IN THE HIGH COURT OF SINDH AT KARACHI

C.P. No. D-2566 of 2024

Present:
Mr. Justice Muhammad Iqbal Kalhoro
Mr. Justice Muhammad Osman Ali Hadi

[Masjid-e-Saheem & others V. Pakistan Defence Officers Housing Authority & others]

Date of hearing	:	20.02.2025
Date of decision	:	11.03.2025
Petitioners	:	Through Khawaja Shams-ul-Islam, Advocate.
Respondent No.1	:	Through M/s. Rehan Kiyani & Adil Channa, Advocates.
Respondent No.3	:	Through M/s. Hussain Ali Almani & Akbar Suhail, Advocates.
Official Respondent	:	Through Mr. Muhammad Qasim Khan, D.A.G.

JUDGMENT

Muhammad Osman Ali Hadi, J: The instant Constitutional Petition has been filed pertaining to grievance of the Petitioners due to their claims of alleged conversion / misuse of Plot No. 38/A (**"Plot-A"**) and Plot No. P-38 (**"Plot-B"**), measuring approx. 2 acres, located at Khayaban-E-Rahat, Phase VI, Defence Housing Authority, Karachi – Pakistan, by the Respondents. The succinct facts are as follow:

2. The Petitioner No. 1 is a Mosque, who has filed this Constitutional Petition through its managing committee, along with Petitioners No. 2 – 6 claiming to be regular worshippers at Petitioner No. 1. The Petitioners are alleging collusion was committed by the Respondents, resulting in misuse of the Plots A & B.

3. The Petitioner No. 1 was constructed in the year 1991, on land provided by Respondent No. 1 at Plot-M-38, Khayaban-e-Rahat, Karachi (**"Plot-M"**), located adjacent to Plots A & B. Respondent No. 1 (which includes Respondents No. 1[a] + [b]) is the licensor / owner of all the mentioned Plots.

4. Plot-A is an open parking area, which is located between Plots-B & M. The usage of Plot-A appears to be the primary source of the Petitioners' disgruntlement.

5. Respondent No. 1 was established vide Article 4 of Presidential Order No. 7 of 1980 (**"the Order"**). Under powers conferred vide the Order, Respondent No. 1 issued secondary legislation in the form of the Town Planning Rules of 2014, pursuant to which the DHA Karachi Building Control & Town Planning Regulations 2020 (**"the Regulations"**) were promulgated. The 2020 Regulations govern all property aspects under the ownership and control of Respondent No. 1, which include all the Plots relevant / mentioned in this Judgement. The applicability of the Regulations remains unopposed by all the parties, and the parties hereto are themselves reliant upon the Regulations.

6. Respondent No.3 is a private limited company which has a license given by Respondent No.1 to lease / use amenity plot for purposes of a **"playground"** on Plot-B. Respondent No. 3 are also responsible for general maintenance of Plot-A (parking area).

7. Arguments were commenced by learned Counsel for the Petitioners, followed by arguments from learned Counsels for Respondents No.1 & Respondent No. 3. We have heard arguments of the learned Counsels, which are summarized as under:

8. Learned Counsel for the Petitioner states that Plots A & B have been wrongfully given to Respondent No.3. The basic crux of the Petitioners' arguments is that the Respondents are misusing the Plot, which as per the learned Counsel for the Petitioner was allocated for public amenity, and he states that it is now being used as a commercial enterprise. Learned Counsel has attached various site plans in this regard. In support of his first contention, he has submitted various case laws on which he remains reliant.

9. Learned Counsel for the Petitioner next contended that Plot-A, which is a parking area, has been illegally taken over by Respondent No.3, and states that it is being used as a storage space and is covered with garbage boxes, benches, man-hole covers etc. He contends that this is causing hindrance for people coming to Petitioner No. 1 for prayers.

10. Counsel for the Petitioner next submitted that Respondent No.3 was given a contract for license of Plot-B, without participating in an open auction,

in connivance with Respondent No.1. He stated this to be contrary to the Public Procurement Regulatory Authority Rules (**"PPRA"**). Learned Counsel submitted that Petitioner No. 1 approached the Executive Director of Respondent No.1 regarding their concerns, and sought a copy of the agreement between Respondent No.1 and Respondent No.3, but the same was not supplied to them. He further stated that the parking area (i.e. Plot-A) was to be used by them (i.e. the Petitioners), and this was being disrupted as Respondent No. 1 had given the Plots to Respondent No. 3. Learned Counsel next contended that Respondent No.3 was incorporated post being awarded a contract, and as per Counsel for the Petitioners, the same is not permissible.

11. Lastly, the Counsel for the Petitioners concluded his arguments by stating that Respondent No.1 does not have the authority to give out Plot(s) - A & B.

