

ORDER SHEET
IN THE HIGH COURT OF SINDH KARACHI

Suit No. 1550 of 2022

DATE	ORDER WITH SIGNATURE OF JUDGE
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1. For hearing of CMA No.13683/2022
2. For hearing of CMA No.15559/2022

Khawaja Shams-ul-Islam, Advocate for the Plaintiff
Mr. Ali T. Ebrahim, Advocate for Defendants 1 to 3
Mr. Saad Siddiqui, Advocate for Defendant No.4 along
with Mr. Ahmed Nizamani, Advocate

Date of Hearing : 01.02.2023

Date of Order : 10.02.2023

ORDER

AMJAD ALI SAHITO, J.: Through the listed application [CMA No. 13683 of 2022], the Plaintiff seeks suspension of the operation of the letter dated 21.08.2020, wherein **Port Qasim Authority (hereinafter called as "PQA")** refused to grant right of way (road cutting permission) on the ground that the permission of **Right of Way (hereinafter called as "ROW")** is available for the allottees of PQA. Apart from the suspension of the operation of the letter dated 21.08.2020, the Plaintiff also seeks a direction to the Defendants 1 to 3 to immediately issue right of way in favour of the Plaintiff's industrial feeder meter and restrain the Defendants especially Defendants No.1 to 3, their agents, representatives, servants, subordinate or any one claiming on their behalf from harassing and interfering in the lawful business activities of the Plaintiff under the garb of the certificate of ROW in any manner whatsoever and/or taking any coercive action in any manner whatsoever, till final disposal of the Suit as also through this application, the Plaintiff seeks a further direction to the Defendant No.4/K-Electric that instead of waiting for the ROW certificate from the PQA, they should immediately provide a dedicated industrial feeder inside the Plaintiff's factory and provide electricity from the industrial dedicated

feeder instead of providing electricity from the katcha abadi residential load shedding area.

2. Learned counsel for the Plaintiff submits that Plaintiff/factory has been established in 2017 and manufacturing motorcycle parts; that more than 15,00 employees are working including Engineers, Technicians and other Field Officers; that more than 50 Chinese Engineers are also working inside the factory, besides they are also residing in the residential colony of the factory under heavy security; that for the purpose of grant of NOC of the ROW, the Defendants 1 and 3 are creating hindrance inter alia asking undue favour. He further contended that Defendant No.2, who is a corrupt officer, demanded heavy bribe, which the Plaintiff refused to pay; that for redressal of present controversy, Plaintiff's Management filed an application for 2 Mega Watts dedicated feeder for their factory Meter No.HTO-3920, Plot No.672, 673 (27 Acre) Bin Qasim Deh Joreji Taluka, District Malir Port Qasim; that in the year 2018 K-Electric provided electricity connection to the Plaintiff after completing all the formalities but the said supply provided to the Plaintiff from a residential and high loss feeder despite the Plaintiff requested to K-Electric for supplying electricity through dedicated industrial feeder.

3. The learned counsel further contended that due to provision of electricity supply via residential and high loss feeder, most of the heavy duty machinery incurred an inevitable burnout because of inadequate voltage supply, moreover the Plaintiff is facing incessant problems such as heavy fluctuation, breaker tripping on feeder and several cable faults since 2019 till date which has exposed the plaintiff industry to heavy losses.

4. The learned counsel further stated that K-Electric advised the Plaintiff to bring road cutting permission, as such, the Plaintiff approached to Pakistan Railways, PQA and Bin Qasim Town for laying 2 Mega Watts feeder cable system from Port Qasim Grid to Plaintiff's factory; that the

