

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
C.P. No.D-8075 of 2019

Order with signature of Judge

Before

***Aqeel Ahmed Abbasi, J.
Mahmood A. Khan, J.***

For orders as to maintainability of petition.

02.05.2023.

Mr. Mohammad Sabir Khan, Advocate for respondents 15 to 24.
Mr. Mohammad Qasim, Deputy Attorney General.
Mr. Abdul Jaleel Zubedi, Additional Advocate General Sindh.

Instant matter was taken up in the morning at the first round when brief was held on behalf of Mr. Ali Nawaz Khuhawar, Advocate for the petitioner, who was reportedly busy before another Bench, and adjournment was sought, however, learned counsel for the respondents vehemently opposed such request on the ground that instant petition is misconceived and not maintainable, as remedy available to the petitioner in respect of the subject controversy has already been availed by filing appeal, therefore, filing instant constitutional petition is totally misconceived and without any lawful authority. The matter was kept aside to be taken up after recess. Now when the matter is taken up in the second round, Mr. Daniyal Sheikh, Advocate has shown appearance and held brief for Mr. Ali Nawaz Khuhawar, Advocate for the petitioner and made a request for adjournment on the ground that perhaps the latter is unwell. Such request is once again vehemently opposed by the learned counsel for the respondents, who submit that instant petition is misconceived and not maintainable and has drawn attention of this Court to the order dated 01.12.2022 which reads as follows:

“It is an admitted position that the appeal filed by the petitioner against the judgment/decreed impugned in the present petition was dismissed by the appellate Court as being barred by limitation where-after the present petition under Article 199 of the Constitution has been filed. We are of the view that a constitutional petition under Article 199 does not lie in cases where the party has already availed the remedy provided under the law.

In view of the above and also in view of observations made in the order dated 08.02.2022, learned counsel for the petitioner requests for time to assist the Court regarding maintainability of the petition. Adjourned.”

Perusal of the record and the relief sought in the instant petition support the contention of the learned counsel for the respondents with regard to the maintainability of instant petition which aspect of the matter was also recorded by a division bench of this Court in the order dated 08.02.2022 passed in the instant petition wherein reference was made to the reported judgment of the Honourable Supreme Court in the case of NAIMATULLAH KHAN, ADVOCATE vs. FEDERATION OF PAKISTAN and others (2020 SCMR 622), wherein it has been held that railway land cannot be given to a society for further allotment of residential schemes. It appears that counsel for the petitioner has not been able to satisfy this Court as to the maintainability of instant petition and the matter is pending since 2019 unnecessarily. Accordingly, instant petition is dismissed along with listed applications.

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