

**JUDGMENT SHEET**  
**IN THE ISLAMABAD HIGH COURT,**  
**ISLAMABAD**

Writ Petition No.3685 Of 2020  
Vanguard Books Pvt. Limited  
**Versus**  
Lok Virsa.

Date of hearing : 29.12.2020.

Petitioner by : Mr. Idrees Ashraf, Advocate,  
Respondent by : M/s Ali Gohar Durrani, Zarar Arif Shah and  
Nida Khan, Advocates with Mr. Talha,  
Executive Director Look Virsa.

**FIAZ AHMAD ANJUM JANDRAN, J.-** Through the instant writ petition, petitioner wants to countermand notice dated 30.11.2020 issued by the respondents whereby he was directed to vacate Lok Virsa Display Centre, F-6 Markaz, Super Market, Islamabad ("**rented premises**") within seven days and to hand over its peaceful possession alongwith clearance of its utility bills to the respondent.

2. Essential and relevant facts for the adjudication of the instant writ petition are that the respondent rented the premises to the petitioner initially in the year 1996 and lastly through an agreement dated 09.03.2017 for a period of 3 years which was not extended further. The respondent then filed an ejectment petition before the learned Rent Controller, which was dismissed being not maintainable due to bar contained in the Notification dated 15.03.2018 issued by the Ministry of Interior, Government of Pakistan. Vide said Notification Government buildings have been excluded from the application of the Islamabad Rent Restriction Ordinance,

2001 (**IRRO, 2001**). The respondent, thereafter, served the petitioner with notice, impugned herein.

3. The learned counsel for the petitioner contended that in terms of Section 3 of the National Institute of Folk and Traditional Heritage (Lok Versa) Ordinance 2002, ("**Ordinance 2002**") the respondent is an autonomous body and, therefore, rented premises cannot be termed as a government building under the Federal Government Lands and Buildings (Recovery of Possession) Ordinance, 1965, therefore, notice is liable to be set aside.

4. On the other hand, learned counsel for the respondent argued that for all intents and purposes, petitioner is unauthorized occupant regarding the rented premises because he has failed to tender double amount of rent payable to the respondents in pursuance of the last expired lease agreement.

5. Heard the learned counsel for the parties and perused the record with their able assistance.

6. The sole question agitated before this Court is "*Whether the National Institute of Folk and Traditional Heritage of Pakistan Lok Virsa (hereinafter to be described as "**the Lok Virsa**") is covered under the purview of the Notification, (**the Notification**) issued by the Government of Pakistan, Ministry of Interior, bearing No. S.R.O.1/2/97-ICT-II dated 15.03.2018 or not?*" For ease of reference the Notification is reproduced as under:-

**"S.R.O.1/2/97-ICT-II.** In exercise of the power conferred by sub-section (2) of section 1 of the Islamabad Rent Restriction Ordinance, 2001 (IV of 2001) and in supersession of its

*Notification No. S.R.O. 83(KE)/2002, dated the 19<sup>th</sup> July, 2002 and No.S.R.O 538(I)/2004, dated 24<sup>th</sup> June, the Federal Government is pleased to specify the following areas, namely:-*

- (a) area within urban limits of the Islamabad Capital Territory in Zones I, II & V;*
- (b) housing schemes approved and demarcated as such by the Capital Development Authority in accordance with the Islamabad Capital Territory (Zoning) Regulations, 1992;*
- (c) area declared as urban areas by the Capital Development Authority with the approval of the Federal Government in accordance with the Capital Development Authority Ordinance, 1960 (XXIII of 1960).*

*to be the area to which the said Ordinance No.IV of 2001 shall extend, except:-*

- i) Lands and buildings in the diplomatic enclave, and*
- ii) Such buildings, lands, offices and public properties **owned or hired by the Government.**" [Emphasis added]*

7. Initially, the Lok Virsa was established pursuant to Resolution No.F.10-11/82-Admin dated 19.06.1983. Subsequently, the resolution *ibid* stood repealed by the Ordinance 2002.

8. Section 3 of the Ordinance 2002 is of much significance, said provision for ease of reference is being reproduced hereunder:-

### ***3. Establishment of the Institute.***

*(a) The National Institute of Folk and Traditional Heritage (Lok Virsa) as reconstituted in accordance with the Provisions of this Ordinance shall **body corporate having perpetual***

**succession and a common seal with powers, subject to the provisions of this Ordinance, to acquire, hold and dispose of property, both and moveable and immovable, and shall by the said name sue and be sued.** [Emphasis added]

(b) .....

