

ORDER SHEET
THE HIGH COURT OF SINDH, KARACHI
C.P. No. D-2842 of 2023

Dated: Order with signature of Judge(s)

- 1.For hearing of Misc No. 13629 of 2023
2.For hearing of Main Case.

- 1). Mr. Justice Yousuf Ali Sayeed
2). Mr. Justice Mohammad Abdur Rahman

Date of hearing : 27 June 2023:-

Petitioner : Faizan Enterprises through Muhammad Nadeem Khan, Advocate.

Respondent No.1 : Government of Sindh through Mr. Asad Iftikhar, Assistant Advocate General, Sindh.

Respondents No.2
3 & 4 : Mr. S.Hassan M Abid, Advocate along with Qayyum Khan Director Charged Parking KMC

ORDER

MOHAMMAD ABDUR RAHMAN, J: This Petition has been maintained by the Petitioner under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 against a notice dated 8 May 2023 issued by the Office of the Director (Charged Parking) Karachi Metropolitan Corporation, cancelling a permission granted for “reserved parking” that was granted to the Petitioner under the provisions of Bye-Law 14 of the Karachi Municipal Corporation Parking Bye-Laws 1975 that had purportedly been issued by the Karachi Municipal Corporation under Section 91 of Sindh Peoples Local Government Ordinance, 1972 read with item 21 of Schedule IX and Section 71 of the Sindh Peoples Local Government Ordinance, 1972 in conjunction with KMC Resolution No. Dir/CP/KMC/Gen/872/2023 dated 22 March 2023 and which are now purportedly subsisting under the provisions of the Sindh Local Government Act, 2013.

2. The facts of this Petition are not disputed. The Director (Charged Parking) Karachi Metropolitan Corporation had on 24 February 2023 issued to the Petitioner, a letter permitting them to “reserve” a parking space for 32 Vehicles on a portion of a public thoroughfare, in front of Sindh Government Hospital Sharifabad, Karachi from 1 February 2024 to 31 January 2024 against a fee of Rs, 1,152,000 (Rupees One Million One Hundred and Fifty Two Thousand) per annum which was payable by the Petitioner to the Karachi Metropolitan Corporation in three installments. It is also admitted that the first installment of Rs. 480,000 (Rupees Four Hundred and Eighty Thousand) was paid by the Petitioner to the Karachi Metropolitan Corporation on 6 April 2022. The relevant terms of the letter dated 24 February 2023 on which such a reservation of a parking space was made are indicated as under:

“ ... In Pursuance of KMC Resolution No. 22 dated 24-06-2021 permission for Reservation of Parking space for Parking of 34 Vehicles at INFRONT OF SINDH GOVERNMENT HOSPITAL SHARIFABAD is hereby granted for a year on the following Terms and Conditions:-

1. That the Permission for Reserved area may only be used for Parking of vehicles and any other use of the allotted area may lead to the legal consequences any may cancel the permission after issuance of prior notice.
2. That no concrete/Pacca Construction will be allowed in Parking area.
3. That the Parking space will be utilized for the purpose of Parking and no other activity will be allowed in that area.
4. You shall be responsible for the Security of the Reserved Parking Space under your use and allotted by KMC.
5. That in case of Security Agencies asked for vacation of Parking area you should vacate the same without any hinderance.
6. That the payment of Rs, 11,52,00 deposited in advance vide Payorder No. 14022255 dated:06-04-2023 of Meezan Bank F.B. Area Block -06 Branch Towards Reserve Parking Fee for the Month of Feb-2023 to Jan-2024 @Rs. 3,000/- per vehicle per Month against 32 Vehicles against the Outstanding due amount for the Month of Feb-2024 to June 2024 of Rs. 4,80,000
7. That if the existing rates are enhanced you would have to pay the difference accordingly.
8. That the Reserve Parking permission will be extended on advance payment of Reserved Parking Fee.

9. Breach of the any above condition shall render to cancellation of permission and forfeiture of amount paid in advance.

3. That on 8 May 2023 a letter was issued by the Director (Charged Parking) Karachi Metropolitan Corporation which purported to cancel the permission granted on 24 February 2023 and which read as under:

“ ... *The Reserved Parking facility of 32 Vehicles Infront of Sindh Government Hospital Sharifabad is hereby/ Cancelled/Withdrawal with immediate effect as you failed to follow the conditions of Reserved Parking Facility.*

You are hereby directed to vacant the Possession within 02 days time otherwise strict legal action will be initiated as per the relevant laws and rules.”

4. Being aggrieved by the letter dated 8 May 2023 (hereinafter referred to as the “Impugned Notice”) the Petitioner has maintained this Petition alleging that the permission that had been granted by the Director (Charged Parking) Karachi Metropolitan Corporation was granted until 1 January 2024 and could not be unilaterally withdrawn. He further contended that when he approached the Director (Charged Parking) Karachi Metropolitan Corporation to discuss the Impugned Notice, a demand was made of an extortionate amount as illegal gratification to withdraw the Impugned Notice. The Petitioner states that he is unwilling to pay any amount to the Director (Charged Parking) Karachi Metropolitan Corporation as illegal gratification and contends that the Impugned Notice has been issued by Director (Charged Parking) Karachi Metropolitan Corporation “arbitrarily, capriciously and in violation of law” and is liable to set aside.

