

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
C.P. No. D- 7892 of 2022

Date	Order with signature of Judge
1.	For hearing of Misc. No. 33413 of 2022
2.	<u>For hearing of main case</u>
Date of Hearing	: 17 October 2023
Petitioner	: Mr. Abdullah Azzam Naqvi Advocate along with Mr. Waqar Ahmed, Advocate.
Respondent No. 1:	: Ms. Mehreen Ibrahim, Deputy Attorney General
Respondent No. 2 & 3	: Nemo
Respondent No. 4	: Mr. Iftikhar Hussain, Advocate
Respondent No. 5 & 6	: Mr. Mehran Khan, Assistant Advocate General Sindh

ORDER

MOHAMMAD ABDUR RAHMAN J. The Petitioner maintains this Petition under Article 199 of the Constitution of the Islamic Republic of Pakistan as against the issuance of a letter dated 2 April 2005 issued by the Deputy District Officer (Revenue) and ADC (Grade I) Saddar Town Karachi i.e. the Respondent No. 6 to the Respondent No. 2, the Respondent No. 3 and the Respondent No. 5 inquiring as to whether the ownership of Plot No. 65/II/II, 15th Street Off Khayaban e Mujahid, Phase V, Pakistan Defence Officers Housing Authority, Karachi (hereinafter referred to as the " Said Property") stood in the name of Hyder Ali Muljee; who was required to pay a sum of Rs. 4,200,000 (Rupees Four Million Two Hundred Thousand), in Case No. 26 of 2003 (16) under Section 15 of the Payment of Wages Act, 1936 and under Section 10 of the Workmens Compensation Act, 1923 and which amount was sought to be recovered from him as arrears of Land Revenue.

2. The Petitioner is the owner of the Said Property which she acquired through a Registered Conveyance Deed dated 12 November 2003 and whose name is entered in the records of the Respondent No. 2, the Respondent No. 3 and the Respondent No. 4 as the owner of the Said Property. The Petitioner was married to one Haider Ali Rashid who was also known as Hyder Ali Muljee and who was a partner in a firm known as "Celluko Industries." While the Petitioner denies any knowledge of the working of the partnership, it seems that her late husband was involved in Case No. 26 of 2003 (16) under Section 15 of the Payment of Wages Act, 1936 and under Section 10 of the Workmen's Compensation Act, 1923 and which resulted in a liability being attributed either to him or as to "Celluko Industries" for a sum of Rs. 4,200,000 (Rupees Four Million Two Hundred Thousand) and which was sought to being recovered by the Respondent No. 6 as arrears of Land Revenue.

3. To affect such a recovery, the Respondent No. 6 issued a letter dated 2 April 2005 to the Respondent No. 2, the Respondent No. 3 and the Respondent No. 5 inquiring as towards the ownership of the Said Property and whether it stood in the name of the Petitioner's Husband i.e. the (late) Hyder Ali Muljee. It seems that the Respondent No. 2, in response to the letter dated 2 April 2005, had issued a letter dated 16 April 2005 to the Respondent No. 6 confirming the title of the Petitioner to the Said Property and which caused the Respondent No. 6 to issue another letter dated 18 July 2005 to the Respondent No. 3 and the Respondent No. 5 which clarified that as the Respondent No. 2 had confirmed the Petitioner's title to the Said Property, the Respondent No. 2 and the Respondent No. 5 should also reply confirming as to in whose name the title of the Said Property vested. The Respondent No. 3 thereafter on 21 April 2005 also sent a letter confirming the Petitioner's title to the Said Property, while apparently the Respondent No. 5 has to date not responded to either of the two letters.

4. The Petitioner contends that the letter dated 2 April 2005, led to the Respondent No. 2, the Respondent No. 3, the Respondent No. 4 and the Respondent No. 5 all putting an unofficial “freeze” on the transfer of the title of the Said Property and on the basis of which she has been impaired from further dealing with the Said Property in violation of her fundamental rights as enshrined under Article 23 and Article 24 of the Constitution of the Islamic Republic of Pakistan, 1973. The Petitioner contends that in absence of the Said Property being attached or injuncted, the Respondents are prohibited from preventing the Petitioner from dealing with her property and prays that directions may be given to the Respondents to remove the unofficial “freeze” on the transfer of the title of the Said Property. The Counsel for the Petitioner did not rely on any case law in support of his contentions at the time of addressing his submissions.

