

**ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI**

Suit No.672 of 2022

M/s Multix International Corporation
Versus
Karachi Metropolitan Corporation

Date	Order with signature of Judge
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For hearing of CMA 6984/22

Dates of hearing: 15.09.2022, 30.09.2022 and 04.10.2022

Mr. Haider Waheed along with Mr. Munim Masood for plaintiff.
Mr. Waleed Khanzada along with Mr. Mohsin Khan for defendant.

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Muhammad Shafi Siddiqui, J.- In pursuance of a competitive bidding process, plaintiff entered into a public-private arrangement with predecessor of Karachi Metropolitan Corporation (KMC). The terms were reduced into writing vide agreement dated 28.07.2007 (*date is also disclosed as of 27.07.2007*). Under the said arrangement plaintiff was permitted to process and run a slaughter house at the subject property described in the agreement. The dispute in the present suit is of its renewal after 15 years of first tenure, for another period of 15 years. Plaintiff has filed this suit for declaration and injunction along with injunction application which is being decided through this order.

2. Plaintiff's case is based on irrevocability period of entire 30 years i.e. 15 years in the beginning at the initial stage and thereafter renewal for another 15 years, on enhancement of 20% on the last fee paid and the terms and conditions to be agreed by mutual consent. Irrevocability of the second 15 years is denied by the defendant. The agreement was executed between plaintiff and defendant through City District Government Karachi (as it then was under Sindh Local Government Ordinance, 1979), which is now being recognized as Karachi Metropolitan

Corporation under Sindh Local Government Act, 2013. The execution and the terms of the agreement are not denied by the defendant.

3. I have heard learned counsel for plaintiff and defendant and also perused the documents as relied upon by them.

4. The salient features of the agreement under consideration are that City District Government Karachi (as it then was) granted the right to run and control the slaughter house, for the duration of 15 years under section 45 of Sindh Local Government Ordinance, 1979 for the reactivation of non-operational mechanical Abattoir at Landhi and shifting of old, temporary and manual slaughter house for beef at Landhi into the aforesaid Abattoir boundary for manual slaughtering; reactivation of non-operational abattoir, so that it would then be comprised of both types, i.e. manual and semi-mechanical slaughtering house called City Abattoir.

5. In the agreement party (1) is City District Government Karachi now Karachi Metropolitan Corporation and party (2) is Multix International Corporation i.e. plaintiff. Clause 1 of the contract allowed and permitted the second party to run the contract irrevocably for a period of 15 years at the beginning, which was renewable after a period of 15 years by mutual consent of both the parties. Clause 2 of this agreement is material to the extent that the reason of its irrevocability (first 15 years), as defined, was that the second party is required to make huge investment which is running into millions of rupees approximately for reactivation of City Abattoir on the subject land approximately measuring 31 Acres, which land, undisputedly belong to defendant/KMC. This is required to be performed in terms of phases as described in Schedule 'A'.

6. Another salient feature of this agreement is a monitoring board comprise of representative of defendant as well as of the plaintiff who

are required to meet periodically to monitor the project affairs. It was agreed that City Abattoir i.e. the subject land where the aforesaid operation is being conducted, shall under no circumstances be changed and whole premises shall be used strictly for related and allied work under strict supervision of monitoring board disclosed in Clause 3 of the agreement.

7. Plaintiff being a second party to the agreement was accorded permission and right to construct and cause modification within Abattoir premises in accordance with its approved technical and financial proposal attached as Schedule 'C' after due approval of the Monitoring Board and that in this regard an office space is to be provided to facilitate the officers and staff of the Monitoring Board. Clause 11 of the agreement provides that construction and renovation work would be exclusively done by Second Party at his own cost and the plaintiff shall carry out construction and renovation work and installation of the machinery as per approval of the Monitoring Board and that the defendant was entitled to be represented at site of the City Abattoir through its nominee i.e. Project Coordinator, who was/is responsible for monitoring various functions of City Abattoir. However, he was/is not required to interfere with the working of the plaintiff i.e. management and operation of the slaughter house.

8. In terms of understanding, as reduced into writing, the plaintiff had the permission by the defendant to carry out construction, alteration, renovation and installation, repair and maintenance and any minor changes in the project according to Schedule 'A' and 'C' "subject to approval of the Managing Board".

9. The purpose of this outsourcing was to collect the requisite revenue from the said slaughter house in terms of Schedule 'D' to this agreement and to be shared in terms of understanding reached as per

Schedule 'B'. The two clauses may not be well worded however it is argued by plaintiff that at the expiry of first period of 15 years, if the plaintiff wish to continue with the said arrangement at the enhanced rate, as has already been described in the agreement and that the terms of the agreement shall be satisfactory and sufficiently performed with honesty, defendant would be bound to the renewal, for another period of 15 years.