5. Mr. S. Hassan M. Abdi, appeared on behalf of the Karachi Metropolitan Corporation and has contended that Director (Charged Parking) Karachi Metropolitan Corporation had in fact issued a letter to the Petitioner on 24 February 2023 whereby the Petitioner had been granted permission to **reserve a portion of a public thoroughfare** in front of a

building known as Sindh Government Hospital Sharifabad as a parking space for 32 Vehicles from 1 February 2023 to 31 January 2024 against a fee of Rs, Rs, 1,152,000 (Rupees One Million One Hundred and Fifty Two Thousand) per annum and which amount was payable by the Petitioner to the Karachi Metropolitan Corporation in three installments. He further contended that while the first instalment of Rs. 480,000 (Rupees Four Hundred and Eighty Thousand) was paid by the Petitioner to the Karachi Metropolitan Corporation on 24 February 2023; on 18 April 2023 the fee that was charged for reserving such a parking space had been increased by the Karachi Metropolitan Corporation and pursuant to clause 7 of the letter dated 24 February 2023, the Petitioner was obliged to make good the difference. He stated that as the Petitioner had failed to pay such an amount to the Director (Charged Parking) Karachi Metropolitan Corporation he was constrained, under clause 9 of the letter dated 24 February 2023, to issue the Impugned Notice to the Petitioner. He stressed that the Petition was misconceived as the Director (Charged Parking) Karachi Metropolitan Corporation was acting well within his authority and in conformity with the terms and conditions of the letter dated 24 February 2023. He contended that the Karachi Metropolitan Corporation had the requisite power to authorise the reservation of parking under the provisions of Bye-Law 14 of Karachi Municipal Corporation Parking Bye-Law 1975 which he stated empowers the Karachi Metropolitan Corporation to permit a portion of a public thoroughfare to be reserved for the benefit of a private individual to allow them a private parking space. He clarified that while the Karachi Municipal Corporation Parking Bye-Law 1975 had been notified under Section 91 read with item 21 of Schedule IX and Section 71 of the Sindh Peoples Local Government Ordinance, 1972 notwithstanding the repeal of that statute, the Karachi Municipal Corporation Parking Bye-Law 1975 would on account Section 23 of the West Pakistan General Clauses Act, 1957 continue to subsist under the provisions of the Sindh Local

Government Act, 2013. Neither the Counsel for the Petitioner nor the counsel for Karachi Metropolitan Corporation relied on any case law in support of their contentions.

6. We have heard the learned counsel for the Petitioners and the counsel for the Karachi Metropolitan Corporation and have perused the record.

A. The Vires of Bye-Law 14 of the Karachi Municipal Parking Bye-Laws 1975 under the provisions of the Sindh Peoples Local Government, Ordinance, 1972

7. The purported power to grant permission to a person to use **a portion of a public thoroughfare** as a private parking space is found in Bye-Law 14 of the Karachi Municipal Corporation Parking Bye-Law, 1975 which states as under:

“ ... (1) The Mayor may allocate to individuals, firms, associations or other bodies having their offices or business places in the **controlled area, parking spaces** on basis of **monthly payment of parking fees** without any concession.

(2) The Mayor may without assigning any reason revoke the periodical allocation and in such case the part of the payment covering the unexpired period shall if such revocation is not a consequence of violation of these bye-laws, be refundable.”

(Emphasis is added)

It is apparent that by this By-Law the Mayor, as elected under the Sindh Peoples Local Government Ordinance, 1972 in a “controlled area” had the power to “allocate” a “parking space” to a certain class of person as against a monthly parking fee.

8. The Karachi Municipal Corporation Parking Bye Laws 1975 have been notified under Section 71 read with item 21 of Schedule IX and Section 91 of Sindh Peoples Local Government Ordinance, 1972. Section 71 of the Sindh Peoples Local Government Ordinance, 1972 states as under:

“ ... Taxes to be Levied

(1) *The Corporation, a People’s District Council, a People’s Municipality and a People’s Town Committee **may with the previous sanction of Government**, levy, in the prescribed manner, all or any of the taxes, rates, tolls and **fees** mentioned in Schedule VII:*

Provided that a tax, rate or toll which is either levied as a cess or a tax by Government or in addition to the government tax, rate or toll on the same item mentioned in Schedule VII shall not be more than that levied by Government.

(2) *Notwithstanding anything contained in sub-section(1), no tax on the annual letting value of buildings and lands shall be levied on buildings and lands or portions thereof exclusively used for public worship, charitable purposes, educational institutions, burial and burning of the dead and no water rate or conservancy rate shall be charged on buildings and lands situated in any part of the local area, where the Council as no arrangements for supplying water or for the removal of refuse and sullage, as the case may be.*

(3) *A Council may, subject to rules, on an application by the owner or occupier of a house exempt one-third of the tax on letting value of buildings and lands and rate for maintenance of a fire-brigade and the whole of water rate and conservancy rate if satisfied that the building or land or any portion thereof which has been assessed as a separate property, has been lying vacant or remained un-productive for a period of more than two months.”*

It is therefore apparent that the Karachi Metropolitan Corporation had subject to the approval of the Government of Sindh, the authority to charge “taxes, rates, tolls and fees “ on any matter that was specified in Part I of Schedule VII of the Sindh Peoples Local Government Ordinance, 1972 and which are reproduced hereinunder:

“ ... PART 1 – TAXES, RATES, TOLLS AND FEES TO BE LEVIED BY KARACHI METROPOLITAN CORPORATION.

