

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

**PRESENT:**  
**Justice Munib Akhtar**  
**Justice Athar Minallah**

**CIVIL PETITION NO.888 OF 2024**

*(Against the judgment dated 01.2.2024 of the  
Lahore High Court, Rawalpindi Bench passed in  
Writ Petition No.3692 of 2022)*

*Muhammad Safeer and others* ... ***Petitioners***

***Versus***

*Muhammad Azam and others* ... ***Respondents***

For the petitioners: Mr. Taimoor Aslam Khan, ASC

For respondent No.1: Ch. Hafeezullah Yaqoob, ASC  
assisted by Sarang, AHC

Date of hearing: 12.06.2024

**ORDER**

**Athar Minallah, J.-** The petitioners have invoked the jurisdiction of this Court conferred under Article 185(3) of the Constitution of the Islamic Republic of Pakistan, 1973 ('**Constitution**') and they have sought leave against the judgment, dated 01.02.2024, passed by the High Court whereby the petition filed under Article 199 was dismissed solely on the ground of maintainability.

2. An application was filed by Muhammad Azam ('**respondent No.1**') before the revenue officials for demarcation of the property described therein. The Gardawar Halqa ('**respondent No.6**'), after completing the demarcation proceedings, vide report dated 13.10.2021 had concluded that encroachments were made by the petitioners. The latter preferred an appeal before the Assistant Commissioner ('**respondent No.4**') and it was dismissed vide order dated 17.1.2022. The petitioners invoked the revisional jurisdiction and their petition was dismissed by the Additional Commissioner (Revenue) ['**respondent No.3**'] vide order dated 13.4.2022. The petitioners then

assailed the orders before the Member (Judicial-IV), Board of Revenue, Punjab (**'respondent No.2'**) and their revision petition was also dismissed vide order dated 06.12.2022. The petitioners ultimately invoked the constitutional jurisdiction of the High Court, vested under Article 199 of the Constitution, but the petition was dismissed on the sole ground of maintainability. The learned High Court was of the view that the remedy provided under section 8 of the Punjab Board of Revenue Act 1957 (**'Act of 1957'**) was adequate and efficacious and, therefore, the petition under Article 199 was not competent.

3. We have heard the learned counsel for the parties. The petitioners had challenged the orders passed by the respective revenue officials before the High Court by invoking the jurisdiction vested in it under Article 199 of the Constitution. They had raised multiple grounds in their petition for challenging the said orders. However, the High Court was of the opinion that since the remedy by way of review, provided under Section 8 of the Act of 1957, was adequate and efficacious, therefore, the petition under Article 199 of the Constitution was not maintainable.

4. We have noted that the High Court, without adverting to the grounds expressly taken by the petitioners in their petition, concluded that the remedy by way of review provided under section 8 of the Act of 1957 was adequate and efficacious for the purposes of entertaining the petition under Article 199 of the Constitution. It is settled law that the rule that the High Court will not ordinarily entertain a petition under Article 199 when an adequate remedy is available and such remedy only regulates the exercise of constitutional jurisdiction and does not affect its existence. When the law provides an adequate remedy, constitutional jurisdiction under Article 199 will ordinarily only be exercised in exceptional circumstances. The exceptional circumstances

which may justify exercising jurisdiction when an adequate remedy is available are when the order or action assailed before the High Court is palpably without jurisdiction, manifestly *malafide*, void or *corum non judice*. The tendency to bypass a statutory remedy is ordinarily discouraged so that the legislative intent is not defeated. The High Court, while exercising its discretion, must take into consideration the facts and circumstances in each case in order to determine whether the remedy provided under the statute is illusory or not. These principles have been consistently highlighted by this Court.<sup>1</sup>

5. The power of review stems from the statute and, therefore, it is to be exercised by a court or an authority having regard to the conditions and limitations expressly prescribed by the legislature. The scope of review is distinct from that of an appeal. In case of an appeal all questions of fact and law are to be considered but the scope of a review is limited to the conditions and limitations expressly provided under the relevant statute which confers the power. Sub-section (1) of section 8 of the Act of 1957 sets out the scope and the grounds for exercising the power of review. The three grounds expressly stated in section 8(1) of the Act of 1957 are: (i) discovery of new and important matter or evidence which, after the exercise of due diligence, was not within the knowledge or could not be produced by the person seeking review at the time when the decree was passed or the order was made, (ii) some mistake or error apparent on the face of the record and lastly,

