

IN THE HIGH COURT OF SINDH, KARACHI
C.P. No. D-6325 of 2021

Present:
Justice Zafar Ahmed Rajput,
Justice Ms. Sana Akram Minhas

Petitioner	:	Tata Textile Mills Limited, through Mr. Muhammad Naqash, Advocate.
Respondent No. 1.	:	Federation of Pakistan, through its Secretary, Ministry of Maritime Affairs, through Mr. Muhammad Qassim, DAG.
Respondent No. 2.	:	Province of Sindh, a. through its Secretary, Local Government & Housing Town Planning Department b. through its Secretary, Industries & Commerce Department. (<i>Nemo</i>).
Respondent No. 3.	:	Port Qasim Authority (PQA), through its Director General, through Mr. Munawar Ali Isani, Advocate.
Respondent No. 4.	:	Karachi Development Authority (KDA), through its Director General, through Ms. Nazia Siddiqui, Advocate.
Respondent No. 5.	:	Sindh Industrial Trading Estates Limited (SITE) through its Secretary, through M/s. Touqeer Ahmed & Hafeezullah Brohi, Advocates.
Date of hearing	:	31.10.2024
Date of order	:	<u>31.10.2024</u>

ORDER

ZAFAR AHMED RAJPUT, J: - Through the instant Constitutional Petition, the

Petitioner *inter-alia* seeks the following relief: -

- I) *To declare that Transfer/Mutation charges being demanded from the Petitioner Company for substitution of its name in the records of Respondent No. 3 to 5 in respect of the immovable properties mentioned in Paragraph No. 7 are without lawful authority and of no legal effect;*
- II. *To direct Respondent No. 5 to substitute name of erstwhile Island Textile Mills Limited with the Petitioner's name in its records in respect of Plot No. A/12 and A/15, S.I.T.E., Kotri, Sindh measuring 13.73 Acres;*
- III. *To direct Respondent No. 4 to substitute name of erstwhile Salfi Textile Mills Limited with the Petitioner's name in its record in respect of Plot No. HX-1, Landhi Industrial Area, Karachi measuring 19.512 Acres;*

- IV To direct Respondent No. 3 to substitute name of erstwhile Salfi Textile Mills Limited with the Petitioner's name in its record in respect of Plots No. W5/02 and W5/03 (Ware Houses), North West Industrial Zone, Port Qasim measuring 5 Acres (each);*
- V To restrain Respondent No. 5 from charging any fee for substitution of name in favor of the Petitioner in respect of Plot No. A/12 and A/15, SITE., Kotri, Sindh measuring 13.73 Acres;*
- VI. To restrain Respondent No. 4 from charging any fee for substitution of name in favor of the Petitioner in respect of Plot No. HX-1, Landhi Industrial Area, Karachi measuring 19.512 Acres;*
- VII. To restrain Respondent No. 3 from charging any fee for substitution of name in favor of the Petitioner in respect of Plots No. W5/02 and W5/03 (Ware Houses), North West Industrial Zone, Port Qasim measuring 5 Acres (each)*
- VIII. To grant permanent injunction restraining the Respondents from taking any coercive action against the Petitioner.*

