

IN THE HIGH COURT OF SINDH CIRCUIT COURT MIRPURKHAS

Constitution Petition No.D-920 of 2024
(Muhammad Ajmal Vs. SSP Mirpurkhas & others)

DATE ORDER WITH SIGNATURE OF JUDGE

Before;
Adnan-ul-Karim Memon, J
Amjad Ali Bohio, J

Date of hearing & Order 19.08.2024

Mr. Kamran Bhatti, advocate for the petitioner
Mr. Ayaz Ali Rajpar, A.A.G Sindh

=

ORDER

Adnan-ul-Karim Memon, J. Petitioner Muhammad Ajmal has filed this petition under Article 199 of The Constitution of the Islamic Republic of Pakistan, 1973 seeking protection against the highhandedness of private respondents, who have launched an illegal housing scheme over his agricultural land and despite his repeated approach, the official respondents did not take any legal action.

2. learned counsel for the petitioner has addressed the question of maintainability of this petition and argued that an alternate remedy if not adequate and efficacious for a citizen, the resort can be made to invoke constitutional jurisdiction, if requirements of Article 199 are otherwise attracted, to ensure that purpose of any law may not be defeated, and an implied objective of the law is to ensure an orderly behavior in a society and if on one hand a wrongful act is left unattended based on certain technicalities and on the other hand a victim of wrongful act is left to run from pillar to post, then in due course of time, an orderly system of a society would be diminished and will be replaced by a disorderly and intolerant behavior as well as lawlessness. He argued that issues involved in the present case are peculiar as discussed supra, in particular, violation of fundamental right(s) of a citizen / Petitioner is a serious issue and must be remedied at the earliest, therefore, despite remedy of approaching Civil court by filling Civil Suit a Constitution Petition is also maintainable,

particularly when nature of reliefs claimed are different. He prayed for allowing the petition.

3. We have heard learned counsel for the parties present in Court and have gone through the record of the case, with their assistance. Since the question of maintainability has been raised by the learned A.A.G, therefore, it is to be decided first.

4. The dispute involved in the present Petition is primarily between Petitioner and private Respondents over the subject property, whereas, Official Respondents against whom Petitioner claims that they in violation of their statutory obligation assisted and abetted the above-named private Respondents in forcibly dispossessing the Petitioner from the subject property and launched the Housing Scheme in the name and style of Daim Residency, without their permission.

5. We are cognizant of the factual position of the case that the Housing Society is formed with the object of providing its members with dwelling houses on conditions to be determined by its bylaws. Housing Cooperative Societies are intended to provide better and cheaper houses, especially to the low and middle-income groups who, otherwise, cannot afford to own houses through individual efforts. They are functioning on the cooperative principles of self-help, self-finance, mutual aid, and self-governance. In addition to the above, Housing colonies or housing societies developed by the land developers/ government/semi-government institutions/ autonomous bodies are meant to provide better living places to the citizens equipped with fully civic necessities, and for this purpose, they make offers for their sale by different modes of advertisements and agreements highlighting the facilities which will be available to the allottees/purchasers so they are bound to fulfill their obligation. There are settled laws and rules which govern the modus operandi for establishing a housing society/colony as to how the land has to be acquired/purchased; but as an ill-luck would have it, the housing colonies/societies are being allowed to run their affairs without proper sanction. Although in some of the cases, it is claimed that the procedure has been adopted in those matters too, by-laws have not been adhered to *stricto sensu* rather those are being trampled upon apparently for ulterior gains. In most of the cases agricultural land is being converted into setting

up housing societies/colonies, as well as, green belts are being permitted to be crushed in the name of providing houses to the public, which is apathy on their part.

6. In our society ordinarily, we come across complaints leveled against the administration of housing societies that the plots given to the purchaser after making full payment are different (locality-wise) from what was shown to them at the time of agreement. While dealing with this aspect the Supreme Court of Pakistan in the case of Messers PAK GULF CONSTRUCTION COMPANY (PVT.) LTD. ISLAMABAD vs. FEDERATION OF PAKISTAN through Secretary Finance, Ministry of Finance, Islamabad and others (2020 PTD 336) had held as under: -

“However, during recent years with the development of cooperative housing societies and statutory authorities engaged in the business of development and sale of real estate, a methodology of transferring immovable property has evolved, whereby properties are transferred privately without involving the Registrar of Documents. Such private transfers are designed to avoid transactional costs, taxes and duties which in turn lead to higher turnover of such properties for investment purposes. Such societies, statutory authorities and even limited liability companies (such as the petitioner) adopt various modes of undertaking such transfers including issuance of transfer letters, allotment letters, agreements to sell and other similar documents which do not require registration. Although such mode of transfer is not a legally recognized mode of transfer of immovable property, a practice has evolved over the past few decades whereby such properties change hands on the basis of allotment letters, agreements to sell, transfer letters etc. This method has obvious financial benefits by way of saving Stamp Duty, Registration Fee and CVT. The sum combined effect such savings comes to substantial amounts of money in addition to being convenient and less hassle some.”

7. Even otherwise, the provision of basic civic amenities is a mandatory requirement and in a way is the sole purpose for which a housing society must have been established. People are not supposed to pay heavy prices only for a chunk of land but the prices are certainly paid for a piece of land situated in a secure perimeter wherein basic amenities that are necessary for enjoying a peaceful life as provided and guaranteed under Article 9 of the Constitution, are essentially provided. This aspect was deliberated in a recent judgment of the Supreme Court of Pakistan in the case of D.G. KHAN CEMENT COMPANY LTD. vs. GOVERNMENT OF PUNJAB through Chief Secretary, Lahore and others reported as **2021 SCMR 834**. A similar view was held in a case of Ms. SHEHLA ZIA and others vs. WAPDA **PLD 1994 Supreme Court 693**

8. However, we are dealing with an issue of private dispute between the parties and it is made clear that the instant writ petition is mandamus

in nature while the object of the writ of continuing mandamus is to ensure that orders of the courts are implemented & do not fall victim to official recalcitrance. The Doctrine of continuing mandamus serves several functions, especially in a case where the executive does not carry out its functions effectively and either does not implement a statutory function/duty or does not exercise its discretion wisely. Socio-economic rights, for instance, propose a major challenge to the judicial and legal system where coercing state action is at times, an insurmountable task. The superior courts on a number of occasions while exercising powers under Article 199 of the Constitution have held supervisory jurisdictional roles.

9. Without prejudice to the rights of the parties on observation record herein above on the subject issue and keeping in view the foregoing facts and circumstances, the matter is disposed of in the terms that the petitioner, if his cause still subsists, has a remedy to approach the Court of plenary jurisdiction for such a declaration or he can also seek his remedy under the Illegal Dispossession Act, 2005, if he has been dispossessed illegally from his property, which is also an adequate and efficacious remedy under the law, as this Court cannot give concrete findings on the subject issue at this stage under Article 199 of the Constitution; therefore, this petition needs to be disposed of in the above terms.

JUDGE

JUDGE

“Ali Sher”