

IN THE HIGH COURT OF SINDH AT KARACHI

Suit No. Nil of 2021 (-758)

[Mian Nasser Hyatt Maggo *versus* Federation of Pakistan and others]

Dates of hearing	:	<u>14.04.2021, 23.04.2021 and 27.04.2021.</u>
Plaintiff	:	Mian Nasser Hyatt Maggo, through M/s. Salauddin Ahmed and Basim Raza, Advocates.
Defendants No.1-3	:	Federation of Pakistan and 2 others, through Mr. Irfan Ahmed Memon, Deputy Attorney General for Pakistan along with Mr. Muhammad Arifullah, Director General, Trade Organization.
Defendants No. 4 & 5	:	M/s. Khalid Tawab and Muhammad Hanif Gohar, through M/s. Khalid Javed, Munawar Juna and Farkhanda Shaheen, Advocates.
Defendant No.6	:	The Federation of Pakistan Chamber of Commerce & Industry, through M/s. Ahmed Ali Hussain and Aman Aftab, Advocates.
Defendant No.7	:	Election Commission of the Federation of Pakistan Chamber of Commerce & Industry – 2021, through Mr. Asad Khan, Advocate.
Defendant No.8	:	Nemo
Defendant No.9	:	Nemo

Case law relied upon by Plaintiff's Counsel

1. **1998 M L D page-1302,**
[*Mehboob Ali and another versus Fazal Yousaf Sidiq and others*] – *Mehboob Ali Case*;
2. **2014 C L C page-216,**
[*Malik Allah Bakhsh versus District Judge, Rajanpur and 2 others*] – *Malik Case*;
3. **P L D 1997 Supreme Court page-3,**
[*Abbasia Cooperative Bank (Now Punjab Provincial Cooperative Bank Ltd.) through Manager and another versus Hakeem Hafiz Muhammad Ghaus and 5 others*] – *Abbasia Case*.

Case law relied upon by Counsel for Defendnats No.4 and 5

1. **2007 S C M R page-741,**
[*Raja Ali Shah versus Messrs Essem Hotel Limited and others*];

2. **2002 S C M R page-338,**
[*S. M. Shafi Ahmad Zaidi through Legal Heirs versus Malik Hassan Ali Khan (Momin) through Legal Heirs*];
3. **2003 C L D page-1185,**
[*M. Waqar Monnoo, Member, Central Managing Committee versus All Pakistan Textile Mills Association through C.E.O. and 3 others*] – **Waqar Monoo Case**;
4. **2001 C L C page-1966,**
[*Messrs Al-Riaz Agencies versus Chambers of Commerce and Industries, Karachi and others*] – **Al-Riaz Agencies Case**;
5. Unreported Supreme Court Judgment dated 18.05.1986 passed in Civil Appeal No.13-K of 1986
[*Abdul Razzak Rajwani versus M/s M.Y. Industries and others*] – **Rajwani Case**;
6. **P L D 1990 Karachi page-335,**
[*Messrs Mumtaz Steel Corporation (Pvt.) Ltd. through Managing Director and 4 others versus Pakistan Steel Rolling Mills Association (Karachi Circle) through Secretary and 5 others*];
7. **1992 M L D page-651,**
[*Siddiq and another versus Chamber of Commerce and Industries, Karachi and another*];
8. Unreported Judgment dated 07.12.2020 passed in C. P. No. D – 314 of 2020 passed by High Court _____
[*Muhammad Hanif Gohar versus Federation of Pakistan and others*];
9. Unreported Order dated 16.12.2020 passed by Sindh High Court in C. P. No. D – 5682 of 2020
[*Asim Ghani Usman versus Federation of Pakistan and others*];
10. **P L D 1974 Supreme Court page-151,**
[*The Federation of Pakistan through the Secretary, Establishment Division, government of Pakistan Rawalpindi versus Saeed Ahmad Khan and others*]; and
11. **P L D 1994 Supreme Court page-738,**
[*Pir Sabir Shah versus Federation of Pakistan and others*]

Case law relied upon by Defendant No.6's Counsel

1. **2018 S C M R page-1444,**
[*Searle IV Solution (Pvt.) Ltd. and others versus Federation of Pakistan and others*].