2. Briefly stated facts of the case, as disclosed in the memo of Petition, are that the Petitioner, namely, “*Tata Textile Mills Ltd.*” is engaged in the business of manufacturing and sale of textile goods and allied items; that the Petitioner along with Island Textile Mills Ltd. (“**Island**”), Salfi Textile Mills Ltd. (“**Salfi**”) and Tata Energy Ltd. (“**Tata Energy**”), presented a Scheme of Amalgamation (“**Scheme**”) before this Court in JCM No.13 of 2020 under Sections 279–283 and 285 of the Companies Act, 2017 (“**Act of 2017**”); that under the Scheme, Island, Salfi and Tata Energy were amalgamated with and into the Petitioner by transfer of their entire undertakings, including assets and liabilities, in consideration of issuance of shares of the Petitioner to their respective shareholders; that the amalgamation resulted in the dissolution of the said companies without winding up and was sanctioned by this Court vide order dated 02.03.2021, followed by Addendum Orders dated 17.03.2021; that by virtue of Sections 282 and 285 of the Act of 2017 and Articles 4.1, 5.1 and 8.1 of the sanctioned Scheme, all assets of Island, Salfi and Tata Energy stood vested in and transferred to the Petitioner without any further act or deed, subject only to mutation or substitution of the Petitioner’s name in the relevant records; that the assets in question principally include: (i) Plot Nos. A/12 and A/15, S.I.T.E., Kotri, District Jamshoro, measuring 13.73 acres; (ii) Plot No. HX-1, Landhi Industrial Area, Karachi, measuring approximately 18.80 acres; and (iii) Plot Nos. W5/02 and W5/03 (warehouses), North Western Industrial Zone, Port Qasim, Karachi, measuring 5 acres each; that in respect of Plot Nos. A/12 and A/15, S.I.T.E., Kotri, the property was originally held by Island under a Lease Deed dated 13.11.1971, with subsequent additions and amalgamation of Plot No. A/15 through Addenda to Lease dated 20.06.1998

and 23.04.2014, respectively, resulting in a total area of 13.73 acres; that since the property continued to stand recorded in the name of Island, the Petitioner approached the Respondent No.5 for substitution of its name pursuant to the sanctioned Scheme; however, the Respondent No.5 declined to make the requisite change and demanded mutation/transfer charges and unofficial amounts; that the Petitioner consequently served notices dated 12.05.2021 and 07.07.2021, requesting correction of the record, but with no response; that similarly, Plot No. HX-1, Landhi Industrial Area, originally measuring 19.512 acres, was initially leased to Al-Ata Textile Mills Ltd. and subsequently underwent revisions in area; that following a change of name, Al-Ata Textile Mills Ltd. became Salfi Textile Mills Ltd. in 1983, and an Addenda Deed dated 03.12.2014 reaffirmed the area at approximately 18.80 acres; that the Petitioner approached the Respondent No.4 for substitution of its name in the relevant record but the Respondent No.4 refused to do so and demanded transfer/mutation charges and unofficial amounts; thereafter, notices dated 12.05.2021 and 07.07.2021 were served upon the Respondent No.4, but no action was taken; that as regards Plot Nos. W5/02 and W5/03 at Port Qasim, the same had been transferred in favour of Salfi through Transfer Letters dated 07.05.2013; that the Petitioner approached the Respondent No.3 for substitution of its name in the relevant record; however, the Respondent No.3 treated such substitution as a transfer requiring execution of a registered document and demanded fees and unofficial amounts; that despite notices dated 12.05.2021 and 07.07.2021, no corrective action was taken; that the reminders, dated 26.08.2021, were subsequently addressed to the Respondents No.3 to 5, reiterating the Petitioner's request for substitution of the names of the amalgamated companies with that of the surviving company in accordance with the Scheme sanctioned by this Court; that Island, Salfi and Tata Energy were enjoying concessionary utility tariffs by virtue of their status as Export Oriented Units (EOUs), unless its name is substituted in the relevant records, the Petitioner would be unable to avail the same status and concessions, resulting in payment of higher utility charges and substantial financial loss; that despite repeated requests and notices, the Respondents No.3 to 5 failed to discharge their statutory obligations by effecting the requisite changes in their records. Consequently, claiming that such acts and omissions have adversely affected its lawful rights and that no other efficacious remedy is available, the Petitioner has invoked the constitutional jurisdiction of this Court seeking appropriate directions to the Respondents.

