

*Judgment Sheet*

**IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD**

Constitutional Petition No. D – 56 of 2011

Present :

1. Mr. Justice Nadeem Akhtar
2. Mr. Justice Shahnawaz Tariq

Petitioner : Syed Munawar Ali Shah through Mr. Ahsan Gul Dahri,  
Advocate.

Respondents : (1) Province of Sindh,  
(2) Secretary Forest, Government of Sindh,  
(3) Chief Conservator of Sindh, Hyderabad,  
(4) Conservator of Forests, Afforestation Circle, Hyderabad,  
and (5) Division Forest Officer, Hyderabad Division, Hyderabad,  
through Mr. Allah Bachayo Soomro, Additional Advocate  
General Sindh, Hyderabad.

**J U D G M E N T**

**NADEEM AKHTAR, J.** – Through this Constitutional petition, the petitioner has prayed for a direction against the respondents to grant extension in the lease period of the subject land in his favour.

2. The case of the petitioner, as averred in the petition, is that he was granted lease of 15-00 acres of forest land from Chokri No.19, Lot No.390 in Noor Ketri Forest (**‘the land’**) by the respondents through an auction at the rate of Rs.1,100.00 per acre per year for five years from Rabi 2006 to Kharif 2010, ending on 31.12.2010. The said lease was granted in favour of the petitioner through lease deed dated 30.4.2006 executed on behalf of the Government of Sindh by respondent No.4 / Conservator of Forest, Afforestation Circle, Hyderabad, and respondent No.5 / Divisional Forest Officer, Hyderabad Division. After execution of the lease and proper demarcation of the land, possession thereof was handed over to the petitioner. During the entire five years’ lease period, the petitioner abided by all the terms and conditions of the lease, and there was no violation in respect thereof on his part. The agreed lease amount was regularly paid by the petitioner, and the last payment for the year 2010 was paid by him on 03.5.2010. It is the case of the petitioner that before the expiration of the lease period, he applied to the respondents through an application dated 2.11.2010 for extension of the lease period for a further period of five years. He has alleged that the respondents kept him on false hopes and promises that the lease period will be extended, but the needful was

not done. The petitioner has further alleged that the respondents were attempting to grant / allot the land to some third party without following the prescribed rules and regulations, and also that similar leases in respect of other lands in the same vicinity have been renewed by the respondents during the same period in favour of other lessees.

3. On behalf of the respondents, comments were filed by respondent No.5 / Divisional Forest Officer, Hyderabad, wherein it was alleged that the petitioner had violated the terms and conditions of the lease *“by not raising mandatory 25% hurry / block plantation over the leased area as per the terms and conditions of the lease”*. The allegation of allotment of the land to some third party, was denied in the comments. The petitioner’s contention about extension of similar leases in favour of other lessees during the same period, was not denied by the respondent.

4. Mr. Ahsan Gul Dahri, the learned counsel for the petitioner, submitted that there was a specific provision in the lease deed for renewal of the lease on the same terms or on such terms and conditions and period as may be specified by the Government with 25% increase in the original lease money. He contended that such renewal was subject to the condition that there should be no violation of the terms and conditions of the lease, particularly relating to the raising of hurry / block plantation by the lessee / petitioner. He argued that since there was no violation at all by the petitioner of the terms and conditions of the lease, including the raising of hurry / block plantation, and the petitioner has admittedly paid the entire lease money, he was/is entitled to the renewal of the lease, especially when he had applied for renewal much before the expiration of the lease. He invited our attention to a number of letters issued in December 2010 by the Chief Conservator of Forests Sindh at Hyderabad, whereby leases of various lessees were renewed for a further period of five years from Rabi 2010–2011 to Kharif 2015, ending on 31.12.2015. The learned counsel submitted that the above renewals in the lease period clearly show that the petitioner is a victim of deliberate discrimination by the respondents. It was urged that such an obvious discrimination alone is sufficient to allow the instant petition.

5. On the other hand, Mr. Allah Bachayo Soomro, the learned Additional Advocate General Sindh, submitted that under the terms and conditions of the lease, the petitioner cannot claim renewal of the lease as a matter of right, as the discretion to renew the lease vests solely with the Government under Clause 4 of the lease deed. He further submitted that such discretion could be exercised by the Government only upon faithful fulfilment of the terms and conditions of the lease deed by the lessee, particularly relating to the raising of

hurry / block plantation. He asserted that since the petitioner did not raise mandatory 25% hurry / block plantation over the land, there was no question of exercising discretion or renewing the lease in his favour. In addition to his above submissions, it was submitted by the learned AAG that the petitioner has no vested right in the land, therefore, this petition is liable to be dismissed.