Case law relied upon by Deputy Attorney General for Pakistan

1. **2020 C L D page-251,**
[*Ms. Saba Gul versus Government of Pakistan through Secretary Commerce and 3 others*].

Other precedents

1. **2012 S C M R page-730,**
[*Administrator, Thal Development through EACO Bhakkar and others versus Ali Muhammad*] – **Thal Case**;

2. **2009 S C M R page-1392,**
[*Securities and Exchange Commission of Pakistan versus Mian Nisar Elahi and others*]; and
3. **2019 P T D page-1387,**
[*Dewan Steel Mills through Authorized Representative and others versus Federation of Pakistan through Secretary, Ministry of Commerce, Islamabad and others*] – ***Dewan Steel Mills Case.***

- Law under discussion:**
1. Constitution of the Islamic Republic of Pakistan, 1973.
 2. The Trade Organizations Act, 2013.
 3. The Trade Organizations Rules, 2013.
 4. The Code of Civil Procedure, 1908.

ORDER

Muhammad Faisal Kamal Alam, J.:- By this Order, an application [C.M.A. No.6180 of 2021] filed under Order VII Rule 11 of Civil Procedure Code, 1908 (“CPC”) by Defendants No. 4 and 5 (for the sake of reference only, can be referred to as the “Complainants”), is decided.

2. Present *Lis* is in respect of Annual Elections held in the Defendant No.6 – the Federation of Pakistan Chamber of Commerce and Industry (“FPCCI”) to elect President and Office Bearers of Defendant No.6 – FPCCI for the year 2021. Dispute arose on the election result for the post of President, which was contested by Plaintiff and Defendant No.4 and consequently a complaint was filed by Defendants No.4 and 5 (Complainants) before Defendant No.1(ii) – Director General of Trade Organization (DGTO) against Defendant No.6 – FPCCI, Defendant No.7 – Election Commission of FPCCI and present Plaintiff. Complaint is at page-177, Annexure 'D' of the plaint.

3. It is prayed by present Plaintiff that Defendant No.2 while exercising his quasi judicial jurisdiction in the proceeding relating to said complaint,

has acted in a bias manner, which is also violative of Article 10A of the Constitution of Islamic Republic of Pakistan, 1973 (the “**Constitution**”), Defendant No.1, under Section 13(3) of the Trade Organization Act, 2013 (the “**TO Act**”), can appoint any other Officer to act as Regulator and decide the complaint, or in the alternate Defendants No.1 – Federation of Pakistan, under Section 23 of the TO Act take over the mandate of Defendant No.2 to adjudicate the complaint.

4. Mr. Khalid Javed, Advocate, representing Defendants No.4 and 5, has argued that present suit is not maintainable and the plaint is barred by law, because when the entire mechanism is provided for adjudication of election dispute, which is *sub judice* before Defendant No.2 (Riaz Ahmed, Regulator of Trade Organization) functioning under Defendant No.1, thus the present proceeding is an attempt to circumvent the proceeding before the above Regulator. Under Section 13 of the TO Act, an Officer is appointed as a Regulator to perform functions of Regulator of Trade Organizations under the said statute. The legal team of Defendants No 4 and 5 contended that the said Regulator appointed under Section 13 of the TO Act, is empowered under sub-section 3(f) of Section 14, to annul the results of any election held by Trade Organization, on the grounds mentioned in the statutory provision itself, against which an Appeal lies in terms of section 21(2) of TO Act before the Federal Government within 14 days of decision, which can be further challenged before a High Court. It is contended that all the grounds mentioned in the plaint with regard to the conduct of Regulator – Defendant No.2, can be taken by any of the parties to the present proceeding, if an Appeal is filed before this Court as provided in the above TO Act, and, therefore, the present suit is not maintainable. Further contended that the above provision of the TO Act also empowers the Appellant Authority to suspend the operation of execution of decision,

