

ORDER SHEET
HIGH COURT OF SINDH AT KARACHI
HCA Nos. 201 and 290 of 2018

Date

Order with signature of Judge

1. For orders on office objections
2. For hearing of main case
3. For hearing of Misc. No.1768/18

02.05.2019

Mr. Muhammad Salim Mangrio Advocate for the appellant
Mr. Miran Muhammad Shah AAG a/w Bilal Khokhar, Manager
Legal of respondent No. 10

x.x.x.x.x

At the very outset Counsel for the appellants states that the instant High Court appeals stood squarely covered by the decision given in the case of Malik Khan Muhammad Tareen vs. Messers Nasir & Brother Coal Company & others reported in 2018 SCMR 2121 vide paragraphs No.9, 10 and 11. Learned AAG appearing for the respondents has also endorsed such situation.

The relevant paragraphs of the judgment are reproduced as under:-

“9. In order to regulate place suing and institution of civil proceedings, same is to be instituted in the Civil Court of lowest grade competent to try it (section 15, C.P.C) and in the Court where the defendant or one of the defendants resides or work for gain, or where the cause of action occurs, or where it relates to right to or interest in immovable property, is requires to be instituted within the local limits of whose jurisdiction the immovable property is situated. It could also be the Court in whose jurisdiction action or inaction of any State or public authority/functionary is involved (see sections 15 to 20 CPC).

10. In the instant case controversy as to mining lease, is involved. In a case from Australian jurisdiction, Queensland Supreme Court in a case reported as Sojitz Coal Resources Pty Ltd. vs. Commissioner of State Revenue [2015] QSC 9 held “that mining leases did not constitute an ‘estate or interest in land’ according to ordinary concepts. Position in Pakistan is no different, mining lease means rights and interest in mines

and minerals in and on the surface of earth or land, mines and minerals are regarded as moveable property. Rights and interest in mines and mineral on or in the surface of land is separate and distinct from "rights to or interest in immovable property" within the contemplation of clause (d) of section 16, C.P.C, mines and minerals are movable property and in terms of Articles 172 and 173 of the Constitution of Pakistan read with section 49 of the Land Revenue Act, 1967 and Provincial Mining Rules (in instant case Balochistan Mineral Rules, 2002) all mines and minerals shall be and shall always be deemed to have been the property of Government, irrespective of fact that title to surface land vests in an individual. Forest Department or any other authority or even the Government itself. It is the proper enjoyment of its rights thereto, which is regulated under the Mineral Development (Control) Act, 1948 read with respective Provincial Mining Concession Rules (see Water and Power Development Authority and another v. Assistant Director Mines and Minerals, Attock and others PLD 2012 Lahore 83), Messrs National Highway Authority through duly authorized Director (Legal) v. The Chief Secretary, Government of the Punjab, Lahore and 5 others (PLD 2017 Lahore 390) and Fateh-ul-Mulk Ali Nasir and 4 others v. Government of Khybder Pakhtunkhwa through Secretary Mines and Minerals and 6 others (2015 CLOC 1762 [Peshawar])).

11. In instant case as elaborately discussed by the learned Bench of the High Court and rightly held that no rights and interest in the immovable property is involved, and since the objections as to territorial jurisdiction was not raised promptly before the very Civil Court seized of the matter as required under section 21, C.P.C and no prejudice is shown to have been caused to the defendant, therefore Court of Civil Judge, Quetta has jurisdiction.-----"

We, therefore, in the categorical statement given by the Counsels today disposed of both the High Court Appeals in the light of the above decision of the apex Court and remand the matters to the learned single Judge for giving a decision on merits of the cases in accordance with law.

Judge

Judge