

IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD

R.A. No.235 of 2024

Date of hearing & Order: 02.05.2025

Dr. Anis-ur-Rehman Siddiqui, Advocate for applicants.
Mr. Allah Bachayo Soomro, Additional Advocate General, Sindh.

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ORDER

Dr. Syed Fiaz ul Hassan Shah, J: Initially the applicants instituted a Suit for Specific Performance and directions to the respondent No.3 to handover the Shops No.11 and 19 situated at Masjid Abul Fazal near Qadam Gah Moula Ali (R.A) station Road Hyderabad. The Trial Court after recording the evidence and hearing the parties decreed the Suit by way of Judgment and Decree dated 01.11.2023 & 07.11.2023 which were assailed by the respondents in Civil Appeal No.245 of 2023 and the same was allowed by the learned 8th Additional District Judge Hyderabad through Judgment dated 4th July 2024 only on the ground that the Suit before the Trial Court was barred under section 21 of the Sindh Waqf Property Ordinance 1979. The learned Additional Advocate General, Sindh strongly opposed the revision application and states that the Suit was barred at the time of institution and the trial Court has wrongly decreed the Suit and it has rightly been dismissed by the learned Appellate Court.

2. I have heard the parties and perused the record. The learned Appellate Court has relied upon Section 21 of “**The Sindh Waqf Property Ordinance, 1979**” which has already been repealed and new law “**The Sindh Waqf Properties Act, 2020**” has been enacted by the Province of

Sindh wherein Section 21 *ibid* no longer exists, and the matter now falls under the provisions of Section 25, which state as under;

“21. Any sum due to as rent or lease money in respect of waqf property, the administration whereof has been taken over and assumed by the Chief Administrator, if not paid within thirty days of its having become due, may be recovered as arrears of land revenue.

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25. Save as expressly provided in this Act, no Civil or Revenue Court or any other authority, shall have jurisdiction: (a) to question the legality of anything done under this Act by or at the instance of the Chief Administrator; or Bar of jurisdiction; or (b) in respect of any matter which the Chief Administrator is empowered by or under this Act to determine or settle; or (c) to grant an injunction or other order in relation to any proceeding before the Chief Administrator under this Act or anything done intended to be done by or at the instance of the Chief Administrator under this Act.”

3. Perusal of section 25 of the Sindh Waqf Properties Act, 2020, it appears that the embargo has placed under the said provision does not apply to the case of applicants as the respondent(s) himself given undertaking and thereby committed a compromise against the lawful consideration. The volunteered subjugation of Respondent would regulate under the Contract Act, 1872 such undertaking is available at page 105 para-3 whereof is reproduced hereunder:

“3. That the Auqaf Department will hand over the newly constructed area of shop to the same person as per the same existing physical status after completion of shops on ground floor of the said Masjid upto 30th June 2018, on rent which will be fixed by the department in respect of only in rent matter of the department.”

4. The Respondent No.3 has further entered into a contract for tenancy available at page-107 of the file, wherein complete mechanism has been

given to fulfill contractual obligations by the parties. The list of contractual obligations comes under primary statute “**the Contract Act, 1872**”.

5. The Sindh Waqf Properties Act, 2020 primarily relates to the Waqf Properties and its management and administration. The *ibid* Act does not provide the legal framework either to do deal with the claim or disputes of an agreement. Similarly, the *ibid* Act does not prohibit the Respondent Official to not enter into contract. This special law only provides specific mechanism for Administration and preservation of entrusted Waqf Properties which include its search, custody, care, utilization of income through various modes including rental earnings. The rental properties deals under sections 10 & 11 of *ibid* Act. However, the applicants have no relationship with the Respondents in terms of Sections 10 & 11 of the Act and this was the misconception as I have noticed in the impugned judgment.

6. A statute may define the purpose of subject matter of an agreement, disputes arising from that agreement will be resolved using the principles and procedures outlined in the Contract Act, 1872. The Contract Act mandates the specific and resolution of disputes related to the Contract itself. The claim of the applicants encircling around the terms and conditions of the Contract and alleged breach thereof.

7. Disputes arising from agreements even involving legal persons are generally resolved under Contract Law and further under the special laws in case that establish or govern these specific or limited legal provisions. The special law may define the status or regulatory framework of entity but the enforcement or resolution of Contractual Obligations typically fall within the scope of Contract Act, 1872 and its related dispute mechanisms such as Arbitration or Mediation. The Section 38 of the Contract Act, 1872 specifically addresses such situation while saying :

“S.38 of Contract Act, 1872:-

‘Effect of refusal to accept offer of performance. Where a promisor has made an offer of performance to the promisee, and the offer has not been accepted, the promisor is not responsible for non-performance, nor does he thereby lose his right under the contract.’

8. The said provision speaks about the ‘effect of refusal of party to perform promises wholly’ which includes a right of ‘forfeiting the earnest money’ within meaning of Section 55 of the Act. In the instant matter, the defendants did communicate their intention to perform their part while requesting the plaintiff to place draft deeds for immediate execution thereof but it was avoided by the plaintiff. In the case of **“West Pakistan Tanks Terminal (Pvt.) Ltd. V Collector (Appraisement)”**, [2007 SCMR 1318], it is held that:

“10. (sic) The law is well-settled that one cannot be allowed to take advantage of his wrong act or fraud played by him and in fact applying the law applicable to the lawfully taking away of consignments from the bonded warehouse, if applied in such cases, would amount to placing a premium on the fraud played by an importer involved in the act of smuggling.”

(emphasis supplied)

9. The Supreme Court of India held in case of **“Thermal power limited vs State of MP”**, (2000 3 SCC 379) as under:

“That even a contract entered into in the exercise of an enabling power conferred by a statute would not, by itself, be a statutory contract. It was further held that such a contract is a statutory contract one only to the extent to which a statute either prescribed certain terms and conditions to be contained in such contract or has the effect of incorporating such terms and conditions by way of reference in the facts of that case. The concept of a statutory contract has only limited the exercise of such discretion, in as much as a contract entered into under a statute or one to which a statutory body or entity is a party, would not become a statutory contract.”

10. In another judgment “**Kerala SEB versus Kurien E Kalathil**”, (2006 SCC 293), the Supreme Court of India held that:

“A dispute arising out of the terms of a contract entered into by a statutory body would also have to be settled by the ordinary principles of contract law and that mere fact that one of the parties to such a contract is a statutory body will not, by itself, operate so as to exclude the ordinary principles of contract law.”

11. Since the parties have entered into contract, therefore, the Suit instituted for Specific Performance of Contractual Obligations by the applicants is well maintainable. It may be observed that appellate Court has not passed Order on merits of the case while ignoring the evidence adduced by the parties, consequently, the impugned judgment dated 4th July 2024 is **set-aside** and the matter is remanded to the Appellate Court to decide the *lis* afresh, after hearing the parties.

12. Revision Application stands disposed of.

JUDGE

Muhammad Danish*