

IN THE HIGH COURT OF SINDH, KARACHI

Suit No. 1755 of 2008

Ahmed Saeed and others

Versus

**Province of Sindh, through the Secretary,
Education Department and two others**

Date of hearing : 06.03.2018

Date of decision : 06.03.2018

Plaintiffs : Ahmed Saeed and others,
through M/s. Yousuf Moulvi and Rafia
Murtaza, Advocates.

Defendants : Province of Sindh and others,
Through Mr. Pervaiz Ahmed, Legal
Advisor of Defendant No.1 along
with Mr. Hamid Kareem, Director
School Education, Mr. Muhammad
Idrees Alvi, Advocate for KMC and
Syed Aaley Maqbool Rizvi,
Additional Advocate General along
with Ms. Naheed Akhtar, State
Counsel.

Case law cited by the Plaintiffs' counsel

1. 1987 SCMR page-1197
(*Board of Foreign Mission of the Presbyterian Church Vs.
Government of The Punjab*)
2. 1996 SCMR page-1767
(*Director of Schools and others Vs. Zaheeruddin and others*)
3. 1993 MLD page-1298
(*Karachi Government of Sindh Vs. Miss Aruba Kamal*).
4. 1998 CLC page-1971 Peshawar
(*Sanaullah Vs. Bibi Shanaz Akhtar*).
5. 1989 CLC page-202 Quetta
(*Sher Muhammad and 6 others Vs. Haji Sher Muhammad*)

Case law relied upon by Defendants' side

- Law under discussion:**
- (1). The Constitution of the Islamic Republic of Pakistan, 1973.
(*Constitution*)
 - (2). Transfer of Property Act, 1882,
[*Property Law*].
 - (3). Karachi Building and Town Planning Regulations, 2002.
(*Building Regulations*)
 - (4). The Code of Civil Procedure, 1908,
[*CPC*]
 - (5). Qanoon-e-Shahadat Order, 1984,
[*Evidence Law*]
 - (6). Sindh Rented Premises Ordinance, 1979, [*SRPO*].

JUDGMENT

Muhammad Faisal Kamal Alam, J: The present suit has been filed, *inter alia*, in respect of a residential property, viz. House No.V-C-8/17, measuring 216 Square Yards (*suit property*), situated in Nazimabad, Karachi (Central) and recovery for its vacant and peaceful possession with the following prayer clause_

“The Plaintiff, therefore, prays as under: -

- A. *Decree for payment of mesne profit at tentatively valued at Rs.5,000/- per month till the December, 2008 works out to be Rs.16,45,755/- (Rupees Sixteen Lac, Forty Five Thousand Seven Hundred and Fifty Five Only), and onwards with an increase of 10% after every three years, (based on the permissible increase as per the SPRO, 1979) till the date when vacant and peaceful possession of the Suit Property that is House No.V-C-8/17, Nazimabad, Karachi, Karachi is handed over to the Plaintiffs and all the claims/out standings are recovered in favour of the Plaintiff jointly and severally from the Defendants.*
- B. *Decree of Rs.2.5 million for all the damages caused to the Suit Property against the Defendants jointly and severally.*

- C. *Decree of Rs.1 Million tentatively valued for the Plaintiff suffering on account of ill legal possession of the suit property by the Defendants may be granted to the Plaintiffs from the Defendants jointly and severally.*
- D. *Direct the Defendant No.3 or any other person(s) in possession of the Suit Property that is House No.V-C-8/17, Nazimabad, Karachi, Karachi, to vacate and handover the peaceful and vacant of the same to the Plaintiffs.*
- E. *Restraint the Defendants or any other person(s) acting and claiming any right under them from creating any third party interest in the use and possession of the Suit Property that is House No.V-C-8/17, Nazimabad, Karachi in whatsoever manner.*
- F. *Grant such other relief as this Hon'ble Court deems just and proper in the circumstances of the suit."*

