

**SUPREME COURT OF PAKISTAN**  
(Appellate Jurisdiction)

**PRESENT:**

Justice Yahya Afridi, CJ  
Justice Musarrat Hilali  
Justice Shakeel Ahmad

**Civil Petitions No. 182-Q/2017 and 191-Q/2017**

*(Against the judgment dated 07.09.2017, passed by the High Court of Balochistan Quetta in CP No. 267/2012)*

Fareedullah Khan & others (in CPLA 182-Q/2017) ...Petitioner(s)

Province of Balochistan through Secretary C&W  
Department Government of Balochistan & others  
(in CPLA No. 191-Q/2017)

***Versus***

Province of Balochistan through Secretary C&W ...Respondents  
Department Govt. of Balochistan & others (in  
CPLA 182-Q/2017)

Fareedullah Khan & others (in CPLA No. 191-Q/2017)

For the Petitioner(s) : Mr. Khalil Ahmed Panezai, ASC  
Mr. Abdus Saleem Ansari, AOR  
(in CP No. 182-Q/2017)  
  
Mr. Zahoor Ahmad Baloch, Addl.  
AG, Balochistan (in CP No. 191-Q/2017)

For the Respondent(s) : Mr. Zahoor Ahmad Baloch, Addl.  
AG, Balochistan (in CP No. 182-Q/2017)  
  
Mr. Khalil Ahmed Panezai, ASC  
Mr. Abdus Saleem Ansari, AOR  
(in CP No. 191-Q/2017)

Date of Hearing : 14.07.2025

**ORDER**

**Shakeel Ahmad, J.-** These petitions for leave to appeal under Article 185(3) of the Constitution of Islamic Republic of Pakistan, 1973, are directed against the judgment dated 07.09.2017, passed by the High Court of Balochistan, Quetta (***“the High Court”***), whereby and whereunder C.P No.267 of 2012 was allowed, directing the respondents No. 1 & 2 (***“the C&W Department”***) to pay Rs. 20,12,668/- to the petitioners (***“legal heirs of the contractor”***) out of the security amount.

2. Facts and circumstances giving rise to instant petitions are that father of the petitioners, Farid Ullah Khan & others, (***“the contractor”***) was awarded a contract in the year 1986 for construction of building of the Balochistan High Court by

the C&W Department, however, on account of unsatisfactory performance, he was blacklisted by the C&W Department on 21.07.1991, thereby his security was forfeited. Feeling aggrieved, the contractor filed a suit, which was decreed vide judgment and decree dated 04.05.2006. However, due to failure on the part of C&W department to release the security amount to him, he filed an execution application before the executing Court for implementation of judgment of the trial Court. The executing Court dismissed the execution application on 20.05.2009, declaring that there is no mention of release of the security amount in favour of the contractor. Feeling aggrieved, the contractor filed a Civil Miscellaneous Appeal, before the High Court, during its pendency he embraced death, as such, the petitioners/ his legal heirs were arrayed in the panel of petitioners. The High Court, keeping in view the controversy of payment of security amount, converted the appeal into a Constitution Petition, issued notice to the C&W Department, directing it to submit details of the amount allegedly paid to the contractor and, after making factual inquiry in this regard, partly allowed the petition, directing the C&W Department to pay Rs. 20,12,668/- to the legal heirs of the contractor out of security amount within a period of thirty days vide impugned judgment dated 07.09.2017. The legal heirs of the contractor are of the view that they are entitled to recover total security amount i.e. Rs. 68,67,668/-, hence, being aggrieved of the partial recovery of the security amount, they filed Civil Petition No. 182-Q of 2017 while the C&W Department being unhappy with the impugned judgment has filed Civil Petition No. 191-Q of 2017.

3. Heard and record perused.

4. It is an admitted fact that in earlier round of litigation, the contractor brought a suit, seeking the following relief:

*"It is therefore, prayed that this Honourable Court may be pleased to pass a decree in favour of the plaintiffs in the following terms:*

*a. Declaring that the plaintiff is "A" class contractor of no limit and is entitled to carry out the work throughout Balochistan as such, also declaring that office order No. 70- 82 /CE/ C&W/ 1270/W-II*

- dated 21.07.1991 passed by the defendant No.2 is illegal and subsequent letter issued on the basis thereof to various departments of the Government is also illegal and of no legal effect.*
- b. The defendants may be restrained by permanent injunction from interfering with the plaintiff's rights as "A" class contractor of no limit registered as such, and they may be restrained from acting on the impugned order dated 21.07.1991 and letter based thereon.*
  - c. Any other relief in lieu of or in addition to the above which this honourable Court may deem fit in the circumstances of the case may also be granted.*
  - d. Cost of the suit may be awarded to the plaintiff in the interest of justice"*

