

ORDER SHEET  
**IN THE HIGH COURT OF SINDH, KARACHI**

Present:-

**Mr. Justice Salahuddin Panhwar, J.**

**Mr. Justice Khadim Hussian Soomro, J.**

**C.P. No.D-1937 of 2024**

(Mr. Mushtaq Ahmed v. Federation of Pakistan)

**Date of hearing :-24.04.2024**

**Date of announcement:- 03.05.2024**

Mr. Shahzaib Akhtar, Advocate for Petitioner

**ORDER**

**Khadim Hussain Soomro,J:-** Through this Constitutional Petition, the Petitioner seeks the following relief(s):-

- "i. Declare that the Respondents are bound by Statutory Provisions as laid down in Evacuee Trust Properties (Management and Disposal) Act, 1975 and any action violative of the same is void ab initio.*
- ii. Restrain the Respondents from illegally dispossessing the petitioner from his shops and apartment as mentioned in para 9 of the memo; till the status quo order dated 30.12.2020 in Suit No.2154/2020, is in the field;*
- iii. Restraint the Respondents from taking any coercive action against the petitioner's ownership of his shops and apartment as mentioned in para 9 of the memo;*
- iv. Restraint the Respondents from passing any ex parte adverse orders against the petitioner's ownership of his shops and apartment as mentioned in para 9 of the memo;*
- v. Any other relief that this Honourable Court may deem appropriate.*
- vi. Costs of the Petition."*

2. Learned Counsel for the Petitioner submits that the petitioner is a bonafide purchaser of the Shops bearing Nos.12, 13, 14, 15 & 16 constructed on a Plot bearing No.W.O.5/21-62, situated in Shahbaz Plaza Apartment, Baba-e-Urdu Road, Karachi; that the Respondent issued a Notice dated 22.12.2020 on the ground of default in payment of rent,

which the petitioner denied; that the petitioner has impugned the Notice by filing a Suit bearing Suit No.2154/2020 in which status quo order was passed on 30.12.2020. Learned Counsel for the Petitioner asserts that since the restraining order was issued, the Respondents have been attempting unlawfully to remove the petitioner from their property, which has created an exigence for filing the instant petition.

3. We have heard the learned Counsel for the petitioner and perused the material available on record.

4. Admittedly, the petitioner has filed a Civil Suit No.2154/2020, pending before this Court in a Single Bench ( original side) for adjudication, on the same subject matter between similar parties. The petitioner has impugned a Notice dated 22.12.2020 in a Civil Suit wherein the status quo order is operating, and on the same facts and question of law, the present petition is pending.

5. The legal maxim 'Ubi jus ubi remedium' (wherever there is a right, there is a remedy). The maxim establishes a fundamental legal principle, affirming that an individual has a lawful entitlement to a concomitant recourse to initiate legal proceedings in a court unless the Court's jurisdiction is precluded. According to the rule of jurisdictional prudence, the courts usually show the restraint with the directions to the parties first to take the recourse of an alternate and or equally effective mechanism and framework of remedy provided rather than to take departure to surpass or circumvent such remedy. Reliance can be placed in the case of the Government of Punjab through the Secretary, Schools Education Department, Lahore and others v. Abdur Rehman and others (2022 SCMR 25). The lawmakers' goal behind adopting these remedies is to constrain issues falling within the jurisdiction of the forum that is competent to adjudicate solely upon the matter. Any endeavour to bypass

or evade these designated forums is deemed impermissible, as mandated by the provisions of Article 199(1) of the Constitution.

6. The petitioner has already exhausted that forum by filing the Suit; the principle of exhaustion of remedies imposes a restriction on a litigant, prohibiting them from seeking a remedy in the constitutional jurisdiction.

7. The exceptional jurisdiction conferred by Article 199 of the Constitution is fundamentally designed to provide a specific remedy when the illegality and impropriety of an action by an executive or other governmental authority can be demonstrated without protracted inquiry. The term "adequate remedy" denotes a remedy that is effective, attainable, accessible, advantageous, and expeditious. The petitioner has exhausted effective remedy by filing a suit. The doctrine of exhaustion of remedies dictates that a litigant must not pursue a remedy in a different court or jurisdiction until the remedy prescribed by law has been fully exhausted.

8. The writ jurisdiction of the High Court should not serve as the exclusive recourse or remedy for rectifying the wrongs, distress, and sufferings endured by a party, especially when an equally efficacious, alternative, and adequate remedy is available under the law. This principle is grounded in the notion that the litigant should not be inclined to bypass or disregard the provisions enshrined in the pertinent statute, which delineate specific procedures for challenging the impugned action. Proceedings under Article 199 of the Constitution are oriented towards enforcing a right rather than establishing a legal right. Therefore, the right asserted by the petitioner must not only be clear and complete but straightforward, and there must be an actual infringement of that right. In the case of *Dr Sher Afgan Khan Niazi v. Ali S. Habib and others* (2011 SCMR 1813), the apex court has observed as follows:-

"19. In the light of what has been discussed herein above and in view of the various complicated questions of facts availability of alternate/ adequate remedies and premature stage, no interference should have been made by the learned High Court in exercise of its Constitution Jurisdiction as conferred upon it under Article 199-A read with section 561-A, Cr.P.C. The Intra Court Appeal has, however has rightly been rejected in view of the dictum laid down by this Court in titled *Nawazul Haq Chowhan v. State* (2003 SCMR 1597)".

9. Referring to the submissions made by the learned Counsel for the petitioner, the respondents are making significant efforts to remove him from the mentioned shops. Suppose the petitioner is dispossessed from the subject property. In that case, he may file a contempt application before the Court that has passed the restraining order or a suit under Section 9 of the Specific Relief Act 1877. Still, he can not file a constitution petition under Article 199 of the Constitution of the Islamic Republic of Pakistan 1973. The principle of exhaustion is not merely a procedural formality but a mandatory rule of jurisdictional prudence, which falls under Article 199(a) of the Constitution of the Islamic Republic of Pakistan, 1973. Once an election is made and a judicial path is chosen, a litigant is precluded from initiating subsequent proceedings to seek relief or remedy that contradicts the claims or remedies that could have been pursued through the initial action. This principle is known in jurisprudence as the doctrine of election. The doctrine is extrapolated from the established legal tenets of waiver or the voluntary relinquishment of a known right, claim, privilege, or relief, as encapsulated in Order II, Rule 2 of the Code of Civil Procedure (C.P.C.), the doctrine of estoppel as enshrined in Article 114 of the Qanun-e-Shahadat Order 1984, and the doctrine of res judicata as enunciated in Section 11 of the C.P.C. and its accompanying explanations. This principle is fortified by the precedent set forth by the Supreme Court of Pakistan in the case of *Trading Corporation Of Pakistan v. Devan Sugar Mills Limited and others* (PLD 2018 Supreme Court 828).

In light of the foregoing legal and factual matrix, this petition is hereby summarily dismissed at the threshold, together with the listed applications enumerated herein.

JUDGE

JUDGE

Rafiq/P.A.