(1) *Tax on the import of goods for consumption, use or sale in the Karachi Metropolitan Corporation area.*

(2) *Tolls on roads, bridges and ferries.*

(3) *Tax on vehicles of all kinds.*

(4) *Drainage Tax.*

(5) *Fire Tax.*

(6) *Development tax for specified periods for specific public benefit or public utility projects.*

(7) *Rate for the bulk supply of water.*

(8) *Fees for specific services rendered. And licences/sanctions /permission granted.*

(9) *Cess on taxes levied by Government.*

(10) *Any other tax which Government is empowered to levy by law.*

Section 91 of the Sindh Peoples Local Government Ordinance, 1972 confers on the Karachi Metropolitan Corporation the general right to make Bye-laws and states as under:

“ ... *By-Laws*

91. (1) A Council may, and if required by Government shall, make by-laws not inconsistent with the rules, to carry out the purposes of this Ordinance.

(2) In particular and without prejudice to the generality of the foregoing powers, such by-laws may provide for all or any of the matters enumerated in Schedule IX and all matters incidental, consequential and supplemental thereto.

(3) If the Council fails to make any by-laws when required by Government to do so, Government may frame the by-laws and publish them in the official Gazette which shall be adopted by the Council.”

As is apparent, Section 91 of the Sindh Peoples Local Government Ordinance, 1972 permits the Karachi Metropolitan Corporation to frame Bye-laws to “carry out the purposes” of the Sindh Peoples Local Government Ordinance, 1972 including, but not limited to, the right to frame Bye-Laws in respect of any matter contained in Schedule IX of the Sindh Peoples Local Government Ordinance, 1972. The item that had been identified in Schedule IX of the Sindh Peoples Local Government Ordinance, 1972 on the basis of which the Karachi Municipal Corporation Parking Bye-Laws 1975 was authorised to notify the Karachi Municipal Corporation Parking Bye-Laws 197 was item 21 and which reads as under:

“ ... 21. *Regulation of Traffic*”

9. It would therefore seem that so as to fulfil its responsibility under the provisions of the Sindh Peoples Local Government Ordinance, 1972, the Karachi Metropolitan Corporation had framed the Karachi Municipal Corporation Parking Bye-Laws 1975 so to “regulate traffic” within its jurisdiction and in doing so had under Bye-Law 14 conferred on the Mayor

in a “controlled area” the power to “allocate” a “parking space” to a certain class of person as against a “parking fee”. The fact that the Karachi Metropolitan Corporation had the requisite authority to frame Bye-Laws for the regulation of traffic does not automatically permit them to charge a fee for reserved parking. To be able to achieve this a specific power has to be conferred by statute on the Karachi Metropolitan Corporation to charge such a fee. As is apparent Section 71 of the Sindh Peoples Local Government Ordinance, 1972, subject to the sanction of the Government of Sindh, confers a general power on the Karachi Metropolitan Corporation to levy “taxes, rates, tolls and fees” on any matter mentioned in Schedule VII of the Sindh Peoples Local Government Ordinance, 1972. However, when one examines Part I of Schedule VII it is apparent that there is no right conferred on the Karachi Metropolitan Corporation to charge a fee on “reserved parking”. A similar question arose in the case reported as **Cyrus Cowasjee vs. Karachi Metropolitan Corporation**¹ wherein while examining whether the Karachi Metropolitan Corporation had the power under the Sindh Local Government Act, 2013 to levy a mutation fee on the inheritance of a person to an immovable property a Division Bench of this Court held that:²

“ ... 9. We may now examine the relevant provisions of Sindh Local Government Act, 2013 and also the provisions of Peoples Local Council (Land) Rules, 1975, under which, the respondent (KMC) issued the impugned challan to the petitioners in the sum of Rs.12,99,452/- towards mutation charges in respect of subject immovable property. Since, in the impugned challan issued by the respondents to the petitioners demanding charges, there has been no reference to any provision of law, under which such demand was created. However, when the learned counsel for the respondents was confronted to refer to the relevant provisions of Sindh Local Government Act, 2013, whereby, authority to collect mutation fee/charges is vested in the respondents, learned counsel, in response to such query, referred to the provisions of sections 96 and 103 of the Sindh Local Government Act, 2013. **Perusal of the provision of section 96 of the Sindh Local Government Act, 2013, shows that, it gives an authority to the council to levy taxes, rent, tolls and fee mentioned in Schedule 5 of the Act, 2013, whereas, in terms of Item No.12, Part 1 of Schedule 5 of Sindh Local Government Act, 2013, KMC has the authority to impose tax on transfer of immovable property. However, there is no authority vested in the KMC in terms of section 96 read with Schedule 5 of**

