.13 of 2007** (PLD SC 217) which also concerned respondent No.13 Bahria Town and is similar to this case in terms of factual controversy and held as under;

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"32. From above resume, it is abundantly clear that some of the applicants/petitioners have sold land to M/s. Bahria Town and have received sufficient amount towards sale price and have also handed over possession. In many cases mutations have been effected in the name of M/s. Bahria Town in lieu of sale made by villagers/applicants, which according to learned counsel for the petitioners/applicants are fake and fabricated which raises factual controversy and cannot be resolved without recording of evidence."(bold added)

Does the Petitioner have a case on Merits.

19. Even if for arguments sake the petitioner had no alternative remedy under the law; that he was an aggrieved party; that respondents No.13 (Bahria) and 14 (Paradise) came within the ambit of Article 199 of the Constitution and there were no factual controversies in this case all as contended by the petitioner and this petition was maintainable under Article 199 (which we have found it not to be for a host of reasons mentioned above) as the petitioner spent much of his time arguing the case on merits as alluded to earlier in this judgment so we consider a brief overview of the case on merits is warranted. **In short, from a brief review of the record we find that the petitioner has no case on merits which reveals as follows;**

1. That 2006.23 acres of land were lawfully purchased by respondent No.14 (Paradise) via Form VII whereby the land was transferred in name of respondent No.14 (Paradise)
2. That Respondent No.14 (Paradise) gave two separate Power of Attorney's respectively to respondent No.13 (Bahria) on even date (25.10.2019) duly registered for 511-09 acres and on 25.10.2019 duly registered for 1495-14 acres.
3. That BTK II Project is being built on 1005-37 ¾ acres which as admitted by the Forestry department in its comments is private land and not state land which was confirmed by the report of the Mukhtiarkar Taluka Thano Bula Khan dated 31.07.23 which also confirms that the land is not of scattered pieces as alleged by the petitioner. So there is no question of the land being State land. Rather it is private land.

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4. The MOD (which also includes the PAF) in open Court has admitted that it has no objection to the development of BTK II which is over 42 KM's from its base and also has not objected to other developments in the locality of the PAF Base.
5. The Layout plan of BTK II was approved vide letter dated 11.11.2019 by respondent No.6 (Sehwan Development Authority) in favour of respondent No.13 (Bahria) as attorney of respondent No.14 (Paradise).
6. NOC for Sale was issued in favour of respondent No.13 (Bahria) as attorney of respondent No.14 (Paradise) by respondent No.4 (SBCA) vide letter dated 09.12.2019 as confirmed by SBCA in their comments. Such NOC also allowed for gas, electricity and water hence legal formalities were fulfilled vis a vis the NOC.
7. Soorat-e-Hall (Map) of BTK II shows it is being developed on single piece of land as opposed to scattered land which was confirmed by the report of the Mukhtiarkar Taluka Thanu Bula Khan dated 31.07.23.
8. There appears to be no legal bar on Bahria developing the land or selling the plots.

20. Thus, even on merits the petitioner has no case against the respondents and in particular respondents 13 (Bahria) and respondents 14 (Paradise).

In summary the Petition is dismissed as being not maintainable for the reasons discussed above and even otherwise on merits.

21. Before parting with this judgment we would like to emphasize that there may be room for this court to entertain public interest litigation under Article 199 in extremely worthy cases which genuinely effect the public and their fundamental rights (but not as a routine which often is the case nowadays) but in so doing all the legal requirements must be met by the petitioner under Article 199 of the Constitution and even other wise this court should use extraordinary care and caution before entertaining such petitions which are often at the cost of this court dealing with more

substantive matters involving fundamental rights such as the right to life and a right to an expeditious hearing of an appeal. For example, appeals against conviction where often the appellants have been rotting behind bars for years on end without having their appeal heard as the courts valuable time is often eaten up in dealing with so called public interest litigation which as alluded to above may be motivated by extraneous considerations.

JUDGE

JUDGE

Sajjad Ali Jessar