5. Ms. Mehreen Ibrahim, Learned Deputy Attorney General addressed arguments on behalf of the Respondent No. 1 and contended that as the allegations had primarily been levied as against the Respondents No. 2, the Respondent No. 3, the Respondent No. 4 and the Respondent No. 5 the Federation of Pakistan was not concerned by the Petition and would abide by whatever orders were passed by this Court. Similarly, Mr. Iftikhar Hussain on behalf of the Respondent No. 4 and Mr. Mehran Khan, Learned Assistant Advocate General Sindh who appeared on behalf of the Respondent No. 5 and the Respondent No. 6 stated they would also abide by whatever orders were passed by this Court. None of the Counsels for the Respondents relied on any case law during the course of the hearing of the Petition. The Respondents No. 2 and the Respondent No. 3 were not represented at the time of the hearing of this Petition.

6. We have heard the Counsel for the Petitioner and the Counsel for the Respondent No. 1, the Respondent No. 5 and the Respondent No. 6 and have perused the record. Article 4 of the Constitution of the Islamic

Republic of Pakistan (which is identical in terms to Article 2 of the Constitution of Pakistan, 1962) clarifies:

- “ ... **Right of Individuals to be dealt with in accordance with law**
- (1) To enjoy the protection of law and to be treated in accordance with law is the **inalienable** right of every citizen, wherever he may be, and of every other person for the time being within Pakistan.
- (2) In particular
- (a) No action detrimental to the life, liberty, body, reputation or property of any person shall be taken except in accordance with law;
- (b) **No person shall be prevented from or be hindered in doing that which is not prohibited by law; and**
- (c) No person shall be compelled to do that which the law does not require him to do.”

6. The Honourable Supreme Court of Pakistan, in the decision reported as **Ch Manzoor Elahi vs. Federation of Pakistan**¹ has directed that it was the duty of this Court under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 to enforce Article 4 of the Constitution of the Islamic Republic of Pakistan, 1973:

- “ ... In my opinion, the powers given to a High Court under Article 199 of the Constitution is wide enough to cover not only a case of infringement of Fundamental Right as contained in Part I of the Constitution, but also to enforce the inalienable right of a citizen as mentioned under Article 4 of the Constitution which runs thus:-
- "4. (1) To enjoy the protection of law and to be treated in accordance with law is the inalienable right of every citizen, wherever he may be, and of every other person for the time being within Pakistan.
- (2) In particular-
- (a) no action detrimental to the life, liberty, body, reputation or property of any person shall be taken except in accordance with law;
- (b) no person shall be prevented from or be hindered in doing that which is not prohibited by law; and

¹ PLD 1975 SC 66

(c) no person shall be compelled to do that which the law does not require him to do."

It has been contended in this context that there is no remedy provided by the Constitution to enforce the rights and obligations mentioned in Article 4. The contention is misconceived. In the first place, the injunctions contained in Article 4(2) are not only mandatory but they are also clothed in prohibitory language which indicate that the provisions are self-executing and no legislation is necessary to give effect to them. The rules of interpretation of a written Constitution as reproduced above support this view. Apart from the question of any machinery to enforce the right or obligation, as I have said earlier, nobody is relieved of the obligation to comply with them. In the second place, I am unable to conceive that a right or obligation so clearly and solemnly given or put can be without a content, meaning or purpose. Unless, therefore, on an examination of the Constitution I am led to the inevitable conclusion that the Courts are powerless to enforce the inalienable right or the obligation mentioned in Article 4, I am of the opinion that the Courts are bound to give the Article a meaning and a purpose. I have, however, already noticed that Article 199 of the Constitution gives indeed wide powers to a High Court to act for the enforcement of the rights and obligations mentioned in Article 4 of the Constitution.

Article 4 may be compared with the due process of law in the American Constitution. The case of *Government of West Pakistan v. Begum Agha Abdul Karim Shorish Kashmiri* P L D 1969 S C 14, supports this view. In the case under report Article 2 of the 1962 Constitution which is corresponding to Article 4 of the Constitution was considered and the Court observed as follows:-

" The words 'in an unlawful manner' in sub-clause (b) of Article 98 (2) have been used deliberately to give meaning and content to the solemn declaration under Article 2 of the Constitution itself that it is inalienable right of every citizen to be treated in accordance with law and only in accordance with law. Therefore, in determining as to how and in what circumstances a detention would be in an unlawful manner one would inevitably have first to see whether the action is in accordance with law, if not, then it is action in an unlawful manner. Law is here not confined to statute law alone but is used in its generic sense as connoting all that is treated as law in this country including even the judicial principles laid down from time to time by the superior Courts. It means according to the accepted forms of legal process and postulates a strict performance of all the functions and duties laid down by law. It may well be as has been suggested in some quarters, that in this sense it is as