(c) ..... ”

9. The term '**Body Corporate**' has been defined in the section 9 of the Companies Act 2017 as

**'Body Corporate' or 'Corporation' includes—**

- (a) a company incorporated under this Act or company law; or
- (b) a company incorporated outside Pakistan, or
- (c) a statutory body declared as body corporate in the relevant statute, but does not include—
  - (i) a co-operative society registered under any law relating to cooperative societies; or
  - (ii) any other entity, not being a company as defined in this Act or any other law for the time being which the concerned Minister-in-Charge of the Federal Government may, by notification, specify in this behalf;" [Emphasis added]

10. A judgment from Indian jurisdiction reported as "***Devi Dayar Marwah v. The State of Andhra Pradesh***" (AIR 1963 AP 479) wherein it was held that:-

*"In our view, one of the tests to find whether an institution is a Corporation or a department of the Government is to enquire whether the undertaking functions as a responsible independent organization and not as part of any*

*department of State. Another test would be to see whether it is endowed with the capacity to contract obligations and of suing and being sued. Further the power to possess, use and change a seal is incidental to a corporation and a corporation aggregate can, as a general rules, only act or express its will by deed under its common seal. In Bagchi's Law of Corporation, at p.177, it is stated that where a number of persons are so constituted by an Act of Parliament that they have perpetual succession, are to continue for all time, may take land, make contracts which shall be binding not upon themselves but upon the persons filling office, and are authorized to sue or to be sued in the name of their treasurer, they are in the nature of a corporation aggregate.*

*Generally, when a corporation is created by an Act or by a Charter, they themselves provide for the formation of a body corporate and invest it with powers to make rules, bye-laws, to have a seal and to contract, acquire property, etc. and also provide for its perpetual succession.* "[Emphasis added]"

11. The term 'body corporate' has a wider connotation than the term 'corporation' (*though all corporations incorporated under the Company law are body corporate*) and includes all corporations incorporated under the Companies Act, 2017 and all those created through special act of the parliament. When an institution is created by the legislature and they expressly provide for the formation of body corporate having perpetual succession, common seal, capacity to acquire, dispose of property and the ability to sue and being sued are conferred, the same has an independent status and cannot be termed as Government. Hence, the section 3 of Ordinance 2002 clearly depicts the legislative intent.

12. The very ability to sue and be sued is of great legal importance. When Lok Virsa is sued, it is not required to be sued through government, similarly when Lok Virsa sues it does not require to sue through Government because it can do so on its own. Lok Virsa has its own common seal, while in case of government it needs not to have an independent and separate seal.

13. Thus, being a body corporate, Lok Virsa can acquire, convey and hold property with its own name along with the right to dispose of the property.

14. The term 'Government' contained in the Notification retains pivotal importance. It is defined in Section 3 (21) of the General Clauses Act, 1897 as under:-

*"Government" or "the Government" shall include both the [Federal Government] and any Provincial Government:*

15. In the Rules of Business 1973 [See rule 3 (I)], list of Ministries and Divisions is provided, wherein at serial No.8, is the Ministry of Federal Education, Professional Training, National Heritage and Culture while its Division National Heritage and Culture is mentioned as Sub-Division (b). Said Division is at heading No.25 and the Lok Virsa is at serial No.14 of the said heading. These Rules of Business are basically framed and enforced for the achieving the object of harmonious and smooth working between Ministries and their attached Departments. The routine working be so effective and cordial that day to day affairs of the department are not hampered. This is for the administrative purpose only and could not convert status of the Lok Virsa as that of the government by any yardstick particularly for the purposes of the Notification.

16. This Court in a Division Bench judgment reported as **“National Highway Authority through Director (Legal) v. Lilley International (Pvt.) Limited and another”** (2020 CLC 608 Islamabad) while dealing with the status of NHA has upheld in paragraph 28 as under:-

*"28. While dismissing this appeal with costs, we are mindful of Section 35-C C.P.C. as amended by the Costs of Litigation Act, 2017 which provides that the Government shall not be liable to costs under Sections 35, 35-A and 35-B C.P.C. Although by virtue of Rule 3(3) of the Rules of Business, 1973 read with item No.3 in paragraph 6 of Schedule-II thereof, the Communications Division has the administrative control over the National Highway Authority and by virtue of Rule 4(4) read with item No.16 of Schedule-II of the said Rules, the "National Highways and Pakistan Motorways Police Department" is an attached department of the Communications Division, this does not make the National Highway Authority an adjunct or alter ego of the said Division and/or the Government. The term "Government" has not been defined in the Civil Procedure Code, 1908. "Government" has been defined in Section 3(21) of the General Clause Act, 1897 to include both the Federal Government and any Provincial Government. The National Highway Authority, being a statutory body, cannot be termed as the "Government". Since the appellant is a statutory body established under the provisions of the National Highway Act, 1991 and therefore does not fall within the meaning of "Government" it cannot be insulated from the imposition of costs under Section 35 C.P.C." [Emphasis added]*

17. By taking useful guidance from the quoted case law, it could be safely held that by any stretch of imagination the word 'Government' as contained in the notification could not be held applicable in the case of petitioner, in humble view of this Court.

18. The question framed in paragraph 6 is answered in the above terms.

19. The case laws relied upon by the learned counsel for the respondent are not relevant qua the controversy in hand, therefore, are not applicable to the peculiar facts/law on the subject.

20. The cumulative effect of above discussion is that the respondent is not covered under the notification. The conclusion drawn by the learned Rent Controller is not correct appreciation of law on the subject. The respondent, being not left remediless, may avail all remedies as per law if so advised.

21. **Disposed of** in the above terms.

**(FIAZ AHMAD ANJUM JANDRAN)**  
**JUDGE**

A.R.Ansari

Announced in the open Court on **25.02.2021.**

**JUDGE**

Approved For Reporting