

# THE HIGH COURT OF SINDH AT KARACHI

Present:

Mr. Justice Jawad Akbar Sarwana

C. P. No. S–2326 of 2017

Petitioners:

(1) Haider Zaman s/o Ali Khan; (2) Aqil Khan s/o Abdul Razaque; (3) Aziz ur Rehman s/o Rehman Shah; (4) Abdul Qader s/o Ghulam Qader; (5) Muhammad Sabir s/o Muhammad Sadiq; (6) Muhammad Malik s/o Muhammad Nabi; (7) Bahadur Khan s/o Noor Habib; (8) Shujahat Ali S/O Ahmed Ali (9) Hazrat Khan s/o Muhammad Yaqoob; (10) Gul Rahim s/o Rahiullah; (11) Shahid Wadan s/o Amir Khan; (12) Badshah Ameen s/o Zareen; (13) Muhammad Ashgar s/o Muhammad Sadiq; (14) Muhammad Eijaz Kiani s/o Muhammad Imran Kiani; (15) S. Nazeer ul Haq s/o Syed Azeem ul Haq; (16) Ali Zaman s/o Ali Bahadur; (17) Sajjad Ahmed s/o Muhammad Saeed; (18) Hiader Zaman s/o Ahmed; (19) Muhammad Iqbal s/o Qadir Shah; and (20) Mohammad Waqas s/o Mohammad Ashraf through Mr. Abdul Ghaffar, Advocate

Respondent No.1:

Province of Sindh through its Chief Secretary, Karachi

Respondent No.2:

The Assistant Commissioner, Landhi, Karachi

Respondent No.3:

The Commissioner for Workmen's Compensation & Authority under the Payment of Wages Act & Authority under the Shops & Establishment Act, East Division, Karachi, through Ms. Deebe Ali Jaffri, AAG Sindh

Respondent No.4:

M/s. Artistic Garments Industry (Pvt.) Ltd. (formerly Mohammad Farooq Textile Mills Ltd.), through Mr. Muhammad Naqqash Advocate

Date of Hearing:

16.09.2025

Date of Decision: 16.09.2025

### **ORDER**

**Jawad Akbar Sarwana, J.**: These **20 petitioners**, who are former worker/workman of M/s. Muhammad Farooq Textile Mills Limited {"MFTML"}, on 27.10.2017, invoked the writ jurisdiction of the High Court of Sindh at Karachi under the Constitution of the Islamic Republic of Pakistan ("1973 Constitution"). They are **aggrieved by the direction dated 05.03.2011** passed under Section 5 of the **Payment of Wages Act, 1936** ("the Act of 1936") by the Commissioner for Workmen Compensation & Authority under the Payment of Wages Act (East Division) Karachi (Respondent No.3){**"the Authority"**}, and inaction on the part of the execution wing of the Authority under Section 15(5)(b) of the Act of 1936, that is, the Assistant Commissioner & Assistant Collector Grade-I, Landhi Sub-Division District Korangi, Karachi (Respondent No.2){**"Assistant Commissioner"**} to recover the amount so directed to be paid as arrears of land revenue from the present employer/establishment/occupier of the factory, that is, M/s. Artistic Garments Industries (Pvt.) Ltd. (respondent No.4){**"AGIPL"**}.

2. Counsel for the 20 petitioners has argued that AGIPL is liable to deposit with the 20 petitioners the outstanding compensation which was payable to them within one (1) month from the date of the direction dated 15.03.2011 under the Act of 1936. He contends that the compensation amount to be deposited by AGIPL to the 20 petitioners and/or their Legal Heirs (L.R.'s) as arrears of land revenue, crystallised by the direction dated 05.03.2011 passed by the Authority against MFTML, which was operating and running a factory on the Industrial Plot Nos. 6 & 7, Sector No.21, Korangi Industrial Area, Korangi Township, Karachi ("Industrial factory plots"), under the Factories Act, 1934. Counsel submits that as a consequence of AGIPL

