

Order Sheet

IN THE HIGH COURT OF SINDH AT KARACHI

Constitutional Petition No. S – 230 of 2021

Petitioner : The Province of Sindh,
through Mr. Salman Talibuddin, Advocate General Sindh,
and Mr. Ziauddin Junejo Addl. Advocate General Sindh.

Respondent No.1 : The Islamic Education Trust,
through Syed Mureed Ali Shah Advocate.

Dates of hearing : 23.12.2021, 27.01.2022, 08.02.2022, 17.02.2022,
15.08.2022, 23.08.2022 and 31.08.2022.

ORDER

NADEEM AKHTAR, J. – Through this Constitutional Petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, the petitioner / Province of Sindh has impugned the order passed on 05.03.2021 by the executing Court in Rent Execution Application No.17/2008, whereby the writ of possession in respect of the subject premises was ordered to be issued / repeated along with strong police force and the Rangers contingent, if necessary. The operative part viz. paragraph 7 of the aforesaid order reads as under :

“ 7. I have gone through the order of Hon’ble Supreme Court of Pakistan and found that there is no specific restraining order to halt the execution proceeding passed by the Hon’ble supreme Court of Pakistan. Therefore, I could not persuade myself to agree with the submission of the learned District Attorney. As the final ejectment order has been passed by the Hon’ble Supreme Court of Pakistan dated 18.12.2018 which is still in field and the same is intact, hence, the execution of the said order has to be carried out with full force unless some specific restraining order comes in the field, therefore, office is directed to repeat writ of possession through head bailiff, along with strong police force and the Rangers contingents if necessary, however, any obstruction / resistance to the execution of writ of possession shall be dealt by this Court as provided under Order XXI Rule 97 & 98 CPC besides other rules. In this regard, the Head Bailiff is required to identify the specific person along with role if anyone causes any obstruction or resistance to him in execution of the writ of possession.”

2. The case has a checkered history. For the purposes of the instant petition, the relevant facts are that Rent Case No.413/2004 was filed by the respondent No.1-Trust seeking eviction of various educational institutions and the City District Government from its property viz. Plot No. 90, M. A. Jinnah Road, Jamshed Quarters Karachi, measuring 22,349 sq. yds., commonly known as “Islamia College Building Complex” (**‘demised premises’**). The said rent case was

allowed by the Rent Controller vide order dated 26.04.2008 which was challenged by Government Islamia Law College in First Rent Appeal No.69/2009. The said appeal was dismissed by the appellate Court vide judgment dated 10.12.2011. The petitioner also filed an appeal viz. First Rent Appeal No.91/2012 against the order of eviction and other subsequent orders passed by the Rent Controller, which was dismissed by the appellate Court vide order dated 26.04.2013 as being barred by limitation. Meanwhile, the petitioner also filed an application under Section 12(2) CPC before the Rent Controller / executing Court for setting aside the order of eviction which application was dismissed vide order dated 18.04.2012. Against the dismissal of their appeals, Government Islamia Law College and the petitioner filed Constitutional Petition Nos. S-598/2012 and S-999/2013, respectively. Both the said petitions were heard together and were dismissed by this Court through a common judgment delivered on 09.11.2018. The said judgment of this Court was assailed by the petitioner before the Hon'ble Supreme Court through Civil Petition Nos. 709-K and 710-K of 2017, which were dismissed vide order dated 18.12.2019, the operative part whereof reads as under :

“ Since the amount of rent per the directions of Rent Controller has not been deposited within time therefore, we are not inclined to give any further indulgence. No exception to the impugned judgment under facts and circumstances is called for. Since Educational Institution is being run in the subject premises, we do not want to disturb the current academic session. We, therefore, maintain the ejection order, however, subject to deposit of regular monthly rent and utility bills without fail. Learned Addl. Advocate General Sindh and learned counsel for KMC are directed to bring it to the notice of authority concerned that any failure to deposit monthly rent and up-to-date utility bills would entail consequences for the officer concerned as well. Learned counsel for the respondent was indulgent in conceding that since academic year should not be disturbed he is ready and willing to provide time up to July, 2020. Petitioner should make alternate arrangement by August 2020 which we consider is a sufficient time for the petitioner to shift the students and commence a new academic year in a properly acquired or other existing educational facility. Respondent shall continue to pay rent and all utility charges for the period premises are vacated and handed over peacefully to the respondent. Any failure to comply with the order, ejection may follow without any further notice and with police aid. Petitions are accordingly dismissed.”
(emphasis added)

3. While dismissing the petitioner's petitions through the above-quoted order dated 18.12.2019, the Hon'ble Supreme Court was pleased to direct the petitioner to make an alternate arrangement by August 2020. Instead of complying with such direction / order, the petitioner resisted the execution proceedings initiated by respondent No.1 and did not vacate the demised premises. In this background, the impugned order was passed by the executing Court on 05.03.2021 for issuance of

the writ of possession in respect of the demised premises along with strong police force and the Rangers contingent, if necessary. Immediately after passing of the impugned order by the executing Court, the petitioner filed the instant petition on 12.03.2022 and succeeded in obtaining an ex-parte ad-interim order from this Court on 15.03.2022 whereby the impugned order passed by the executing Court was suspended till the next date of hearing. However, the said ex-parte ad-interim order was not extended in the present petition after 30.08.2021.

