

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Constitution Petition No.D-653 of 2024

Before:

*Mr. Justice Zulfiqar Ali Sangi;
Mr. Justice Abdul Hamid Bhurgri.*

Petitioners : Bashir Ahmed and 2 others,
through Mr. Shah Nawaz Waseer,
Advocate.

Respondents : Federation of Pakistan and 54 others,

Date of Hearing & Order: 16.05.2025.

ORDER

Abdul Hamid Bhurgri, J.- Through this petition, the petitioners have invoked the extraordinary constitutional jurisdiction of this Court by filing the present petition, wherein they have arrayed fifty-five Respondents, comprising Respondents No.01 to 50, who are public officials, and Respondents No.51 to 55, who are private parties.

2. The case advanced by the Petitioners is that Respondents No.52 to 54 have purportedly established a residential colony under the name Shah Faisal Colony, located adjacent to the G.T. Road at National Highway Road, Ghotki, Deh Jamal, within the territorial limits of Taluka Ghotki. Petitioners claimed to be the office bearers of the Shah Faisal Colony Welfare Association, Ghotki. It is asserted by the Petitioners that they have purchased residential plots within the said colony and are currently residing therein. The Petitioners' grievance is twofold: first, that the Respondents No.52 to 54 have not secured any legal approval for establishment of colony; and second, that despite assurances made by the said Respondents regarding the provision of essential municipal and civic facilities including electricity, gas, drainage and sewerage systems, road infrastructure, and street lighting no such commitments have been fulfilled. The Petitioners aver that repeated approaches made to both the private and official Respondents have been met with indifference and inaction. The Petitioners further complain that there exist significant factual inconsistencies in the submissions of the Respondents which warrant judicial scrutiny. Ultimately, they pray that Respondents No.52 to 54 be

directed to provide all requisite civic amenities namely, gas, electricity, drainage and sewerage systems, road access, a family park, the construction of a mosque and Eid Gah, healthcare facilities, and adequate street lighting without cost, through official municipal channels. They also seek injunctive relief restraining Respondent No.52 from initiating any commercial construction on allegedly encroached land situated in Survey No.137, Deh Jamal. In the end they prayed that the petition may be allowed.

3. Petitioners' counsel during arguments has reiterated the same facts of his petition.

4. After hearing, we have gone through material available before this Court.

5. At the very outset, this Court posed queries to the learned counsel for the petitioners as to how the present petition is maintainable in view of the numerous factual controversies raised therein, and how a writ can be issued against the private respondents from whom the petitioners claim to have purchased the land. The learned counsel, however, was unable to offer any plausible explanation.

6. The petitioners claimed to be residents of private housing scheme known as "Shah Faisal Colony" and have filed this Constitution Petition alleging that the private respondents have failed to provide essential municipal facilities. They seek directions not only against the private developers/respondents No.52 to 54 but also government departments to ensure provision of such amenities.

7. This court is of the considered view that the petition is not maintainable in its present form. The primary grievance of the petitioners arises out of alleged inaction by private individuals or entities, who do not fall within the definition of "person, amenable to writ jurisdiction under article 199 of the Constitution of Pakistan". It is settled principle that the writ cannot ordinarily be issued against private parties unless it is demonstrated that they are discharging public function under a statutory frame work, which is not the case here.

8. Moreover, the relief sought against government official is also misconceived. It is responsibility of private developers to obtain approval of the housing scheme and to provide infrastructure and amenities prior to transfer of such scheme to the local government. Unless and until the scheme is duly approved and handed over to the relevant municipal corporation, government is under no statutory obligation to provide basic facilities within such private developments.

9. Additionally, the petitioners raises dispute which invokes factual controversies concerning the obligation of private parties, which requires evidence and enquiry. It is a settled principle of law that this Court, while exercising its constitutional jurisdiction under Article 199 of the Constitution, is not empowered to undertake a factual inquiry or resolve disputed questions of fact. The constitutional jurisdiction is primarily intended to address issues involving public law, enforcement of fundamental rights, or jurisdictional errors by public functionaries. Where the resolution of a dispute depends upon examination of evidence, determination of private rights, or adjudication of contested facts, the parties must resort to the appropriate forum under ordinary civil or criminal law. Accordingly, this Court declines to interfere in the matter, as it raises factual controversies which cannot be resolved in writ jurisdiction.

10. Reliance is placed on the case of ***Mst. Kaneez Fatima through legal heirs v. Muhammad Saleem and others*** 2001 SCMR 1493, wherein the honourable apex Court has held as under:-

“Even otherwise such controversial questions could not be decided by the High Court in exercise of powers as conferred upon it under Article 199 of the Constitution of Islamic Republic of Pakistan”.

Similarly in the case of ***Anjuman Fruit Arhtian and others v. Deputy Commissioner Faisalabad and others***, reported in 2011 SCMR 279, following observations were made:-

“The upshot of the above discussion is that learned single judge in the chambers has rightly declined his constitutional jurisdiction in view of various controversial questions of law and facts which can only be resolved on the basis of evidence which cannot recorded in exercise of constitutional jurisdiction.

The petition being devoid of merit is dismissed and leave refused”.

10. Accordingly, the petition being misconceived is not maintainable in law is dismissed in ***limine*** with no order as to costs.

Judge

Judge

Irfan/PS