IN THE HIGH COURT OF SINDH AT KARACHI

Suit No. 1010 of 1999

Karachi Gymkhana ---------- Plaintiff

Versus

Government of Sindh & another ---------- Defendants

Date of hearing:	**03.02.2017.**
Date of Judgment:	**14.03.2017.**
Plaintiff:	**Through Mr. Khawaja Shamsul Islam along with Mr. Imran Taj and Mr. Khalid Iqbal Advocates.**
Defendants:	**Through Mr. S. Alay Maqbool Rizvi AAG.**

J U D G M E N T

Muhammad Junaid Ghaffar, J. This is a Suit for Declaration, Specific Performance and Perpetual Injunction seeking the following prayer(s):-

1) "a declaration that the Defendant No. 1 has granted a 99 years lease of Plot No. CL-11/1, measuring 57,726 square yards, Civil Lines Quarters Karachi in favour of the Plaintiff.

2) a direction to the Defendant to specifically perform the legally binding contract which stood concluded on 29.6.1999 by accepting payment of the agreed lease money of Rs. 5,000,000/- from the Plaintiff and by simultaneously executing a lease of 99 years of the said property in favour of the Plaintiff.

3) A perpetual injunction restraining the Defendants from taking any action likely to prejudice, discriminate or interfere with the Plaintiff's use and occupation of and leasehold rights in the said property.

4) Any other relief that this Hon'ble Court may deems fit and proper in the circumstances of this case;

5) Costs of the proceedings in favour of the Plaintiff."

2. The precise facts as stated are that Plaintiff was established in the year 1886 and is one of the oldest Clubs in Karachi located on Plot No. CL-11/1, measuring 57,726 square yards, Civil Lines Quarters, Karachi (hereinafter referred to as the "Suit Property"). It is further stated that through a letter dated 29.06.1999, Defendant No. 1 offered to grant a 99 years lease of the Suit property for the same purpose for which it was allotted upon payment of Rs. 5,000,000/- and the offer was accepted on the same date whereas, vide order dated 30.06.1999 the property was leased out for 99 years and Defendant No. 1 also issued directions to Defendant No. 2 to recover the amount of Rs. 5,000,000/- and to execute the lease accordingly. The Plaintiff thereafter prepared two Pay Orders on 30.06.1999 and offered the same for payment to Defendant No. 2 but same were refused. Again an attempt was made on the same date by directly approaching Defendant No. 2 and finally on 12.07.1999 they were dispatched through post along with a covering letter. However, in response, Defendant No. 2 returned the said payment stating that it could not be accepted and further stated that the matter has been referred back to Board of Revenue due to some legal issues. Thereafter, on 15.07.1999 the Plaintiff received a letter dated 05.07.1999 issued by Defendant No.1 whereby, the earlier offer of 29.06.1999 was withdrawn, hence instant Suit.

3. After issuance of summons and notices written statement was filed on behalf of Defendant No. 2 and vide order dated 07.08.2001 following issues were settled:-

> "1 Whether the Plaintiff is entitled to Specific Performance of Contract concluded on 29.6.1999?
>
> 2) Whether the Defendant is liable to execute 99 years lease of the said property favour of the Plaintiff?
>
> 3) Whether the Plaintiff has entitled to a perpetual injunction restraining the Defendants from taking any action adverse or discriminatory towards the Plaintiff's use and occupation and leasehold rights in the said property?"

4. The evidence was recorded through commission. Plaintiff led its evidence through PW-1 Wing Cdr (Retd.) Hassan Mazahir, whereas, Defendant No. 2 led its evidence through DW-1 Muhammad Arif and DW-2 Fazal Hussain. Learned Counsel for the Plaintiff has contended that the offer dated 29.06.1999 (Exhibit P/1) was immediately accepted by the Plaintiff on the very same date (Exhibit P/2) and therefore, there was no occasion for the Defendants to withdraw and or resile from such offer of lease. Per learned Counsel a binding contract was entered into which cannot be cancelled in the manner it has been done. Learned Counsel has referred to (Exhibit P/3) dated 30.06.1999 and has contended that after issuance of such directions, Defendant No. 2 was bound to issue the lease documents and could not have raised any objection on any personal