4. Meanwhile, the petitioner filed Civil Review Petition Nos. 130 and 131 of 2020 before the Hon'ble Supreme Court seeking review of the aforesaid order dated 18.12.2019 passed by the Hon'ble Supreme Court in its Civil Petition Nos. 709-K and 710-K of 2017 whereby the said petitions were dismissed with direction to the petitioner to make an alternate arrangement by August 2020. The order passed by the Hon'ble Supreme Court on 07.10.2021 in the said review petitions filed by the petitioner is extremely important and relevant for the purposes of the instant petition and as such is reproduced here for ease of convenience :

“ The judgment of this Court dated 18.12.2019 passed in C.P. Nos. 709-K and 710-K of 2017 filed by the Province of Sindh against the Islamic Education Trust and others holds as follows :

*“ We, therefore, maintain the ejectment order
Learned counsel for the respondent was indulgent in conceding that since academic year should not be disturbed he is ready and willing to provide time up to July, 2020. Petitioner should make alternate arrangement by August 2020 which we consider is a sufficient time for the petitioner to shift the students and commence a new academic year in a properly acquired or other existing educational facility. Respondent shall continue to pay rent and all utility charges for the period premises are vacated and handed over peacefully to the respondent. Any failure to comply with the order, ejectment may follow without any further notice and with police aid. Petitions are accordingly dismissed.”*

2. Clearly, our order envisages the peaceful handing over of the possession of the rented premises to the respondent, its owner on 01.09.2020. The failure to comply with the said order permits the respondent owner of the property to recover possession with police aid. Pursuant to the said order, the respondents approached the Rent Controller for issuing a writ of possession in execution of the ejectment order affirmed by the Supreme Court on 18.12.2019.

*3. The Rent Controller issued the writ of possession on 05.03.2021 empowering the head bailiff to handover possession to the respondent-Trust along with strong police force aid and the Rangers contingent, if necessary. The petitioner, Provincial Government approached the High Court in C.P. No. S-230 of 2021 wherein, by order dated 15.03.2021 (“**Restraining Order**”), the writ of possession dated 05.03.2016 by the Rent Controller was suspended on the ground that a Notification dated*

29.07.1980 (“**Exemption**”) issued by the Provincial Government had exempted the premises of privately owned Schools and Colleges that had been taken over under MLR 118, from the provisions of the Sindh Rented Premises Ordinance, 1979 (“**Ordinance**”). Hence the Rent Controller had no jurisdiction in the matter. In addition, the learned Advocate General (“**AG**”) submitted that under the ejectment order affirmed by this Court on 18.12.2019 rather than the respondent-Trust it was the Official Assignee who was to receive possession of the premises of the privately owned schools and colleges of the respondent-Trust / private owners.

4. Having heard the learned AG, we find that the Supreme Court in its judgment reported as Government of Sindh versus Delhi Anglo Arabic College and Schools (2009 SCMR 315) and in an earlier judgment dated 12.12.2002 passed in C.A. No.1544 of 2000 has observed that the notification of exemption from the Ordinance, in respect of the privately managed schools and colleges taken over under MLR 118, had been withdrawn. The learned AG has not been able to explain how the said judicial finding can be disregarded on the basis of a letter dated 14.09.2020 issued by an officer of the Provincial Government that is referred in the Restraining Order. Therefore, prima facie, the first ground taken in the Restraining Order lacks force. More so because the said plea had been urged previously by the Provincial Government in the proceedings but had later been abandoned subsequently.

5. Secondly, the learned AG urged that the ownership of the privately owned schools and colleges belonging to the respondent-Trust that had been taken over under MLR 118 had subsequently been entrusted to the Official Assignee. This was done by order of the High Court passed on 07.09.2001 disposing of C.P. No.96 of 2001 involving a dispute between the legal heirs of Mr. A.M. Qureshi the founder of the Trust, inter alia, about the control and management of its affairs. The same order also directed the Official Assignee to assume the powers of the owner of the property (the Trust) and take such measures as were necessary to protect the owner’s (Trust’s) interest in accordance with the trust deed. Such appointment was subject to orders passed in a pending Suit (Suit No.333 of 1982) between the contesting heirs of the founder of the Trust. The CPLA filed against the order dated 07.09.2001 was dismissed on 13.11.2001. Subsequently the Suit was dismissed on 31.12.2001. The appeal filed there-against was dismissed in the year 2005 and that order attained finality. As a result, the order dated 07.09.2001 empowering the Official Assignee to deal with the property of the respondent-Trust ceased to have effect. Accordingly, the second premise supporting the Restraining Order by the learned High Court dated 15.03.2021 in C.P. S-230/2021 and adopted by the learned AG is prima facie also erroneous.

