

ORDER SHEET
IN THE HIGH COURT OF SINDH KARACHI

C.P. No.D-3073 of 2012
C.P. No.D-6448 of 2015

DATE	ORDER WITH SIGNATURE OF JUDGES
-------------	---------------------------------------

11.02.2020

Mr. Muhammad Farooq, Advocate for the petitioner
Mr. Amir Aziz Khan, Advocate for petitioner in C.P No.D-6448/2015
Abdul Jalil Zubedi, AAG
Mr. Ishrat Ghazali, Advocate for Respondent No.5
Ms. Alize Bashir, Advocate for Respondent No.6
Mr. Mansoor Mir, Advocate for applicant/intervener
Mr. Jibrán Nasir, Advocate for applicant/intervener

ZULFIQAR AHMAD KHAN J:

1. These connected petitions pertain to Young Men's Christian Association a worldwide youth organization founded on 06-06-1844 by Sir George Williams in London, now based in Geneva, Switzerland, with more than 64 million beneficiaries around 120 countries. The association commenced its operations in Karachi, Pakistan in the year 1913 by registering itself as a society under the name of "Karachi Young Men's Christian Association" under the Societies Registration Act, 1860 and was accorded Registration No.29/1913 on 14-01-1913 (hereinafter called "YMCA society"). To house its philanthropic operations covering accommodation, health, education and academia, etc. in Karachi, various pieces of lands were allotted to the said society roughly totaling around 36,955 square yards in Sheet No. RB-1, Survey No1/1. These properties were duly leased in the name of YMCA society alone and none else. While operations of the society were running over quarter of a century smoothly, in the last few decades, two other bodies with deceptively similar names were registered by local individuals. These were Young Men's Christian Association, a body registered under the Voluntary Social Welfare Agencies (Registration & Control) Ordinance, 1961 (hereinafter called "Karachi YMCA") and

another, under the Companies Ordinance, 1984 under registration No.K-08526 of 2001 (hereinafter called "YMCA company"). The battle to gain control over Karachi assets of the society has been vigorously going on since early 2000 when finding strength under the Voluntary Social Welfare Agencies (Registration & Control) Ordinance 1961, the Director/Provincial Co-ordinator of Social Welfare Department, Government of Sindh through its letter dated 11-09-2003 appointed a caretaker body to run the affairs of the Karachi YMCA, but since there were no assets in the name of the Karachi YMCA, the caretaker camouflagingly took over the assets and operations of the YMCA society (which allegedly) was battling for its existence on account of mistrust erupted between its members, and outsider lobbies eying most valuable lands of the society needed ways to pock into the affairs of the society. Posed with this situation, YMCA society held its elections on 11-11-2004 and elected its Board for the term of 2004-2006. Upon getting approval of a general body, an application was made by the elected Board of YMCA society to the Directorate of Social Welfare on 08-12-2004 for the cancellation of Karachi YMCA to the extent that through this mechanism assets of YMCA society were mischievously overtaken by the caretaking body. In the wake of these developments, through letter dated 01-12-2004 the caretaker administrator chose to handover charge to the newly elected Board, however when some members of Karachi YMCA chose to interfere in this handover, YMCA society filed a suit bearing No. 1401/2004 wherein status quo orders dated 11-01-2005 were passed in favor of YMCA society. This, however did not stop the Directorate of Social Welfare from issuing an order dated 16-03-2005 for re-appointment of a caretaker body, which resulted in filing of Constitutional Petition No.D-330/2005 where a divisional bench of this Court passed orders dated 06.10.2005 setting aside the

caretaker body and directing that elections of YMCA society should be held under the supervision of Nazir of this court. Nazir was directed to take over all the relevant record of membership, scrutinize it in the light of the bye-laws of YMCA society to determine eligibility, and hold elections within 60 days. Nazir was also directed to have accounts of the society audited through qualified auditors too.

2. It appears that elections were held by a committee comprising of Nazir, MIT of this Court and the office of the Advocate General after scrutiny of record of membership. The results were communicated to the Director, Provincial Coordinator for Social Welfare Department, Government of Sindh, which issued a notification handing over charge to the newly elected body. It however later transpired that in fact elections were held of Karachi YMCA rather than YMCA society as it was alleged that after the promulgation of the 1961 Ordinance, the Societies Registration Act, 1860 stood impliedly repealed, thus Karachi YMCA stepped into the shoes of YMCA society and took over all assets of the latter. This notion was however refuted with feverish intensity by the society which pleaded that Karachi YMCA is a fictitious body trying to usurp assets of the society, and the society was fully functions under the 1860 Act. Thus a question was posed through CP No. D-330/2005 as to whether elections of the YMCA society were held or not?
3. A Divisional Bench of this Court, through its detailed and speaking orders dated 22.10.2010 & 28.10.2010 came to the conclusion that the confusion engulfed by the committee lead Nazir of this court to hold elections of Karachi YMCA rather than that of YMCA society and it was ordered that Nazir in association with Provincial Assistant Registrar/Joint Stock Companies to hold elections of YMCA society (the entity registered under the 1860 Act) after

carrying out the exercise contemplated by the Court's order dated 06.10.2005.