ground. Per learned Counsel once the competent authority i.e. the Land Utilization Department had in principal agreed to renew the lease for 99 years upon payment of Rs. 5 million, the Deputy Commissioner (Defendant No.2) concerned just to settle his personal grudge and score, refused to abide by the directions of Defendant No. 1 which has led to filing of instant Suit. Learned Counsel has read out the cross-examination of DW-1 Muhammad Arif and has contended that the same supports the Plaintiff's case. He has also relied upon Annexure X/1 produced in evidence by the Defendant which according to the learned Counsel is an agreement dated 26.08.1886 whereby, the land in question was allotted to the Plaintiff and submits that even otherwise, by virtue of this agreement the Defendants are required to execute a proper lease deed for 99 years renewable for further period in accordance with law. Learned Counsel has also read out Section 105 of the Transfer of Property Act as well as Section 10 of the Colonization Act, 1910. Per learned Counsel there is a proposal which has been accepted and consideration was paid; therefore, it is a binding and concluded contract; hence, Defendants are duty bound in law to issue a proper lease. Learned Counsel has also read out Sections 52 and 61 of the Easement Act 1882, as well as Section 39 and 40 of the Land Revenue Act, 1967, and has contended that the allotment of the land in question is of a permanent nature with possession and must culminate in execution of a proper lease deed. In support he has relied upon *Commissioner of Income Tax, Peshawar Zone, Peshawar V. Messrs Siemen A.G. (PLD 1991 SC 368)* and *Sharif Haroon V. Province of Sindh and another (PLD 2003 Karachi 237).*

5. On the other hand, learned AAG has contended that though an offer letter was issued for renewal of lease; however, since the same was not in accordance with law, it was withdrawn. He has further submitted that the amount paid was returned, whereas, the proposal was also withdrawn; therefore, there is no question of granting any further relief to the Plaintiff. Learned AAG has further submitted that the agreement of 1886 is merely a license which cannot be converted into a lease, and therefore, the offer letter was illegal. Learned AAG further submitted that they may apply for a proper lease as required under the law. He has prayed for dismissal of instant Suit.

6. I have heard the learned Counsel for the Plaintiff as well as learned AAG and perused the record. Since all the three issues are interlinked, therefore, they are being dealt with and decided together. Insofar as facts of the case are concerned, they do not appear to be in dispute to the extent that Plaintiff is one of the oldest members Club of the city of Karachi, whereas, they were issued letter dated 29.6.1999 on behalf of the Land Utilisation Department, Government of Sindh, for renewal of lease and after its acceptance by the plaintiff and payment of lease money, has been withdrawn and money

has been returned. The defendants case is that the offer for renewal of lease was mistakenly issued on the directives of the then Governor who had no authority in law to do so. It further appears to be a matter of record that the land in question was allotted to the plaintiff in the year 1886, and the Defendant's witness (Muhammad Arif) while filing his affidavit in evidence, produced a Memorandum dated 26.08.1886, issued by the Revenue Department Bombay Castle and an agreement on behalf of Karachi Gymkhana with reference to Government Resolution No. 6107 dated 26.08.1886 marked as **X/1** and **X/2**. Both these documents appear to be crucial for resolution of this dispute and since they have been brought in evidence on behalf of the Defendant; therefore, notwithstanding that only copies have been produced, I am of the view that they can be considered as admissible documents. The first document which is a Memorandum dated 26.08.1886 and the second document is an Agreement. Both read as under:-

"Karachi,
No. 6107

Revenue Department,
Bombay Castle, 26th August, 1886.

Memorandum from the Commissioner in Sindh No: 2779 dated 7th Aguust 1886 forwarding one No. 436 of the 'same' date from the Collector of Karachi, who submits an application from the General Officer, Commanding, Sindh District for the vacant land between the Government House and the Collector's Office at Karachi, being allowed to be used as pleasure ground by the residents of Karachi and states that the (Collector) does not see any objection to the application being granted subject to the condition that Government should be at liberty to resume the plot at any time they think fit to do so and that no compensation shall be claimable for any loss that the resumption of the plot by Government might cause: The Commissioner observing that the land applied for might be set apart for the purpose specified and that it will continue generally under the control of the Collector who would see that it is only used for the purpose for which it is granted, while the Brigadier General would regulate its use and manage it in such a manner as he considers best.

Resolution…The piece applied for may be allowed to be used as recreation ground subject to the conditions specified by the Collector and the Commissioner-in-Sindh.

