

IN THE HIGH COURT OF SINDH, KARACHI

Const. Petition No. D – 4300 of 2017

PRESENT:

MR. JUSTICE AQEEL AHMED ABBASI.
JUSTICE MRS. ASHRAF JEHAN.

Karachi Metropolitan Corporation

Vs.

Province of Sindh & others

Petitioner: through Mr. Sameer Ghazanfar, advocate

Respondent No.1: through Mr. Saifullah, AAG

Respondents No.2 & 3: through Mr. Javed Ahmed Qazi, advocate a/w
Noor Muhammad Baloch, Director Taxation,
DMC Malir, Karachi.

Respondent No.4: through Mr. Ali Ahmed Ghumro, advocate

&

Intervenor: through Ms. Fozia Aslam Arain, advocate

Date of Hearing: 09.08.2018.

Date of Order: 09.08.2018.

ORDER

Instant petition has been filed by Karachi Metropolitan Corporation (KMC) through Deputy Director, Veterinary Services Department, against the respondents, whereby, two Auction Notices dated 03.06.2017, published in Daily Newspaper "Ummat" and "Awami Awaz" on behalf of Director Local Taxes/Taxation, District Municipal Corporation, Malir, calling for open bids in respect of three contracts for the financial year 2017-18 for (i) Cattle Piri, Cattle Colony (ii) Cattle Piri, Aasso Goth Malir and (iii) Road No.8

and 9, Cattle Colony, have been impugned, whereas, following relief has been sought:-

- a) *To declare that the acts of the DMC Malir and the third respondent are in excess of their jurisdiction, hence illegal, void, ab-initio and of no lawful effect.*
- b) *To declare the impugned Auction Notices in daily newspaper "Ummat" and "Awami Awaz" both dated 03.06.2017 illegal, unlawful and having been issued without any lawful authority.*
- c) *To restrain the DMC Malir, its officials, staff, any and every person working through or under it, on its behalf or in its name from illegal trespassing over the petitioner's land i.e. Cattle Colony, Landhi, Karachi.*
- d) *To grant any other relief which may be deemed fit and proper in the circumstance of the case.*
- e) *To grant costs.*

2. Learned counsel for the petitioner has argued that vide letter No.HM341/57 dated 15.02.1957 issued by the Office of Mukhtiarkar of Karachi, Muhammadi House, Karachi, land comprising of 752 Acres from N.A. 46 of Deh Gangiaro and N.C.26 of Deh Rehri, was leased out to the petitioner i.e. Karachi Metropolitan Corporation, for a period of thirty (30) years for establishing Cattle Colony, and since then, the said land and the Cattle Colony established thereon is in the possession of the petitioner (K.M.C) Per learned counsel, after expiry of lease period, petitioner approached the Government of Sindh for Renewal of the lease, whereas, codal formalities have been completed and a challan dated 04.08.2017 amounting to Rs.500,000/- (Rupees Five Lacs Only) has also been deposited in the treasury, however, needful has not been done so far. Learned counsel has submitted that the subject land is popularly known as

Cattle Colony, Landhi, which was leased out in favour of the petitioner to establish Cattle Colony, and to maintain a slaughter house and also to deal in live cattles within the specified area, whereas, according to learned counsel, petitioner is performing such functions since last many decades, and also provides veterinary services to the live cattles through qualified doctors while charging fee in accordance with provision of Sindh Local Government Act, 2013. It has been further contended by the learned counsel that in terms of Clause-4, Part-I of Schedule-II of Sindh Local Government Act, 2013, Maintenance of Abattoirs and Cattle Colonies to be specified by the Government, is the part of the functions to be performed by the KMC, whereas, District Municipal Corporations have no jurisdiction or domain over the aforesaid Cattle Colony, particularly, in respect of functions assigned to the KMC, to the exclusion of functions to be performed by various District Municipal Corporation (DMC). However, according to learned counsel, inspite of hereinabove legal position, through impugned Auction Notices published in the Newspapers through the Director Taxes/Taxation, DMC, Malir respondents intend to award contract in respect of functions to be performed by KMC, with malafide intention to trespass upon the land belonging to KMC and also to collect fee from the specified Cattle Colony, Landhi which has been leased out in favour of KMC for such purpose. Per learned counsel, such act of respondents besides being illegal, will also deprive the KMC from its legitimate revenue which the KMC is entitled to earn the revenue by awarding contract of the above specified Cattle Colony through public auction in accordance with Sindh Local Government Act, 2013. It has been prayed that respondents may be restrained from awarding the contract of the

Cattle Piris pursuant to impugned Advertisements, and may be further restrained from encroaching upon the subject land which was leased out to the petitioner and has remained in lawful possession of the petitioner since then.

