

IN THE HIGH COURT OF SINDH AT KARACHI

BEFORE:
Mr. Justice Muhammad Shafi Siddiqui

C.P. No. S-598 and 999 of 2013

Province of Sindh

Versus

The Islamic Education Trust & others

Date of Hearing:	31.10.2017
Petitioner in both the petitions:	Through Mr. Ziauddin Junejo, AAG along with M/s Ghulam Mustafa Mahesar AAG and Aale Maqbool Rizvi AAG.
Respondent No.1 in both petitions:	Through Mr. Mureed Ali Shah Advocate.
Respondent No.2 in C.P. No.598 of 2013 and respondents No.2 to 11 in petition No.999 of 2013:	Nemo.

J U D G M E N T

Muhammad Shafi Siddiqui, J.- These petitions are filed by Government of Sindh through Secretary Education & Literacy Department, challenging different orders passed by the Rent Controller and by Additional District Judge. The orders impugned include (i) an order dated 26.04.2008, which is an ejectment order, (ii) order dated 18.04.2012 which is order dismissing the application under section 12(2) CPC, (iii) order dated 29.09.2012 whereby petitioner seeks to implead Secretary Government of Sindh, Education Karachi, instead of CDGK which was dismissed, (iv) order dated 15.10.2012 allowing the execution application, 02.11.2012 allowing writ of possession with police aid, (v) order dated 03.09.2009 dismissing the application under order I rue 10 CPC by I-Additional District Judge Karachi East in FRA No.69 of 2008, (vi) order dated 10.12.2011 dismissing the FRA No.69 of 2008 in CP No.S-598 of 2013. In CP No.S-999 of 2013 order dated 26.04.2013 passed by V-Additional District Judge Karachi East in FRA No.91 of 2012 as being

barred by time pertaining to Rent Case No.413 of 2009 and Execution Application No.17 of 2008, has been challenged.

Learned A.A.G. appearing for the petitioner submitted that the Rent Application was filed without impleading the petitioner as being necessary and proper party and hence in the absence of necessary and proper party such proceedings were not maintainable, besides being without jurisdiction. He submitted that without determining the fact as to who are the trustees and what powers have been delegated to such trustees and without determining the title of the trust, the rent application could not have been decided. He further submitted that until and unless such questions were framed and answered with reasoning, the rent order should not have been passed by the Rent Controller and hence he has filed the petition directly without exhausting the remedy of appeal in respect of some of the orders of the Rent Controller and after considerable delay as being void orders.

Learned AAG further relied upon Section 3 of Sindh Rented Premises Ordinance, 1979 and submitted that all premises, other than those owned or requisitioned under any law by or on behalf of the federal government or provincial government situated within an urban area, shall be subject to provisions of Ordinance 1979.

Learned AAG appearing for the petitioner has relied upon case of Director of Schools v. Zaheeruddin reported in 1996 SCMR 1767, Government of Punjab v. Anjamun-i-Tarraqi-i-Talim reported in PLD 2011 Lahore 258 and the case of Syed Muhammad Alam v. Syed Mehdi Hussain reported in PLD 1970 Lahore 06 to strengthen his arguments that since the Rent Controller had no jurisdiction therefore all orders passed and/or series of orders that were subsequently passed by Rent Controller and Appellate Authority are all void orders and hence no limitation would run against these void orders.

Learned AAG further relied upon a leave granting order passed in Civil Petition 180-K/2016 where in an identical situation in respect of section 3 of Sindh Rented Premises Ordinance leave has been granted.

On the other learned counsel for respondent submitted that these petitions were filed only to prolong and delay the matter as otherwise the questions, as raised in the instant petitions, were either settled earlier or were not challenged at the appellate forum by filing appeal. Learned counsel has relied upon an order passed in CP No.D-96 of 2001 filed by Islamic Education Trust and submitted that all those questions which are being raised now are past and closed transactions. The Official Assignee was directed to assume the powers in terms of the orders passed in aforesaid petition and the ejectment application was accordingly filed. Learned counsel has relied upon correspondence and references filed by the Official Assignee, which were conceded to by the petitioner as well as by City District Government Karachi/KMC who contested all the references in CP No.96 of 2001 on behalf of CDGK/KMC.

He further submitted that Martial Law Regulation 118 of 1972, which was in respect of privately owned premises in which nationalized educational institutions were housed, was subsequently withdrawn and is no longer available in respect of such buildings and hence the application under section 3 of Sindh Rented Premises Ordinance, 1979 was rightly rejected/dismissed.

Learned counsel for the respondent further relied upon orders passed in CP No.473 of 2008 challenging order dated 26.04.2008 (ejectment order) which is also impugned here, which petition was dismissed vide order dated 28.10.2008 yet again the petitioner has challenged the same order in these petitions. Application under section 12(2) CPC was then filed by the petitioner which was also dismissed on 18.04.2012. The appeal against the dismissal of application under

section 12(2) CPC dated 18.04.2012 was also dismissed on 26.04.2013 against which also these petitions are filed.