Sd/- J.De C. Atkins.
Acting under Secretary to
Government."

A G R E E M E N T

We the undersigned members of the Managing Committee of the Karachi Gymkhana club do hereby agree to take from Government the land measuring 59,722

square yards and bounded as under for recreation ground under Government Resolution No. 6107 dated 26th August, 1886 on the following conditions.

North by Government House.
South by Scandal Point Road.
East by No. 4 Survey Sheet F-7
Belongs to Mr. Theodore.
C.W. Somerlatt.
West by open space (Government Reserve)

1- That the land will be used for the purpose of recreation only and for no other purpose:-

2- That the land will be continued generally under the control of the Collector, and the Brigadier General would regulate its use and manage it in such manner as he considers best.

3- That Government shall have the power to resume the plot at any time they think fit to do so, and that no compensation (except for expenses incurred on the existing boundaries) shall be claimable for any loss that the resumption of the plot by Government might cause.

Sd/- G.B. Simpson Lieutenant Co.
Sd/- E. Balfe Captain.
Sd/- W.E. Padley.
Sd/- W.U. Nicholes.
Sd/- H.M. Thomson."

7. Perusal of these documents reflect that the land in question was allotted by the then Collector on an application moved on behalf of the plaintiff, by observing that there appears to be no objection to the application being granted, subject to the condition that Government should be at liberty to resume the plot at any time they think fit to do so, and that no compensation shall be claimable for any loss that the resumption of the plot by Government might cause. It is further recorded that the plot be set apart for the purposes specified and it shall only be used for which it is granted. Whereas, the agreement provides that, we the undersigned members of the Managing Committee of the Karachi Gymkhana club do hereby agree to take from Government the land measuring 59,722 square yards with the condition that the land will be used for the purpose of recreation only and for no other purposes and that the land will continue generally under the control of the Collector, and the Brigadier General would regulate its use and manage it in such manner as he considers best and that the Government shall have the power to resume the plot at any time they think fit to do so, and that no compensation (except for expenses incurred on the existing boundaries) shall be claimable for any loss that the resumption of the plot by Government might cause. Both these documents have been brought in evidence by the Defendants and the contents thereof reflect that it is an agreement between the parties with certain conditions stipulated therein. It is not, nor has it been, the

case of Defendants at any moment of time that the Plaintiff has violated any of the conditions of the agreement in question. In fact they have never issued any notice nor any evidence has been led to that effect that either the Plaintiff is misusing the plot for any other purpose for which it was allotted; nor any other wrongful act has been attributed against the Plaintiff. Moreover, it is not the case of the defendants that they intend to resume the plot for any purposes and can do so on the basis of the allotment conditions and the agreement of 1886. Thereafter, it appears that the Plaintiff approached the Government through Land Utilization Department and upon such approach letter dated 29.06.1999 (Exhibit P/1) was issued to the Plaintiff which reads as under:-

"No. PS/MBR/LU/480/99
BOARD OF REVENUE SINDH,
Camp at Karachi dated 29.6.1999.

To,

Mr. Altaf Agha,
President of Karachi Gymkhana,
4, Club Road, Karachi.

SUBJECT: REQUEST FOR RENEWAL OF LEASE OF PLOT CL-11/1 FOR PERIOD OF 99 YEARS.

Reference Your letter No. Land/99, dated 16.3.1999 addressed to the former Governor.

The Government of Sindh in Land Utilization Department has been pleased to agree in principle for renewal of amenity plot No. Cl-11/1 Civil Lines Quarters Karachi for 99 years lease on the following conditions:-

i) The lease will be on the same terms and conditions for recreational purpose and land shall not be used for any other purpose viz: Commercial 8 residential act;

ii) The renewal of lease is subject to first payment of Rs. 50,000,000/- (Fifty lacs).

I am directed to request you to give your offer for payment of above amount and accepting the conditions so that final renewal order could be issued in the matter.

Sd/- 29.6.99
DEPUTY SECRETARY (LAND UTILIZATION)
BOARD OF REVENUE, SINDH."

8. Such request for renewal of lease was accepted and the Defendants were asked for issuance of a challan for immediate payment. Thereafter, on 30.06.1999 the Defendant No. 1 issued a letter to Defendant No. 2 (Exhibit P/3) which reads as under:-

"No. PS/MBR/LU/981/99
BOARD OF REVENUE SINDH,
Camp at Karachi dated 30.6.1999.

