

## IN THE HIGH COURT OF SINDH KARACHI

### Present:

Mr. Justice Syed Hasan Azhar Rizvi

Mr. Justice Adnan Iqbal Chaudhry.

### Constitution Petition No. D-1702 of 2007

[Federation of Pakistan versus Official Assignee / Official Liquidator and others]

- Petitioners : Federation of Pakistan through Ministry of Finance, Government of Pakistan and another through M/s. Zahid F. Ebrahim, Additional Attorney General of Pakistan and Kashif Sarwar Paracha, Deputy Attorney General of Pakistan.
- Respondent 1 : Official Assignee/Official Liquidator, Dr. Chaudhry Waseem Iqbal.
- Respondent 2 : Abdul Rehman Jinnah, through Mr. Ghazanfar Ali Jatoy, Advocate.
- Respondent 3 : M/s. Khawaja Amir Ishaq and Syed Rizwan Ahmed through Mr. Khalid Jawed Khan, Advocate.
- Respondent 4 : Nemo.
- Dates of hearing : 05-12-2018, 13-12-2018 & 19-12-2018
- Date of decision : 17-06-2019

### JUDGMENT

Adnan Iqbal Chaudhry J.- The Federal Government (the Petitioner) in its capacity as lessor of the subject land seeks to set-aside the auction and sale thereof made to the Respondent No.2 in winding-up proceedings relating to the lessee, Pakistan Fertilizer Company Ltd.

2. Pakistan Fertilizer Company Ltd. [PFCL] was incorporated on 09-10-1968 under the erstwhile Companies Act, 1913. Vide an indenture of lease dated 15-07-1969, the Federation of Pakistan (the

Petitioner) leased 70 acres land at Mauripur, Karachi (the Subject Land) to PFCL for establishing a fertilizer factory. However, the fertilizer factory could not be established and in the year 1982 PFCL filed for winding-up in the High Court of Sindh at Karachi vide J.M. No. 24/1982 under section 166 of the erstwhile Companies Act, 1913. Per the winding-up petition, the management and shareholding of PFCL was acquired by the Federal Government pursuant to Articles 4 and 7-B respectively of the Economic Reforms Order, 1972; and thereafter under Article 7E of the said Order, the shares and management of PFCL were transferred to National Fertilizer Corporation of Pakistan Ltd., a company wholly owned and controlled by the Federal Government.

3. Per the aforesaid winding-up petition, PFCL was not able to undertake its principal object of establishing a fertilizer factory; that the project for which PFCL was incorporated was no longer economically viable; that PFCL had borrowed loans from various financial institutions and was unable to pay its debts; that owing to the said reasons, the Ministry of Production, Government of Pakistan, in consultation with the Ministry of Finance had decided to liquidate PFCL; and therefore, at an extra-ordinary general meeting of PFCL held on 08-09-1982, the members of PFCL passed a special resolution to wind-up the said company. At the time of the winding-up petition, the Subject Land consisted of a partly constructed building as the administration block of PFCL, and some machinery lying packed in crates.

4. Vide order dated 23-10-1983 passed in J.M. No.24/1982, PFCL was wound-up and the Nazir of the Court was appointed as the Official Liquidator. Subsequently, on or about 26-12-1986, the Nazir moved a reference to the Court for permission to sell the assets of PFCL, including the Subject Land, so as to pay the creditors of PFCL. Vide order dated 14-09-1986 the Company Court permitted the Nazir to do so. Thereafter, first the movable property of PFCL which

consisted of some components of the unassembled and incomplete fertilizer plant, were sold to the highest bidder, the Respondent No.2, and then the Subject Land was put to auction by the Official Liquidator where again the Respondent No.2 emerged as the highest bidder. Consequently, vide order dated 19-02-1989 passed in J.M. No.24/1982 the sale of the Subject Land in favor of the Respondent No.2 was confirmed by the Company Court; possession was apparently delivered to the Respondent No.2 on 27-02-1989; and a sale certificate was executed in his favor on 28-02-1989 which was duly registered with the concerned Sub-Registrar on 31-03-1989.

