

LAHORE HIGH COURT
RAWALPINDI BENCH, RAWALPINDI.
JUDICIAL DEPARTMENT

W.P.No.2154 of 2022

Syeda Farzana Batool, etc.

Versus.

Iltaf Hussain Shah, etc.

JUDGMENT.

Date of hearing: **13.12.2023**

Petitioners by: ***Mr. Junaid Iftikhar Mirza, Advocate.***

Respondent No.1 ***Ms. Shazia Abbas Chaudhary, Advocate.***
by:

Respondents No. ***Malik Zafran Zulfi Advocate.***
2 to 19 by:

Respondents ***Malik Amjad Ali, Additional Advocate***
No.20 to 23 by: ***General for Punjab.***

Mirza Viqas Rauf, J. *This petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 (hereinafter referred to as “Constitution”) assails the vires of order dated 15th June, 2022 passed by the Member (Judicial-IV), Board of Revenue, Punjab in a revision petition filed by the petitioners whereby he proceeded to dismiss the petition being devoid of force and merits. This petition was admitted for regular hearing by way of order dated 29th July, 2022, however, on previous date a question was framed with regard to the maintainability of this petition with the following observations: -*

“2. *It appears that the constitutional petition is arising out of order dated 15th June, 2022 passed by the Member (Judicial-IV) Board of Revenue, Punjab Rawalpindi Camp on a revision arising from proceedings under the Punjab Land Revenue Act, 1967. In terms of Section 8 of the Punjab Board of Revenue Act, 1957 remedy of review is available and apparently main petition is not maintainable.*

3. *Office to list out this C.M alongwith main petition on 13.12.2023. On the said date the respondents/ writ petitioners shall*

assist the Court with regard to maintainability of the petition with no further adjournment.”

2. *Learned counsel for the petitioners, while addressing the question of maintainability, submitted that remedy of review is not efficacious in the circumstances. He added that even otherwise, the scope of review is always limited. Learned counsel contended that constitution petition, in the circumstances is thus, maintainable.*

3. *Conversely, learned counsel representing the respondent No.1 as well as learned Law Officer seriously resisted the maintainability of this petition.*

4. *Heard. Record perused.*

5. *It evinces from the record that respondent No.1 moved an application under section 135 of the Punjab Land Revenue Act, 1967 (hereinafter referred to as “Act, 1967”) before Tehsildar/AC-I, Chakwal seeking partition of the joint land forming part of Khasra Nos.930 and 932 situated in village Minwal, Tehsil & District Chakwal. After passing through various phases, the application for partition was finally accepted on 12th December, 2020. Feeling dissatisfied, predecessor-in-interest of the petitioners namely Amir Hussain Shah preferred two appeals under section 161 of the “Act, 1967” before the District Collector, Chakwal, which were dismissed on 31st March, 2021. The order was then challenged in revision petitions before the Additional Commissioner (Consolidation), Rawalpindi Division but the revisions were also dismissed vide order dated 14th October, 2021. The petitioners then challenged the said order through revision petition under section 164 of the “Act, 1967” before the Board of Revenue, Punjab wherein the impugned order was passed. It is, thus, evident that the impugned order arises out of proceedings conducted by the revenue hierarchy under the “Act, 1967”.*

6. *In order to provide for constitution of Board of Revenue, the Punjab Board of Revenue Act, 1957 (hereinafter referred to as “Act, 1957”) was promulgated. The Board of Revenue was constituted in terms of section 3 of the “Act, 1957”, which was given the general*

superintendence and control over all Revenue Officers and Revenue Courts. Section 5 of the “Act, 1957” vests certain powers upon the Board, which reads as under: -

5. Powers of the Board.—(1) The Board shall be the controlling authority in all matters connected with the administration of land, collection of land revenue, preparation of land records and other matters relating thereto.

(2) The Board shall be the highest court of appeal and revision in revenue cases in the Province.

(3) All proceedings relating to any of the matters referred to in sub-sections (1) and (2) which immediately before the date of coming into force of this Act, were pending before the final appellate or revisional authority of any Province, State or other territory or area which has been included in the Province of Punjab, shall stand transferred to the Board.

7. Section 8 of the “Act, 1957” bestows power of review upon the Board. For ready reference and convenience, same is reproduced below: -

8. Review of orders by the Board.—(1) Any person considering himself aggrieved by a decree passed or order made by the Board and who, from the discovery of new and important matters or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or the order was made, or on account of some mistake or error apparent on the face of the record or for any other sufficient reason desires to obtain a review of the decree passed or order made against him, may apply to the Board for a review of judgment and the Board may, after giving notice to the parties affected thereby and after hearing them, pass such decree or order as the circumstances of the case require.

(2) Every application for a review of a decree or order under sub-section (1) shall be made within ninety days from the date of that decree or order.

