IN THE HIGH COURT OF SINDH,
CIRCUIT COURT HYDERABAD

RA. No. 05 of 2017

DATED	ORDER WITH SIGNATURE OF JUDGE
1.6.2017	

1. For orders on CMA 895/17
2. For katcha peshi
3. For hearing of MA 45/17

Mr. Arbab Ali Hakro, Advocate for applicant
Mr. Mr. Ashfaq Nabi Qazi, Asstt: A.G.
Mr. Noorul Haq Qureshi, Advocate

***ZULFIQAR AHMAD KHAN*, J**.- Through this application, the applicant who admittedly is a contractor of M/s. Lakhra Coal Development Company (LCDC) has requested for being added as party to the instant Revision Application. Undoubtedly, applicant's relationship is solely governed through a master and servant arrangement between LCDC and itself. In the given controversy where dispute is over the land granted to the Applicant and the question posed is whether LCDC's lease expired after the lapse of the term of 30 years or it was terminated which issue is solely is between the lessee and lessor. I therefore, do not find that the intervenor is either necessary or a proper party. The application being meritless is accordingly refused. The counsel has attempted to produce certain orders passed by the District Judge where he was made a party in the litigation pending before that court. As stated earlier controversy at hand is regarding expiry or termination of lease between the lessee and lessor, wherein no relief could be granted to the contractor of the lessee, and if its interests are impaired, its remedy is to file a Civil Suit against its master LCDC for any breach of their inter-se relationship.

2&3. Through listed application (M.A. 45 of 2017) made under Order 39 Rule 1 and 2 CPC interim injunction has been sought against the respondent from acting on their order dated 14.1.2015 or interfering with the possession of 7,942-61 acres of land situated at Lakhra Khanot, District Jamshoro till final decision of the instant Revision Application.

When this application came up for hearing for the first time, on 20.01.2017 an ex-parte interim injunction was granted to the Applicant and today, the application is heard at length for confirmation of the stay or otherwise.

Brief facts of the controversy between the parties is that the Applicant was originally granted a total area of 16,564 acres for the purpose of coal mining under Pakistan Mining Concession Rules 1960 now repealed by Sindh Mining Concession Rules, 2002 ("the Rules"). For reasons which find mention in the order of the Appellate Court, an area of 8,622 acres was resumed by the provincial government in the year 1996 on account of certain alleged violations leaving current area of 7,942-61 acres to the disposal of the Applicant. The concession granted to the current area, given in parcels, are attached between pages 96 to 106, one of such a notification was issued for the grant of an area dated 03.05.1993 for 3,533 acres in the northern block in terms of which an assignment / transfer in favour of the Applicant was made for the period of 30 years from the date of notification on the terms and conditions laid down in a notification dated 08.04.1985. It is interesting to observe that the said vital document of 1985 has not been produced by the Applicant. Be that as it may, even in the absence of the same, the skeleton conditions attached with the said assignment / transfer of land in favour of the Applicant reproduced at the bottom reverse of the said notification are vital and I reproduce them in the following.

(a) Applicant to abide by all the liabilities of the lease in question.

(b) Applicant will execute lease deed in terms of Rule 21 of Pakistan Mining Concession Rules, 1960.

(c) Applicant will furnish monthly production / dispatch return by the 7th of each month regularly, in case there is no production during the particular month, a `Nil` report may be submitted in this respect.

(d) Applicant will submit regularly on quarterly basis the reports of progress with regard to the mining work carried out by them in the area.

(e) Applicant will return one copy of the attached plan duly accepted.

Per counsel for Applicant, when these leases after enjoying their life of 30 years came to an end, the Applicant made an application attached at page 107 seeking renewal of these leases on 26.3.2012. Upon having been received the said application, through a letter issued on 8th September, 2014 the Directorate of Coal Mines Energy Department, Government of Sindh replied as under:-

" I am directed to refer to your letter dated 15.03.2014 regarding renewal of coal mining leases and to say that before your request for renewal of

> coal mining case(s) is placed in the next meeting of Coal Mines Committee following information be provided.
>
> (a) Copies of Lease Deed(s) executed in the name of LCDC.
>
> (b) Copy of notification authorizing the LCDC to sell the coal in open market.
>
> (c) Consolidated production report / statement for last five years.
>
> (d) Consolidated year wise statement of coal supplied to Lakhra Coal Power plant for last five years."

