

HIGH COURT OF SINDH, CIRCUIT COURT AT HYDERABAD

C.P No.D-745 of 2020

[Ms. Asma Hameed versus Province of Sindh & Others]

DATE	ORDER WITH SIGNATURE OF JUDGE
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Before:-

Mr. Justice Adnan-ul-Karim Memon
Mr. Justice Adnan Iqbal Chaudhry

Petitioner : Through Mr. Ahmed Murtaza Arab advocate
Private respondent : Through Mr. Bilawal Ali Ghunio advocate
Official respondents: Through Mr. Allah Bachayo Soomro,
Additional Advocate General Sindh
Date of Hearing & Decision: 26.10.2021

ORDER

ADNAN-UL-KARIM MEMON, J:- Through this petition, the petitioner has sought direction against the official respondents for demolishing the building constructed by respondent No.6 allegedly without any approved layout plan.

2. At the outset, we asked learned counsel for the petitioner as to how this petition is maintainable concerning her easement rights, which right if any ought to have been agitated before the Court of plenary jurisdiction. The petitioner has contended that it is her fundamental right under the Constitution to choose the forum; therefore, she has chosen to file this petition.

3. Mr. Ahmed Murtaza Arab, learned counsel for the petitioner has submitted that the petitioner is residing in her House bearing C.S No.E-684, situated Mukhi Narain Das Lane Hyderabad, where there is a common Street bearing C.S No. E-678 admeasuring 104 sq. yards, which is specifically reserved for passage of residents of House Nos. 680 to 685 only. He further submits that private respondent No.6 is also residing there in his House bearing No.E-673, for whom there is a main entrance/passage from the southern side. He also submits that adjacent to the private respondent's house there was a small open plot bearing C.S No.679 admeasuring 20.7 sq. yards, which was merged into respondent's plot/house by the Settlement Commissioner Hyderabad in the year 1963. He next submits that after the merger of the open plot the respondent No.6 demolished his old house and reconstructed his house on both merged

plots and for passage thereof the street is to be from the southern side having no concern on the northern side, where the house of the petitioner is situated. He also submits that respondent No.6 has constructed a new building without any approved layout plan and mainly used to open the windows of his house towards the northern side, for which he has no authority and concern, hence this petition. In support of his contention, he has relied upon the statement filed today along with a bunch of documents and argued that the petitioner's easement rights are in jeopardy, therefore, the private respondent may be directed to restore her easement rights with direction to the official respondent to demolish the illegal building having no approved layout plan.

4. Learned counsel for private respondent has refuted the claim of petitioner and raised the question of maintainability of this petition on the ground that the petitioner has the efficacious and adequate remedy if she is so aggrieved against the action of official/ private respondents. He prayed for dismissal of the petition.

5. We have heard learned counsel for the parties and perused the material available on record.

6. The facts of the case, prima-facie show that, the claim raised by the petitioner in the instant petition is founded on easement right over a window allegedly opened by the private respondent, which created a situation whereby her privacy is disturbed. It is found that the petitioner could establish an easement right over the subject issue before the competent court of law through cogent evidence. Therefore, in our considered view, the rights and claim made by the petitioner through the instant petition could not be looked into in the constitutional petition. Prima facie the petitioner has brought the lis containing dispute of civil nature between the parties, and there is a remedy available with the petitioner in the Court of plenary jurisdiction.

7. In view of above, this petition is dismissed with no order as to costs; however, the petitioner is at liberty to approach the learned Civil Court, having jurisdiction in the matter.

JUDGE

JUDGE