which means, that even present Defendants No.4 and 5 being complainants are successful, the present Plaintiff has the adequate and proper remedy. Argued that under Section 30 and 32 of the TO Act, no suit or other proceeding can be filed against a person, who is acting in good faith in terms of the TO Act and, the said Law has an overriding effect on other laws, thus present suit is barred by the above provisions of the statute. In support of his arguments, he has cited the case law mentioned in the opening part of this order.

5. Mr. Salahuddin Ahmed, Advocate along with Mr. Basim Raza, Advocate, representing Plaintiff, has argued in favour of the maintainability of present suit and stated that alternate remedy rule is not applicable to suit proceeding, which are filed under Section 9 of CPC, which has a much wider scope than envisaged in Article 199 of the Constitution. Contended that since present election dispute is also related to Defendant No.6 - FPCCI, hence the present *lis* is filed, besides, calling in question the conduct of Defendant No.2 showing his biasness while adjudicating the complaint before him. The legal team of Plaintiff has also drawn a comparison between the erstwhile Trade Organizations Ordinance, 1961 (“**Old Law**”) and the TO Act, in support of their arguments. Contended that earlier under Section 16 of the Old Law, an Appeal was provided with almost same powers to the Appellant Authority, which is now mentioned in Section 21 of the TO Act. Similarly, under Section 12 of the Old Law, there was a specific bar in the statute for filing a proceeding, including for the matters relating to Election dispute, which is not mentioned in the present TO Act; rather, Section 18 specifically permits filing of a suit or proceeding in a High Court, while prohibiting filing of suit or any other legal proceeding before some other fora. It is argued on behalf of Plaintiff, that all the decisions relied upon by the Legal Team of Defendants No.4 and 5,

are not applicable to the facts of present case, as those decisions have been given concerning the provisions of Old Law, *particularly*, Section 12 thereof, in which bar to the suit is specifically mentioned, *whereas*, under present Section 18 of the TO Act, permission to file a suit in this Court is expressly provided. He has also referred to Section 16 of the Sindh Building Control Ordinance, 1979 (“SBCO”), which was not given effect in number of cases and particularly in the case of Mehboob Ali (*spra* – 1998 M L D page-1302 (Karachi)). He has referred to paragraphs-3, 6, 7, 12, 15.1, 16 and 18(c) of the plaint, primarily dealing with the issue of biasness of Defendants No.2 and 3. It is stated that a questionnaire was sent to Defendant No.6 – FPCCI (*available at page-837 of Court file*) and only a day was given to answer such questions, which is practically not possible, but only evidence of prejudice mind of the said Defendant No.2 (Regulator). Similarly, the interim orders dated 10.03.2021 (*at page-45 of the Court file*), for seeking consent of the parties for scrutiny of record of ballots, is an illegal exercise of jurisdiction by the said Defendant No.2, as he has no such power. To augment his arguments, learned counsel for Plaintiff has relied upon the case law mentioned above. On 30.04.2021, learned counsel for the Plaintiff has also submitted his written synopsis, which will be part of record.

6. Mr. Ahmed Ali Hussain, Advocate representing Defendant No.6, while supporting the arguments of Plaintiff’s counsel, has submitted compendium of case law, *primarily*, relating to the original jurisdiction of this Court vis-à-vis ouster clause in statute, which cannot be treated as an absolute bar, *inter alia*, in view of Section 9 of the CPC, conferring a Civil Court with plenary jurisdiction to decide the matters. Learned counsel for Defendant – FPCCI has referred to relevant paragraph of the Supreme Court Judgment handed down in famous *Searle* Case – 2018 S C M R page-

1444, to support his arguments that original jurisdiction of this Court is basically derived from Section 14 of Sindh Courts Act, 1926, and cannot be equated with that of original jurisdiction of original Court, because, Sindh Bench of this Court (Sindh High Court) is a High Court established under the Constitution and not a District Court. consequently, Section 217 of the Customs Act, 1969, which bars the legal proceeding and is ouster clause, was held, will not bar the suits filed in this Court but only bars cognizance of suit filed under civil jurisdiction exercised by Civil Courts.