12. In support of his contentions the learned Counsel referred to various documents attached with the Memo of Petition, such as a Commissioner Report dated 05.06.2024 (at Page No.29 Part-II of the File), Site Plan (at Page No.77 Part-II of the File), Pictures (at Page No.167-205 Part-I of the File), Statement submitted by the Petitioner dated 31.12.2024 (at Page No.849 of the File), the License Agreement between Respondent No.1 & Respondent No.3 (at Page Nos.161-175 of the File). Learned Counsel further referred to Page No.159 of the File which shows an Expression of Interest (EOI) dated 10.11.2022, which he submits responses / bids were to be received by 25.11.2022, but states that the Respondent No.3 was not compliant within this timeframe.

13. Learned Counsel then relied upon the 2020 Regulations, particularly under Clauses 1.4.1, 2.75, 6.9.6, 6.12. He lastly cited Sections 109, 110, 111 & 112 of the Cantonment Act, 1924. He submitted several caselaw in support of his contentions.[1] In conclusion, learned Counsel submitted that for reasons furnished by him, this Petition should be allowed.

14. Next, learned Counsel for Respondent No.1 addressed the Court. He referred to his Para-wise Reply to the Petition, whereby he submitted that all Regulations and process have been duly followed, and that being the lawful owners, there remains no bar for Respondent No.1 to have given Plot-B

[1] 2022 SCMR 171 + 152; 2022 SCMR 2080; 1999 SCMR 2883; 1997 MLD 299; 1995 SCMR 1584; 1990 MLD 965; 1998 SCMR 392; 2020 SCMR 1474 + 513 + 121; 2010 SCMR 885; 2012 SCMR 6; PLD 2016 SC 808; 2009 CLC 1199.

under the License Agreement to the Respondent No.3. He further contended that Plot-B always was and still remains an amenity plot. He submitted previously in the year 2009, it was licensed (through transparent process) to a private concern, namely Mr. Malik Muhammad Rafiq of Zamzama United Football Club (**"MMR"**) for setting up a recreational area, for football and other sporting activities. A football playing / training and sporting ground / facility was established and being run on Plot-A, until around the year 2021. In the year 2021, he submits MMR was evicted for non-payment of license fees and other dues. Learned Counsel contended that MMR then filed a Suit (1663/2021) before the Hon'ble High Court of Sindh (Annexure-D of the PW Reply), from which High Court Appeal No. 382/2022 ensued and remains pending. Counsel submits that throughout previous usage of the Plots by MMR, the current Petitioners never had any objections to MMR operating a football and sporting facility on Plot-B, in the same manner currently being done by Respondent No. 3. Counsel then stated that Plot-B has always been utilized for sports activity under management of private persons, against which the Petitioner has never previously complained, and hence doing so at this stage by the Petitioner is for *mala fide* purposes.

15. Learned Counsel lastly submitted that the said Plot-B has not been converted from an "Amenity Plot" and still remains under definition of "Playground", for which he also referred to 2020 Regulations.

16. Lastly, learned Counsel for Respondent No.3 appeared in the matter and furnished his submissions. He vehemently controverted the assertions put forth by the Petitioner. His first line of argument was that the Petitioners have no *locus standi* to file the instant Petition. He submitted that Petitioner No.1 is neither a legal, nor a registered entity, and therefore cannot approach the Court under article 199 of the Constitution. He further submitted that Petitioners No. 2 to 6 have not provided any evidence of residence near the Playground, and they do not fall under the definition of 'aggrieved persons', which is *sine qua non* for invoking the Constitutional Jurisdiction of this Court.

17. Learned Counsel next contended this Petition was also barred under the doctrine of *laches*. He submitted that the Petitioners themselves have attached a license agreement between Respondent No.1 and MMR (the previous licensee) dated 22.07.2015 (at Page No.57 Annexure P/4 of the Petition), yet the Petitioners never came forth with any complaints nor did they partake in the legal proceedings concerning MMR (the previous licensee), and therefore this Petition has come at a belated stage and suffers from *laches*.

Counsel extended his arguments by stating the instant Petition against the current Licensee i.e. Respondent No.3, is being conducted purely for personal *mala fide* purposes. Learned Counsel next contended that "Playground" has been defined under Regulations 2.78.2 of the 2020 Regulations which includes all structures for sporting activities and sports clubs. He submitted that the Counsel for the Petitioners wrongly asserted there has been conversion on Plot-B, for which the Petitioners have not provided any basis. Counsel for Respondent No. 3 strongly stated there has been no conversion or misuse of the amenity Plot-B by them. He distinguished the case law cited by the Counsel for the Petitioners by submitting that those cases pertain to purely conversion and misuse of amenity plots, whereas in the instant matter regarding Plots-A & B there has been no such conversion or misuse. He contends that none of the case law cited by the Petitioners is relevant to the current matter.

