

**IN THE HIGH COURT OF SINDH, CIRCUIT COURT,
HYDERABAD**

Civil Revision Application No. 169 of 2015
[Province of Sindh and others v. Mst. Tasleem Begum and another]

Date of hearing : 16.03.2020.

Applicants : Province of Sindh and 3 others, through Mr. Allah Bachayo Soomro, Additional Advocate General Sindh.

Respondents No. 1& 2 : Mst. Tasleem Begum and another, through Mr. Arbab Ali Hakro, Advocate.

JUDGMENT

Muhammad Faisal Kamal Alam, J:- Applicants have challenged Judgment dated 09.10.2015 (Decree dated 16.10.2015) of learned Appellate Court passed in Civil Appeal No.20 of 2015, preferred by the Applicant No.2 against the Judgment and Decree dated 28.02.2015 and 03.03.2015, respectively, in F.C. Suit No. 606 of 2013 filed by the Respondents.

2. Relevant facts are that Respondents have filed the above *lis* against Applicants, *primarily*, seeking direction to hand over the vacant, physical possession of the property – C.S. No.2420/1, measuring 106-6 Square Yards, Ward ‘E’ situated at Islamic Chowk, Hyderabad Sindh (“**Subject Property**”) to Respondents (Plaintiffs), which was being used by former as Government School. It is averred in the plaint that deceased Muhammad Deen Siddiqui, husband of present Respondent No.1, rented out the Subject Property to former Head Master of the School at the relevant time for Tuition Center and School under the name and style of ‘Ali-Noor’ Primary School, Hyderabad. Subsequently, said School was nationalized by the Government of Sindh under the Martial Law Regulation (**MLR**) No. 118

and present Applicants took over the School at the Subject Property and started paying rentals to above named deceased husband of Respondent No.1. Pleaded in their plaint that present Applicants had stopped paying rent since year 1982 till the filing of the above *lis*, that is, September, 2013, and hence Applicants are defaulters.

3. In the Written Statement, present Applicants have challenged the maintainability of above suit on legal grounds relating to Government Officials provided under Article 174 of the Constitutional of Islamic Republic of Pakistan, 1973 and Section 79 of CPC (Civil Procedure Code). In paragraph-13 of the Written Statement, present Applicants have admitted that an amount of Rs.18,000/- was deposited in the Court as part payment towards rentals. It is further pleaded in Written Statement that under MLR No.118, assets and properties of privately managed Schools and Colleges vest in the Government.

4. Learned Additional Advocate General Sindh argued that both judgments have not appraised the evidence property and did not consider the provisions of MLR No.118. It is also contended that Respondents are not the owners of Subject Property and want to usurp the Government property. Subsequently, learned A.A.G. has also filed synopsis and has mentioned the following precedents in support of his arguments_

1. 1999 S C M R page-16
[*Haji Abdul Aziz v. Government of Balochistan through Deputy Commissioner, Khuzdar*];
2. 2010 S C M R page-115
[*Government of Balochistan, CWPP&H Department and others v. Nawabzada Mir Tariq Hussain Khan Magsi and others*];
3. 1968 S C M R page-464
[*Ch. Abdul Kabeer v. Mian Abdul Wahid and others*];
4. 2014 M L D page-141
[*Ghulam Muhammad vs. Abdullah*]
5. P L D 1998 Quetta page-34
[*Jan Muhammad vs. Mulla Abdul Rehman and 4 others*]

6. 2012 S C M R page-730
[*Administrator, Thal Development through EACO Bhakkar and others*];
7. 1974 S C M R page-45
[*Jhangrez v. Faizullah Khan and others*];
8. 2007 S C M R page-621
[*Muhammad Sami v. Additional District Judge, Sargodha and 2 others*];
9. P L D 2005 Lahore page-102
[*Muhammad Sharif and others v. Meraj Din and others*];
10. P L D 2010 SC page-604 and
[*Federation of Pakistan through Secretary Ministry of Defence and another*];
11. 1974 S C M R page-45
[*Mir Aslam vs. Faizullah Khan*]

5. Mr. Arbab Hakro, Advocate for the Respondents, has argued that necessary and proper party is the Education Department, which has been properly impleaded. He also referred to the title of the Suit in which Province of Sindh has been mentioned as Defendant No.4. It is contended that even if ancillary Government Official is not impleaded, the same was not fatal in view of order I, Rule 9 of CPC. He has cited the following decisions to augment his arguments_

1. 1999 S C M R page-971
[*Zakirullah Khan and others vs. Faizullah Khan and others*]
2. 2008 S C M R page-332
[*Suba and others v. Abdul Aizz and others*]; and
3. 1989 C L C page-271
[*Fazl-eMobin Ahmad and others v. Government of Sindh through the Secretary, Education Department, Government of Sindh and 3 others*].

6. On a specific objection of learned counsel for the Applicants about the time barred claim, Respondent's Advocate replied that Respondents were agitating their grievance before the Education Department, but when the same did not yield any positive results, Respondents served a Legal Notice dated 02.08.2011 after which the above *lis* was filed on 27.09.2013.

