

THE HIGH COURT OF SINDH, KARACHI

Suit No. 1646 of 2008

[Arshad Mahmud & another versus Province of Sindh & another]

Plaintiffs : Arshad Mahmud and National Academy of Performing Arts [NAPA] through Mr. Muhammad Najeeb Jamali Advocate.

Defendant 1 : Province of Sindh through M/s. Pervez Ahmed Mastoi, Ziauddin Ahmed Junejo and Kalpana Devi, A.A.G.

Defendant 2 : Shree Ratneswar Maha Dev Welfare Shewa Mandli, through Mr. Mukesh Kumar G. Karara Advocate.

Dates of hearing : 16-08-2019, 23-08-2019, 13-09-2019
20-09-2019 and 27-09-2019.

Date of decision : 23-12-2019.

ORDER

Adnan Iqbal Chaudhry J. - By CMA No. 11475 of 2008 the Plaintiffs pray for a temporary injunction to restrain the Defendant No.1 (Government of Sindh) *“from interfering with the peaceful and quiet possession of the premises or use of business and/or from ejecting its personnel/students, removing its possession, demolishing or interfering with its constructions on the premises in any manner whatsoever or creating any third party rights.”*

2. The property involved is the ‘Hindu Gymkhana’ which consists of a building with a unique architecture constructed between 1925-1927 and surrounding land said to be presently measuring, as per one version around 6700 square yards, and as per another version around 4500 square yards. The ‘Hindu Gymkhana’ is protected heritage under the Sindh Cultural Heritage (Preservation) Act, 1994 [the Heritage Act].

3. The Plaintiff No.2 is the National Academy of Performing Arts [NAPA], a company limited by guarantee. The Plaintiff No.1 is an artist and Director of the said company. NAPA is said to be a not-for-profit organization that is funded by grants and donations. Its aims and objects are the preservation and promotion of performing arts in Pakistan. At the time of Suit, NAPA claimed to have around 200 students enrolled in different faculties of performing arts. Per the plaint, the Federal Secretary Finance, the Federal Secretary Culture, and the Provincial Secretary Culture are *ex-office* members of the Board of Directors of NAPA.

4. The facts in brief are; that with the aim of setting-up an academy of performing arts, NAPA made a request to the Government for using the Hindu Gymkhana. Per the Plaintiffs, that particular place was requested as it provided an inspiring and creative environment essential for developing artistic expression. By notification dated 21-09-2004, a Committee including the Secretary Law, Secretary Finance and Secretary Culture was constituted to negotiate and finalize terms and conditions for NAPA's temporary use of the Hindu Gymkhana. Per the minutes of meeting dated 03-11-2004, that Committee concluded that since a number of protected heritage buildings were let by owners to tenants for different purposes, there was no legal impediment to leasing the Hindu Gymkhana to NAPA on certain terms and conditions. Some time thereafter, possession of the Hindu Gymkhana was delivered to NAPA for its purpose.

5. After NAPA moved its office to the Hindu Gymkhana, its Board resolved to construct a theatre within the land of the Hindu Gymkhana opposite the old Hindu Gymkhana building at the spot of an unfinished structure of an amphitheatre constructed some-time in 1980-1990. Per the Plaintiffs, a modern theatre was required for the training of NAPA's students and practical studies in stage-craft and allied subjects such as lighting, designing, sound etc., and also for show-casing the public performances of its students. The building

plan of the theatre was approved by the Karachi Building Control Authority [KBCA] *vide* letter dated 17-09-2005. Right thereafter, *vide* agreement dated 23-09-2005 (the Subject Agreement), the Government of Sindh through the Secretary Culture, granted the Hindu Gymkhana to NAPA on the following terms and conditions:

- “1. (i) *In consideration of monthly lease of Rs. 50,000/- (Rupees Fifty Thousand only) with a progressive increase at the rate of 10% thereof after every three years, the Government doth hereby grant and demise unto the NAPA the demised premises for a period of 30 years commencing from the date of execution of this agreement subject to review by the Government after each 10 year period.*
2. *The NAPA shall pay lease charges in advance on or before the 10th day of each month.*
3. *The building of Hindu Gymkhana is a protected heritage under the Sindh Cultural Heritage (Preservation) Act, 1994 and the NAPA shall not make any alterations in the original structure of the building. Any alterations to be made will have to be vetted by Advisory Committee for Cultural Heritage.*
4. *The demised premises will be used exclusively for promotion of Arts and Culture of Pakistan, specifically Sindh, and in accordance with the terms and conditions laid down in Memorandum and Articles of Association of National Academy of Performing Arts (NAPA). NAPA is setup as a not-for-profit organization and any violation/deviation from the Memorandum and Articles of Association will render this agreement null and void.*
5. *The NAPA shall not sub-let the demised premises.*
6. *The NAPA shall allow Government to use the demised premises free of charge subject to the approval of Chairman/CEO of NAPA, for events of the Sindh Government relating to Culture and Arts and shall also allow upto two nominees of the Government of Sindh, Department of Culture to attend classes at NAPA on an annual basis, free of cost subject to normal admission procedures.*
7. *The NAPA shall give representation to the Government on its Board of Governors and appoint Secretary of the Culture Department as a member of the Board. Any failing to do so shall constitute a breach of this Agreement leading to immediate termination.*
8. *If the NAPA Commits any breach of any terms or condition of this agreement, the agreement shall be liable to termination after three month's notice and on expiry of notice period the demised premises together with building thereon shall be resumed by Government without any compensation whatsoever.*
9. *On the expiry of sooner termination of the agreement, the NAPA shall handover the possession of the demised premises together with building (free of financial constraints) standing thereon to the Government or any officer authorized by it without compensation.”*

6. At the time when the gray structure of NAPA's theatre had been constructed, the Government of Sindh issued notice dated 13-09-2008 (the impugned notice) to terminate the Subject Agreement. The reason cited for the termination was that by constructing a theatre on the land of the Hindu Gymkhana, a protected heritage, the NAPA had breached the conditions of the Subject Agreement and had violated the Heritage Act.

7. It is NAPA's case that construction of the theatre had commenced with the consent of the Government of Sindh, and that in any case such construction did not violate the Subject Agreement or the Heritage Act. Vide an interim order dated 03-12-2008 this Court restrained the Government of Sindh from giving effect to the impugned notice. Subsequently, when the KBCA withdrew its approval to the building plan of the theatre on the ground that NAPA had not provided an NOC from the 'heritage department', that was challenged by NAPA before a Division Bench of this Court *vide* C.P. No. D-6/2009, which was allowed by order dated 08-05-2014 by quashing KBCA's withdrawal notice and by directing the KBCA to provide NAPA an opportunity of a hearing before taking any action. It was observed by the Division Bench that such order would not have any bearing on this Suit which shall be decided on its own merits. Per learned counsel for the Plaintiffs, the KBCA did not take any subsequent action.

8. The Defendant No.2 claims to be a Hindu welfare society, and before it had intervened in this Suit, the Defendant No.2 had filed C.P. No. D-2267/2007 to challenge NAPA's occupation of the Hindu Gymkhana. While its joinder application was pending in this Suit, C.P. No. D-2267/2007 filed by the Defendant No.2 was dismissed on the ground that the petition involved disputed questions of fact. The Defendant No.2 assailed the said dismissal before the Supreme Court of Pakistan *vide* CPLA No. 20-K/2014, and on 27-02-2014 the Supreme Court granted leave to appeal in the following terms:

“Having heard learned counsel for the parties, we are persuaded to grant leave to appeal in Civil Petition No.20-K/2014 to consider whether the Hindu Gymkhana which admittedly is evacuee property could have been given on lease to NAPA; whether NAPA could have been used and defaced in the manner it has been alleged; whether the act of the Government of Sindh of granting lease to NAPA is violative of the fundamental rights provision of the Constitution and whether the impugned order is sustainable in law? Since some of the issues raised in this petition may be *sub-judice* before the High Court in Writ Petition No.06/2009 and Civil Suit No.1646/2008 and as the matter is pending decision in the High Court of Sindh since long, we are persuaded to direct the High Court of Sindh to decide both the cases preferably within a month of the receipt of this order. Office shall transmit a copy of this order to the Hon’ble Chief Justice of the High Court of Sindh for information.”

9. *Vide* order dated 10-11-2014, the Defendant No.2 was made party to this Suit. That joinder was appealed by NAPA *vide* HCA No. 332/2014. Pending appeal, proceedings in this Suit remained stayed. HCA No. 332/2014 was eventually dismissed on 10-10-2018. (Written statement had been filed by the Defendant No.2 on 03-10-2019 after the matter had been reserved for orders).