2. On issuance of summons, the contesting Defendant No.2 filed its Written Statement.

3. Following Issues were framed on 18.11.2013.

- "1. *What is the effect and current status of Martial Law Regulations No.118/1977 under which the suit property/running school of the plaintiff was taken over by the Defendant No.1 and subsequently transferred to the Defendant No.2?*
2. *Whether the Defendants No.2 and 3 have committed the default in payment of rent to the Plaintiffs hence they are liable to handover possession to the Plaintiff?*
3. *Whether the Defendants are liable to pay compensation/damages for illegal use of Plaintiff's property?*
4. *What should the decree be?"*

4. It is necessary to give a background of the present proceeding. It is not disputed that the suit property belonged to the father of present Plaintiffs. The ownership lease issued by the Federal Government, has been produced as Exhibit-**PW-1/5** by Plaintiff witness, and Clause-**A** whereof clearly mentions that the property in question is for residential use. The other undisputed fact is that by virtue of Martial Law Regulations 118/1972, which later become the Provincial Act, viz. Martial Law Regulation No.118 (*Sindh Amendment*) Act, 1972, *inter alia*, private Schools were nationalized, similarly, the school which was running in the subject premises was taken over by the Defendant No.1 and was subsequently transferred to Defendant No.2; both being official Defendants. However, Defendant No.3, the Globe Secondary School did not prefer to contest the present proceeding.

5. Earlier the present Plaintiffs have filed a proceeding before a Rent Controller in the shape of Rent Application, which was registered as Rent Case No.206 of 2007, seeking eviction of present Defendants from the suit property, which was opposed by the present Defendants on the ground that to such premises the **SRPO** is excluded by virtue of its Section 3 and the subsequent Notification No.VIII (3) SOJ/75, dated 29.07.1980. These relevant documents, which are matter of record, have been produced in the evidence by Plaintiff's side and is available from pages-113 to 151. Finally, the learned Rent Controller vide its order dated 04.12.2008 (Exhibit-**PW1/16**) sustained the objections of present Defendants and dismissed the Rent Application, which compelled the present Plaintiffs to file instant *lis*.

6. In the intervening period in compliance of the orders dated 31.05.2013 and 07.06.2013 an amount of Rs.1,34,650/- (*Rupees One Hundred Thirty Four Thousand Six Hundred Fifty Only*) was paid by

Defendants No.1 and 2 as arrears of rent for the period from 01.07.2000 to 30.06.2010.

7. This Court granted the application of Plaintiffs' side and sought a Report about the general state of condition of the premises in question. Eventually, Nazir took assistance of an expert Architect, namely, Mr. Zia Jaffery, who submitted his Report, which is available from pages-85 to 123 of the main Court file. Interestingly, this Report was never objected to by the Defendants. The conclusion of this Report shows that the suit property / building of School is in a dilapidated condition and it is mentioned that at **present it is not suitable for habitation and particularly of pupils/students,** because considering the present physical structure, any mishap can take place.

8. Evidence was led by the parties. Plaintiff examined himself and one other witness, namely, Nasiruddin Siddiqui, who is the Estate Agent, *whereas*, from the Defendants' side, it's Director School Education, Karachi (*Masoob Hussain Siddiqui*) testified.

9. Mr. Yousuf Moulvi along with Ms. Rafia Murtaza, the learned counsel representing the Plaintiffs have argued that the Plaintiffs were not cross-examined on material part of the evidence, particularly relating to the ownership and default in payment of rent. He further submits by making a reference to paragraph-27 of his Affidavit-in-Evidence that the premises in question is required for his personal use. He has further submits that during proceeding of the instant case, the Plaintiff No.3 had passed away, therefore, he had moved an application under Order XX Rule 3 of CPC, mentioning the legal heirs of Plaintiff No.3, which was allowed vide order dated 24.09.2012 with direction to file an amended title, which was filed on 13.12.2012. He has relied upon the aforementioned reported Judgment of *Director School*

Education, in which the Hon'ble Apex Court has held that for seeking, *inter alia*, relief of possession, in respect of the Government occupied properties, the jurisdiction of the Rent Controller is ousted, but the same can be sought by way of a suit.

