

IN THE HIGH COURT OF SINDH AT KARACHI

SUIT NO. 1148 / 2006

Plaintiff: Saudi Pak Health & Rehabilitation Trust
Through Mr. Farhatullah Khan Advocate.

Defendants: Province of Sindh and another through
No. 1 & 2. Mr. Suneel Talreja AAG.

Defendant: The Secretary Land Utilization Board of
No. 3. Revenue through Mr. Akhtar Ali Advocate.

- 1) For orders on maintainability of Suit vide order dated 21.09.2009.
- 2) For examination of parties / settlement of issues.

Date of hearing: 02.05.2018.
Date of order: 02.05.2018.

ORDER

Muhammad Junaid Ghaffar, J. This Suit is coming up in orders as to maintainability as on 12.01.2009, the Court had framed the following issue:-

“Whether the Plaintiff has a cause of action for filing of the Suit to enable it to claim declaration in terms of Section 42 of the Specific Relief Act?”

Learned Counsel for the Plaintiff submits that in 2001 the then Governor was approached by the Plaintiff for the purpose of allotment of land for establishing a Hospital with 100% foreign investment and the then Governor accepted such proposal and issued directions to the concerned authorities, whereafter, a demarcation fee was deposited and certain demarcation was also carried out. He further submits that vide Letter dated 22.11.2001 issued by the Survey Settlement and Land Records of the Department the area was marked and appropriate approval was granted. Therefore, per learned Counsel the objection is to be overruled as the Plaintiff's Suit is maintainable. Learned Counsel has relied upon ***PLD 2002 SC 208 (Pakistan through Ministry of***

Finance Economic Affairs and another V. FECTO Belarus Tractors Limited).

I have heard the learned Counsel and perused the record. It appears that the Plaintiff's case is that pursuant to their request to the then Governor the exercise of demarcation was carried out and upon deposit of fee, a land was also demarcated. However, at the very outset, I had confronted the learned Counsel as to under what law, upon their request, the then Governor could even entertain such an application and asked the departments to conduct survey to which learned Counsel was unable to refer to any such provision of law. It is settled law that no such land can be demarcated or allotted merely on a private representation to the Governor or for that even the Chief Minister. Any Government under the constitutional dispensation derives power and authority under the constitution itself and or under the legislative instrumentalities as may be conferred by the competent legislature. Any public functionary, how high so ever it may be, is subservient to the Constitution and law and has to act within the boundaries assigned by the Constitution and law framed thereunder. "It is now a well-entrenched in administrative jurisprudence of Pakistan that all the public functionaries including the Chief Minister is bound to deal with the public property strictly in accordance with the parameters laid by the law, rules and regulation framed thereunder ¹. Thus, in view of the arguments put-forth by petitioner's counsel the competent Authority was not authorized to grant initially lease for more than a period of three years for agricultural purposes. As such the said authority including the Chief Minister under the said scheme of law had no lawful authority to extend the period up to thirty years, that too, without auction². We are in complete agreement with the view taken by the Division Bench of the High Court when it says that public functionaries including the Chief Minister can deal with the public property only under a prescribed procedure within the parameters of law under a duly sanctioned scheme and not at their whims. Even if such order was passed by the Chief Minister in favour of the petitioner, authorities concerned would not be bound to follow such

¹ AMERICAN INTERNATIONAL SCHOOL SYSTEM v Mian MUHAMMAD RAMZAN (2015 SCMR 1449)

² Abdul Haque Indhar v Province of Sindh (2000 SCMR 907)

illegal and void order of a superior authority. It would rather be in the exigencies of good order of administration and their duty to point out to the high-ups that they were acting in excess of their lawful authority and in violation of law and the constitutional mandate. They may be apprised of the legal consequences flowing from such acts. The compliance of any illegal and arbitrary order is neither binding on the subordinate forums nor valid in the eyes of law³. In this case in fact there is not even an allotment and perhaps some verbal assurance and the purported exercise of demarcation. There appears to be no assurance or any sort of undertaking on the part of the Government, whereas, it is settled law that no land could even otherwise be allotted to anybody except in accordance with law which at least requires open auction of any such land which is available for allotment.

Under Section 42 of the Specific Relief Act any person entitled to any legal character, or to any right as to any property, may institute a Suit against any person taking, or interested to doing, his title to such character or right, and the Court may in its discretion make therein a declaration that he is so entitled, and the Plaintiff need not in any such Suit asked for any further relief. It is clearly provided that for exercise of such discretion of the Court as to a declaration of status or right one can approach the Court for seeking a declaration, but that is to that right only. Here in this case there appears to be no right accrued to the Plaintiff for seeking any such declaration. The case relied upon by the learned Counsel for the Plaintiff is not relevant on facts, and therefore, I am of the view that instant Suit is not maintainable.

Accordingly, the legal issue settled by the Court vide order dated 12.02.2009 in terms of Order 14 Rule 2 CPC is answered in negative. Suit stands dismissed as not maintainable.

J U D G E

ARSHAD/

³ Iqbal Hussain v Province of Sindh (2008 SCMR 105)