3. Learned counsel for the Petitioner contended that the demand raised by the Respondents No. 3 to 5 for mutation charges or transfer fee for substitution of the

name of Tata Textile Mills Ltd. in place of Island and Salfi in their respective records is mala fide, illegal, arbitrary and without lawful authority; that mutation or transfer charges are attracted only where there is an actual transfer of title between two distinct persons, whereas, in the present case, no transfer of title has taken place; rather, the change is merely a substitution of the name of the Petitioner Company pursuant to the Scheme of Amalgamation sanctioned by this Court vide order dated 02.03.2021 passed in J.M. No. 13 of 2020; that pursuant to the said order the subject immovable properties stood vested in the Petitioner Company by operation of law; therefore, no fresh conveyance, registered instrument, mutation or transfer was required; that the Petitioner merely seeks substitution of its name in the records of Respondents No. 3 to 5 in terms of Article 5.1 of the sanctioned Scheme of Amalgamation; that no law, rule, regulation, policy, allotment order, lease, transfer order, mutation order, addendum or other instrument governing the subject properties provides for payment of any fee or charges for such substitution of name; that the Respondents cannot lawfully demand or recover any amount in the absence of a specific statutory or contractual provision authorizing such levy; that the amalgamation of Island, Salfi and Tata Energy with the Petitioner Company has resulted in a statutory substitution of the corporate name and did not create any new right or involve any change in ownership of the subject properties; therefore, the proposed substitution in the records of the Respondents No. 3 to 5 cannot be treated as an independent transfer or mutation attracting transfer fees and at most, only such amount as may be expressly prescribed under the applicable law, rules or regulations could be demanded, and no amount beyond such prescribed charges could legally be recovered; that the failure of the Respondents No. 3 to 5 to substitute the Petitioner's name has deprived the Petitioner of certain concessions and benefits available to the amalgamated companies on account of their export-oriented status, including concessions relating to utilities such as electricity and gas; that such omission has adversely affected the Petitioner's business operations and constitutes a failure on the part of the Respondents to discharge their statutory obligations, thereby infringing the Petitioner's fundamental rights guaranteed under Articles 18, 19-A and 23 of the Constitution; that the Petitioner apprehends coercive action from the Respondents No. 3 to 5, including sealing of its factories, in order to enforce the disputed demand, which would cause irreparable loss to the Petitioner by disrupting production, preventing timely performance of contractual obligations, exposing it to loss of business in a highly competitive textile market, and potentially jeopardizing the employment of thousands of workers; that the Petitioner is, therefore, entitled to the relief(s) sought for.

4. Learned counsel for Respondent No. 3 (PQA) maintained that Section 282(6) of the Act of 2017 is relevant, as it provides that property shall vest free from any charge only where the order sanctioning the compromise or arrangement so directs; that the order dated 02.03.2021 passed in J.C.M. No. 13 of 2020 does not direct that Plot Nos. W5/02 and W5/03 (Warehouses), each measuring 05 acres, situated in North Western Industrial Zone, Port Qasim, Karachi, shall vest in the Petitioner free from the liability of transfer fees prescribed under Serial No. 4 of the Port Qasim Authority Land Allotment Policy (**“Policy”**), nor does it provide that such charges shall cease to have effect by virtue of the sanctioned Scheme of Arrangement; hence, the subject plots remain liable to transfer fees under the Policy and are not exempt therefrom under Section 282(6) of the Act; that the Petitioner has incorrectly attributed to the Respondent No. 3 the position that transfer of the subject plots pursuant to the sanctioned Scheme of Arrangement must necessarily be effected “by way of a registered document”; rather, the specific case of the Respondent No. 3 is that the transfer of the plots from Salfi to the Petitioner, being a transfer from one distinct legal entity to another, is subject to payment of the prescribed transfer fees under the Policy; that the present case is not one of mere substitution of the company’s name consequent upon a change of name under Section 12 of the Act of 2017, whereas the subject plots have, in fact, passed from Salfi to the Petitioner under the sanctioned Scheme, which contemplated transfer of assets between distinct legal entities pursuant to the acts contemplated by the parties and sanctioned by the Court; hence, such transfer cannot be equated with a mere change of name or treated as a transfer occurring solely by operation of law so as to dispense with the charges otherwise payable under the Policy; that the Petitioner is liable to pay all applicable charges and dues, including transfer fees prescribed under the Policy, as a prerequisite for recording the subject plots in its name in the records of the Respondent No. 3; that the Petitioner is not entitled to the reliefs sought in the petition.

