

IN THE HIGH COURT OF SINDH, KARACHI

**Suit No. 778 of 2021**

Plaintiff	:	Fauji Oil Terminal & Distribution Company Limited, Karachi, through M/s. Khalid Mehmood Siddiqui & Ghulam Rasool Korai Advocates.
Defendant No.1.	:	Port Qasim Authority, Karachi through Mr. Ali T. Ebrahim, Advocate.
Defendant No.2.	:	National Transmission and Despatch Company, through M/s. Salahuddin Ahmed & Anas Makhdoom, Advocates alongwith Mr. Hamza Randhawa, Chief Legal Officer, NTDC.
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Date of hearing	:	19.05.2021
Date of order	:	19.05.2021
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**ORDER**

**ZAFAR AHMED RAJPUT, J:-** By this order, I intend to dispose of C.M.A. No. 6089 of 2021, filed on behalf of the plaintiff, under Order XXXIX, rule 1 & 2 read with section 151, C.P.C., seeking an injunctive order restraining the defendant No.1 (*Port Qasim Authority “PQA”*) from granting any permission to defendant No.2 (*National Transmission & Despatch Company “NTDC”*) with regard to passing of high transmission line over its leased land. On 05.04.2021, this Court passed an ad-interim order on the application directing the parties to maintain status-quo to the extent of the subject land belonging to the plaintiff.

2. The facts necessary and germane for the disposal of the instant C.M.A. are that the plaintiff i.e. Fauji Oil Terminal & Distribution Company Limited, Karachi has filed the instant suit for declaration and permanent injunction alleging therein that it owns and operates Marine Oil Terminal at Port Qasim; that by virtue of two lease deeds registered in 1992 and 2006, it has acquired lease hold rights from defendant No.1 for the construction of an Oil Terminal in respect of land measuring 20.465 Hectares, numbered as DRG No. LDD/ 102-92(sur) and 77 acres bearing Plot No. NEZ/1/P-163; that it has established a strategic installation

providing a 'Fuel Hub' to cater fuel requirement of the country; that the defendant No.2/NTDC is constructing 500 KV/DC Transmission Line to interconnect 660 MW Lucky Electric Coal Fired Power Plant with Port Qasim - Matiari Transmission Line and it requested the plaintiff, vide its letter dated 14-05-2020, to an N.O.C./permission for construction of one tower in the leased land of the plaintiff, which request of NTDC was regretted by the plaintiff; that the defendants appeared to be determined to act in a high handed manner, just to accommodate the needs of a private power plant, which will cause great loss and prejudice to the plaintiff; hence, this suit has been maintained *inter alia* with the following prayers:-

i. *Declare that PQA has no authority to permit passing of high transmission line over the land leased and utilized by the plaintiff for the construction of its Strategic Oil Terminal and Storage.*

ii. *Declare that PQA has no authority to permit the up gradation of 220 KV line passing over the land leased and utilized by the plaintiff for the construction of its Strategic Oil Terminal and Storage.*

iii. *Declare that NTDC has no authority to enter into a private arrangement, persuading K-electric to vacate its 220 KV line, facilitating the NTDC to forcefully pass its 550 KV line, over the land leased and utilized by the plaintiff for the construction of its strategic oil terminal and storage.*

iv. *Restrain the defendants, their agents' representatives and assignees from taking any coercive action or forcefully passing high transmission line over the land leased and utilized by the plaintiff for the construction of its Strategic Oil Terminal and Storage.*

3. Mr. Khalid Mahmood Siddiqui, learned counsel for the plaintiff, reiterating the facts of the plaint has contended that a number of foreign vessels frequently call on the plaintiff's terminal carrying huge quantities of petroleum and gas products and if it is observed by the shipping company or their local agents that a high transmission line is passing over the sensitive oil installation, they may decline to load petroleum products for Pakistan, which would result in colossal loss of business as well as reputation of the plaintiff. He while referring the case of

*Shehla Zia and others v. WAPDA (PLD 1994 SC 693)* has emphasized that there may be adverse effects of electro-magnetic fields on the health of the plaintiff's employees and there are chances of a catastrophe and consequent public loss by passing high transmission line over plaintiff's terminal and in such case huge public loss of life and property would not only be a crippling event for the plaintiff's terminal but would also expose its functionaries to criminal liabilities. He has also contended that the electricity being presently produced by KANUPP-I, II and III is being connected with the National Grid at Northern Bypass, North of Karachi and the power being produced by Lucky Electric Power Company Limited ("LEPCL") may also be connected to the National Grid at the same point. He has further contended that in terms of Section 12 (2) of the Electricity Act, 1910 the defendants are not authorized to lay down or place any electric supply line or other work in through or against any building, or on, over or under any land not dedicated to public use whereon, where over or where under any electric supply line or work has not already been lawfully laid down or placed by such licensee without the consent of the local authority or of the owner or occupier concerned. In this regard, Mr. Siddiqui has referred to the case of *GEPCO and others v. Arshad Mehmood (PLD 2017 Lahore 723)*, wherein Lahore High Court maintained the injunction while observing the fact that "*High Voltage Electricity Transmission Line was being laid over the land owned by the plaintiff and section 12 of the Electricity Act, 1910, barred the Authorities to lay down any electricity supply line or other work without the consent of its owner or occupier in case of any objection by owner/occupier, the Authorities were bound to obtain written permission from District Magistrate in view of existing imminent danger of lives of public at large.*"