¹ PLD 2022 Sindh 106

² *Ibid* at pgs. _____

the Sindh Local Government Act, 2013, to charge or collect mutation fee/charges. Similarly, section 103 provides for framing the Rules under the Act, according to which, all taxes, rent, toll, fee and other charges levied by council shall be imposed, assessed, leased compounded, administered and regulated in such manner and such period may be prescribed. It further provides that Rules be framed under this Section for the purposes of assessment of collection of taxes. Learned counsel for the respondent referred to Peoples Local Council (Land) Rules, 1975, which according to learned counsel, are still applicable for the purposes of Sindh Local Government Act, 2013, and placed reliance on Rules 26 and 27 and argued that in terms of Rule 26 of Peoples Local Council (Land) Rules, 1975, the council is required to keep land register, showing the name of lessee, transferees or other persons, who may acquire any right over the land or applied under these rules, whereas, in terms of Rule 27, according to learned counsel, while registering names of transferees in such register, the council shall, as far as possible adopt the procedure laid down in the West Pakistan Act XVII of 1967 for mutation of names in respect of plots leased out by the Government and any entry made in such register shall be rectified by the council on furnishing of such proof and a mutation fee of 2% of the initial sale price. Reference by the learned counsel for respondent to aforesaid Rules in the instant case seems irrelevant, for the reason that in the case in hand, there is no act of transfer of immoveable property under Transfer of Property Act, 1882, by a living person to another living person(s), nor there is any sale price of the subject property, upon which 2% of mutation fee could be charged, whereas, admittedly the subject immoveable property stands devolved in the petitioners by operation of law through inheritance (Will). Moreover, aforesaid Rules do not override the provisions of the Sindh Local Government Act, 2013, nor can enlarge the scope of the charging provisions and the authority as vested in KMC for the purposes of charging or creating any tax, fee, rent or other charges etc as provided under the Sindh Local Government Act, 2013.

10. It is well settled legal position in law that in fiscal statutes, charging provisions are to be strictly construed. No tax, fee, charge or levy etc. can be imposed unless such authority is available under the constitution and the relevant statute in terms of clear and unambiguous language. No government or Authority can compulsorily extract money from any person or class of person either in the form of tax, fee, charge or levy, unless specifically authorized under the law. It is also settled legal position that there is no room for any intendment or presumption in a fiscal statute, whereas, burden lies upon the Government, or the authority to establish that there is a provision of the statute, whereby, charge has been created for the purpose of collecting tax, fee, levy or any other charges from any person or class of person(s) in unequivocal and clear terms, whereas, in case of any ambiguity, the benefit is to be extended to the person or class of person(s) upon whom such incidence or charge is created. Reliance in this regard can be placed in the following cases:

(i) Commissioner of Income Tax, Companies-II, Karachi v. Messrs Muhammad Usman Hajrabai Trust Imperial Courts, Karachi (2003 PTD 1803)

(ii) Province of the Punjab through Secretary, Government of Punjab, Excise and Taxation Deptt. and others v. Muhammad Aslam and others (2004 SCMR 1649)

(iii) Collector of Sales Tax and Federal Excise v. Messrs Abbot Laboratories (Pakistan) Ltd., Karachi (2010 PTD 592)

(iv) Continental Biscuits Ltd. v. Federation of Pakistan through Secretary Defence, Ministry of Defence, Islamabad and 3 others (2017 PTD 1803)."

(Emphasis is added)

10. As has been held, whenever an authority acts to impose a “tax, fee, charge or levy etc. such a right must be identified in the relevant statute in “clear and unambiguous language”. As there is no item in Part I of Schedule VII of the Sindh Peoples Local Government Ordinance, 1972 which permits the Karachi Metropolitan Corporation to charge a fee on “reserved parking”, we are of the opinion that the Karachi Metropolitan Corporation under Bye-Law 14 of the Karachi Municipal Corporation Parking Bye-Law 1975 had no authority to charge a fee reserving a parking space for any person (or for that matter to charge a fee for a parking space) under the provisions of the Sindh Peoples Local Government Ordinance, 1972. The provisions of Bye-Law 14 of the Karachi Municipal Corporation Parking Bye-Law 1975 having been notified, without the Karachi Municipal Corporation having the requisite authority under Section 71 of the Sindh Peoples Local Government Act, 1972 to charge such a fee, are therefore ultra vires of Section 71 of the of the Sindh Peoples Local Government Act, 1972 and void.

