

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT:

MR. JUSTICE ANWAR ZAHEER JAMALI, HCJ
MR. JUSTICE SH. AZMAT SAEED
MR. JUSTICE FAISAL ARAB

CIVIL APPEAL NO. 185 OF 2015

(On appeal against the judgment dated 12.03.2015
passed by the Election Tribunal, Rawalpindi in Election
Petition No. 284/2013)

Ch. Hamid Hameed

... Appellant

VERSUS

Barrister Abdullah Mumtaz Kahlon and others

... Respondents

For the Appellant: Mr. Tariq Mehmood, Sr. ASC
Syed Najam-ul-Hassan Kazmi, Sr. ASC

For the Respondent (1): Dr. Babar Awan, Sr. ASC
Mr. Muhammad Hanif Khatana, ASC
Syed Rifaqat Hussain Shah, AOR

Assisted by:
Mr. Farooq Awan, ASC and
Barrister Adil Kahloon

Date of Hearing: 10.05.2016

JUDGMENT

FAISAL ARAB, J.- In the General Elections that were held on 11.05.2013, the appellant was declared returned candidate from the National Assembly constituency NA-66-III City Sargodha. The respondent No. 1, who was runner up filed Election Petition before the Election Tribunal under Section 52 of the Representation of the People Act, 1976 alleging corrupt and illegal practices on the part of the appellant. It was also alleged that the appellant in his nomination form has concealed his ownership/interest in Koh-e-Noor Textile Cotton Mills situated in Pipplan, District Mianwali. The Tribunal after framing

issues and recording evidence of the parties, accepted the Election Petition on the ground of concealment of asset. Appellant's election was declared void and fresh election in the constituency was ordered. Being aggrieved by such decision the appellant filed the present appeal.

2. Learned counsel for the appellant Mr. Tariq Mehmood submitted that appellant's election was declared void on the ground that the appellant had concealed his ownership/interest in Koh-e-Noor Textile Cotton Mills though he was never an owner of the said mills. He submitted that the appellant is in the business of purchasing old machinery and equipment as well as the material of old buildings that are to be demolished. He further explained that apart from purchasing old machinery and equipment as well as the material of old buildings of the said mills, the appellant alongwith his other two partners entered into a contract with the owner of the said mills to launch a project on the land of the mills. The purpose of the project was to carve out plots and then sell them to the general public. He submitted, the appellant never become owner of the land of the mills, he only made investment.

3. Learned counsel for the respondent No. 1, Dr. Babar Awan in rebuttal argued that there was sufficient evidence on record to establish that the appellant became owner of Koh-e-Noor Textile Cotton Mill which fact he ought to have declared in his nomination form but he concealed the same. Learned counsel referred to various documents on record to demonstrate that the appellant became one of the owners of Koh-e-Noor Textile Cotton Mills. He drew our attention

to a complaint lodged by the appellant with DPO Sargodha wherein he alleged fraud on the part of one Ghulam Abbas Khan, who while acting as attorney of the original owner of the mills, Khaqan Hassan Najeeb, sold plots and misappropriated the sale proceeds that fell to the share of the appellant. He then took us to the FIR that was lodged pursuant to such complaint at Police Station N Area, District Sargodha under Section 406 PPC on 5.2.2012. He also referred to partnership agreement executed on 19.7.2001 among the appellant having 37.5% share and two other persons namely Javed Iqbal having 25% share and Mian Munir Ahmed having 37.5% share.

The partnership deed shows that three partners had agreed to make investment in the project mentioned above. The owner of the mills agreed to launch the project which was to be supervised by his nominee Ghulam Abbas Khan. He was made responsible to sell the plots and deposit the sale proceeds in bank which amount was then to be shared amongst all the stakeholders according to their respective shares. After sale of the plots, the appellant alleged misappropriation of his share on the part of Ghulam Abbas Khan, which led to filing of the complaint and FIR No. 54 at Police Station N Area, Sargodha under Section 406 PPC on 5.2.2012.

4. It is an admitted position that title of Koh-e-Noor Textile Cotton Mills remained with Khaqan Hassan Najeeb till the finalization of the project. From the record of the criminal proceedings, it is evident that the appellant only alleged misappropriation of his share in the project that apparently remained unpaid. Thus the whole transaction with regard to the sale of the plots was nothing but an

investment in a project, object of which was materialized when plots were carved out, sold and transferred to the purchasers through execution of sale deeds that were executed by Ghulam Abbas Khan on the strength of power of attorney executed in his favour by Khaqan Hassen Najeeb. Hence, from the above, it is apparent that neither on or before 30.06.2013 the appellant became owner of Koh-e-Noor Textile Cotton Mills. The appellant only made an investment along with his two other partners in a project which came to an end with the sale of the plots and only for the misappropriation of appellant's share in the sale proceeds, criminal proceedings were initiated against Ghulam Abbas Khan. Had the project failed even then the appellant would not have become owner in the land in question as in such eventuality also he would have only claimed return of his investment plus damages and nothing more. So the question of concealment of ownership in Koh-e-Noor Textile Cotton Mills does not arise. The finding of the Election Tribunal in these circumstances is not sustainable in law.

5. The above are the detailed reasons of our short order of even date whereby we allowed this appeal and set aside the impugned judgment.

CHIEF JUSTICE

JUDGE

JUDGE

Islamabad, the
10th of May, 2016
Approved For Reporting
Khuram