subsequently becoming the “occupier” under Section 2(L) of the Factories Act, 1934, of the same factory which stood and continues to stand on the said Industrial factory plots under the Factories Act, 1934, previously occupied by MFTML, AGIPL is now responsible for the amount due as arrears of land revenue as the concerned employer under the direction dated 05.03.2011. He contends that the Act of 1936, operates against the employer/establishment/occupier of the factory of the employed person concerned on the said Industrial factory plots, and the new occupier, AGIPL, is responsible for the payment of wages to its workers/workmen, howsoever it may have occupied the factory on the said Industrial factory plots. The mode of acquisition of the Land & Building, Plant & Machinery, etc. as part of the factory on the said Industrial plots of the factory cannot wipe out the liability of the present occupier, i.e. respondent no.4, AGIPL. He further contends that the Act of 1934, read in the light of the provisions of the Standing Order, 1968, such as the liability of the ultimate employer, etc. and the Factories Act, 1934, concept of “occupier” is a species of special law which must be read holistically in that context and trumps the general law and/or any other competing subject law. He contended that the labour laws protect the rights of worker and cannot be subject to Company laws. He argues that where two special laws apply to the same event/facts, then the law which extends the maximum benefit to the worker/workman and/or safeguards their rights prevails in light of series of Judgments of the Supreme Court of Pakistan, including, inter alia, two such reported judgments, namely, Kohinoor Chemical Co. Ltd and another v. Sind Employees’ Social Security Institution and another, PLD 1977 SC 197 = NLR 2004 Labour 10; and, National Embroidery Mills Ltd. & Ors. v. Punjab Social Security Institution, 1993 SCMR 1201. Finally, he contended that the writ is/was maintainable under Article 199(1)(a)(ii) of the 1973 Constitution as the Authority which had passed the direction dated 05.03.2011 under Section 15 of the Act of 1936 was “without lawful authority”

for not enforcing such directions passed within the framework of machinery provided under Section 15(5)(b) of the Act of 1936, that is, through the Assistant Commissioner inspite of its powers under Section 18 of the Act of 1936 to pass further directions. As no appeal is/was provided under the Act of 1936 to deal with the current situation, this petition was filed by the 20 petitioners.

3. Counsel for respondent no.4, AGIPL, vehemently opposes the submissions of petitioner Counsel. He argues that by way of background, MFTML owned an immovable Land & Building on the Industrial factory plots along with Plant & Machinery installed in the said factory premises and all stores and spares, including all fixed assets, excluding the contents of the admin office building or yarn, fabric and cotton present within the premises of the factory. He submits that MFTML obtained various finance facilities from several banks from time to time, which MFTML was not able to repay on the relevant maturity date(s), and notified the same to the Banks that it does not have sufficient cash liquidity to repay the finance facilities.

4. As such Standard Chartered Bank Pakistan Limited ("SCB"), Habib Bank Limited ("HBL") and National Bank Limited ("NBP") filed recovery suits against the Petitioner's Employer for recovery of various finance facilities before the Court being Suit No. B-48 of 2010 ("SCB Suit"), Suit No. B-47 of 2010 ("HBL Suit") and Suit No. B-46 of 2010, ("NBP Suit"). Subsequently, the MFTML and the said Banks entered into a compromise agreement in terms whereof a consent decree was passed in each of the said suits.

5. The SCB, HBL, NBP, Five Star Enterprises, AGTPL (respondent no.4) and MFTML thereafter entered into a Settlement Agreement dated 08.04.2014 ("Agreement"). Under the terms of the Agreement, the said Banks agreed to accept MFTML's Plant & Machinery and Land & Building as full and final

settlement of any and all outstanding amounts owed by MFTML towards the Banks, with the understanding that the Banks shall have no further recourse against MFTML and any of its shareholders or directors.

6. Five Star Enterprises, being the buyer of Plant & Machinery, agreed with the Banks to purchase the Plant & Machinery for an aggregate sale consideration of Rs. 284,500,000/ (net of Sales Tax) through the terms and conditions stated in the Agreement. Similarly, respondent no. 4, being a buyer of Land & Building, agreed with the Banks to purchase the Land & Building for an aggregate sale consideration of Rs. 539,280,000/- through the terms and conditions stated in the Agreement. Consequent to the execution of the Agreement in lieu of the above terms, the parties filed an application in the NBP Suit seeking modification in the consent decree, which was allowed vide Order dated 02.05.2014 ("Modification Order") of the Honorable High Court of Sindh. It was further observed in the said order that the Modification Order shall also operate in SCB Suit and HBL Suit as well. Only after the Modification Order was passed by this Honorable Court and after completion of all legal formalities under the law, respondent no. 4, AGIPL, purchased the property vide Registered Conveyance Deed of Immovable Property dated 15.05.2014 bearing Registration No. 897 Book No. I dated 16.05.2014 and M.F. Roll No.36884/9356 dated 19.05.2014 ("Conveyance Deed") conveyed through the Nazir of this Hon'ble Court. Therefore, AGIPL acquired a clean title to the Industrial factory plots, including the Land & Building, Plant & Machinery, etc. from the Nazir of the Court - free from all encumbrances, charges, and dues. Consequently, the 20 petitioners have no claim against AGIPL. Instead, they (the petitioners) may recover their dues from the Court-appointed Liquidator under the winding-up proceedings initiated by the SECP against MFTML.