5. The Respondent No.2 subsequently proceeded to mortgage the Subject Land with National Bank of Pakistan [NBP] to avail certain financial facilities. Due to his default in repaying the finance facilities, NBP sued the Respondent No.2 for recovery. To pay off the said debt, the Respondent No.2 entered into an agreement to sell 60 acres out of 70 acres of the Subject Land to the Respondent No.3 such that the sale proceeds were to be deposited in execution proceedings instituted by NBP against the Respondent No.2. However, the Sub-Registrar refused to register the sale deed of the said land between the Respondents 2 and 3 until the Respondent No.2 provided an NOC and Deh Form-II from the concerned Mukhtiarkar duly signed by the DDO, Karachi. Being aggrieved of the refusal of the Sub-Registrar to register the sale deed as aforesaid, the Respondent No.2 moved CMA No.198/2004 under section 151 CPC before the Company Court in J.M. No.24/1982 praying for a direction to the Collector Sales Tax Central Excise, Karachi, the Mukhtiarkar and the DDO Revenue to issue Deh Form II and an NOC for the sale of the Subject Land, or alternatively to direct the Sub-Registrar to register the sale deed of the agreed part of the Subject Land between the Respondents 2 and 3.

6. The aforesaid CMA No.198/2004 was contested *inter alia* by the Collector Excise and Sales Tax by contending *inter alia* that clause

4 of the lease of the Subject Land provided that it had to be used for the purposes of establishing a fertilizer factory within three years, and clause 5 of the lease provided that the lessee could not assign, or give rights to any person in the Subject Land without the previous consent in writing of the Government of Pakistan. Therefore, it was contended by the Collector Excise and Sales Tax that since PFCL had never established the fertilizer factory, the Subject Land should revert to the Excise and Taxation Department. The Company Court held that clause 4 of the lease had become redundant when liquidation of PFCL and the sale of the Subject Land had been made at the behest of the Federal Government itself who had never taken any steps to resume the Subject Land after the expiry of three years. However, the objection that clause 5 of the lease prohibited the Respondent No.2 from assigning any right in the Subject Land to any other person without the prior consent in writing of the Federal Government, that was upheld by the Company Court by requiring the Respondent No.2 to obtain the requisite sanction for further sale to the Subject Land to the Respondent No.3, and while allowing CMA No.198/2004 vide order dated 11-05-2004 the Company Court also directed the Federal Government to act reasonably as and when the requisite permission was sought by the Respondent No.2.

7. The aforesaid order dated 11-05-2004 passed by the Company Court on CMA No.198/2004 in J.M. No.24/1982 was assailed by the Petitioner (Federal Government) before the Supreme Court of Pakistan vide Civil Appeal No. 2079/2004 wherein it was contended *inter alia* that on the failure of PFCL to adhere to clause 4 of the lease of the Subject Land i.e., the failure to establish a fertilizer plant within three years, the Subject Land had reverted to the Federal Government, and consequently the sale of the Subject Land to the Respondent No.2 in winding-up proceedings of PFCL and any further sale thereof by the Respondent No.2 were transactions null and void. Though the Supreme Court did observe that the sale of the Subject Land to the Respondent No.2 was contrary to clause 4 of the

lease, but ultimately the appeal was allowed on the ground that the Company Court did not have jurisdiction to decide a matter relating to a transaction between the purchaser of the Subject Land and a third party i.e., the Respondents 2 and 3. The concluding paragraph of the judgment dated 10-10-2006 in Civil Appeal No. 2079/2004 was as follows:

*“In sequel to above mentioned discussion we are of the considered opinion that the learned Single Judge in Chambers had no authority to resolve such a controversial issue by exercising his jurisdiction under section 151 CPC and without impleading the Government of Pakistan as necessary party. In such view of the matter the appeal is accepted and the order impugned being unlawful is set aside. The parties concerned may approach to the forum concerned for the redressal of their grievances, if so desired.”*

