JUDGMENT SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD

W.P. NO. 886 OF 2025

Mirza Dil Muhammad deceased through his legal heir Mirza Manzoor Hussain.

….Petitioner

Versus

Fazaia Housing Scheme etc

…Respondents

Petitioner by : **Mr.Shabbir Hussasin Dheloon, Advocate.**

Respondents by : **Syed Tassadaq Hussain Naqvi, Advocate. and Adnan Awan, Advocate for R.Nos. 1 to 4.**

Date of hearing : **06.05.2025**

MUHAMMAD AZAM KHAN, J.

1. Through the instant Writ Petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 **("Constitution")**, the Petitioner seeks direction to the Respondents to make the payment of the compensation of the land. The Petitioner seeks declaration to the effect that the Agreement dated 20.06.2023, is illegal and unlawful, and further prays that, in the event of non-payment of compensation, possession of the acquired land be restored to the Petitioner.

2. The facts giving rise to the filing of the instant Writ Petition are that the predecessor-in-interest of the Petitioner had migrated from Jammu and Kashmir during the partition of the subcontinent in 1947 and settled in Rawalpindi. Being a refugee, the Settlement Department allotted 99 Kanals 15 Marlas of land to the predecessor of the Petitioner through R.L-II and R.L-III in Mouza Chowhan, District Islamabad, out of which land measuring 94 Kanals 5 Marlas was acquired by Respondent No.1 in the year 1990. The possession was taken over by the Respondents' society in the year 1990 but compensation was not

paid; instead, the Respondent Society initiated litigation just to prolong the payment of compensation. It is averred that the litigation remained pending till 2023, but the Respondent Society failed to hatch its evil designs; even the leave to appeal of the Respondent Society was dismissed by the august Supreme Court of Pakistan.

3. After completion of the first round of litigation, an Agreement was executed between the parties on 20.06.2023 under coercion and threats. It is also alleged that the Respondent Society called Manzoor Hussain, son of Dil Muhammad, where Respondent No.4 extended threats to him and thereafter offered compensation in the shape of two plots of 500 Yards, which offer was refused. The Petitioner reported the matter to Respondent No.2 through an application dated 13.11.2024, who also turned a deaf ear to the claim of the Petitioner and instead treated the Petitioner harshly. Having been disappointed by the conduct of the Respondents, the Petitioner has invoked the Constitutional jurisdiction of this Court, praying therein that the so-called Agreement dated 20.06.2023 be declared illegal and unlawful, and further that if the Respondents fail to pay compensation to the Petitioner, the possession of the land be ordered to be delivered to the Petitioner.

4. The learned counsel for the Petitioner contended that the land measuring 94 Kanals and 5 Marlas, which was acquired by Respondent No.1 in 1990, was never compensated for despite the passage of over three decades. The Petitioner asserted that the Respondents deliberately prolonged litigation to avoid their obligation, culminating in the dismissal of the Respondents' leave to appeal by the august Supreme Court in 2023. Following the end of litigation, an agreement dated 20.06.2023 was executed, which the Petitioner claims was obtained through coercion and threats, particularly by Respondent No.4, who allegedly threatened Manzoor Hussain and attempted to compensate the Petitioner with two plots of 500 yards each, an offer that was declined. The Petitioner further stated that an application submitted to Respondent No.2 on 13.11.2024 went unheeded, and instead of redress, the Petitioner was met with hostility. It is argued that in these exceptional circumstances, where administrative remedies have failed, and fundamental rights are at stake, the Constitutional jurisdiction of this Court under Article 199 is to be invoked. The Petitioner sought a

declaration that the Agreement dated 20.06.2023 is illegal and void, and that in the absence of compensation, the land in question should be restored to the Petitioner.

5. In response, the learned counsel for the Respondents submitted that the Writ Petition is not maintainable. He argued that the relief sought by the Petitioner namely the declaration of nullity of the Agreement dated 20.06.2023 and recovery of compensation or possession, raises complex and disputed questions of fact. Such matters, particularly those involving allegations of coercion, require detailed evidence which cannot be recorded or assessed in writ proceedings. The appropriate forum for such adjudication, according to the Respondents, is a Civil Court. Furthermore, the learned counsel pointed out that Fazaia Housing Scheme is a private entity not created under any statute and not discharging any public function. As such, no writ can be issued against it under Article 199 of the Constitution. The Constitutional jurisdiction is limited to enforcement of public law obligations and cannot be used to resolve private contractual disputes or enforce civil rights where an adequate and efficacious remedy exists under the ordinary law. The learned counsel for the Respondents contended that when a statutory or civil remedy is available, such as under the Land Acquisition Act, 1894, a writ petition is not the appropriate course. He submitted that the Petitioner's grievances relate to compensation and contractual entitlements that fall squarely within the jurisdiction of the Civil Court and not within the writ jurisdiction of this Court.

6. A pre-admission notice was issued to the Respondents, and the matter was fixed for arguments on the maintainability of the Writ Petition.