6. We have heard the learned counsel for the petitioner as well as the learned AAG, and have also perused the material available on record. The contention of learned AAG is correct that, under Clause 4 of the lease deed, it was the discretion of the Government to renew the lease, and such discretion could be exercised by the Government only upon faithful fulfilment of the terms and conditions of the lease deed by the lessee, particularly relating to the raising of hurry / block plantation. In this context, we have examined Clause 13(i) of the lease deed, which provides that should the Conservator of Forests / Chief Conservator of Forests is of the opinion that the lessee is not faithfully carrying out the terms and conditions of the lease deed in a proper manner, he may terminate the lease after giving a written notice of at least 15 days to the lessee, and also after giving him an opportunity of hearing. In reply to our query as to whether or not any notice in terms of Clause 13(i) *ibid* was issued to the petitioner in case he had violated the aforesaid condition of the lease deed, the learned AAG conceded that no such notice was ever issued to the petitioner. He also conceded that except for the above alleged breach on the part of the petitioner, he did not violate the other terms and conditions of the lease deed.

7. It is an admitted position that the agreed lease money was paid by the petitioner on yearly basis, and the respondents accepted the same from him every year till the last year ended on 31.12.2010, without any objection or protest that he did not raise mandatory 25% hurry / block plantation over the land. It is also an admitted position that no notice was ever issued to the petitioner by the respondents in terms of Clause 13(i) *ibid* for the alleged breach of the aforesaid condition of the lease deed. Therefore, the respondents' assertion that the mandatory condition of the lease deed was violated by the petitioner as he did not raise mandatory 25% hurry / block plantation over the land, does not appear to be correct. In view of the above and also as the petitioner admittedly did not violate any the other condition of the lease deed, the respondents ought to have extended the lease period as per the terms and conditions of the lease deed.

8. It has come on record, which has not been denied by the respondents, that similar leases of various lessees were renewed in their favour during the same period for a further period of five years from Rabi 2010–2011 to Kharif 2015, ending on 31.12.2015. However, the lease in favour of the petitioner was

not extended by the respondents although he had filed an application for such purpose much before the expiration of the lease. The respondents were duty-bound to give similar treatment to the petitioner and to exercise the discretion vested in them honestly, justly, fairly, impartially and in accordance with law. In this context, reference may be made to the law laid down by the Hon'ble Supreme Court in the following authorities :

- A. In the case of *Shafqatullah and 2 others V/S Land Acquisition Collector (D.C) Haripur and 2 others, 2006 CLC 1555*, the Hon'ble Supreme Court was pleased to hold *inter alia* that under Article 25 of the Constitution of the Islamic Republic of Pakistan, which provides that “*All citizens are equal before law and are entitled to equal protection of law .....*”, all persons similarly placed have equal rights and when certain rights are declared available to one or more such persons, all other persons similarly placed with them stand declared entitled to such rights ; and, it will be sheer discrimination if such persons are denied equal rights, and will be contravention of the provisions of Article 25.
- B. In *Central Board of Revenue and 3 others V/S Seven-up Bottling Company (Pvt.) Ltd. 1996 SCMR 700*, it was held by the Hon'ble Supreme Court that Article 25 of the Constitution guarantees for equality of all citizens before law and their entitlement to get equal protection of law ; this provision casts a duty on the Government to ensure enactment of laws which provide equal protection to all citizens ; and, such rights of citizens cannot be defeated on the ground of waiver.
- C. In the cases of *J. A. Sherwani V/S Government of Pakistan 1991 SCMR 1041* and *Abdul Baqi and others V/S Muhammad Akram and others, PLD 2003 Supreme Court 163*, the Hon'ble Supreme Court recapitulated the following principles of equal protection of law :-

“(i) *That equal protection of law does not envisage that every citizen is to be treated alike in all circumstances, but it contemplates that persons similarly situated or similarly placed are to be treated alike ;*

(ii) *that reasonable classification is permissible but it must be founded on reasonable distinction or reasonable basis ;*

(iii) *that different laws can validly be enacted for different sexes, persons in different age groups, persons having different financial standings, and persons accused of heinous crimes ;*

(iv) *that no standard of universal application to test responsibilities of a classification can be laid down as what may be reasonable classification in a particular set of circumstances, may be unreasonable in the other set of circumstances ;*

*(v) that a law applying to one person or one class of persons may be Constitutionally valid if there is sufficient basis or reason for it but a classification which is arbitrary and is not founded on any rational basis is no classification as to warrant its exclusion from the mischief of Article 25 ;*

*(vi) that equal protection of law means that all persons equally placed be treated alike both in privileges conferred and liabilities imposed ;*

*(vii) that in order to make a classification reasonable, it should be based ---*

*(a) On an intelligible differentia which distinguishes persons or things that are grouped together from those who have been left out ;*

*(b) That the differentia must have rational nexus to the object sought to be achieved by such classification.”*

9. The facts and circumstances of this case show that the other lessees whose leases were extended during the same period by the respondents for five years and the petitioner, were similarly placed. Therefore, the said other lessees and the petitioner were entitled to equal rights and treatment in law by the respondents. In view of the law laid down by the Hon'ble Supreme Court, this is a case of sheer discrimination and contravention of the provisions of Article 25 of the Constitution of the Islamic Republic of Pakistan as the petitioner has been denied equal rights and treatment by the respondents.

Foregoing are the reasons of the short order announced by us on 15.01.2014, whereby this petition was allowed as prayed.

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