4. Mr. Siddiqui has further contended that the defendants have no right to endanger the lives of the citizens by its actions without the consent of the citizens and in violation of fundamental rights as enshrined under Articles 4, 9, 14, 18 and

23 of the Constitution of Pakistan. In this regards, he has placed his reliance upon the case of Karachi Electric Supply Corporation Ltd. v. Government of Sindh through Secretary, Irrigation and Power, Karachi and others (2005 MLD 702) wherein a Division Bench of this Court maintained the order of the Single Judge passed in a civil suit filed on the original civil jurisdiction of this Court, restraining K.E.S.E. from installation of overhead high tension transmission line, pipe/pole alongwith cables within plaintiff's factory premises and held the same as illegal, arbitrary, without jurisdiction and in violation of fundamental rights as enshrined under Articles 4, 9, 14, 18 and 23 of the Constitution of Pakistan. He has further contended that the plaintiff has made out a good prima facie arguable case, balance of convince also lies in its favour and in case ad-interim injunction is not granted, it shall suffer irreparable loss. In support of his contentions, learned counsel has also relied upon the case of Muhammad Khan and others v. WAPDA through Project Director and others (2011 SCMR 1028) wherein Apex Court has directed WAPDA to pass its 132 KV Transmission Line along periphery instant of over and above the plaintiff/ petitioner's land.

5. Conversely, Mr. Ali T. Ebrahim, learned counsel for defendant No. 1, has maintained that the defendant No.1 being a body corporate, established under Section 4 of the Port Qasim Authority Act, 1973 is engaged in the management and operation of Port Qasim within its territorial limits. He has further maintained that the defendant No.1 has leased out its 1200 acres land to various industries in accordance with its Land Allotment Policy, which policy also provides for Right of Way (R.O.W.) for the purpose of laying overhead or underground transmission lines or cables, pipelines or for constructions of drains, etc. He has also maintained that the plaintiff is a lessee/allottee of the defendant No. 1, whom the defendant No. 2 initially applied for grant of R.O.W. for the subject 500KV transmission line by erecting Tower No. 10 in leased plot of the plaintiff, which was refused by the plaintiff; subsequently, the defendant No.2 provided an amended route plan of its

transmission line in concert with K-Electric, which already had an R.O.W. granted to it by defendant No. 1 previously for its 220KV transmission line; therefore, the router plan was amended by the defendant No. 2, ostensibly in order to avoid erecting proposed tower.

6. Mr. Ali T. Ebrahim has further maintained that the request of the defendant No. 2 in terms of the amended route plan for the transmission lines is being considered by the defendant No. 1 in accordance with its Land Allotment Policy and Survey Department of the defendant No. 1 has already conducted various physical as well as satellite imagery based surveys of the proposed R.O.W. in order to scrutinize the same. He has further maintained that the Land Allotment Policy of the defendant No. 1 provides for the entire mechanism and framework of granting R.O.W. to an applicant, which requires the defendant No. 1 to scrutinize an application for R.O.W. and point out specific issues, if any, which also allows the defendant No. 1 to cater for special circumstances with such clauses to be incorporated in the grant of such R.O.W. He has also maintained that the grant of R.O.W. to defendant No.2 being an internal policy matter shall be scrutinized and determined, subject to completion of all formalities, by the defendant No. 1 under its Land Allotment Policy; hence, instant application being devoid of any merit is liable to be dismissed.

