

IN THE HIGH COURT OF SINDH, KARACHI

Present

Mr. Muhammad Shafi Siddiqui, J

Mrs. Rashida Asad, J

HCA No.192 of 2022

[Muhammad Aqeel & Others v. Federation of Pakistan & Others]

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For Appellants:	Mr. Zia-ul-Haq Makhdoom Advocate
For Respondent No.1	Mr. Kafeel Ahmed Abbasi, DAG
For Respondent No.2	Mr. Jawwad Ali Dero, Addl. AG
For Respondent No.3/KDA	Mr. Javed Ali Sangi, Advocate
For Respondent No.6	Mrs. Rehmatunnisa, Advocate
For Respondent No.7	Mr. Ali Nawaz Khuhawar Advocate
For Respondent No.10(ii)	Mr. Raheel Nafees Siddiqui, Advocate/In person
Dates of hearing	23.06.2022 -o-o-o-

JUDGMENT

Muhammad Shafi Siddiqui J.- By virtue of an order dated 8.6.2022 an additional interim order was passed that “no further construction shall be raised on the subject land” alongwith an earlier ad interim order of “no third party interest”, which annoyed the appellants and compelled them to file this HCA.

2. Brief facts of the case are that a Suit bearing No.2137 of 2020 alongwith an interlocutory application was filed by one M/s Entrepreneur Developers against Federal and Provincial Governments alongwith other regulators i.e. KDA, Mukhtiarkar, Military Estate Office, Cantonment Board and certain private individuals claiming interest in the property. Earlier one of the individuals had also filed a suit in respect of same property as Suit No.1822/2020 where, as an interim

measure, his possession only, was secured on 23.11.2020. In Suit No.2137/2020 also an injunctive order was passed on 24.12.2020 whereby status quo was ordered to be maintained. The said injunction application in Suit No.2137/2020, however, was dismissed vide order dated 13.12.2021 which order was challenged before Division Bench of this court as HCA No.44 of 2022 which remanded the matter to the learned Single Judge after maintaining an order that “no further third party interest shall be created” till decision on the application by learned Single Judge.

3. We have heard the learned counsel for the appellants, who have an urgency in the matter on account of above additional interim order and also counsel for respondents who have expressed their interest in the property. Mr. Zia`s case is that the learned Division Bench has purposely not granted the status quo order and in fact preferred to pass an order that no third party interest be created till decision of the injunction application which application was required to be expeditiously decided, preferably in 15 days` time. It is Mr. Zia`s case that with this understanding, learned Single Judge was not further empowered to pass any additional ad interim order that concerns with the ongoing construction, as it has virtually deprived the appellants from continuing with the construction. It is the appellants` case that learned Single Judge has attempted to deviate from firm observation of the Division Bench that till decision of the application no other or additional order could be passed except that of a third party interest, as granted by learned Division Bench. In this regard, learned counsel has relied upon the Judgment dated 13.2.2006 passed by Hon`ble Supreme Court of India in Case No. Appeal (Civil) 1101 of 2006 [Kishore Kumar Khaitan & Anr vs. Praveen Kumar Singh].

4. On the other hand, Mr. Raheel Nafees Siddiqui, Advocate/respondent No.10 (ii) appearing in person also claimed to be a partner of M/s Entrepreneur Developers and its advocate, whereas respondent No.7/M/s Kay Kay Builders (Pvt) Ltd is represented by Mr. Ali Nawaz Khuhawar, Advocate. It is respondents` case that Division Bench never restrained learned Single Judge from passing any other appropriate order and that intention of the bench is disclosed in para 4 of the order of the Division Bench. They further submit that the application is yet to be decided within the timeframe given by the Division Bench or any other extended period as deem fit and proper by the learned Single Judge, however, against an ad interim order this appeal would not lie. They further submit that since there are number of claimants including Board of Revenue and Military Estate Office, therefore, it was felt necessary by the learned Single Judge that parties be directed not to raise further construction thereon.