10. On the other hand, the legal team from the Defendants' side led by Syed Aaley Maqbool Rizvi, Additional Advocate General, refuted the claim of Plaintiffs. It is further stated that the students studying in Defendant No.3 (School) will face hardship if the present suit is entertained.

11. Arguments and record of the case thoroughly considered.

12. Primarily, the legal team of the Defendants has cross-examined the Plaintiff on a Circular, produced by Defendant's witness and marked as "X", purportedly issued by the Government of Sindh for de-nationalization and re-transfer of Schools. Though the Plaintiffs' sole witness acknowledged that the Defendant No.3 (*Globe Secondary School*) is being run in the suit property and has not been de-nationalized as yet, but the other suggestion of Defendants' counsel about the ownership of suit property has been successfully rebutted / denied by the Plaintiffs' witness (*Ahmed Saeed Siddiqui*). The deposition of Plaintiff's witness about that he was unsuccessful in locating the record of Miscellaneous Rent Case (MRC) No.668 of 1990, in which, the Defendants were depositing the monthly rents, also remained unchallenged. Thus, it is further proved that default by Defendants in rent amount from May, 1988, as testified by the said Plaintiff's witness.

As against that the cross-examination of the Defendants' witness is to a certain extent contrary to record and self-contradictory. Though he has admitted that the above amount of Rs.134,650/- (*Rupees One Hundred Thirty Four Thousand Six Hundred Fifty Only*) was paid

towards arrears of rents for the period from 01.07.2000 to 30.06.2013 but it is also admitted that thereafter no rentals were paid, although the said witness during his cross-examination undertook that all the dues were cleared within two (02) months. During the proceedings, I queried the legal team of Defendants and their Director School Education (Mr. Hamid Kareem) present today, about the above aspect and they have not disputed this position that after 30.06.2013 no rent has been paid for the premises in question. In his cross-examination, Defendant's witness also admitted that there is another School running in the vicinity and students of Defendant No.3 can be shifted. To a particular question, the Defence witness stated that 48 students are enrolled in the morning shift and 25 students in the evening. The said Defendant's witness did not deny that the Circular (*as referred above*), which has been exhibited as document "X", was never notified but it is a Provincial Cabinet decision.

It is also not controverted by the Defendants while leading the evidence that Plaintiffs earlier served the Defendants with a legal notice dated 29.10.1988, for demanding the arrears of rent and possession of the suit property. This legal notice has been produced as Exhibit **PW 1/10** by the Plaintiff's witness, wherein, *inter alia*, it has been mentioned that five other Schools exist in the same vicinity. On this material aspect also, the evidence of Plaintiffs remained unchallenged and hence stood admitted by the Defendants.

13. It is also necessary to point out that the evidence of second witness of Plaintiff-PW-2, is not considered, as the learned counsel for Plaintiffs on instructions has dropped his prayer of mesne profits and damages, not as a concession to Defendants, but obviously on account of this protracted litigation.

14. Learned Additional Advocate General further argued that the present Plaintiff is not the only owner and they are other legal heirs as well, who may have a different view. On this particular plea when the learned AAG was confronted with the order of this Court in which Letter of Administration was granted to the present Plaintiff (Exhibit **PW-1/8**), the Special Power of Attorney (Exhibit **PW 1/3**) given to him by other Plaintiffs/legal heirs, this argument was not taken further. More so, all the legal heirs are already arrayed as Plaintiffs and have not taken a contrary stance.

15. Findings on the Issues are as follows:

FINDINGS

ISSUE NO.1.	As under.
ISSUE NO.2.	In Affirmative.
ISSUE NO.3.	Dropped.
ISSUE NO.4.	Suit Decreed.

REASONS

ISSUE NO.1.

16. It is not a controversial Issue any more after the Judgment of Hon'ble Supreme Court handed down in *Board of Foreign Missions Case (supra)* that the afore referred Martial Law Regulation does not and could not take away the ownership/proprietary rights of an individual in whose premises a School was functioning, which was taken over by the Provincial Government, as is done in the present case. It is held, that the object of the above MLR was to take over the management of the Institutions and not to confiscate the property in which the privately managed School was being run. This established rule has been further reiterated in the *Director of Schools case (ibid)*,

wherein, *inter alia*, the Hon'ble Supreme Court has held that though the applicability of **SRPO** is excluded in respect of those premises in which the Government Schools are being run but at the same time owner is not left remediless or helpless and eviction can be sought by filing a suit. Therefore, the present Plaintiffs have rightly approached this Court through the instant *lis*.