8. Subsequent to the observation of the Supreme Court in Civil Appeal No.2079/2004 that the parties may approach the concerned forum for the redressal of their grievance, the Federal Government proceeded to file the instant constitution petition with the following prayer :

*“It is therefore, respectfully prayed that this Hon’ble Court may be pleased to:*

*(a) Declare that the leased premises being piece of land approximately measuring 70 Acres within the limits of Central Excise and Land Customs Department Land at Mauripur, Karachi in the Karachi Taluka of Karachi District was not on absolute asset of M/s. Pakistan Fertilizer Company Ltd., (wound up) and, as such, the same was not liable to be sold in the winding up proceedings by the learned Company Judge in J.M. No. 24/1982;*

*(b) Declare that the order of sale dated 19-2-1989 in respect the leased premises and the sale certificate issued pursuant thereto dated 28-2-1989 and its subsequent registration with the sub Registrar “T” Division X Karachi at Serial No. 10 at pages No. 107 to 157, Volume of Book-1-A Supplementary Part III dated 31-3-1989 are void, illegal and no legal effect whatever;*

*(c) Declare that alienation and / or encumbrance of the leased premises by the respondents purportedly pursuant to the order of sale dated 19-2-1989 are void and to no legal effect.*

(d) Declare that the leased premises stood resumed in favour of the petitioners and that the petitioners have lawful right to take possession thereof from the respondents and / or any other person acting through or under any of them.

(e) Direct the respondents and / or any other person in possession of the piece of land approximately measuring 70 acres within the limits of Central Excise and Land Customs Departments Land at Mauripur, Karachi in the Karachi Taluka of Karachi District to deliver vacant physical possession to the petitioners.

(f) Permanently restrain the respondents and / or any other person acting through or under any of them to interfere with the peaceful vacant physical possession of the premises being piece of land approximately measuring 70 Acres within the limits of Central Excise and Land Customs Departments Land at Mauripur, Karachi in the Karachi Taluka of Karachi District by the Petitioner;

(g) Award any other relief which this Hon'ble Court may deem appropriate in the circumstances of the case.

(h) Cost."

9. In the meanwhile, the Respondent No.3 moved Civil Review Petition No.303/2006 before the Supreme Court to review the judgment dated 10-10-2006 passed in Civil Appeal No. 2079/2004. Vide order dated 16-01-2008, the Supreme Court observed that the grounds raised in the review petition required consideration and ordered status quo. The review petition was eventually disposed of by the Honourable Supreme Court vide order dated 16-05-2012 on a statement filed by the parties as follows:

"Parties have filed the following statement:-

*"It is submitted that in the last para of the impugned judgment dated 10.10.2006, it has been observed as under:-*

*"The parties concerned may approach to the forum concerned for the redressal of their grievances, if so desired."*

*The Federation of Pakistan and collectors of Central Excise and Sales Tax have filed a C.P. No. D-1702/2007, which is pending before the Honorable High Court of Sindh. A. Rehman Jinnah and the Interveners/Petitioners are entitled to contest the said Petition and are also entitled to file proceedings for redressal of their grievances. All such proceedings should be heard and disposed off on merits un-influenced by the judgment. The Review Petition be disposed of in aforesaid terms."*

2. Learned counsel for the petitioner has stated that as there is a charge upon the property in terms of section 49 of the Transfer of Property Act, 1882, therefore, parties be directed to maintain the status-quo. We were not inclined to allow the parties to maintain the status-quo but in the meanwhile the Official Assignee pointed out that in the proceedings, which are pending before the High Court, order of status-quo had already been passed on 4<sup>th</sup> September, 2008, relevant para there from is reproduced herein below: -

*"We have perused the judgment of Hon'ble Supreme Court and observed that it is an elaborate judgment and status of the company in respect of the land has been highlighted. Let notice be issued to the respondents. In the meanwhile all concerned parties are directed to maintain status quo".*

In view of the fact that learned High Court had already passed the order of status-quo, therefore, request so made on behalf of the petitioner need not to be entertained.

