

IN THE HIGH COURT OF SINDH, KARACHI

J.M. No. 53/2017

Applicants : Province of Sindh & Others,
through Mr. Muhammad Muzaffar
Laghari, Addl. A. G alongwith
Gulsher Ahmed Mangi, Director
Exploration, Ghulam Rasool
Tanviri, Deputy Director and Syed
Sahib Bokhari, Law Officer, Mines
and Minerals, Government of
Sindh.

Respondent No.1 : M/s. Pakrock Corporation (Pvt.)
Ltd, through Mr. Ch. Atif Rafique,
Advocate

Date of hearing : 11.04.2019

J U D G M E N T

YOUSUF ALI SAYEED, J:- This Application under Section 12 (2) CPC has been filed on 13.09.2017 by the Province of Sindh, through the Directorate of Minerals Department, assailing the compromise decree dated 07.03.2011 in Suit Number 903 of 2000 (the “**Underlying Suit**”) on the ground that neither the Application that had been presented under Order 23, Rule 3 nor the Settlement Agreement on which the compromise was predicated had been signed by the Director General, Mines and Minerals Department, Province of Sindh, and that the terms thereof contravened the “Sindh Mining Concession (Granite) Order, 2007 (the “**2007 Order**”) promulgated vide Notification No.SO(ADMN)/M&MD/1-44/2003 dated 20.09.2007, whereby a restriction was said to have been imposed on the grant of exploration licenses or mining leases in Karoonjhar Range Mountains of Nagarparkar.

2. Addressing the preliminary objections raised on behalf of the Respondent No.1 that recourse to Section 12(2) CPC did not lie as against a decree made by consent and that the Application was even otherwise barred by limitation, it was merely submitted by the learned Additional Advocate General that the Application was maintainable and no period of limitation would apply as the impugned Decree was a 'void order'. Reliance was placed in this regard on a judgment of the Honourable Supreme Court in the case reported as Land Acquisition Collector Nowshera vs. Sarfaraz Khan PLD 2001 SC 514 and on a judgment of a learned Division Bench of this Court in the case reported as National Bank of Pakistan vs. Khairpur Textile Mills Limited 2001 CLC 1187.

3. It was contended that the impugned decree was 'void' as the concurrence of the Director General, Mines and Minerals Department, Province of Sindh was absent. Furthermore, it was submitted that the 2007 Order had not been brought to the attention of the Court at the time that the compromise had been sanctioned. Reliance was placed in this regard on a judgment of the Honourable Supreme Court in the case reported as Government of Sindh vs. Khalil Ahmed 1994 SCMR 782 and Directorate-General Civil Defence, Government of Pakistan, Interior Division, Islamabad v. Mian Abdul Salam 2007 SCMR 1779.

4. It was averred that the absence of proper authorization on the part of the Province and suppression of the 2007 Order was demonstrative of the fact that the impugned decree had been obtained through fraud and misrepresentation, hence was liable to be set aside.

5. Conversely, learned counsel for the Respondent No.1 submitted that the grounds taken by the Applicant were baseless and misconceived. It was pointed out that the parties had all been represented before the Court on the date that the Underlying Suit was decreed and that the Settlement Agreement itself bore the stamp and signature of the Director General, Mines and Minerals Department, Province of Sindh, with its execution being preceded by a series of meetings between the representatives of the Respondent No.1 and the functionaries of the Government of Sindh, as reflected in the Minutes filed along with the counter-affidavit of the Respondent No.1, which, per learned counsel, demonstrated that the terms of settlement had been determined following a protracted process of consultation with participation and concurrence of the competent authorities.

6. It was submitted further that the 2007 Order posed no absolute restriction in the matter as the leases in favour of the Respondent No.1 had been granted as far back as 1987, which were then cancelled in 2000, and compromise was in relation to their restoration to the extent of 25% of the area thereof. It was submitted that there was nothing on record to demonstrate that such restoration would transgress the 2007 Order, which was being invoked only to raise an unwarranted objection in relation to the claim of the Respondent No.1, whereas the Province/Department had already given effect to the very Settlement Agreement in relation the Respondent No.2. He submitted that no case of fraud and misrepresentation had been made out under the circumstances.