4. Since the entire controversy was so ably, aptly and methodologically adjudicated by our learned brothers, we deem it essential to reproduce the reasoning and the operating part of the said order embodied between paragraphs 13-22 in the following:

13) *We have thoroughly gone through bulky files in three volumes, examined Nazir Reports, Final Report of the Advocate General Sindh, objections thereto, various references, including Reference No.5. From examination of record produced, it is apparent and clear that the election indeed was held but of "Karachi YMCA" registered under the Voluntary Social Welfare Agencies (Registration and Control) Ordinance 1961 as per order of this Court dated 02-11-2006. However Honorable Supreme Court, maintained the Order dated 6-10-2005, therefore it is clear election if any held under order of Court dated 02-11-2006 are also of no legal sanctity. No elections of Petitioner YMCA (ie YMCA Society as called herein), registered under the Societies Registration Act 1860, was held as directed by this Court vide order dated 06-10-2005.*

14) *It may be noted that the Petitioner YMCA itself complained of formation of unauthorized organizations and associations under the same name and style of YMCA under Ordinance 1961 and Companies Ordinance 1984 respectively. At that time Mr. M.M Tariq Advocate, was representing the Petitioner YMCA. Now he represents Karachi YMCA, registered under Ordinance 1961 of which the election was held and as per Nazir Report dated 16-04-2010 elected members forcibly took over the charge of the property of Petitioner YMCA from the Nazir. Conduct of Mr. M.M Tariq Advocate is unbecoming of an advocate and raises many questions.*

15) *On examination of the record of election and so also of the Final Enquiry Report prepared by the Advocate General of Sindh, admittedly, no election was held of the Petitioner YMCA registered under Societies Registration Act 1860, but of "Karachi Young Man Christian Association" registered under the Ordinance 1961.*

16) *We have examined the record with the assistance of learned counsels. It transpires that the confusion arose on the basis of Reference No.5 dated 17-10-2006 filed by the Committee constituted by the Court (page 1385 of the main file). In the Reference No.5 Committee made a remark in para 2 "In the wake of proclamation of Voluntary Social Welfare Agencies Ordinance, it was mandatory for all NGOs to get themselves registered under the said Ordinance 1961. Thus YMCA registered was in fact a continuation of the Original YMCA registered under the Societies Act, 1860". The Court on the basis of assumption of the Committee as above, passed orders dated 02-11-2006 observing "Reference No.5 is the main Reference under consideration. It is disposed off by directing that the entity registered under Voluntary Social Welfare Agencies (Registration and Control) Ordinance 1961, is to be*

considered as valid and legitimate YMCA and consequently the subsequent registration of this entity under Section 42 of the Companies Ordinance is declared to be unlawful". Consequent directions were made to hold election of YMCA registered under the Ordinance 1961.

17) *It may be observed that in Pakistan under various legal regime welfare organizations, agencies and trust are registered and regulated by/under different provincial and federal law and regulated by different regulatory authorities. This is not the occasion to dilate on all such laws and legal regime, relevant for the purposes of present controversy is welfare agency registered under Societies Act of 1860, which is registered and comes under the regulatory control of "Provincial Registrar/Joint Stock Companies, Sindh Directorate of Industries (Registration Wing)". Whereas welfare agencies or associations registered under the Voluntary Social Welfare Agencies (Registration and Control) Ordinance 1961 for the purposes of registration and monitoring comes under the provincial Social Welfare Department Government of Sindh. Welfare agencies and or commonly referred to as Non-Governmental Organizations (NGO) are also registered under Section 42 of the Companies Ordinance 1984 and are registered and regulated by Securities Exchange Commission of Pakistan (SECP).*

18) *Since the order passed by this Court dated 06-10-2005 whereby election of Petitioner YMCA (registered under Societies Act 1860) has been maintained by the Honourable Supreme Court vide order dated 03-02-2010, therefore, entire exercise carried out by the Nazir of scrutinizing the record of "Karachi Young Man Christian Association" registered under Ordinance 1961 becomes exercise in futility and in negation to the Order dated 06-10-2005 of this Court.*

19) *We have also examined the Articles and Memorandum of YMCA, registered under Voluntary Social Welfare Agencies (Registration & Control) Ordinance, 1961, which was placed on record by Mr. M.M. Tariq advocate appearing for the Petitioner association. Articles and By Laws of such association do not show that such "Karachi YMCA" was formed in supersession or by taking over or amalgamation with the Petitioner YMCA formed under the Societies Registration Act 1860 and none could be done without due process of law. Society registered under the Societies Act 1860 are registered for the promotion of literature, science, or fine arts or for diffusion of knowledge, political education or for charitable purposes as defined in the preamble and Section 20 of the Societies Registration Act 1860. The association or society registered under the Act of 1860 could lose its existence only by amalgamation with any other society by following mandatory provision and in the manner laid down in Section 12 of the Act 1860, or could be dissolved by following section 13 and 14, thereof or Governing Body of the Society formed under the Act of 1860 could be superseded by the Provincial Government temporarily under Section 16-A of the Act of 1860 for period of one year and on expiry of the period governing body is reconstituted in accordance with memorandum of association. We have also examined provisions of Voluntary Social Welfare Agencies (Registration and Control) Ordinance, 1961, which was promulgated on 02-12-1961 to provide for the registration and control of voluntary social welfare agencies in any one or more of the 16 fields as enumerated in the schedule of the Ordinance 1961. The Society or Agency registered under the Ordinance 1961 could only be*