B. The Vires of Bye-Law 14 of the Karachi Municipal Parking Bye-Laws 1975 under the provisions of the Sindh Local Government, Act, 2013

11. While we have come to the conclusion that Bye-Law 14 of the Karachi Municipal Corporation Parking Bye-Law 1975 was ultra vires of the Sindh Peoples Local Government Act, 1972 and void, keeping in mind that the Sindh Peoples Local Government Ordinance 1972 was repealed on 25 July 1979 by the Sindh Local Government Ordinance, 1979 and that despite the repeal of the Sindh Peoples Local Government Ordinance, 1972, the Karachi Municipal Corporation Parking Bye-Laws 1975 would continue to subsist under Section 23 of the West Pakistan General Clauses Act, 1956 we are obliged to examine the vires of By-Law 14 under the provisions of the Sindh Local Government Act, 2013

12. It has been contended by Mr. S. Hassan M. Abdi, on behalf of the Karachi Metropolitan Corporation that the Karachi Municipal Corporation Parking Bye-Laws 1975 continue to subsist under Section 23 of the West Pakistan General Clauses Act, 1956 and which section reads as under:

“ ... *Continuation of appointment, notification, orders, etc, issued under enactments repealed and re-enacted*

*23. Where any provincial Act is repealed and re-enacted with or without modification, then, **unless it is otherwise expressly provided**, any appointment, notification, order, scheme, rule, form or **bye-law** made or issued under the repealed Act, shall **so far as it is not inconsistent with the provisions re-enacted** continue in force, and be deemed to have been made or issued under the provisions so re-enacted unless, or until it is superseded by any appointment, notification, order, scheme, rule, form or bye-law made or issued under the provisions so re-enacted.”*

(Emphasis is added)

The section has been interpreted by a Division Bench of this Court in the decision reported as **Dr. Syed Muhammad Ali Shah vs. Chairman, Pakistan Cricket Board, Lahore**³ wherein while interpreting the provisions of Section 24 of the General Clauses Act, 1897 (which are para materia the same as Section 23 of the West Pakistan General Clauses Act, 1956) it was held that:⁴

“ ... *On reading section 24 of the General Clauses Act, as referred to above, we are clear in our mind that deeming provisions of section 24 of the General Clauses Act, 1897 keep order, scheme, rule, form or bye-law framer under the repealed Act alive as long as new order, scheme rule, form or bye-law under the new re-enacted regime is framed in accordance with re-enacted statute. Section 24 of General Clauses Act serves to protect and save order, scheme, rule, form or bye-law, under the repealed Act. Purpose is to maintain the continuity and avoid any vacuum between the interval when such order scheme, rule, form or bye-law as the case may be are framed under the re-enacted statute.”*

While agreeing with the interpretation that has been cast by the Division Bench of this Court on the provision of law, we note that as the interpretation of the words “**so far as it is not inconsistent with the provisions re-enacted**” were not in issue in that petition, the impact of those words as contained in that Section have not been discussed in the judgement.

³ 2010 MLD 1241

⁴ *Ibid* at pg. 1249

These words import into law the principle that delegated legislation, including but not limited to delegated legislation which are in the form of either an “order, scheme, rule, form or bye-law”, cannot override the provisions of the statute under which they are promulgated or in terms of Section 23 of the West Pakistan General Clauses the provisions of the statute under which they are “deemed” to have been promulgated. Such “order, scheme, rule, form or bye-law” in the nature of delegated legislation, to the extent that it transcends the statute and therefore being inconsistent with the provisions contained in the statute pursuant to which it is notified, must be construed as ultra vires of that statute and to that extent void.⁵

13. Keeping in the mind that the legality of Bye-Law 14 of the Karachi Municipal Corporation Parking Bye-Laws 1975 has to be examined against the statute that currently regulates local government in the Province of Sindh it would be convenient to summarise the sequence of the statutes regulating local government in the Province of Sindh, their promulgations, repeals, re-enactments and re-repeals which are as follows:

- (i) the Sindh Peoples Local Government Ordinance, 1971 was repealed on 25 July 1979 by the Sindh Local Government Ordinance, 1979;
- (ii) The Sindh Local Government Ordinance, 1979 was repealed on 6 August 2001 by the Sindh Local Government Ordinance, 2001;

⁵ See *Province of East Pakistan and Another vs. Nur Ahmad and Another* PLD 1964 SC 451 at pg. 456; *Khawaja Ahmad Hassan vs. Government of Punjab* 2005 SCMR 186 at pgs. 225-228; *Zarai Taraqiati Bank Limited vs. Said Rahman* 2013 SCMR 642 at pg. 655; *Azam Wazir Khan vs Messrs Industrial Development Bank Limited* 2013 SCMR 678 at pg. 683; *Muhammad Amin Muhammad Bashir Limited vs. Government of Pakistan* 2015 SCMR 630 at pg. 636; *Mir Shabbir Ali Khan Bijarini vs. Federation of Pakistan* PLD 2018 Sindh 603 at pg. 616-617;

- (iii) The Sindh Local Government Ordinance, 2001 was on 14 July 2011 repealed by the Sindh (Repeal of the Sindh Local Government Ordinance, 2001 and Revival of the Sindh Local Government Ordinance, 1979) Act, 2011 and whereby the Sindh Local Government Ordinance, 1979 was revived;
- (iv) On 7 September 2012, the Sindh Peoples Local Government Ordinance, 2012 was promulgated and which repealed the Sindh (Repeal of the Sindh Local Government Ordinance, 2001 and Revival of the Sindh Local Government Ordinance, 1979) Act, 2011 and the Sindh Local Government Ordinance, 1979;
- (v) On 22 October 2012, the Sindh Peoples Local Government Act, 2012 was promulgated and which repealed the Sindh (Repeal of the Sindh Local Government Ordinance, 2001 and Revival of the Sindh Local Government Ordinance, 1979) Act, 2011, the Sindh Local Government Ordinance, 1979 and the Sindh Peoples Local Government Ordinance, 2012;
- (vi) On 25 February 2013, the Sindh (Repeal of the Sindh Peoples Local Government Act, 2012 and Revival of The Sindh Local Government Ordinance, 1979) repealed the Sindh Peoples Local Government Act, 2012 and re-enacted the Sindh Local Government Act, 1979; and
- (vii) On 16 September 2013, the Sindh Local Government Act, 2013 repealed the Sindh Local Government Ordinance, 1979.