7. It was pointed out that, even otherwise, the Application was barred by limitation, having been filed on 13.09.2017, beyond the period of three years prescribed in terms of Article 181 of the Limitation Act. As to the applicability of Article 181 of the Limitation Act, reliance was placed on the judgments reported at Muhammad Akram Malik vs. Dr. Ghulam Rabbani PLD 2006 SC 773, Mst. Nasira Khatoon vs. Mst. Aisha Bai 2003 SCMR 1050, and Government of Sindh vs. Ch. Fazal Muhammad PLD 1991 SC 197.

8. Learned counsel submitted that the assertion as to the decree being a 'void order' was completely misconceived in as much as the Court seized of the Underlying Suit had been competent to adjudicate on the matter and proper representation had been available on the date that the order had been made, representation from the Advocate General's Office having also been present.

9. It was averred that even if for the sake of argument the contention of the Applicant were to be considered, the aspect of limitation could not be left completely open ended and the period prescribed under Article 181 would to be reckoned from date of knowledge, which ought to be reckoned from 17.03.2011 in view of the presence of the departmental functionaries and State counsel on that date. It was submitted that even if such period were reckoned from the date of first appearance from the side of the Advocate General's Office made in Execution No. 60/2013, being 11.09.2014, the matter was still evidently time barred and liable to be dismissed. He placed reliance on the judgment of the Honourable Supreme Court in the case reported as Muhammad Raz Khan v. Government of NWFP and another PLD 1997 SC 397.

10. Having considered the submission advanced and the material on record, it is apparent that the Application is bereft of merit and has been filed only to further delay the proceedings in Execution No. 60/2013 filed by the Respondent No.1 as far back as 22.11.2013. The grounds taken by the Applicant are fallacious, as is apparent from the face of the Settlement Agreement and the Order made in the Underlying Suit on 07.03.2011 which reflects that the Director General, Mines and Minerals Department was a participant and that the relevant parties were duly represented before the Court.

11. It merits consideration at the outset that there is a clear a distinction between an illegal order and a void order, for whilst every void order would certainly be illegal, every illegal order would not necessarily be void. Whilst orders passed without lawful authority, without jurisdiction, or against the principles of natural justice may be void, every order made by a competent judicial forum that suffers from some error cannot necessarily be so regarded. The distinction was explained by the Honourable Supreme Court in Muhammad Swaleh v. United Grain Fodder Agencies, PLD 1964 SC 97, with reference to the grounds of revision set out in section 115, C.P.C. Their lordships observed that when a Court or a Tribunal assumes jurisdiction not vested in it by law or fails to exercise jurisdiction so vested, its order may be void and a nullity in law. However, when it acts illegally or with material irregularity in the exercise of its jurisdiction, the ensuing order may be voidable but would not be void.

12. In the case of M/s. Conforce Ltd. v. Syed Ali Shah etc., PLD 1977 SC 599, it was stated by the Apex Court that

:-----

"...we would observe that a void order or an order without jurisdiction is only a type of an illegal order passed by a Court and the fact that it has been passed and that it may, therefore, create rights cannot be altered by describing it as void or without jurisdiction. And, further, the expressions "void orders" and "orders without jurisdiction" are overworked expressions." (at Page 601 D)

13. Subsequently, in the case of Land Acquisition Collector, Nowshera & Others v. Sarfaraz Khan & Others, PLD 2001 SC 514, it was observed by the Honourable Supreme Court that:

"It is settled law that the bar of limitation would not operate in respect of void orders but not in respect of erroneous orders. The question of ' limitation may not, therefore; arise in respect of a judgment which is a nullity in law, void or ultra vires the statute or the constitution. In point of fact, if an order is without jurisdiction and void, it need not even be formally set aside as has been held in the cases of Ali Muhammad v. Hussain Bakhsh PLD 1976 SC 37 and Ch. Altaf Hussain and others v. The Chief Settlement Commissioner PLD 1965 SC 68." (at Page 517 A)

14. It is evident from the aforementioned precedents that a mere irregular, incorrect, erroneous or illegal order does not necessarily fall within conception of the term "void", and that the law of limitation would apply to such orders.