dissolved on the Report of the Registration Authority, which is made after hearing the society or agency and provincial government on being satisfied with the Report may make an order of dissolution, or the Provincial Government on the recommendation or proposal of three-fifth of member of the society/agency, if satisfied, may order dissolution of the society/agency. The Ordinance 1961 does not speak of repeal of the Act of 1860, therefore, implied repeal of Act of 1860, as argued by Mr. Aqil Awan cannot be inferred from reading of Ordinance 1961. Very fact that various provisions of the Act of 1860 were amended in province of Sindh from time to time and lately by Societies Registration (Sindh Amendment) Ordinance VII of 2005 dated 15-08-2005, where by Deni Madaras were brought into the net of the Act of 1860. The amendment was made after the petition was filed on 05-04-2005, therefore contention of Mr. Aqil Awan advocate is preposterous and is rejected.

20) We have expressed our displeasure over the conduct of the counsel of the petitioner Mr. M.M. Tariq, who was once representing the Petitioner YMCA registered under the Societies Registration Act, 1860, after the elections were managed of an association registered under the Societies Registration Act, 1961 (sic), he has switched over his loyalties to an association, of which registration is questionable. Conduct of Mr. M.M Tariq is indeed of unbecoming of an advocate and is against all profession ethics, we refrain from dilating mover on his conduct and leave the matter to Sindh Bar Council to examine such conduct and take the matter to Sindh Bar Council to examine such conduct and take action, as admissible under the law. Let copy of this order be forwarded to chairman and vice chairman of Sindh Bar Council for taking such action against Mr. M.M Tariq Advocate as may be in accordance with law.

21) In view of the foregoing discussion, it is conclusively established that no elections were held of the Petitioner YMCA, since it was directed that the election are to be held under supervision of the Nazir of this Court in association with Respondent No.2, but as the facts unfolded, it appears that the Respondent No.2 Director Provincial Coordinator, Social Welfare Department, Government of Sindh, is the registering and regulatory authority of association registered under the Ordinance 1961. For the association registered under the Societies Registration Act, 1860, the Provincial Registrar/Joint Stock Companies, Sindh, Directorate of Industries (Registration Wing), is the registering and regulatory authority, both the authority are different and separate have not overlapping role or function, neither the Provincial Coordinator, Social Welfare Department, Government of Sindh, can exercise any regulatory role or control over the affairs of the Agency or society registered under Societies Act 1860, nor the Provincial Registrar or Assistant Registrar/Joint Stock Companies, Sindh has any control or authority over the affairs of the association registered under the Voluntary Social Welfare Agencies (Registration and Control) Ordinance, 1961.

22) Under the circumstances let the Nazir in association Provincial Assistant Registrar/Joint Stock Companies, Sindh, Directorate of Industries (Registration Wing), hold election of the Petitioner YMCA registered under the Societies Registration Act, 1860 after carrying out the exercises as ordered by this Court on 06-10-2005. Nazir to immediately take over the control of YMCA alongwith all record, present management

represented by M/s.Aqil Awan and Mr. M.M Tariq advocate to immediately handover the charge to the Nazir of this Court. Nazir may run the affairs of the Petitioner YMCA, till new body is elected and notified by the Provincial Assistant Registrar/Joint Stock Companies, Sindh Directorate of Industries (Registration Wing). Nazir to carry on, up to date Audit of the Petitioner YMCA. Nazir to scrutinize all transactions made contract concluded by the so called elected body as notified by the Respondent No.2 and in case any impropriety is observed may bring it to the notice of the court for examination and order. Tentatively Nazir fee in the sum of Rs.25,000 to be paid out of the funds of the Petitioner YMCA.

5. The said order of 28.10.2010 was challenged through Civil Appeal No. 225-K of 2011, which was dismissed by Apex Court's order dated 31.05.2012 where the Hon'ble Supreme Court maintained this Court's order dated 28.10.2010, thereby upholding the earlier order passed on 06.10.2005 where the Nazir was directed to hold elections within 60 days after scrutinizing the record and issuance of correct members list mentioning members which were eligible to cast votes in accordance with the bye-laws of the YMCA society (not Karachi YMCA).

6. Nazir after conducting elections submitted his report dated 17.04.2012 after (strangely) coming to the conclusion that there were only 124 active members of YMCA society. Full contents of the said report are reproduced in the following:

Submitted:

1. *On 31-05-2012, Honourable Supreme Court was pleased to pass following order in Civil Appeal No. 225-K of 2011 against judgment dated 28-10-2010 of Honourable High Court, Karachi passed in C.P No.D-330/2005. The relevant portion reads as under:-*

"6. The learned High Court in this view of the matter and after taking into consideration all aspects of the matter through impugned order rightly directed the Nazir to hold elections of YMCA registered under Societies Registration ACT, 1860 after carrying out the exercise as ordered by

the High Court on 6.10.2005, which order was maintained by this Court.

7. For the foregoing reasons, the order impugned dated 28.10.2010 does not call for any interference. Therefore, the instant appeal is dismissed.”

