

- d. In the meanwhile, restrain the defendant from threatening and harassing and breaching its contractual obligations towards the plaintiff and from interfering with the peaceful possession of the immovable property/mill/movable assets and directing the parties to maintain status quo.
- e. Any other better consequential relief as this Hon'ble Court may deems fit and proper.

SUIT NO.2097/2015

- a. Declaration that the asset purchase agreement dated 27.06.2014 between the defendant and the plaintiff is legally valid and binding on the defendant.
- b. Direct the defendant to perform its part of the obligation under the agreement dated 27.06.2014.
- c. Permanent injunction against the defendant to restrain it from breaching its contractual obligations towards the plaintiff and from interfering with the plaintiff's peaceful possession of the immovable property/mill.
- d. In the meanwhile, restrain the defendant from threatening and harassing and breaching its contractual obligations towards the plaintiff and from interfering with the peaceful possession of the immovable property/mill and directing the parties to maintain status quo.
- e. Any other better consequential relief as this Hon'ble Court may deems fit and proper.

2. On 06.11.2015 notices were issued, till then parties were directed to maintain *status quo*. Record reflects that on 23.11.2015 Mr. Noor Ahmed Memon filed Vakalatnama and contended that under the garb of *status quo* orders, plaintiffs have occupied the factories forcibly and have deployed their private guards with the help of police officials. The said order, being relevant, is reproduced herewith :-

'Mr. Noor Ahmed Memon advocate files Vakalatnama on behalf of defendant alongwith authority letter as well resolution, taken on record. He contends that after passing of *status quo* orders plaintiffs have deployed their private security guards as well as with the help of police occupied their factory.

Be that as it may, since parties were directed to maintain *status quo* hence it shall not be presumed that such directions were issued to occupy the factory under the garb of interim order. Accordingly both parties shall maintain *status quo*. Call report from the SSP Tando Muhammad Khan with direction that police shall not interfere with the business affairs of the plaintiff and defendant in any manner. Sohail Qasim, Senior Legal Officer, Anglo Fertilizers and Shiraz Ahmed, Head of Legal Department, Fauji Fertilizers, contend that they are tenant of defendant with regard to godown and their valuable chattels are also available there and plaintiffs have deployed their private persons and have deprived them of their legal rights. Such contention raised by learned counsel for defendant as well as representatives of Anglo Fertilizers and Fauji Fertilizers, is negated by learned counsel for plaintiff.

Learned counsel for defendant contends that he will file C.A. during the course of the day and provide copy to learned counsel for the plaintiff. Adjourned for hearing of injunction application. Meanwhile District & Sessions Judge, Tando Muhammad Khan shall conduct thorough probe with regard to claim of the defendants that they have been deprived of their legal and valuable chattels which are available in the factory and plaintiff by force has occupied the factory of defendant. He would be competent to appoint any officer for surprise visit also. Such report shall be submitted within a week. Office shall communicate this order to learned District & Sessions Judge through fax.

With regard to contempt application, plaintiff shall satisfy the maintainability of the instant application.

3. Accordingly District and Sessions Judge, was directed to conduct enquiry, such report is placed on record. Statement is also filed by the police official present, taken on record.

4. At the outset learned counsel for plaintiff contend that with regard to grievance of Fauji Fertilizer Company Limited and Anglo Fertilizer Company Limited, they were unaware about their agreement with the defendant, however they have allowed them to lift their consignments available in the mill area. He submits photocopy of letter, pursuance of

above representatives of the above companies are present and admit that they have been allowed to shift their chattels.

5. At this juncture it would be conducive to refer the report submitted by the learned District & Sessions Judge, Tando Muhammad Khan, in both these suits, such reports are as under:-

SUIT NO.2096/2015:

“ I paid surprise visit at Seri Sugar Mills, Tando Muhammad Khan on 27.11.2015 at about 04.00 PM. I found the main gate of the mills locked. However two persons were found seated near the guard room inside the main gate. They came nearer to the gate and after obtaining my introduction and purpose of visit, one of them unlocked the smaller gate of the main gate and allowed me to go inside. I got the vehicle parked outside the main gate and went inside. On introduction, the person, having key of the gate, disclosed his name to be Ali Akbar s/o Muhammad Usman Zardari R/O Moro, presently working as security guard. He stated that he has been appointed since about 02 months from the side of Southern. He did not show his CNIC or the service card. He stated that he is being paid by one Major through his incharge Sajjad Zardari. The other person disclosed his name to be Afzal s/o Muhammad Uris Ganbheer who stated that he has been there as private security guard since about 09 months and that he, too, was being paid monthly salary by one Major through his incharge Pariyal. He also did not show his CNIC or the service card. He also stated that in all they are 12 security guards for the day and night duty and that they have not been given any weapon. In the meanwhile another person came there from inside the mills area who disclosed his name to be Rahib s/o Muhammad Juman Zardari R/O Mukriari, Taluka Moro, District Naushahro Feroze who also disclosed that he, too, is a security guard there since about 02 months and that he would not give any further statement. The said Rahib Zardari also called some other persons from inside the mills area from whom two persons disclosed their names to be Sajjad Ali s/o Gul Muhammad Zardari R/O Village Dalail Zardari, Taluka Moro, District Naushahro Feroze and Manzoor Ali S/O Mir Muhammad Laghari R/O Village Tando Jan Muhammad, District Mirpur Khas, incharge Security guards and supervisor respectively. Mr. Manzoor Ali persons had come there to take goods, but they restrained them. I intended to visit the mills area further but the persons gathered there avoided getting my further visit continued due to absence of their aegis. I also found some huts of Bedouin persons in the

open plot in front of the main gate for whom the said private security guards disclosed that they were staying in the eastern side of main Hyderabad Badin Road and that they have shifted to open plot in front of mills main gate since 26.11.2015. I also recorded such statements. M/s. Ali Akbar Zardari, Afzal Ganbheer and Rahib Zardari signed the statements while M/s. Sajjad Ali Zardari and Manzoor Ali Laghari did not give me the proper statement nor did they put their signatures on the gist of their statements. While I was returning from the mills, I noticed one person available at inside the boundary of Seri Sugar Mills who was in blue uniform, usually being used by the private security guards. On query for introduction, he disclosed his name to be Shahnawaz. He did not disclose the name of his father as well as proper abode, except that of Matli. However disclosed that his one uncle, whose name, too, he did not disclose, has got him stayed there since about 06/07 days on basis of daily wages and that he blue uniform has been supplied by the available Zardari persons and that the check post is located there on the other gate.

I have the honour to further submit that on 01.12.2015 one Muhammad Aurangzeb Khan, Resident Director, Omni Group of Companies alongwith Mr. Umar Pirzada advocate have appeared on behalf of the plaintiff and submitted statement with documents i.e. two copies of agreements, complete record of salaries being paid to staff for more than year, deployed with free consent of defendant at suit property, copy of status quo order passed by the honorable High Court of Sindh Karachi in Suits NO.2096 of 2015 and copy of memo of Civil Suit No.2096/2015 (Re-Southern Sugar Mills (Pvt) Limited vs. Seri Sugar Mills Limited. On behalf of the defendant M/s. Muhammad Ashraf, Ajmal, Ghulam Moeen, Muhammad Yousif and Jamshed alongwith Mr. Noor Ahmed Memon advocate have appeared and submitted documents i.e. statement of Ghulam Moeen, Photocopies of newspaper cuttings, statement of Sultan Sikandar, Security officer alongwith list of personnel and statement of Muhammad Tarique."

SUIT NO.2097/2015:

"I paid surprise visit at TMK Sugar Mills, Tando Muhammad Khan on 29.11.2015 at about 12.00 noon. I found there was free access after satisfying the private security personnel. No police personnel were noticed there. On introduction, one of the private security personnel disclosed his name to be Lahno s/o Muhammad Jafar Zardari R/o Village Allahwassayo Zardari, presently working as security guard. He stated that he has been there since about one year as an employee of Maribilo Company being run through one Major Ashraf. He state that they are in all 20 private security guards, however without service cars, and their incharge is one Abdul Sattar Rajpur. He

further stated that the main gate of TMK Sugar mills remained locked by the police for about 20 days leaving them to enter and exit through smaller gate. However the main gate has been unlocked after about 20 days on 27.11.2015. He also stated that there are in all 12 godowns under the usage of companies of Sona and Engro fertilizers. The other person was Abdul Sattar Rajpar incharge of private security guards who also stated almost the same facts except that the police had locked the main gate on 17.11.2015 and that they have also been supplied 03 repeaters and one pistol by the security company. I also found loading of fertilizers bags of Engro fertilizers and FFC from the godown located inside the mills area. One Hakim Ali s/o Hyder Bux Rind was the headman of workmen loading Engro fertilizer bags on heavy loader vehicles and Bakhmaluddin s/o Amal Shahdeen Khattak was supervisor of FFC. The supervisor of FFC disclosed that they were restrained from loading unloading of their goods for about 20 days w.e.f. 08th / 09th November 2015 to 27th November 2015. I recorded the statements of said Lakhno Zardari, Abdul Sattar Rajpar, Hakim Ali Rind and Bakhmaluddin Khatak.