3. Notices were issued to respondents, pursuant to which, comments have been filed on behalf of the respondents No.2 & 3, wherein, the claim of the petitioner has been seriously disputed, whereas, objection has been raised as to maintainability of instant petition on the ground that lease was granted for thirty years only for Cattle Colony, Landhi and not the remaining two Cattle Piris, whereas, such lease has also been expired, and further seriously disputed facts have been agitated by the petitioner, which require evidence and proper adjudication, whereas, alternate remedy is also available to the petitioner in terms of Section 119 & 120 of the Sindh Local Government Act, 2013, whereby, according to respondents, Provincial Local Government Commission is appointed under the Chairmanship of Minister for Local Government to, interalia, resolve all disputes between any Department of Government of Sindh and Council, or between two Councils. Learned counsel for respondents No.2 & 3 while supporting objections filed by respondents, have argued that respective DMCs have the authority to maintain Abattoirs and Cattle Colonies to be specified by Government of Sindh in terms of Clause-4 to Part-I, Schedule-II of Sindh Local Government Act, 2013, and for such purpose, to call for a tender and to invite bids in respect of area falling within the territorial limits of different DMCs, therefore, according to learned counsel, petitioner (KMC) cannot collect any tax/fee in respect of Cattle Piris which fall within the territorial jurisdiction of DMC Malir in the instant case. Learned

counsel have further contended that petitioner has not approached this Court with clean hands as entire facts have not been disclosed. According to learned counsel respondents, no document of title or lease in respect of subject Cattle Piri has been filed alongwith petition which could establish their title or lawful possession over such Cattle Piri, on the contrary, merely photocopy of a letter dated 15.02.1957 issued from the Office of Mukhtiarkar Karachi, addressed to the Municipal Commissioner, KMC, Karachi, has been annexed with petition, which shows that merely possession of land admeasuring 752 acres was given to petitioner (KMC) for establishing Cattle Colony, whereas, neither any lease agreement has been placed on record either for the initial period of 30 years, nor any subsequent renewal of lease has been filed by the petitioner to support their claim regarding their lawful title or possession over the subject Cattle Piri. It has been further argued by the learned counsel for the respondents that in terms of Section 117 of the Sindh Local Government Act, 2013, all the properties which are not specifically reserved by the Government of Sindh, stand vested in a Council, therefore, the respective DMCs have legal entitlement and control over such properties falling within their territorial jurisdiction, therefore, the petitioner cannot claim any right or entitlement over the subject land/Cattle Piri, nor could challenge the collection of tax/fee by the concerned DMCs in respect of live cattle on the aforesaid Cattle Colony, and the areas as specified in the impugned Advertisement(s).

4. Learned Addl. A.G has also supported the contention of the learned counsel for the respondents No.2 & 3 and submitted that impugned Advertisement for auction of tax/fee collection at Cattle Piri mentioned therein, have been issued in accordance with the

provisions of Sindh Local Government Act, 2013, by the concerned DMC i.e. DMC Malir, within whose territorial jurisdiction, such Cattle Piris have been established. According to learned Addl.A.G, all the land within the territorial limits of Province of Sindh vests in Government of Sindh and can be allotted or leased out through Board of Revenue for specified purpose, whereas, KMC cannot claim ownership or title in respect of such land, which in the instant case, falls within territorial limits of DMC, Malir. It has been further contended by the learned AAG that petitioner has agitated disputes facts, whereas, instead of approaching the Provincial Local Government Commission in terms of Section 119 & 120 of Sindh Local Government Act, 2013, for resolution of dispute regarding subject land (Cattle Piris) has directly approached this Court under its constitutional jurisdiction, whereas, a declaration is being sought on the basis of disputed facts. According to learned Addl. A.G, in the instant case, petitioner (KMC) has obtained an ex-parte ad-interim restraining order from this Court through misrepresentation of facts, in respect of Cattle Piris at Cattle Colony, Aaso Goth and Cattle Colony at Road No.8 & 9 also, which are not part of Cattle Colony, Landhi, whereas, petitioner (KMC) in the garb of status quo order passed by the Court on 20.06.2017 is continuously collecting tax/fee from all the three Piris. It has been prayed by the learned Addl.A.G. that petition may be dismissed for being not maintainable.

5. We have heard the learned counsel for the parties perused the record with their assistance, and also examined the relevant provisions of the Sindh Local Government Act, 2013. From perusal of the contents of instant petition and the comments filed on behalf of the respondents, it has emerged that facts as stated in the memo

