

Order Sheet
IN THE HIGH COURT OF SINDH, KARACHI
C.P. NO. D- 5801 OF 2016

PRESENT:
MR. JUSTICE NADEEM AKHTAR
MR. JUSTICE ARSHAD HUSSAIN KHAN

Petitioner Muhammad Aslam through Mr. Shamshad Ali Qureshi,
Advocate.

Date of Hearing 15.12.2016

ARSHAD HUSSAIN KHAN, J. The petitioner through the instant constitutional petition has prayed as follow:-

- “A) To direct the respondents No.1 & 2 to discharge their legal obligations as provided under statue by demolishing illegal unlawful and unauthorized construction raised by respondent No. 3, 4 & 5 without any approval situated at Plot No. 856 (old No. 33/3) & 857 (Old No.33/4) Street No.33 Sector-B Qayumabad, Korangi street Karachi.*
- B) To direct the respondents No. 6 to provide legal protection to the respondent No. 1 & 2 as per order of this Honorable Court for proper action in accordance with law to implement the passed order with later and sprit.*
- C) Any other relief(s) which this Hon’ble Court may deem fit and proper under the circumstances of the case.*
- D) Award cost of the petition

2. Brief facts leading to the filing of the present petition as averred therein are that respondents 3 to 5 are raising illegal construction on Plots No. 856 (old No. 33/3) & 857 (Old No.33/4) Street No.33, Sector-B, Qayumabad, Korangi street, Karachi, without any approval of building plan which is very dangerous for possession holder in future. The petitioner approached the concerned authority- Respondents No. 1 and 2 but the said respondents failed to take any action against respondents 3 to 5. Hence, the petitioner filed the present petition for redressal of his grievances.

3. On 16.11.2016 when the present petition first time came up for hearing this Court directed the counsel for the petitioner to satisfy the Court about maintainability of the present petition. Relevant portion of the said order for the sake of ready reference is reproduced as under:

“3 to 5. It is claimed by the petitioner that the subject plot is owned by him but respondents 3, 4 and 5 haven taken over possession thereof illegally and are raising construction thereon without any authority or approved plan. The petitioner has not filed copies of the title documents of his purported ownership. His counsel is put on notice to satisfy the court on the next date about the maintainability of the petition in view of the above, and also to file copies of the title documents, failing which appropriate orders shall be passed on the next date as my be deemed fit. At his request, adjourned to 30.11.2016”

4. On 30.11.2016 a request for adjournment was made on behalf of the petitioner upon which following order was passed:

“Petitioner Muhammad Aslam Khan is present in person. He requests for adjournment on the ground that his counsel had to leave the city in view of some urgent personal engagement. He undertakes to file copies of the title documents of the subject property on the next date in compliance of the order passed on 16.11.2016. It has been made clear to him that in case the said documents are not filed before the next date this petition will be dismissed. At his request, adjourned to 15.12.2016.”

5. The counsel for the petitioner filed a statement dated 15.12.2016, which is taken on record. The petitioner though filed certain documents along with the said statement however, no title documents reflecting ownership of the petitioner have been filed with said statement. Furthermore, from the documents filed by the petitioner along with the said statement, it appears that the petitioner filed the present petition in order to settle the score with private respondents 3 to 5 who according to the petitioner have taken over plots in question from the petitioner illegally and started raising construction.

6. It was incumbent upon the petitioner to show his locus standi and to establish his legal right over the plots in question by placing on record title documents but despite clear directions the petitioner has placed no such document to strengthen his alleged claim over the

plots in question and the allegations emphasized in the instant petition. Furthermore, the petitioner raised disputed question of fact, which cannot be decided in the constitutional jurisdiction of this court.

7. It may also be stated that Article 199 of the Constitution casts an obligation on the High Court to act in the aid of law and protects the rights within the framework of Constitution and this extra ordinary jurisdiction of High Court may be invoked to encounter and collide with extraordinary situation and non-availability of any alternate remedy under the law where the illegality of the impugned action of an executive or other authority can be established without any elaborate enquiry into complicated or disputed facts. It is worth mentioning that it is mandatory and obligatory for a party invoking the Constitutional jurisdiction to establish a clear legal right, which should be beyond any doubt and controversy. Controverted questions of fact, adjudication on which is possible only after obtaining all types of evidence in power and possession of parties can be determined only by the courts having plenary jurisdiction in the matter. Reliance can be placed on the case of Anjuman Fruit Arhtian and others vs. Deputy Commissioner, Faisalabad and others (2011 SCMR 279).

8. The upshot of the above discussion, we are of the considered view that in absence of any legal right of the petitioner over the plots in question the petitioner does not have *locus standi* to maintain the present petition and as such the same is not maintainable. Consequently, the present petition being devoid of any legal substance is liable to be dismissed.

Foregoing are the reasons for our short order dated 15.12.2016, whereby the petition along with listed applications was dismissed with no order as to cost.

JUDGE

JUDGE