7. Learned AAG Sindh submits that, following the removal of the Land & Building, Plant & Machinery, etc. and all other assets of MFTML from the books of accounts of the company, on 14.10.2017, the Additional Registrar of Companies, SECP, filed a petition in the High Court seeking winding up of MFTML through the High Court by way of JCM No.25 of 2017 under Section 301 r/w Section 304 of the Companies Act, 2017, r/w Rule 75 of the Companies (Court) Rules, 1997. Learned AAG submitted that the claims of the 20 petitioners are to be filed under the Companies Act, 2017, in the winding up proceedings before the Company Judge, which proceedings apparently were/are still pending before the High Court. Learned AAG Sindh further submitted that the twenty (20) petitioners filed the above titled C.P. No.S-2326 of 2017 on 27.10.2017, about 13 days after the Registrar of Companies had filed the winding up petition JCM No.25/2017 on 14.10.2017, therefore, in the facts and circumstances of the case, the petitioners cannot rely on the labour laws and their claims are subject to the law of priority.

8. Heard Counsel and learned AAG Sindh and perused the documents available on file. It appears that when the services of the twenty (20) petitioners were terminated and certain terminal dues accrued, which remained unpaid, the petitioners were compelled to file with the Authority applications under Section 15 of the Act of 1936. After giving notice to the employer/establishment/occupier, the Authority passed the direction dated 05.03.2011 against the employer/establishment/occupier. However, after issuing notice to the employer/establishment/occupier to deposit the money, when no such deposit was made, the matter was taken up by the Assistant Commissioner to initiate land revenue proceedings to enforce the directions of the Authority.

9. The Assistant Commissioner, namely Abdul Sattar Hakro, in compliance with this Court's Order dated 16.03.2020, filed

comments dated 14.04.2021. The record reflects that between 09.12.2016 (page 83) and 20.08.2020, the Assistant Commissioner issued several notices of demand under Section 81 of the Land Revenue Act, 1967 and Warrants of Arrest under Section 82(1) of the Sindh Land Revenue Act, 1967 to MFTML, but there is/was no further escalation by the Assistant Commissioner against the present employer/establishment occupying the factory on the Industrial factory plots, that is, AGIPL. All such notices are addressed to MFTML. It is common ground, according to the petitioners' counsel, and respondent no.4, and as confirmed by the Assistant Commissioner's written comments, too, that no proceedings or hearings have taken place before the Authority/Assistant Commissioner to conclude the process of recovery of arrears of land revenue under Section 15(5)(b) of the Act of 1936. Indeed, while the Assistant Commissioner has filed his written comments in this petition explaining to the High Court why he has taken no further steps to recover the arrears of land revenue, yet on the ground, in the proceedings themselves, there is no order available on record concerning the status of the enforcement proceedings. None has been filed or placed on record which articulates officially the position of the Authority/Assistant Commissioner on the process of recovery of arrears of land revenue pursuant to the Authority's Order dated 05.03.2011.

10. Meanwhile, on 01.06.2023, this Court passed the following order in the petition:

“Compliance report filed by the Respondent No 2 is taken on record and in which the Assistant Commissioner Ibrahim Hyderi, Landhi, Karachi has appeared and has stated that he has attempted to affect service on the Respondent No. 4 and states that to the best of his knowledge the assets of the Company known as M/s. Muhammad Farooq Textile Mill (Pvt.) Limited was subject to a Banking Suit Nos. B-46 to B-48 of 2010 and the assets of the Company were thereafter sold to Respondent No. 4. He is not

fully aware as to whether the Company known as M/s. Muhammad Farooq Textile Mill (Pvt.) Limited has in fact either been wound-up or amalgamated as part of a scheme of arrangement with the Respondent No. 4.