2. The relevant portion of order dated 28-10-2010 is reproduced for kind perusal of Honourable Court;

“Under the circumstances let the **Nazir in association provincial Assistant Registrar/Joint Stock Companies, Sindh, Directorate of Industries (Registration Wing)**, hold election of the petitioner YMCA registered under the Societies Registration Act, 1860 after carrying out the exercises as ordered by this Court on 06-10-2005...”
(bold is for emphasis)

3. For further clarification, the relevant portion of order dated 06-10-2005 passed by Honourable Court is given below;

“The Nazir shall take over all the relevant record of membership and notify the date of fresh elections within 60 days from the date of receipt of this order. The Nazir Shall scrutinize the record and issue list of members eligible to cast their votes in accordance with bye-laws”

4. In compliance of Honourable Orders, mentioned above, undersigned initially called registered copy of by-laws of the YMCA registered No.39/1913 registered under Societies Registration Act 1860 from Mr. Junaid Ahmed, the Provincial Assistant Registrar, Joint Stock Companies Sindh, Directorate of Industries (Registration Wing) along with any member list of YMCA, if lying in record of said office. In reply, the concerned official appeared before undersigned and submitted 6 paged certified copy of the by-laws of YMCA Karachi. He further disclosed that his office does not maintain or prepare membership record of the Petitioner YMCA but in past, it has been practice that different persons/groups had kept their record in his office but same cannot be verified by his office being genuine or

correct. The concerned Assistant Registrar also filed a list of membership, so prepared by the then Nazir in year 2005. Moreover, he also submitted copy of some letters to show that neither any member list is prepared by his office nor any list is genuine because of the fact that same is allegedly issued by his office/predecessor being certified copy of member list. The copy of by-laws is attached at Annexure A/1 to A/6 and letters of Provincial Assistant Registrar are also submitted at Annexure B/1 to Annexure B/4 for kind perusal of the Honourable Court.

5. Thereafter, in order to prepare list of Active Members, help was taken from the by-laws of the Association and sealed membership record of YMCA (which?) so taken over by the then Nazir Mr. Zaheeruddin in compliance order of Honourable Court dated 06-10-2005 from office of YMCA situated at Plots/Sheets No.RB-1 Survey No.1-A,1/1 & Survey No.2, Aiwan-e-Saddar Road Karachi. After proper scrutiny, list of 124 Active members was prepared but same required renewal of members in terms of its Bye-laws.
6. Next, in order to give proper notice of Elections and renewal of YMCA membership, a General Public Notice regarding Elections of 16 directors of YMCA (which?) was got published in Daily "The NEWS" and Daily "Jung". The copies of newspapers are attached at Annexure C & D respectively for perusal. Detailed Election program was also displayed on the Notice board of Nazir office on 21-07-2012. The copy of Election Schedule is submitted at Annexure E and as per schedule list of 124 Active members was displayed on 23-07-2012.

7. On 24-07-2012, an objection was filed by one Saleem Khursheed Khokhar against the exercise of undersigned by calling it in Violation of the orders passed by Honourable Courts. He objected that undersigned had failed to take over properties of YMCA, that undersigned is holding election without consultation of provincial Assistant registrar Joint Stock Companies.....

thus, they were declared successful being uncontested. The copy of final list of candidates is filed at Annexure L. Therefore, such information was intimated to provincial Assistant registrar Joint Stock Companies for issuance of proper notification. Thereafter, notification was issued by Provincial Assistant Registrar Joint Stock Companies, the copy of same is filed at Annexure M.

8. The election report is submitted for kind perusal and soliciting further orders in respect of handed over the charge of YMCA to its new elected body along with request that Nazir fee for election may be sanctioned.

7. As it could be seen, this report is so flimsy, non-speaking that it even does not clearly mention which entity's elections were conducted even this time.

8. Immediately after these (non-contested) elections dated 16.08.2012 were held, the results were challenged through instant Petition No.D-3073/2012 alleging that those 124 active members as determined by the Nazir of this Court whose YMCA membership registration numbers fell between 34807 to 34914 (Page 311-315) were fake; ignoring the original YMCA society's members whose registration Nos. started from 1420 onwards. A prayer was made that charge not to be handed over to the newly elected body, as

elections were (allegedly) not held in strict compliance of this Court's and the Apex Court's orders, as well as, a request for fresh elections was made.