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<sup>1</sup> *Commissioner of Income Tax v. Messrs Eli Lilly Pakistan (Pvt.) Ltd.* (2009 SCMR 1279), *Collector of Customs, Customs House, Lahore and 3 others v. Messrs S.M. Ahmad and Company (Pvt.) Limited, Islamabad* (1999 SCMR 138), *Khalid Mahmood v. Collector of Customs, Customs House, Lahore* 1999 SCMR 1881), *Ch. Muhammad Ismail v. FazalZada, Civil Judge, Lahore and 20 others* (PLD 1996 SC 246), *Income-Tax Officer and another v. M/s. Chappal Builders* (1993 SCMR 1108), *Commissioner of Income Tax, companies-II and another v. Hamdard Dawakhana (Waqf), Karachi* (PLD 1992 SC 847), *AbdurRehman v. Haji Mir Ahmad Khan and another* (PLD 1983 SC 21), *The Murree Brewery Co. Ltd. v. Pakistan through the Secretary to Government of Pakistan, Works Division and 2 others* (PLD 1972 SC 279), *Col. Nawabzada Muhammad Amir Khan v. The Controller of Estate Duty and others* (PLD 1961 SC 119), *Tariq Transport Company, Lahore v. The Sargodha-Bhera Bus Service, Sargodha and others* (PLD 1958 SC 437).

‘for any other sufficient reason’. The review jurisdiction conferred under section 8 of the Act of 1957 is, therefore, confined and limited to the said three grounds. This Court has held in the case of Muhammad Din<sup>2</sup> that the expression ‘for any other sufficient reason’ does not extend to every cause which would make the remedy by way of review available but such cause must be relatable to the circumstances as discovery of new and important matter or some mistake or error apparent on the face of the record. The expression, therefore, is to be read ejusdem generis with the preceding expressions or grounds. Any other interpretation would change the nature of the review contrary to the legislative intent, because the legislature had indeed not intended to provide the remedy of an appeal. The scope of the review jurisdiction under section 8 of the Act of 1957 is, therefore, restricted to the grounds expressly prescribed by the legislature.

6. We have gone through the impugned judgment and it is obvious from its plain reading that the High Court, without adverting to the grounds taken by the petitioners, had dismissed the petition solely on the ground that the remedy of review under section 8 of the Act of 1957 was adequate. This conclusion, without examining the grounds taken by the petitioners, was not sustainable. The High Court could only have formed an opinion whether the remedy under section 8 of the Act of 1957 was adequate and efficacious in the light of the facts and circumstances of the matter before it, particularly having regard to the grounds taken by the petitioners in their petition. Any ground taken and not covered within the scope of the jurisdiction of review provided under section 8 of the Act of 1957 would have rendered the remedy illusory and definitely not adequate for the purposes of exercising jurisdiction under Article 199 of the Constitution. This

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<sup>2</sup>Muhammad Din and others v. Muhammad Amin and others (PLD 1994 SC 288)  
Riaz Hussain and others v. Board of Revenue and others (1991 SCMR 2307)

Court, in the case of Syed Asad Hussain<sup>3</sup> has observed that the expression adequate remedy represents an efficacious, reachable, accessible, advantageous and expeditious remedy. The High Court, therefore, misdirected itself by excluding from consideration the grounds taken by the petitioners so as to determine whether the review jurisdiction was adequate in the context of exercising jurisdiction vested in it under Article 199 of the Constitution. Moreover, the expansive interpretation given to the expression 'for any other sufficient reason' amounted to changing the scope of the review jurisdiction not intended by the legislature. If the High Court, after examining the grounds taken by the petitioners and the facts and circumstances of the case in hand was satisfied that they were covered within the scope of the remedy expressly provided under section 8 of the Act of 1957 then it would have been justified in deciding the question of maintainability of the petition under Article 199 of the Constitution. We are afraid that this was not what the High Court did in the case before us.

7. For the foregoing reasons, we convert this petition into an appeal and the same is allowed by setting aside the impugned judgment. Consequently, we remand the matter to the High Court for deciding the question of maintainability in the light of the principles highlighted above.

Judge

Judge

**Islamabad the**

12<sup>th</sup> June 2024

**APPROVED FOR REPORTING**

*Aamir Sheikh/Rameen Moin*

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<sup>3</sup>Syed Asad Hussain and others v. Syed Ghulam Khatib (2023 SCMR 325)