

2023 M L D 1121

[Lahore]

Before Jawad Hassan, J

Mst. MEHR-UN-NISA BEGUM---Petitioner

Versus

LAHORE DEVELOPMENT AUTHORITY through Director General and 5 others---
Respondents

W.P. No. 153723 of 2018, heard on 23rd February, 2023.

(a) Constitution of Pakistan---

----Art. 199---Constitutional petition---Locus standi---Scope---Petitioner claimed that the proposed installation of a tube well in a park reserved for public use and children's recreation would negatively impact the playground---However, the respondents argued that the tube well was to be installed in a vacant area---Validity---Petitioner was not directly affected by any actions taken by the respondents regarding the installation of the tube well, which was solely between the cooperative society and Water and Sanitation Agency (WASA)---Petitioner did not have locus standi to approach the High Court under Article 199 of the Constitution---Constitutional petition was dismissed, in circumstances.

"Judicial Review of Public Actions" page-977 Volume-2 by Justice (Retd.) Fazal Karim rel.

Moulvi Iqbal Haider v. Capital Development Authority and others PLD 2006 SC 394; Sheri-CBE and others v. Lahore Development Authority and others 2006 SCMR 1202; Province of Sindh through Chief Secretary and 8 others v. Syed Kabir Bokhari 2016 SCMR 101; Mrs. Kausar Rashid through Attorney v. Karachi Building Control Authority and 9 others 2017 MLD 1363 and Mian Fazal Din v. Lahore Improvement Trust, Lahore PLD 1969 SC 223 ref.

(b) Constitution of Pakistan---

----Art. 199---Constitutional jurisdiction---Locus standi---Aggrieved party---Scope---It is sine qua non for initiation of proceedings under Art. 199 of the Constitution that the petitioner should have a locus standi to institute the proceedings or in other words the petitioner should be an aggrieved party from the action of the respondent.

Montgomery Flour and General Mills Ltd., Montgomery v. Director, Food Purchases, West Pakistan and others PLD 1957 (W.P) Lahore 914; Imran Khattak and another v. Ms. Sofia Wagar Khattak, PSO To Chief Justice and others 2014 SCMR 122; Hafiz Hamadullah v. Saifullah Khan and others PLD 2007 SC 52 and N.W.F.P. Public Service Commission and others v. Muhammad Aril and others 2011 SCMR 848 rel.

Mian Fazal Din v. Lahore Improvement Trust, Lahore PLD 1969 SC 223 ref.

Muhammad Javed Iqbal Qureshi for Petitioner.

Sahibzada Muzaffar Ali Khan, Advocate Supreme Court for LDA.

Mian Muhammad Saqlain for Respondent No. 4.

Zerak Elahi, Vice Counsel for WASA.

Date of hearing: 23rd February, 2023.

JUDGMENT

JAWAD HASSAN, J.---The Petitioner through this writ Petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 (the "Constitution") has prayed as under:

"In view of the above submissions, it is most respectfully prayed that the instant writ Petition my graciously be accepted and act of the Respondents with regard to construction of Tube-Well in the area reserved for Park/Green Belt may graciously be declared illegal, unlawful, mala fide, violative to the law laid down by the august Supreme Court of Pakistan as well as by this Honourable Court with the direction to the Official Respondents to take prevented measures to save the area reserved for Park situated in Block-C of the Society, in the best interest of Society and its Members.

It is further prayed that till final disposal of the instant writ Petition, the Respondents may kindly be restrained from constructing Tube-Well in the area reserved for Park as well as Green Belt, which shall meet the ends of justice.

Any other relief deemed judicious, conducive and appropriate may kindly be awarded to the Petitioner to meet the supreme ends of justice, fair play, equity and transparency."

2. Brief facts of the case are that the Petitioner is resident member of the Respondent No.4/LARECHS Cooperative Housing Society Limited (the "Society"), wherein Park measuring 08 kanals is established and utilized by inhabitants of the Society. It is averred in the Petition that the officials of the Society started construction/establishment of tube-well in the aforesaid reserved area, which is not permissible under the law. Whereupon the Petitioner moved various Applications in the office of the Society beside a Petition under section 54 of the Cooperative Societies Act, 1925 (the "Act") before the Respondent No.3/Registrar Cooperatives Punjab but no positive action has been taken place. Hence, this Petition.