7. Mr. Salahuddin Ahmed, learned counsel for defendant No. 2, has argued that the defendant No. 2 operates national electricity grids connecting with various load centers and distribution companies for onward delivery of electricity to the consumers through its nation-wide transmission line infrastructure. He has further argued that the alleged 500KV extra-high voltage transmission line is to be constructed and operated to cater for the growing demand for cheap electricity and in that regard the Government of Pakistan has granted a concession for setting up and operation of a 660MW coal fired power project at Port Qasim through the

Implementation Agreement and a Power Purchase Agreement between LEPCL and Central Power Purchasing Agency (Guarantee) Limited. He has added that back as 1993, the Karachi Electric Supply Company (now K-Electric) applied to PQA for R.O.W. along certain roads in PQA jurisdiction to transmit electricity from the K.E.S.C. owned power plants, located in Port Qasim, which PQA confirmed, vide minutes dated 25.04.1996, and granted R.O.W. to K.E.S.C. of 15 meters on either side of the central line of the 220KV transmission line (i.e. a total of 30 meters), and thereby the K.E.S.C. installed its pylons and the transmission line and began operating the same. He has further argued that on plaintiff's refusal to pass the proposed 500KV transmission line in national interest over a small portion of its leased land, the defendant No. 2 came up with an alternative plan with K-Electric and PQA, under which the defendant No. 2 would dismantle the existing K. Electric 220KV transmission line, which is not on the plaintiff's land, and in its place install the proposed 500KV transmission line, while K-Electric transmission line would be shifted to the other side of the other road far within the R.O.W. granted by PQA to K-Electric as there is no other feasible option but to route the transmission line in the manner proposed by the defendant No. 2. Hence, the defendant Ne. 2 has no plan to pass any transmission lines over the plaintiff's leased land.

**8.** Mr. Salahuddin Ahmed has further argued that due to non-cooperation of the plaintiff, it was deemed more feasible to simply use the PQA land for laying of the transmission lines. He has further argued that there are no rules or standards governing passing of transmission lines over oil facilities or pipelines other than the minimum vertical/horizontal distance requirements, while the proposed transmission line in place of the existing K-Electric line is well within requirements. He has further argued that no adverse effect will be caused to any future plans of the plaintiff, and it will not in any manner adversely affect any of the plaintiff's installations whose entire case is based on apprehensions. He has

further argued that the existing K-Electric transmission line of 220KV is not a low transmission line, which is classified as Extra-High Voltage 88 transmission line; as such both, the existing K-Electric and the proposed transmission lines, fall within the same category and the present proposal avoids the plaintiff's land altogether and does not affect any of its structures or buildings whatsoever. He has also argued that since the proposed transmission line is not being constructed over the plaintiff's land; as such, no cause of action has in fact accrued to it to institute the present suit, which has failed to make out a case for grant of any of the reliefs claimed for, while the balance of convenience is in favour of the defendant No. 2 and against the plaintiff, which has failed to establish that any irreparable loss and injury shall be caused to it; hence, this application is liable to be dismissed.

**9.** I have heard learned counsel for the parties and perused the material available on record with their assistance.

**10.** An age old golden rule of granting discretionary relief of injunction is (i) the prima facie existence of right in favour of the plaintiff and its infringement by the defendant or the existence of a prima facie case in favour of the plaintiff; (ii) an irreparable loss, damages or injuries which may occur to the plaintiff, if the injunction is not granted; (iii) the inconvenience which the plaintiff will undergo from withholding the injunction will be comparatively greater than that which is likely to arise from granting it or in other words, the balance of convenience should be in favour of the plaintiff. Court has to make only a tentative assessment of the case for enabling itself to see whether three requisites for grant of injunction exist in favour of plaintiff or not. Existence of prima facie case is to be judged or made out on the basis of material on record at the time of hearing of injunction application and such material should be of the nature that by considering the same, Court should or ought to be of the view that plaintiff applying for injunction was in all probabilities likely to succeed in the suit by having a decision in his favour.

The term “prima facie case” is not specifically defined in the Code of Civil Procedure. The judge-made-law or the consensus is that in order to satisfy about the existence of prima facie case, the pleadings must contain facts constituting the existence of right of the plaintiff and its infringement at the hands of the opposite party. Balance of convenience means that if an injunction is not granted and the suit is ultimately decided in favour of the plaintiff, the inconvenience caused to the plaintiff would be greater than that would be caused to the defendant, if the injunction is granted

**11.** In the instant case, it appears that vide indenture of lease dated 07.12.1992, the plaintiff was granted a lease in respect of 20.465 hectares of land to set up its oil terminal, which was located to the North of the existing K-Electric transmission line, and through indenture of lease dated 13.07.2006 a further land of 77 acres was leased out to the plaintiff for the purposes of future expansion, which is located to the South of the existing K-Electric transmission line; as such, in between these two plaintiff’s leased lands, there is PQA land on which a road and 220 KV extra high transmission line of K-Electric are existing since 1993. It further appears that the plaintiff was leased out the land, which has set up and is operating its oil terminal not only with the full knowledge of the existence and operation of said transmission line without any objection. It also appears that neither PQA has ever leased out the R.O.W. over land given for the K-Electric for its transmission line to the plaintiff nor the plaintiff has ever claimed the same. It also appears that the indentures of lease expressly retain in the PQA the right to free and uninterrupted passage of running of electricity from or onto other buildings together with the right to construct and maintain or permit to be laid, constructed or maintained in, under, upon or over the premises such further wires and cables and similar apparatus as may in the opinion of the lessor/PQA be necessary and desirable. In this regard, I deem it advantageous to reproduce here under the Clause I (b)(i) of the Indenture of Leases for reference:



*“The free and uninterrupted right of passage and running of water and night soil gas electricity and other services as are now or may at any time hereafter be used and enjoyed from or to other buildings and land of the Lessor its successors in title or their Lessees or others as aforesaid through the gutters pipes sewers drains water courses wires and cables in under upon or over the premises TOGETHER with the right to lay construct and maintain (or permit to be laid constructed or maintained) in under upon or over the premises such further gutters pipes sewers drains water courses wires and cables manholes stopcocks inspection chambers and similar apparatus as may in the opinion of the Lessor be necessary or desirable during the term hereinafter referred to AND TOGETHER ALSO with the right for the Lessor and its agents and all other persons lawfully authorized with or without workmen and others at all reasonable times but with fourteen days prior notice to the Lessee except that no notice shall be required in the case of emergency to enter upon the premises or any part thereof for the purpose of laying constructing inspecting maintaining repairing renewing any gutter pipe sewer drain water course manhole stopcock wire cable inspection chamber or similar apparatus of the Lessor or such other persons as aforesaid causing as little inconvenience as possible and making good all damage caused to the premises by reason of the carrying out of any such works but the Lessee shall not be entitled to make any claim or claims on the Lessor in respect of its exercising its right herein reserved.”*

**12.** It may be deduced that Clause III of the indentures of lease expressly sets out that the plaintiff will not be entitled to any right of access of light or air and to any other right, privilege or easement save as has been expressly provided in the lease, which would restrict or interfere with the use of any adjoining or neighboring land for building or any other purpose. Hence, *prima facie* the plaintiff cannot claim any right to restrict or interfere with the use of PQA land adjoining its leased lands for any purpose including the setting up of the transmission line by the defendant No. 2.

**13.** There is no denial to the fact that under the terms of the Implementation Agreement and Power Purchase Agreement and the Power Policy of the Government of Pakistan 2015, the Government (through the Defendant No. 2) is required to provide interconnection of the LEPCL plant with the national grid to transmit the electricity generated to the consumers up country and as per plan the LEPCL Plant is to be connected via 500KV extra high voltage wires to the High Voltage Direct Current (“HVDC”) transmission line near Matiari for onward transmission to upper Punjab, and the alleged HVDC transmission line is Pakistan’s first privately owned and operated transmission line, constructed on BOT basis by a Chinese-owned SPV, namely, Pak-Matiari Lahore Transmission Company Limited, being set up under the CPEC framework at a project cost of over \$1.85 billion, which is envisaged to carry 4000MV of electricity from Pakistan's South to Pakistan’s North, which will decrease the load on the old and aging transmission lines, thereby reducing line losses.

**13.** The indubitable and indisputable facts are that the plaintiff's leased land is well beyond the minimum distance required from transmission line and the existing extra high voltage transmission line of K-Electric does not run through or even above any part of the plaintiff's leased land but on the land of PQA. Further, said transmission line already exists since the plaintiff’s inception and no foreign vessel company or their local agents have ever objected to it. The proposed transmission line follows the exact path of the said existing K-Electric transmission line. As observed by the Apex Court in Human Rights Case No. 14392 of 2003 (2014 SCMR 220), the provision of electricity comes under the guarantee of right to life enshrined in Article 9 of the Constitution and everyday life of the common man is hampered by massive load-shedding and the economic sector cannot be expected to run without the provision of energy. Hence, the importance of proposed project for national cause cannot be ruled out, and thus no

injunction can be granted against the public policy and public interest, particularly when section 12 of the Electricity Act, 1910 has no application at all in the case.

**14.** As a result, I have no hesitation to hold that the plaintiff has failed to make out good prima facie arguable case in its favour; neither balance of convenience lies in favour of plaintiff nor it will suffer any irreparable loss and injury in case of refusal of injunction. So far the case-law relied by the learned counsel for the plaintiff are concerned, it may be observed that there is no cavil to the principles propounded in these cases but the same being on distinguishable facts and circumstances, do not advance the case of the plaintiff.

**15.** For the foregoing facts and discussion, I find no merit in this application, which is accordingly dismissed by recalling ad-interim order, dated 05.04.2021, with no order s to costs.

**16.** Above are the reasons for my short order dated 19.05.2021.

Athar Zai

JUDGE