NOC/ROW was issued by the Pakistan Railway, Bin Qasim Town, however, PQA refused to issue ROW and apprised the Plaintiff that PQA grid station is only for Port Qasim allottees and the Plaintiff is not amongst them, therefore, they refused to give the permission to the Plaintiff on that score alone. Learned counsel further contended that PQA has also granted permissions to other factories/industries located in the same vicinity but refused to grant permission to the Plaintiff's factory only; that after completing all formalities, K-Electric had written two letters dated 11.05.2020 and 17.06.2020 to Director (P&D) and Chairman PQA respectively, wherein the K-Electric requested to issue way leave approval/road cutting permission under Section 13-1 of Electricity Act, 1910 for installation of HT / LT Pole / laying LT cable. Learned counsel also submits that the Plaintiff made certain payments and charges to K-Electric through pay orders and if any amount is outstanding, he is ready and willing to pay the same to the K-Electric. Learned counsel once again emphasized that the Plaintiff has been discriminated as the Defendants No. 1 to 3 were given permissions to other neighboring factories, which constitutes the violation of the Article 25 of the Constitution of the Pakistan, 1973, which ensures equality before the law, therefore, the Plaintiff craves for aforesaid relief.

5. The learned counsel for the Plaintiff submits that the Plaintiff has a prima facie case and balance of convenience is also lies in his favour and no irreparable loss would be caused to the Defendants if the injunction application is allowed. Lastly, prayed that the instant application may be allowed. In support of his contentions, the plaintiff has relied upon the cases reported as *2012 CLC 1738 (Al-Abid Silk Mills Ltd. vs. Karachi Electric Supply Company Ltd. and another)*, *2014 PTD 243 (Engineer Iqbal Zafar Jhagra and Senator Rukhsana Zuberi vs. Federation of Pakistan and others)*, *2019 SCMR 247 (Human Rights Case No.17599 of 2018)*, *2020 SCMR 1488 (Naimatullah Khan Advocate and others vs. Federation of Pakistan)*, *2020 SCMR 622 (Naimatullah Khan Advocate vs. Federation of Pakistan and others)*, *PLD 2014*

Sindh 344 (Mst. Hamra Ahsan vs. M/s. Karachi Electric Supply Co. through C.E.O.) and 2001 CLC 321 (M/s. Erum Heights Residents Welfare Association vs. Karachi Electric Supply Corporation Ltd. through Managing Director and 3 others).

6. On the other hand, learned counsel for Defendants 1 to 3/PQA submits that the Plaintiff has converted Na-class land for poultry farm purpose for 30 years into agriculture/ industrial/commercial land for 99 years. He further contended that the Plaintiff falls within the territorial jurisdiction of Land Utilization Department, Board of Revenue, Government of Sindh, as such, the Plaintiff has set up its industry outside territorial jurisdiction of Defendant No.1 Industrial Estate. He further added that initially the land was granted for poultry farm purpose but the same was converted for industrial/commercial purpose; hence, there is no privity of contract inter se between the Plaintiff and the Defendants 1 to 3; that as per Section 11 (iv) of the Land Allotment Policy, Defendant No.1 is also entitled to reject any application made to it in relation to grant of ROW; that the Plaintiff is not allottee of Defendant No.1 as such the Plaintiff is not entitled to claim any relief from the Defendant No.1; that as per recommendation of NESPAK and in order to avoid expand the road due to increase in the volume of cargo being transported via PQA main road; that Defendant No.1 is in the process of rehabilitation and expansion of road, as such, the Plaintiff has no right to demand ROW from Defendant No.1 in relation to the subject road, grant of such right is simply impossible as there is no space/corridor available for laying of cables pursuant to the planned expansion of the same. As regards the permission to other industries / factories, learned counsel submitted that they have also informed/advised to other industries/factories to shift/remove their lines/cables that have been laid down on the subject road; He further submitted that the Plaintiff cannot claim grant of ROW from the Defendant No.1 as a matter of right, rather it is a settled principle of law that easement cannot be allowed as a matter of right; hence, he prayed for dismissal of the instant

application. In support of his contentions, he has relied upon the cases reported as *2011 SCMR 226 (Nisar Ahmed vs. Masood Akhtar and others)*, *Judgment dated 23.11.1928 (Jit Singh vs. Gujranwala Electric Supply Co. Ltd.)*, *PLD 2017 Lahore 723 (GEPCO and others vs. Arshad Mehmood)* and *1986 CLC 150 (National Cement Industries Ltd. vs. Karachi Electric Supply Corporation Ltd. and 2 others)*.

