

ORDER SHEET

IN THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANA

1st Civil Appeal No.S-11 of 2024

1st Civil Appeal No.S-12 of 2024

1st Civil Appeal No.S-13 of 2024

1st Civil Appeal No.S-14 of 2024

1st Civil Appeal No.S-15 of 2024

1st Civil Appeal No.S-16 of 2024

1st Civil Appeal No.S-17 of 2024

1st Civil Appeal No.S-18 of 2024

1st Civil Appeal No.S-19 of 2024

DATE	ORDER WITH SIGNATURE OF JUDGE
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1. For orders on office objections at flag "A".
2. For hearing of main case.

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27.01.2025

Mr. Abid Hussain Qadri, Advocate for the Appellant company a/w Arslan Haryah, Deputy Manager (L&EM), SSGCL, Regional Office, Larkana.

M/s. Abdul Rehman A. Bhutto and Zubair Ahmed Abro, Advocates for the Respondents in 1st Civil Appeal No.S-15 & 118 of 2024.

Mr. Ghulam Muhammad Soomro, Advocate for the Respondent in 1st Civil Appeal No.S-16 of 2024.

Mr. Ghulam Asghar Khichi, D.A.G. a/w Oshaq Ali Sangi, Assistant Attorney General for Pakistan.

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Arguments heard. Reserved for Order.



Judge

Manoor

IN THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANA

1st Civil Appeals No.S-11 to 19 of 2024

Sui Southern Gas Company Limited

v/s.

Bhajan Lal and others

Appellants: Through Mr. Abid Hussain Qadri, Advocate
a/w Arsalan Haryah, Deputy Manager
(L&EM), SSGCL, Regional Office, Larkana.

The Respondents: Through M/s. Abdul Rehman A. Bhutto, Zubair
Ahmed Abro and Ghulam Muhammad
Soomro, Advocates.

Mr. Ghulam Asghar Khichi, D.A.G a/w Oshaq
Ali Sangi, Assistant Attorney General for
Pakistan.

Date of hearing: 27.01.2025

Date of decision: 31.01.2025

JUDGMENT

Omar Sial, J.:- The principal question of law to be decided in these appeals is whether a Gas Utility Court established under section 3 of the Gas (Theft Control and Recovery) Act, 2016, has jurisdiction to adjudicate civil disputes arising under the Act. In all the cases from which these appeals arise, the District Judge declined to do so and rejected plaints under Order 7 Rule 11 C.P.C.

2. A Gas Utility Court is defined in section 2(i) of The Gas (Theft Control and Recovery) Act, 2016, as established under section 3. Section 3 of the Act provides the mechanism for establishing the Court. The mechanism is that the Federal Minister of the Law and Justice Division may, with the consultation of the Chief Justice of the High Court, establish as many Gas Utility Courts in a district as necessary.

3. Section 4 of the Act emphatically holds that barring the Gas Utility Court, no other court shall have the jurisdiction to entertain any matter within the purview of the Act. Section 5 of the Act stipulates

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that the said notified Gas Utility Courts shall have the powers of a civil as well as a criminal court for the adjudication of matters falling within the scope of the said Act.

4. Via Notification No. SO No. 293(I)/2017 dated 02.05.2017, passed under section 3 of the Act, the courts of certain District and Sessions Judges were notified as Gas Utility Courts to operate within defined territorial jurisdictions. Unfortunately, an ambiguity crept in due to the wording of the Notification. The notification mentioned that the Courts so established will "*exercise the powers for the trial of offenses under the said Act...*" No mention was made explicitly for also adjudicating civil disputes falling within the purview of the Act.

5. This is the basis of the Respondents to argue that the Gas Utility Court(s) for adjudicating civil disputes under the Act have not been notified therefore, the jurisdiction vests with a civil court established under section 9 of the Civil Procedure Code, 1908. For the following reasons, I respectfully disagree with the said contention.

6. The notification mentions section 3 of the Act. Section 3 of the Act only provides for establishing an all-encompassing Gas Utility Court. It does not bifurcate between a civil or a criminal Gas Utility Court. Further, section 4, which is the operative section to determine the jurisdiction of a Gas Utility Court, stipulates that the same "*shall have exclusive jurisdiction with respect to all matters covered by this Act.*" Hence, Since the Act does not create a division between a Civil Gas Utility Court and a Criminal Gas Utility Court, delegated legislation, i.e., a notification, cannot create such a distinction for the same will be in contravention of section 4. Section 20 of the General Clauses Act, 1897 provides that "*Where by any Federal Act or Regulation, a power to issue any notification...is conferred...the expressions used in the notification...if it made after the commencement of this Act, shall unless there is anything repugnant in the subject or context, have the same respective meanings as in the Act or Regulation conferring the power.*" Even otherwise, it is settled law that delegated legislation

Ob

cannot contradict the principal statute.¹And in case of any contravention, the courts shall make all efforts to reconcile the inconsistency.²

7. I further note that the District and Sessions Judges have been notified as Gas Utility Courts. If, for the sake of assumption, it is argued that these were elected only for the criminal trial, then the question arises as to why the term District was also included. A District is defined in section 2(4) of the Civil Procedure Code, 1908 as "...the local limits of the jurisdiction of a principal civil Court of original jurisdiction (hereinafter called a "District Court")." At the same time, a Court of Session is established under section 9 of the Criminal Procedure Code, 1898, for criminal cases. The term "District and Sessions Judge" is used cumulatively in the notification. Had the intent been to only notify for criminal trials, then the correct phrase employed would have been Sessions Judge only and not District and Sessions Judge. Even if that were the case, the same would not have been valid as the notification cannot revoke/withhold jurisdiction expressly granted by the statute under section 4. The powers of issuing the notification must fall squarely within the mandate of the principal statute. This understanding is confirmed by the opinion of the Ministry of Law and Justice, bearing reference no. F.22(1)/2016-A.V dated 3.11.2021 that was sought in response to the judgment reported at SSGC v. *Data CNG Filling Station (2021 MLD 568)*.

8. Accordingly, I have no doubt that the Gas Utility Courts established under the notification hold the jurisdiction to adjudicate civil and criminal matters per the mandate of sections 3, 4 and 5 of the Act. Accordingly, the Impugned Order is set aside, and the Gas Utility Courts are directed to proceed with adjudicating civil cases under the Act and ensuing notification.

9. Another aspect of the Impugned Order, which neither side has pleaded, has been noticed by me. The learned District Judge



¹ 2016 SCMR 550, National Electric Power Regulatory Authority v. Faisalabad Electric Supply Company Limited

² 2024 PLD 325, Popular International (Pvt.) Limited v. Pakistan through Secretary, Revenue and Ex-Officio Chairman, FBR

rejected the plaint under Order 7, Rule 11 (c) as being barred by law. Nothing in the Act bars the appellants from filing a claim under the Act. The entire mechanism of the Act provides explicitly for filing such suits. Hence, the learned Judge erred in holding that the suit was legally barred as the reasoning directly conflicts with the Act. If he believed that he did not have requisite jurisdiction to adjudicate on the matter, he could, at best, have ordered for the return of the plaint under Order 7, Rule 10, CPC, and not rejected the plaint.

10. All appeals are allowed.


31/1/25
JUDGE