

Order Sheet
IN THE HIGH COURT OF SINDH AT KARACHI
Constitution Petition No. D – 5669 of 2023

DATE	ORDER WITH SIGNATURE OF JUDGE(S)
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Present:-
Mr. Justice Salahuddin Panhwar.
Mr. Justice Khadim Hussain Soomro.

1. For orders on CMA No.8963/2024.
2. For orders on CMA No.26492/2023.
3. For orders on CMA No.26493/2023.
4. For hearing of main case.

06.05.2024

Mr. Fazal-ur-Rehman, Advocate for the petitioners.

ORDER

KHADIM HUSSAIN SOOMRO,J:- Through the instant petition, the petitioners have prayed as under:-

- (a) *To direct the Respondent No.2 to 3 to perform their official duties in accordance with law and provide the infrastructure, basic amenities and facilities in the area of petitioner's Plot for construction the factory / building in proper manner, and further direct the respondents to deliver the remaining area of the allotted land i.e. Plot No. B-194, due to over lapping and short fall by the Respondent No.2 & 3.*
- (b) *To declare that the Respondent No.2 & 3 not be entitled to collect N.U.F. charges until to providing the infrastructure, basic amenities, security and developed the area.*
- (c) *To declare that the Impugned Letter dated 15.11.2021 is null and void and there is no value in the eye of law.*
- (d) *To restrain the Respondent No.2 & 3, their men, agents, staff, employees, administrators, sub-ordinates and any other person or persons acting on their behalf from taking any coercive action / step for cancellation or creating any third party interest in respect of the petitioner's land / Plot No.B/194, acres, and admeasuring 19.75 acres, and another Plot No.B-204, admeasuring 2 acres, SITE Area, Nooriabad, in any manner.*
- (e) *Any other relief or relief(s) which this Hon'ble Court may deems fit and proper as per circumstances of the case.*

2. The relevant facts of the case are that the petitioners are lawful bonafide allottees/owners of Plot No.B/194, SITE Area, Nooriabad, admeasuring 19.75 Acres allotted by Respondent / SITE vide allotment Order No.ADM/NA/1793/3045 dated 30.05.2003, and agreement to license was executed on 14.06.2003 vide letter

No.SITE/E/NA/300, dated 06.05.2007, (allotted land) similarly another industrial Plot of land bearing No.B-204 measuring 02 acres, situated at Nooriabad, allotted to the petitioners' firm M/S Specific Textile Industries after execution of an agreement of Assignment to transfer of Right to lease on 04.01.2007. The petitioners only have 11.70 acres in possession of Plot No.B/194 and 02 Acres of Plot No.B-204 due to overlapping made by Respondents No.2 & 3, who through their letter dated 13.06.2019 also cancelled the various Plot of other persons. Furthermore, Respondents No.2 & 3 also failed to provide proper infrastructure work, i.e. roads, drainage, water supply and electricity, which are not being done up till today. In this regard, the petitioners served many letters and made several requests to Respondents No.2 and 3, but they neither pay any heed to it, nor work has been done by them, even the demarcation of the petitioners' Plot was held by them upon which the petitioners moved an application to learned Ombudsman, who directed the Estate Engineer, SITE, Nooriabad to surveyed the area and submit the comprehensive report through letter No.SITE/NA/E364 dated 27.09.2019 under intimation to the Director Administration SITE Ltd.; however, Respondents No.2 & 3 never took any action to provide the infrastructure in the area. On 15.11.2021, the petitioners received a letter through reference No.6057, wherein a huge amount of Rs.8,768,229/- is outstanding in respect of the petitioners' Plot No.B-194 admeasuring 19.75 acres and subsequently Respondents No.2 & 3 published a recovery notice with intimation for cancellation of allotments of the various plots including the petitioners' Plot in Daily Jung dated 22.12.2021 which is unjust as the Respondents No.2 & 3 did not provide any infrastructure which itself a breach of the license agreement, Rules and Regulations of SITE Ltd.; hence they are not entitled to demand N.U.F., and development charges from the petitioners. Therefore, the petitioner filed Civil Suit No.04/2022 before the Court of Senior Civil Judge, Jamshoro, which was dismissed vide order dated 06.11.2023 on the grounds of maintainability. The total area allotted to the petitioners is about 21.75 acres, out of which the petitioners have given 11.70 acres of land; hence, the actual shortfall of the petitioners' Plot is 10.05 acres due to overlapping made by respondents No.2 & 3, and for that land, the petitioners already paid upto date development charges, rent and fire charges etc. Moreover, the petitioners under protest have also paid approximately Rs.1,481,256/- to Respondents No.2 & 3 and request demarcation, earmarking, possession and waiver of N.U.F. charges of Plot No.B/194 and B-204, but the Respondents No.2 & 3 failed to give any response. It is submitted that due to the non-providing infrastructure, security, and development, the petitioners are facing hardships due to the ill intention of Respondents No.2 & 3 to cancel the allotment of their land in an illegal manner. The demand of N.U.F. charges by Respondents No.2 & 3 in excess of the premium payable by the petitioners under the allotment order is illegal, arbitrary and without jurisdiction. As such, the allotment