7. Arguments heard and record perused.

8. Précis of the case law relied upon by the learned Additional A.G. (for the Applicants) is that no suit against government is maintainable unless concerned Government, either Federal or Provincial, is impleaded as one of the Defendants as envisaged under Article 174 of the Constitution of Islamic Republic of Pakistan, 1973, and Section 79 of CPC (Civil Procedure Code); compliance of Rule 31 of Order 41 of CPC (points for determination) is necessary for the Appellate Court while deciding an appeal, but its non-compliance should not so strictly interpreted that it may result in vitiating judgment, *particularly*, when substantial compliance of this provision (Order 41, Rule 31 of CPC) is made; issue of maintainability cannot be settled merely on the concession of parties but it is to be independently decided, considering when remedy of appeal was available against resumption of land, then it should have been exhausted; it is bounden duty of Court to notice the question of limitation irrespective of facts whether it was agitated or not and the decisions of courts should show that question of limitation has been clearly decided; if the documents, which have not been brought on record through witnesses and not duly exhibited cannot be taken into consideration; even concurrent findings of courts below can be interfered with in revisional proceeding if they suffer from material irregularity.

9. On the other hand, gist of the case law relied upon by learned counsel for the Respondents is under Order 41 Rules 22 and 23 of CPC, Court can pass orders to do complete justice, although respondent, in whose favour decree is, has not filed any cross-objection; that provisions of MLR No.118 were promulgated only to take over the management of the educational institutions and not to confiscate the property of owners.

10. Adverting to the arguments of learned Additional A.G. about maintainability of Suit, which are considered first. Article 174 of the

Constitution and Section 79 of CPC provide that, *inter alia*, when suit is filed against a Provincial Government, then the Province is to be named as Defendant. In the plaint, Province of Sindh is mentioned as Defendant No.4, thus this objection is meritless. Similarly, the arguments of Applicants' Advocate (Additional AG) about applicability of MLR No.118 relating to the nationalization of privately managed colleges and schools vis-a-vis Articles 268 and 269 of the Constitution (*inter alia*, concerning existing laws continue in force and validity of martial law orders), have been completely addressed by the Honourable Supreme Court in its leading judgment of Board of Foreign Mission (*ibid*, 1987 S C M R page-1197), Director of Schools v. Zaheeruddin and others – 1996 S C M R page-1767 and 1989 C L C page-271 [Fazl-e-Mobin Ahmad and others v. Government of Sindh] .In the above judgments, the Honourable Supreme Court and learned Division Bench of this Court have *held*, that taking over of management of Schools under MLR No.118 by the Government, would not affect ownership rights and the properties in question, while clarifying that in these particular cases Rent Controller has no jurisdiction but Respondents for any alleged cause of action may institute suits. This is what precisely the Respondents have done.

11. With regard to the other contention of ownership as raised in the present revision, the record of entire case is examined, *particularly*, both the impugned Decisions. The learned Trial Court has given a positive finding for Issue No.1 that Extract of Property ownership was produced by present Respondents, showing that Subject Property was inherited by present Respondents from their predecessor the said above named Muhammad Deen; *whereas*, present Applicants did not produce any document that can show that Subject Property vests in the Applicants/Government. In the written statement of Applicants no such

specific plea about ownership was taken. Similarly, the learned Appellate Court has also applied its mind and discussed the Findings of learned Trial Court, while specifically determining the ownership issue.

12. That issues of maintainability was also independently decided in favour of present Respondents, inter alia, rather on the admission of an official witness who testified that Applicants paid the rentals of the Subject Property upto year 1982, when in compliance of the Court Order, an amount of rupees eighteen thousand was deposited in Court in favour of Respondent No.1 (Mst. Tasleem Begum), while holding that Applicants are defaulter. This answers the objection of Applicants about the time barred claim. Non-payment of rents is a continuous cause of action, for which Respondents initially started litigation against Applicants in the year 2011 by filing a rent case Rent Application No. 266 of 2011 and then the above *Lis*. Thus, the case law cited by learned Additional AG is distinguishable, particularly relating to applicability of Order 41, Rule 31 of CPC and law of Limitation (Limitation Act, 1908). It is unfortunate that Applicants being officials have acted inversely proportionate to their legal obligation to act in a fair, just and reasonable manner.

13. Somewhat similar issues were decided in a recent judgment handed down on 06.03.2018 in Suit No.1755 of 2008 (*Ahmed Saeed and others v. Province of Sindh, through Secretary, Education Department and two others*) by this Court. relevant portion of the Judgment is reproduced herein under_

“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-objectioned 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.”*

14. In the above suit proceeding, Education Department, which is Applicants No.2 and 3 in the present revisional proceeding, had also

produced a circular in the evidence issued by Government of Sindh for De-nationalization and Re-transfer of Schools. If the Government has finally decided the re-transfer and de-nationalization, then this policy should be implemented across the board and not only to few favorites of Government Officials.

15. In view of the above discussion, both impugned Decisions since do not suffer from any illegality and material irregularity, therefore, no interference is justified in this revision proceeding. This revision application is without merits and is dismissed.

JUDGE

Hyderabad,
Dated: _____.