6. We consider that the Provincial Government has purported to avoid and disregard the direction given by this Court in its order dated 18.12.2019 by urging incorrect pleas before the learned High Court in C.P. No.S-230 of 2021. Such a purport mocks our directions by the persons responsible in initiating, approving and pursuing the proceedings in C.P. No.S-230 of 2021 to procure on untrue grounds a direction by the learned High Court in its order dated 15.03.2021 that conflicts with our afore-said order dated 18.12.2019. Prima facie, such conduct by the concerned officers of the Provincial Government amounts to disobedience of our order dated 18.12.2019 which constitutes contempt of Court. These officers are Mr. Khalid Haider Shah, Secretary (Colleges) Education and Literacy Department and Mr. Faqir Muhammad Aziz, Additional Secretary (Colleges)

Education and Literacy Department, Government of Sindh, who at the relevant time initiated, approved or pursued the improper course of prosecuting C.P. No. S-230 of 2021 and the learned Advocate General, who candidly informed that the said proceedings had been instituted on his advice and that he entered appearance in and prosecuted the same before the learned High Court. Therefore, each of these officers and the Advocate General are prima facie accountable for committing contempt of this Court by filing the proceedings seeking in effect of disobey and avoid the order of this Court dated 18.12.2019.

7. *The office is directed to issue notices to the aforementioned three persons who shall file their reply within four weeks of the receipt of such notices.*

8. *The learned counsel for the respondent-Trust shall file certified documents showing the composition of its Board of Trustees and shall file undertakings of the Trustee members pledging their unequivocal and unqualified purpose, intention and obligation to continue to maintain and run the schools and colleges taken over under MLR 118 that are functioning in the premises owned by the respondent-Trust, as charitable institutions. Relist.”*

5. A copy of the aforesaid order dated 07.10.2021 passed by the Hon'ble Supreme Court was filed in the instant petition by respondent No.1 vide statement dated 08.11.2021 and also along with its C.M.A. No.6349/2021 under Order XXXIX Rule 4 CPC filed on 09.12.2021. In view of the said order dated 07.10.2021, the learned Advocate General Sindh was put on notice by this Court vide order dated 23.12.2021 passed in the instant petition to satisfy the Court on the next date of hearing regarding the maintainability of this petition. On the next date of hearing viz. 27.01.2022, the learned Advocate General Sindh concluded his submissions on the question of maintainability of the petition, and since he had raised an objection as to the representation of the respondent No.1-Trust, the matter was adjourned to 08.02.2022 for filing of proper authorization by the representative of the respondent-Trust. On 08.02.2022, the learned Advocate General Sindh made a statement that an order was passed by the Hon'ble Supreme Court on 07.02.2022 on the review applications filed by the petitioner, and requested that the said order be examined by this Court before proceeding further in the matter. On that date, he undertook to place on record a copy of the said order before the next date of hearing, however, further time was sought by him on the next date of hearing. A copy of the said order dated 07.02.2022 passed by the Hon'ble Supreme Court was eventually filed by respondent No.1 vide statement dated 17.03.2022.

6. Perusal of the aforesaid order dated 07.02.2022 passed by the Hon'ble Supreme Court shows that on that date a statement on behalf of the petitioner was

made before the Hon'ble Supreme Court that the petitioner shall, whilst handing over possession and control of the schools and colleges being run in the demised premises within one week of the date of the said order, file an interpleader Suit before this Court in respect of the demised premises ; and, in view of the above statement, the contempt notices issued by the Hon'ble Supreme Court vide order dated 07.10.2021 were recalled and the review applications filed by the petitioners were disposed of accordingly. Despite making the above statement before the Hon'ble Supreme Court, the possession and control of the schools and colleges being run in the demised premises were not handed over by the petitioner within one week of the date of the aforesaid order nor was the interpleader Suit instituted within the stipulated period. However, on 08.03.2022 Suit No.398 of 2022 under Section 92 CPC read with Order XXXV CPC was instituted by the petitioner at the original side of this Court, but the possession and control have not been handed over by it up till now.