10. Mr. Najeeb Jamali, learned counsel for the Plaintiffs submitted that it was obvious that NAPA had started construction of the theatre with the consent of the Government of Sindh (Defendant No.1) as the Secretary Culture, Government of Sindh was a Board-member of NAPA who was part of the decision-making process in that regard, and he had facilitated NAPA in obtaining KBCA’s approval to the theatre’s building plan, otherwise the KBCA would not have approved the building plan at a time when the Subject Agreement had yet to be granted to NAPA. Learned counsel submitted that the Subject Agreement had in fact been executed to enable NAPA to construct the theatre; that the theatre was being constructed at a distance of about 87 feet from the building of the Hindu Gymkhana and did not endanger it, nor does the impugned notice make such allegation; that the Subject Agreement had only restricted alteration of the old Hindu Gymkhana building; that no such alteration was made nor did the impugned notice make such allegation; that the NAPA had in fact restored the old Hindu Gymkhana building to its

original glory and is maintaining the same; therefore it was absurd to allege that NAPA committed breach of the Subject Agreement or that it violated the Heritage Act. Learned counsel submitted that the impugned notice was *malafide* as it had been issued for political considerations after the change in Government; that the impugned notice had jeopardized the training of NAPA's students and an investment of Rs.120 million expended by NAPA on the construction and equipment of the theatre which was funded by Government grants and donations by private persons.

11. On behalf of the Government of Sindh (Defendant No.1), the learned Additional Advocate General submitted that the NAPA was required to obtain the approval of the Culture Department, Government of Sindh and that of the Advisory Committee constituted under the Heritage Act before raising any construction on the land of the Hindu Gymkhana, thus NAPA committed breach of the Subject Agreement and violated the Heritage Act; hence the impugned notice.

12. Mr. Mukesh Kumar Karara, learned counsel for the Defendant No.2 submitted that the land of the Hindu Gymkhana had been granted in the year 1921 for cultural and religious festivals of Hindus; that the Hindu Gymkhana building was constructed by the Hindu community for the Hindu community, and therefore it should be restored to them for their cultural and religious festivals; and that depriving the Hindu community from the Hindu Gymkhana was an infringement of their Fundamental Rights. Learned counsel further submitted that there still exists the remnant of a Hindu temple on the land of the Hindu Gymkhana which goes to show that the place was used for Hindu worship as well. Though he acknowledged that the theatre was constructed by NAPA at some distance from the old Hindu Gymkhana building, he submitted that the land surrounding and including the old Hindu Gymkhana building was one composite property which was protected heritage; therefore any construction within such property, unless permitted by the Advisory Committee

constituted under the Heritage Act, was unlawful. Learned counsel submitted that the Subject Agreement was an unregistered document and therefore it did not convey any interest to NAPA in immovable property. He submitted that the Defendant No.2 was before the Court not only in the interest of Hindu minority rights but also as a whistle blower of the unlawful agreement between the Government of Sindh and NAPA.

13. In rebuttal, Mr. Najeeb Jamali, learned counsel for the Plaintiffs submitted that under section 90(d) of the Registration Act, 1908 a lease executed by the Government does not require registration; that when the Government of Sindh was on board with the construction of the theatre, the NOC of the Advisory Committee was not required; that the Hindu Gymkhana was never confined to the use of the Hindu Community alone; and that the academy of NAPA is open to all communities including Hindus.

14. Heard the learned counsel and perused the record.

As per the extract of the Property Register of Karachi District, it appears that land measuring 39,178 square yards (Sheet No.RB-1, Survey No.5) was granted by the Municipality to the "Hindu Gymkhana Association" on 01-03-1921. In 1948 it was leased to the Muslim Gymkhana for 5 years. Thereafter, as per the Gazette of Pakistan dated 15-07-1963, the Hindu Gymkhana was treated as an 'Evacuee Public Trust' and claims were invited against such property by the Evacuee Trust Committee, presumably under the erstwhile Pakistan (Administration of Evacuee Property) Act¹, 1957. On 25-01-1975, the Evacuee Trust Properties (Management and Disposal Act, 1975 was published where under ownership of all evacuee trust properties vested in the Federal Government and the general supervision and control thereof vested in the Evacuee Trust Property Board. But then the above mentioned property extract shows that in 1978, by order of the Settlement Commissioner, an area of 27,346

¹ The Pakistan (Administration of Evacuee Property) Act, 1957 was repealed on 28-01-1975 by the Evacuee Property and Displaced Persons Laws (Repeal) Act, 1975.

