

IN THE HIGH COURT OF SINDH AT KARACHI

Present: **Muhammad Junaid Ghaffar and Agha Faisal, JJ.**

CP D-5434 of 2020 : Muhammad Bashir & Another
vs. Province of Sindh & Others

For the Petitioner : Ghulam Akbar Jatoi, Advocate

Date of hearing : 12.11.2020

Date of announcement : 12.11.2020

JUDGMENT

Agha Faisal, J. (1) Granted. (2) Deferred. (3) Granted subject to all just exceptions. (4) The present petition has been filed in respect of purported development in Goth Mulan Essa Brohi situated in District West Karachi, by persons admittedly not resident therein. It has been pleaded that the said development is on state land, hence, and ought to be demolished and further that the petitioners be provided protection against private persons, named in the prayer clause yet not impleaded in the petition.

2. At the very onset the petitioners' counsel was required to address the Court with respect to the maintainability of the petition, especially with respect to the *locus standi* of the petitioners and also as to whether there was any document on record to reconcile the assertions pleaded. It was argued *simpliciter*, with much unappreciated candor, that if notice was issued in this petition then the petitioners would benefit monetarily from the purported development taking place.

3. In so far as the prayer for protection is concerned it is settled law that such a grievance ought not to be agitated before the High Court without having exhausted recourse before the relevant fora¹. There is no constituent of the pleadings to denote if the grievance was escalated before the concerned officials / fora prior to institution hereof and no such argument was articulated before us. Even otherwise seeking sanctions against private persons not arrayed before us cannot be appreciated by this court.

¹ Per *Ejaz Afzal Khan J* in *Younis Abbas & Others vs. Additional Sessions Judge, Chakwal & Others* reported as *PLD 2016 Supreme Court 581*; Per *Nadeem Akhtar J.* in *Abdul Hameed & Another vs. Province of Sindh & Others* reported as *PLD 2019 Sindh 168*.

4. The petitioner's counsel admitted that the petitioners were not resident of the area under scrutiny, however, claimed that they were land owners in the vicinity. Upon specific query as to whether any documents had been placed on record with regard to the alleged land ownership of the petitioners, albeit in an area otherwise than that under reference, the petitioners' counsel responded in the negative. It was added that although they had no title documentation, however, they were occupants of areas in the vicinity. In such regard it is apparent that the counsel was unable to demonstrate the *locus standi* of the petitioners to maintain the present petition.

The exercise of powers, per Article 199 of the Constitution, was required to be undertaken upon application of an aggrieved person². The petitioners' counsel failed to make any case before us to qualify the petitioners within the definition of an aggrieved person³.

5. The petition, and the documentation filed therewith, is devoid of any substantiation to suggest that there is any encroachment upon state land or that there is any illegal construction taking place thereupon. The State is duly empowered to take remedial measures if its land is being misappropriated and nothing has been placed on record to demonstrate if the State is aggrieved at all.

On the contrary it was specifically argued that mere issuance of notice in the present petition would enable the petitioners to obtain pecuniary benefits from the asserted development taking place. It may suffice to observe, in the very least, that the invocation of the writ jurisdiction of this court cannot be sanctioned for purposes of unjust enrichment.

6. In view of the reasoning and rationale herein contained, we are of the considered view that the petitioners' counsel has failed to set forth a case for the exercise of extra ordinary Constitutional jurisdiction by this Court, hence, this petition is hereby dismissed *in limine*.

JUDGE

JUDGE

² Barring certain exceptions, i.e. writ of *quo warranto*, however, no case was made out to qualify the present petition within an exception recognized by law; 2019 SCMR 1952.

³ *Raja Muhammad Nadeem vs. The State* reported as PLD 2020 Supreme Court 282; *SECP vs. East West Insurance Company* reported as 2019 SCMR 532.