18. Learned Counsel next stated that Plot-A is a parking area which has not been licensed to the said Respondent No.3, nor has Respondent No.3 ever claimed over the same. He submits that Respondent No.3 has simply been tasked with maintenance and general cleanliness of the parking area (i.e. Plot-A), and submits the parking area is open for any/all persons to park their vehicles, whether they are visiting the Masjid at Plot-M or going to Plot-B (i.e. the Playground).

19. Counsel for Respondent No. 3 then addressed the arguments put forth by the Petitioners, pertaining to lack of tender and PPRA Rules not being followed (*supra.*). He refuted the same by stating that Respondent No.3 was awarded the License pursuant to a public Expression of Interest issued by Respondent No.1 for Plot-B dated 10.02.2022 (Annexure-A at Page 159, Part-II of the File), after the previous private licensee had defaulted and Respondent No.1 had repossessed Plot-B. He stated there were 9 bids put forward of which Respondent No. 3 was found to be the most suitable, and were hence awarded the License. Counsel also submitted that they are a private limited company under the name of "Cedar (Pvt.) Ltd.", and after being awarded the contract they formed special purpose vehicle (with consent of Respondent No. 1) which was mentioned as "Cedar (Pvt.) Ltd. (Optimum Sports Pvt. Ltd.)". Learned Counsel concluded by summing up his (afore-stated) arguments and submitted that the Petitioners have not provided a single piece of legal substantiation in support of their allegations, nor have they approached this Court with clean hands. He submitted that the Petitioner No.1 Mosque was given by Respondent No.1, who still remains owner of the

entire Property (which includes Plots A & B, as well as Plot-M-38). He submitted that the Petitioners have been unable to show any basis or justification for their attempts in trying to take over Plot-A, and are attempting to seize control of Plot-A land, despite not having any legal backing to do so. He reiterated the Respondent No. 3 is only using Plot-B for amenity purposes, and the establishment / operation of football and recreational facilities is positive for society, and in accordance with law. He lastly asserted that Respondent No. 3's rights on the Plot-B / Playground are additionally legally secure under the Easements Act, 1882, for which he placed reliance on section 52. He submitted caselaw in support of all his above contentions. [2]

20. We have heard the detailed and exhaustive arguments of the learned Counsels, and have deeply examined the Petition and all documents, as well as the plethora of caselaw referred, after which we opine as follows:

21. The first legal point we address is the maintainability of the instant Petition. The persons approaching this Court on behalf of Petitioner No.1 are admittedly not a registered or legal entity, so the question remains, can they be considered as a *'juristic entity'* in the eyes of the law? It is a settled proposition that any person approaching a High Court under Article 199 of the Constitution of Pakistan 1973, must be an **"aggrieved person"** (with the exception of seeking a writ of *habeas corpus* or *quo warranto*, both of which are irrelevant for the present purposes). That a perusal of the Petition (specifically letter dated 12.02.2009 at Page No.45 of the File) shows that it is Respondent No.1 who has given management of Petitioner No.1 to some persons to form a managing committee, to look after and maintain Petitioner No. 1 Masjid. Even letter dated 02.11.2022 issued by the said managing committee to Respondent No.1 (Page No.27 of the File) shows that the managing committee still appear to report their details and accounts to Respondent No.1. There also remains no dispute that Plot-M is owned by Respondent No. 1. The Petitioners appear, at best, to look after general upkeep and maintenance of Plot-M, operating with the permission and under the authority of Respondent No. 1.

22. After listening to the arguments put forth, and upon a careful perusal of the Petition File, it is abundantly clear that the said managing committee does not hold any legal status and are not registered persons. Even this Court raised the question of maintainability of the Petition on 12.12.2024, which

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[2] PLD 2022 Sindh 282; 2018 PLC (CS) 1063; 2011 CLC 368; 2011 PLC 336; 201 PLC 306; 2013 PTD 1582; PLD 164 Lahore 138; PLD 2024 SC 235; 2023 SCMR 1442; 2021 CLC 1564; 2016 PLC(CS) 728; 2014 SCMR 1573; 2012 SCMR 280 & 2008 CLC 606; PLD 2020 Isl. 199; PLD 2017 Isl. 115; 2014 CLC 174; 2007 CLC 1398; 2007 MLD 423; 2005 CLC 939; 2002 MLD 1847; 1989 CLC 773.

remained unaddressed by counsel for the Petitioners. We find that Petitioner No. 1's managing committee are working under the authorisation of Respondent No. 1, and the Petitioner No. 1 on their own volition, could not invoke the Constitutional Jurisdiction of this Court.

23. In so far as Petitioners No. 2-6 are concerned, there also appears nothing on record to show their *locus standi* as aggrieved persons in the said matter. A bare perusal of the Title Page of the Petition illustrates that Petitioners No.4, 5 & 6 are not even residents of Khayaban-e-Rahat, which is the area in which Plots are located.