square yards (not including the old Hindu Gymkhana building) was given to the Police Department, and an area of 6,700 square yards, including the old Hindu Gymkhana building, was given to the Federal Public Service Commission for its office. In the same year, 1978, an area of 4,164 square yards was sold to Aligarh Muslim University Old Boys Association, and in 1987 an area of 416 square yards was transferred to one Abdul Majeed Khan under a P.T.D. The transfers by the Settlement Commissioner go to suggest that it may well be that the Hindu Gymkhana was not eventually declared 'evacuee trust property' and remained only 'evacuee property'. But then these questions can only be decided after evidence. In the meanwhile, suffice to observe that thus far the record does not show that post-partition the Hindu Gymkhana was ever devoted as an amenity for the Hindu community and therefore the opposition to the temporary injunction on the ground that the Hindu Gymkhana was an amenity for the Hindu Community has no luster at this preliminary stage of the Suit.

15. Per the written statement of the Government of Sindh, the part of the Hindu Gymkhana with the Federal Public Service Commission (6,700 square yards) was vacated after the latter's office moved to Islamabad; that part then came to the PWD; and then pursuant to a directive of the Prime Minister given in 1989, the old Hindu Gymkhana building along with whatever land remained with it, was transferred to the Department of Culture, Government of Sindh. While a letter dated 11-07-1989 addressed by the Educational Adviser to the Secretary Department of Culture is on the record which mentions the 'transfer' of the Hindu Gymkhana to the Culture Department, Government of Sindh, the record thus far does not show the instrumentality by which such transfer was made by the Federal Government to the Government of Sindh. However, since all of that can only be determined after evidence, for the limited purpose of deciding the listed application, I presume that the transfer of the Hindu Gymkhana to the Government of Sindh was lawful and at the time of the Subject Agreement it was the property of the Government of Sindh.

16. It is not the case of the Government of Sindh that the Subject Agreement was confined to the use of the old Hindu Gymkhana building. Though the Subject Agreement is silent whether construction could be raised on the land surrounding the said building, the letter dated 25-08-2005 written by NAPA to Secretary Culture enclosing the architectural drawing of the proposed theatre on that land supports Mr. Jamali's contention that the Government of Sindh, who was the owner/lessor of the Hindu Gymkhana, had in fact facilitated the approval of the theatre's building plan otherwise the KBCA would not have issued its approval to NAPA at a time when the Subject Agreement was not in existence. Further, the minutes of the meeting of NAPA's Board dated 25-05-2006 and 09-12-2006 show that the Secretary Culture, Government of Sindh, who was on the Board of NAPA, had participated in the meetings whilst the theatre was being constructed and its progress was being discussed from time to time. However, that brings into examination the questions whether the raising of such construction was otherwise restricted by the Heritage Act, and what was the role of the Advisory Committee in that regard, for it was contended by the learned AAG Sindh and Mr. Mukesh Kumar Advocate that under the Heritage Act the prior approval of the Advisory Committee was mandatory even for constructing on the surrounding land of the protected heritage.

17. The Advisory Committee is constituted by the Government under section 3 of the Heritage Act to include architectural historians, archaeologists, heritage conservators and scholars of traditional arts and crafts. Sections 7, 8, 10 and 13 of the Heritage Act which are central to the scheme of the Heritage Act and to the questions above, are as follows:

- "7. Acquisition of right in or guardianship of a protected heritage of the Government.**—(1) The Committee with the sanction of the Government, may purchase or assume custodianship of any protected heritage.
- (2) The Committee may accept the gift or bequest of any protected heritage.
- (3) The owner of any protected heritage may, by written instrument, appoint the Committee as the guardian of the protected heritage,

and the Committee may, with the sanction of Government, accept such guardianship.

(4) When the committee has accepted the guardianship of protected heritage under subsection (3), the owner shall except as expressly provided in this Act, have the same status, right, title and interest in the protected heritage or object as if the Committee had not been appointed guardian thereof.

(5) When the Committee has accepted the guardianship of a protected heritage under subsection (3), the provisions of this Act relating to agreement executed under section 8 shall apply to the written instrument executed under the said subsection."

8. Preservation of protected heritage.--(1) The Committee may, with the previous sanction of Government propose to the owner to enter into an agreement with Government for the preservation of any protected heritage.