To,

The Deputy Commissioner South,
Karachi.

SUBJECT: REQUEST FOR LEASE OF PLOT NO. CL-11/1, CIVIL LINE QUARTERS IN FAVOUR OF KARACHI GYMKHANA.

The Government of Sindh in Land Utilization Department has been pleased to lease out amenity plot No. CL-11/1, measuring 57.726 square yards Civil Line Quarters Karachi for 99 years at the payment of Rs. 50,00,000/- (Fifty Lacs only) on the same terms and conditions for recreational purpose subject to further condition that the land shall not be used for any other purpose i.e. Commercial / residential etc. If at any time it is found that the land is not being used for the purpose, the same will be resumed without giving notices.

You are requested to recover the above amount and execute the lease agreement accordingly.

/-
(NASIR AHMED SIDDIQUI)
SECRETARY TO GOVERNMENT OF SINDH
LAND UTILIZATION DEPARTMENT."

9. Subsequently the Plaintiff prepared two Pay Orders bearing No. 043669 dated 30.06.1999 for Rs. 2 million and another Pay Order No. 0344530 dated 30.06.999 for Rs. 3 million. However, such request was regretted through a Letter dated 12.07.1999 by Defendant No. 2 in the following manner:-

"OFFICE OF THE DEPUTY COMMISSIONER
& D.M (SOUTH) KARACHI

No. DC(S)/AC(S)/4543/99, Karachi the 12th July,1999.

To,

The Secretary,
Karachi Gymkhana,
Karachi.

Subject: PAYMENT IN LIEU OF LEASE OF POT NO: CL-11/1 CIVIL LINES QUARTERS IN FAVOUR OF KARACHI GYMKHANA.

With reference to your letter No. Land/99 dated 12th July 1999, it is informed that in response to the order No. PS/MBR/LU/481 dated 30th June 1999, this office has already referred back the case to the Board of Revenue indicating some legal / procedural observations.

In this scenario, this payment cannot be accepted which is returned back to our office.

Sd/-
For DEPUTY COMMISSIONER & D.M.
KARACHI SOUTH"

10. It further appears that in the meantime the Defendant No. 1 also issued a letter dated 5.7.99 (Exhibit P/7) which reads as under:-

"No. PS/MBR/LU/494/99
BOARD OF REVENUE SINDH,
Camp at Karachi dated 05.07.1999.

To,

Mr. Altaf Agha,
President of Karachi Gymkhana,
4, Club Road, Karachi.

SUBJECT: REQUEST FOR RENEWAL OF LEASE OF PLOT CL-11/1 FOR PERIOD OF 99 YEARS.

The offer letter No. PS/MBR/LU/480/99 dated 29.06.1999 issued by this Department is hereby withdrawn.

Sd/-
(NASIR AHMED SIDDIQUI)
SECRETARY TO GOVERNMENT OF SINDH
LAND UTILIZATION DEPARTMENT."

11. The moot question before the Court appears to be that whether after issuance of letter for renewal of lease for the period of 99 years (Exhibit P/1) the Defendant No. 1 can withdraw the same or not. It is to be kept in mind that an offer was made which stood accepted by the Plaintiff and even the Pay Orders were prepared for the lease amount; however, without assigning any reason or justification the offer was withdrawn. It has time and again been noticed by the Courts that the Government officials first issue some offer either for grant of a lease or make some promise and thereafter without assigning any reason or legal justification withdraw the same. This is what has happened in this matter. In law such conduct cannot be appreciated or permitted by the Court. If for some

reason the offer for renewal of lease was to be withdrawn or modified then it was incumbent upon the Defendants to do the same through proper reasoning and after strictly following the mandate of law. It is not an offer by a private party which can be withdrawn but by a responsible officer of the Government i.e. the Secretary Land Utilization Department. Such conduct is never expected from an office as high as of a Secretary to the Government of Sindh. Once an offer has been made and has been accepted, it becomes a binding contract for the parties to perform it. It is not in fact the whim and desire of the officer concerned, which can prevail regarding grant and withdrawal of such offer. The offer through Exhibit P/1 must have been made after due consideration and proper summary to that effect as this is the way Rules of procedure provides. Anything to the contrary has neither been pleaded nor argued before the Court. It is not that the offer came in vacuum at the behest of one individual, and that the other individual at the helm of affairs withdrew it. The Government at least is not required to run its affairs in this manner. In the evidence the defendants have miserably failed to bring on record any document so as to suggest that (Exhibit P/1) was issued without proper approval and as to how it was not legally procured and as to what were the legal impediments which were noticed subsequently, resulting in its withdrawal. Nothing has been brought on record to substantiate that any misrepresentation as alleged was committed by plaintiff in procuring letter dated 29.6.1999 (Exhibit P/1). An aggrieved person can always seek specific performance of such an agreement even specific performance can be ordered of an oral agreement.