Certain information were provided by the Applicant in response to the said demand, however, as per record and as admitted by the learned counsel for the Applicant, LCDC failed to produce the lease deeds mandated in terms of Rule 21 of 1960 Rules which the Applicant was to enter into (within three months of the date) of notification assigning / transferring land in favour of the Applicant, as well as no document was shown to satisfy that the Applicants were granted permission to sell coal in the open market. It is pertinent to mention that under Rule 21 of the 1960 Rules, if a license or lease is not executed within three months of the communication of the approval of the application, the right of the Applicant to such a license or lease lapse. The court was informed that the sole purpose of having coal mined was to supply it to the WAPDA Coal Power Generation facility available at Lakhra. Court's attention was also drawn to the impugned letter dated 14.1.2015 attached at page 409 in terms of which the request for renewal of lease for further 30 years was declined for the reasons given in paragraph 3 of the said letter, which are reproduced hereunder:-

> "Subsequently, the matter was placed before the Coal Mines Committee in its meeting held on 15.09.2014, the Committee observed gross violations of terms and conditions of mining leases and Sindh Mining Concession Rules, 2002 by the LCDC such as (i) Non execution of Lease Deed(s) (ii) unauthorized sale of coal in open market and (iii) Non commissioning of mechanized mine operation."

The said decision of Coal Mines Committee was communicated by the Secretary, Energy Department, Government of Sindh. Also of relevance and reproduced is the last paragraph of the impugned letter as hereunder:-

> "Keeping in view the facts, the coal mining leases earlier assigned / transferred / granted to M/s. Lakhra Coal Development Company Limited vide Notification No. DMD/S/ML-COAL(65)91/1717 dated 15.02.1996 covering an area of 7,942.61 acres at Lakhra Coal Field cannot be

renewed further. Hence the said leases are liable to be treated as expired / cancelled."

Having his application for extension of the terms of lease declined, the Applicant preferred F.C. Suit No. 03 of 2015 where it sought injunctive orders against the operation of the said letter. In its order dated 20.8.2016, the learned Senior Civil Judge-II, Kotri declined the application filed under Order 39 Rule 1 and 2 CPC by a detailed order. Relevant paragraphs of the said order, in the interest of relevancy, are reproduced hereunder:-

10. I have given due consideration to the arguments of both the sides and have carefully thrashed out pleadings, the documents annexed therewith and case laws relied upon by the learned counsel for plaintiff with the valuable assistance of learned counsel for the parties. The principles governing the grant of injunction pending disposal of the suit are that the plaintiff is required to show prima facie case in his favour, balance of convenience, and irreparable loss.

11. All the three ingredients must co-exist in favour of the plaintiff in order to entitle him to grant of interim injunction. It is well settled law that in case where even one ingredient is missing no temporary injunction an at all be capable of being granted. Please see case reported as 1989 CLC 1813. Besides, the injunctive relief being a discretionary one, the plaintiff must show that he has come to court with clean hands. Cursory perusal of the record it shows that the plaintiff has claimed that lease(s) will expire in the year 1926 but the notifications in respect of transfer/ assigning of the lease9s) submitted by the plaintiff with his plaint are speaking volumes leaving behind no room for any doubt or ambiguity. There is no denial to the fact that initially the PMDC was lessee and periods of leases are given herein below which were subsequently transferred to the plaintiff vide notification dated 3.5.1993.

Periods/ Schedule of leases

(1) 25.04.1980 to 24.4.2010	(2) 25.04.1980 to 24.4.2010
(2) 17.01.1981 to 13.01.2011	(4) 06.04.1983 to 05.04.2013
(5) 14.01.1981 to 13.01.2011	(6) 06.04.1983 to 05.04.2013

The above reproduced periods show that the leases expired in the year 2013. Interestingly the on the one hand the plaintiff has claimed that the leases will expire in the year 2026 but it has applied for renewal of the leases vides it letter dated 26.03.2012 which negates the claim of the plaintiff.