(2) An agreement under this section may provide for the following matters or for such of them as it may be found expedient to include in the agreement---

- (a) the maintenance and custody of the protected heritage and the duties of any person who may be employed to watch it;
- (b) the restriction of the owner's right to destroy, remove, alter or deface the protected heritage;
- (c) the facilities of access to the public or to any portion of the public and to persons deputed by the Committee to inspect or maintain the protected heritage;
- (d) the notice to be given to Government in case the land on which the protected heritage is situated is offered for sale by the owner, and the right to reserve by Government to purchase such heritage, or any specified portion of such heritage, at its market value;
- (e) the payment of any expenses incurred by the owner or Government in connection with the preservation of the protected heritage; and
- (f) any matter connected with the preservation of the protected heritage which is a subject of agreement between the owner and Government.

(3) The terms of any agreement under this section may be altered from time to time with sanction of Government.

(4) Either party may terminate an agreement under this section on giving three months' notice in writing to the other party.

(5) An agreement under this section shall be binding on any person claiming to be owner of the protected heritage to which it relates through or under party by whom or on whose behalf the agreement was executed.

(6)"

~~"10--~~(1) If it is apprehended that any person intends to destroy, remove, alter, deface or imperil the protected heritage or to build on or near the site thereof in contravention of the terms of an agreement

for its preservation under section 8, the Committee may make an order prohibiting any such contraventions.

(2)

(3)"

"13. Maintenance of protected heritage.-- The Committee shall maintain and preserve every protected heritage in respect of which Government has acquired any of the rights mentioned in section 7 or which the Government has acquired under section 12."

18. It will be seen that section 7 of the Heritage Act contemplates two roles of the Advisory Committee thereunder; one of 'custodianship' of the protected heritage; and the other of 'guardianship'. It appears that, 'custodianship' is where legal possession of the protected heritage is given to the Advisory Committee under sub-sections (1) and (2); and 'guardianship' is where the owner of the protected heritage retains its legal possession but appoints the Advisory Committee as guardian thereof by a written instrument under sub-section (3).

19. 'Government' and 'owner' are defined separately by section 2 of the Heritage Act and are used distinctly in sections 7 and 8 of the said Act to refer to separate persons. In other words, where sections 7 and 8 refer to the 'owner' of a protected heritage, that is a reference to a private owner of protected heritage as distinct from a protected heritage that vests in the Government. Thus, the agreement for guardianship of a protected heritage envisaged under section 7(3) to 7(6) of the Heritage Act to which the Advisory Committee is party; and the agreement for the preservation of a protected heritage envisaged under section 8 of the Heritage Act to which the Government is party, both are with regards to protected heritage owned by a person not the Government and both are agreements with the private owner of a protected heritage.

20. Under the scheme of the Heritage Act, the functions and powers of the Advisory Committee and the Government to exercise control over privately-owned protected heritage are conditioned. The power of the Advisory Committee under section 10 of the Heritage

Act with regards to the preservation of a protected heritage is only in respect of a privately-owned protected heritage and is dependent on a prior agreement executed with the private owner under section 8 of the Act. Where a private owner of protected heritage does not agree to an agreement under section 7 or 8 of the Heritage Act, then the Advisory Committee may with the sanction of the Government offer to purchase the protected heritage under section 7(1) of the Heritage Act; or the Government may acquire the protected heritage under section 12 of the Heritage Act.

21. Since the Hindu Gymkhana is a Government-owned protected heritage and the Subject Agreement is not with any private-owner of protected heritage under sections 7(3) to 7(5) or section 8 of the Heritage Act, the role of the Advisory Committee envisaged under the said provisions is also not attracted. For the same reason the power of the Advisory Committee to pass a prohibitory order under section 10 of the Heritage Act, which as stated above is dependent on an agreement with the private owner under section 8 of the Act, is also not attracted.

22. The role of the Advisory Committee with regards to Government-owned protected heritage comes under section 7(1) of the Heritage Act where the Advisory Committee “with the sanction of the Government” may assume custodianship of any protected heritage (of Government); and under section 13 of the Heritage Act which mandates the Advisory Committee to maintain and preserve every protected heritage “in respect of which Government has acquired any of the rights mentioned in section 7 or which the Government has acquired under section 12.” But the record does not show that the Government sanctioned ‘custodianship’ of the Hindu Gymkhana to the Advisory Committee under section 7(1) of the Heritage Act; nor does the criteria of section 13 of the Heritage Act seems to be met by the Hindu Gymkhana which is not a property in which the Government acquired rights under section 7, or a property acquired by the Government under section 12 of the Heritage Act.