24. We refer to a similar placed matter of the *Anjuman Araian* case[3] which discussed the matter of dismissal of a writ petition filed by an individual on behalf of *Anjuman-i-Araian*. The learned Division Bench held they did not have *locus standi* and were not an aggrieved person, and therefore could not invoke the constitutional jurisdiction of the Court. The relevant paras are reproduced hereunder:

> *"**9.** The appellant has failed to establish any legal right. Doubtless, it has no right in the juristic sense. It has also not been able to show that the sale has resulted "in the loss of some personal benefit" to it. Reliance was placed by the learned counsel on Fazal Din v. Lahore Improvement Trurt and Montgomery Flour & General Mills Ltd. v. Director, Food Purchases (P L D 1957 Lab. 914). These authorities are of no avail to him for the reason that by the impugned sale the Anjuman has not suffered any legal wrong, nor have its interests been in any way affected. Even if the sale had not been made in favour of the respondent, the appellant was not entitled to the transfer of the property, nor had the Anjuman a right to lawfully remain in its possession. The Anjuman, in the circumstance, cannot challenge transfer in favour of the respondent. In Imdad Ali Malik v. The Settlement Commissioner etc. (Civil Petition for Special Leave to Appeal No. 172 of 1964) it was held by the Supreme Court: "We declined to hear Mr. Muhammad Bakhsh Meer, who appeared for the petitioner, when he attempted to argue that the house could not, in law, go to the informer. It is clear that the petitioner has no vested right in house, and that he has other wise no locus standi, in these proceedings, to question the disposal of the house by the Settlement Authorities." In Sardar Muhammad v. Pakistan (1970 Law Notes Lab. 736) the petitioners had constructed the shop over the property and on a notice of ejectment served by the Municipal Committee they challenged the order in writ petition wherein it was held that the petitioners had no right or title to remain on the property and therefore, cannot act in a manner so as to perpetuate unlawful possession. In Masitullah v. Chief Settlement Commissioner (P L D 1965 Lab. 672) it was observed by Anwarul Haq, J. (as he then was, and now the Chief Justice) that*

[3] PLD 1973 Lahore 500

"according to the provisions of the Act itself, the appellant before us is not entitled to claim the property in dispute under the earmarking scheme. In these circumstances it can hardly be urged that he has a vested right in this property. It has been repeatedly held by this Court as well as by the Supreme Court that if a petitioner has no locus standi in the matter, the Court is under no obligation, at his instance, to examine the entitlement of the respondent." It was further observed: "For the reason given above we are of the view that the appellant Masitullah has no locus standi in the matter of the transfer of the house in dispute. Therefore, it is not necessary for us to examine whether the house has been rightly transferred to the respondent, Major Bashir Ahmad. The result is that the appeal fails and is hereby dismissed." In Zebun Nisa Kureshy v. Chief Settlement and Rehabilitation Commissioner (P L D 1962 Pesh. 186) it was observed: "Before concluding we may mention that Mr. Zafar expressed his intention of bringing what he considers to be the illegal allotment and transfer of the property in dispute in favour of respondent No. 2 to the notice of Enforcement Staff. This, however, is no reason why we should help him by giving a finding as to the status of respondent No. 2 when such a finding is unnecessary in deciding the fate of the present petition."

"…….. In Haji Adam v. Settlement and Rehabilitation Commissioner (P L D 1968 Kar. 245) it was held: "Now in the light of these authorities let us examine whether the appellant who was the petitioner in the Court below can be said to be aggrieved party within the meaning of Article 98 of the Constitution. It has already been noted that he had never applied for the transfer of the shop. He could not have done so being a local. He had not even moved for the sale of the shop by auction because he had given a no objection with regard to the transfer of it In favour of Mukhtarunnisa. That, however, might not by itself be very material. It may further be noted that he was not a party to any of the proceedings with regard to the transfer of the shop by the Settlement authorities. It was only when he was asked to pay rent after the final transfer order to Bahauddin that he moved this Court under Article 98. The sole ground on which he claimed to be an aggrieved party was that if the property was put to public auction he would be able to bid at it. But as observed by the Supreme Court that right is shared by every other citizen of this country. Can it be said that every such person who might have been able to bid if an auction had been held would have a vested right in the matter of the transfer of such a property, and if it was transferred otherwise than by auction be could claim to have suffered injury and say that he was directly aggrieved. In other words, can it be said that he was legally aggrieved. The answer to that question in our opinion, must be in the negative." In Abdul Hamid v. Settlement and Rehabilitation Commissioner (1971 S C M R 711) it was held: "The mere desire to bid for a property at an auction does not carry a vested right to bring such property to auction." In Doaba Goods Forwarding Agency Ltd. v. Province of Punjab (1971 S C M R 527) it was held: "the High Court's function under Article 98 of the Constitution of 1962 is not pronounced upon the validity of laws or Notifications, etc., as merely an academic exercise but it is only where a person is aggrieved, that is to say, adversely affected by such a law that he may invoke the jurisdiction of the High Court and then the High Court would in a concrete case deal with the legal position." In Abdul Qayyum v. Chief Settlement Commissioner (P L D 1968 S C 362) it was held: "Another aspect of the case is that Kirpa Ram building having been declared a