12. Moreover the plaintiff (LCDC) was setup in the year 1990, and it is claiming the alleged amount spent by PMDC, WAPDA in the year 1975 to 1986. It is worth to add here that he PMDC and WAPDA are separate entities and they spent the alleged amount in their independent capacity even a decade ago prior to setting up the

plaintiff company, but they did not put any such claim despite of lapse of about thirty years. The plaintiff too has belatedly put forward demand of its alleged expenditure on account of feasibility study of mechanized mines, hence law of limitation, laches is prima facie a hurdle in the way of the plaintiff. There is no denial to the fact that the plaintiff failed to establish mechanized or semi-mechanized mines. The plaintiff/lessee was not allowed to sell the coal of leased mines area in open market and it was duty bound to supply the coal only to the WAPDA but contrarily the plaintiff is selling the coal in open market in contravention of the terms and conditions of the lease(s). Rather the record/reports of the plaintiff shows that more major share of coal was sold out in open market and a small quantity was supplied to WAPDA, which results in load shedding/power shortage and heavy loss to the state lands/minerals/natural resources of the Province.

13. Tentative assessment of the record reveals that the application of the plaintiff for renewal of the lease(s) was declined by the Coal mines committee (constituted under Sindh Mining Concession Rules 2002) in its meeting dated 15.09.2014. The committee observed gross violations of terms and conditions of mining lease and the Rules by the plaintiff /lessee. The committee held that the plaintiff failed to execute lease deed(s), unauthorized sale of the coal in open market, and non-accomplishment of mechanized mines. In my humble view the defendant (GoS) / lessor is not bound renew the lease(s) and the record furnished by the plaintiff is self-contradictory. The plaintiff vide its reports and letters has admitted its failure to abide by the terms and conditions and has given some excuses in this regard which does not appeal to a prudent mind. Per plaintiff lease deed(s) are missing due to shifting. The plaintiff was bound to execute lease deeds within three months of the issue of mining lease notification. The plaintiff claimed that it was authorized by the lessor to sell out the excess coal in open market but it failed to produce any such authorization before the coal mines committee as well this court. The plaintiff Board of Directors unilaterally decided to sell out the coal in open market without the sanction, approval of the lessor. The plaintiff also failed to furnish periodical reports since 2009. Rather the plaintiff is holding the suit lands despite of the expiry of the lease period of 30 years which is causing heavy loss to the province and power sector. Reliance is placed upon case reported as 2002 SCMR 2002(S.C.).

14. - - - - - - -

15. Moreover the plaintiff has filed this for declaration, injunction and compensation after about 20 years of the action of resuming of 8622 Acres which was allotted to M/s. Smith and after about two years of the dismissal of its application for renewal lease(s) hence in my humble view limitation and laches is also a hurdle in the way of the plaintiff. Moreover, relationship between parties was governed by mining lease and Sindh Mining Concession Rules, 2002, previously Pakistan Mining Concession Rules, 1960, being a special laws applicable thereto, Contract Act, 1872 and Specific

Relief Act, 1877 would not apply to such lease(s) contracts. Besides the plaintiff himself had translated his grievance and loss in pecuniary terms through alternative relief of damages/ compensation in suit. In my humble view the plaintiff has alternate remedy to demand compensation in terms of money as per his own demand hence the plaintiff fails to make out a case for grant of temporary injunctions. My views are fortified with case reported as 2009 YLR 2319 (Lahore).

16. Now coming to the claim of the plaintiff, as argued by Mr. Hakro, that in case the supply of coal to WAPDA stopped it will cause great inconvenience for the people/manpower and load shedding in surrounding areas like Jamshoro and Hyderabad. In this regard the tender notice dated 23.01.2013 of the WAPDA's power plant (LPGCL) is on record which shows that the WAPDA is also purchasing the coal from open market thus it is obvious that the plaintiff and WAPDA will not suffer any irreparable loss in case of refusal of the injunction. Moreover, the plaintiff should not worry regarding the load shedding because it is the responsibility of the WAPDA, who is running the Lakhra Power Plant. If the injunction be granted the defendant will suffer irreparable loss as the plaintiff is continuously carrying on coal mining despite of expiry of the 30 years lease(s) period, admittedly it is selling coal in the open market which is causing heavy loss to state natural resources/coal of the province.