7. Mr. Asad Khan, Advocate representing Defendant No.7 – Election Commission of the above Election for Defendant No.6, besides, supporting the arguments of learned counsel for the Plaintiff has contended that Defendant No.2 acted illegally, with *mala fide* and hence the present suit is maintainable. He has referred to page-203 of the Court file to show that Defendant No.7 (Election Commission) was duly notified in terms of Rules 16 and 17 of the Trade Organization Rules, 2013 (the “**Said Rules**”). That Defendant No.2 being Regulator can only exercise powers mentioned in the TO Act and the Said Rules, *particularly*, under Section 14 of the TO Act. That Defendant No.2 is a forum of Appeal against decisions of any person, committee or office bearers before the conduct of Elections. Learned counsel has cited instances to demonstrate that Defendant No.2 acted illegally, for instance issuance of questionnaire (also referred by Plaintiff’s Advocate), which is at page-837, to Defendant No.7 (Election Commission) containing a long list of queries and only one day was given to reply the same, which is practically not possible. Thus, questionnaire was not required as Rule 18 of the Said Rules deals with the subject. The afore-referred order of Regulator (Defendant No.2) for scrutiny of ballots is also violative of Rule 19 of the Said Rules, because, there is no such provision mentioned either in the TO Act or the Said Rules.

8. Arguments heard and record perused.

9. It is necessary first to analyze contents of plaint containing allegations against official Defendants and particularly Defendant No.2, who is adjudicating the complaint filed by private Defendants-Complainants, because main grievance of Plaintiff, Defendants No.6 and 7, is that Defendant No.2 has not exercised his jurisdiction in a fair, just and equitable manner, and the element of his biasness and mala fide can be seen from the record. This is necessary to assess the applicability of case law cited by Plaintiff, Defendants No.6 and 7, as against relied upon by counsel for Defendants No.4 and 5 (Complainants).

10. The legal team of Plaintiff has referred to Paragraphs-3, 6, 7, 12, 15.1, 16, 18(c), 19 and 20 of the plaint. Paragraph-3, *inter alia*, states the legal grounds that conduct of Defendant Regulator is violation of due process and fair trial guaranteed under Article 10A of the Constitution. Paragraph-6 states that when copy of the complaint was provided by official Defendants to the Secretary General of the Defendant No.6 (FPPCI) via email dated 05.01.2021 and letter of same date, the same was incomplete and eligible and upon the request of Secretary General of Defendant No.6, time to file reply thereto was extended till 15.01.2021, but legible copies and complete set of complaint with annexures was not provided in the intervening period and request to further extend the time was not responded. Paragraph-7 (of the plaint) states that Plaintiff and Defendant No.7 (Election Commission) filed their respective Written Statements on 15.01.2021 in spite of the fact that complete set of complaint and annexures were not provided and the same were obtained by the contestants (Plaintiff, Defendants No. 6 and 7), themselves. In the present *Lis* copies of the Written Statements have been made part of the record as Annexures "F-1" to "F-3". Paragraph-12 avers that during proceeding

before official Defendants (Defendant No.2) – Secretary General of Pak Afghan Joint Chamber of Commerce and Industry (Defendant No.8) claimed copy of the complaint and requested for time to file reply, which was verbally allowed while directing the counsel for Complainant (present Defendants No.4 and 5) to proceed with the matter, but same was objected to by Advocates for present Plaintiff and Defendant No.7 (Election Commission), as they wanted to read the reply to be filed by above Defendant No.8 (Pak Afghan Chamber of Commerce and Industry), *inter alia*, because the eligibility of said Defendant No.8 was objected to by the Complainants (Defendants No.4 and 5). This request was not accepted by Defendant No.2 and counsel of Complainant (present Defendants No.4 and 5) and Defendant No.7 had to conclude their respective arguments on 24.02.2021, and counsel for present Plaintiff partly argued the matter.