9. This Court through on 30.08.2012 ordered that charge not to be handed over to the new management. On 19.12.2013 CMA 2945/2013 (under Order 1 Rule 10) filed by Khalid Mehmood Masih came up for orders, notices were waived and copies exchanged. On 06.02.2014 it was agreed that the said application be heard along with the main petition. CMA 4447/2014 (under Order 1 Rule 10) filed by Asia Pacific Alliance of YMCA ("YMCA Asia") came up for orders. On 30.04.2014 counsel for the petitioner raised no objections to the addition of Asia Pacific Alliance of YMCA to be impleaded as a party, thus it was added as Respondent No.5. CMA 22019/2017 (under Order 1 Rule 10) filed by YMCA Technical Institute (YMCATI) came up for orders on 20.10.2017, counsel for the Petitioner and learned AAG raised no objection. Orders were made to implead YMCATI as Respondent No. 6. Request of YMCATI to include Nazir on the board of YMCATI was allowed. Between 16.01.18 till date, strangely it transpired that a tenancy was created in favor of Choudary Muhammad Ameen Khan by Farrukh Harrison acting as Secretary YMCA for a period of 10 years from 26.11.2007 to 25.11.2017, he also executed tenancy agreement with Muhammad Aslam Taj for a period of 5 years in respect of the lands of the YMCA society. On the basis of the tenancy agreement dated 26.11.2007, the tenant filed Civil Suit No. 378/08 in this Court where through SMA 2041/08 his application was allowed subject to deposit of rent at the rate of Rs.200,000 per month with the Nazir of this Court. Upon expiry of the said term, Nazir moved a reference dated 30.11.2017 for taking over

possession of the said property, which was declined vide order dated 28.02.2018.

10. Importantly the matter of use of lands of YMCA society for wedding functions came to the attention of Hon'ble Supreme Court where in a meeting held on 21.12.2018 under the chairmanship of the Hon'ble Chief Justice, where following directions were issued:-

(i) The Hon'ble Chair directed the Nazir Sindh High Court to submit comprehensive report as to who has permitted holding wedding functions in the ground of YMCA, and if such functions are being conducted under the orders of High Court, the report should mention about such orders for examination.

11. Nazir accordingly filed his report dated 11.01.2019, which was submitted in the instant petitions on 02.04.2019 too. Since that report narrates the story as to how the lands of the society were usurped, its full contents are reproduced hereunder:-

1. With profound respect, I have the honor to submit that in the meeting held at Karachi under Chairmanship of Hon'ble Mr. Justice Gulzar Ahmed and Hon'ble Mr. Justice Munib Akhtar, Honourable Judges, Supreme Court of Pakistan, the following directions were passed for compliance by the undersigned:

i) The Hon'ble Chair directed the Nazir Sindh High Court to submit comprehensive report as to who has permitted holding wedding functions in the grounds of YMCA, and if such functions are being conducted under the orders of High Court, the report should mention about such orders for examination.

ii) The Hon'ble Chair further directed the Principal YMCA and Nazir that there should be no marriage ceremony in YMCA ground except those which have already been permitted upto end of December 2018 and no more.

iii) Report shall also give details about the original allotment and status of case of YMCA and so also to provide all paper regarding its original allotment and its purpose of allotment.

2. In this regard, it is respectfully submitted that as soon as the above directions received, the undersigned issued notice for General Public on the same date i.e. 31-12-2018, through the concerned Station House Officer, for strict compliance of the direction contained in the subject meetings regarding restriction of

marriage ceremonies after 31.12.2018 and forwarded such copy to the S.S.P concerned. Such notice was also affixed at the subject ground. Copy of such letter is enclosed and marked "A/1 to A/2".

3. It is respectfully submitted that the Honourable High Court pleased to pass order dated 06-10-2005, in C.P No. D-330 of 2005, (Copy of Order is enclosed (marked "B/1 to B/2) which is reproduced as under;

"Let elections be held of the petitioner No.1 association under the supervision of Nazir of this Court in associate with Respondent No.1/Director provincial Coordinator for Social Welfare Department, Government of Sindh.

The Nazir shall take over all the relevant record of membership and notify, the date of fresh elections within 60 days from the date of receipt of this order. The Nazir shall scrutinize the record and issue list of members eligible from their votes in accordance with bye law.

Nazir shall exercise his power of the Governing body of the Petitioner Association.

Nazir to also ensure that the accounts of the petitioner be audited through duly qualified auditors upto the date of his appointment."

4. In compliance of above order, the then Nazir initiated proceedings for holding Elections of YMCA (Petitioner's Association in C.P No.D-330 of 2005 YMCA V/s Government of Sindh). On 17.11.2005 the Honourable Court pleased to issue further directions. (Copy of Order is enclosed and marked "C"). And relevant Paras of Order are reproduced as under;

"The Nazir shall operate the accounts with the permission of the Court and shall run day to day affairs of the Association till further orders.

Nazir shall exercise all powers of the Governing Body of the Petitioner/Association of (YMCA) till further Order.

5. Therefore, the Nazir deal the day to day affairs of Petitioner Association. Whereafter the Honourable Court constituted the committee comprising three Members i.e. Nazir, Member Inspection Team High Court of Sindh and Advocate General Sindh vide Order dated 09-12-2005. (Copy of orders, with subsequent Order dated 02.11.2006 in this connection, are enclosed and marked (D/1 to D/3, E/1 to E/2).

6. In compliance of said Orders, the committee issued notification on 15th Nov.2006 with regard to the Elections and after completion of Election process, the then Nazir submitted report dated 10.12.2006 before the Honourable High Court in above Petition wherein 12 members were declared to be successful candidates against 12 seats of members of Board Directors, as unopposed. Copy of such notification and report are enclosed and marked (F/1 to F/2 and G). And various reports in this regard had also been submitted by the then Nazir.