In the circumstances, the Petitioner is directed to inquire from the Security & Exchange Commission of Pakistan (SECP) as to the status of M/s. Muhammad Farooq Textile Mill (Pvt.) Limited i.e. as to whether it is still in existence or has been wound-up or subject to scheme of arrangement whereby the liability of M/s. Muhammad Farooq Textile Mill (Pvt.) Limited has been passed on either to the Respondent No. 1 or to other Company. Order accordingly.

Adjourned to a date in office.”

11. Thereafter, the Court passed yet another order dated 18.08.2023, which is reproduced as hereunder:

“Learned counsel files statement, alongwith certain documents, taken on record. Copies provided to learned A.A.G.

JCM No.25/2017 shall be tagged alongwith present petition, as requested by the counsel present.”

12. However, vide the order dated 19.10.2023, this Court de-tagged the said JCM from the petition. The said order is reproduced herein below:

“Counsel has affected appearance on behalf of Respondent No. 4 and has filed Vakalatnama which is taken on record. He claims copy which the Petitioner's Counsel undertakes to supply. Once copies are supplied Counsel shall come prepared.

Insofar as the file of J.C.M. No. 25/2017 is concerned, office is directed to de-tag the file and fix it independently according to roster on the next date. To come up on 23.11.2023. Office to place copy of this order in connected JCM.”

13. Based on the above review, it is evident that the land revenue proceedings by the Authority through the Assistant Commissioner have yet to be concluded. In PICIC v. Allied



Textile Mills Ltd., 1991 MLD 2301, a learned Single Judge of this High Court observed:

“17. As far as the claims of Khadim Ali and WAPDA Hyderabad are concerned, admittedly there was no decree passed by the Court in their favour. Mr. M.L. Shahani appearing on behalf of Khadim Ali has contended that the claim of, the workmen is recoverable as arrears of land revenue under the provisions of the Payment of Wages Act. Be that as it may, but the said Act is a special law which provides a special procedure for execution of the orders of the Authority under the Payment of Wages Act and resort must be had to that alone. Section 73 of the C.P. Code refers to execution of decrees for payment of money and since admittedly the order passed by the Authority for Payment of Wages Act is not a decree, the provisions of section 73 C.P.C. cannot be invoked by the workmen. The claim of WAPDA is equally not maintainable as there is no decree passed in its favour by any Court. . . .”

(underlining added)

14. Based on the above case law, the learned single Judge of this Court has observed that the determination of compensation of money awarded by the Authority under Section 15 does not lead to a decree passed by the Authority. I would agree. Indeed, proceedings before the Authority under Section 15(3) and (4) of the Act of 1936 culminate in the Authority passing directions. This is followed by the Authority directing the Assistant Commissioner under Section 15(5)(b) of the Act of 1936 to effect the recovery of compensation as arrears of land revenue.

15. In the instant petition, when the Authority passed the direction dated 05.03.2011 under Section 15 of the Act of 1936, the employer/establishment/occupier of the factory, MFTML, was still a going concern. While the banking suit filed against MFTML was apparently pending before the banking court, no settlement between the banks and the customer, MFTML, was on the horizon. The banks' suits had yet to be decided by the banking

courts, and no judgment and decree had been passed against MFTML as of 05.03.2011. The Nazir of the High Court had also not stepped into the picture, and did not do so until about May 2014 – almost three (3) years after the Authority announced its direction in March 2011. At the material time, the Authority had no reason to take into consideration in its direction of 05.03.2011, the points raised during arguments concerning, that is, the ultimate liability of the employer/establishment/occupier of the factory who is occupying the said factory under the labour laws, the impact of the Settlement recorded by the Courts between the banks and MFTML, the involvement of the Nazir issuing a sale certificate of the Plant & Machinery and the Industrial factory plots to AGIPL, the Winding-up petition filed by the SECP, etc. The direction dated 05.03.2011 does not deal with any of the above points. All these developments/events occurred after the Authority passed directions under Section 15(3) and (4) of the Act of 1936. Further, neither the petitioners had any grievance against the direction per se, as the same was/is in favour of the petitioners. They had no reason to challenge the direction by filing an appeal before the Labour Court under Section 17 of the Act of 1936. Indeed, the petitioners have not invoked the writ jurisdiction of the regular bench to challenge the direction dated 05.03.2011. They appear to have come to the High Court to decide whether the Authority's silence concerning the implementation of said direction under Section 15(5)(b) is "without lawful authority" and "of no legal effect".