could not be cancelled because of the petitioners' vested rights. The Petitioners apprehend that the respondents are trying to cancel their plots and take other coercive action against them. Hence, the petitioners filed the instant petition with the above-mentioned prayers.

3. Learned counsel for the Petitioners contends that the Petitioners are lawful allottees of the land in question after payment of valuable consideration. He also contends that due to the non-providing of infrastructure in the area, i.e. complete the services of roads, drainage, water supply, electricity, and security to start the construction work of the factory, Respondents No.2 and 3 cannot demand Non-Utilization Fee from the Petitioners as they have failed to discharge obligation on their part. He further contends that the demand of N.U.F. charges by Respondents No.2 and 3 is in excess of the premium payable by the Petitioners under the allotment order. As such, the impugned letter dated 15.11.2021 demanding the N.U.F. charges without providing basic amenities is not only exorbitant but illegal, unlawful and void abinitio.

4. Admittedly, the petitioners were allotted the land by Respondent / SITE vide allotment Order No.ADM/NA/1793/3045 dated 30.05.2003, and agreement to license was executed on 14.06.2003 vide letter No.SITE/E/NA/300, dated 06.05.2007, with certain terms and conditions. As per the terms and conditions of the allotment, the Petitioners were required to take possession of the allotted land within three months from the date of allotment. Furthermore, it was also stipulated that the Petitioners complete the construction of their factory within eighteen months from the date of taking over the possession of the allotted land. As mentioned above, all these terms and conditions have been violated by the Petitioners; therefore, the cancellation notice was issued by Respondents Nos 2 and 3, which is the subject matter of the instant petition.

5. The record shows that prior to this petition, the petitioners filed F.C Suit No. 04 of 2022, where they prayed a declaration of ownership for the allotted land and sought to invalidate the letter dated 15.11.2021. The petitioners' suit was dismissed, and against judgment and decree, the petitioners did not file an appeal. The legal maxim 'Ubi jus ubi remedium' (wherever there is a right, there is a remedy). The maxim, as mentioned above, establishes a fundamental legal principle, affirming that an individual has a lawful entitlement to a concomitant recourse to initiate legal proceedings in a court unless the Court's jurisdiction is precluded. According to the rule of jurisdictional prudence, the courts usually show the restraint with the directions to the parties first to take the recourse of an alternate and or equally effective mechanism and framework of remedy provided rather than to take departure to surpass or circumvent such remedy. Reliance can be placed in the case of the

Government of Punjab through the Secretary, Schools Education Department, Lahore and others v. Abdur Rehman and others (2022 SCMR 25).

6. The exceptional jurisdiction conferred by Article 199 of the Constitution is fundamentally designed to provide a specific remedy when the illegality and impropriety of an action by an executive or other governmental authority can be demonstrated without protracted inquiry. The term "adequate remedy" denotes a remedy that is effective, attainable, accessible, advantageous, and expeditious. The petitioner has exhausted effective remedy by filing a suit. The petitioner has an effective remedy for filing an appeal under 96 of the Code of Civil Procedure 1908, but the petitioner missed the bus without any reasonable and lawful excuse. The doctrine of exhaustion of remedies dictates that a litigant must not pursue a remedy in a different court or jurisdiction until the remedy prescribed by law has been fully exhausted. The dictum laid down by the Apex Court of Pakistan in the Case of ***Sana Jamali v. Mujeeb Qamar and another (2023 SCMR 316)*** emphasizes the principle that the High Court's writ jurisdiction is not to be used as the first and only solution for addressing grievances. Instead, it should be invoked after the remedies provided by the law have been exhausted. The Superior Courts are discouraged from engaging in fact-finding missions requiring evidence, which is better suited for lower Courts or tribunals with specific procedures for such matters. The law prescribes certain remedies for specific grievances, and those remedies must be pursued to their full extent before higher judicial intervention is sought through writs. This approach is designed to respect the hierarchy of the legal system and the specific processes established within it, ensuring that all available legal avenues are appropriately utilized before turning to the High Court's writ jurisdiction. It also serves to prevent the unnecessary overburdening of higher courts with cases that can be resolved through the prescribed legal channels.