of petition regarding entitlement of the petitioner/KMC over subject Cattle Colony, Landhi, Karachi; Cattle Piri, Aasoo Goth, Malir; & Cattle Piri at Road No. 8-9, Cattle Colony, Landhi, Karachi, has been seriously disputed by respondents, who have asserted that the so-called allotment and lease in favour of petitioner/KMC in respect of Cattle Colony, Landhi, through letter dated 15.02.1957 for a period of 30 years', has already expired, whereafter, such land has not been allotted/leased out in favour of the petitioner/KMC by the Sindh Government. Whereas, according to respondents, the remaining two Cattle Piri's i.e. Cattle Piri, Aasoo Goth, Malir; & Cattle Piri at Road No. 8-9, Cattle Colony, Landhi, Karachi were never in possession of the petitioner/KMC as the same fall within the territorial limits of District Malir, therefore, as per Clause (7) Part II of Schedule-V of the Sindh Local Government Act, 2013, DMC Malir as the authority to collect the fee/charges in respect of Animals' sale. It has also been stated in the comments filed on behalf of respondents No.2 & 3 in terms of Section 119 & 120 of the Sindh Local Government Act, 2013, respondents have already filed a representation before Provincial Local Government Commission, whereas, the petitioner instead of getting the matter resolved from the Commission, has filed instant petition through concealment of facts. In support of their contention, respondents have also filed various letters issued by the Municipal Commissioner, DMC Malir and Deputy Commissioner, Malir, with regard to their entitlement to collect fee in respect of two Cattle Piri's i.e. Cattle Piri at Aasoo Goth, Malir; & Cattle Piri at Road No. 8-9, Cattle Colony, Landhi, Karachi. During pendency of instant petition, a contempt application was also filed on behalf of respondents No. 2 & 3, wherein, it has been alleged that alleged contemnor in the garb of ex-parte ad-

interim order obtained on 20.06.2017, requiring the parties to maintain status-quo in respect of subject cattle piris, have awarded the contract for the Financial Year 2017 – 2018 in respect of Cattle Piri at Aasoo Goth, Malir, which according to respondents, fall within the territorial limits of District Malir and has always remained in the possession of DMC, Malir.

6. Learned counsel for the petitioner was specifically asked to produce any document(s) including allotment, lease in respect of subject cattle piris in their favour by the Government of Sindh, however, except a photocopy of letter dated 15.02.1957 issued by the then Mukhtiarkar of Karachi in favour of Municipal Commissioner, KMC filed by the petitioner alongwith instant petition, learned counsel for the petitioner could not refer to any document(s) in this regard, and has stated that petitioner (KMC) has applied for renewal of lease in respect of Cattle Piri at Cattle Colony, Landhi, while making payment of Rs.5 Lac, whereas, such request of the petitioner admittedly, has not so far been acceded to. During the course of arguments, learned counsel for the petitioner also tried to show the bench some map of District Malir, which did not contain the stamp or endorsement of Competent Authority, however, could not identify the subject cattle piris and their territorial limits, nor could successfully establish from any document(s) that petitioner/KMC has some legal title, possession or entitlement in respect of all the three cattle piris as referred to hereinabove. If allotment of Cattle Colony, Landhi (Malir) in the name of petitioner (KMC), pursuant to letter dated 15.02.1957 issued by the then Mukhtiar of Karachi, is considered to be a valid document of allotment/lease, even then, such allotment/lease has already expired, whereas, its renewal is still under process,

therefore, presently, it appears that petitioner (KMC) is merely holding possession of such land, in anticipation of renewal of lease by competent authority. However, in respect of the remaining two cattle piris, petitioner has not been able to produce any document(s) to substantiate their entitlement to collect fee/charges as per Sindh Local Government Act, 2013, on the sale of animals. It is regretted to note that petitioner (KMC) has remained very casual towards establishing their claim over subject land and Cattle Piris, as no substantive material or document(s) have been produced to support their claim over subject land/Cattle Piris. Similarly, respondents have also not been able to establish their entitlement over subject land and Cattle Piris, except for merely, having referred to some provisions of Sindh Local Government Act, 2013, to support their contention that respective DMCs have the authority to collect fee/charges in respect of sale of Animals from the Cattle Piris established within the territorial limits of District Malir.

7. In view of hereinabove facts and circumstances of the case, it has emerged that seriously disputed facts relating to title, possession and entitlement of both the parties' to collect fee/charges in respect of three cattle piris has been agitated through instant petition, which cannot be decided by this Court in its constitutional jurisdiction under Article 199 of the Constitution, particularly, when both the parties failed to produce the legal documents in this this regard. Moreover, the subject dispute has already been referred to the Provincial Local Government Commission, which is admittedly pending disposal, as per law.

8. In view of hereinabove facts and circumstances of the case, instant petition was dismissed vide our short order dated 09.08.2018 alongwith listed application, and above are the reasons of such short order. However, before parting with the order, we may clarify that since, we have not decided the claim of either party in respect of three cattle piris on merits, therefore, would direct the parties to maintain status-quo till final decision by the Provincial Local Government Commission, whereas, it is expected that said dispute may be decided at an early date, after providing opportunity of being heard to both the parties, preferably, within a period of one month from the date of receipt of this order. Any party aggrieved by such decision of Provincial Local Government Commission, will be at liberty to seek further remedy in accordance with law.

JUDGE

JUDGE

Nadeem