7. As noted above, this matter was partly heard by me on 27.01.2022 when the learned Advocate General Sindh had concluded his submissions on the question of maintainability of the petition. However, the matter could not be listed before me due to a change in the roster sitting, and meanwhile Mr. Salman Talibuddin ceased to hold the office of the Advocate General Sindh. After this development when the matter came up before me on 15.08.2022 and 23.08.2022, Mr. Ziauddin Junejo, Additional Advocate General Sindh, requested for time to assist the Court, which requests were allowed on both occasions as an indulgence. However, he once again made such a request on a third consecutive date i.e. 31.08.2022 which was declined, where-after he made a statement that the Court may pass such order as it may deem fit.

8. The main thrust of the arguments advanced by Mr. Salman Talibuddin, the then Advocate General Sindh, was that respondent No.1 had no *locus standi* either to initiate the eviction proceedings in respect of the demised premises or to seek execution of the eviction order passed in respect thereof. According to him, the eviction proceedings initiated by respondent No.1, the orders passed therein and the orders passed in the proceedings arising therefrom, were *coram non judice* and of no legal effect ; and, if at all the possession and control of the demised premises were to be handed over by the petitioner, the same were to be handed over only to the Official Assignee who was entrusted with the same by this Court, and not to respondent No.1. Regarding the maintainability of the present petition, it was contended by him that the petitioner does not have any other remedy in law except for filing this petition which is maintainable and should be

decided by this Court on merits without being influenced with the proceedings before the Hon'ble Supreme Court and the orders passed therein.

9. It is an admitted position that the order of eviction attained finality before the Hon'ble Supreme Court on 18.12.2019 when the petitions filed by the petitioner were dismissed with direction to the petitioner to make an alternate arrangement by August 2020. Not only this, the review applications filed by the petitioner seeking review of the aforesaid order were disposed of by the Hon'ble Supreme in terms of order dated 07.02.2022 whereby the petitioner was required to hand over the possession and control of the demised premises within one week of the said order. The questions whether or not respondent No.1 had any *locus standi* to initiate the eviction proceedings in respect of the demised premises or to seek execution of the eviction order passed in respect thereof, or the said eviction proceedings and the orders passed therein or in the proceedings arising therefrom were *coram non judice* and of no legal effect, stood finally decided before the Hon'ble Supreme Court on 18.12.2019 i.e. before filing the present petition. Thus, the above questions cannot be looked into at this stage by this Court. In any event, the plaintiff has filed Suit No.398 of 2022 in pursuance of the order passed by the Hon'ble Supreme Court on 07.02.2022, therefore, all such questions will be decided in the said Suit.

10. The other submission made on behalf of the petitioner that the possession and control of the demised premises could be handed over by the petitioner only to the Official Assignee as he was entrusted with the same by this Court, is erroneous and misconceived in view of the order dated 07.10.2021 passed by the Hon'ble Supreme Court whereby this objection raised by the petitioner was rejected by holding that the order dated 07.09.2001 passed by this Court in C.P. No.96 of 2001 empowering the Official Assignee to deal with the property of the respondent-Trust had ceased to have effect. In any event, this contention has no relevance with the eviction proceedings and the eviction order passed therein which order has attained finality as noted above. Nonetheless, it is to be noted that the eviction proceedings wherein all the above mentioned orders were passed and maintained up to the Hon'ble Supreme Court were initiated and pursued by respondent No.1. Therefore, it is respondent No.1 who is entitled under the law to the possession of the demised premises.

11. Through the impugned order passed by the executing Court, the writ of possession in respect of the demised premises was ordered to be issued / repeated along with strong police force and the Rangers contingent, if necessary.

Perusal of the said order shows that it was passed by the executing Court after carefully examining the order passed on 18.12.2019 by the Hon'ble Supreme Court and by applying and following it correctly. The impugned order does not suffer from any illegality or jurisdictional defect that requires interference by this Court in its constitutional jurisdiction. It is, in fact, in line with the orders passed by the Hon'ble Supreme Court, and is fully justified as all judicial authorities throughout Pakistan, including this Court, are duty-bound to act in aid of the Hon'ble Supreme Court under Article 190 of the Constitution of the Islamic Republic of Pakistan, 1973.

12. In view of the above discussion, the petition is not maintainable and is liable to be dismissed. The petition is liable to be dismissed also in view of the order dated 07.10.2021 passed by the Hon'ble Supreme Court wherein it was held that the petitioner has purported to avoid and disregard the direction given by the Hon'ble Supreme Court in its order dated 18.12.2019 (whereby the petitioner was directed to make an alternate arrangement by August 2020) ; incorrect pleas have been urged by the petitioner before this Court in the instant petition ; the approval, initiation and prosecution of the instant petition was improper ; and consequently, contempt notices were issued by the Hon'ble Supreme Court to the persons found responsible for such avoidance and disregard.

13. Foregoing are the reasons of the short order announced by me on 31.08.2022 whereby this petition and the application pending therein were dismissed.

J U D G E