12. Perusal of the evidence so led on behalf of the Defendants further reflects that insofar as the authenticity and genuineness of (Exhibit P/1 and P/3) are concerned, it is not the case of Defendant that either they are forged or have not been issued by the concerned officers. The Defendant's witness Muhammad Arif while replying to a question submits that, ***"It is correct to suggest that Ex. P/1 i.e. letter dated 26.09.1999 was issued by the Land Utilization Department containing the terms and conditions therein and lease payment is also mentioned in it a sum of Rs. 50 Lacs."*** He further states that, ***"It is correct that the Plaintiff, Gymkhana, issued letter dated 29.6.1999 to the Deputy Secretary, Land Utilization, Board of Revenue Sindh and accepted the terms and conditions offered by the Defendant No. 1. It is correct to suggest that the letter dated 30.06.1999 was issued by the Secretary Land Utilization Department to the Defendant No. 2 (Deputy Commissioner Sindh) wherein it is mentioned that the land is measuring 57,726 square yards for 99 years lease and the payment of Rs. 50 Lacs. It is correct that the Plaintiff issued two cheque i.e. Ex. P/4 to the Assistant Commissioner (Revenue) District South Karachi a sum of Rs. 50 Lacs by containing letter dated 12.7.1999 i.e. Ex. P-5."*** He further states that, ***"It is correct that the letter dated 05.07.1999 was issued by the Defendant No. 1 to the Plaintiff in which it is simply stated that the offer letter dated***

26.09.1999 issued by the department was hereby withdrawn. It is correct that the above said letter in which no reason has been mentioned to withdraw the offer but the same was not issued by me. It is correct to say that the letter dated 12.07.1999 and 05.07.1999 the word "misrepresentation" was not mentioned. The word "misrepresentation" is only mentioned in the written statement as well as the affidavit in evidence."

13. Similarly DW-2 Fazal Hussain Avesi, the Section Officer-II Land Utilization Department to a question submits that, ***"It is correct that the department of Deputy Secretary Land Utilization Board of Revenue issued the letter dated 30.06.1999 to the Plaintiff. I admit the terms & conditions of the letter dated 29.06.1999. It is correct that the Plaintiff accepted the terms and conditions offered by the Defendant in letter dated 29.06.1999. It is correct that the letter dated 30.06.1999 the department issued further terms and conditions mentioned in the said letter. It is correct that the plaintiff in compliance of the terms and conditions mentioned in letter dated 29.06.1999 & letter dated 30.06.1999 issued cheque of Rs. 50 Lacs through letter darted 12.07.1999."*** He further submits that, ***"it is correct to suggest that the department has not mentioned any reason to withdraw the letter dated 29.06.1999. It is correct that the terms & conditions of Board of Revenue department dated 24.08.1886 and the same was signed by the Acting Secretary to the Government the agreement. It is correct to suggest that no expiry date is mentioned in the Article X/1 & X/2."***

14. Perusal of the evidence so led by the Defendants reflects that insofar as issuance of letters dated 29.06.1999 and 30.06.1999 is concerned, the same has not been denied. It has further come on record that admittedly no reasons were assigned for withdrawing the said offers. In the circumstances, it appears that the conduct of the Defendants in first making an offer and accepting payment and thereafter, withdrawing the same does not appear to be lawful or having any justification. It is not in dispute that Plaintiff is in possession of the Suit land since more than 130 years and never ever either its title or possession has been challenged in any manner by the Defendant. In the case of ***Karachi Metropolitan Corporation v. Mst. Rahima Bai & 7 others*** (**1988 MLD 374**) a learned Single Judge of this Court had the occasion to deal with a case wherein KMC through its resolution had allotted an adjacent piece of land measuring 538 Square Yards to the respondents. However, due to some delay the commitment was not honored and even an extra amount was asked for by KMC, and subsequently it was pleaded that the earlier resolution was only an offer and stands withdrawn. The respondents filed a Suit before the lower Court which was decreed and matter came in appeal before a learned Single Judge of this Court who while dismissing the appeal held as follows;

