

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

H.C.A. No.247 of 2019

Post Qasim Authority
Versus

Lucky Electric Power Co. Ltd. & others

Date	Order with signature of Judge
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1. For orders on CMA 2079/19
2. For orders on office objection a/w reply as at "A"
3. For orders on CMA 2080/19
4. For hearing of main case
5. For orders on CMA 2081/19

Dated: 16.07.2019

Mr. Ali T. Ebrahim for appellant.

M/s. Faiz Durrani and Fayaz Ahmed Memon for respondent No.1

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Mr. Faiz Durrani files his Vakalatnama along with counter-affidavit to application under order 41 Rule 5 CPC while Mr. Fayyaz Ahmed Memon files Vakalatnama on behalf of respondent No.1. The same are taken on record. Although the matter is fixed for orders however since the counsels plead urgency by the consent main appeal is being heard along with listed applications.

We have heard the learned counsel and perused record.

It is a case where appellants have impugned an order passed on application under section 151 CPC (CMA No.5445 of 2019) for demarcation of land. An area of 250 Acres was originally required by respondent No.1 and it is claimed that a lease was also executed. While this land was being considered by Province of Sindh for respondent No.1, a suit bearing No.1917 of 2017 was filed for declaration that 139 Acres approximately falls in domain and jurisdiction of appellant and thus there is an overlapping of land.

On the basis of orders of the Court, inspection was carried out by Surveyor of Pakistan which report was filed through Nazir of this Court. This first report is available at page 317. In the first inspection report it



is disclosed as first option that an area of 31.573 Acres falls in high water line whereas 22.816 Acres falls in area 50 yards of High Water Line. The subsequent suggestion shows that an area of 52.274 Acres falls in High Water Line/Sea whereas 22.816 Acres falls in area 50 yards of High Water Line. Thus, at the most this report disputes an area of 75 Acres to be beyond domain of Province of Sindh to prevent them to execute the lease to such an extent.

While the parties were considering their rights, another report through Nazir of this Court is filed and it is claimed that Nazir has signed this report on 21.03.2019. The disputed land through this report of Surveyor of Pakistan then exceeds from 75 Acres to 109 Acres. It is at this point of time when an application under section 151 CPC for demarcation was considered by learned Single Judge and an order dated 17.06.2019 for demarcation of the land on the basis of first report dated 27.09.2018 was passed, which is impugned in this appeal.

Learned Single Judge in his order has not considered the report filed by the Nazir subsequently signed on 21.03.2019. Learned Single Judge may have valid reason to ignore such report on the basis of report filed earlier but then the order has to provide reasons as to why such subsequent report is being ignored or not taken into consideration. Earlier and subsequent reports are only tentative and a subsequent report suggest 109 Acres of land beyond the domain and jurisdiction of Government of Sindh as it vests with Federal Government in terms of Article 172 of Constitution of Pakistan. The earlier orders that deals with 75 Acres of land was passed when no such report of 21.03.2019 was in the field. The earlier order too was tentative and do not resolve the controversy finally.

Be that as it may, there was no consideration of subsequent report which disputes the land to the extent of 109 Acres. It is claimed



by Mr. Durrani who has appeared on notice that virtually the correspondence shows that the appellants never registered their claim over and above 75 Acres and it is the consensus reached between the parties.

It is not the matter of agreement between the two; the land as claimed by appellants is with them for specific purpose and there cannot be a consent for its transfer to a third party. It is the jurisdiction, which is being exercised by Province of Sindh to lease out the land which allegedly does not fall within their domain. If the land falls in high water alone then in terms of Article 172 of the Constitution of Islamic Republic of Pakistan, 1973 it falls within the jurisdiction and domain of Federal Government and hence exercise of such powers by Province of Sindh would be a futile attempt to lease out the land, which do not fall in their domain and jurisdiction.

The two counsels i.e. Mr. Ebrahim and Mr. Durrani agreed that since learned Single Judge has not taken into consideration such aspects and the subsequent report minutely, though the findings are tentative, and has not given its finding as to why such report is not relevant. It will be a futile process to all respondent to exercise any such rights over the disputed land, which now comes about 35 Acres approximately on the basis of these reports.

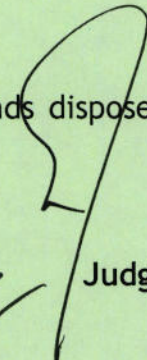
As agreed the matter is remanded back to learned Single Judge to decide the application for demarcation and the effect of demarcation, after considering the material available on record including but not limited to the reports available on record filed through Nazir of this Court as well as jurisdiction of Authority. This exercise of rehearing the application under section 151 CPC bearing CMA No.5445 of 2019 may preferably not take more than four weeks. The date for hearing of such application is




fixed on 31.07.2019 before learned Single Judge, as agreed by the learned counsel.

By consent appeal along with listed applications stands disposed of in the above terms.

Order issued


Judge


Judge