

IN THE HIGH COURT OF SINDH, KARACHI

CP No.S-6303 of 2025

(Abdul Razzak Budhani v. Ministry of Industries and Production and 2 others)

Before:

Justice Muhammad Saleem Jessar

Justice Nisar Ahmed Bhanbhro

Petitioner : Abdul Razzak Budhani through Mr. Waseem
Shaikh, advocate

Respondents : Nemo.

Date of hearing and order: 30.12.2025

.....

ORDER

Nisar Ahmed Bhanbhro, J. Through the instant petition, the petitioner has prayed as under:

“(i) Declare that the act(s), omission(s) and commission(s) on the part of Respondents and its officers /officials in Auctioning the subject Unit of the Petitioner violates Article 4, 10-A, 18, 23, 24 of the Constitution of Islamic Republic of Pakistan.

(ii) Direct the Respondents to act strictly in accordance with law and to further restrain the Respondents as mentioned in para No 3 of the Auction Notice "The Successful Bidder will submit application for setting industrial/trading undertaking, under Rule No.6 of EPZA Rule 1981", which is contrary to the signing of General Agreement and Lease deed signed dated 03.03.2005 whose validity expires after 30 Years.

(iii) To Suspend the Auction Proceedings being conducted on 31.12.2025.

(iv) Prohibit and restrain the Respondents from taking any action which would be detrimental to the right(s) and business interest(s) of the Petitioner.”

2. Learned counsel for the petitioner contended that Petitioner is a business entity engaged in import, export and indenting. That on 07.12.2004, petitioner purchased the unit admeasuring 400 square yards viz. Plot No H - 9 Sector B - VII situated at Export Process Zone Karachi from M/s. Intermarkets for a sale consideration of US\$: 22,000 under an agreement of sale executed in between the parties; that the unit was leased out to M/S Intermarkets by Export Processing Zone Authority EPZA. He argued that the Petitioner vide letter dated 07.12.2004 requested EPZA/ Respondent No 2 to transfer the lease of the unit along with fixtures, furniture and Security Deposit of US\$: Ten Thousand in the name of Petitioner Company; that Petitioner’s requested was conceded to by EPZA vide

letter dated 31.12.2004 issued by the General Manager Investment Promotion; that following the approval of transfer, the petitioner and EPZA entered into a general agreement dated 03.03.2005 for operational activities. He argued that since purchase and subsequent general agreement, the petitioner was in possession of the Unit. He further argued that due to financial constraints, the petitioner could not initiate business activities in the unit; however, the petitioner filed an application with EPZA for merger of company with other company: that the said application was consented through a letter dated 30.10.2008. Learned counsel contended that petitioner sent a letter dated 06.04.2015 to the respondent No.2 requesting for the revival of sick/non-performing unit, but the said request was declined vide letter dated 30.10.2019. He further contended that petitioner was willing to revive its unit and is now in a position to commence business activities, but the respondents have issued an auction notice dated 11.12.2025 in respect of the above-referred Unit. He submitted that the auction notice is issued illegally and with malafide intention to deprive petitioner of a right created through valid transfer and agreement. He further submitted that the lease between the petitioner and the respondent No.2 was valid for (30) years which will expire in the year 2035 and the respondent No.2 cannot auction the premises until the expiry of lease. He prayed to suspend the operation of Auction Notice.

3. Heard arguments. From perusal of record made available before us, it transpired that the Unit viz. Plot No.H-9, situated in Sector B-XI, EPZA, Karachi, was property of Export Process Zone Authority. The Unit was leased out to M/S InterMarkets by EPZA. The lease rights were purchased by the petitioner Messrs. Jubilee Intertrade through an agreement of sale dated 7th December, 2004 and such transfer of lease was assented by the respondent No.2 vide letter dated 31.12.2004. Pursuant to the approval of transfer of lease, Petitioner entered into a general agreement with EPZA on terms and conditions set forth in the said general agreement.

4. It further transpired from the record that petitioner failed to comply with the terms and conditions of the general agreement; therefore, the respondent No.2 issued a notice dated September 5, 2025, insisting petitioner to commence the trade activities. In the notice dated September 5, 2025, it was made clear that if the petitioner failed to start business operation within 45 days' time, the action leading to cancellation/withdrawal of the sanction of the unit will be started.

