

**IN THE HIGH COURT OF SINDH, CIRCUIT COURT,
HYDERABAD.**

Present:
Mr. Justice Muhammad Shafi Siddiqui
Mr. Justice Arshad Hussain Khan

C.P. No.D-1531 of 2021
[Platinum Petroleum Service versus Province of Sindh & others]

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For petitioner:	Mr. Mujtaba Sohail Raja Advocate.
For Respondents No.1 & 3:	Mr. Rafiq Ahmed Dahri, Assistant Advocate General, Sindh.
For Respondent No.2:	Mr. Muhammad Hayat Mughal Advocate.
For Respondent No.4:	Mr. Muhammad Humayoon Khan and Syeda Bakhtawar Naz Shah Advocates.
Date of hearing:	17.08.2023.
Date of announcement:	23.08.2023.

JUDGMENT

Muhammad Shafi Siddiqui, J.- Petitioner through instant petition has impugned the letter/notice dated 01.09.2021 written by Executive Engineer, Phuleli Canal Division Badin to the petitioner whereby the subject plot/property is held to be an encroachment, with consequential relief as to the declaration of its entitlement over the subject plot.

Rights in the subject property¹ situated in Left Bank Barrage Colony/National Highway, Hyderabad, were initially vested with the Irrigation Department, Province of Sindh. Upon promulgation of Sindh Irrigation & Drainage Authority Act, 1997 such rights were claimed by Sindh Irrigation & Drainage Authority (SIDA)/respondent No.2. It is claimed that presently the property is under delegated management of respondent No.3 i.e. Left Bank Canals Area Water Board. This delegation is not disputed by counsel.

The facts disclosed that on 24.04.1973 the subject property was requisitioned by one Hyder Ali for the purposes of establishing refueling facility/petrol pump. A formal lease was executed on 17.09.1974, which was originally for ten years, extendable at the option. The original area was 592.50 sq. yards, which claimed to have been subsequently enhanced/ extended. The rights were assigned by the then lessee to Premium Oil Company i.e. Pakistan

¹ Commercial Plot measuring 1027 sq. yards

State Oil's predecessor. After completion of lease period, respondent No.1 revised the lease terms on 21.12.1988 whereby the leasehold rights, as exercised by original lessee, were conferred upon one Inayat Ali by the Pakistan State Oil, which continued the same business.

In consideration of the agreement on 01.12.1997 by Inayat Ali in favour of Hafizullah/Hafizullah's son, the rights were delegated and subsequently on the strength of one General Power of Attorney to Hafizullah's son namely Tariq. It is claimed that the property was finally conveyed by Tariq to Iqbal Ahmed Memon and Mrs. Yasmeen Iqbal. By way of an agreement of sale dated 29.09.1999. The dealership rights were also surrendered in favour of last lessee i.e. Iqbal Ahmed Memon and Mrs. Yasmeen Iqbal.

It is claimed that the lease of the property has continuously been extended. Requisite documents of extension of the area have also been attached with the petition. Petitioner also cited the references of some earlier litigation of the property in shape of Suits No.83 of 2007 and 56 of 2009 with SIDA and so also Suit No.74 of 2009.

Petitioner is in receipt of a letter/notice of 01.09.2021 by Phulleli Canal Division, Badin camp office @ Left Bank Barrage Canal Hyderabad. It is claimed in the notice that since lease period (last lease) has expired, therefore, occupation of the petitioner, at best, is of a trespasser/encroacher and hence vacation of the premises/property was advised to the petitioner and in consequence thereof this petition has been filed.

Respondents in response have put appearance by filing objections to the petition wherein they have contested the claim of the petitioner and defended the impugned notice.

We have heard learned counsel for the petitioner as well as learned Assistant Advocate General appearing on behalf of respondents No.1 and 3 and that of learned counsel appearing for private respondents.

This was admittedly a land adjacent to the Left Bank Canals, which are vested (since not disputed) with Sindh Irrigation & Drainage Authority (SIDA)/respondent No.2 and consequently the Left Bank Canal Area Water Board/respondent No.3. If at all it is so, as we are not debating as to the entitlement of these authorities under the law, they (SIDA) were however, under an obligation to utilize the land in the best possible transparent manner. It is admittedly not so, as the predecessor of the petitioner was granted this land without any codel formalities.

The government properties are not owned by the individuals acting under the authority, as is the present one whose affairs are run by and/or being managed and controlled by SIDA and Left Bank Canal Area Water Board i.e. respondents No.2 and 3; they were/are not supposed to hand over the valuable properties of the authorities to their loved ones. This is criminal negligence being continued ever since the subject plot was first leased out without any contest or public notice. Had the execution or extension of the lease was not disputed by some of the individuals of the respondent No.2, this criminal negligence would not have surfaced.

The petitioner has filed this petition for equity and it does not deserve one in return as petitioner or any of its predecessor has not performed it while acquiring land; in such circumstances as no codel/transparent formalities were followed for a fair competition, no indulgence could be granted. Any investment on plot by way of installations to carry out the object of petrol pump is entirely at its (petitioners') own risk, cost and consequences. Furthermore, the petitioner has already reaped the fruits of such investment for a long period of time. The government properties cannot be permitted or allowed to be thrown away in such manner as it requires fair & transparent contest as far as lease price is concerned. It should have been done by way of an auction followed by public notices so that best possible price could be fetched. These periodical leases and extension would not gain anything; neither premium could be given to a wrong being continued since decades.

We have inquired from learned counsel appearing for official respondents as to the present situation to which they submitted that they are in process of auctioning the site in question and would take all such measures in relation to all lands vested with them (official respondents) and in consequence whereof the notices to all concerned have been issued and are being issued. Waking up of officials of respondents No.2 and 3 must be on the basis of some understanding not materialized as it was earlier. Thus, at this stage we are not inclined to give a premium to the petitioner by directing the respondents to extend the leases on the terms as they deem fit and proper.

It is expected that in cases of all such properties/lands likely to be utilized under the law vested with respondents No.1 to 3, a fair and transparent mechanism should be followed where all codel formalities would be completed and a fair contest between those who are interested in occupying/obtaining the lands in question should be seen. Thus, since the lease in question has already expired in the instant case and if respondents have desire to utilize the land/lands adjacent to Left Bank Canal, they may do so

through a public notice/auction, inviting interested parties for operating from the site in question, to have the best possible market price in terms of the lease money and for better terms of the lease too. In case they are not interested in auction, the land/lands be retrieved immediately, as required by law, with compliance report to this Court in four weeks' time. Needless to mention here that petitioner is also at liberty to participate in the process of auction.

The petition, in view of above, merits no consideration and is accordingly dismissed along with pending application.

JUDGE

JUDGE

Irfan Ali