Learned counsel further argued that no explanation is provided as far as delay in filing the appeal i.e. FRA No.91 of 2012 is concerned and even these petitions are filed after five months of the orders passed therein. The application under order I rule 10 CPC, as preferred by the petitioner in FRA No.69 of 2008, was dismissed by the Appellate Court.

Learned counsel for the respondent in support of his contentions relied upon the cases of Government of Sindh v. Delhi Anglo Arabic College reported in 2009 SCMR 315 and an unreported order passed in CPLA No.869-K of 2001 in the case of Islamia Law College v. Islamic Education Trust.

I have heard the learned counsel for parties and perused the material available on record.

Somehow identical questions and disputes, as raised by learned AAG today, were raised earlier and it is necessary to see as to whether such questions are still open for a fresh judicial scrutiny, as contended and prayed for in these petitions.

The cause started when in CP No.D-96 of 2001 a Division Bench of this Court in the interest of justice secured the interests of the trustees by appointing Official Assignee to assume the powers of the owner of the property and take such measures as he considered necessary or expedient to protect the owners' interest in accordance with the trust deed. The said order was passed on 07.09.2001. The communication with the Government of Sindh started when the Official Assignee wrote a letter and on 06.03.2003 the Official Assignee was informed that the financial and administrative authority of all educational institutions and offices in district except professional colleges have been de-centralized to CDGK. Accordingly, the CDGK has been asked to pay rental dues

immediately. The Official Assignee then filed a Reference dated 05.04.2003 claiming amounts under different heads. Mr. Manzoor who appeared for CDGK at the relevant time then conceded that CDGK was liable to pay rent from the date of de-centralization. To a statement of Official Assignee in pursuance of order dated 14.05.2003 whereby the amount claimed by the respondents towards different heads was allowed, the Division Bench of this Court in the aforesaid petition passed a consent order that the rent prior to the date of de-centralization is to be paid by respondent No.1 therein i.e. Government of Sindh and the Official Assignee has determined such amount. Mr. Salman Habibullah requested for time to call the concerned officer as to the payment of such amount. Subsequently in terms of order dated 22.03.2004 the Division Bench was pleased to pass following order:-

“12. The argument, indeed appears plausible. Nevertheless it purports to over look the provisions of Section 2 of Martial Law Regulation 118 (Sindh Amendment) Act, 1972, para 9 of MLR 118 contemplating that all liabilities and contractual obligations of the previous management stood vested in the Government came to be deleted. In other words with effect from the said date, the Government was no longer bound to fulfill the obligations of the Society. For the foregoing reasons it is not possible for us to hold that the Government was bound to pay rent on the basis of the rate agreed upon between the Trust and the Society even if we were to hold that the rate of Rs.0.25 per sq. feet was eminently reasonable. We would, therefore, leave the question open to the Official Assignee to seek determination and recovery of rent through appropriate forum in accordance with law. The question as to whether the provisions of MLR 118 (which was promulgated by the Chief Martial Law Administrator, exercising the legislative power of the Federation) could be validly amended through Act XX of 1972 (which was enacted by the Provincial Legislature) was valid in terms of Article 139 of the Interim Constitution or Article 143 of the present Constitution, is another serious question of law, which may be resolved in proceedings and not in a summary manner through this reference.”

The application under section 3 of the Sindh Rented Premises Ordinance, 1979 on the strength of an order passed in Civil Appeal

No.1544 of 2000 was dismissed. It was observed that the protection was no longer available in respect of the building in question.

Vide order dated 10.02.2006 a tentative rent order was passed by the Rent Controller on an application under section 16(1) of Sindh Rented Premises Ordinance, 1979 to deposit the arrears in the sum of Rs.1,12,33,005/- within a period of two months which was not complied with and accordingly the defence was struck off vide order dated 26.04.2008. However, a reasonable time of six months was given to hand over vacant peaceful possession of the demised premises.

C.P. No.S-473 of 2008 was then filed challenging order of 26.04.2008 by the Province of Sindh/petitioner apparently without exhausting the remedy of appeal, as it was claimed that there was no relationship of landlord and tenant between the parties. It was however disposed of by a Bench of this Court by observing that the principal of college had filed an appeal against the ejectment order however refrained from passing any order/observation which may prejudice the case of either parties and consequently the petition was dismissed.

Belatedly an application under section 12(2) CPC was filed to challenge the same order whereby the defence was struck off which too was dismissed on 18.04.2012 after recording the evidence by the Rent Controller followed by its dismissal by the appellate Court in FRA No.91 of 2012, as being barred by time to which no satisfactory reply has been made.

As to the contention of AAG appearing for the petitioner that these orders are void orders, he has relied upon the judgment of Lahore High Court in case of Syed Muhammad Alam (Supra). Before nationalization there was of course a relationship of landlord and tenant between the parties. When the management of these colleges was nationalized the ownership of the property vest with the Islamic Education Trust and hence the relationship remained intact without

prejudiced. Subsequently the notification was also withdrawn. It is beyond comprehension that the argument, as to non-existence of relationship of landlord and tenant, was raised by the petitioners' counsel. They were admittedly paying rent since 1961 till the nationalization of the management of these institutes housed in the subject premises.