As such, at present, local government in the province of Sindh is regulated by the provisions of the Sindh Local Government Act, 2013 and Bye-Law 14 of the Karachi Municipal Corporation Parking Bye-Laws, 1975 would therefore have to be examined against the touchstone of that statute to see whether it permits the Karachi Metropolitan Corporation the authority to charge a fee for “reserved parking”.

14. The general power of the Karachi Metropolitan Corporation to levy taxes, rates, tolls and fees is contained in Section 96 of the Sindh Local Government Act, 2013 and which states as under:

“ ... **Taxes to be Levied**

96.(1) Subject to sub-section (2) a Council may levy, in the prescribed manner all or any of the **taxes, rates, tolls and fees mentioned in Schedule V:**

Provided that where a tax, rate or toll which is levied as a cess, tax or surcharge by Government, such tax, rate or toll shall not be more than that levied by Government:

Provided further that where a tax, toll or fees is leviable both by the Metropolitan Corporation and a District Municipal Corporation, the District Municipal Corporation shall not levy such tax, toll or, fees except with the sanction of the Metropolitan Corporation;

Provided also that Government may direct the Metropolitan Corporation to levy any tax, rates, toll or fees leviable by a District Municipal Corporation subject to such conditions as Government may specify.

(2)The Metropolitan Corporation shall give share of the taxes, rates, toll or fees collected by it to the District Municipal Corporation in such proportion as may be determined by Government.

(3) All taxes, rates, tolls and fees levied by a Council shall be notified in the prescribed manner and shall, unless otherwise directed by Government, be subject to previous publication.

(4) Where a Council levies a tax, rate, toll or fees, it shall specify the date on which such tax, rate, toll or fees shall come into force.

Part I of Schedule V of the Sindh Local Government Act, 2013 specifies items on which the Karachi Metropolitan Corporation can levy a “tax, rates, tolls or fees” and which are as follows:

“ ... **PART - I**

**TAXES, RATES, TOLLS AND FEES TO BE LEVIED BY
KARACHI METROPOLITAN CORPORATION**

1. Fire Tax.
2. Conservancy Tax.
3. Drainage Tax.
4. Fees for slaughtering of Animals.
5. Fee on conversion of land use all over the City.
6. Fee on licences / sanctions / permits granted by KMC.
7. Market fee on land owned by KMC
8. Tolls on roads and bridges owned and maintained by KMC
9. Charged Parking on the roads maintained by KMC
10. BTS Towers
11. Entertainment Tax
12. Tax on transfer of immovable property
13. Cess on any taxes levied by the Government.”

15. Section 139 of the Sindh Local Government Act, 2013 empowers the Karachi Metropolitan Corporation to make Bye-laws and which is reproduced hereinunder:

“ ... **Bye-laws**

139. (1) A Council may, and if required by Government shall, make bye-laws not inconsistent with the rules, for carrying out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing powers such bye-laws may provide for all or any of the matters enumerated in Schedule VIII and all matters incidental, consequential and supplemental thereto.

(3) All bye-laws shall be made subject to the condition of previous publication.

(4) All bye-laws shall be subject to the sanction of Government and Government may sanction the same with or without modification.

(5) If the Council fails to make any bye-laws when required by Government to do so, Government may frame the bye-laws and publish them in the official Gazette and the bye-laws so published shall be deemed to be bye-laws made by the Council.

(6) Government may frame model bye-laws and the Councils may adopt them or be guided by them.

(7) All bye-laws shall be published in such manner as in the opinion of the Authority making them is best suited for information of the residents of the local area concerned.”

16. Schedule VIII of the Sindh Local Government Act, 2013 specifies the items that the Karachi Metropolitan Corporation can make Bye-Laws on and which are identified below:

“ ... **SCHEDULE - VIII**
MATTERS RESPECTING WHICH BYE-LAWS MAY BE
MADE

1. Registration of births and deaths and Marriages.
2. Regulation of sale of Cattle and Animals.
3. Regulation , management and regulation of orphanages, widow homes and other institution of the relief of the poor.
4. Organization of village defence, and adoption of measures for village safety and security.
5. Regulation and management of common property.
6. Regulation of burning and burial grounds.
7. Regulation of the slaughter of animals and construction and maintenance of Slaughter Houses.
8. Detention and destruction of stray dogs.
9. Enforcement of Vaccination.
10. Prevention and Control of Infectious Diseases.
11. Prevention of adulteration of food stuffs.
12. Regulation of milk supply.
13. Regulation of stables.
14. Prevention of encroachments.
15. Prevention and abatement of nuisances.
16. Regulation of the erection and re-erection of building.
17. Regulation of dangerous buildings and structures.
18. Management and regulation of public ferries.
19. Regulation of dangerous and offensive trades.
20. Management and regulation of Cattle Ponds.
- 21. Regulation of Traffic.**
22. Organization and regulation of fairs, show, tournaments and other public gatherings.
23. Enforcement of compulsory education.
24. Specification of purposes for which licences shall be required, and the terms and conditions subject to which licences may be issued.
25. Promotion and furtherance of any of the functions of the Councils, and the carrying of any of the purposes of this Act, not provided for in the rules.