7. Arguments heard and record perused.

8. A careful perusal of the record reveals that the primary relief sought in this petition is the declaration of the Agreement dated 20.06.2023 as illegal, and a consequential relief of return of possession of land if compensation is not paid. The entire dispute revolves around the validity, enforceability, and interpretation of an Agreement executed between private parties. The issues raised are inherently

factual in nature and require the recording of pro and con evidence, including but not limited to the question of free consent, the terms of compensation, and the conduct of parties leading to the Agreement. It is well-settled that matters involving disputed questions of fact and requiring detailed factual inquiry cannot be adjudicated in exercise of constitutional jurisdiction under Article 199 of the Constitution. It is a settled proposition of law that when an alternative legal remedy is available, particularly through statutory procedures such as filing a civil suit or seeking a reference under the Land Acquisition Act, 1894, a Writ Petition under Article 199 of the Constitution is not maintainable. The Land Acquisition Act, 1894, provides a comprehensive mechanism for addressing grievances related to land acquisition, including disputes over compensation and the legality of the acquisition process. The statutory remedies are considered adequate and comprehensive, and Constitutional jurisdiction should not be invoked when an alternative remedy exists. This approach ensures that matters related to land acquisition are addressed through the established legal framework, promoting consistency and finality in legal proceedings.

9. The claim of the Petitioner regarding alleged non-payment of compensation for land purportedly taken several decades ago gives rise to disputed questions of fact which cannot be adjudicated upon in writ jurisdiction under Article 199 of the Constitution. A civil suit for recovery of compensation is a well-established statutory remedy available to the Petitioner under ordinary civil law. Where such an alternative and efficacious remedy exists, the High Court would ordinarily refrain from exercising its writ jurisdiction. It is trite law that where an adequate remedy is available under the law, particularly in matters involving factual controversies, the Petitioner must first exhaust such remedies before approaching this Court. Reliance is placed on *Muhammad Zaman v. Government of Punjab* ***(PLD 2019 SC 1)***, wherein the apex Court held that writ jurisdiction is not a substitute for civil proceedings where the matter involves questions of title, possession, or compensation.

10. The second limb of the Petitioner's case is also legally untenable. Fazaia Housing Scheme, from the record and arguments presented, is not a statutory body created under any statute, nor does it perform any

public function amenable to writ jurisdiction. It is evidently a private entity, and hence, no writ lies against it under Article 199 of the Constitution. Writ jurisdiction is generally available against public functionaries or statutory bodies performing public duties. No writ can be issued against a purely private body in matters of private law unless it can be demonstrated that such a body is discharging public functions or is under statutory obligation, which is not the case here. Reliance is placed on *Pakistan Defence Officers Housing Authority v. Lt. Col. Syed Jawaid Ahmed* ***(2013 SCMR 1707)***, wherein it was held that writ lie only against persons or bodies performing public functions or under statutory command.

11. The Petitioner's prayer for declaring the Agreement dated 20.06.2023 as null and void similarly falls within the domain of the Civil Court. Whether the Agreement is void, voidable, or has been obtained by fraud, misrepresentation, or any other vitiating factor, is a matter that necessitates the recording of evidence and detailed inquiry, which is not permissible within the scope of writ jurisdiction. The court of writ jurisdiction is not the appropriate forum to adjudicate on the validity of contractual obligations between private parties. Such matters are best left to be decided by the Civil Courts, where parties can lead evidence and assert their respective claims. This view is reinforced by the principle laid down in *Muhammad Aslam v. Addl. District Judge, Lahore* **(2003 SCMR 1781)**, which categorically holds that questions requiring factual adjudication and analysis of documents and intent of parties are to be decided in civil proceedings.

12. The case law relied upon by the learned counsel for the Petitioner; *Collector of Land Acquisition Abottabad Vs Alhaj Sardar Bahadur Khan and others* **(2009 SCMR 224)**, *Muhammad Saleem Chaudhry Vs Defence Housing Authority Commercial Area etc.* **(2009 MLD 720 Lahore)**, and *Mst. Rafiqan and others v. Land Acquisition Collector, Pak Arab Refinery and others* **(1993 CLC 2333)** are not applicable in this case, as the proposition involved therein pertains to determination of compensation of acquired land. But in the instant Writ Petition, the claim of the Petitioner is that the Agreement dated 20.06.2023, executed between the parties, be declared null and void, and in case of non-payment of compensation, the acquired land be ordered to be

returned to the Petitioner. Such a relief cannot be granted by this Court in exercise of writ jurisdiction.

13. The upshot of the above discussion is that this Writ Petition is not maintainable. The Petitioner has an adequate and efficacious alternate remedy available before the competent Civil Court. The reliefs sought, including the declaration of the Agreement dated 20.06.2023 as null and void, involve disputed questions of fact that require the recording of evidence, a task that falls outside the scope of writ jurisdiction. Furthermore, the Respondent, Fazaia Housing Scheme, is a private entity not performing any statutory function or discharging any public duty in the present matter, and therefore does not fall within the ambit of Article 199 of the Constitution. Moreover, writ jurisdiction is reserved for enforcement of fundamental rights and for issuance of directions to public functionaries acting without lawful authority or in violation of law; it is not intended to adjudicate private contractual disputes or issues of compensation, which are properly addressed through civil proceedings.

14. For the foregoing reasons, this Court declines to exercise writ jurisdiction in the matter. The Petitioner, if so advised, may seek redress through the appropriate forum. Consequently, this Writ Petition is **dismissed** for want of jurisdiction.

(MUHAMMAD AZAM KHAN)
JUDGE

Announced in the open Court on this _____ day of May 2025.

JUDGE

Sajid/-