3. Learned counsel for the Petitioner submits that the Petitioner along with other members are residents of Society who are adversely aggrieved by the installation of tube well on the park area which has been reserved for the use of public and recreation of children for their playground. He submits that by installation of tube well in the park, fundamental rights of the Petitioner and others to access public places under Article 26 of the Constitution will be infringed upon, which

clearly states that "in respect of access to places of public entertainment or resort, there shall be no discrimination against any citizen on the ground only of race, religion, caste, sex, residence or place of birth". He further contends that under Article 9 of the Constitution, it is the fundamental right of every citizen of life necessities and liberty. In order to strengthen his argument, he relied on "Moulvi Iqbal Haider v. Capital Development Authority and others" (PLD 2006 SC 394), "Sheri-CBE and others v. Lahore Development Authority and others" (2006 SCMR 1202), "Province of Sindh through Chief Secretary and 8 others v. Syed Kabir Bokhari" (2016 SCMR 101) and "Mrs. Kausar Rashid through Attorney v. Karachi Building Control Authority and 9 others" (2017 MLD 1363).

4. Conversely, Sahibzada Muzaffar Ali Khan, ASC for the Respondent/LDA has objected qua maintainability of this Petition by stating that the Petitioner did not approach this Court with clean hands and has no locus standi. He added that as per approved scheme plan the Plot No.34-C where the Petitioner is allegedly residing, does not exist as the scheme does not contain Blocks.

5. Learned counsel for the Respondent No.4/Society submitted that though the Petitioner is bona fide member of the Society but the property in question is not reserved for Park as per the Layout Plan of the Society.

6. Learned counsel for WASA submitted that the disputed area is a triangular patch of few yards only which is lying between the two roads independently. The said area is neither shown as park in the plan nor is an established/developed park. He further stated that the Respondent/ WASA only drilled a small dia test bore about 600 feet down the earth to test the quality of water down the area as the upper aquifer of the area has been found contaminated. He further stated that the aforesaid drilling was made with consensus of administration of the Society but till today tube well has not been installed due to pendency of this Petition.

7. Arguments heard. Record perused.

8. The gist of the issue in hand is the installation of tube-well which, according to version of the Petitioner, is going to be installed in the park reserved for public use and recreation of children for their playground but stance of the Respondents is that it is to be installed at a vacant area/place.

9. When confronted whether writ is maintainable against the Respondent No.4/Society, which is not a person as per Article 199(5) of the Constitution and what is her locus standi to file this Petition, learned counsel for the Petitioner has no answer to it.

10. However, during proceedings of the case, Mr. Faisal Maqsood Khan, Advocate was appointed as Local Commission to visit the site, take photographs of the site, corroborate whether tube-well is going to be installed in the park or in an open area of the Society/Respondent No.4 and also check the record of concerned department/society to ascertain whether the disputed place has been reserved for park or an open area? Accordingly the Local Commission submitted his report by stating that he visited the site in question and measured its area, which is 09 "marlas" and 3 "sarsai" and is an open space/place according to layout plan and

has not been reserved for any park by the Respondent No.4/Society. He further stated in report that version of the Petitioner is not correct and nothing was found on the site as stated in the Petition.

11. Moreover, the Respondents in their replies submitted that the Respondent/WASA only drilled a small dia test bore about 600 feet down the earth to check/test the quality of water and the said drilling was made with consensus of administration of the Society.

12. It is sine qua non for initiation of proceedings under Article 199 of the Constitution that the Petitioner should have a locus standi to institute the proceedings or in other words the Petitioner should be an aggrieved party from the action of the Respondents. Pivotal judgment of the apex Court on this issue is Mian Fazal Din v. Lahore Improvement Trust, Lahore (PLD 1969 SC 223) and the Lahore High Court titled Montgomery Flour and General Mills Ltd., Montgomery v. Director, Food Purchases, West Pakistan and others (PLD 1957 (W.P) Lahore 914) wherein it was observed that for a person to have locus standi to initiate a petition for issuance of writ, he must have some right in the matter in that strict sense of the term which is provided in article 170 of the Constitution. In the case titled Dr. Imran Khattak and another v. Ms. Sofia Wagar Khattak, PSO To Chief Justice and others (2014 SCMR 122) the Hon'ble Supreme Court of Pakistan held as follows:

"It would exercise such jurisdiction under Article 199(1)(a)(i), (ii) and (c) on the application of an aggrieved person while under 199(1)(b)(i) and (ii) on the application of any person whether aggrieved or not, and not on an information or on its own knowledge. In the case of "Tariq Transport Company, Lahore v. Sargodha Bhera Bus Service and others" (PLD 1958 SC (Pak) 437), this Court held that a High Court was not competent merely on an information or on its own knowledge to commence certiorari proceedings or other proceedings of a similar nature under Article 170 of the Constitution of Islamic Republic of Pakistan, 1956. In the case of "Fazl-e-Haq, Accountant General, West Pakistan v. The State" (PLD 1960 SC (Pak) 295), this Court reiterated the view by holding that the extraordinary jurisdiction relating to a writ could only be exercised by the High Court when moved by a party whose legal rights have been denied."