7. The Honourable Court pleased to pass Judgment dated 30.01.2009, in above petition whereby appointed the then Nazir Mr. Moinuddin Ahmed, by name as Administrator. Copies of such Judgment containing 25 pages are enclosed and marked H. Whereas the Honourable Supreme Court set aside the above said Judgment in Appeal No. 185-K of 2009 vide Order dated 03.02.2010 and restored Order dated 06.10.2005. Copy enclosed and marked (I/1 to I/ 4).

8. Thereafter the Honourable High Court pleased to pass further Judgment dated 28.10.2010, which is enclosed and marked (J/1 to J/9) and the relevant directions are reproduced as under;

22) Under the circumstances let the Nazir in association Provincial Assistant Registrar Joint Stock Companies, Sindh, Directorate of Industries (Registration Wing), hold election of the Petitioner YMCA registered under the Societies Registration Act, 1860 after carrying out the exercise as ordered by this Court on 06.10.2005, Nazir to immediately take over the control of YMCA alongwith all record present management represented by Mr. Aqil Awan and Mr. M.M Tariq advocate to immediately handover the charge to the Nazir of this Court. Nazir may run the affairs of Petitioner YMCA, till new body is elected and notified by the Provincial Assistant Registrar/Joint Stock Companies, Sindh Directorate of Industries (Registration Wing). Nazir to scrutinize all transaction made contract concluded by the so called body as notified by the Respondent No.2 and in case any impropriety is observed may bring it to the notice of the court for examination and order.”

9. In compliance of said Order, the then Nazir initiated proceeding to conduct Re-election of YMCA, during the such period the Honourable Supreme Court in Civil Appeal No.225-K of 2011, preferred against judgment dated 22-10-2010, 28-10-2010, pleased to pass further Order dated 31.05.2012. (Copy of Order is enclosed and marked (K/1 to K/3) the relevant Paras are as under;

“The learned High Court in this view of the matter and after taking into consideration all aspects of the matter through impugned order rightly directed the Nazir to hold elections of YMCA registered under Societies Registration Act, 1860 after carrying out the exercise as ordered by the High Court on 06.10.2005, which order was maintained by this Court.

For the foregoing reasons, the order impugned dated 28.10.2010, does not call for any interference. Therefore, the instant appeal is dismissed. ”

10. In compliance of above Order the then Nazir completed the process of Election and filed report dated 17.08.2012 before the Honourable Court for kind perusal and soliciting further orders, in respect of handing over the charge of YMCA to its new elected body. Copy of such report is enclosed and marked (L/1 to L/ 4).

11. After Election proceeding, held by the then Nazir, one Saleem Khokar filed a separate petition on 29.08.2012 being C.P No.D-3073 of 2012 against the Govt. of Sindh and others, praying therein that the Charge of the YMCA should not be handed over to persons elected in consequence of the same election and the Honourable Court may be pleased to hold that the elections of YMCA etc. The Honourable High Court in said petition pleased to pass order dated 30.08.2012, copy of Oder is and marked (M/1), the relevant portion of which is reproduced as under;

“.... Notice as above. In the meantime, let the elections be held as scheduled, however, charge may not be handed over to the management. Let this petition be fixed along with the CPD-330/2005 on the said date before the same bench.”

12. As per record, during such proceedings one Farrukh Harrison S/o Rafiq Saif holding NIC No.42201-0618702-3 executed un-registered Tenancy Agreement dated 26.11.2007, showing himself as Secretary of YMCA with one Choudary

Muhammad Ameen Khan S/o Choudhary Ghulam Muhammad Khan holding NIC No.42101-8014690-3 without any authority for the period of ten years 26.11.2007 to 25.11.2017, which was attested by the Justice of Peace and the same person executed second Tenancy agreement dated 08-11-2007, with One Muhammad Aslam Taj S/o Taj Muhammad holding CNIC No.42201-0560303-9 for the period of 5 years for some portion of the subject ground.

13. On the basis of such tenancy agreement dated 26.11.2007, one Tenant Muhammad Ameen filed Suit No.378/08 before the Hon'ble High Court wherein the following order was passed, the relevant Para is reproduced as under;

“Subject to all just exception and at the risk and cost of the plaintiff; the application, CMA No.2041/08 is allowed and the plaintiff is permitted to deposit monthly rent at the rate of Rs.200,000/- with the Nazir of this Court.”

14. In compliance of above Order the Plaintiff/Tenant deposited rent amount at Rs.200,000/- per months from 14.03.2008 upto December 2018 with this office. It is respectfully submitted that the then Nazir's filed report dated 21-06-2016 with prayer which is reproduced as under;

“the high handedness of the Plaintiff may be taken seriously and the premises of the Christian minority commonly known as YMCA may further be secured by dismissing the suit of Plaintiff along with imposition of exemplary cost.

15. It is respectfully further submitted that such agreement has also been expired and the undersigned submitted reference dated 30.11.2017 before the Honourable Court for taking over possession of said property which is declined vide Order dated 28.02.2018. Copies of Plaint with prayer, copy of agreement, copies of orders and Nazir's reports are enclosed and marked N/1 to N/4, O/1 to O/4, P/4, Q/1 to Q/4 & R/1 to R/4).

