

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

MR. JUSTICE GULZAR AHMED

MR. JUSTICE DOST MUHAMMAD KHAN

Civil Appeal No.1208 of 2011

(On appeal from the judgment dated 29.11.2010
passed by the Lahore High Court Lahore in Civil
Revision No.29/2008)

Malik Muzaffar Ahmed

...Appellant

Versus

Majlis-e-Ilmi Society thr. Muhammad Zubair

..Respondent

For the appellant: Khawaja Saeed-uz-Zafar, ASC

For the respondent: Raja Muhammad Irshad, ASC
Syed Rifaqat Hussain Shah, AOR

Date of hearing: 15.12.2015

JUDGMENT

Dost Muhammad Khan, J.— This appeal has been filed against the impugned judgment of the learned Judge in Chamber of the Lahore High Court, Lahore rejecting the plaint of the appellant under Order-VII, Rule-11 CPC after setting aside the order of the Trial Judge, who rejected the application and held that after recording some evidence the question of exemption from pre-emption then would be decided.

2. Learned ASC for the appellant vehemently contended that the learned High Court has fallen in error due to misinterpretation of the language of clause (a) of sub-section (1) of section 23 of the Punjab Pre-emption Act, 1991, which only provides exemption from exercise of right of pre-emption to the sale of *Waqf Property* or property used for charitable, religious or public purposes. To understand the scope and true language of the said provision of law, it is reproduced below: -

“23. No right of pre-emption in respect of certain properties. –(1) No right of pre-emption shall exist in respect of sale of—

(a) Waqf property or property used for charitable, religious or public purposes.”

The learned ASC made attempt to take benefit of the defective language of the Statute without making efforts to discover the true intent of the Legislature, rather avoided to attend to that proposition despite quarries, made by the Court.

3. The facts of the case are that, the respondent, ***Majlis-e-Ilmi Society***, purchased land measuring 123-K, 3-M, described in the heading of the plaint, from one Shoaib Ahmed for a sale consideration of Rs.47,00,000/-. This sale of land was pre-empted by the appellant being adjacent owner however, the respondent filed an application under Order-VII, Rule-11 CPC for rejection of the plaint on the strength of the provision of S.23 of the Punjab Pre-emption Act, 1991, as according to them the same was exempt from the pre-emption right. The application was dismissed as stated above however, the learned Judge in the High Court allowed the same and rejected the plaint.

4. True, that the provision of S.23 *ibid* suffers from absurdity, ambiguity and inadvertent omission on the part of the drafter because along with the sale the word, ***‘purchase’*** was not added to the said provision.

5. According to the NWFP (KPK) Pre-emption Act, 1987 this omission is not occurring there. The same is reproduced as under: -

"23. No right of pre-emption in respect of certain properties. –(1) No right of pre-emption shall exist in respect of sale or purchase of—

(a) A waqf property or a property used for charitable, religious or public purpose."

In view of the judgment in the case of **Government of NWFP v. Malik Said Kamal Shah** (PLD 1986 SC 360) majority of the provisions of the Punjab Pre-emption Act, 1913 and that of NWFP (KPK) Pre-emption Act, 1950 were declared against the injunctions of Islam and the governments were directed to amend the law according to the guidelines, given therein so to bring it in conformity with the injunction of Islam. To achieve the object, the Government of the day referred the matter to the Islamic Ideology Council to provide the law for all the provinces, also keeping in view the customs and traditions of each province, not against the injunctions of Islam and after consultation with the Law Division, Government of Pakistan had to forward the same to the governments so that the new draft law is enacted through Legislature.

6. The Islamic Ideology Council, after considerable deliberations with Jurists on "*Islamic Fiqa*" with regard to right of pre-emption, all ancillary and allied matters and after consultation with the Law Division drafted the proposed law for the provinces and forwarded the same to their respective governments. It was in this background that, the new Pre-emption Act of NWFP (KPK) was notified on 26.04.1987. While the Government of Punjab in the first instance through an Ordinance dated 27.08.1990 promulgated by the Governor of Punjab, enacted the new law, which after making some amendments therein, was passed by the Provincial Legislature and after getting assent of the Governor of the Province, the same was

issued on 6th April, 1991 in the extraordinary Gazette of Punjab Province.

7. In both the Acts of the two provinces, the provision of S.23 thereof provides protection from right of pre-emption to “*Waqf*” property or a property used or attached to charitable or religious institutions however, in the provision of the NWFP (KPK) Pre-emption Act, as cited above, the words “***sale and purchase***” both are used however, the word “***purchase***” is missing from the similar provision of the Punjab Pre-emption Act, 1991. In the same provision of the Punjab Pre-emption Act, S.23(2), the property purchased or acquired by the Federal or the Provincial Government or local authority is also given exemption from pre-emption. This provision was challenged along with some other provisions of the Punjab Pre-emption Act, 1991 before the Federal Shariat Court on the plea that the same were against the injunctions of Islam.

A larger Bench of the Federal Shariat Court in the case of **Muhammad Ismail Qureshi v. Government of Punjab** (PLD 1991 Federal Shariat Court 80) has held as under: -

“That the provision of section 23(2) is not repugnant to injunction of Islam as property, which is to be pre-empted, must be owned by a person. That is why, the properties which are Waqf or used for charitable, religious and public purposes are not pre-emptible. On this analogy, the State-owned properties also are not pre-emptible because they are not property of a person. Extending the principle further, a property acquired by the State for public purposes does not remain property of a person or an association of persons. Therefore, a property for public purposes, as envisaged in Shariah, is not pre-emptible.”