16. According to the petitioners' Counsel, the petitioners' grievance has arisen because neither the Authority nor the Assistant Commissioner under Section 15(5)(b) of the Act of 1936 have articulated any reason for non-compliance with the Authority's direction dated 05.03.2011. The Authority has remained silent after issuing the direction dated 05.03.2011, and only the Assistant Commissioner in the Written Comments filed by him in this petition has provided any explanation why,

apparently, the Authority has not taken any action. Still, there is no official response on the part of the Authority concerning why the revenue proceedings have not yet been concluded, and nothing has been submitted by the Assistant Commissioner officially in the proceedings under Section 15(5)(b) of the Act of 1937, so far. In the circumstances, until and unless the Authority/Assistant Commissioner articulates the reason for the non-recovery of the compensation amount in terms of arrears of land revenue proceedings pursuant to the direction dated 05.03.2011 under Section 15(5)(b) of the Act of 1936, no case is made out by the petitioners against the Authority's original direction dated 05.03.2011.

17. The Authority owes a statutory duty to explain to the petitioners who have been waiting for the outcome of the directions dated 05.03.2011 to recover the compensation payable to them as arrears of land revenue, why the proceedings under Section 15(5)(b) remain pending since 05.03.2011 till present. After more than 15 years, the Authority cannot endlessly and/or unreasonably stay silent and not provide any explanation. In the facts and circumstances of the case, the Authority must issue some "further direction" under the framework of Section 15 of the Act of 1936 to bring closure to the matter at least before the Authority.

18. The Legislature could not have expected the Authority not to enforce the compensation amount so determined, and to voluntarily keep its directions pending without expressing any reasons for the same. In my view, the Authority remains saddled with its statutory obligations under Section 15 once directions emerge under Section 15(3) and (4) of the Act of 1936, and is obligated, as a matter of principles of natural justice, to issue within the framework of Section 15 some "further direction" to inform the worker/workman, viz., the status of the final outcome of the proceeding under Section 15(3) and (4) of the Act of 1936,

why the execution is stalled and what the Authority plans to do next to bring closure to the matter in terms of Section 15(3) and (4) of the Act of 1936.

19. The High Court under writ jurisdiction cannot leapfrog the Authority/Assistant Commissioner and decide the revenue proceedings itself, including, inter alia, assigning liability on any person, until the Authority itself exercising its powers under Section 18 of the Act of 1937, decides the legal controversies which have emerged after 05.03.2011, first, and articulate their reasons why direction under Section 15(5)(b) of the Act of 1936 have not been completed, and what the Authority plans to do about it. No doubt, after such “further direction” is issued by the Authority, another cause of action may well accrue to the petitioners and/or any other aggrieved person to challenge such “further direction” but this cannot be a ground for the Authority’s inaction/silence, viz. the proceedings under Section 15(5) of the Act of 1936.

20. Given the above, I find that the Authority’s silence at the execution stage of the direction, not to take action under Section 15(5)(b) of the Act of 1936, through the Assistant Commissioner to effect its direction dated 05.03.2011, and to voluntarily stay the execution proceedings under Section 15(5)(b) without any reason provided to the parties is “without lawful authority” and “of no legal effect”. Accordingly, the writ petition is allowed to this extent and the Authority and the Assistant Commissioner are ordered to complete the process of Section 15 of the Act of 1936 pursuant to its direction dated 05.03.2011 and issue/pass, within the framework of Section 15 of the Act of 1936, “further direction” - within forty-five (45) days from today - coupled with reasons as to why the Assistant Commissioner has not complied with the directions of 05.03.2011 up to date and what the Authority will do about the enforcement proceedings in the context of Section 15 of the Act of 1937. The parties herein or otherwise, whosoever

is aggrieved by such “further direction” issued by the Authority, will have whatever recourse that may be available under the law to agitate before the competent forum.

21. The Office is directed to send a copy of this order to both (i) the Authority and (ii) the Assistant Commissioner, respectively, for necessary action, and to obtain from them an update by mid-November 2025 to submit to this Court in the last week of the same month.

22. The petition stands allowed in the above terms.

**J U D G E**