

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

C.P No.D-4570 of 2025

[Ameer Bux Gaad v. P.O Sindh and others]

DATE	ORDER WITH SIGNATURE OF JUDGE(S).
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Before;

Mr. Justice Yousuf Ali Sayeed;

Mr. Justice Abdul Hamid Bhurgri.

1. For orders on office objections.
2. For orders on CMA No.19214/25.
3. For orders on CMA No.19215/25.
4. For hearing of main case.

Date of hearing:- 03.10.2025

Mr. Blosch Ahmed Junejo, Advocate for the petitioner.

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Abdul Hamid Bhurgri, J.- Through the instant petition, the Petitioner seeks a direction to the Respondents for issuance of the remaining challan amount in respect of land measuring 15-00 acres situated in N.C No.105, Deh Thoming, Scheme-33, Karachi, purportedly recommended for allotment following the approval of a summary by the competent authority dated 15.08.2012.

2. It is the Petitioner's case that pursuant to the approval of the summary, Challan No.936 dated 22.11.2012 was issued and paid by him in part performance of the allotment process, but the remaining challan has not been issued despite repeated requests and representations.

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

4. At the outset, it may be observed that mere approval of a summary does not confer any vested or enforceable right upon the Petitioner. The record does not show that any final lease deed was executed or concluded. In fact, the Petitioner remained silent for an extended period from 2012 to 2019 - before making a representation, which is a delay that remains unexplained and reflects adversely on the Petitioner's conduct.

5. It is well settled that the constitutional jurisdiction is intended to safeguard vested rights rather than establish them, and no writ can lie to enforce internal summaries, recommendations, or departmental correspondence. Courts can only enforce rights that have crystallized in law. The relief sought by the Petitioner is therefore beyond the scope of constitutional jurisdiction.

6. In paragraph 13 of the petition, the Petitioner disclosed that a civil suit bearing No.1612/2020 was pending before this Court on the same subject matter. However, it was only during oral arguments that learned counsel for the Petitioner candidly admitted that the said suit had already been dismissed for non-prosecution, and no application for its restoration has been filed to date. This lack of disclosure in the pleadings is a matter of concern and indicates a failure to approach the Court with complete candour.

7. Furthermore, the principle of approbate and reprobate applies squarely. The Petitioner, having elected to file a civil suit for the same relief, and having allowed it to be dismissed without pursuing restoration, cannot now seek the same relief through a constitutional petition. The conduct amounts to waiver and estoppel.

8. The doctrine of election is fully attracted in the present case. Once the Petitioner elected to pursue a civil remedy through a suit, and allowed that remedy to lapse without availing the statutory option of restoration, he cannot now be permitted to re-agitate the same cause through a constitutional petition. The law does not permit forum shopping or multiple bites at the cherry. Under the doctrine of election of remedies, once an aggrieved party has pursued and exhausted one remedy, they are deemed to have forfeited their right to invoke another. The only permissible remedy in such cases is to pursue the course already chosen, not to re-approach a different forum. Reliance is placed on the case of **Qazi Mumtaz Hussain and others v. Government of Sindh through Secretary Revenue and others, 2025 SCMR 939**, wherein Honourable Supreme Court has observed as follows:-

“By applying the principle of Doctrine of Election the appellants cannot be permitted to have another bite of the cherry by invoking original jurisdiction of Civil Court for a similar recourse. As per the doctrine of election a person aggrieved of an order/judgment may have a host of remedies to challenge the same but he shall have to elect one of those remedies and after choosing one he may not avail another remedy². Thus, the appellants themselves have chosen to be ousted from availing the jurisdiction of Civil Court long back when they opted to invoke the jurisdiction in pursuance of 1977 Act”.

In another case of **Chief Executive Officer NPGCL, GENCO-III, TPS Muzafargarrah v. Khalid Umar Tariq Imran and**

others, 2024 SCMR 518, the Honourable Supreme Court has held as under:-

“Once the choice is exercised and the election is made then the aggrieved person is prohibited from launching another proceeding to seek relief or remedy contrary to what could be claimed and or achieved by adopting other proceeding/ action and or remedy, which in legal parlance is recognized as doctrine of election , which doctrine is culled by the courts of law from the well-recognized principles of waiver and or abandonment of a known right, claim, privilege or relief as contained in Order II, rule (2), C.P.C., principles of estoppel as embodied in Article 114 of the Qanun-e-Shahadat Order 1984 and principles of res judicata as articulated in section 11, C.P.C. and its explanations. Reference in this regard may be made to the case of Trading Corporation of Pakistan v. Devan Sugar Mills Limited and others (PLD 2018 Supreme Court 828).”

Similar view was taken in the case of **Mrs. Seema Tariq Khan and another v. Najamul Sehr Soomro and 6 others, PLD 2025 Sindh 264**, as under:-

“The settled principles of the doctrine of election¹ denote that the election to commence and follow an available course, from concurrent avenues, vests with a suitor, however, once an option is exercised then the suitor is precluded from re-agitating the same lis in other realms of competent jurisdiction. Therefore, in our considered view the present Appeal, at least to the extent of Order dated 21.10.2021 is hopelessly time barred and cannot be maintained”.

This Court in the case of **Lucky Cement limited v. Federation of Pakistan and others, 2021 PTD 835** has observed as under:-

“7. It is apparent that the petitioner had elected to avoid the departmental hierarchy of dispute resolution from the very onset of its grievance. The settled principles of the doctrine of election²¹ denote that the election to commence and follow an available course, from concurrent avenues, vests with a suitor, however, once an option is exercised then the suitor is precluded from re-agitating the same lis in other realms of competent jurisdiction. The august court has illumined that providing an option to elect a remedial recourse does not frustrate or deny the right to choose any remedy, which best suits under the given circumstances. However, the doctrine of election has been evolved by courts to curb successive / multiple adjudication processes in respect of a singular impugned action.

As long as a party does not avail of a remedy before a forum of competent jurisdiction all such remedies remain open to be invoked, however, once the election is made then the party may not be allowed to hop over and shop for one after another coexistent adjudication process. The TCP judgment distilled the wisdom of a myriad of commonwealth authority and concluded that after exhausting a remedial course a suitor may not be allowed to venture upon another remedial avenue for the same malady, which though available was not invoked, as permitting the same would be an abuse of the process of law, which cannot be approved.

In the present facts and circumstances, the petitioner's plea for invocation of the department adjudication process, albeit twenty five years belated and post exhaustion of the remedial course elected to have been pursued, appears to be impeded by the doctrine of election.

8. In so far as the concession of the learned Deputy Attorney General is concerned, conceding to a departmental recourse quite literally a generation after the petitioner itself elected to avoid the same, we find ourselves unable to subscribe to the argument advanced. In any event the petitioner's counsel, in rebuttal, rejected the said concession on the ground that securing the demand, even if a departmental adjudication process was directed, would be prejudicial to the interests of the petitioner".

9. In view of the above discussion, the petition is not maintainable, both on legal and factual grounds. Accordingly, the petition stands **dismissed** in **limine**, along with all listed and pending applications.

JUDGE

JUDGE

Ayaz Gul