The dictum was followed by this Court in the case of P L D 1975 Karachi 373. The upshot of the above discussion is that an order cannot be altered or rescinded if any immediate fixed right of present or future was accrued to the party because such a right is a fixed right in contradiction to being expedient or contingent right. In the instant case the appellant had accepted the proposal of the respondents 1 to 7 vide Resolution No. 1263 dated 25th January, 1986. This resolution was communicated to the respondents vide letter dated 27th January, 1986 (Ext. 1/C) and in pursuance of this Resolution the respondents deposited 25% of the price as directed by the appellants. The respondent No. 8 had also accorded sanction vide decision dated 2nd May, 1981. The appellants would now be estopped from withdrawing it. As stated above, the appellants accepted Rs. 16,812.50 from the respondents 1 to 7. This being the case, the appellants had thereafter no power to reconsider again under Section 21 of General Clauses Act. In the present circumstances the appellants accorded their sanction to grant of land admeasuring 538 square yards and a sum of Rs. 16,812.50 being 25% of the occupancy value of the land at Rs. 125 per square yard also having been accepted. I do not think the appellants had any power to re-consider it again. There seems to be no provision in Municipal Administration Ordinance, 1960, or in Sind Local Government Ordinance to revoke a sanction once given.

The true principle of promissory estoppel seems to be that where one party has by his words or conduct made to the other a clear and unequivocal promise which is intended to create legal relations or effect a legal relationship to arise in the future, knowing or intending that it would be acted upon by the other so acted upon by the other party, the promise would be binding on the party making it and he would not be entitled to go back upon it, if it would be inequitable to allow him to do so having regard to the' dealings which have taken place between the parties and that the said principle has been evolved by the Courts for doing justice and there is no reason why it should be given limited application by way of defence. The principle of promissory estoppel can be invoked in the instant case. I am of the view that the respondents 1 to 7 are entitled to the grant of lease and the appellants cannot withhold it based on the said subsequent policy and/or under section 45(5) of the Sind Local Government Ordinance, 1979 or M.L.Os. 60 and 87.

As regards the last contention of the learned counsel for the appellants that the sanction does not comply with Sind Land Rules. This contention is devoid of force. The appellants had passed a resolution granting land to respondents 1 to 7 at Rs. 125 per square yard. The resolution was duly communicated to the respondents 1 to 7 and the respondents 1 to 7 deposited 25% occupancy charges m pursuance of the resolution. The respondent No. 8 accorded its approval to the resolution on 2-5-1981. The appellants instead of 1 executing a lease in the prescribed form wanted to wriggle out when the decisive step was already taken. The respondents 1 to 7 filed the suit for directing the appellants to execute the lease after completing all the formalities. In the present case there is a binding contract between the parties. I am of the opinion that the suit is not hit by the provisions of section 4 of the Specific Relief.

Now if the appellants entered into a contract of its statutory duty and the respondents 1 to 7 acted upon it, the appellants cannot be allowed to act arbitrarily so as to cause harm and injury, flowing from their unreasonable conduct, to respondents 1 to 7. In such a situation, the Court is not powerless from holding the appellants to their promise and it can be enforced by a Court directing the appellants to perform their duty. A suit would certainly lie to direct performance of a duty.

> The learned Civil Judge accordingly was fully justified in directing the appellants to complete all the formalities and to grant a lease in the prescribed form. For this proposition it is not necessary to cite decisions nor text books, although I have been taken through case law and other authorities by counsel on, both sides.

15. In the case of ***Nasira Sultana v Habib Bank Limited & Others*** (**PLD 1975 Karachi 608**), a learned Single Judge of this Court in a case of allotment of plot by Karachi Development Authority was pleased to observe, that allottee according to the terms of Agreement was entitled to be put in to possession and raise construction on the plot and on payment of full occupancy value, KDA was bound under the agreement to grant lease of 99 years to the allottee, and in such circumstances it was held that allotment was not a mere licence as contended by KDA.

