

**IN THE HIGH COURT OF SINDH AT KARACHI**

Present:  
Mr. Justice Muhammad Shafi Siddiqui

Suit No. 182 of 2011

Pakistan State Oil Company Limited  
Versus  
Abdul Ali & others

Date of Hearing: 08.11.2022

Plaintiff: Through Mr. Asim Iqbal Advocate.

Defendant No.1: Through Mr. Zia-ul-Haq Makhdoom Advocate.

Defendant No.2 to 4: None present.

**J U D G M E N T**

Muhammad Shafi Siddiqui, J.- In this suit Pakistan State Oil Company Limited seeks, amongst others, following declarations:

*(a) Declaration that the plaintiff Installation situated at Zulfiqarabad Oil Terminal Bin Qasim Town, Karachi falls under Key Point Installation Category I-A and no structure/construction shall be permitted within the distance of 200 Sq. Yds. from the plaintiff installation.*

*(b) Declaration that the defendant No.1 is not entitled to raise any construction within the distance of 200 Sq. Yds. from the plaintiff Key Point Installation Category I-A, Zulfiqarabad Oil Terminal, Bin Qasim Town, Karachi.*

2. The notices and summons were issued and in response thereto official defendants No.2 and 3 have filed their joint written statement, defendant No.1 has filed separate statement whereas defendant No.4 declared exparte.

3. Vide order dated 21.09.2015 both learned counsels appearing for plaintiff and defendant No.1 have agreed that entire suit can be disposed of on the basis of pleadings and documents available on record as no oral evidence is required for a decision of questions arising out of suit. Following issues were then framed:-

1. *Whether the defendant is precluded from using their land in pursuance of Rule 10 of the Civil Defence (Special Powers) Rules, 1951?*
2. *Whether the aforesaid Rule 10 would disentitle the neighboring land owners from utilizing their land in accordance with law?*
3. *What should the decree be?*

4. I have heard learned counsel for parties and perused material available on record. Since there are only two issues, which too are interconnected, I propose to decide the same jointly.

5. These questions, as raised by the plaintiff in these proceedings, are neither novel nor new as these questions have come across in a number of cases which were ultimately decided by this Court. First of such order in this regard is reported in the case of Pakistan Refinery Limited v. Maskatiya Industries (Pvt.) Ltd.<sup>1</sup>. This judgment decided/determined the question of applicability of a judgment in rem and judgment in persona and simultaneously, it has also discussed Rules of Civil Defence (Special Powers) Rules 1951, in particular Rule 10 thereof. Rule 10 of *ibid* Rules 1951 is a material rule, which provides that the building so raised in the vicinity or structurally altered shall be subject to permission of the government in accordance with such requirements as to layout materials and construction as the government may impose, being requirement which in the opinion of that government was necessary.

6. The aforesaid judgment further observed that subject of acquiring or holding and disposing of properties is fundamental right, which cannot be taken away except with reasonable restrictions to be imposed by law in the public interest. This case law/judgment is however in relation to an injunction application and an application under order XXXIX Rule 4 CPC, which were taken to their logical end and the land owner was

---

<sup>1</sup> SBLR 2011 Sindh 711 (Pakistan Refinery Limited v. Maskatiya Industries (Pvt.) Ltd.

allowed to raise boundary wall on its plot at its own risk to protect the same being encroached.

7. In the case of Barrett Hodgson Pakistan (Pvt.) Ltd. v. Pakistan Refinery Ltd.<sup>2</sup>, which embarks upon the interpretation of Rule 10 of Rules 1951, plaintiff's application was allowed however defendant No.3 therein was considered as an entity to only impose restrictions for the purposes of rendering building of the plaintiff, more secured and protected for the purposes using the same in accordance with ibid Rules. This judgment did not restrict the owner from using the property as deem fit and proper however reasonable restriction, as required for the security and protection of the inhabitants of the building, was considered.