In a petition filed by Islamic Education Trust as CP No.D-96 of 2001, which was disposed of by order dated 07.09.2001 the principal Government Islamia Law College preferred Civil Petition for Leave to Appeal bearing No.869-K of 2001. The petition before the High Court was resisted on many grounds as being incompetent, misconceived and not maintainable and in particular the enforcement of MLR 118 of 1972 whereby all educational institutions were nationalized and the management of the colleges of Islamic Education Society along with its assets and liabilities was taken over by the government and that through notification dated 08.03.1973, issued by Government of Sindh, Educational Department, in exercise of powers under section 1 read with 4 of Government Educational & Training Institutions Ordinance, 1960, the management and administration of the petitioners' colleges was given under the Board of Governors for law colleges in Karachi. While the Division Bench maintained that it was only management of the colleges which was taken over by the government in MLR 118 whereas title to the property remained with the original owners, the division Bench of this Court in the interest of justice directed the Official Assignee to assume powers of the owner as there was a dispute amongst the members of family of late A.M. Qureshi relating to the management of trust properties which was subjudice in Suit No.333 of 1992. It was a case of the Government Islamia College that KMC on nominal rent has granted a piece of land to the Society in the year 1958 and one of the members of the Trust to be nominated by KMC as member of the Trust. Different tenements were acquired by different educational institutes

who became tenants of the trust and different tenancy deeds were executed. It was conceded by the counsel who appeared for the college that by virtue of paragraph 5 of MLR 118 the government did not become owner of the property in which privately managed schools and colleges were being run. The Hon'ble Supreme Court while disposing of aforesaid CPLA clarified that the intention of MLR 118 was manifestly only to take over the management and not to confiscate the properties in which privately managed schools were housed. This view was reiterated in the case of Government of Punjab v. Board of Foreign Missions reported in PLD 1988 SC 382 and Sister Marry John v. Government of Punjab reported in 1999 SCMR 2235 and Province of Punjab v. Muhammad Ilyas reported in 2000 SCMR 893. The order passed by the Division Bench of this Court was not interfered by the Hon'ble Supreme Court.

The ejectment application hence was filed in accordance with law and the applicability of section 3 of Sindh Rented Premises Ordinance, 1979 was resisted by the Rent Controller as well as by the Appellate Court on the strength of the fact that MLR 118 of 1972 was only in respect of running the management of these schools and colleges and the title of the property would not be altered by the aforesaid MLR which was otherwise withdrawn in terms of the judgment passed in the case of Government of Sindh v. Delhi Anglo Arabic College (Supra). Paragraph 9 of the same is reproduced as under: -

“With regard to the contention that the relationship between the parties was that of landlord and tenant and in case of failure of the petitioner to pay the monthly rent for the premises in question, the respondents ought to have resorted to the provisions of the Ordinance for ejectment of the petitioners, it is noted that according to Martial Law Regulation 118 privately owned premises in which Nationalized Educational Institutions are housed/functioning were exempted from application of the Ordinance. Though such exemption was subsequently withdrawn and no longer available in respect of such buildings yet in view of the stipulation contained in clause (6) of the agreement that the breach of any of the terms set out in sub-clauses (a) to (n) of clause (6) would be

sufficient ground for the respondents to terminate this agreement as well as clause (8) of the lease agreement empowering the respondent to terminate the agreement on commission of breach of any of the terms of the agreement, the tenancy was liable to termination/ forfeiture in terms of section 111 of the Transfer of Property Act. Irrespective of the above circumstances, the fact remains that neither in the suit nor in the High Court Appeal this objection has ever taken or raised by the petitioners.”

Similarly in the case of Government of Sindh v. Khalil-ur-Rehman in Civil Appeal No.1544 of 2000 Hon’ble Supreme Court held that in the context of the facts of the case:-

“.....suffice it to observe, after enforcement of Martial Law Regulation 118, the premises in which nationalized educational institutions located in privately owned properties were exempted from the operation of the provisions of Ordinance 1979. The said protection has since been withdrawn and is no longer available in respect of said buildings. Even when such exemption was intact forfeiture of tenancy clause was available to the owners of the properties in terms of section 112 of Transfer of Property Act and could be availed of in appropriate cases.”

In view of these findings and observations it seems that the relationship of landlord and tenant cannot be deemed to be non-existent or ceased to be in existence by virtue of MLR 118/1972. This is however without prejudice to the fact that such protection in terms of section 3 of Sindh Rented Premises Ordinance, 1979 was withdrawn. I do not find any of the orders which were passed by Rent Controller or appellate Court to either be void or without jurisdiction. Hence the petitions are dismissed along with pending applications. Since the Islamia Law College has also preferred a petition against the ejection order which is not fixed today, therefore, the observations here shall not prejudice the case of any other petitioner who has separately filed the petition and pending.

Above are the reasons of my short order dated 31.10.2017 whereby the petitions were dismissed.

Dated:

Judge