

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT:

MR. JUSTICE MUSHIR ALAM
MR. JUSTICE SARDAR TARIQ MASOOD
MR. JUSTICE SAYYED MAZAHAR ALI AKBAR NAQVI

CIVIL PETITION NO. 1134-L OF 2018

(On appeal against judgment dated 01.03.2018 passed
by the Lahore High Court, Lahore in Intra Court
Appeal No. 1392/2017)

Province of Punjab through Secretary Communication and Works
Department, Lahore through Chief Engineer (North/Central)
Punjab Highway Department, Lahore

... Petitioner

VERSUS

Yasir Majeed Sheikh etc

... Respondents

For the Petitioner: Barrister Qasim Ali Chohan, Addl. A.G.
Mr. Asif Bashir, Deputy Director Legal

For Respondent (1): Barrister Umer Riaz, ASC

Date of Hearing: 15.01.2021

JUDGMENT

SAYYED MAZAHAR ALI AKBAR NAQVI, J.- Through this petition under Article 185(3) of the Constitution of Islamic Republic of Pakistan, the petitioner has called in question the legality of the impugned judgment dated 01.03.2018 passed by the Lahore High Court, Lahore, whereby the Intra Court Appeal filed by the petitioner was dismissed and hence the judgment dated 07.06.2017 of the learned Single Judge in Chambers was maintained, whereby the Writ Petition filed by the respondent No. 1 for getting access of his petrol pump from the main carriage way was allowed.

2. Briefly stated the facts of the matter are that in the year 2004, the respondent No. 1 installed a petrol pump on Lahore-Kasur Road. At that time, he was given access from the

main road but subsequently the access from the main road was denied by the Punjab Highway Department, which led to filing of Constitutional Petition by the respondent before the learned Lahore High Court, Lahore. The learned Single Judge in Chambers of the High Court vide judgment dated 07.06.2017 allowed the Constitutional Petition by directing the petitioner to provide access points to the petrol pump of the respondent No. 1 from the main Lahore-Kasur Road in the shape of entry and exit. Being aggrieved, the petitioner filed Intra Court Appeal before the learned Lahore High Court but the same has been dismissed vide impugned judgment dated 01.03.2018. Hence, this petition seeking leave to appeal.

3. Learned Additional Advocate General *inter alia* contended that most of the petrol pumps, which have been given direct access are not situated in front of the green belt whereas the petrol pump of the respondent is situated in front of the green belt, therefore, no question of discrimination arises; that the learned Single Judge as also the learned Division Bench did not inquire from NESPAK to explain their design of the dual carriageway so that if access is granted to the respondent's petrol pump what could be the possible consequences in terms of road safety and other traffic related hazards; that no fundamental right of the respondent has been infringed by declining him direct access as he is specifically been given access from the alternate road, which is 360 feet away and that the impugned judgments are not maintainable in the eyes of law.

4. Learned counsel for the respondent No. 1, on the other hand, defended the impugned judgment. He contended that there are other petrol pumps which have been given direct access whereas the same has been denied to the respondent and that right of a roadside owner to have access to the highway is a fundamental right, which is protected under the constitution and, therefore, the writ petition was maintainable.

5. We have heard learned Law Officer as also learned counsel for the respondent and have perused the record.

6. We have specifically confronted learned counsel for the respondent as to how the writ petition was maintainable when the

respondent was claiming direct access from the main road, which is an easementary right, to which he stated that right of roadside owner to have access to the highway is a fundamental right, which is protected under the Constitution and for the grounds of discrimination writ petition was filed. The learned High Court while allowing the writ petition of the respondent mainly observed that only the respondent's petrol pump has been denied access from the main road, which is violation of Article 18 of the Constitution. However, we have noted that same is not the case here. According to the reports of local commissions, which were formed during the proceedings before the High Court, although some of the petrol pumps have been given access from the main road but at the same time there are petrol pumps, which have no direct approach, therefore, the question of discrimination does not arise. There is no cavil that Article 18 of the Constitution of Islamic Republic of Pakistan guarantees every citizen the right of freedom of trade, business or profession but this right of the respondent has not been infringed, because although he has been denied access from the main road but he has the access from alternate route i.e. service road, which is 360 feet away from the main road. In these circumstances, existence of right of easement in respect of the respondent is a question of fact, which needs to be decided after recording of evidence and the same could not have been done in the constitutional jurisdiction. Extraordinary writ jurisdiction in such like situations, which is based upon factual propositions, should not be exercised mere on the apprehension of the party. The jurisdiction conferred on the High Courts under Article 199 of the Constitution is an extraordinary relief and the same has to be exercised in aid of justice and not to interfere in jurisdictions of other statutory forums unless it is shown that order, action or inaction is in violation of any provision of law or without lawful authority or jurisdiction. When the law has provided an adequate remedy, constitutional jurisdiction under Article 199 of the Constitution cannot be exercised as the same has to be exercised in exceptional circumstances, which could justify invoking the said jurisdiction. It has time and again been said by this Court that propensity to bypass remedy provided under relevant statute by

resorting to constitutional jurisdiction is to be discouraged so that legislative intent is not defeated. The same is meant to be exercised in extraordinary circumstances and not in run of the mill cases. Therefore, we are compelled to observe that the very constitution petition was not maintainable as disputed question of facts were involved, which cannot be decided unless evidence is recorded to that effect. Learned counsel for the respondent has cited certain judgments but those are squarely distinguishable on the facts and law, therefore, of no avail to the respondent in any manner.

7. For what has been discussed above, we convert this petition into appeal, allow it and set aside the impugned judgment of the learned Division Bench dated 01.03.2018 as also the judgment of the learned Single Judge in Chambers dated 07.06.2017. Needless to observe, the respondent can approach the Court of competent jurisdiction for redressal of his grievance in accordance with law, if so advised.

JUDGE

JUDGE

JUDGE

Islamabad, the
15th of January, 2021
Approved For Reporting
Khurram