



then such order being illegal can be quashed by this court under writ jurisdiction. The respondents 1 to 4 being Government Officials are bound to perform their duties according to law and rules without harassing the common people. He has further urged that as the present case is of mala fide and in excess of jurisdiction, the same is required to be declared as null and void by exercising powers under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973.

3. On the other hand, Syed Shahzad Hyder Shah learned counsel for the private respondents by rebutting the above arguments has contended that the present petition is misconceived and non-maintainable, as the matter relates to resolving the factual controversy and thus this Court cannot make factual enquiries by invoking its Extraordinary Constitutional Jurisdiction, hence the same may be dismissed with exemplary cost. According to learned counsel, the Extraordinary Constitutional Jurisdiction of this Court cannot be used as a substitute of appeal under Section 8 of the West Pakistan Land Revenue Act, 1967. He has also contended that this Court cannot bypass hierarchy under the Land Revenue Authority, as adequate and alternate remedy is available to the petitioners; therefore, this petition is not maintainable. He prays for dismissal of this petition being not maintainable. Be that as it may, we are only confined to the factum as to whether this Court has jurisdiction under Article 199 of the Constitution to dilate upon the issues of the Petitioner raised in the present proceedings.

4. We have heard learned counsel for the parties on the issue of maintainability of instant petition and perused the record made available before us.

5. In our view, Article 199 of the Constitution, inter alia, provides that the High Court may exercise its powers there under only "if it is satisfied that no other adequate remedy is provided by law". It is well-settled that if there is any other adequate remedy available to the aggrieved person, he must avail

and exhaust such remedy before invoking the Constitutional jurisdiction of High Court, whether such remedy suits him or not. In our view, the doctrine of exhaustion of remedy envisaged in Article 199 prevents unnecessary litigation before the High Court.

6. In our view, one of the reasons for introducing the doctrine of alternate remedy was to avoid and reduce the number of cases filed directly before this Court, and at the same time to allow the prescribed lower forum to exercise its jurisdiction freely under the law. Moreover, if a person moves this Court without exhausting the remedy available to him under the law at lower forum, not only the purpose of establishing that forum would be completely defeated, but such person will also lose the right of appeal available to him under the law. Under Article 10-A of the Constitution of Islamic Republic of Pakistan, 1973, for determination of civil rights and obligations or in any criminal charge against him, every citizen is entitled to a fair trial and due process. Therefore, it follows that fair trial and due process are possible only when the Court / forum exercises jurisdiction strictly in accordance with law. It further follows that this fundamental right of fair trial and due process in cases before this Court is possible when this Court exercises jurisdiction only in cases that are to be heard and decided by this Court and not in such cases where the remedy and jurisdiction lie before some other forum. If the cases falling under the latter category are allowed to be entertained by this Court, the valuable fundamental right of fair trial and due process of the persons / cases falling under the former category will certainly be jeopardized. There is a misconception and trend that in any of the situations discussed above Article 199 of the Constitution can be invoked without availing and exhausting the remedy provided by law, on the ground of violation of fundamental rights guaranteed by the Constitution.

7. Prima facie, it appears that the petitioners have mainly challenged the impugned order dated 17.3.2010 passed by District Officer Revenue, Tando Allahyar with the following reasoning:-

“6. On perusal of entry No.27 of DK book No.26386, it appears that S No.369/1 area 8:00 acrs stands in the name of Khana S/o Sipoy by Rubbing / erasing, which is not doubt suspicious.

7. Report of ST / Tapidar received from Mukhtiarkar revenue Tando Allahyar vide his letter No SC/84, dated 18/2/2010 indicates that there is a mango garden in the land and it is in possession of applicant, who appropriates its produce and pays land revenue to the government. From the above facts it appears that S no.369/1 area 8:00 acre of Deh dhand Shah was Government Nakaboli land and it was allotted to applicant Ali Murad Bozdar by the defunct barrage authorities vide A form No.12490 and TO Form No dated 28/7/1982 and such entry is available of the record and letter on applicant gifted the said land to his sons namely Iftkhar Hussain 0-50 Paisa Share and Ishtiaque Hussain to the extent of 0-50 paisa share respectively vide entry No.519 dated 19/6/2004 and such land is in possession of the applicant and who has kept, planted mango garden enjoys its produce and pay land revenue as reported by ST and Tapidar of the beat and Mukhtiarkar Revenue Tando Allahyar has fully corroborated and supported reports of Tapedar and S.T. Mukhtiarkar (Revenue) Tando Allahyar is therefore authorized to make correction in the relevant entries and also make note about exclusion of survey No 369/1 from entry No.27 dated 2/8/1973 of DK book No 26386 and also from entry no 58 of VF-VII A, prepared during the course of rewriting in the light of subsection 7/5, 7/6 section of 44 and 104 of land Revenue Act 1967, with a view to rectify mistake and bring the record upto mark in order to avoid further confusion if any person has any objection over this judicial order he can make an appeal before EDO Revenue Tando Allahyar or board of Revenue or any court of law for annulling in this order.”

8. Admittedly, the petitioners failed to avail the remedy as provided under the Land Revenue Act, as has been held in the case of Mumtaz Ahmed and another v. The Assistant Commissioner and another (PLD 1990 SC 1195).

Honorable Supreme Court held that: ---

"Petitioners should not have approached the High Court without exhausting other remedies provided in law in the hierarchy of the Revenue Forums. Constitutional Petition being premature thus could be dismissed on that ground alone. Proper procedure to be followed by the petitioners."

9. Accordingly, without going into the validity of order passed by the District Officer Revenue, Tando Allahyar, we consider it fit to dismiss this petition on alternate ground that the petitioners should not have approached

this Court without exhausting other remedies provided in law to them in the hierarchy of Revenue Forum as has been held in the case of Mumtaz Ahmed and another v. the Assistant Commissioner and another reported in PLD 1990 SC 1190 (supra). Thus this petition being not maintainable is dismissed leaving the aggrieved party to take recourse as provided under the law.

10. This constitutional petition was dismissed by a short order dated 3.9.2020. These are the reasons for the same.

JUDGE

JUDGE