Against this order, an appeal was preferred where the Appellate Court of 1st Additional District Judge, Kotri passed a judgment dated 21.10.2016 wherein the Appellate court failed to find out any illegality or material irregularity in the orders of the trial court and accordingly dismissed the Applicant's appeal. Against these concurrent findings, the present Revision Application has been preferred.

Learned counsel for applicant forcefully contended that the impugned letter dated 14.01.2015 has been issued in violation of Rule 59(2)(a) of Sindh Mining Concession Rules, 2002, where a mechanism has been provided that before cancelling a title under sub-rule 1 on a ground referred to in that sub-rule, the licensing authority is required to issue a notice in writing giving no less than 30 days time of its intention to cancel the title on the ground detailed in sub-rule 1, as well as, to specify the date before which the holder of the title was to submit a reply providing the ground on which he wishes the licensing authority to not to cancel the lease and thereafter the procedure provided under the latter part of this rule, the licensing authority could give a notice in writing cancelling the title. Learned counsel as stated earlier, vehemently argued that the aforementioned procedure has not been followed before the above mentioned order dated

14.01.2015 was passed. When posed with the question that the case in hand is not about the cancellation of mineral title rather is about renewal of the mineral title after its expiry. Provisions of Rule 48 were brought to the Court's attention, which I take the liberty to reproduce in the following:-

> 48. Duration of Mining Lease- (1) Subject to these Rules, a mining lease
>
> (a) shall be valid for such period not exceeding thirty years extendable for further period as determined by the licensing authority;
>
> (3) Notwithstanding the provisions of sub-rule (1), but subject to these rules, where an application is made for the renewal of a mining lease, the lease shall not expire until the application is refused, withdrawn, granted or lapses, whichever first occurs."

By referring to the above mentioned provision of the Rules 2002, learned counsel contended that the said Rule gives the Applicant lessee first right of renewal and that right could not have been taken away unless the mechanism provided under Rule 59 was followed. At the latter part of his arguments, learned counsel made reference to Rule 71 which provides the forum of appeal. The counsel contended that the impugned notice has been directly issued by the Secretary, Energy Department, Government of Sindh who was not the licensing authority, and by directly issuing the said notice, the Applicant has been deprived of an opportunity of appeal which lies against every order of the licensing authority to the Secretary Mines and Mineral Department. Learned counsel at the last leg of his arguments placed reliance on Section 105, 106, 107 and 113 of Transfer of Property Act, 1882 and contended that LCDC being granted lease was required under Section 113 to be served a notice before its lease was terminated.

Learned Assistant Advocate General, appearing on behalf of respondents forcefully submitted that the case in hand is not about the cancellation of lease rather it is for the mechanism to be followed upon expiry of a lease, therefore, the Rule 59 referred by the learned counsel for Applicants is not applicable. He referred to page 55 of the trial court's order and by reading first paragraph thereof submitted that the Applicants are picking dual stands as at one hand, they have contended that the lease expired in 2013 while on the other hand they say that they are in possession of lease that will expire in 2026. Learned A.A.G. in his arguments supported the two orders passed by the court's below and submitted that they are speaking orders and there is no material irregularity

therein, hence the instant Revision Application made under Section 115 CPC being meritless be dismissed.

Learned counsel for applicant in rebuttal assisted the court to the question as to how 2002 Rules are applicable where the lease in question was granted through 1960 Rules. By placing reliance on Rules 116 and 117 of 2002 Rules, learned counsel put forward the case that through those repealing provisions, all the leases granted under 1960 Rules are required to be dealt with by the present 2002 Rules, therefore, his earlier contention about that the cancellation of Appellant's lease in violation of Rule 56 being nullity in the eyes of law has been allegedly established, therefore, the said letter should be held as of no consequences or least to say that since LCDC is in possession of the said 7,942.61 acres of land, it should not be dispossessed in the interim period till the trial court comes to a final conclusion.