I have the honour to further submit that on 01.12.2015 one Muhammad Aurangzeb Khan, Resident Director, Omni Group of Companies alongwith Mr. Umar Pirzada advocate on behalf of plaintiff and submitted with documents i.e. two copies of agreements, complete record of salaries being paid to staff for more than year, deployed with free consent of defendants at both suit properties, complete record of status quo order passed by the honorable High Court of Sindh Karachi in Suits bearing Nos.2096/2015 and 2097/2015. Learned counsel for the defendant had also appeared and submitted statement alongwith documents i.e. affidavit of Ajmal Husain, copy of FIR bearing crime No.139/2015, news cutting of different newspapers, copy of rent agreement with Engro fertilizers limited, copy of lease agreement with FFC, copy of letter to TMK Sugar mills limited, copies of cheques, statement of Muhammad Ashraf with list of personnel, statement of Muhammad Ilyas, statement of Shahmawaz Zaffar of FFC alongwith documents and statement of Engro fertilizers alongwith documents."

6. Before proceeding further, the peculiar facts of the instant case make me to say that the term '*status quo*' , per Black's Law Dictionary (Seventh Edition) is '*the situation that currently exists*' . Thus, an order to maintain the *status quo* shall always put either parties *under a legal obligation and duty of 'not to change currently existing situation'* as it was at the time of

passing order by the Court. None of the parties to a *lis* will be allowed to use or exploit the orders of the Courts. A complaint of exploiting the Court orders should not go unchecked as the Court(s) are meant to provide legal and legal support only and cannot be allowed to be used as *tool* or for *exploitation*.

7. Reverting to the merits of the case, the Report filed in Suit NO.2096/2015 *prima facie* reflects that at the time of surprise visit by Senior Civil Judge/Assistant Sessions Judge, Tando Muhammad Khan, guards of Zardari clan were available there without their CNICs, further they contended that they are residents of District Naushehro Feroz; that they are receiving salary; failed to show their service cards. Further it is mentioned that learned Senior Civil Judge/Assistant Sessions Judge was not allowed to visit that mill except the main portion (open area); whereas in report, filed in Suit NO.2097/2015, it is mentioned that main gate of TMK Sugar Mills remained blocked by the police for about 20 days leaving them to enter and exit through smaller gate, hence main gate was locked after 17.11.2015.

8. The portions of the reports, as underlined for emphasis, would show locking and blocking of the mills recently particularly from beginning of the November, 2015 which is also date of presentation of the suits. The reports also indicate that FFC officials were restrained from unloading of their goods for last 20 days. The status of FFC and Engro to be having *godowns* and continuing enjoying control thereon under agreement *prima facie* patent which even the plaintiffs have acknowledged by saying that they (FFC & Engro) shall be allowed to lift their articles. Such *prima facie* facts do not fit in the plea of the plaintiffs that both mills have been in their control since date of Assets Purchase Agreement available at page 153 of Suit

No.2097/2015 and at page 43 of another Suit. On the other hand, the facts *prima facie* appear to be shouldering the contention of the defendant regarding forcible possession/control by plaintiffs under an order of *status quo* which cannot be approved or stamped. The police also appears to have played a role in such control and possession over the Mills which *prima facie* is a patent exploitation of this Court order, therefore, issue show cause notice to the Directors of the plaintiffs company and SSP Tando Muhammad Khan that why contempt proceedings should not be initiated against them, further plaintiff shall immediately release the possession of the defendants within three days. DIG Hyderabad is hereby directed that he shall conduct thorough probe with regard to police aid with the private persons and illegal occupation of both factories and register FIR against responsible persons. This exercise shall be completed within ten days and he shall also allow the possession to be handed over to the defendant within three days under the mushirnama, such compliance report shall be fulfilled. Commissioner Hyderabad Division is hereby directed that he shall ensure that both mills are functional as per government directions in letter and spirit. In case plaintiff fails to hand over the possessions to the defendant, Nazir of this Court shall ensure the transfer of possession to the defendants.

9. *While parting, it is pertinent to mention that,* in matters of specific performance of contract, filed with reference to ASSETS PURCHASE AGREEMENT, the ingredient known as *irreparable injury* is not available with purchaser, particularly where delivery of possession is denied because money in such like matters) may well be adequate one which *ordinarily* is sufficient to decline a relief of Specific Performance, as is the spirit of Section 12 of the Specific Relief Act. Therefore, the order to bring things to its original position as they were at time of passing the order for maintaining the status quo shall cause no harm or prejudice to the plaintiff. The plaintiffs

shall have full and fair opportunity in establishing their cause and claims but strictly in accordance with law. In view of above earlier status quo order is recalled.

Imran/PA

J U D G E