16. The Tenant/Plaintiff namely Choudhary Muhammad Ameen also filed Petition bearing No. C.P.D-2081/10, against the K.B.C.A and Others) and second Petition bearing No.C.P.D-123/09 filed by the Khalid Mehmood Malik against the KBCA, in both the petitions the Hon'ble Court passed Order dated 14.04.2011, the relevant Paras of which are reproduced as under;

“We would, in the circumstances, issue notice to the Secretary, Culture & Tourism Department, Government of Sindh, as well as to the Nazir of this Court so that they may provide proper assistance. The Secretary, Culture & Tourism shall express himself in relation to the issue as to whether raising of construction, as has been done in the subject property, is permissible under the law, the property being a National Heritage.

..... Nazir of this Court shall submit their detailed replies/ reports/comments alongwith all the relevant documents.

..... Nazir of this Court shall disclose as to on what date, he was appointed administrator as above, and as to when the purported agreement in relation to the subject property was executed in favour of the Petitioner, and by whom, as to whether such was done under a lawful authority.”

17. In compliance of above Order, the then Nazir filed report dated 05.05.2011 before the Honourable Court wherein it was pointed out as under;

“The Nazir took over the charge from 06.10.2005, and till today the YMCA is under custody of Nazir and the tenancy agreement dated 26.11.2007, made between Furukh Harisen and Chudhary Muhammad Amin Khan in Suit No.378 of 2008, is illegal whereas the committee had been constituted comprising of Nazir, MIT and Advocate General no body was authorized to enter into negotiation/transaction with regard to the property/ground of School of YMCA.

18. *The above both Petitions were disposed off as per Order dated 04.05.2011, and on 29.01.2014 (Copies of Order and Report are enclosed and marked (S/1 to 5/3 & T/1 T/2).*

19. *Second tenant filed Suit No.1615 of 2007 (Muhammad Aslam V/s Young Members Christian Association, (YMCA) which is also connected with the above Suit and no amount has been deposited with this office. The following Order dated 19.12.2007, was passing in the above suit;*

“Notice to the defendants. In the meanwhile, the defendants are restrained from interfering into the business of the plaintiff from the portion of the above property.

20. *The copies of Complaint with prayer, Agreement, Order is enclosed with this report and marked above suit is enclosed. At present both suits are pending before the Honourable Court on the basis of such agreements. Copies of both Suits and Orders are enclosed and marked (U/1 to U/4, V/1 to V/7 & W/1 to W/2).*

21. *It is respectfully pointed out that in compliance of Orders of Minutes of meetings, the undersigned called the documents from the concerned Mukhtiar, he produced three documents one the letter vide No.CTS/3711/68, Karachi the 11th Dec, 1968 addressed to the Commissioner Karachi from Deputy Commissioner, Karachi, along entries on the record of rights in two Pages with sketch of Sheet No.A.M.4, wherein the 1/1 recreation Ground for Y.M.C.A is mentioned which are enclosed and marked (X/1 to T/6) and the relevant portion of said with regard the YMCA are as under;*

1) YMCA Ground

The Playground is located on plot No.1/1 Sheet R.B.I. It admeasuring 27724 sq. yds. And granted for 99 years lease from 1st August 1960 in favour of the young Men Christian Association on the following terms and conditions vide Chief Commissioner, Karachi's letter No. f.3(51)/52-Rev dt. 2.9.58 and 1.11.58.

1. *That no prescriptive right should be created by the continuance of the occupation.*
2. *That the Association must be prepared to restore the Land when required to do so.*
3. *That the Association may put up a swimming pool at their own cost and risk and that no compensation would be claimed by them in case the Government require the area for their own use and*
4. *That on other permanent structures would be put up except with the previous approval of the Collector and subject to the same conditions given in (3) above.*

22. *Report is respectfully submitted for kind perusal and orders.*

12. Also between 16.01.2018 till date, a few new interveners moved applications to join these vigorously contested proceedings, as well as court was informed by the Nazir that some individuals including Father Joseph Paul, Salim Khursheed Khokar and Fazal Shehzads' showed unbecoming attitude to the Nazir of this Court, appropriate orders were passed requiring furnishing of securities by these individuals. Court was informed on 29.01.2019 that petitioner in CP No.D-3073/2012 has taken political asylum outside Pakistan. However the Petitioner appeared in this Court on 17.01.2020 denied this allegation and undertook to file counter-affidavits to all pending applications, whereafter the matter came up for hearing today.

13. As it becomes obvious from the above narration, while the properties (including the open plot) were leased out about a century ago in the name of Pakistani arm of the international Young Men's Christian Association operating globally and latter's operations were running as per usual business for a long time, the creation of Karachi YMCA under a confusingly and deceptively similar name under the 1961 Ordinance created a lever to illegitimately interfere with and scoop out the assets and properties of this international association under the disguise that YMCA society had become defunct upon promulgation of the 1961 Ordinance. This controversy was dealt with in details by our lords through this Court's order dated 28.10.2010 which was maintained by the Apex Court, reducing to this Courts earlier order dated 06.10.2005 of holding fair elections, which assignment hasn't been accomplished till date, to the extent that the parent body YMCA Asia (as defined earlier, the Asia and Pacific Alliance of YMCA) had to intervene and join these tasteless razor-sharp disputes. International bodies operating globally in any field, in particular, religion and philanthropy eye such local deceitful, illegitimate and rouge acts aimed to deter their

