

ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD.
C.P.No.D-1839 of 2023

DATE	ORDER WITH SIGNATURE OF JUDGE
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1. For orders on office objection
2. For hearing of main case.

04-07-2024

Mr. Muhammad Ismail Bhutto, Addl: Advocate General Sindh
along with Inspector Zaheer Ahmed Gaho PS A-Section Tando
Allahyar.

None present for the petitioner and while it is a fit case for dismissal for non-prosecution, perusal of the pleadings and record demonstrates that the order under challenge has been rendered in a suit by the Anti-Encroachment Tribunal, Hyderabad.

The relevant law, being section 27 of the Sindh Public Property Removal of the Encroachment Act, 2010 Act only contemplates an appeal against an order passed by the Special Court¹; and not by the Tribunal².

This Court has not been assisted with any law³ 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*⁴, 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.

It is settled law that the ambit of a writ petition is not that of a forum of appeal, nor does it automatically become such a forum in instances where no further appeal is provided⁵, and is restricted *inter alia* to appreciate whether any manifest illegality is apparent from the order impugned. It is trite law⁶ that where the fora of subordinate jurisdiction had exercised its discretion in one way and that discretion had been judicially exercised on sound principles the supervisory forum would not interfere with that discretion, unless same was contrary to law or usage having the force of law.

The impugned judgment appears to be well-reasoned and perusal thereof does not demonstrate any manifest infirmity therein or that it could not have been rested upon the rationale relied upon.

In view hereof, this petition is found to be misconceived, hence, dismissed.

Judge

Judge

¹ 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.

² 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.

³ Since the statute, Sindh Public Property (Removal of Encroachment) Act, 2010, admittedly contains no provision in such regard.

⁴ Per *Ijaz ul Ahsan J* in *Gul Taiz Khan Marwat vs. Registrar Peshawar High Court* reported as *PLD 2021 Supreme Court 391*.

⁵ Per *Ijaz ul Ahsan J* in *Gul Taiz Khan Marwat vs. Registrar Peshawar High Court* reported as *PLD 2021 Supreme Court 391*.

⁶ Per *Faqir Muhammad Khokhar J.* in *Naheed Nusrat Hashmi vs. Secretary Education (Elementary) Punjab* reported as *PLD 2006 Supreme Court 1124*; *Naseer Ahmed Siddiqui vs. Aftab Alam* reported as *PLD 2013 Supreme Court 323*.