The suit of the contractor was decreed only to the extent of claim "A" & "B" vide judgment and decree dated 04.05.2006. His request for release of the security amount on the basis of the said judgment and decree was declined by the C&W Department. Being aggrieved of the same, the contractor filed an execution application before the executing Court, seeking release of security amount basing his claim on the judgment and decree dated 04.05.2006. On coming to the conclusion that, the suit to the extent of release of security amount was not decreed in favour of the contractor, the executing Court dismissed his application vide order dated 20.05.2009, against which the contractor filed appeal before the High Court, during its pendency, he embraced death whereafter his legal heirs (petitioners in CP No. 182-Q/2017) were impleaded as petitioners.

5. We find from the record that after converting the appeal into Constitution petition, the High Court, requisitioned the record from the C&W Department, examined the same and after making a factual inquiry, allowed the petition, directing the C&W Department to pay Rs. 20,12,668/- to the legal heirs of the contractor out of total amount i.e. Rs. 68,67,668/-. It is by now settled that the High Court, while exercising jurisdiction under Article 199 of the Constitution of Islamic Republic of Pakistan, cannot entertain matters requiring factual inquiry, it is the prerogative and privilege of the trial Court to examine such

controversies so as to be disposed of on merit after taking into consideration the evidence led by the parties. A perusal of the prayer clause set out in the plaint reflects that the petitioners have not made any prayer for release of security amount. The order for release of the security amount by the High Court in its Constitutional jurisdiction was objected by the C&W Department stating that it has already been released to the contractor. In our view, the factual controversy raised by the parties can only be resolved after recording pro and contra evidence through a civil suit. The High Court mainly keeping in view exigency in the matter involved, decided to get such matter examined by summoning official record, carrying out full-fledged inquiry in presence of the parties, which exercise could not have been done in writ jurisdiction. The scope and ambit of the proceedings before the High Court, in the instant case, was limited to the extent of judgment and decree of the trial Court and the order dated 20.05.2009, passed by the executing Court, dismissing the execution application on the ground that the claim for recovery of the security amount mentioned in execution application was not decreed in favour of the contractor. The High Court has not attended to any of the above stated prayers and the judgment and decree passed by the trial Court, and order of the executing Court, and proceeded to decide the case after making a detailed inquiry. Thus, in our view, the High Court exceeded in its authority by passing the impugned judgment, calling for interference. In this context, reference may be made to Waqar Ahmad's case<sup>1</sup>, wherein it was held as under:-

*"The extraordinary jurisdiction under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 ("Constitution") is destined to dispense with an expeditious remedy in cases where the illegality or impropriety of an impugned action can be established without any exhaustive inquisition or recording of evidence, but if some convoluted or disputed question of facts are involved, the adjudication of which can only be determined by*

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<sup>1</sup> *Waqar Ahmed & others VS The Federation of Pakistan through Cabinet Secretariat, Establishment Division, Islamabad & others (2024 SCMR 1877)*

*the Courts of plenary jurisdiction after recording evidence of the parties, then incontrovertibly the High Court cannot embark on such factual controversy"*

Similarly, in Federal Government Employees Housing Authority's case<sup>2</sup>, this Court ruled that, it is constitutionally impermissible for the Courts to expand and enlarge their jurisdictional domain, which is neither allowed by the Constitution nor by the law.

6. For the foregoing reasons, we are of the considered opinion that the findings, conclusions, and directions issued to the C&W Department for payment of Rs. 20,12,668/- out of the total security amount was beyond the Constitutional mandate and authority of the High Court. Therefore, Civil Petition No. 191-Q/2017 (filed by the Provincial Government of Balochistan) is converted into an appeal and allowed. The impugned judgment is set aside, whereas, the Civil Petition No. 182-Q/2017 filed by the legal heirs of the contractor, seeking release of remaining security amount i.e. Rs. 48,55,000/-, is dismissed and leave refused, leaving them to seek relief from the appropriate forum, if so advised, subject to all just and legal objections from the other side. No order as to costs.

Chief Justice

Judge

Quetta  
14.07.2025  
Zia/\*

Judge

***Approved for Reporting***

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<sup>2</sup> *Federal Government Employees Housing Authority through Director General, Islamabad VS Ednan Syed & others* (PLD 2025 Supreme Court 11)