5. Learned counsel for the Respondent No.4 (KDA) stated that according to their record only Plot No. HX-1, Landhi Industrial Area, Karachi was originally allotted in favour of M/s. Al-Atta Textile Mills Limited vide Allotment Order No.5653 dated 28.11.1967, followed by issuance of the Acknowledgment of Possession on the same date and execution of a Lease Deed measuring 94,436.88 square yards; that a revised site plan subsequently reflected the area as 18.84 acres; that the name of the allottee was thereafter changed from M/s. Al-Atta Textile Mills Limited to M/s. Salfi Textile Mills Limited on the basis of the certificate issued by the Registrar of Joint Stock Companies dated 16.08.1983 and

subsequently a Deed of Addenda was registered in favour of Salfi, formerly known as M/s. Al-Atta Textile Mills Limited, through its Chief Executive, Mr. Adeel Shahid Anwar, vide Registration No.2177 dated 03.12.2014, bearing M.F. Roll No. U-86424/9763 dated 16.12.2014.

6. Learned counsel for the Respondent No. 5 (SITE) submitted that the Scheme of Arrangement in respect of Plot Nos. A/12 and A/15 was duly sanctioned by this Court; however, the Respondent No. 5 was required only to record the sanctioned Scheme as an intimation of the transfer or reconstitution of rights in the aforesaid properties and any consequential mutation or transfer of the property rights was subject to payment of the prescribed government charges and compliance with the applicable procedure; that a similar issue was considered by this Court in J. Misc. Application No. 08 of 2012, filed by Metro Cash & Carry Pakistan and others, wherein a Scheme of Arrangement concerning Plot No. D/22, situated in the SITE Area, Karachi, was sanctioned under Sections 279 to 283 read with Section 285 of the Companies Ordinance, 1984, pursuant thereto, prescribed mutation and transfer fees amounting to Rs.9,000,000/- were recovered from the Petitioner as government charges, whereafter SITE Limited effected transfer of the property rights through mutation letter dated 13.08.2012; that the said precedent demonstrates that the recording of a sanctioned Scheme of Arrangement and the consequential transfer of property rights remain subject to payment of the applicable statutory charges and compliance with the prescribed procedure; that the instant Constitutional Petition is not maintainable, as the relief sought by the Petitioner does not warrant exercise of the Constitutional jurisdiction of this Court; that the Petitioner has an adequate and efficacious alternate remedy under the ordinary law and, being an allottee of the subject plot, it could pursue such other remedies as may be available to him, including a suit for specific performance, a claim for damages, or acceptance of a substitute plot offered by the concerned authorities; hence, the petition is liable to be dismissed.

7. Learned Deputy Attorney General, supporting the stance taken by the learned counsel appearing on behalf of the Respondents No. 3 and 5, argued that Section 282(6) of the Act of 2017 does not exempt the subject properties from applicable transfer or mutation charges unless the sanctioning order expressly so directs; that the order dated 02.03.2021 passed in J.C.M. No. 13 of 2020 contains no such direction, and therefore the subject properties remain liable to the prescribed transfer fees and other applicable charges under the relevant policies and procedures; that the transaction involves transfer of property rights between distinct legal entities pursuant to the sanctioned Scheme of Arrangement and

cannot be equated with a mere change of name or substitution under Section 12 of the Act; as such, the Petitioner is required to comply with the prescribed procedure and pay the applicable charges before the properties can be recorded in its name.