5. Record further evidenced that Petitioner did not start business activities; therefore, the sanction granted through letter dated 31.12.2004 was canceled, and the allotment of the Unit was withdrawn. Petitioner did not challenge the

cancellation, instead approached the respondent No.2 for the merger of the unit with Messrs. Jubilee Apparel. The application for the merger was declined, such intimation was given to the petitioner through a letter dated 18th April, 2022 even the said letter was not challenged before any forum.

6. Scanning of the record further revealed that the unit allotted to the petitioner was placed for auction through notices dated 21.08.2023, 27.9.2024 and 15.09. 2025. All the above auction proceedings failed and now vide auction notice dated 11.12.2025, the fresh proceedings have been initiated, which will be held on 31.12.2025. The contention of the petitioner that the petitioner was a lawful allottee of the premises under auction is without substance, as the allotment granted in his favour was canceled by authority in the year 2007 on petitioner's failure to fulfil the terms and conditions of the general agreement.

7. The General Agreement between the parties provided a dispute resolution mechanism through arbitration. Per clause 17 of the General Agreement, in case of any dispute between the parties, it was agreed that the same shall be resolved in the manner prescribed thereunder. For ease of reference, Clause-17 of the General Agreement available at Pages-45 to 48 of the Court's file is reproduced below:

"17. PROVIDE ALWAYS IT IS HEREBY AGREED AND DECLARED AS UNDER:

A. ANY DISPUTE BETWEEN THE PARTIES SHALL BE REFERRED TO ARBITRATION HAS PROVIDED UNDER SECTION 24 OF ORDINANCE IV OF 1980 AND SUCH PROCESSINGS SHALL TAKE PLACE AT KARACHI.

B. THAT THE AUTHORITY RESERVES THE RIGHT TO WITHDRAW /CANCEL /REVOKE THE SANCTION OF THE INVESTOR IF HE COMMIT'S ANY BREACH OR VIOLATES ANY OF THE TERMS AND CONDITIONS AGREED UPON BETWEEN THE INVESTOR AND THE AUTHORITY UNDER THIS AGREEMENT OR ANY OTHER AGREEMENT OR IF IN THE OPINION OF THE AUTHORITY THE PURPOSE FOR WHICH SANCTION WAS ACCOREDED IS NOT BEING FULFILLED."

8. From perusal of Clause-17 of the General Agreement it is crystal clear that the authority was competent to withdraw, cancel or revoke the sanction of the investor if it committed any breach or violated any of the terms and conditions of the general agreement. If the Petitioner was not satisfied with the cancellation orders, that the matter ought to have been referred for arbitration in terms of Section 24 of the Ordinance IV of 1980. The petitioner did not challenge the cancellation letter or even did not seek settlement of the dispute as agreed upon

by the parties through General Agreement. The cancellation of allotment / lease of the unit remained unchallenged thus attained finality and Petitioner was not the allottee of the Unit under auction.

9. The claim of the petitioner is based upon an allotment that is no more in the field, as such it cannot create any right of title in his favour and the auction proceedings cannot be stayed on mere assertion that once at a point of time petitioner was allottee of the Unit under auction. Moreover, Petitioner did not challenge earlier auction notices and remained in deep slumber, and no ground was available to challenge the present auction proceedings.

10. It was for the Petitioner to demonstrate that auction proceedings impinged upon its fundamental rights. The Petitioner's entire claim rested upon an earlier lease which stood canceled, Petitioner failed to point out any action on the part of Respondents that offended its fundamental rights. The EPZA is a statutory body established to promote export activities and for that purpose it allots / leases land to the business entities. It is within the domain of the authority to cancel or withdraw the lease of a property if lessee failed to conform to the terms and conditions of lease. The notice dated 11.12.2025 demonstrated that it was an open Auction and Petitioner would get an equal opportunity to participate in the auction proceedings. In essence the controversy raised in the instant petition could have been resolved by acting upon the terms and conditions contained in the General Agreement, but Petitioner did not resort to Para 17 of General Agreement for arbitration. Otherwise the case of the Petitioner involved disputed questions of fact requiring recording of evidence, thus fell within the domain of the Courts of Primary Jurisdiction to adjudicate.

11. In the wake of the above discussion, no illegality or perversity has surfaced in the auction proceedings requiring indulgence of this Court to exercise the powers of judicial review conferred under article 199 of the Constitution of Islamic Republic of Pakistan, of 1973. This petition being devoid of merits therefore fails and is accordingly dismissed in limine with no order as to costs along with pending application(s).

JUDGE

Head of Const. Benches

Nadir/PS*

Approved for reporting