big mansion neither appellant had entitlement to its transfer. This affected their locus standi to challenge the transfer In favour of respondent No. 2" and that "as to the locus standi of Ch. Abdul Qayyum 1t has been earlier brought out that he did not file any settlement form for the transfer of the Kirpa Ram building. He had, therefore, no right to challenge the transfer in favour of the respondent No. 2." In Ghulam Mohy-ud-Din v. Government of Pakistan (1971 S C M R 747) it was observed that the appellant "has no entitle ment to the disputed shop and consequently no locus standi to challenge the order of the Central Government transferring the shop to respondent No. 3." Reliance was also placed on Farida Khan v. Chairman, Karachi Municipal Corporation (1971 S C M R 109) where it was held that an owner had no locus standi to challenge the order of assessment for house for the reason that the tax was payable by the tenant. In Mst. Ammenabai v. Karachi Municipal Corporation (1971 S C M R 80) the Municipal Corporation had, by its resolution dated the 8th of June 1965, decided to sell the land in dispute to respondent No. 3 at the rate of Rs. 150 per sq. yd. The petitioner challenged the order in appeal which was dismissed by the Commissioner. She then filed the Writ Patition which was also dismissed on the ground that the petitioner had no legal right to the grant of land under Article 98 of the Constitu tion. She challenged the order fn the Supreme Court and it was held: "We are of the view that the petition under Article 98 of the Constitution was clearly not maintainable as the petitioners had no legal right to the grant of the land which they could assert by way of a petition under the said Article".

In this view of the matter the learned Judge in Chambers' had rightly held that the appellant had no locus standi to file and petition under Article 98 of the late Constitution."

*"**12**. In the case of unincorporated associations, the Secretary or other officers of the club cannot sue or be sued except by obtaining permission under Order I, rule 8. In Narumal Mulchand and others v. Rais Hashim and others (A I R 1940 Sind 63) where a Panchayat consisting of numerous persons brought a suit and all the members of the Panchayat were not on the record, nor had those on the record obtained permission under Order I, rule 8 to represent the other members of the Panchayat. It was held that it was "a suit akin to that brought by an unregistered society or by a club" and since the provisions of Order I, rule 8 were not complied with, the suit had rightly been dis missed. In Kumaravelu Chettiar v. T. P. Ramaswami (A I R 1933 P C 183) the question of representation under Order I, rule 8, C. P. C. was considered at length and It was observed : "Order I, rule 8 formulates an exception to the general principle that all persons interested in a suit shall be parties thereto." In Atma Ram Babaji Chowgale v. Narayan Arjun Dere (A I R 1922 Born. 109) the facts were that the president of a caste authorised under a resolution passed by the Managing Committee of the caste elected by the com munity under caste rules for the Management of caste properties filed suits for ejectment in his own name. It was held that "there being numerous members of the community, having the same interest in the suit, notice of the institution of the suit to all such persons as well as the permission of the Court is necessary for filing the suit as provided in Order I, rule 8 of the Civil Procedure Code."*

If the members of the Anjuman wanted to file the writ petition the proper procedure to follow was to obtain the leave of the Court under Order I, rule 8, C. P. C."

The above principle is an established norm which appears applicable to the matter-at-hand. We find the Petitioners have been unable to satisfy this Court on the question of maintainability. Upon further query on this crucial aspect, learned Counsel for the Petitioners have only responded with generalised statements, and then shifted towards a more 'public interest' approach, and have argued the Petition is in the interest of the public-at-large.

25. The Petition appears to be a contrast in itself, as on one hand the Petitioners have stated that they are aggrieved by the actions of Respondent No.1 in licensing the Plot-B to Respondent No.3, yet at the same time they have also attempted to invoke principles of public interest litigation, which in law are entirely separate[4] and cannot be called into play in the same breath. It has been repeatedly held by the Superior Courts that litigation should not be invoked under the guise of public interest, when there is clearly private interest involved. Reliance is placed on the Supreme Court ruling in *Premier Battery Industries Private Ltd.*[5] where it was held:

> *"**12.** Coming to the alternative stand taken by learned counsel for the petitioner that the matter may be treated as 'public interest litigation'. It is noted that on realizing that the petitioner was unlikely to succeed in view of his failure to participate in the process at any stage, the learned counsel tried to persuade us to examine the matter as one of public importance to undo the process, which according to him, had been undertaken in violation of SPP Act, 2009 and the Rules framed thereunder. It was urged that the entire process be repeated afresh. This necessitates an examination of the scope and parameters of public interest litigation. Such litigation does not strictly fall under any part of Article 199 of the Constitution of Islamic Republic of Pakistan, 1973. However, it has received judicial recognition enabling the Courts to enlarge the scope of the meaning of 'aggrieved person' under Article 199 of the Constitution to include a public spirited person who brings to the notice of the Court a matter of public importance requiring enforcement of Fundamental Rights. However, the constitutional jurisdiction of the superior Courts is required to be exercised carefully, cautiously and with circumspection to safeguard and promote public interest and not to entertain and promote speculative, hypothetical or malicious attacks that block or suspend the performance of executive functions by the Government."*
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> *"**13.** In the present case, at the centre of the controversy is a built, own and operate project for uninterrupted supply of electricity to various pumping stations operated by KW&SB. Work towards the operation of these pumping stations has direct nexus with the supply of water to citizens of Karachi which has not progressed since March, 2017, when this litigation was initiated. While the*

[4] PLD 2017 Lahore 597
[5] 2018 SCMR 365

> *Court is not inclined without evidence to impute any motives to the petitioner, we must emphasize that public interest litigation undertaken by a citizen must in the first place transparently demonstrate its complete bona fides; that such litigation is not being undertaken to serve a private or vested interest and is demonstrably aimed at serving public interest, good or welfare. These attributes in a public interest initiative have already been dilated upon by this Court in Muhammad Shafique Khan Sawati v. Federation of Pakistan (2015 SCMR 851); ECHO West International (Pvt.) Ltd. v. Government of Punjab (PLD 2009 Supreme Court 406); Iqbal Haider v. Capital Development Authority (PLD 2006 Supreme Court 394) and Javed Ibrahim Paracha v. Federation of Pakistan (PLD 2004 Supreme Court 482).*
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> *"**14.** We are in no manner of doubt that the petitioner has a personal interest in the present litigation. It is motivated purely by its own economic interest and thus it wants reversal of the entire process so that it or somebody it represents, can avail another opportunity of joining the process leading towards bidding of the project after having missed the deadline. The present litigation is therefore not public interest but rather personal interest litigation. We are therefore not inclined to examine the case from the stand point of public interest litigation."*

This point has been enunciated throughout our jurisprudence. The Petitioners' actions appear to be due to some personal gain / concern, where it appears they seem to want to take control of Plot-A (i.e. parking area), for which the instant Petition would not be maintainable. Reference is placed on *Senator Khalida Ateeb's* case[6], in which a learned Division Bench of this Court held:

> *"**5.** Article 199 of the Constitution contemplates the discretionary[2] writ jurisdiction of this Court and the said discretion may be exercised upon invocation by an aggrieved person[3] and in the absence of an adequate remedy. The petitioner's counsel failed to make any case before us to qualify the petitioner within the definition of an aggrieved person[4]. In so far as the issue of the MOU is concerned, admittedly there existed an adequate remedy, however, the same was abjured. Under such circumstances no case could be set forth to justify the direct recourse to writ jurisdiction. It was the respondents' argument that the present petition was filed only after the earlier identical petition had been dismissed, hence, the delay. Be that as it may, the petitioner's counsel made no effort to dispel the preponderant reflection that this petition was hit by laches. Even otherwise the allegations levelled, albeit prima facie bald and unsubstantiated, could not be entertained in any event as adjudication of disputed questions of fact, requiring detailed inquiry, appreciation of evidence etc., is unmerited in writ jurisdiction[5]."*

[6] PLD 2024 Sindh 273

> *"**6.** While the learned counsel insisted that this matter merited indulgence in the public interest, however, we are constrained to observe that the present petition appears to be an attempt to seek publicity, without any justifiable cause of action. Per settled law, public interest litigation ought not to be aimed at seeking publicity and the law requires the Court to ascertain whether the supplicant is acting in a bona fide manner[6]. Public interest litigation should not be a mere adventure, an attempt to carry out a fishing expedition and / or to settle personal scores[7]. The Court must distinguish between public interest litigation and publicity motivated litigation, private interest litigation and / or politically motivated litigation[8]."*

26. We find the above criterion laid down by the Courts to successfully invoke public interest litigation have also not been met here by the Petitioners.

27. The points raised by the learned Counsels for the Respondents, challenging as to why the Petitioners never approached the Courts beforehand, despite a previous football ground under the name "*Zamzama United"* having operated on Plot-B since the year 2015, also requires further scrutiny. The Petitioners themselves attached a license agreement between Respondent No. 1 and MMR / Zamzama United (at Page No.57 of the File), thereby showing the Petitioners had awareness of the said football / sporting club operating, but yet they chose not to file any complaint. Moreover, when Respondent No.1 and MMR / Zamzama United were embroiled in a legal battle (Suit No.1663/2021 & HCA No.382/2022), the Petitioners opted not to join the same. This negates the current position of the Petitioners, since the crux of their arguments is based on Plot-B not to be used for sporting activities by Respondent No. 3. Another aspect of *laches* raised by Counsel for Respondent No.3 in this regard cannot be ignored either. By the Petitioners' own submissions, they have been in charge for maintenance of Petitioner No.1 since 16.02.2009, and yet they have waited for over 15 years before approaching a Court of law. Reliance is place on 2015 SCMR 851[7] which held:

> *"**6.** The Court is, however, not inclined without evidence to attribute motives to the appellant. Otherwise, even bona fide public interest litigation may be discouraged. It must, nevertheless, be emphasized that public interest litigation undertaken by a citizen must in the first place transparently demonstrate its complete bona fides: that such litigation is not being undertaken to serve a private or vested interest but is demonstrably aimed at serving the public interest, good or welfare. These attributes in a public interest initiative by a spirited citizen have already been dilated upon by this Court in ECHO West International (Pvt.) Ltd. v. Government of Punjab (PLD 2009 SC 406), Iqbal Haider v. Capital Development Authority (PLD 2006 SC 394) and Javed Ibrahim Paracha v. Federation of Pakistan (PLD 2004 SC 482)."*

[7] *Muhammad Shafiq Khan Sawati v Federation of Pakistan*

> *"**7.** A third feature of public interest litigation which is derived from the aforementioned two attributes, is that the challenge brought must be based on concrete facts that are duly substantiated or are verifiable. In the present case, notwithstanding the lapse of more than 14 months, after the second round of bidding concluded on 26-11-2013, resulting in issuance of letter of acceptance dated 15-1-2014, no factual material was brought by the appellant before the learned Islamabad High Court or before this Court to substantiate or exemplify the allegation made against respondent No.4, the contract awardee. The constitutional jurisdiction of the superior Courts is exercised to safeguard and promote the public interest and not to entertain and promote speculative, hypothetical or malicious attacks that block or suspend the performance of the executive functions by government. In the present case, contract execution of Lot 3.2 has not progressed since issuance of the letter of acceptance dated 15-1-2014. Public interest has actually suffered as a result of the delay. By the state of disclosure of allegations, facts and evidence, the appellant has failed to demonstrate any wrongdoing and harm having been done to public interest. We also find that for the lack of requisite disclosure about the appellant's status and activities, his present initiative fails to portray his bona fides. For the said deficiencies in this appeal and the unclear status and object of the appellant, we dismiss the appeal with no order as to costs."*

28. The gist of the Petitioners' further arguments regarding conversion of an amenity plot, needs to be observed through the 2020 Regulations. It is an accepted position by all parties that DHA Karachi Building Control and Town Planning Regulations 2020 (**"2020 Regulations"**) are *in-vogue* and regulate usage of the Plots in question. Learned Counsel for the Petitioners referred to various clauses in the 2020 Regulations (*supra*). Our observations on the 2020 Regulations in this regard are as follow:

> 2020 Regulations
>
> 2.5 **"Amenity Plot"**: A plot allocated exclusively for the purpose of amenity uses such as government offices, diplomatic missions, health welfare, public utilities, education, worship places, burial grounds and recreational areas etc.
>
> 2.75 **"Park"**: A recreational area, developed as such having greenery i.e. Plantation/ grass which may include all or any of the following faculties;
> 2.75.8 Play land.
> 2.75.9 Any other outdoor / covered recreational facility.
>
> 2.78 **"Playground"**: An area used for outdoor play or recreation, especially by children, and often containing recreational equipment such as slides and swings.
>
> Chapter 6 of the 2020 Regulations deals with Amenity Building Standards. Specifically, clause 6.10 includes standard for sports which reads:
>
> **6.10 Standards for Sports / Entertainment / Recreational Facilities:**
> Plots allocated for sports/ entertainment and recreational facilities to be constructed on following parameters.

29. The above cited 2020 Regulations clearly establish that sporting facilities fall under the ambit of recreation, and are covered by the definition of *'amenity'*. Even the building standards provided by the 2020 Regulations provides for sporting faculties to conform to amenity building standards. We find the arguments of the Petitioners regarding Plots-B's alleged conversion and misuse, to be without any legal basis. A simple perusal and study of the 2020 Regulations clearly provide the activities mentioned to be part of amenities, and hence Respondent No.3's usage of the Plot-B would be in conformity with the 2020 Regulations.

