

ORDER SHEET
THE HIGH COURT OF SINDH AT KARACHI

C.P. No.D-229 of 2021

Date	Order with Signature(s) of Judge(s)
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Present

Mr. Justice Muhammad Ali Mazhar.

Mr. Justice Amjad Ali Sahito.

M/s. Murad Ali & Co Petitioner

Versus

Province of Sindh and others Respondents

Date of hearing: 10.02.2021

Mr. Muhammad Riaz Ahmed, advocate for the petitioner
Mr. Sheharyar Mehar, Assistant Advocate General
Mr. Abdul Ahad Shaikh, Law Officer, District Council

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Muhammad Ali Mazhar, J. In essence, the petitioner has entreated for the directions against District Council, Karachi to auction collection rights of tax/fee for milching animals and issuance of health clearance certificate for the year 2020-21. Learned counsel for the petitioner vigorously relied on the order passed by this court in **C.P. No. D-3205 of 2020 (Shoaib Ahmed Qazi & others vs. Province of Sindh & others)** on 27.10.2020. For the ease of reference paragraphs 2 & 3 of the order are reproduced as under:

“2. Precisely, the petitioners have prayed for the cancellation of unlawful auction proceedings published by respondent No.6 on 12.06.2020 and 16.06.2020. During pendency of these proceedings, learned counsel for the respondent No.6 has given a clear statement that the earlier auction proceedings have been scrapped and no tender was awarded to any person in pursuance of the auction notices published on 12.06.2020 & 16.06.2020, however, they have also produced a copy of re-auction notice dated 24.10.2020, 22.10.2020 and again 24.10.2020 published in various newspapers for the same contract/invitation of tender and the auction dates for the first attempt is 09.11.2020 at 11:00 a.m., second attempt on 10.11.2020 at 11:00 a.m. and third attempt on 11.11.2020 at 11:00 a.m. Learned counsel for the respondent No.6 has given a clear statement

that the petitioner may also apply in the tender proceedings and their bids will be considered in a transparent manner and in accordance with SPPRA Rules.

3. At this juncture, learned counsel for the petitioners argued that there is a possibility that since considerable time has been lapsed, therefore, the new contract may not be for a period of one year on which Mr. Abdul Ahad Shaikh, Law Officer, of respondent No.6 as well as learned advocate both have given a clear statement that new contract would be for the year 2020-2021 and duration of contract shall be a minimum period of one year. Let the petitioners apply in the fresh tender that would be considered in accordance with Law. Petition is disposed of accordingly along with pending application.”

2. The learned counsel for the petitioner avowed that pursuant to aforesaid order, the official respondents were bound to conduct auction under the provisions of Sindh Local Councils (Auctioning of Collection Rights) Rule, 2016 and should have announced the date of auction.

3. On notice, Mr. Abdul Aziz Dayo advocate has filed vakalatnama for respondent No.6. Mr. Abdul Ahad Shaikh, Law Officer, District Council, Karachi has also filed the comments. In paragraph (3) of comments, it is clearly stated that in compliance of order passed by this court supra, they had published notices in the newspapers for inviting bids for auction and auction proceedings were to be conducted on 9th, 10th & 11th of November, 2020. However they have shown their inability to conduct and complete the auction proceedings for the reasons that one Hakim Ali filed a Civil Suit No.2038 of 2020 in this court for challenging the enhancement of bid amount as reflected from interim order passed on 06.11.2020, whereby respondent No.6 was restrained from conducting/holding auction. Law Officer of respondent No.6 submits that due to interim order the auction could not be conducted.

4. The learned counsel for the petitioner contended that the interim order in the said suit has been obtained by misrepresentation of facts and amounts to frustrate the order

of divisional bench in C.P. No.D-3205 of 2020 whereby the clear orders were passed for the re-auctioning so that every interested party may apply and submit the bid in a transparent manner for the award of contract. At this juncture, the Law Officer, District Council submitted that the person, who filed the suit was a contractor in past but at present he was no privy of contract with the District Council. It was further stated that this person never submitted any bid pursuant to the notice published for auction after passing order by this court in C.P.No.D-3205 of 2020. He further stated that they are religiously approaching the learned trial court for deciding the injunction application in the suit but for one or the other reasons matter is being adjourned. It was further stated by him that an urgent application was also moved to get the decision on the injunction application to an early date and as a result of interim order not only the auction proceedings are withheld but it is also causing huge loss to the government exchequer.

5. The learned counsel for the petitioner requested that some directions may be issued to the trial court so that the injunction application may be decided within 10 days thereafter the auction may be conducted. He further argued that petitioner in C.P. No.D-3205 of 2020 (Shoaib Ahmed Qazi) has already filed an application under Order 1 Rule 10 C.P.C. for becoming party in the aforesaid pending suit before the learned single Judge of this court but no such application has been filed by the present petitioner.

6. The purpose of disposing of earlier petition (C.P. No. D-3205 of 2020) was to ensure that auction proceedings should be conducted as soon as possible in a fair and transparent manner in accordance with the relevant law and rules of auction in which every interested person may participate and submit the bid for awarding contract to the successful bidder but in this case, Law Officer of the District Council shown lone inability and incapability in the delay of auction due to the restraining order obtained subsequently by Hakim Ali in

his suit which clogged and hampered the entire smooth process and according to him government exchequer is sustaining the huge losses.

7. The interim order passed in suit shows that the plaintiff in the suit challenged the enhancement of bid amount and some other issues have also been raised which are independent in nature. The issue of interim order passed by learned single Judge in Suit No.2038 of 2020 is pending before competent court of law in which the petitioner if feels aggrieved may file an application for joining in the suit and or the respondent No.6 may also file an urgent application with the prayer for an early disposal of injunction application and or an application under Order 39 Rule 4 CPC may also be moved for vacation of stay order in the larger public interest or to avert or preclude further loss of government exchequer as alleged. The fact remains that this is not an appeal against the order passed by the learned single judge in suit where some directions could have been issued by us for an early disposal of injunction application or after hearing the parties, an appropriate order could have been passed. What we are seized of is a constitution petition in which neither we can vacate or modify the interim order passed in a suit based on independent grounds not subject matter of earlier petition before us nor can we issue writ against the order of single judge keeping in view the bar contained under Article 199 (5) of the Constitution of Pakistan. However office is directed to place copy of this order before learned single Judge who is seized of the Suit No.2038 of 2020 for perusal and we earnestly expect that the learned single Judge in view of the urgency in the matter will decide the injunction application preferably within 20 days.

8. The petition is disposed of accordingly along with pending application.

Judge

Judge