

Order Sheet
IN THE HIGH COURT OF SINDH,
CIRCUIT COURT, HYDERABAD

CP. No. D- 256 of 2013

Sajid Hussain v. Province of Sindh and others

BEFORE :

Mr. Justice Adnan-ul-Karim Memon
Mr. Justice Adnan Iqbal Chaudhry

Petitioner: Sajid Hussain through M/s. Muhammad Arshad S. Pathan & Ghulam Sarwar, Advocate in CP No. D- 256 of 2013

Respondent: Pir Shabbir Ahmed Jan Sarhandi through Mr. Bilawal Ali Ghunio, Advocate.

Mr. Allah Bachayo Soomro, Addl.A.G.

Date of hearing
& decision: 26.10.2021

O R D E R

ADNAN-UL-KARIM MEMON, J:- The instant constitutional petition was disposed of vide order dated 08.12.2020. An excerpt of the order is reproduced as under:-

“Subject matter of this petition is the tender and bidding process for construction of shops around central jail Hyderabad. This petition was filed in the year 2013 in respect of the alleged tender for the construction of 12 shops around jail. Initially, when this petition was taken up serious objections were raised regarding its maintainability and it was observed by the Bench that the action of the Superintendent Central Prison Hyderabad for handing over site around jail for construction of such shops was without the sanction of law. There may have been some financial obligations incurred by the petitioner for initial construction but that was ordered to be settled between them. The question now left is whether the Superintendent, Central Prison Hyderabad was under any authority, power or obligation to issue such tender without the sanction of law. Prima facie simple answer to this query is “No”. There was no sanction of law or permission from any concerned ministry, nor there could be. Individually the Superintendent Central Prison Hyderabad should not have issued such tender for construction of alleged shops and that alone for the benefit of individuals on monthly basis. On 02.12.2020 we had summarized the facts about such actions as undertaken by the Superintendent, however, today Mr. Allah Bachayo Soomro, Additional Advocate General has made an attempt that he is not aware as to where the said Superintendent is. He has shown his ignorance if he is still serving or has gone elsewhere. We didn’t appreciate such an attempt of learned A.A.G. to save the Superintendent from the clutches of the consequence of an unlawful action undertaken by him. The land around and in the vicinity of jail is a land which should be completely saved from inhabitancy of all individuals and it should not have been the subject matter of any tender for any commercial gain either for the department or for any individual.

We, therefore, deem it appropriate to dismiss this petition with direction that the matter be referred to the NAB authorities for initiating proceedings against the Superintendent Central Prison Hyderabad namely Pir Shabbir Ahmed Jan Sarhandi who allegedly issued tender in respect of 12 shops which formed the subject matter of this petition and also probe any other allotment of land forming part of the jail.

The compliance report be filed within eight (08) weeks by the respondents for referring the matter to NAB authorities. A copy of this order be forwarded to NAB authorities.

This petition is dismissed in the above terms.

2. Through listed application bearing MA No. 357/2021, the applicant seeks review of above order dated 08.12.2020 on the ground that the petitioner has suppressed the real facts before this Court; it is not a matter of corruption or misappropriation of government exchequer; that there was/is documentary proof available on record to show that the applicant had done all the work with the approval of government thus no loss caused to the public exchequer at his hand; the applicant has followed all legal / codal formalities whereby he safeguarded the government property from the illegal encroachers; that the subject land is out of premises of the prison; and, is located on National Highway road; that due to above order dated 08.12.2020 the applicant might be harassed and blackmailed by the NAB authorities, which was/is the sole purpose of filing the instant review application; there is no indication of corruption or misappropriation against the applicant nor anything that is available on record to connect the applicant with any kind of corruption or misappropriation; that the applicant has been condemned unheard; and, it is settled principle of law that no one should be condemned unheard; that no opportunity to clarify the position before this court, with regard to sending the case to NAB for inquiry, has been given to the applicant and if any opportunity of hearing is provided the applicant will be able to clear his position; record apparently shows that there are some mistakes/oversights on the face of record; that the facts apprised above clearly shows that the order dated 8.12.2020 has erroneously been passed to the extent of suspension of notification dated 12.11.2019 due to misguiding of the petitioner.

3. We have scanned the record and found the contention of the learned Counsel for the applicant untenable, for the simple reason that this court while dismissing the petition simply referred the matter to NAB for enquiry against the superintendent of Central Prison Hyderabad who allegedly issued tender in respect of 12 shops which formed the subject matter of the petition and probe any other allotment of land forming part of the jail.

Even otherwise the applicant is a party to the proceedings and he also appeared before this court in person and filed comments; however, on the day when the petition was heard and decided he had chosen to remain absent as such he cannot claim immunity to the extent that he has been condemned unheard.

4. Perusal of record shows that the applicant has not assailed the order dated 8.12.2020 passed by this Court, before the Honorable Supreme Court yet.

5. In our view, the review of the order can only be made by the party, if there is a mistake or error apparent on the face of record as provided under Order XLVII (Section 114 CPC). The applicant through the review application has attempted to call into question the validity of order dated 8.12.2020 passed by this Court without assailing the same before the Appellate Forum.

6. Applicant has admitted that whatever he has done as mentioned in the impugned order, was/is under the instruction of the high ups, thus his involvement is less in the matter. Prima-facie, this assertion is untenable for the simple reason that if there is a loss to the public exchequer, the competent authority could look into the matter on criminal side, and the scope of review is limited under Order XLVII (Section 114 CPC).

7. For the aforesaid reasons, we are not persuaded by the contention of learned Counsel for the applicant that any case of review is made out. Therefore, the review application merits dismissal, which is accordingly dismissed as, in our view, the order dated 8.12.2020 passed by this court was based on correct factual as well as legal position of the case and we do not find any inherent flaw floating on the surface of record requiring our interference.

8. Consequently, the application bearing MA No. 357/2021 is dismissed.

JUDGE

JUDGE