

IN THE HIGH COURT OF SINDH AT KARACHI
C.P.No.D-2867 of 2021

Date Order with Signature of Judge

Before:-

MR. JUSTICE AQEEL AHMED ABBASI, C.J.
MR. JUSTICE ABDUL MOBEEN LAKHO.

Zaid Amin Akhai.....v.....Government of Sindh & others

10-01-2024

Mr.Muhammad Ahsan Ghani, Advocate for the Petitioner.
Ms.Humaira Jatoi, Advocate for SBCA (Respondent No.2)
Mr.Khalil Ahmed Siddiqui, Advocate for the Respondent No.3.
Mr.Saifullah, A.A.G.

ORDER

After hearing learned counsel for the petitioner at some length and in view of the objection raised by the learned counsel for the respondent No.3 as well as by the learned A.A.G., while confronted the learned counsel for the petitioner, as to maintainability of instant petition keeping in view the relief being sought in the prayer clauses, which prima facie cannot be granted in view of the recent Judgment passed by Hon'ble Supreme Court of Pakistan in the case of **Abdul Karim...v...Nasir Salim Baig and others** reported in **2020 SCMR 111**, wherein, it has been held that a residential plot cannot be converted into a commercial without approval by the Master Plan Authority after calling objections, whereas, further directions have been issued to the effect that any such conversion if granted earlier may also be re-examined in the light of aforesaid judgment, learned counsel for the petitioner could not submit any reasonable explanation nor could deny the legal

position as referred to above. Learned counsel for the petitioner, however, submits that though the case of the petitioner seeking commercialization of his plot has been pending before the Respondents for the last more than two (02) decades, whereas, the petitioner was required by the Respondents to make payment of the commercialization charges in four equal instalments, out of which two instalments were paid, however, later the respondents insisted upon payment of the third and fourth instalments jointly which the petitioner could not paid, therefore, the respondents started to raise such objections. According to learned counsel for the petitioner, though the petitioner is being discriminated as adjoining properties had already been commercialized by the respondents, however, keeping in view the recent Judgment of the Hon'ble Supreme Court of Pakistan, the petitioner would be satisfied if the respondents may be directed to atleast return the amount, which has already been paid by the petitioner towards commercialization charges. Learned counsel for the respondents submits that though instant petition is misconceived as there is contractual obligation between the parties and the petitioner has defaulted in making payment of the instalments within stipulated period, whereas, considerable period has already been lapsed, however, the respondents will consider the request of the petitioner for the refund of the amount paid by the petitioner towards commercialization charges in accordance with law and policy.

3. Accordingly, instant petition is disposed of with the directions to the petitioner to approach the respondents for the refund of the amount paid by the petitioner to the respondents

towards commercialization charges, which request of the petitioner shall be considered by the respondents in accordance with law, rules and the policy, however, the petitioner's claim may not be treated as time barred in view of pendency of dispute and litigation before this Court. It is expected that unless there is some other legal impediment, the amount which was received by the respondents towards commercialization charges may not be kept by the respondents, which appears to have been paid and received prior to recent development on the subject pursuant to Judgment of the Hon'ble Supreme Court of Pakistan as referred to hereinabove.

Petition stands disposed of in the above terms along with pending application if any.

Chief Justice

Judge

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