Petition stands disposed of in the above terms."

10. In support of this petition Mr. Zahid F. Ebrahim, learned Additional Attorney General relied on clause-4 of the lease of the Subject Land (copy filed as Annexure P-2 to this petition), which reads as under: -

*"4. The lessee shall use the demised land only for the purpose of installing a plant or complex for producing Phosphstic Fertilizers and related by-products, and shall establish such a plant or complex within a period not exceeding three years from the date of the execution of this deed, failing which the lease shall stand terminated".*

The learned Additional Attorney General laid emphasis on the words "... *failing which the lease shall stand terminated*" appearing in clause 4 of the lease to submit that the effect thereof was that on the failure of PFCL to establish a fertilizer factory within the stipulated period of three years, the lease stood terminated automatically with the effect that the Subject Land reverted to the Federal Government, and therefore it was never a part of the assets of PFCL which could have been sold in the liquidation of PFCL. The learned Additional Attorney General submitted that such effect of clause 4 of the lease had been endorsed by the Supreme Court of Pakistan in its

judgment dated 10-10-2006 passed in Civil Appeal No.2079/2004 and therefore there was no room for any further discussion on the validity of the sale of the Subject Land. On the query of the Court whether any action had been taken by the Petitioner under the provisions of the Transfer of Property Act, 1882 to determine/forfeit the lease of the Subject land and whether any appeal had been preferred by the Petitioner to challenge the sale of the Subject Land in liquidation proceedings, the learned Additional Attorney General submitted that as the termination of the lease was automatic, no further action was required under the provisions of the Transfer of Property Act, 1882, and that after the observation of the Supreme Court in its judgment in Civil Appeal No.2079/2004 that the sale of the Subject Land to the Respondent No.2 was unlawful, there was no consequence of the failure of the Petitioner to appeal the sale.

11. Mr. Khalid Jawed Khan, learned counsel for the Respondent No.3 submitted that the judgment dated 10-10-2006 passed in Civil Appeal No.2079/2004 had been reviewed by the Supreme Court of Pakistan vide order dated 16-05-2012 passed in Civil Review Petition No. 303/2006 and therefore the reliance placed by the Petitioner on observations made in the judgment in Civil Appeal No.2079/2004 is misplaced. He submitted that PFCL and its assets, which included the Subject Land, were nationalized in the year 1972 (under the Economic Reforms Order, 1972) and taken over by the Petitioner itself (the Federal Government); that such nationalization took place within the period of three years that were allowed in the lease to set-up the fertilizer factory; that the winding-up petition itself acknowledged that the fertilizer factory could not be set-up for economic reasons; that the Petitioner No.2 (the Collector) had himself granted an NOC to the Respondent No.2 for creating a charge over the Subject Land; and therefore clause 4 of the lease had never been enforced by the lessor, the Petitioner. Mr. Khalid Jawed Khan submitted that all of the said facts had not been brought to the notice of the Honourable Supreme Court at the time of the judgment



in Civil Appeal No.2079/2004 and that is why the parties had filed a statement to agree that any proceeding filed by them after the judgment in Civil Appeal No.2079/2004 should be decided uninfluenced by the said judgment, which statement was accepted by the Supreme Court vide order dated 16-05-2012 passed in Civil Review Petition No.303/2006.

12. Chaudhry Waseem Iqbal, the Official Assignee and Official Liquidator of PFCL supported the submissions advanced by Mr. Khalid Javed Khan. He further submitted that the sale of the Subject Land to the Respondent No.2 was a past and closed transaction as the sale proceeds thereof had been distributed amongst the creditors of PFCL long ago. He submitted that this constitution petition was not maintainable as the order of the Company Court confirming the sale of the Subject Land to the Respondent No.2 could only have been assailed via an appeal under the Companies Ordinance, 1984.