16. The learned AAG has made an attempt to argue that the agreement in question is a mere Licence, and therefore the plot in question cannot be leased out. I am afraid such contention is misconceived. It is not in dispute that pursuant to the allotment and agreement in the year 1886, the plot in question is in physical possession and disposal of plaintiff. As observed, it has never been the defendant's case that either the allotment was time bound, or any conditions of the allotment were violated. The plaintiff is in possession with all such powers as are available to a lessee for raising construction and or use of the property within the mandate of allotment conditions. Merely calling or labeling such an allotment as licence, even otherwise would not ipso facto make it a licence. The distinction has been very eloquently given by the Hon'ble Supreme Court in the case of ***Abdullah Bhai v. Ahmad Din*** (**PLD 1964 SC 106**), and a learned Division Bench of this Court in the case of ***Haji Noor Muhammad and others v. Karachi Development Authority and 2 others*** (**PLD 1975 Karachi 373**), while following this dicta of the Hon'ble Supreme Court has been please to observe as follows;

> 11. Mr. Nasir Khan also faintly attempted to argue that under the terms of the allotment and the allotment regulations of the K. D. A., the allottee is a mere licensee until the allottee builds a house and executes a regular lease with the K. D. A. This contention has no substance in view of the decision of their Lordships of the Supreme Court in tile case of Kamaluddin Ansari v. Director, Excise and Taxation (P L D 1971 S C 114), that the allottees of plots in the P. E. C. H. Society were either licensees nor sub-licensees, though they bad been so labelled in the agreements executed between the Government, the housing societies and the individual owners, for they had real interest in the land allotted to them. The criterion that has been laid down by their Lordships of the Supreme Court in the case of Abdul Bhai v. Muhammad Ahmad Din (P L D 1964 S C 107) for distinguishing between a lease and a licence is whether any right in immovable property itself, i.e. a right in rem, has passed to the person

> concerned. In this case clearly a right in rem in respect of the plot has passed to the allottee.

17. As could be seen from the discussion noted hereinabove that insofar as the allotment of the land as well as agreement entered into in the year 1886 are concerned, there is no denial by the Defendants to that effect. It is also a matter of record that subsequently on 29.06.1999 a letter was issued for renewal of the lease in question. Though subsequently, such letter has been withdrawn but notwithstanding such withdrawal, it is of paramount importance to note that it speaks about renewal of lease, meaning thereby that there existed at least some lease in favour of the Plaintiff of which the renewal was being granted. As noted above, again there is no specific denial regarding issuance of such letter and so also as to the authority of the concerned person. The only objection which has been raised in the written statement (though not supported in the evidence) is to the effect that the letter was issued on certain misrepresentations by the Plaintiff. However, what exactly was the misrepresentation of the Plaintiff has not come on record. There is nothing in the evidence which could support this argument, therefore, in all fairness; it would be safe to observe that there was an implied consent regarding the agreement in question, and in furtherance thereunder, in the shape of a lease document.

In the case reported as ***Devi Prasad Sri Krishna Prasad Ltd. and another V. Secretary of State*** *(***AIR 1941 Allahabad 377***)* a learned Division Bench was confronted with a situation wherein, the Appellant after award of a tender had defaulted and was claiming refund of the security deposit made thereunder. The Appellant's case was that though there was correspondence to the effect that tender was awarded and accepted; however, the correspondence required issuance and consenting of a formal lease document in respect of the forest land granted to the Appellant. The Appellant's Suit for recovery of the amount of security was dismissed and it came before the Division Bench of Allahabad High Court and while dilating upon the facts of the case as well as Section 30 of the Government of India Act, 1915 (Analogous [more or less similar] to Article 173 of the Constitution of Islamic Republic of Pakistan, 1973) the learned Division Bench dispel the impression that until and unless a formal lease deed was issued, the contract was not binding and upon default in execution of the contract, the appellant was entitled for refund. It was categorically held that even if no formal deed is executed the contract amongst the parties pursuant to exchange of letters and correspondence was a binding contract. The learned Division Bench in fact placed reliance on the famous passage of Lord Parker in the case of ***Von Hatzfeldt Wildenburg V. Allexander*** *(***1912) 1 Ch 284 at P. 288***)* who had observed as follows:-

> "It appears to be well settled by the authorities that if the documents or letters relied on as constituting a contract contemplate the execution of a further contract between the parties, it is a question of construction whether the execution of the further contract is a condition of term of the bargain or whether it is a mere expression of the desire of the parties as to the manner in which the transaction already agreed to will in fact go through. In the former case there is no enforceable contract either because the condition is unfulfilled or because the law does not recognize a contract to enter into a contract. In the latter case there is a binding contract and the reference to the more formal document may be ignored.