7. Another aspect of the instant petition was filed in the year 2023, wherein the petitioner sought the declaration of the letter Letter dated 15.11.2021 through which respondents no 2 and 03 demanded the outstanding lease money from the petitioners after the lapse of 2 years, regarding which the counsel has given no reasonable explanation. Hence, the laches also hits this petition. The petitioners asserted that they engaged in correspondence with the department in pursuit of their claim does not absolve them from the repercussions of the doctrine of laches, which postulates that a party may possess an otherwise enforceable right but forfeits its entitlement to enforcement when affected by laches.

8. Similarly, if the constitutional petition remedy is not invoked within a reasonable timeframe, interference may be declined on the grounds of laches. It is inherent in the doctrine that procrastination undermines equity, a principle favouring

vigilant and not indolent. Laches, in its elementary sense, signifies a failure to undertake actions that ought to have been performed within a reasonable temporal framework. The assessment of laches in a constitutional petition is invariably contingent upon the conduct exhibited by the individual seeking constitutional recourse, but in the instant case, the counsel for the petitioner could not justify the delay in filing the petition. The reliance can be placed on case laws such as **PLD 2013 SC 268 (Umar Baz Khan v. Syed Jehanzeb and others)**, **2004 SCMR 400 (Farzand Raza Naqvi and others v. Muhammad Din through Legal Heirs and others)**, **2012 SCMR 280**, **2012 P.L.C. (C.S.) 218 (State Bank of Pakistan v. Imtiaz Ali Khan and others)** and **2014 P.L.C. (C.S.) 1292 (Asghar Khan and others v. Province of Sindh and others)**. The Apex Court of Pakistan, in a recent case of **Ex. Col. Muhammad Azad Minhas and another v. Federation Of Pakistan (PLD 2024 Supreme Court 235)**, elaborated on the principle of laches in the context of constitutional petitions.

9. The dictum emphasizes that while the bar of limitation generally does not apply to proceedings under Articles 199 and 184 of the Constitution, there is an expectation for such proceedings to be initiated promptly and within a reasonable time frame. This is to prevent the issue of laches, which refers to an unreasonable delay in asserting a right or claim in a way that prejudices the opposing party. The Apex Court referenced several past judgments to support this principle, including **Dr. Muhammad Tahir-ul-Qadri v. Federation of Pakistan (PLD 2013 SC 413)** and **Jawad Mir Muhammadi v. Haroon Mirza (PLD 2007 SC 472)**, which established that laches is not an absolute bar to constitutional jurisdiction but must be considered on a case-by-case basis. The Apex Court also cited **S.A. Jameel v. Secretary to the Govt. of Punjab (2005 SCMR 126)**, which held that the question of laches should be examined based on equitable principles since constitutional relief is discretionary and equitable in nature. In that case, the Apex Court found that the appellants/petitioners failed to explain their years of silence and delay in invoking constitutional jurisdiction. As a result, their constitutional petitions were dismissed on the grounds of laches, as they were deemed to have demonstrated contumacious lethargy, inaction, laxity, or gross negligence in pursuing their cause for enforcement of a right.

10. The concept of laches is not an abstract or technical rule. It applies when it would be unfair to grant a remedy because one party's actions could be seen as a waiver of that remedy or because one party's actions and indifference put the other party in an unreasonable position to assert that remedy later on. Two crucial factors in these cases are the duration of the delay and the nature of the acts done during that time, which can impact both parties and create a balance of justice or injustice regarding the remedy. The reliance can be placed on **Lindsay Petroleum**

Company v. Hurd ((1874) L.R. 5 PC 221), which was observed on pages 239 & 240:

"The doctrine of laches in Courts of Equity is not an arbitrary or technical doctrine where it would be practically unjust to give a remedy either because the party has, by his conduct done that which fairly be regarded as equivalent to the waiver of it or where by his conduct and neglect he had, though perhaps not waiving that remedy, yet put the other party in a situation in which it would not be reasonable to place him if the remedy were afterwards to be asserted, Two circumstances, always important in such cases are, the length of the delay and the nature of the acts done during the interval, which might affect either party and cause a balance of justice or injustice in taking the one course of the other, so far as relates to the remedy."

11. We are of the considered opinion, under the circumstances of the case, that the petitioners have failed to establish grounds warranting indulgence of this Court under Article 199 of the Constitution; resultantly, the present petition is dismissed in limine along with the listed applications. However, the petitioners are at liberty to avail themselves of an appropriate legal remedy to recover the amount paid in advance as permissible under the law.

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Dated: .05.2024.