Paragraphs-15.1 and 16 have questioned the authority of Defendant No.2 for sending letter dated 08.03.2021, which is in a form of a questionnaire to Defendant No.7 (Election Commission) and sought answer on the next day, that is, 09.03.2021. It is stated in the plaint that this act itself is an evidence of biasness on the part of Defendant No.2. Further averred that Defendant No.2 has made a disclosure before the parties, who appeared before him on 09.03.2021, that the said Defendant No.2 has received instructions from the 'upper echelons' of Defendant No.1 to decide the matter.

Paragraph-18(c) again is a complaint against the said correspondence of 08.03.2021 (**the Questionnaire**). It is further argued that the order of Defendant No.2 dated 10.03.2021 (*at page-845*) for further security of ballots, for which he sought a written consent to scrutinize the record, is completely alien to the relevant statute and the aforesaid Rules 2013. It is stated that Rule 18, relating to election procedure, has been violated.

Whereas, Paragraphs-19 and 20 of the plaint are read to highlight that official Defendant No.3 (Director of DGTO) is also not acting independently but at the behest of Defendant – DGTO (Defendant No.1[ii]); that constitution of an Inquiry Committee on 15.03.2021 (*Annexure 'Q/1' of the plaint, page-847*) and issuance of notice for inquiry of the ballot papers on the proposed date, that is, on 19.03.2021 at 9.30 a.m., shows that official Defendants are acting with a pre-determined mind and will fulfill the agenda of present Defendants No.4 and 5 by conducting a sham inquiry.

11. Summary of the case law relied upon by Advocates for Defendants No.4 and 5 (Complainants) is_

Court is not only empowered but under obligation to reject the plaint even without any application from a party, if the same is hit by any of the clauses mentioned under Rule 11 of Order 7 of CPC; besides pleadings, other material available on record which on its own strength is legally sufficient to refute the claim of Plaintiff, can be looked into for the purpose of rejection of plaint; Section 12 of the Old Law (The Trade Organizations Ordinance, 1961) was discussed in the Waqar Monnoo case [*ibid*] and it was held that the said provision provides a complete mechanism in respect of elections and consequently the plaint was rejected. In this reported case this Court has deprecated the practice of members of a registered association / societies who instead of resolving the dispute through the appropriate procedure, resort to litigation. In Al-Riaz Agencies case (*supra*), plaint was rejected in view of erstwhile section 12 of the Old Law and reliance was placed on an unreported judgment of *Abdul Razak Rajawani versus M/S MY Industries*, handed down by the Honourable Supreme Court; it is held (in AL Riaz case) that even admitted documents produced in defence can be looked into for deciding a case under Order 7,

Rule 11 of CPC. In Rajwani case (*supra*) Honourable Supreme Court dismissed the suit, discharged the Receiver and held that since Trade Organizations Ordinance, 1961, provides a complete remedy for regulation and control of a trade organisation, including complaints about mismanagement, hence, suit was held to be barred under provisions of section 12 of the Old Law read with section 9 of CPC, while order of the High Court was also set aside. It would be advantageous to reproduce the observation of the Apex Court_

“It may be observed that any interference with the affairs of an elected body through court proceedings is undesirable. The suit, therefore, merits to be dismissed and the receiver discharge so that status quo auntie Ltd at the general body meeting be convened.....”