As is apparent the Karachi Metropolitan Corporation is, under item 21 of Schedule VIII read with Section 139 of the Sindh Local Government Act, 2013 permitted to make Bye-Laws to “regulate traffic” in the city of Karachi. It therefore remains to be seen as to whether a power to levy a fee for “reserved parking” is permissible under the provisions of Part I of Schedule V of the Sindh Local Government Act, 2013 as held in **Cyrus Cowasjee vs. Karachi Metropolitan Corporation**⁶ in “clear and unambiguous language”.

17. Under Item 9 of Schedule V of the Sindh Local Government Act, 2013 the Karachi Metropolitan Corporation has the right, to charge a “tax,

⁶ PLD 2022 Sindh 106

rates, tolls or fees” in the nature of “Charged Parking on the roads maintained by KMC”. While we haven’t been given any proof that the road on which the parking that has been reserved for the Petitioner is being “maintained” by the Karachi Metropolitan Corporation, on the assumption that it is in fact being maintained by it, we are nevertheless of the opinion that there as there being a distinction between “Charged Parking” and “Reserved Parking” the Karachi Metropolitan Corporation does not have the authority under section 96 of the Sindh Local Government Act, 2013 to charge a “parking fee” for “Reserved Parking”.

18. The distinction is actually apparent in the provisions of the Karachi Municipal Corporation Parking Bye-Laws 1975 themselves which in Bye-Law 3 provides that:

“ ... 3. No person shall park any vehicle on any controlled area except on the space specified for that purpose and on payment of the fee prescribed in the Schedule to these bye-laws.

Provided that no such fees shall be charged for parking a vehicle at the specified space for a period of 5 minutes or less. “

The concept of “charged parking” as is evident from the provisions of Bye-Law 3 of the Karachi Municipal Corporation Parking Bye-Laws, 1975 envisages that when a motorist temporarily parks a motor vehicle on a road, so as to deter such person from parking on the road for an undetermined time i.e. to use the road as a private parking space, a fee is imposed on the motorist. When a Parking Space is utilised by the motorist even for a fee it **will not be reserved for that person to the exclusion of the general public** and would in effect be in the nature of a license to use the space at the absolute discretion of the Karachi Metropolitan Corporation. In the event that the motorist violates the terms of the temporary license, the relevant authorities would have the right to impound the vehicle and remove it from the parking space. Similarly, in the event that the motorist leaves the parking space any member of the general public can park his motor vehicle

in that space. Conversely, Bye Law 14 of the Karachi Municipal Corporation Parking Bye-Laws, 1975 reads as under:

- “ ... (1) The Mayor may allocate to individuals, firms, associations or other bodies having their offices or business places in the **controlled area, parking spaces** on basis of **monthly payment of parking fees** without any concession.
- (2) The Mayor may without assigning any reason revoke the periodical allocation and in such case the part of the payment covering the unexpired period shall if such revocation is not a consequence of violation of these bye-laws, be refundable.”

Under this Bye-law where a portion of a thoroughfare has been blocked for the benefit of a person such as the Petitioner **to the exclusion of the general public** for a determined term as against a monthly parking fee and which to our mind would amount to a lease being granted by the Karachi metropolitan Corporation in favour of the individual. The Supreme Court of Pakistan in the decision reported as **Abdullah Bhai vs. Ahmad Din**⁷ while identifying the difference between a “license” and a “lease” has set the following threshold which would to be considered to make such a distinction:⁸

- “ ... The line of demarcation between a lease and a license will sometimes be very thin though there is no doubt as to the principle applicable. A lease as will appear from Section 105 of the Transfer of Property Act is a transfer of an interest in immovable property. Ownership of physical property consists of a number of rights and the owner of such property when he creates a lease, transfers to the lessee a part of the rights of ownership, i.e., the right of enjoyment of the property, for a period, for consideration. During the continuance of the lease the right of enjoyment of the property belongs to the tenant and not to the landlord. The right of ownership as well as the rights of which it is composed are rights in rem and not in personem and by the lease a right in rem is transferred to the lessee. On the other hand a "licence" as will appear from its definition in Section 52 of the Easements act is merely a competence to do something which except for this permission would be unlawful. It does not confer any rights in physical property. There is in the case of a license only a person agreement between the licensor and the licensee whereby the licensor agrees not to interfere with the doing a particular acts on property which is in his possession. No right in rem passed to the licensee.”

