

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
C.P. No. D-203 of 2017

Date	Order with Signature(s) of Judge(s)
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Hearing of case

1. For orders on C.M.A. No. 4822/20.
2. For hearing of main case.

20.12.2021

Mr. Furqan Ali, Advocate for petitioner.
Mr. Ashraf Ali Butt, Advocate for respondent No. 5.
Mr. Khursheed Javed, Assistant Attorney General.

Through instant petition, the petitioner seeks issuance of writ of mandamus against the respondents No. 1 to 3 to take appropriate measures and serious necessary endeavors for the redressal of the grievances faced by the people of thickly populated area over the railway' tack and remove the garbage dumping and sewerage overflowing from the affected areas of the Railway's Track without making any pretext or throw out the responsibilities upon each other so that hundreds of people and their future generation could be saved from the catastrophe or pollution. The petitioner also seeks direction to respondent No.3 to comply with the order dated 12th April, 2016 passed by Wafaqi Mohtasim (Ombdusman) without any pretext.

Learned counsel for the petitioner contends that no alternate efficacious remedy is available to the petitioner to get the aforementioned order of Wafaqi Mohtasib implemented; hence, he is compelled to maintain this petition. He also contends that where alternate remedy is not efficacious or speedy or where statutory functionary acts mala-fidely, or in a partial, unjust and oppressive manner, which on the face of it, is patently illegal or without lawful authority, or suffers from such legal infirmity which is patent on the fact of the impugned order/action, then High Court may, inspite of the existence of the alternate remedy, excise jurisdiction under Article 199 of the Constitution and grant relief to the aggrieved party.

Heard learned counsel for the petitioner and perused the material available on record.

Though the petitioner has specifically prayed for the implementation of the order of Wafaqi Mohtasib dated 12th April, 2016. It is an admitted position that the relief claimed by the petitioner through instant petition was already agitated by him before the Wafaqi Mohtasib, who adjudicated the same vide

aforementioned order. We are not impressed with the arguments of learned counsel for the petitioner that no efficacious remedy is available to the petitioner for getting the order of Wafaqi Mohtasib implemented, in view of section 11(5) of The Establishment of the Office of Wafaqi Mohtasib Order, 1983, which provides that *“If the Agency concerned does not comply with the recommendations of the Mohtasib or does not give reasons to the satisfaction of the Mohtasib for non-compliance, it shall be treated as "Defiance of Recommendations" and shall be dealt with as hereinafter provided”*. Section 12 (1) *ibid* provides that *“If there is a "Defiance of Recommendations" by any public servant in any Agency with regard to the implementation of a recommendation given by the Mohtasib, the Mohtasib may refer the matter to the President who may, in his discretion, direct the Agency to implement the recommendation and inform the Mohtasib accordingly”*.

We are; therefore, of the view that the Wafaqi Mohtasib is duly empowered to get his order implemented under the aforesaid Order and the remedy which is equally efficacious lies before him in terms of Section 11(5) and 12(1) *ibid*.

For the foregoing facts and reasons, this petition being devoid of legal merit is accordingly dismissed alongwith listed application.

JUDGE

JUDGE

Athar Zai