23. Thus, have seen that the provisions of sections 7, 8, 10 and 13 of the Heritage Act are not attracted to the circumstances of the case, *prima facie* it cannot be said that construction of a theatre by NAPA on the land granted to it was prohibited by the Heritage Act, or that the said Act required NAPA to obtain the approval of the Advisory Committee before raising such construction. I may clarify here that this observation is with regards to the Heritage Act only, and is not to come in the way of any other law that imposes restrictions on the raising of said construction.

24. I now turn to clause 3 of the Subject Agreement, reproduced in para 5 above, which was referred to by learned counsel for the Defendants, *albeit* meekly, to contend that there was a breach of the Subject Agreement by NAPA. Clause 3 of the Subject Agreement is unambiguous. It is only when NAPA intends to make alterations in the 'original structure of the building' viz. the old Hindu Gymkhana building, is it required to obtain the permission of the Advisory Committee. However, the impugned notice does not allege that NAPA had made any alterations to the old Hindu Gymkhana building. That has never been the case of the Government of Sindh. Thus, the question of breach of clause 3 of the Subject Agreement does not arise.

25. While Mr. Mukesh Kumar Karara had cited section 107 of the Transfer of Property Act, 1882 to submit that the Subject Agreement did not operate as a lease as it was an unregistered document, and while Mr. Najeeb Jamali had relied on section 90(1)(d) of the Registration Act, 1908 to submit that the Subject Agreement by the Government was exempt from registration, but that is where they had stopped. The learned Advocate General Sindh too did not take any stance on the nature of the Subject Agreement. Though under section 107 of the Transfer of Property Act, 1882 "a lease of immoveable property from year to year, or for any term exceeding one year, or reserving a yearly rent, can be made only by a registered instrument", and under section 17(1)(d) of the Registration Act, 1908 such a lease is

required to be registered compulsorily, but then other questions that necessarily arise are whether the Subject Agreement was a lease under the Transfer of Property Act, 1882 ? or whether it was a grant or an interest granted in land covered under the Government Grants Act, 1895 to which the provisions of the Transfer of Property Act, 1882 and the Registration Act, 1908 do not apply ? or whether it was merely a license under the Easements Act, 1882 ? None of the said questions were adverted to by any of the learned counsel. Therefore, and since this order is concerned only with an application for temporary injunction, I leave those questions for the ultimate analysis of the case.

26. As discussed above, learned counsel for the Plaintiffs has been able to demonstrate *prima facie* that the NAPA did not commit breach of the Subject Agreement nor did it violate the Heritage Act by constructing a theatre on the land granted to it. In fact, it appears that the Government of Sindh as the owner of the said land had acquiesced in such construction and had led NAPA to believe that it was investing in the land of the Hindu Gymkhana for the tenure of the Subject Agreement. Apparently, the structure of the theater is at some distance from the old Hindu Gymkhana building, per the Plaintiffs at a distance of approximately 87 feet, and the impugned notice does not allege that said construction caused any damage to the old Hindu Gymkhana building. The NAPA does not appear to be an organization for profit and the grant/lease of the Hindu Gymkhana to NAPA was admittedly for the public purpose of promoting the arts and culture of Pakistan and in the public interest of show-casing the performing arts for all communities alike. As regards the special interest of the Hindu community in the use of the Hindu Gymkhana for their cultural and social purposes, pending final determination of the Suit I do not see why that interest cannot be addressed by the Government of Sindh under clause 6 of the Subject Agreement which provides that "*NAPA shall allow Government to use the demised premises free of charge subject to the approval of Chairman/CEO of NAPA for events of the Sindh Government relating to Culture and Arts*". Thus, NAPA has a *prima facie* case for the grant of a temporary

injunction; the balance of convenience is in its favor and its students; and unless the injunction is allowed, the harm to NAPA and its students would be irreparable.

27. For the foregoing reasons CMA No. 11475 of 2008 is allowed in terms that pending suit the impugned termination notice dated 13-09-2008 shall remain suspended. This order is of course subject to any order that may be passed by the Supreme Court of Pakistan with regards to the Hindu Gymkhana in related proceedings pending before it. Needless to state that the observations hereinabove are tentative and shall not prejudice the case of either party at trial.

JUDGE

Karachi
Dated: 23-12-2019