12. Précis of the case law cited by Plaintiff’s legal team is as follows_

It is a well settled principle of interpretation that provision contained in statute ousting the jurisdictions of Court of general jurisdiction is to be construed very strictly; Sections 16 and 20 of SBCO do not provide an express bar of jurisdiction and this Court has plenary jurisdiction to entertain all suits of civil nature; however, while dismissing the injunction of plaintiff (of the reported case – Mehboob Ali, *supra*), plaintiff was directed to approach before the Committee of the then Karachi Building Control Authority for determining that whether building in question could be declared dangerous or not. In Malik Case [*ibid* – 2014 C L C page-216 (Lahore)], Section 29 of the Punjab Office of the Ombudsman Act, 1997, was discussed in detail and it was held that averments of plaintiff has not challenged any order passed by the Provincial Ombudsman and thus suit was held to be maintainable, *inter alia*, on a settled rule, that civil courts are considered as courts of ultimate jurisdiction. Consequently, decision of subordinate court dismissing the application under Order VII Rule 11 of CPC was maintained by the learned Lahore High Court.

13. At this juncture, it would be relevant to reproduce the ratio of Abassia Case (*supra*) relied upon by the legal team of Plaintiff, *inter alia*, to evaluate the proceeding so far held before the official Defendants, which is challenged in the present *Lis_*

“ where the jurisdiction of the Civil Court to examine the validity of an action or an order of executive authority or a special tribunal is challenged on the ground of ouster of jurisdiction of the Civil Court, it must be shown (a) that the authority or the tribunal was validly constituted under the Act; (b) that the order passed or the action taken by the authority or tribunal was not mala fide; (c) that the order passed or action taken was such which could be passed or taken under the law which conferred exclusive jurisdiction on the authority or tribunal; and (d) that in passing the order or taking the action, the principles of natural justice were not violated. Unless all the conditions mentioned above are satisfied, the order or action of the authority or the tribunal would not be immune from being challenged before a Civil Court. as a necessary corollary, it follows that where the authority or the tribunal acts in violation of the provisions of the statutes which conferred jurisdiction on it or the action or order is in excess or lack of jurisdiction or mala fide or passed in violation of the principles of natural justice, such an order could be challenged before the Civil Court in spite of a provision in the statute barring the jurisdiction of Civil Court.”

14. The reported decision handed down in the case of Ms. Saba Gul – 2020 P L D page-251 (by learned Division Bench of Peshawar High Court) cited by learned D.A.G., is based on present TO Act. Through a writ petition, order of present Defendant No.7, was sought to be set aside. While interpreting present Section 21 of the Statute, relating to Appeal, learned Peshawar High Court is of the view that a specific forum is provided for redressal of grievance and thus the writ petition was dismissed.

Conclusion

15. The governing statute - TO Act and the Said Rules are considered. Defendant No.2 is appointed under Section 13, whereas, Section 14 mentions power and functions; sub-section 3 of Section 14 authorises the said Regulator / Defendant No.2 to conduct enquiries; under clause (e) of subsection 3 of Section 14, the said Defendant No.2 is to act as final forum of Appeals before the conduct of election. Whereas, under clause (f), the said Regulator has power, *inter alia*, to annul the result of any election

subject to the condition mentioned in the said provision. Section 15 empowers the Regulator **to search the premises and inspect any article, books of account, computer hardware and software, data recording devices or other documents**, besides, authority to impound. Section 21 is a provision for Appeal, sub-section whereof states that any person aggrieved by the final order or decision of Federal Government can prefer Appeal to the High Court. Under Section 23, the Federal Government [Defendant No.1] is permissible to carry out functions of a Regulator. Section 30 is an ouster clause, extending indemnity to person who is acting in pursuance of the TO Act or any rule or order made thereunder, from a legal proceeding. Section 32 is a non-obstante clause, making the TO Act a special statute.

Rules 13 to 19 relate to conduct of elections, including announcement of elections schedule, eligibility of voters, appointment of Election Commission and casting of votes, compilation of results and its announcement.