8. The learned Judge of the Lahore High Court in the case of **Muhammad Farooq v. Muhammad Amin Trust Chakwal** (PLD 2007 Lahore 431) also held that *"the record did not deny that vendee was a trust or Waqf and purchased the property as such--- Deed of trust was produced which was a registered document----- Purposes of trust were setting up of a hospital on modern lines and to serve people of locality around--- Chairman of vendee Trust appeared as witness and stated that the land was purchased for constructing a hospital."* This statement was not challenged in cross-examination thus, it was held that, *"plain reading of S.23(1)(a) of Punjab Pre-emption Act, 1991 showed that prohibition was regarding sale of waqf property or property used for charitable purposes--- Intention however, clearly appeared to save the property purchased for charitable user from rigours of exercise of right of pre-emption."*

9. Now it is to be seen in light of the universally acknowledged cannon of interpretation and construction of Statutes as to what was the intent and object of the Legislature by enacting the provision of S.23 of the Punjab Pre-emption Act, 1991.

After going through the injunctions of Islam, as already held by the Federal Shariat Court, exemption from right of pre-emption given to the properties, purchased by the charitable or religious institutions, was the clear intent and object of the Legislature. This was correctly perceived and the drafter has not committed any error while drafting S.23 of the NWFP (KPK) Pre-emption Act, where the words, ***sale and purchase***" both are used.

10. The primary object of the provision of law of the Punjab Pre-emption Act was to protect and save from pre-emption also the properties purchased by these institutions because the property

purchased by it, is used for charitable, religious and public benefit connected therewith and not for monetary or financial gain. If the interpretation, the learned ASC for the appellant suggested, is placed on the said provision of law, in our view, the very intent and object of the Legislature would be defeated. This would be destructive to its implied intent and object it wanted to achieve.

11. Now the question is, whether the Court can supply the omissions through necessary inference till the amendments are made in the relevant provision of S.23 of the Punjab Pre-emption Act. In this regard, the famous Jurists and celebrated Judges of the superior courts of different countries have consistently held that, if there is an occasion where there is inadvertent omission on the part of the drafter and if interpretation on that account is placed in a way to give effect to the omission, not only it will defeat the intention of the Legislature but will also result into harmful drastic consequences. Therefore, in such a case, it becomes imperative for the Courts to fill-up the gap and to supply the omission, so to avoid the obvious destructive effect on the true intent of the Legislature. It is also a bedrock principle of interpretation and construction of Statutes that in a case of ambiguity and absurdity or inadvertent omission, the Court has to make departure from the plain meaning of the Statute and to adopt a construction, which would further and carry the object of the Legislature into effect by resorting to drawing inference therefrom.

12. In the comprehension of a Statute, certain factors cause objective doubts as to the meaning of Legislative text. These are called doubt-factors. The drafters, either due to inadvertent omission or deliberately, avoid to use unnecessary words for the object of brevity. This technique is called ellipsis, meaning thereby that the obvious is to

be provided by implication in such a case. The Courts have the powers to fill-up the lacuna in the Statute through necessary implied addition.

13. It is also a cardinal principle with regard to interpretation of Statute that the Courts have the powers, in cases where there is a manifest contradiction of the apparent purposes of the enactment or the way, the literal construction is likely to lead to a result, not intended by the Legislature, to modify the meaning of the words or to supply the obvious omission due to result of inadvertent mistake on the part of the drafter. This is called a secondary construction of the Statute, where primary construction defeating the purpose of enactment shall be departed from, so to make the Statute sensible by giving effect to the legislative intent. In the cases of inadvertent legislative omissions, defeating the very object of the whole scheme of law, the Courts have the powers to supply the omissions, making the Statute purpose oriented, workable and sensible, by giving effect to the legislative intent. This principle was firmly adopted in wide sense by the Supreme Court in the famous case of **Al-Jehad Trust v. The Federation of Pakistan** (PLD 1996 SC 324). Similar view was held by the Supreme Court in the case of **Mian Muhammad Nawaz Sharif v. President of Pakistan** (PLD 1993 SC 473).

14. In view of the principles, discussed above, and after reading the provision of S.23 of the Punjab Pre-emption Act, 1991 and the entire scheme of the law, we entertain no amount of doubt that the word, "***purchase***" which is mentioned in the similar provision of the NWFP Pre-emption Act, 1987, has been omitted from the said provision of the Punjab Pre-emption Act, due to mistake, albeit inadvertently on the part of the drafter and while following the above construction and interpretation of Statute on the above principles on

the controversy in issue, it is felt fully justified to supply the omission, rendering the said provision of law meaningful, workable and sensible, so to give effect to the intent of the Legislature.

15. Accordingly, the word "***purchase***" must be read in the provision of S.23 of the Punjab Pre-emption Act and in the head-notes appended to it.

16. As a result of above conclusion and findings, this appeal is found devoid of all legal merits. Hence the same is dismissed. The impugned judgment of the High Court is upheld.

Note: Before concluding this judgment we deem it appropriate that copy of this judgment be sent to the Law and Parliamentary Affairs Department/Ministry, Government of Punjab with the recommendation to bring necessary amendments in the provision of S.23 of the Punjab Pre-emption Act, by adding the word, '***purchase***' so to avoid future unnecessary litigation in this regard. Early action on the part of the government of Punjab would be appreciated.

Judge

Judge

Islamabad, the
15th December, 2015
Nisar /-'
Approved For Reporting