8. In the case of Pakistan Refinery Limited v. International School of Choueifat<sup>3</sup> while interpreting Articles 4, 23 and 24 of Constitution of Islamic Republic of Pakistan, 1973 this Court observed that when restriction, which is not otherwise imposed by law, is thrust upon the owner regarding free use of his property, it is clear case of breach of fundamental right of owner of the property. Plaintiff i.e. Pakistan Refinery Limited's application against International School of Choueifat was dismissed in the following terms:-

*“32. I did not find any illegality or irregularity in raising school building on plot in question as the permission to construct school building and approval of building plan was done by the authorities enjoying powers to do so under the Cantonment Laws. Furthermore, the defendant being owner of the plot in question has acquired fundamental rights to hold and enjoy the property rights as guaranteed under Articles 4 and 23 of the Constitution and in protecting or safeguarding the rights of easement and safety of the plaintiffs, the fundamental rights of the defendant in respect of ownership of its plot could not be violated or infringed.*

---

<sup>2</sup> 2009 MLD 1100 (Barrett Hodgson Pakistan (Pvt.) Ltd. v. Pakistan Refinery Ltd.)

<sup>3</sup> 2009 YLR 2000 (Pakistan Refinery Limited v. International School of Choueifat)

*33. At present a presumption is required under illustration (e) of Article 129 of Qanoon-e-Shandat Order, 1984, can be raised that official acts have been regularly performed. However, all these contentions require deeper appreciation of evidence which can properly be thrashed out at the time of trial. From the tentative assessment of the material available on the record, I am of the considered view that the plaintiff have no prima facie case at this stage. The balance of convenience is also not in favour of the plaintiff as great inconvenience will be caused to the defendant being owner of the property in exercising its legal right to deal with its property as per Law. No irreparable loss will be caused to the plaintiff if injunction is refused because loss if any can be compensated in the shape of damages, which has already been claimed in the sum of US \$ 480 million in the suit. Resultantly, C.M.A. No. 7585 of 2008 is dismissed with no order as to costs.”*

9. Case of Barrett Hodgson (Suits No.694 and 1063 of 2008), referred above, was then taken to the appellate jurisdiction in High Court Appeals No.326 and 327 of 2008<sup>4</sup> and learned Division Bench of this Court was pleased to dismiss the appeals in the following terms:-

*“13. The learned Single Judge in the last paragraph of his order has very rightly observed that it will be open for the defendant No.3 (respondent No.3) viz. Federation of Pakistan to impose any condition for the purposes of rendering the building of the appellants' more secured and protected from the persons using the same in accordance with rule 10 of the Civil Defence (Special Power) Rules, 1951. We may further add that in view of Rule 12 of the Civil Defence (Special Power) Rules, 1951, the respondents No.3 if advised may take necessary measures to secure the appellants' premises in the best interest of key point installations and its vicinity.*

*14. In view of the above observations, the listed appeals have no merits and the order passed by the learned Single Judge requires no interference. Accordingly, the both the appeals are dismissed as no order to costs.”*

10. The suit of Barrett Hodgson above then decided finally by this Court. Litigation includes two suits, one filed by Barrett Hodgson Pakistan (Pvt.) Ltd. as Suit No.694 of 2008 and the other by Pakistan

---

<sup>4</sup> PLD 2009 Karachi 315 (Pakistan Refinery Limited v. Barret Hodgson Pakistan)

Refinery Limited as Suit No.1063 of 2008. Both the suits were decided by a common judgment passed on 01.12.2014. In these suits following issues were framed and the findings, as given by Court, are also given:-

