

IN THE SUPREME COURT OF PAKISTAN
(ORIGINAL JURISDICTION)

PRESENT:

MR. JUSTICE TASSADUQ HUSSAIN JILLANI, HCJ
MR. JUSTICE ANWAR ZAHEER JAMALI
MR. JUSTICE KHILJI ARIF HUSSAIN

S.M.C. NO. 01 OF 2014 &
CIVIL PETITION NO. 20-K OF 2014

(On appeal from the judgment dated 25.11.2013
passed by the High Court of Sindh, Karachi in C.P.
No. D-2267/2007)

Suo moto action regarding suicide
bomb attack of 22.9.2013 on the
church in Peshawar

(SMC No. 1/2014)

AND

Shree Ratheshawar Maha Dev
Welfare Shewa Mandly

(In CP 20-K/2014)
... Petitioner

VERSUS

Province of Sindh and others

(In CP 20-K/2014)
... Respondents

In Attendance:

Mr. Ramesh Kumar Vankwani, Patron,
Pakistan Hindu Council
Mr. Abdul Fateh Malik, A.G. Sindh
Mr. Adnan Karim, Addl. A.G. Sindh
Mr. Aslam Butt, DAG
Mr. Eijaz Ali Jatoi, A.C. Tando Adam
Mr. Shahid Farooq, Acting Headmaster
Mr. Abdullah Dahri, S.O. Culture
Mr. Bashir Ahmed, Addl. Secretary Culture
Mr. Nadeem A. Sheikh, ASC (Justice
Helpline)
Mr. Roshan Lal, Mr. Sushi Bhai & Mr. Atam
Parkash (Prem Prakash Mandal)
Mr. Salem Micheal (Justice Helpline)
Mr. Ravi Dawani, President, All Pakistan
Hindu Panchayat
Mr. Saleem Javed (for CMS)
Mr. Neil Keshav, ASC & Mr. Mazhar Ali B.
Chohan, AOR (for petitioner in CP No. 20-
K/2014)
Mr. Makhdoom Ali Khan, Sr. ASC & Mr.
K.A. Wahab, AOR (for respondent NAPA in
CP No. 20-K/2014)

Date of Hearing: 27.02.2014

ORDER

PREM PRAKASH MANDAL / HINDU 'ASHARAM' AT TANDO ADAM

Learned Advocate General Sindh submits that the 'Asharam' within the boundary wall of a primary school in Tando Adam has already been declared a cultural heritage and that there is no restriction on Hindu community to come and use it as 'Asharam'. However, adds on Court query that there is a possibility that the said 'Asharam' could be given access from independent door instead of the community people using the school gate and undertakes to have a plan prepared for the proposed access door.

2. Mr. Shahid Farooq who is acting Incharge / Headmaster of the School confirms the existence of 'Asharam' but he adds that it is not in use for the last many years. However, adds that it is being frequented by members of the Hindu community for the last two years. To this extent the matter is adjourned for tomorrow i.e. 28.2.2014.

HINDU GYMKHANA

3. Learned Additional Advocate General Sindh has filed a written statement on behalf of the Culture Department regarding the Hindu Gymkhana which is to the following effect:-

"The Hindu Gymkhana situated opposite to Arts Council on M.R. Kyani Road, Karachi is a protected heritage under Sindh Cultural Heritage (Preservation) Act, 1994. This building is also a protected heritage under Building Control Ordinance, 1979 and included in the list of "Structure of Special Architectural and Historical Interest of" Karachi. This Gymkhana was transferred by Federal Government to Government of Sindh in 1991 for establishment of a Centre of Arts and Crafts. The renovation of the building was carried out in 1994, after taking over by Sindh Culture Department in 1993.

In September 2005, on the directives of the then President of Pakistan, Hindu Gymkhana was rented out to Mr. Zia Mohiuddin for a period of thirty (30) years for establishing National Academy of Performing Arts (NAPA). In violation of law and terms of the tenancy agreement, NAPA started

construction of a Theater / Auditorium within the premises of Hindu Gymkhana, without seeking permission from the landlord (Culture Department). NAPA did not even take NOC from the Advisory Committee of Government of Sindh on heritage before undertaking the construction activity, within the premises of a heritage building. Principally, NAPA administration was morally and legally bound to seek formal and written permission from both.