7. The learned counsel for K-Electric admitted that they have written two letters mentioned above to the PQA for grant of ROW under Section 13-1 of the Electricity Act, 1910 for installation of LT cables; that the Plaintiff cannot on its whims and wishes and without a right of way certificate started digging inside the PQA, same needs the express permission of the PQA even to maintain the K.E. grid station which is situated inside PQA; that the Defendant No.4 never refused to perform their legal duties, but subject to requirements; that various other companies have obtained the right of way certificate from the PQA and after obtaining such permission, the Defendant No.4 started their work; that the Plaintiff are getting electricity via the T&T Pipri Sub-Station and the Plaintiff had given its consent for the same; that the Defendant No.4 had never refused to provide electricity, but subject to fulfillment of codal formalities and subject to outstanding amount against the Plaintiff as the said amount is paid subject to the permission of PQA. He lastly submits that the Defendant No.4 is ready and willing to provide the electricity to the Plaintiff subject to permission from the PQA and remaining outstanding amount against the Plaintiff.

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

9. Uninterrupted electricity is a fundamental right of every organization as the energy has great importance in our daily lives. Admittedly, the Plaintiff's factory has been established in year 2017 and manufacturing motorcycle parts having more than 1500 employees including 50 Chinese Engineers. In the instant case, the Plaintiff has paid more than 5 crores

to the Defendant No.4 for providing dedicated industrial feeder for uninterrupted electricity as previously, Defendant No.4 did provide electricity to the Plaintiff via electric supply from residential and high loss feeder, as such, heavy duty machinery of the Plaintiff's factory burnout due to fluctuation in electric supply. After completing all the formalities, Defendant No.4 wrote two letters to Defendant No.1 / PQA referring Section 13-1 of Electricity Act, 1910 for installation of LT Cables. The essential law governing the right of way is the Electricity Act 1910, and Section 12 to 18 of Electricity Act deals with the said provision. The defendant No 4 written two letter to the defendant No.1 with request to issue way leave approval/road cutting permission under section (13)-1 of Electricity Act 1910, but the defendant No.1 vide letter dated 21st August 2020 informed to the plaintiff that *"The permission of Right of Way is available for the allottees of Port Qasim Authority. Since you are not allottee of Port Qasim Authority, therefore, your request cannot be entertained under the rules and policy of PQA"*. It is appropriate to reproduce the relevant Para of Section 13(1) of the Electricity Act which is as under:

"Where the exercise of any of the powers of a licensee in relation to the execution of any works involves the placing of any works in, under, over along or across any street, railways, tramway, canal or waterway, the following provisions shall have effect, namely:-
a)
b).....
c)....."

10. Learned counsel for Defendant No.1 invited attention of this Court to Section 11 of the policy, copy of the same is available at Page-529, and submits that the policy is only available for the allottees of PQA not for the plaintiff and without assigning any reason PQA can refuse to grant ROW to any person. It is appropriate to reproduce relevant Section which reads as under;-

"(i) Way-Leave/Right of Way for Cables, Drains Services:

On application made by a party, the Board or Chairman or D.G. (P&D) may grant Wayleaves License or Right of Way (ROW) Lease for the purpose of laying overhead or underground transmission lines or cables, pipelines or for construction of drain, hereinafter termed as Services.”

11. Learned counsel further invited attention of this Court to Subsection (iv) and subsection (viii) of the Section 11 of the Policy, which are also reproduced herein below:

(vi) **Rejection of request:**

on receipt of remarks of the concerned departments the concerned official is of the opinion that a “Wayleave”/Right of Way cannot be granted; he shall inform the applicant accordingly.

(viii) **Way-leaves/Right of way fee and charges:**

Way-leaves/Right of Way fee and charges shall be levied at such rates as may be fixed by the Board from time to time.”