Heard the counsel, learned Asstt: A.G. and reviewed the material available on record.

A simple reading of the impugned letter suggests that it was the meeting of the Coal Mine Committee as desired under Rule 71 of the 2002 Rules which on 15.09.2014 assigned two fundamental reasons for refusing to renew the earlier leases granted to the Applicant. At one hand it is mentioned that the Appellant has committed gross violations of terms and conditions of mining leases by (i) Non execution of Lease Deeds (ii) unauthorized sale of coal in open market and (iii) Non commissioning of mechanized mine operation, and on the other hand it was also observed that the Appellant has failed to follow 2002 Rules. Keeping this view, the decision of Coal Mines Committee of rejecting the request of the Applicant for the extension of the term of lease was communicated through the Secretary Energy Department.

Before this court, the fundamental question is to study mandatory requirements of the notifications in terms of which parts and parcels of land were assigned/ transferred to the Applicant being subject to the terms and conditions of notification of the year 1985, contents of which have not been shown to this Court and in these circumstances, I am at loss to judge the very compliance of the terms of the said notification. Be that as it may, in the absence of 1985 terms, the conditions reproduced in the land assignment / transfer notifications could be considered least to say. Of which probably the most important is that the said notification only assigned / transferred parts and parcels of the land in favour of the Applicant and within three months of the date of these notifications, the

Applicants were required to enter into a lease with the lessee specifying the terms and conditions which were to be adhered by the lessee LCDC. Neither before the trial court nor before the Appellate court, or nor before this Court those lease documents have been produced. In the absence thereof as rightly contended by the learned A.A.G. a view could be taken that those leases were never entered into. Even for the sake of arguments, Court by giving benefit of doubt to the Applicant, could take inverse view by holding that those leases were entered into but there is no cavil to the fact that the term of those leases was 30 years which expired in the year 2013. Focusing my attention to the acts done after 2013, when an application for renewal of leases was made by the Applicant, the documents submitted to the court clearly shows that certain critical questions were posed to the Applicant to satisfy the authority that whether it has complied with the terms and conditions of the lease, amongst which the key question was whether in fact the leases were ever entered into and was any permission ever granted to the Applicant for the sale of coal in open market, and did the applicant failed in brining on the site mechanized mine equipments, being three grounds taken in the impugned letter for refusing to renew LCDC's earlier leases. It is worth mentioning that no arguments are put forward in denial of these three allegations. Astonishingly it is not denied that coal was not sold in the open market. It is a matter of fact that mechanized equipments were not brought and in the absence of lease deeds, Court could easily come to a conclusion that leases were never entered into. This rightly propels the court for the examination of provisions of Rule 48 rather to focus on Rule 59. Once again, in the absence of any lease deed, if for the sake of arguments it is admitted that leases were entered into and during their term of 30 years those lease terms were not violated, still there is no first right of renewal of lease in favour of lessee. It is worth considering that Rule 48 creates possibility for extension of the term of lease, however, state granted leases are always subject to the terms that lessor has the right of cancellation of lease in accordance with law and at the time of renewal, to use its discretion to not to renew the lease. The case at hands fall under sub-rule 2 of Rule 48 where if a request is made for extension of lease, the same request could be well refused, withdrawn or granted by the authority in question. In the given circumstances, the arguments that the lease was improperly cancelled in violation of Rule 59 does not hold any water as in the case at hand LCDC made application for extension of lease and under Rule 48, the authority rests with the provincial government to refuse, withdraw or grant extensions. The case in hand

is marred by the alleged violations wherefrom conduct of the applicant is exposed not only with regard to having failed to enter into proper leases alone, rather selling the coal to open market when coal was to be provided to WAPDA for power generation to an energy starved nation, therefore, neither on merits, prima facie right , balance of convenience or on the anticipated exposure to irreparable loss, I see any merit in the instant Revision Application as no grounds are present before me to differ from the findings rendered by the trial court or those which were cemented at the appellate level. Neither any ground is made under Section 115 CPC for the intervention of this court in the concurrent findings of courts below. I accordingly dismiss this Revision Application along with its all pending applications.

JUDGE

karar_hussain-memon/PS*