30. In the case of Messrs Sultan Mehmood[8] this Court affirmed that the Muhammadan Playground was recognized as an amenity plot meant exclusively for sports. This Court held:

> *"**8**. Coming back to the present case, it is an admitted position that the playground is an amenity plot / public property which was carved out and reserved specifically for sports activities and has always been used by sportsmen and public exclusively for such purpose. In this view of the matter, the principles laid down in the above cited cases would apply with full force to the present case as well."*
>
> *"**9.** In the above mentioned C.P. No.D-1412/2017 filed earlier in respect of the playground, it was held inter alia by this Court vide judgment dated 22.03.2017 that the playground situated in a thickly populated area used to provide opportunity for sports and recreational activities, including cricket, football and hockey, to a significant number of population, and such activities were a delight not only for sportsmen, but also for spectators and local residents; and, there is already a scarcity of open spaces and playgrounds in Karachi and as such depriving children, young men and players from sports activities would amount to snatching away a thrilling delight from their lives. In view of the above and the statements made in the aforesaid petition by the counsel and CEO of CBC as noted earlier, the said petition was allowed by this Court by directing CBC to remove all the construction material, machinery and structure from the playground and resume its possession within three days, and to restore it for sports activities."*

31. The Apex Court held in *Moulvi Iqbal Haider* case[9] that public parks and playgrounds create rights, including right to engage in sports and recreational activities. In the recent ruling of the *Naimatullah Khan* case,[10] the Hon'ble

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[8] 2018 CLC Sindh 619
[9] PLD 2006 SC 394
[10] 2020 SCMR 105

Supreme Court held that there must remain legal protection of playgrounds, which are public amenities and it must remain accessible for public recreation.

32. There is no cavil that an amenity plot cannot be converted for commercial use, and the caselaw cited by the learned Counsel for the Petitioners reiterates the same view. However, we find the instant matter does not concern any conversion of plot usage. The 2020 Regulations along with precedent established by the Courts, have repeatedly held that usage of plots for sports and recreational purposes clearly fall within the ambit and scope of amenity. In this regard also, we find that there has been no misuse of the Plots A or B.

33. The next contention of the Petitioners, that the Plot-B has been given to the Respondent No.3 without following the process of Public Procurement Rules also appears to be misconceived. A public 'Expression of Interest' was issued, after which any suitable applicant could have submitted a bid. The same was done by Respondent No. 3 along with 8 other contenders. Respondent No. 3's bid was deemed to be the most suitable, and hence they were awarded with the License Agreement for Plot-B. In any event, learned Counsel for the Petitioners has failed to explain as to how the Public Procurement Rules (PPR) would be applicable to the matter in hand? nor has he provided any relevant provision of law or explanation for this contention. Public Procurement Rules are only applicable when procurement is being sought by a 'procuring agency'[11], and when in such circumstances proper transparent procurement process is not followed leading to 'misprocurement'[12]. The Plots in question are undoubtedly owned and controlled by Respondent No. 1. PPR holds no relevance or applicability to the said land owned, which can be leased or otherwise disposed by Respondent No. 1 in any manner they desire, as per the laws governing such private ownership and transfer of property. In fact and to the contrary, if the Petitioners' argument was accepted for PPR to be applicable, it would be self-defeating, as in such circumstance the same would also have been required to be followed by Respondent No. 1 when the managing committee of Petitioner No. 1 was being appointed by them, which was not done (nor in our view was required to be done, but we state this to highlight contradictions with this argument submitted by the Petitioners). This issue has been exhaustively deliberated by the Superior Courts, which have held that raising issues of public procurement in a constitutional petition need to be carefully examined,

[11] Section 2(j) Public Procurement Regulatory Authority Ordinance, 2002
[12] Section 2(h) PPRA Ordinance, 2002

and cannot be equated with personal interest litigation.[13] Whereas even under the governing Pakistan Defence Officers Housing Authority Order, 1980, it is Respondent No.1 who retains the power to lease or otherwise dispose / handle land which is owned by them (such as Plots A & B). Hence we find these arguments submitted by the Petitioners to be flawed and of no legal significance. We further fail to see how sections 109 – 112 the Cantonments Act, 1924, referred (but not elaborated) by the Petitioners' Counsel hold any relevance to the matter-at-hand, and as such repel the afore-stated contentions submitted by the Petitioners.

34. It is our view the Petitioners have failed to provide any proper legal basis for maintainability of the instant Petition. More pertinently, the Petitioners have not shown any violation of their fundamental rights in their Petition or in arguments. The only reference to fundamental rights was made in Para 15 of the Memo of Petition, where the Petitioners have scantily referred to article 20 of the Constitution, which is a right not being denied to them nor has any impact on usage of the Plots. It is also not relevant to the Petition itself. The Petitioners have attempted to rely upon pictures and charts, which *even* if accepted, would create serious disputed questions of fact requiring proper recording of evidence, which admittedly cannot be adjudicated by this Court in its Jurisdiction under Article 199 of the Constitution of Pakistan, 1973.

35. All things being considered and in light of the foregoing, we hold that the Petitioners do not hold *locus standi* and have failed to make out a case to invoke the Constitutional Jurisdiction of this Court. We find this Constitutional Petition to be unmaintainable, devoid of merit, and dismiss the same accordingly.

This Constitutional Petition stands dismissed.

JUDGE

JUDGE

M. Khan

[13] *Echo West International Ltd. v Govt. of Punjab* 2009 CLD 937 (Supreme Court)