1. *Whether the defendant No.1 (Plaintiff in Suit No. 1063 of 2008) is a Key Point Installation 1-A and if so what is the effect?*
2. *Whether the Plaintiffs (Defendants No.1 and 2 in Suit No. 1063 of 2008) are entitled to construct and operate school without the prior permission of the Key Point Intelligence Division, ISI?*
3. *Whether the Plaintiffs (Defendants No.1 and 2 in Suit No. 1063 of 2008) have obtained the requisite permission under Rule 10 of the Civil Defence Special Power Rules and/or the Directive of the Federal Government issued on 30.04.1992?*
4. *What is the effect of the Federal Inspection Team in the Office Memorandum of the Acting Director, Civil Defence, Ministry of Interior dated 13.01.2009 and whether it constitutes a valid permission under Rule 10 and/or the Directive issues thereunder?*
5. *What is the effect the N.O.C granted by the Civil Defence Directorate, Home Department, Government of Sindh dated 24.01.2009 to the (Plaintiff in Suit No. 1063 of 2008) in Suit No.694/2008 and whether it constitutes a valid permission under Rule 10 and/or the Directive issued thereunder?*
6. *Whether the construction and operation of the School by the (Plaintiff in Suit No. 1063 of 2008) will pose a security risk to the persons using the school and/or the Refinery of Defendant No.1(Plaintiff in Suit No.1063 of 2008) and/or the intervening space?*
7. *Whether in the event of a terrorist attack on the Refinery of Defendant No.1(Plaintiff in Suit No.1063 of 2008) because of the inflammable material lying in the oil tanks and/or otherwise there will not be a risk to persons therein or nearby or on the adjoining road?*
8. *Whether the Federal Government has issued directives to the Defendant No.1 (Plaintiff in Suit No.1063 of 2008) to upgrade its refinery for the benefit of the general public?*
9. *What should the decree be?*

...

#### FINDINGS

<i>Issue No.1</i>	:	<i>Affirmative</i>
<i>Issue No.2</i>	:	<i>Affirmative</i>
<i>Issue No.3</i>	:	<i>Answered accordingly</i>

<i>Issue No.4</i>	:	<i>Answered accordingly</i>
<i>Issue No.5</i>	:	<i>First part/point accordingly, second part/point affirmative</i>
<i>Issue No.6</i>	:	<i>Answered accordingly</i>
<i>Issue No.7</i>	:	<i>Answered accordingly</i>
<i>Issue No.8</i>	:	<i>Answered accordingly</i>
<i>Issue No.9</i>	:	<i>Suit No.694/2008 decreed to the extent of prayer "A" only Suit No.1063/2008 dismissed.</i>

11. Conclusively the suit of Barrett Hodgson bearing No.694 of 2008 was decreed to the extent of prayer clause 'A' whereas the suit of Pakistan Refinery Limited bearing No.1063 of 2008 was dismissed.

12. This judgment and decree was challenged in High Court Appeals No.7 and 8 of 2015. The learned Division Bench of this Court was pleased to dismiss the appeals, which were assailed before Hon'ble Supreme Court in Civil Petitions No.4703 and 4704 of 2017 decided on 11.01.2018<sup>5</sup>. Hon'ble Supreme Court while considering the contention of parties observed that the impugned judgment of the learned Division Bench revealed that it did not settle points of determination and decision thereon, besides the reasoning assigned by learned Division Bench of this Court did not render the substantial compliance of Rule 31 of Order XLI CPC and that led to setting aside of the two judgments in the High Court Appeals No.7 and 8 of 2015 while placing reliance on the case of *Girilanandini Devi v. Bijendra Narain Choudhry* (AIR 1967 SC 1124). Relevant part of the judgment of Hon'ble Supreme Court is reproduced as under:-

*"7. ....A perusal of the impugned judgment would reveal that the Division Bench of the High Court did not state the points of determination, decision thereon and reasons therefor. What led the Division Bench of the High Court to affirm the finding handed down by the learned Single Judge of the High Court has neither been adverted nor alluded to. Arguments of the learned counsel for the*

---

<sup>5</sup> 2019 SCMR 1726 (Pakistan Refinery Ltd. v. Barrett Hodgson Pakistan (Pvt.) Ltd.