The construction of Theater / Auditorium within the premises of Hindu Gymkhana by NAPA violated the provisions of Sindh Cultural Heritage (Preservation) Act, 1994 and infringed the terms of agreements dated 12.10.2004 and 23.09.2005, made between Government of Sindh (Culture Department) and NAPA. Thus, on the advice of Law Department and in pursuance of clause 8 of the agreement, executed between Culture Department and NAPA on 13th September, 2008, three months notice was served upon NAPA by Culture Department regarding termination of the said agreement and vacation of the premises. In response to this notice, NAPA filed a civil suit No. 1646/2008 in the Honourable High Court of Sindh, which granted stay in the matter. The matter is still pending decision of the court.

Notwithstanding the legal position and details of litigations, as stated above, the said heritage property is under the legal ownership of Government of Sindh, Culture Department. According to Sindh Government Rules of Business (1986), as amended upto December, 2011, 'heritage properties', whether public or private, fall within the official domain of this department. The Hindu Community of Karachi and indeed of the whole province, is clamoring for allowing them the usage of this property at least on their religious rituals (Holi, Diwali, etc). Ironically, NAPA management has remained intransigent even to yield to the legal and genuine demands of the landlord (Culture Department) and of the Hindu Community."

4. Mr. Makhdoom Ali Khan at this stage has entered appearance to submit that the Hindu Gymkhana was given on 30 years lease to National Academy of Performing Arts; that the latter has not changed the character of the main building of Hindu Gymkhana but in the vacant land it has raised construction against which efforts were made to demolish it by the Government of Sindh and NAPA had filed a Constitution Petition bearing No. 06/2009 before the High Court of Sindh which is pending decision; that another petition (bearing No. D2267/2007) was filed by Shree Ratheshwar Maha Dev and the same stands dismissed vide the order dated 25.11.2013 against which the said petitioner has filed

Civil Petition No. 20-K/2014 which is pending decision. It has further been pointed out that a civil suit bearing No. 1646/2008 was also filed by NAPA before the High Court of Sindh which is pending decision.

5. Learned counsel for the petitioner in Civil Petition No. 20-K/2014 submits that admittedly the Hindu Gymkhana was built as far back as 1923 on a land allotted by the Municipal Corporation to Hindu community and in the year 1963 it was declared as an abandoned property by the Government of Pakistan but subsequently it was declared as heritage building. However, in the year 1996 it was declared as evacuee property. Such a property, he further adds, could not have been given on lease to NAPA and the way it has been used and defaced is not only violative of the fundamental rights provision of the Constitution but the Constitutional rights granted to the minorities in the Constitution of Islamic Republic of Pakistan.

6. Having heard learned counsel for the parties, we are persuaded to grant leave to appeal in Civil Petition No. 20-K/2014 to consider whether the Hindu Gymkhana which admittedly is evacuee property could have been given on lease to NAPA; whether NAPA could have been used and defaced in the manner it has been alleged; whether the act of the Government of Sindh of granting lease to NAPA is violative of the fundamental rights provision of the Constitution and whether the impugned order is sustainable in law?

7. Since some of the issues raised in this petition may be sub-judice before the High Court in Writ Petition No. 06/2009 and the Civil Suit No. 1646/2008 and as the matter is pending decision in the High Court of Sindh since long, we are persuaded to direct the High Court of Sindh to decide both the cases preferably within a

month of the receipt of this order. Office shall transmit a copy of this order to the Hon'ble Chief Justice of the High Court of Sindh for information.

CMA No. 120-K/2014

8. In this CMA it is alleged by Hindu community that the manner in which constructions have been raised around Swami Narain Temple and the land around Lakshmi Narain Temple has been leased out to a restaurant has made it difficult for the members of Hindu community to visit those Temples to offer their prayers.

9. We have called learned Advocate General Sindh. A copy of this application has been given to him. He shall file a written reply within 10 days and the matter shall be taken up thereafter.

CHRISTIAN MISSION SCHOOL

10. It has also been brought to our notice that the Christian Mission School which has a historical significance as the founder of this country Quaid-e-Azam Mohammad Ali Jinnah had his earlier education from there has been given to an NGO, which was initially being run by Church of Pakistan and then was nationalized. Learned Advocate General Sindh shall also seek instructions about this and submit a report within 10 days.

CHIEF JUSTICE

JUDGE

JUDGE

Karachi, the
27th of February, 2014
Not Approved For Reporting
Khurram