16. Complaint regarding the election has been filed before the official Defendants and the copy of the same (*as per Paragraph-6 of the plaint*) was sent to Defendant No.6 vide email dated 05.01.2021 and as per averment of Plaintiff though short time was given, but reply to the complaint was also filed by present Plaintiff and other Defendants. The impugned order for scrutiny of record of ballots was passed on 10.03.2021, that is, almost after three months of the filing of complaint and in between few hearings also took place.

17. Learned Advocates for Plaintiff and Defendants No.6 and 7 have failed to point out any specific provision either in the main Statute (TO Act) or the Said Rules, which prohibit the Defendant No.2 from scrutinizing the election material / record, including the ballots. Rules 18 and 19 as relied upon by Defendant No.7, relate to election procedure and

governs the election process from the stage of announcement of election schedule till announcement of election results. *Interestingly, sub-rule 15 of Rule 19* provides that record of the elections shall be open for inspection by Election Commission, upon an application by any of the candidates. Therefore, the arguments of Plaintiff and supporting arguments on behalf of Defendants No.6 and 7, about the illegality of the above order dated 10-3-2021, of Defendant No.2, regarding scrutiny of ballots, has no merits; conversely, since there is no express prohibition in the TO Act or the Said Rules, on the power of Defendant No.2 about inspection / scrutiny of election material / record, including ballots, therefore, this Sub-Rule 15 can be invoked by Defendant No.2. When an official, in the present case, Defendants No.2 and 3 are exercising their authority under a special statute, which sanctions such officials the power to search the premises, scrutinize the record including software data and impound them, coupled with the fact that Sub-Rule 15 of Rule 19 (*ibid*) makes a provision for inspection of election record in the presence of Election Commission, which in the present case is Defendant No.7, then it cannot be said, that Defendant No.2, which is deriving its authority from a special law, cannot scrutinize the election record / material in presence of contesting parties.

Similarly, the above impugned letters of 15.03.2021 and 16.03.2021 have also been perused; where under, **an Inquiry Committee** has been constituted by Defendant No.2 and information whereof is provided to Defendant No.6. It is clearly mentioned in Paragraph-3 of the missive of 15.03.2021, that scrutiny of record will be done in-camera and one member from each side of the contesting party shall be allowed to assist the Committee. Secretary of Defendant No.6 was called upon to make arrangements regarding security and fixation of cameras. Letter of following date [16-3-2021] reiterates this. The scrutiny proceeding was **to be held on 19.03.2021**, apparently at the premises of Defendant No.6 –

FPCCI (*as per correspondence of 16.03.2021*), but on that date, a restraining order was obtained from this Court. From the two correspondences, it is very much apparent that all the contesting parties are allowed to appear before the Inquiry Committee and the entire proceeding would be recorded (through cameras), hence apprehensions raised in this regard by Plaintiff, is of no significance.

Even if the Inquiry Committee does not carry out the task properly, the same can be challenged by any of the aggrieved parties in accordance with the mechanism provided in the TO Act.

18. Sending a **Questionnaire** (*as referred above*) and forming an Inquiry Committee to inspect the record in presence of the present parties, which would also be recorded and not acceding to the request of one of the Advocates for a date of hearing of his choice, cannot be termed as *mala fide* acts floating on the surface of record; nor learned counsel of Plaintiff, Defendants No.6 and 7, have successfully shown, at this stage of proceeding, that official Defendants and particularly Defendant No.2 is acting in a bias manner or his conduct is such, which justifies his disqualification from hearing the subject complaint. No provision(s) of the TO Act and the Said Rules have been violated. Interestingly, few questions mentioned in the said Questionnaire directly relate to the exercise of authority by Defendant No.7 in terms of the Said Rules.

The decision of Honourable Supreme Court handed down in the case of Saeed Khan (*supra* – P L D 1975 Supreme Court 151) is relevant, describing mala fide- that mere allegation is not enough, besides, ruling, rather reiterating that the presumption of regularity is attached to official acts, although such presumption is rebuttable. The above discussion leads to the conclusion that official Defendants No.2 and 3 have not acted illegally and the present conduct of Defendant No.2 is not tainted with *mala fide*.

