

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

PRESENT:

Mr. Justice Aqeel Ahmed Abbasi, CJ
Mr. Justice Abdul Mobeen Lakho, J

C.P. No.D-2404 of 2023

Date	Order with signature of Judge
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PRIORITY CASE:

1. For hearing of CMA No.11549/2023.
 2. For hearing of CMA No.11550/2023.
 3. For hearing of main case.
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Dated; 22nd April 2024

Mr. Muhammad Safdar, Advocate for Petitioners.

Mr. Saifullah, Asst. A.G. Sindh.

Mr. Muhammad Ghazali Shaikh, Advocate for
Respondent No.5.

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ORDER

Through instant Constitutional Petition, the petitioner, who claim to be owners/occupants of two shops in Saddar Cooperative Market Limited, Abdullah Haroon Road, Saddar, Karachi, have expressed their grievance against occupation and collection of parking fees by the respondent No.5 from the owners/occupants on the ground that as per the agreement (Built Operate & Transfer) executed between the Government and the builder/contractor, the possession of the building was to be handed over to the Government and, thereafter, third floor of the building, which is meant for parking for owners/occupants, was to be given through process of auction. According to learned counsel for petitioners, respondent No.5 are continuously charging parking fees in violation of law, whereas, official respondents have not taken any action, whereas, according to learned counsel, such parking should have been given through auction.

Pursuant to Court's Notice, comments have been filed on behalf of the Project Director, Cooperative Development Fund & Projects, Government of Sindh alongwith annexures, whereas, according to learned AAG, the possession of parking has been taken over by the office of the Project Director, Cooperative Development Fund & Projects vide letter dated 06.11.2023, therefore, the purpose of filing instant petition has been served out. It has been further submitted that litigation in respect of same subject matter is already pending before learned Single Judge of this Court in the shape of suits, therefore, instant petition is otherwise misconceived and not maintainable.

Pursuant to Court's Notice, Mr. Muhammad Ghazali Shaikh, Advocate has shown appearance, files vakalatnama on behalf of the respondent No.5 and requests for time to file detail comments, however, under instructions submits that petitioners are not even owners of shops in the subject building/market, whereas, the order of taking over the possession of the parking has been recalled, as it was in violation of law, as according to learned counsel, as per terms of the agreement (BOT) the possession of parking at third floor was to be handed over to Saddar Cooperative Market Limited of the owners/occupants.

Learned counsel for the petitioner has filed a statement alongwith annexure and submits that though the possession was taken over by the respondent, however, thereafter subject parking was given on auction to one successful bidder, namely, M/s. Malik Salahuddin & Co. in the sum of Rs.1,85,50,000/-, work order was issued and, thereafter, they started to collect parking fees, however, official respondents have once again cancelled such bid and again handed over the possession of the parking to the respondent No.5

while referring to Suit No.1470/2022, which is pending before learned Single Judge of this Court, learned counsel submitted that same is not relatable to the subject controversy.

Be that as it may, prima facie it appears that petitioners do not have any locus standi to file instant petition, as neither the parties to the (BOT) Contract in respect of construction of mortgaged building or the contractor, who according to petitioners, being highest bidder for collection of parking fee, have come forward to dispute the right of respondent No.5 to have possession and to collect parking fee, whereas, according to learned counsel for respondent No.5, possession of the parking after its completion was required to be given to the elected body i.e. Saddar Cooperative Market Limited/respondent No.5. It has also been transpired that litigation is already pending before this Court in the form of above suit relatable to the affairs of Saddar Cooperative Market Limited and overall project, therefore, we are not inclined to pass any order in the instant petition, nor would interfere in the process of determination of right or liabilities of the parties in the suit or before this Court. Moreover, disputed facts cannot be examined by this Court, as it requires recording of evidence.

Accordingly, instant Constitution Petition, being misconceived, is dismissed alongwith listed applications.

CHIEF JUSTICE

JUDGE

Farhan/PS