Learned counsel for the Respondent No.2 submitted that the petition was *malafide* as the Respondent No.2 had paid the highest price for the sale of the Subject Land. He submitted that in any case the said sale was a past and closed transaction.

13. Heard the learned counsel and perused the record.

It will be seen that the judgment dated 10-10-2006 passed by the Supreme Court in Civil Appeal No.2079/2004 was against the order dated 11-05-2004 passed by the Company Court on CMA No.198/2004, which application was not a challenge to any order passed in J.M. No.24/1982 but was the grievance of the Respondent No.2 against the refusal of the Sub-Registrar to register the sale deed between the Respondents 2 and 3 in respect of a part of the Subject Land. In other words, the order dated 14-09-1986 passed in J.M. No.24/1982 permitting the Official Liquidator to sell the Subject Land, the order dated 19-02-1989 confirming the sale of the Subject Land to the Respondent No.2, and the sale certificate dated 28-02-1989 of the Subject Land in favor of the Respondent No.2, were

never challenged and remained intact. While the Petitioner (Federal Government) may have contested CMA No.198/2004 on the ground that the sale of the Subject Land to the Respondent No.2 was unlawful, but the fact remains that the Petitioner had never filed any independent proceeding to challenge any of the aforesaid orders passed in J.M. No.24/1982 that culminated into a sale certificate of the Subject Land in favor of the Respondent No.2. Though the Supreme Court had in passing its judgment in Civil Appeal No.2079/2004 observed that the sale of the Subject Land to the Respondent No.2 was contrary to the lease conditions, it had left the parties to remedies available at law in holding that "The parties concerned may approach to the forum concerned for the redressal of their grievances, if so desired."

14. Needless to state that the remedy of the Petitioner against the orders dated 14-09-1986 and 19-02-1989 passed by the Company Court for the sale of the Subject Land in proceedings-in-winding-up (as distinct from an 'order of winding-up') was by way of an appeal to the Division Bench of the High Court under sub-section (2) of section 10 of the Companies Ordinance, 1984 [see the case of *Kamaluddin Qureshi v. Ali International Co.* (PLD 2009 SC 367)]. Admittedly, the said remedy of appeal had never been availed by the Petitioner and had become time-barred long ago. That then begs the question how this writ petition can be maintained to challenge an order not appealed. It was in an attempt to overcome such a hurdle that the learned Additional Attorney General contended that in view of the observation of the Supreme Court in its judgment in Civil Appeal No.2079/2004 that the sale of the Subject Land to the Respondent No.2 was unlawful, there was no consequence of the failure of the Petitioner to appeal the said sale. However, that contention loses force in light of the subsequent order dated 16-05-2012 passed by the Supreme Court in Civil Review Petition No. 303/2006. We agree with Mr. Khalid Javed Khan that the said order passed by the Supreme Court in review is to the effect that the

observations made in the judgment of Civil Appeal No.2079/2004 are not to be considered by us in deciding this constitution petition.

15. Having seen that the judgment of the Supreme Court in Civil Appeal No.2079/2004 was subsequently reviewed as aforesaid, we now turn to the mainstay of the Petitioner's case viz. that the sale of the Subject Land in winding-up proceedings of PFCL was a nullity by reason of clause 4 of the lease of the Subject Land. We have noticed that the said clause 4 appearing in the copy of the lease filed as Annexure P-2 to this petition, is not the same as the one that appears in the copy of the lease that is filed in J.M. No.24/1982 at page 673, in that, the words "*.... failing which the lease shall stand terminated*" appear to have been crossed-out in the latter copy. However, since the text of clause 4 of the lease relied upon by the Petitioner was not questioned before us by the Respondents, we assume that clause 4 of the original lease did contain the words "*.... failing which the lease shall stand terminated*". But even that being so, the argument of the learned Additional Attorney General that the lease of the Subject Land stood terminated and the Subject Land stood reverted to the Federal Government by reason of clause 4 of the lease, fails to address the provisions of the Transfer of Property Act 1882.