The learned Division Bench thereafter went on to hold as under:-

> "It is generally agreed that the provisions of S. 80, Government of India Act, are mandatory and for a contract to be enforceable by or against the Secretary of State the terms of this section must be complied with. It is also a matter of general agreement that an oral contract is not within the purview of S. 80, and sub-s. (2) of this section implies execution of a document and excludes oral contracts, but there is a controversy on the question whether the contract should be expressed by a formal deed or whether it is a sufficient compliance of the statute if the agreement is in writing, though not expressed by a formal deed. In 58 Bom 660, A I R 1986 Bom 19 and A I R 1937 Bom 449 the view was expressed that to comply with the provisions of S. 80, Government of India Act, a formal deed was necessary and contract within the terms of that section cannot be spelt out of correspondence or out of a series of letters and other informal documents; and this Bombay view has also been followed in A I R 1938 Mad 749, 4 Rang 991 and 11 Lah 375. On the other hand, in A I R 1938 Bom 168 it was held that a contract to satisfy the conditions of S. 80 Government of India Act, need not be incorporated in a formal deed or be under seal, and that it may well be entered into by correspondence and by less formal documents. A good deal of Government business is being done in the form of tenders and acceptance of tenders in which, till a very late stage, formal deeds are not drawn up. **However much desirable it may be to have a formal deed with regard to all the agreements made by the Government, we are not prepared to hold, as a matter of law, that an agreement evidenced by tenders and acceptance of tenders or an agreement evidenced by correspondence or other documents of informal nature, though fully established by evidence, must fail and the said to offend the terms of S. 80, Government of India Act. In our opinion, it is a sufficient compliance with the terms of S. 80 if the agreement is expressed in writing, and this writing may comprise of a series of letters or a series of informal documents."** (emphasis supplied)

Therefore, in these circumstances, it cannot be said that there was no agreement between the parties, whereas, the issuance of letter dated 29.06.1999 as well as 30.06.1999 have not been denied and it is merely stated that the same were issued because of misrepresentation and were therefore, withdrawn. This is not acceptable in the given facts. Nothing has been brought on record so as to substantiate any valid reasoning for its withdrawal.

18. The Plaintiff has further stated in its amended plaint as well as affidavit in evidence that in similar circumstances another plot of land has been leased out in the year 1992-93 for 99 yards to M/s Sindh Club. However, such contention of the Plaintiff has not been specifically denied nor controverted through any document or evidence to that effect. Merely, stating that the witness does not have any such information does not amount to proper denial. The witnesses were representing the Government and therefore, it was incumbent upon them to come forward that any such lease has not been granted with documentary evidence but they have failed to do so therefore, presumption would be that the contention of the Plaintiff to that effect has gone unchallenged.

19. In view of hereinabove facts and circumstances of this case and the evidence led by the parties I am of the view that plaintiff has made out its case and is entitled for judgment and decree. Accordingly the issues are answered as under;

Issue No.1: **Affirmative**
Issue No.2: **Affirmative**
Issue No.3: **Affirmative**

20. Resultantly the Suit of plaintiff has to be decreed, however, it is an admitted position that the amount of Rs. 5.0 Million was returned to the plaintiff who has all along enjoyed benefits attached to it, and never made an attempt to deposit the same with this Court. Therefore, the defendants are to be compensated for loss of income on such amount which remained at the disposal of plaintiff. Accordingly, in the interest of justice, equity and fair-play, and keeping in view the peculiar facts and circumstances of this case, the plaintiff shall also be liable to pay 8% yearly profit (note:-not on compound basis) to the defendants in addition to the lease amount of Rs. 5.0 Million as demanded through **Exhibit P/1**. Resultantly, Suit is decreed to the extent of prayer clause(s) (1), (2) & (3), with this modification. Office to prepare decree accordingly.

Dated: 14.03.2017 J U D G E

ARSHAD/