*comprehensive as the American 'due process' clause in a new garb. It is in this sense that an action which is mala fide or colourable is not regarded as action in accordance with law. Similarly, action taken upon extraneous or irrelevant considerations is also not action in accordance with law. **Action taken upon no ground at all or without proper application of the mind of the detaining authority would also not qualify as action in accordance with law and would, therefore, have to be struck down as being action taken in an unlawful manner.**"*

7. The Honourable Supreme Court of Pakistan in its decision reported as **Re: Tariq Aziz-ud-din and other**² has further held that the provisions of Article 4 of the Constitution of the Islamic Republic of Pakistan, 1973 are binding on all the functionaries of government including, but not limited to, the Prime Minister of Pakistan:

“ 27. *Once it is accepted that the Constitution is the supreme law of the country, no room is left to allow any authority to make departure from any of its provisions or the law and the rules made thereunder. **By virtue of Articles 4 and 5(2) of the Constitution, even the Chief Executive of the country is bound to obey the command of the Constitution** and to act in accordance with law and decide the issues after application of mind with reasons as per law laid down by this Court in various pronouncements [Federation of Pakistan through Secretary, Establishment Division v Tariq Pirzada 1999 SCMR 2744].”*

8. As is apparent from the decisions of the Honourable Supreme Court of Pakistan, Article 4 is not only enforceable by this Court in its jurisdiction under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 it must be followed by every functionary of the State. Clause (b) of Sub-Article 2 of Article 4 of the Constitution of the Islamic Republic of Pakistan, 1973 mandates that while it is the inalienable right of a citizen of Pakistan and of every other person for the time being within Pakistan to be treated in accordance with law in particular “No person shall be prevented from or be hindered in doing that which is not prohibited by law.” It seems to us that, regrettably, the Respondent No. 2, the Respondent No. 3, the

² 2010 SCMR 1301

Respondent No. 4 and the Respondent No. 5 are doing just that i.e. “preventing” and “hindering” the Petitioner from dealing with the Said Property without the Petitioner having specifically being “prevented” or “hindered” from doing so under any “law.”

9. In this regard we have specifically perused the letter dated 2 April 2005 issued by the Respondent No. 6 and are clear, that at best, it is a letter inquiring into the ownership of the Said Property and which admittedly was never owned by the Petitioner's husband and which has at all times remained in her name. The response issued by the Respondent No. 2 and the Respondent No. 3 having confirmed this fact, it is equally apparent that thereafter there was no allegation that was levied by the Respondent No. 6 that the Said Property was ostensibly held by the Petitioner's husband or that any of the processes for recovery of arrears, as indicated under Section 80 of the Sindh Land Revenue Act, 1967 were instituted as against the Petitioner or that the Said Property was attached under Section 85 or Section 90 of the Sindh Land Revenue Act, 1967. In fact, after receiving the responses from the Respondent No. 2 and the Respondent No. 3, the Respondent No. 6 did nothing and apparently abandoned their inquiry into the Said Property.

10. There being no action taken by the Respondent No. 6 as against the Said Property, there did not exist any prohibition or hinderance under any law on the basis of which the Petitioner could be subjected to the restrictions, that have apparently been imposed by the Respondent No. 2, the Respondent No. 3, the Respondent No. 4 and the Respondent No. 5, by unofficially “freezing” any transfer of the Said Property. The correct course of action on the part of each of these Respondents, having not received any directions from the Respondent No. 6 to take any action against Said Property, should have been to permit the Petitioner to transact on the Said Property and not to prevent any transfer of the Said Property.

Clearly if such an order had existed, the Respondents and each of them would be mandated to comply with such an order, but in the absence of such an order, the Petitioner is, as per Clause (b) of Sub-Article 2 of Article 4 of the Constitution of the Islamic Republic of Pakistan, 1973 to use the adage "permitted to do what is not specifically prohibited". There being nothing prohibitive order the Petitioner has every right to do what she wishes with the Said Property without any hinderance from the Respondents. This Petition must therefore be allowed.

11. For the foregoing reasons, we hereby direct each of the Respondents to permit the Petitioner to deal with the Said Property in accordance with law, including but not limited to her entitlement under the Sub-Lease issued by the Respondent No. 2 in her favour and which includes her right to transfer the Said Property and in respect of which no impediment should be made by the Respondents. On 17 October 2023 we had as such allowed this Petition on this basis and these are the reasons for that Order.

JUDGE

JUDGE

Karachi dated 25 October 2023