

**ORDER SHEET**  
**IN THE ISLAMABAD HIGH COURT, ISLAMABAD**  
**(JUDICIAL DEPARTMENT)**

**“Diary No. 8428/2020”**

Mst. Attiya Jahangir  
*Versus*  
Chief Executive Officer EMAAR

S.No. of order/ proceeding	Date of order/ proceedings	Order with signature of Judge and that of parties or counsel where necessary.
(01)	23.07.2020	Mr. Muhammad Ramzan Khan, Advocates for the petitioner.

Through this petition, the petitioner has invoked the jurisdiction of this Court, filed under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 with the following prayer with the following prayer:-

*“Under the above said circumstances, it is humbly prayed that he instant petition may kindly be accepted, the impugned order dated 24.06.2020 and 08.05.2020 may kindly be declared illegal, unlawful and without lawful authority and may please be set-aside, as a consequence thereof respondent may kindly be directed to handover the possession of Villa NO.20, Prados Villas EMAAR DHA Phase-V Islamabad,, alongwith consequential/back benefits in the best interest of justice.*

*Any other relief with cost which this honorable Court deems fit and appropriate may also be granted.”*

2. The petitioner is aggrieved by the retrospective cancelation of Villa No.20, Prados Villas EMAAR- DHA Phase-V, Islamabad, and forfeiture of an amount of Rs.11,200,000/- by the respondent. The said Villa was purchased by the petitioner in august 2016 through an agreement with the respondent who is a private person.

3. The respondent in the instant petition is Chief Executive Officer EMAAR, Pakistan, DHA Phase-V, Sector-E, Islamabad, not exercising public functions in connection with the affairs of the Federation, and thus no writ can lie against him.

4. The fundamental question for consideration is the scope of the bar contained under Article 199 (5) of the Constitution and how it has been interpreted by the august Supreme Court in various judgments. It would, therefore, be relevant to reproduce Article 199 (5) of the Constitution for ease of reference, which is as under:-

*"In this Articles, unless the context otherwise requires; "person" includes any body Politic or Corporate, any Authority of or under the control of the Federal Government or of a Provincial Government, and any Court or Tribunal, other than the Supreme Court, a High Court or a Court or Tribunal established under a Law relating to the Armed Forces of Pakistan;"*

5. It is obvious from a plain reading of Article 199 (5) that a Court is indeed a person for the purposes of Article 199 (1) (a) (i) (ii). However, the august Supreme Court, a High Court or a Court or Tribunal established under a law relating to the Armed Forces of Pakistan have been excluded. A constitutional petition invoking jurisdiction under Article 199 is, therefore, barred against the said three categories of Courts or Tribunals.

6. Through this petition, the petitioner seeks enforcement of a contract against a private person which is not maintainable. Reliance in this regard is placed upon the case of "Abdul Wahab and another vs. HBL, and others" (2013SCMR 1383) wherein it has been clearly laid down that writ petition is not maintainable against a private bank as it does not qualify the status of a person authority within the meaning of article 199 of the Constitution. The issue involved in the instant case relates to the contractual obligations which cannot be agitated before this Court in exercise of its constitutional jurisdiction, as such, since the respondent is a private body therefore, writ petition is not maintainable against it. Further the petitioner has alternate

remedy of filing a civil suit before the competent Court of jurisdiction for enforcement of the contractual obligation against the respondent

7. For what has been discussed hereinabove, the office objection is sustained. File be consigned to the record room.

**(GHULAM AZAM QAMBRANI)**  
**JUDGE**  
✓

*Rana M. Ift \**