To our mind when considering the rights conferred on the Petitioner through the letter dated 24 February 2023 it is apparent that the Karachi Municipal

⁷ PLD 1964 SC 106

⁸ *Ibid* at pg. 110

Corporation has prima facie conferred the right to right to enjoy a property for a period for consideration to the exclusion of all others and would in effect be granting a lease to the Petitioner over a portion of a public thoroughfare. This is reinforced by the fact that from the letter dated 24 February 2023 it is apparent that a space of 34 vehicles has been given to the Petitioner which he obviously will not utilise for him own benefit and which he will let out to members of the general public for a fee, thereby clearly permitting the Petitioner to exercise right to the property itself, making the right conferred by the Karachi Metropolitan Corporation a right in rem. Further for the duration of one year, as long as the Petitioner complied with the terms and condition stipulated in the letter dated 24 February 2023, he cannot be displaced from the parking space Finally in clause 8 a right to renewal having also been conferred by the Karachi Metropolitan Corporation on the Petitioner, which leads us to conclude that the right conferred on the Petitioner is clearly that in the nature of a lease and a right in rem.

19. We are therefore of the opinion, that the right to impose a fee for “charged parking” can be exercised by the Karachi Metropolitan Corporation under Section 96 read with item 9 of Schedule V of the Sindh Local Government Act, 2013 when the right conferred is in the nature of a license and whereby inter alia no definite term is given by the Karachi Metropolitan Corporation for the use of the parking space to a person to the exclusion of the general public. Wherever however a parking space is given to a person for a definite term to the exclusion of the general public the same would amount to a lease and which would amount to a “ reserved parking” and be ultra vires of Section 96 read with under Item 9 of Schedule V of the Sindh Local Government Act, 2013.

C. Lease of A Road

20. The Karachi Metropolitan Corporation as held by the Supreme Court of Pakistan in an unreported order dated 16 July 2021 in CP No. 9 of 2010 entitled **Naimutullah Khan, Advocate vs. Federation of Pakistan** while directing the demolition of a building known as “Nasla Tower” which was partially constructed on a road had held that no lease can be granted in respect of a public thoroughfare the Supreme Court of Pakistan held that:

... 6. Further, there is no denial of the fact that on account of such unilateral increase in the area which is not supported by any legally acceptable instrument, a service road has been encroached upon and the Tower exists on area in excess of what was originally leased which is reflected in a duly registered lease instrument. In order to satisfy ourselves, vide our order dated 08.04.2021 we had directed the Commissioner, Karachi Division to submit a report in this regard. Such report has been filed which clearly and categorically states that,

"in the opinion of this office, the available record suggests that area of plot No.A-193 is 780 Sq. Yds and all excess area measuring 341 Sq. Yds occupied by Nasla Tower building is encroached".

7. After examining the entire record and scrutinizing the reports submitted by all concerned agencies and departments, we are in no manner of doubt that the Tower in question (Nasla Tower) has indeed been constructed on encroached land which amongst other things has also blocked a service road. Being illegal construction and there being no provision for compounding such illegality specially where a service road has been blocked, the same (Nasla Tower) is liable to be demolished. Therefore, while dismissing this application, we direct the Commissioner, Karachi Division to remove all persons from the building and take possession of the said Nasla Tower immediately and initiate and complete the process of demolishing the Tower (Nasla Tower) as expeditiously as possible and submit a report in this Court before a date to be fixed by the office in next Session at Karachi. The owners of the Tower shall refund the price of shops/residential units and other areas sold by them in any form to the registered owners within a period of three months from today. In case of any delay, the claimants may claim markup/profit at the bank rate together with damages and for the said purpose initiate proceedings for implementation of the order of this Court before Courts of competent jurisdiction.

The decision of the Supreme Court of Pakistan settles the issue that the Karachi Metropolitan Corporation, while having the right to lease out plots pursuant to a master plan developed in accordance with law, cannot for the sake of increasing its revenue resort to leasing out a public thoroughfare such an action on its part in terms of issuing the letter dated 24 February

2023 was thereafter also in violation of the decision of the Supreme Court of Pakistan in the forementioned decision and an illegal act.

19. For the foregoing reasons, keeping in mind that the Petitioner has maintained this Petition to enforce various rights which have been conferred on it in violation of the law we hold that:

- (i) the provisions of Bye-Law 14 of the Karachi Municipal Corporation Parking Bye-Laws 1975 are ultra vires of the provisions of Section 96 read with Part 1 of Schedule V of the Sindh Local Government Act, 2013 and being void are struck down;
- (ii) notwithstanding the fact that Bye-Law 14 of the Karachi Municipal Corporation Parking Bye-Laws 1975 are ultra vires of the provisions of the Section 96 read with Part 1 of Schedule V of the Sindh Local Government Act, 2013, the Karachi Metropolitan Corporation does not have the right to “lease” a portion of a public thoroughfare for the benefit of a particular class of person to the exclusion of the general public; and
- (iii) the letter dated 24 February 2023, issued pursuant to Bye Law 14 of the Karachi Municipal Corporation Parking Bye-Laws 1975, being based on a void Bye-Law is also void and all amounts paid by the Karachi Metropolitan Corporation to the Petitioner are liable to be returned within one month from the date of this Order.

The Petition and all listed application stand disposed of in the foregoing terms with no order as to costs.

JUDGE

JUDGE

A.Rasheed/Steno.