

IN THE HIGH COURT OF SINDH,
Bench at Sukkur

C. P. No. D – 1561 of 2017

Kashif Ali Sundrani.....Petitioner
Versus
Government of Pakistan and others.....Respondents

Before:

Mr. Justice Muhammad Junaid Ghaffar
Mr. Justice Zulfiqar Ali Sangi

Date of Hearing: **16-12-2021**

Date of Decision: **16-12-2021**

Mr. Mushtaque Ahmed Shahani, Advocate for the Petitioner.
Mr. Saeed Ahmed Balouch, Advocate for the Respondents No.2 to 7.
Mr. Muhammad Hamzo Buriro, Deputy Attorney General.

ORDER

Muhammad Junaid Ghaffar, J. – On 06.02.2018, the following order was passed.

“2&3. Learned counsel for the petitioner undertakes to satisfy the Court on the next date regarding maintainability of this petition, which has been filed for implementation of clause 5 of the lease agreement / contract (page 11) and policy (page 15). At his request, adjourned to **14.03.2018**”.

Today, we have confronted the Petitioner’s Counsel as to the above order and the maintainability of this Petition and in support, the Counsel for the Petitioner has relied upon cases reported as *Messrs Ramna Pipe and General Mills (Pvt) Limited v. Messrs Sui Northern Gas Pipe Lines (Pvt) and others* (**2004 SCMR 1274**), *Messrs Zia Brothers v. Secretary to Purchase Committee, for the Girl Community Model School Alipur* (**2007 CLC 1181**), *Syed Ali Ammaar Jafery v. Federation of Pakistan and others* (**SBLR 2019 Sindh 2238**), *A.M. Constructions Company (Pvt) Limited v. The National Highway Authority & others* (**2015 CLD 130**), *Haji Amin v. Pakistan Trading Corporation (Pvt.) Ltd and others* (**PLD 2009 Karachi 112**), *Network Television Marketing Ltd. v. Government of Pakistan and another* (**2001 CLC 681**), and *Syed Tahir Abbas Shah v. OGDCL through M.D. Head Office Islamabad and others* (**2012 PLC (C.S) 885**)

Insofar as controversy as raised in this Petition is concerned, the same appears to be in respect of enforcement of a lease agreement dated 28.12.2016 purportedly entered into between the Petitioner and one Naseer Muhammad, Regional Coordinator, OGDCL, Sukkur. The gist of the agreement is in respect of Petitioner's land being utilized by the OGDCL; whereas clause-5 of the agreement reads as under:

"(5) That both the parties has agreed to bound to extent co-operation with each other and act as per law. The first party will not demand any other benefits as regard to employment etc of his men in OGDCL except as per OGDCL policy".

In nutshell, the Petitioner's case appears to be enforcement of the lease agreement; whereas, the Respondents' stance is that even otherwise, prayer sought is an exception to such enforcement of the lease agreement, as per prayer clause-5 thereof.

Be that as it may, for the present purposes we are not concerned with this issue which pertains to the merits of the case; but as to the maintainability of this Petition in view of the aforesaid objection. Time and again the above issue has been a bone of contention between the parties and recently the controversy has been settled in at least two cases by this Court. First of the two cases is a judgment passed by a Division Bench at Circuit Court, Larkana, reported as Nawabzada Sardar Ahmed Khan v. Frontier Works Organization (P.W.O) through its Director General F.W.O and 3 others (2018 CLC 1744); wherein by following the judgment of another Division Bench dated 26.01.2017 passed in the case of Fida Hussain & Others v. Secretary Local Government, Sindh & Others (C.P.No.D-546 of 2014) at the same Court, the petitions were dismissed as being not maintainable, whereas the case of Fida Hussain and others (Supra) was also approved by the Hon'ble Supreme Court of Pakistan in Civil Petitions No.95-K to 98-K of 2017, through order dated 11.07.2017.

Subsequently, another learned Division Bench of this Court at Sukkur had taken a contrary view vide its judgment dated 17.04.2018, passed in C.P.No.D-109 of 2011 and other connected matters, perhaps for the reason that the judgment in the case of Nawabzada Sardar Ahmed Khan (Supra) was not cited; though it was reported and was also earlier in time. Nonetheless, the learned Division Bench, at Sukkur, by placing reliance on various Judgments of the Courts including that of Hon'ble

Supreme Court, (which have also been cited by the Petitioner's Counsel before us), had allowed the petitions by holding that that contractual obligations can be enforced in constitutional jurisdiction; however, the said judgment of the learned Division Bench of this Court was then impugned before the Hon'ble Supreme Court in Civil Petitions No.654-K, 655-K 679-K, 684-K to 695-K of 2018, (*Province of Sindh v Abdul Sattar Arbani & Others*) and the Hon'ble Supreme Court vide judgment dated 27.08.2018 has been pleased to set aside the Judgment of the learned Division Bench of this Court dated 17.04.2018. It has been held by the Hon'ble Supreme Court in the said case that contractual obligations cannot be enforced through constitutional jurisdiction as it involves determination of factual dispute and for that the aggrieved person has to seek recourse to civil proceedings.

In view of hereinabove facts and circumstances of this case and the dicta laid down as noted above, this Petition seeking enforcement of a lease agreement is not competent under our Constitutional jurisdiction and is accordingly dismissed; whereas the Petitioner is at liberty to seek appropriate civil remedy, as may be available in accordance with law.

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