16. Clause (g) of section 111 of the Transfer of Property Act, 1882 reads as under:

**"S.111 Determination of lease.** - A lease of immovable property determines:

(g) by forfeiture; that is to say, (1) in case the lessee breaks an express condition which provides that on breach thereof the lessor may re-enter; or (2) in case the lessee renounces his character as such by setting up a title in a third person or by claiming title in himself; or (3) the lessee is adjudicated an insolvent and the lease provides that the lessor may re-enter on the happening of such event; and in any of these cases the lessor or his transferee gives notice in writing to the lessee of his intention to determine the lease;"

Further, section 112 of the Transfer of Property Act provides that a forfeiture under section 111 clause (g) is waived by certain acts of the lessor one of which is “any other act on the part of the lessor showing an intention to treat the lease as subsisting.”

17. Therefore, under clause (g) of section 111 of the Transfer of Property Act, 1882, before the Petitioner as lessor could forfeit the lease for a breach of clause 4 thereof, it was required to give notice in writing to the PFCL of the Petitioner’s intention to forfeit the lease. Admittedly, no such notice was ever given. That, coupled with the fact that neither the Federal Government nor the Collector (Petitioners) had ever raised any objection to the sale of the Subject Land<sup>1</sup> in winding-up proceedings of PFCL but had acted as acquiescing parties, in our view was an act showing intent to treat the lease as subsisting and thus constituted a waiver of clause 4 of the lease within the meaning of section 112 of the Transfer of Property Act, 1882. It is to be noted that both the lessor of the Subject Land and the controlling entity of PFCL who was the petitioner before the Company Court, was one and the same i.e., the Federal Government; that the winding-up petition (J.M. No.24/1982) categorically stated that the assets of PFCL included the Subject Land; that the financials of PFCL filed with the winding-up petition included the Subject Land amongst its fixed assets; that the statement of affairs filed on behalf of PFCL after the winding-up order also included the Subject Land; and that the report of the Provisional Liquidator also listed the Subject Land as the property of PFCL.

18. Adverting now to the most striking feature of this petition, the prayer made in the petition manifests that the Petitioner seeks to set-aside the orders dated 14-09-1986 and 19-02-1989 passed by the High Court acting as the Company Court in J.M. No.24/1982 whereby the

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<sup>1</sup> This is to clarify that the words ‘sale of the Subject Land’ appearing in this judgment mean transfer of the lease.

liquidator of PFCL was permitted to sell the Subject Land to pay of the debts of PFCL, and whereby the sale of the Subject Land to the Respondent No.2 was confirmed. Such prayer, with respect to learned counsel, is seeking a writ against the High Court itself. Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 does not envisage a writ against the High Court. Sub-Article (5) of Article 199 of the Constitution reads as follows:

“(5) In this Article unless the context otherwise requires –  
“person” includes any body politic or corporate, any authority of or under the control of the Federal Government or of a Provincial Government, and any Court or tribunal, other than the Supreme Court, a High Court or a Court or tribunal established under a law relating to the Armed Forces of Pakistan; and  
.....”

In the case of *Muhammad Shafi v. Attaullah* (1984 SCMR 1124), the Supreme Court of Pakistan had held that a constitution petition questioning the legality of an earlier order passed by the same High Court on a Settlement Revision, was barred by reason of Article 199(5) of the Constitution. In the case *Chief Justice of Pakistan Iftikhar Muhammad Chaudhry v. President of Pakistan* (PLD 2010 SC 61) it was held by the Supreme Court of Pakistan that “What emerges from the provisions of clause (5) of Article 199 of the Constitution as also from some precedent cases is that writs should not issue from one High Court to another High Court or from one Bench of a High Court to another Bench of the same because that could seriously undermine and prejudice the smooth and harmonious working of Superior Courts. But this should never be understood to mean that no writ can ever issue to a Judge in his personal capacity or where a Judge was working as *persona designata*.”