15. In the instant case, the Court was certainly fully competent to adjudicate upon the subject matter of the Underlying Suit and to pass the impugned Judgment and Decree. No assertion to the contrary has even been pleaded in this regard.

16. Even otherwise, it need scarcely be mentioned that it is imperative for the proper working of any system of justice that in a context such as the one at hand a party aggrieved by an order passed by a competent judicial forum be required to assail such order in a timely manner through appropriate proceedings, as prescribed, and cannot be allowed to escape the consequence of his own indolence and circumvent limitation by recourse to a plea that the order sought to be questioned is void and hence is not subject to any statute of limitation.

17. In this regard, it merits consideration that in the case of Muhammad Raz Khan (*supra*), on the subject of limitation in relation to a 'void order' it was held by the Apex Court as follows:

“4. Secondly, there is no cavil to the proposition that normally constraints of limitation do not apply against void orders as held in case of Muhammad Shaft v. Mushtaque Ahmed 1996 SCMR 865. Nevertheless every case is' distinguishable on its facts and circumstances. It is undoubtedly imperative for aggrieved party to peruse legal remedies with utmost diligence and satisfy conscious of the Court or quasi-judicial authority for approaching respective forums beyond prescribed limitation, even if objections to that effect were not raised. This principle has been discussed in PLD 1985 SC 153 (Hakim Muhammad Buta and another v. Habib Ahmad and others) and PLD 1993 SC 147 (Province of Punjab and others v. Muhammad Hussain and others). Thus,

aggrieved person seeking redress has legal obligation to justify each day's delay' for launching proceedings, because with lapse of time valuable right accrues to the opposite side. This view has been consistently maintained by superior Courts. However, reference may be made to judgments reported in (i) PLD 1996 SC 292 (All Muhammad and others v. Muhammad Shaft and others), (ii) PLD 1995 SC 396 (Government of Punjab v. Muhammad Saleem), (iii) 1986 SCMR 930 (Muhammad Feroze Khan v. Khalique Dad Khan and 28 others), (iv) PLD 1982 SC (AJ&K) 13 (Khadim Hussain Khan v. The State).

5. Now looking to applicability of limitation against void orders question would naturally arise whether right of such person against whom an adverse order exists would be unfettered, ignoring established principles and would enjoy limitless discretion to knock the door of justice whenever desired by him; or same should be regulated by judicious norms. We earnestly feel that unless certain constraints apply against right of challenging void order specially relatable to period of knowledge, the same may create complications leading to dangerous results. Principle of justice and fair play does not help those who were extraordinary negligent in asserting their right and despite becoming aware about alleged void order adverse to their interest remain in deep slumber. Therefore, according to our considered opinion, facility regarding extension of time for challenging orders cannot be legitimately stretched to any length of unreason period at the whim's, choices or sweet will of affected party. Thus, order termed as nullity or void could at best be assailed by computing period of limitation when he factually came to know about the same. When a person presumes that adverse order is a nullity or totally devoid of lawful authority and ignores it beyond the period specified by law of limitation, then he does so at his own risk. Therefore, in all fairness terminus a quo will have to be fixed, the date of knowledge of alleged void order; which too must be independently established on sound basis. In this behalf, we derive strength from the observations contained in PLD 1975 Baghdad-ul-Jadid 29 (Sayed Sajid Ali v. Sayed Wajid Ali) and 1978 SCMR 367 (S. Sharif Ahmad Hashmi v Chairman, Screening Committee).”

18. In view of the foregoing, it is evident that the Application is misconceived and is even otherwise barred by limitation. Accordingly, the same is dismissed. There is no order as to costs.

JUDGE

Karachi
Dated _____