*parties have been reproduced in the impugned judgment but whose arguments merited acceptance and whose arguments merited rejection have been eluded altogether. The judgment against this background cannot be said to have been rendered in substantial compliance with Rule 31 of Order XLI, C.P.C. We, therefore, do not agree with the argument of the learned Sr. ASC for the respondent that the impugned judgment has been handed down in substantial compliance with Rule 31 of Order XLI, C.P.C. The judgments rendered in the cases of Girilanandini Devi and others v. Bijendra Narain Choudhry and Mst. Roshi and others v. Mst. Fateh and others (supra) are, therefore, not applicable to the case in hand. Even otherwise, we would not encourage an argument of such tenor which would tend to pass the buck of responsibility to the next higher forum and require the latter to do what is the exclusive domain of the first court of appeal and final court of fact and set at naught the parameters prescribed for exercise of jurisdiction at different levels of hierarchy. An argument with such implications would rather hamper than advance the cause of justice when even an executive authority under section 24-A of the General Clauses Act is required to record reasons for making the order or issuing the direction. Having thus considered, we don't think the impugned judgment conforms to the requirements of Rule 31 of Order XLI, C.P.C. by any stretch of imagination. It thus cannot be maintained.*

*8. For the reasons discussed above, these petitions are converted into appeals and allowed, the impugned judgments are set aside and the cases are sent back to a Division Bench of the High Court for decision afresh in accordance with law. As the issues in these cases involve substantial questions of law of public importance, they be disposed of as expeditiously as possible but not later than a period of three months.”*

13. Thus the judgments of learned Division Bench of this Court in High Court Appeal No.7 and 8 of 2015 were set aside on the aforesaid counts only and the appeals were remanded to the learned Division Bench.

14. Instant suit requires consideration in respect of two issues i.e. whether the defendant No.1 is precluded from using his land in pursuance of Rule 10 of the Civil Defence (Special Powers) Rules, 1951 and whether the aforesaid Rule 10 would disentitle the neighboring land owners from utilizing their land in accordance with law?.

15. These questions, though have been decided not only in the aforesaid judgment of Barrett Hodgson in Suits No.694 and 1063 of 2008 in the aforesaid terms but so also interpreted by learned Division Bench of this Court, which appeals (HCA No.326 and 327 of 2008) though were in relation to an interim injunction order in the same suits. The primary consideration was that Federation of Pakistan may impose, in terms of Rule 10 of Rules 1951, condition only for the purposes of rendering the building of the adjacent land owner more secured and protected for persons using the same, in accordance with Rule 10 of 1951 Rules. Defendant No.1's counsel never objected that such reasonable restrictions for the security and safety, not only for the occupants of the property likely to be constructed by defendants but also for the installations and property of the adjacent land owner, may be secured by some reasonable restrictions. This is perhaps the only requirements of Rule 10 of ibid Rules 1951 and it cannot be stretch to the extent that the defendants may not be permitted to raise any kind of construction or utilize their land in accordance with law otherwise it would amount to land acquisition without compensation. Even Mr. Asim Iqbal, learned counsel appearing for the plaintiff, concedes that all that plaintiff wants is that reasonable restriction, as being imposed for the security and safety, of the occupants of the property dweller

16. Such being the situation I am of the view that the defendants are not precluded from using their land in pursuance of Rule 10 of ibid Rules 1951 however the reasonable restriction for the security and safety of the occupants be adhered to, which restriction shall not be arbitrary and fanciful and that such restriction would not be of such magnitude as would materially render and disentitle neighboring land owners from utilizing their land in accordance with law as it would then be in violation of Article, 4, 23 and 24 of the Constitution of Islamic Republic



of Pakistan, 1973. Plaintiff has prayed in the suit that no structure/ construction shall be permitted and that defendants are not entitled to raise any construction within a distance of 200 sq. yards from the plaintiff key point installation i.e. category 1-A, Zulfiqarabad Oil Terminal, is thus misconceived and would amount to acquiring the property without its market value under acquisition laws. Thus Issue No.1 has two parts; plaintiff's installation may have fallen in Category I-A but consequently the adjacent land owners are not precluded from raising construction subject to above clarification and the issue is answered accordingly i.e. for the first part affirmative and second part in negative. Issue No.2 is answered in negative. Consequently with the above observation on Issue No.3, the suit essentially fails and is accordingly dismissed with no orders as to costs.

Dated: 08.11.2022

**J U D G E**