19. Therefore the only question that needs to be answered is whether the High Court is not to be treated as a High Court for the purposes of Article 199(5) of the Constitution of Pakistan when it acts in a special jurisdiction such as a Company Court under section

7 of the Companies Ordinance, 1984 ? The answer to that question is provided by the case of *Tank Steel & Re-rolling Mills (Pvt.) Ltd. v. Federation of Pakistan* (PLD 1996 SC 77). In that case the judgment and decree passed by the Banking Tribunal under the Banking Tribunals Ordinance, 1984, was appealed before the Division Bench of the Peshawar High Court, who required the appellant to deposit the decretal amount as a condition precedent to the appeal as required by the said Ordinance. The appellants could not do so, leading to a dismissal of the appeal. The bank then initiated execution proceedings and the order passed therein was challenged by the appellant/judgment debtor by way of a constitution petition. One of the grounds for dismissing such petition was that the petitioners essentially sought a writ against a Bench of the High Court that had dismissed the appeal. While maintaining such finding, the Supreme Court held as follows:

“9. The learned counsel for the respondent No.3 has taken strong exception to the competency of the writ petition before the High Court as in effect, final orders passed by the Appellate Bench of the High Court were challenged in the Constitutional petition. We entirely agree with the learned counsel for respondent No.3 on the very maintainability of the writ petition. A bare reading of clause (5) of Article 199 of the Constitution of Pakistan would make it clear that the 'High Court' is not a 'person' to whom a writ of High Court can be directed. The obvious result is that the petition is barred by the provisions of the Constitution itself and the petitioners could not be granted any relief in writ jurisdiction of the High Court. It appears to us that the mere conferment of Constitutional jurisdiction on a Bench of the High Court does not have the effect of converting another Bench which exercises the appellate powers of the same High Court inferior to the former. This Court in *Malik Feroz Khan Noon v. The State* PLD 1958 SC (Pak.) 333 has approved the dictum laid down in the case of *Goonesinha v. O.L.de Kretser* (AIR 1945 PC 83) by the Privy Council that a writ of certiorari, which is in the nature of a revisional order and can only be issued to an inferior Court, cannot be issued by a Superior Court to bring up an order made by a Judge of that Court. In *Malik Feroz Khan Noon's* case, the principle deducible is that when the Judges of the High Court function in different capacities under different jurisdiction, they do not act as different Courts but exercise the powers of the same Court and that distribution of those powers is

not more than an internal arrangement among the Judges of the same Court.”

20. Therefore, the case of *Tank Steel & Re-rolling Mills (supra)* settles that even the conferment of a special jurisdiction on the High Court does not open it to a writ under Article 199 of the Constitution of Pakistan. As discussed in para 14 above, the remedy of the Petitioner was an appeal under section 10(2) of the Companies Ordinance, 1984 which the Petitioner had never availed. Even assuming for the sake of argument that this constitution petition could be converted to an appeal under section 10(2) of the Companies Ordinance, 1984, and even if the time-bar of about 18 years or so in filing such proceeding were to be somehow condoned, still, as discussed in para 17 above, clause 4 of the lease of the Subject Land on which the entire case of the Petitioner rests, had been waived by the Petitioner; the lease of the Subject Land had never been determined by the Petitioner; and therefore the said clause 4 of the lease would not be a ground to challenge the orders passed by the Company Court to sell the Subject Land to the Respondent No.2.

Since the instant constitution petition is not a proceeding brought by the Respondent 2 or 3 with regards to the transaction of the Subject Land between them, we refrain from expressing any opinion with regards to that.

21. Therefore, having concluded that a writ cannot issue to the High Court even where the High Court acts as a Court under the Companies Ordinance, 1984, this constitution petition is not maintainable and is dismissed along with pending applications.

**JUDGE**

**JUDGE**

Karachi  
Dated: 17-06-2019