global operations and repute with great concern. These infirmities bring disrepute to a nation's international standings and shatter foreigner's confidence in a country's legal system. The loss of national repute and pride with small gains of few unscrupulous individuals, is a bargain that one must avoid. It seems that all efforts to hold elections of YMCA society since 2002 have failed miserably. Nazir has been holding charge of the affairs of YMCA for over 15 years, have tried to hold elections twice, he has full authority and backing of court, however he has clearly failed in arresting the misuse and usurpation of society's land for private material gains, which blatant illegality was only arrested upon the intervention of the Hon'ble Chief Justice of Supreme Court. The circumstances detailed above and the report presented to the Hon'ble Supreme Court by Nazir speaks volumes about his failures in competently managing affairs of YMCA society and protecting its properties from illegal profiteering. The request of YMCA Asia in becoming a party to these proceedings is a proof that these illegalities have attained a global (dis)repute.

14. The piece of land leased out to an international association to run its globally harmonized operations in Pakistan for the last many years have resulted in no public good, except some unscrupulous elements have filled their pockets. This extremely pieced piece of land in the center of the city has not been put to any good use for the youth of Karachi. That definitely was never the intent of the lessor nor the lessee. Putting Nazir to manage the affairs of a local arm of a successfully run international organization hasn't worked, neither it is viable in long run nor an appropriate remedy for the revival YMCA to its original glory. Time has shown that courts have spent countless man-hours to solve these disputes, the matters have taken turns around many times, but on ground the situation has gone towards the worst from bad, and in our view could not be

restored on proper track until the real and bonafide members who had the wisdom and skills to run this arm of an international outfit are allowed to take over the administration of YMCA society in the prime interest of the local young Christians, for whom this body was formed in the year 1913 and to put the lands to the goodness of people. To us, unless this lethargy is nuked and some out of box solutions are considered, this re-run of Nazir holding elections would not yield any results, unless the body to whom the land was entrusted upon comes forward, takes charge of the affairs of its Karachi arm of YMCA and tries to clean the mess latter's inactivity and non-indulgence has created, which, to us, wouldn't be possible without the active participation of the parent body YMCA Asia, as without it, in our humble view, it would almost be impossible to restore the prestige of Pakistan by creating an enabling environment to re-energize YMCA's operations in Karachi, as it have had in the past, therefore in our view it would be just and proper to give some time to this parent organization to come forward practically through carefully chosen individuals, take over day to day operations of YMCA's assets in Karachi and run it as per the best practices as the experiment of running this arm of global YMCA for the last 15 years through Nazir has only brought more complications, with no benefits to young Christians, for whom this infrastructure was intended to be beneficial. We hope an allowance of tenure of three years to YMCA Asia to directly manage the administration and affairs of YMCA in Karachi would yield long awaited results.

15. It is for these reasons we direct the Nazir of this court to forthwith hand over all accounts, book, assets, responsibilities, roles to YMCA Asia, upon latter having nominated representative individual(s) to him for such purposes without intervention of any party, including the petitioner, YMCA Karachi, YMCA Company of

whosoever, as it is a matter of record, in view of the Director Anti-Corruption Sindh report as well as, in view of documentary evidences brought to this court that these rival groups of YMCA have been involved in corrupt practices and found to have acted against the interest of YMCA at large.

16. The said international parent body, ie YMCA Asia to ensure that land leased out to foster YMCA global roles would not be altered and would remain a sacred trust ensuring that it provides the same quality and standard of services to citizens of Pakistan which it had been rendering since 1913 around the globe. In this reconstitution and strengthening period of three years, new members be added and those who qualify from the existing membership be scrutinized. Once this strengthening exercise is completed, elections be announced as per the bye-law of YMCA society.

17. Let a report be filed in compliance of this order from Nazir when he is in receipt of communication from YMCA Asia nominating a body to run affairs of YMCA Karachi and he being ready to hand over charge as per the foregoing.

18. Pertinent to mention also is sub-section (5) of section 40 of the Trade Marks Ordinance, 2001 which makes using of a registered trade mark as a part of someone else's trade name an infringement of rights of the owner of the trade mark, and in case of non-registered trade marks, on account of deception created by such a misuse, an action of passing off lies. In these circumstances, the entitles other than YMCA society, which is an accredited arm of the original foreign YMCA, use of the YMCA name and mark by the entities registered under the Companies Ordinance, 1984 (now repealed by the Companies Act, 2017) having registration No.K-08526 of 2001, as well as, by the entity registered under the Ordinance of 1961 being Young Men's Christian Association being

an infringement/passing off of the genuine YMCA trade mark, thus forbidden under Section 10 of the Companies Act, 2017 and applicable provisions of the 1961/2001 Ordinance. The regulating bodies being Security and Exchange Commission of Pakistan and Director/Provincial Co-ordinator of Social Welfare Department, Government of Sindh to take immediate action as per law to call upon these entities to stop using their names with infringing YMCA trade mark and force these entities to change their names to ensure that their names are changed to the extent that new names do not cause any confusion and deception with YMCA. Till the time it happens, these two entities not to be permitted to operate with the existing infringing and deceptive names.

Judge

Judge