17. Though the learned AAG has relied upon the paragraphs 3, 4 and 15 of the MLR to argue that against *bona fide* acts of officials, no suit or any other legal proceedings can be brought, but a simple reply to the above legal objection is that pre-requisite for invoking such clause is that acts should be *bona fide*. If the present undisputed evidence is examined and scrutinized, it is not difficult to hold that the Government Officials / Defendants have in effect expropriated (confiscated) the suit property through their acts and deeds, which is violative of Articles 23 and 24 of the Constitution, concerning the proprietary rights of a citizen, therefore, the present proceeding is not barred by any provision of law.

18. The other unfortunate aspect is that on the one hand the Defendants have stopped making the payment of rental and committed breach of their contractual obligations towards Plaintiffs and on the other hand, the School Premises has not been maintained at all, as is evident from the Report of an independent Surveyor/Architect, which till date, remained un-objected to and hence, is now an admitted factual position.

19. Education is a backbone of every society and Primary and Secondary Education is the backbone of Education system. The present case speaks volumes about ineptness and negligence of Defendants towards the education. Defendants could have shown their *bona fide* by

shifting the students (if any) from the suit property to the nearby School(s), as in addition to the above discussion, even otherwise, a School in a property having an area of 216 Square Yards only, is not at all feasible.

20. The Defendants, it is quite apparent, do not have much consideration for the health and safety of students and teaching staff, if any, at present in the subject premises, otherwise at least the same would have been properly maintained, therefore, the **Issue No.1 is answered accordingly** that even under the Martial Law Regulation No.118 of 1972, the ownership of Plaintiffs are not adversely affected and the suit property still belongs to, in the ownership of and vests in the Plaintiffs being its lawful owners, as ruled by the Apex Supreme Court in the above cited cases.

ISSUE NO.2.

21. From the appraisal of the evidence, it is now a proven fact that Defendants committed default in payment of rentals to the Plaintiffs and hence they are liable to be evicted from the suit property forthwith. Admittedly, as is evident from the evidence of the parties, that lastly the rate of per month rent was / is Rs.1,000/- (Rupees One Thousand Only), which has not been paid from 01.07.2013 till date, which the Defendants are liable to pay to Plaintiffs without fail. Thus, **Issue No.2 is answered in Affirmative and in favour of Plaintiffs.**

There is another undenied, factual and legal aspect of the case; the suit property is a residential one and running of School there at, is a clear violation of the Karachi Building and Town Planning Regulation, 2002, in particular, Chapter-18; 18-4.2 thereof. On this ground also the Defendants are liable to be evicted from the suit property and its physical, peaceful and vacant possession be handed over to Plaintiffs.

ISSUE NO.3.

22. No finding is required on this Issue as Plaintiffs have abandoned their claim of mesne profits and damages.

ISSUE NO.4.

23. The Defendants jointly and severally are liable to pay_

- (i). rent at the rate of Rs.1000/- (*Rupees One Thousand Only*) per month from **01.07.2013** till today, that comes to Rs.56,000/- (*Rupees Fifty Six Thousand Only*), within a fortnight from today.
- (ii) the Defendants will withdraw the amounts, which they have deposited in MRC No.668 of 1990 and will pay the same to Plaintiffs within four weeks from today;
- (iii) the Defendants shall hand-over the vacant, physical and peaceful possession to Plaintiffs forthwith and if they have made any unauthorized structure on the premises/suit property then the same shall be removed by the Defendants and their employees at their own costs and expense; and
- (iv) looking at the conduct of Official Defendants and in view of the discussion in the preceding paragraphs, the Plaintiffs are also granted costs of the present proceeding.

24. The suit is decreed in the above terms.

Dated: _____

M.Javid.PA

JUDGE