19. With regard to the contentions rather apprehensions agitated on behalf of Plaintiff and supported by Defendants No.6 and 7, regarding the proceeding before Defendant No.2, it is suffice to state here, that any party aggrieved with the decision of Defendant No.2 can avail the remedy of Appeal, where all the issues can be re-opened and considered.

20. The arguments of legal team of Plaintiff and Defendant No.6 (FPCCI), that rule of adequate remedy does not apply to a suit proceeding, particularly when this Court is exercising its original jurisdiction being a Constitutional Court, and consequently, the ouster clause is to be narrowly (very strictly) interpreted, as held in number of judgments and particularly, the afore-referred *Abbasia* and *Searle case* – 2018 S C M R 1444, coupled with the fact that Section 18 (*ibid*) of the TO Act itself permits filing of proceeding in a High Court, though is correct, but purely as a law point, as this line of argument is not applicable to the peculiar facts of this *Lis*; because it is also held in the *Abbasia* case (*relied upon by Plaintiff*), that such an ouster clause will not be a bar to a suit, **only if the aforementioned conditions** are met (as reproduced in the preceding paragraphs) and not when an authority or a government functionary is exercising power under a special statute and is not exceeding its jurisdiction. **Secondly**, Section 18 of the TO Act would be applicable only when there is no proceeding is *sub judice* before a competent authority. Section 18 is not meant to circumvent the jurisdiction of Officials mentioned in the TO Act itself, otherwise, it would result in an absurd situation; that this Court and Government functionaries are adjudicating the same dispute at the same time. **Thirdly**, this Court being an Appellate Court at the same time determining the issues on its original side [in a suit] and the Appellate side, while hearing an appeal, that too of the same subject matter. This cannot be an intent of the legislature. One possibility of enacting Section 18 in the present TO Act is the bitter history

of frivolous litigation regarding which adverse observations were made by the Courts from time to time, so also mentioned in the foregoing paragraphs.

Proceeding in respect of the complaint, undisputedly, started in January and the suit is filed in March, at the time when a meeting of Inquiry Committee was to be held on 19.03.2021. For three months, the proceeding before official Defendant No.2 is going on and it cannot be said that a fair trial or due process of law is not followed. Thus, the cited case law on behalf of Plaintiff and Defendant No.6 are distinguishable and do not apply to the facts of present case.

21. In my considered view, the rule laid down in the reported judgments, passed in Thal and Dewan Steel Mills Cases (*mentioned in the opening part of this Order*) is relevant, *inter alia*, because both these Decisions by Honourable Supreme Court and this Court are given in respect of suit proceeding. In Thal Case (*ibid*) a resumption order passed by a Colonization Officer was challenged by the respondent (of the reported decision) through a declaratory suit, which was dismissed by the trial Court and maintained by Appellate Court, but in revision, the learned Lahore High Court allowed the same and the two decisions were set aside. Apex Court has interpreted Section 9 of CPC in the light of availability of remedy of Appeal in the hierarchy of Revenue Laws in terms of Section 161 of the Land Revenue Act, 1967, and it is held that the said provision **impliedly bars** the jurisdiction of a civil court in such matters, where the jurisdiction to adjudicate exclusively vested with the Revenue Court. Consequently, decision of the learned Lahore High Court was set aside and the Appeal of an Administrator, Thal Development Authority was allowed. In Dewan Steel case [2019 PTD 1387], the suit was brought challenging the action of officials under the Anti-Dumping Duties Act, 2015. It is held, that since the

special law provides special statutory remedy, hence, suit was not maintainable.

22. Consequently, in view of the above discussion, no cause of action has accrued in favour of present Plaintiff for instituting the present *Lis* and the same is also barred under Section 30 of the TO Act. Thus, Plaint of present Suit is hereby rejected.

JUDGE

Karachi.

Dated: 19.05.2021.

Riaz, P.S.