8. We have heard the learned counsel appearing on behalf of the parties and perused the material available on record.

9. It is an admitted position that the Scheme submitted by the Petitioner in respect of itself and Island, Salfi and Tata Energy was sanctioned by this Court vide order dated 02.03.2021 passed in J.C.M. No. 13 of 2020. Pursuant to the sanctioned Scheme, the amalgamating companies stood merged with the Petitioner, and their undertakings, including the subject properties, vested in the Petitioner in accordance with the terms thereof. The Petitioner is not claiming any independent transfer of title through a subsequent sale, conveyance or assignment; rather, it seeks substitution of its name in the records of the Respondents No. 3 to 5 pursuant to the amalgamation already sanctioned by this Court.

10. The objection of the Respondents, that the Petitioner is liable to pay transfer and/or mutation charges as the properties passed from the amalgamating companies to the Petitioner, cannot be accepted in the circumstances of the present case. The transfer of the subject assets occurred as a consequence of the Scheme sanctioned by this Court. It was not the result of a voluntary transfer between two entities under a conveyance deed. The consequential substitution of the Petitioner's name in the relevant records is, therefore, essentially ministerial in nature and cannot, in the absence of specific statutory or contractual authority, be treated as a fresh transfer attracting transfer charges.

11. Section 282 and allied provisions of the Act of 2017 must be read in the context of the Scheme sanctioned by this Court as a whole. The absence of an express direction in the sanctioning order granting exemption from transfer charges does not, by itself, confer independent authority upon the Respondents to impose a charge that has not otherwise been shown to apply to a statutory amalgamation. Any levy must have a sanction of law or an applicable contractual instrument. The Respondents have not identified any provision in the governing allotment or lease documents, policy, rules or regulations that specifically authorizes the levy of transfer or mutation charges on the substitution of the name of the surviving company pursuant to a court-sanctioned amalgamation.

12. The precedent relied upon by the Respondent No. 5 concerning the payment of mutation and transfer charges in another Scheme of Arrangement does

not, by itself, establish the existence or applicability of such charges in the present case. The Petitioner's liability must be determined on the basis of the statutory and contractual framework governing the subject properties and the terms of the Scheme sanctioned by this Court. In this regard, it has been observed by this Court in the case of *Total Parco Pakistan Ltd. and Total Oil Pakistan (PVT.) Ltd.* (2023 CLD 241) that like a conveyance and sale deed under the Transfer of Property Act, 1882 (which requires registration and stamping under the Registration Act 1908 and Stamp Act 1899), the Scheme of Arrangement does not require to be under the two aforementioned enactments before a Sub-Registrar. It is approved by the Court of law as an instrument confirming scheme and forwarded to the concerned authority; hence the charges being claimed for the transfer of plots are not applicable on this count. As regards the legal objections raised by the learned counsel for the Respondent No. 5, suffice it to say that the availability of an alternative remedy does not constitute a bar where the Respondents' refusal to act upon a scheme sanctioned by this Court, and their insistence upon charges without demonstrated lawful authority, are directly under challenge.

13. In view of the foregoing, the demand made by the Respondents No. 3 to 5 for transfer or mutation charges as a condition for substituting the Petitioner's name in respect of the subject properties is held to be without lawful authority, insofar as no specific statutory, regulatory or contractual provision has been shown to authorize such demand in the circumstances of the sanctioned amalgamation. The Respondents are consequently directed to substitute, in their respective records, the name of Tata Textile Mills Ltd. in place of Island Textile Mills Ltd. and Salfi Textile Mills Ltd., as the case may be, in respect of the properties covered by the sanctioned Scheme, without insisting upon transfer or mutation charges merely on account of such substitution, subject to the completion of any ministerial or procedural requirements that may lawfully apply.

14. Accordingly, the instant Constitutional Petition is allowed in the above terms. The Respondents are directed to process and complete the requisite substitution in their records within a period of 30 days of receipt of this order.

15. The above are the reasons for our short order dated 31st October, 2024.

JUDGE

JUDGE