5. We have heard learned counsel and perused the materials available on record.

6. The judgment of Kishore Kumar Khaitan¹ as relied upon by learned counsel for the appellants, referred in para 3 above, is totally irrelevant for the purposes of deciding the points raised by the appellants. In the referred judgment the matter was remanded essentially to look into the question of possession on the basis of evidence available or that could have been brought and since there were specific directions contained in the remand, mandatory ad interim order was questioned. The bench has essentially discussed the evidence in support of possession which was required for passing any mandatory injunction of the nature as granted. The relevant paras of the referred judgment are 7,

¹Judgment dated 13.2.2006 passed by Hon`ble Supreme Court of India in Case No. Appeal (Civil) 1101 of 2006 [Kishore Kumar Khaitan & Anr vs. Praveen Kumar Singh]

8, 9 & 10 and hence, in view of the specific directions as contained in the referred judgment, the case is distinguishable from the one in hand.

7. Suit No.2137/2020 filed by respondent No.10 essentially seeks a declaration in respect of the land in question as being a rightful owner and that the deed of exchange dated 20.03.1995 was illegal and unlawful and hence sought its cancellation, followed by all consequential mutation and transfer letters etc based on such exchange deed and sought an injunctive on which learned Single Judge was pleased to pass order dated 24.12.2020 for maintaining status quo.

8. The injunction application was finally came for consideration on 13.12.2021 when the same was dismissed against which the appellants preferred HCA No.44 of 2022. Learned Division Bench on the apprehension of the appellants and the counsel representing Board of Revenue, Government of Sindh that the private respondents will create third party interest as the construction was being raised regularly, granted an interim order that no further third party interest shall be created, however, nowhere the order suggests that the powers of learned Single Judge to pass any other injunctive order that may require in the interest of justice before or at the time of disposal of the injunction application, were also curtailed. This aspect of the argument of appellants cannot be termed as ratio of judgment.

9. Per Mr. Zia Makhdoom, the learned Single Judge could have passed an order of status quo or could have restrain the appellants from raising the construction at the time of disposal of the application after hearing but not as ad interim measure. This contention itself amounts to surrendering with the discretionary powers that may be exercised by the learned Single Judge while passing ad interim, interim, or final order on injunction application. If the learned Single Judge was empowered to pass an order while deciding the injunction application finally, then the

said judge equally enjoys the powers to pass interim or ad interim orders of the restraining nature, on the tentative assessment of claims, keeping the interest of the parties and to save interest of the litigants involved. Discretionary powers of the court are wide enough to foster the interest of justice and equity, as it demands.

10. In terms of para 4 of the order of the learned Division Bench in HCA No.44 of 2022, in view of the divergent claims of the parties which includes Board of Revenue, Government of Sindh, Federal and Provincial Governments, Military Estate Office apart from the private claimants, it was deemed appropriate by the Division Bench to set aside the impugned order of 13.12.2021 which dismissed the application and remanded the matter back to the learned Single Judge to decide the application of the plaintiff, in Suit No.2137 of 2020 [who were appellants in HCA No.44 of 2022] “afresh” after hearing of all learned counsel appearing for the parties and after examining all the relevant documents relating to title of the subject land in accordance with law. Passing orders after hearing of an application does not mean that learned Single Judge is not empowered to pass any interlocutory order keeping in mind the interest of parties. Interim orders could be passed on tentative or partly hearing the matter and could also make up a mind as to what interim order shall be beneficial for the parties to a litigation during pendency of application and/or suit. Learned Single Judge after remand, partly heard it and came to a tentative conclusion that since there are so many claimants of the land in question and documents are yet to be filed, therefore, an individual should not be allowed to carry on construction over the subject land.

11. Learned Division Bench in para 4 of the above referred appeal also clarified that the disposal of the said appeal does not have any bearing on the merits of the injunction application which may be decided on its own merits keeping in view three ingredients i.e. [i] prima facie

case [ii] balance of convenience and [iii] irreparable loss & injury. Learned Division Bench did pass an order of not creating third party interest but at the same time never restricted the powers of the learned Single Judge to pass any other order during pendency of an application or at the time of disposing of the application. It is also to be noted that against an earlier order of status quo dated 24.12.2020 which was prevailing before dismissal of injunction application, no appeal was preferred by the appellants.

12. With this understanding of law, we are of the view that no interference at this point of time² is required, more importantly when the main application itself is pending and is expected to be decided preferably in a shortest possible time in terms of the observation of the Division Bench in HCA No.44 of 2022.

JUDGE

JUDGE

Karachi:
Dated:27.6.2022.
Approved for reporting.

² Order dated 14.6.2022 passed in HCA No.196 of 2022.