

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

C.P. No.D-216 of 2024

Before:-

Justice Mrs. Kausar Sultana Hussain
Mr. Justice Khadim Hussain Soomro

Date of hearing & Order:

15.02.2024

Syed Shahzad Ali Shah Advocate for the Petitioner.

ORDER

Justice Khadim Hussain Soomro, J:- Through the instant petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, the petitioner has sought the following reliefs:-

- "a) That this Honorable Court may be pleased to declare the Act of the respondents No.5 & 8 for issuing impugned encroachment notices is illegal, unlawful and without due course of law;
- b) That this Honorable Court may be pleased to suspend the operations of impugned encroachment notices issued by the respondent No.5 & 8 and restrain the respondents from demolishing the Public Shed;
- c) That this Honorable Court may be pleased to direct the respondents not to harass to the petitioners on the basis of impugned encroachment notices issued by respondent No.5 & 8;
- d) That this Honorable Court may be pleased to grant any other relief which the Honourable Court deems fit and proper in view of the above facts to be granted in favor of the petitioner."

2. Brief facts of the instant petition are that the petitioner's house is situated in Ward-12 Lakha Mohallah New Saeedabad District Matiari, with a public shed erected in front, providing drinking water. The shed serves the general public with no encroachment on its space. However, respondents No.5 & 8, influenced by the petitioner's political rivals, issued unwarranted notices alleging encroachment. Respondent No.8, having already encroached upon public space by occupying a plot designated for a public library and engaging in illegal parking, targets the shed for personal gain. Despite no legal basis, they intend to replace it with shops. This targeted harassment reflects a clear violation of natural justice, as the petitioner is subject to harsh penalties and has no way to seek redress from the respondents. The selective targeting of the petitioner demonstrates malicious intent to victimize him due to partisan animosities based on political rivalries.

Such actions not only undermine the petitioner's rights but also jeopardize the interests of the public, as the demolition of the shed and the construction of illegal shops would compromise community resources and infringe upon the dignity of the petitioner's residence. Hence, this petition.

3. Learned counsel for the petitioner has argued that the respondents on the basis of impugned notices, have been harassing the petition unnecessarily, due to which the petitioner has been suffering severely; that there is no encroachment over there, but respondent No.8 has issued the said notices just to pressurize the petitioner; however respondent No.8 has made illegal encroachment.

4. We have heard learned counsel for the petitioner and perused the material available on record.

5. After considering the arguments advanced by the learned counsels for the parties and reviewing the material on the record, it is deemed appropriate to reproduce the relevant extract of The Sindh Public Property (Removal of Encroachment) Act, 2010 (**The Act**) defining the jurisdictional clause of the Tribunal:-

“11. Bar of jurisdiction and abatement of suits.---(1) No Civil Court shall have jurisdiction to entertain any proceedings, grant any injunction or make any order in relation to a dispute that any property is not a public property, or that any lease or license in respect of such public property has not been determined, for the purpose of this Act, or anything done or intended to be done under this Act.

(2) All suits, appeals and applications relating to, encroachment and dispute that any property is not a public property or, that any lease or license in respect of such property has been determined, for the purpose of this Act, shall abate on coming into force of this Act.

Provided that a party to such suit, appeal or application may: within seven days for the coming into force of this Act, file a suit before a Tribunal in case of a dispute that any property is not a public property or that any lease or license in respect of such public property has not been determined.

13. Exclusive jurisdiction.---A Tribunal shall have exclusive jurisdiction to adjudicate upon a dispute that any property is not a public property or that any lease or license in respect of public property has not been determined for the purpose of this Act.”

6. Upon review of the aforementioned jurisdiction clause, it transpired that the legislation had been enacted to address a broad spectrum of prevalent issues pertaining to encroachments, encompassing encroachments upon land, structures, and public assets as defined within said legislation. In the present case, the petitioner is aggrieved against the issuance of notice against him. On the specific query, the counsel replied that the petitioner has no title document of the space occupied by him. The disputed space's location demonstrates that

it is just outside the Public Library. If the petitioner has any right over the disputed space, he may approach the Tribunal to redress the grievances, if any.

7. Section 3 of the Act deals with the powers to remove encroachments on public property, including constructions built on top of them, which is conferred upon the Government or an authorized body. The trespasser must comply with the expulsion order within the allotted time, which ought to be at least two days. More penalties or legal action may be imposed for non-compliance. Section 3 of the said Act reads as under:-

“3. Removal of encroachment and structures.----(1) Government or any authority or officer authorized by Government in this behalf may require the person directly or indirectly responsible for encroachment to remove such encroachment together with the structure, if any, raised by him on the public property, within the period not less than two days as may be specified in the order.”

8. The Act does not particularly proscribe or limit private persons from seeking recourse through the Tribunal. However, Sections 11 and 13 of the Act exclude jurisdiction from Civil Court, but the petitioner can approach the Tribunal.

9. Exceptional jurisdiction conferred upon High Court under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, 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 action of issuance of notice cannot be termed as offensiveness. The term "adequate remedy" denotes a remedy that is effective, attainable, accessible, advantageous, and expeditious. The petitioner has an effective remedy to approach the Tribunal but missed the bus without any reasonable and lawful excuse. The doctrine of exhaustion of remedies dictates that a litigant must not pursue a remedy in a different court or jurisdiction until the remedy prescribed by law has been fully exhausted. 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 under:-

"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)".

10. In view of the reasoning and rationale herein contained, we are of the considered view that the petitioner's counsel has failed to set forth a case for the exercise of extraordinary writ jurisdiction by this Court. Hence, this petition, along with pending applications, is hereby dismissed in limine.

JUDGE

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