(Underlining supplied for emphasis)

It would not be out of place to mention here that the words “or for any other sufficient reason” were inserted by Act XVIII of 1964, which apparently was added to extend the scope of review by the Board.

8. Article 199 of the “Constitution” though bestows power upon this Court to issue different kinds of writs mentioned therein but powers so ordained are not unbridled as is evident from the bare perusal of Article 199 of the “Constitution”, which starts with a precondition in the following form: -

199. Jurisdiction of High Court. (1) Subject to the Constitution, a High Court may, if it is satisfied that no other adequate remedy is provided by law-

(a) on the application of any aggrieved party, make an order —

(i) directing a person performing, within the territorial jurisdiction of the Court, functions in connection with the affairs of the Federation, a Province or a local authority, to refrain from doing anything he is not permitted by law to do, or to do anything he is required by law to do; or

(ii) declaring that any act done or proceeding taken within the territorial jurisdiction of the Court by a person performing functions in connection with the affairs of the Federation, a Province or a local authority has been done or taken without lawful authority and is of no legal effect; or

(b) on the application of any person, make an order—

(i) directing that a person in custody within the territorial jurisdiction of the Court be brought before it so that the Court may satisfy itself that he is not being held in custody without lawful authority or in an unlawful manner; or

(ii) requiring a person within the territorial jurisdiction of the Court holding or purporting to hold a public office to show under what authority of law he claims to hold that office; or

(c) on the application of any aggrieved person, make an order giving such directions to any person or authority, including any Government exercising any power or performing any function in, or in relation to, any territory within the jurisdiction of that Court as may be appropriate for the enforcement of any of the Fundamental Rights conferred by Chapter 1 of Part II.

(underlining supplied for emphasis)

9. *There is no cavil to the proposition that despite availability of alternate remedy, this Court is not precluded to exercise its jurisdiction as a rule of thumb and even in case of availability of alternate remedy, if the circumstances so demand that the exercise of constitutional jurisdiction is inevitable, a High Court can invoke the jurisdiction under Article 199 of the “Constitution” but at the same time, such exercise cannot be made in an omnibus fashion. It is an oft repeated principle of law that where any*

party opts to choose a statutory remedy against an order, it cannot abandon or bypass it without any valid or reasonable cause and file constitution petition challenging such order. Such a trend is even offensive of doctrine of election. Guidance in this respect can be sought from COMMISSIONER OF INCOME TAX, COMPANIES-II and another v. HAMDARD DAWAKHANA (WAQF), KARACHI (PLD 1992 Supreme Court 847). The relevant extract from the same is reproduced below: -

“12. Before parting with the judgment we may observe that in cases where any party resorts to a statutory remedy against an order he cannot abandon or bypass it without any valid and reasonable cause and file Constitution petition challenging the same order. Such practice, in cases where statute provides alternate and efficacious remedy upto High Court, cannot be approved or encouraged. In a recent judgment of this Court in CA. No.79-K of 1991, one of us (Ajmal Mian, J.) in similar situation observed as follows:

"We may now revert to the question, whether the appellant was justified to file above Constitution petition against the order of the Tribunal instead of invoking section 136 of the Ordinance for making a reference to the High Court. According to Mr. Rehan Naqvi, a reference under the above provision would not have been adequate and efficacious remedy as it would have taken years before it could have been heard. The same could be true for a Constitution Petition.

The tendency to bypass the remedy provided under the relevant statute and to press into service Constitutional jurisdiction of the High Court has developed lately, which is to be discouraged. However, in certain cases invoking of Constitutional jurisdiction of the High Court instead of availing of remedy provided for under the relevant statute may be justified, for example when the impugned order/action is palpably without jurisdiction and/or mala fide. To force an aggrieved person in such a case to approach the forum provided under the relevant statute may not be just and proper.

In the present case, the appellant had opted to avail of the hierarchy of forums provided for under the Ordinance upto the stage of filing of appeal before the Tribunal and, therefore, it would have been proper on the part of the appellant to have invoked section 136 of the Ordinance for making a reference to the High Court instead of filing a Constitutional petition. In our view, once a party opts to invoke the remedies provided for

W.P.No.2154 of 2022

under the relevant statute, he cannot at his sweet will switch over to Constitutional jurisdiction of the High Court in the mid of the proceeding in the absence of any compelling and justifiable reason."

Reference can also be made to TRADING CORPORATION OF PAKISTAN versus DEVAN SUGAR MILLS LIMITED and others (PLD 2018 Supreme Court 828).

*10. For the foregoing reasons, this petition is not maintainable. Resultantly, the same is **dismissed** with no order as to costs.*

(MIRZA VIQAS RAUF)
JUDGE

Approved for reporting.

JUDGE