10. This interpretation is denied by Mr. Waleed Khanzada, learned counsel appearing for defendant, on the count that they (plaintiff) apparently did not make the mechanical Abattoir operational, which was sole purpose of entering into an agreement nor made investment.

11. No one specially defendant argued that the subject agreement is an unregistered agreement despite it being claimed for an extended period of 15-30 years, hence I do not comment on it.

12. On a defence, as raised by the defendant, that they (plaintiff) have neither invested any amount nor raised any kind of structure, as required, plaintiff is not entitled even for the first period of 15 years, however there is no complaint lodged by defendant or project coordinator or Monitoring Board.

13. Secondly, reliance was placed on Section 77 of Sindh Local Government Act, 2013 that such contract could only be entered into after inviting offers/bids in an open auction and hence it could not have been continued for leftover period of first 15 years or extended without compliance of the aforesaid provisions yet again. Counsel has further relied upon Rules framed thereunder i.e. Sindh Local Council (Contract) Rules, 2016, Sindh Local Council (Auction of Collection Rights) Rules, 2016 and Sindh Local Council (Fee) Rules, 2017. It is thus obligatory upon the defendant to follow such rules while executing this renewal or executing fresh agreement, as argued.

14. Without prejudice to the applicability of these rules, the transparency prima facie was followed in the earlier transaction in the sense that before such agreement could be reduced into writing, the bids were invited in at least six newspapers and the plaintiff was successful. The rights, which were guaranteed to the plaintiff in pursuance of the aforesaid agreement, could not be taken away by subordinate or later legislation by framing rules under present enactment i.e. Act 2013, substance of which has already been complied with i.e. transparency and its approval.

15. Important question and turning point however is to see what rights were guaranteed and whether alleged investment even if made by plaintiff could entail an unlimited working period for plaintiff. If this is accepted, it would amount to an agreement for a perpetual lease, which is not the case here.

16. Irrevocability attached to the agreement is only for limited period of first 15 years, which too was conditional i.e. investment. This period was completed notwithstanding whether investments were made or not as no complaint of any nature was filed by KMC or any of its predecessors and the period of 15 years completed. Clause 28 is conclusive in the sense that the initial contractual period is of 15 years, whereafter contractor is responsible for handing over the City Abattoir along with “building machinery, constructed portions and installed equipment though all of it were given to plaintiff when it took over for its reactivation. This concludes that if any irrevocability is attached in consideration of any investment, it is for first 15 years only.

17. The revenue share (Schedule B) is carried out in such a way that plaintiff took 60% of entire revenue generated for the first four years. The sharing is based on the understanding reached between them so the question is huge investment, if any, cannot be pleaded later,

particularly after a period of 15 years for which period agreement was not made irrevocable, rather based on mutual understanding.

18. If the interpretation, as suggested by plaintiff, is admitted that after investment a licensee cannot be stopped from operating or the license cannot be cancelled under section 60 of Easement Act, it will become perpetual lease.

19. Clause 1, 28 and 38 are to be reconciled and read down so that no clause of it becomes redundant and/or the plaintiff would not get a perpetual lease, which is not the intention of parties. These effective clauses of the agreement are reproduced as under:-

“1. The 2nd party is allowed to run the contract irrevocably for a period for 15 years at the beginning and at the initial stage which could be renewable after a period of 15 years by mutual consent of both the parties.

...

28. At the end of the contract period which is initially for 15 years, the contractor shall be responsible for handing over the complex with present building and machinery as well as the building and machinery constructed/installed subsequently during the contract period, provided if the contract is not renewed.

...

38. At the expiry of the agreement, if the 2nd Party fails to continue with the said agreement at the enhanced rates as has been already mentioned above i.e. 20% that the agreement will satisfactorily and efficiently be completed for the contractual period honestly and in the best efforts and labors which could be done by the Second Party be welcomed and the satisfactory agreement shall be completed under their very NOSE.” (exactly as described in the agreement).

20. Word “Irrevocability” is not connected or articulated anywhere except Clause 1 i.e. for first 15 years only. There is no clause of investment after 15 years which may give continuity to irrevocability for any other period than described in the first clause and defendant has to hand over every structure, whether built by plaintiff or plaintiff occupied an already constructed area and that is it. Now at the end of this period the plea of investment cannot come into play since 15 years

were consumed by plaintiff which is a huge period for recovery of such investment, if made, which in any case not the responsibility of defendant, as understood from plain reading of agreement. This has to be kept in mind while reading clause 38 that it is not a grant in perpetuity; only if parties to contract agree, it may be extended.

21. With this understanding of law, I am of the view that plaintiff has no prima facie case, balance of inconvenience is not in its favour and no irreparable loss would be caused in case the injunction is declined.

22. The application as such is dismissed with no orders as to costs.

Dated: 19.10.2022

J U D G E