Moreover, in Hafiz Hamadullah v. Saifullah Khan and others (PLD 2007 SC 52) the apex Court held as follows:

"With regard to the first objection it may be noted that under Article 199(1)(a) of the Constitutional jurisdiction of the High Court can be invoked by an aggrieved person which denotes a person who has suffered a legal grievance, against whom a decision has been pronounced which has wrongfully deprived him or wrongfully refused him something which he was legally entitled to. It is also the requirement that the person invoking the constitutional jurisdiction under Article 199 of the Constitution has to establish that any of his legal or fundamental right guaranteed under the Constitution has been violated resulting in legal loss."

Further, in N.W.F.P. Public Service Commission and others v. Muhammad Aril and others (2011 SCMR 848) it was observed as follows:

"The right which is the foundation of an application under Article 199 of the Constitution is a personal and individual right. The legal right may be a statutory right or a right recognized by the law. A person can be said to be aggrieved only when a person is denied a legal right by someone who has a legal duty to perform relating to the right. There must not only be a right but a justiciable' right in existence, to give jurisdiction to the High Court in the matter. Unless whatever right personal or otherwise, on which the application is based is established, no order can be issued under Art.199."

13. In view of the above judgments of Hon'ble Supreme Court of Pakistan and from the facts of the case, it is evident that the Petitioner is not aggrieved from any orders, acts or proceedings done or taken against her by the Respondents. Infact, the installation of tube well is only between the Respondent No.4/Society and the Respondent No.5/WASA, which has nothing to do with the Petitioner, therefore, the Petitioner is not an aggrieved person to approach this Court under Article 199 of the Constitution. Hon'ble Mr. Justice (R) Fazal Karim in his book "Judicial Review of Public Actions" has elaborated the distinction between "Aggrieved Party" and "Aggrieved Person" at page-977 Volume-2 which reads as follows:

"Distinction between "Aggrieved Party" and "Aggrieved Person"

It will be noticed that sub-clause (a) of clause (1) of Article 199 of the Constitution uses the expression "aggrieved party" while sub-clause (c) of clause (1) of that Article uses the expression "aggrieved person". On general principle, when the Legislature uses two different expressions, the intention is to convey different meanings. The word "party" can assume importance in cases in which there had been proceedings under the relevant statute to which the applicant under Article 199 was not a party, as it did in Haji Adam v. Settlement and Rehabilitation Commissioner. But the word "party" as used in Article 199, clause (1)(a) means one who is competent to maintain an action, and a person not a Party to the proceeding under the relevant statute, can seek relief under Article 199, if he shows that the decision is directed against him or his property in the sense that the enforcement of the decision would involve special, immediate and in its effect a direct injury to his interest." (Tariq Transport Company Case- PLD 1958 SC (Pak) 437).

Similarly at page-980 of the "Judicial Review of Public Actions" Locus Standi is elucidated in the following terms:

"Locus Standi is a Question for Decision, not of Discretion.

The question whether an applicant is or is not an aggrieved party or person within the meaning of Article 199 is not a matter in the discretion of the Court. "The matter is one for decision, a mixed decision of fact and law, which the Court must decide on legal principles" (Lord Wilberforce in IRC v. Fed of Self Employed (1981) 2 All ER 93).

Object of this Provision

The right to be satisfied about the applicant's locus standi, said Lord Scarman in IRC v. Fed. Of Self Employed [(1981)2 All ER 93J enables the Court to prevent abuse by busy bodies, cranks

and other mischief-makers. It is as Lord Wilberforce said in the same case, an important safeguard against the Court being flooded and public bodies harassed by irresponsible applications."

14. From the perusal of record it is evident that the Petitioner is not aggrieved and has no locus standi to file this petition. On the touchstone of the above principles of the apex Court and the foregoing reasons, the instant petition is not maintainable and is hereby dismissed.

SA/M-53/L Petition dismissed.