12. Learned counsel for the Plaintiff also submitted that PQA/Defendant No.1 has granted permission to the Plaintiff’s neighboring industrial consumers namely M/s. Naushaba Naeem Industries, M/s. Lucky Industries, M/s. Daulat Bano Industries and M/s. Nisan Ghandara in the same vicinity and adjacent to Plaintiff’s boundary walls, as such, he claims that the Defendant No.1 is discriminating with the Plaintiff and refused his request on the ground that the Plaintiff had refused to oblige their illegal demands. Doctrine of equality as contained in Article 25 of the Constitution of Pakistan, 1973 enshrines the golden rules of Islam it states that every citizen, no matter whosoever, must be accorded equal treatment with similarly situated persons. Basic Rule for the exercise of such discretion and reasonable classification is that all persons placed in similar circumstances must be based on reasonable grounds in a given set of circumstances but the same in any case must not offend the spirit of Article 25 of the Constitution.

13. The industries/factories are the backbone of the economy of the Pakistan. Defendant No.1 while rejecting the permission of ROW to the Plaintiff, only disclosed that factory does not fall within the territorial jurisdiction of PQA but failed to reply under what circumstances PQA has provided ROW to the above mentioned four industries. The defendant No. 1 has taken contradicting position in its letter dated 21st August 2022 and his written statement. In the letter the PQA simply informed the plaintiff that this facility is available only for the allottees of PQA, but while filing the written statement the defendant No.1 disclosed in para No. 21 that as per recommendation of NESPAK and in order to avoid accident due to increases in the volume of cargo being transported via PQA main road/subject road the defendant No.1 is in process of rehabilitating and expending the subject road, and advised to other allottees to shift their lines/cables that have been laid down on the subject road, and Further submits that grant of such right is simply impossible as there is no space/corridor available for lying cables pursuant to the planned expansion. Learned counsel for the PQA has failed to place on record any documents, which may even remotely suggest that the PQA has advised/informed the other factories for removing their cables. The pictures available on record show that there was no development work on the said road and it is simply katcha road and PQA had already provided similar facilities to the other industries as mentioned above, but the plaintiff has been discriminated, which is in violation of Article 25 of the Constitution of the Islamic Republic of Pakistan, hence, the Plaintiff is also entitled for same relief.

14. The Defendants No.1/PQA is a public organization and is bound to respect the fundamental rights of the organization granted by our constitution. Right to business is an inalienable right of every party which cannot be denied by a public sector company which is administrative control by the federation. The policy relied by the Defendant No.1 on the basis of which ROW is denied to the Plaintiff ex-facie violates

the right to business, more particularly, when the Defendant No.1 has allowed the other different organizations which are located outside the territorial jurisdiction of the Defendant No.1. Additionally an attempt has been made to mislead the Court that PQA intends to expand the road and therefore now it is not possible for it to grant ROW. No such material has been placed before this Court providing the propose design for widening or expansion of the road. The status of the land of the plaintiff cannot be a made a ground for denying the ROW as the Defendant No.1 in law cannot undertake such exercise which falls with the competence of Sindh Government. The K-Electric has made efforts to seek approval from the PQA but it appears that all such efforts have been declined without lawful justification. This country needs economic boost by encouraging industrial activity besides employment of the common man. Denial of ROW to the plaintiff may lead to closer of the industry which prima facie claims to have been suffering from losses. To save such a situation intervention of this Court is necessary and I hold that the plaintiff has made out a prima facie case of grant of injunction. No loss would be caused to the PQA and balance of conveyance rests with the plaintiff. For the aforesaid reasons, I allow the injunction application directing the Defendants No.1 to 3 to immediately grant approval/permission to the plaintiff. This should be done within two weeks from today subject to any charges under the policy/rules and report the compliance to this Court. The plaintiff should also pay any outstanding dues to K-Electric for the purpose of industrial dedicated feeder.

15. In view of the order passed hereinabove, the application bearing CMA No. 15539 of 2022 seeking same relief has become infructuous, which stands disposed of.

16. The cases relied on by learned counsel for the defendant No.1 to 3 are distinguishable from the facts of the present case.

JUDGE