

**JUDGMENT SHEET.**  
**ISLAMABAD HIGH COURT, ISLAMABAD,**  
**JUDICIAL DEPARTMENT.**

**W.P No.618/2019.**

**Mrs. Falak Ara Khattak** Vs. **M/s Gun and Country Club  
through its Secretary,  
Islamabad etc.**

Petitioner by: Mr. Shams Iqbal Khattak, Advocate.

Respondent No.2 by: Ms. Ruqia Samee, AAG.

Respondents No.1, 3 & 4 by: Syed Naeem Bokhari, Mr. Kashif  
Nawaz Siddiqi and Mr. Muhammad  
Imad Khan, Advocates.

**Date of Decision: 04.11.2019.**

**MOHSIN AKHTAR KAYANI, J:-** Through this writ petition, the petitioner has challenged termination of lease letter dated 17.12.2018 executed between respondent No.1/M/s Gun and Country Club and the petitioner.

2. Learned counsel for the petitioner contends that the petitioner entered into lease agreement with respondent No.1 regarding lease of Spa & Saloon facilities vide agreement dated 29.05.2018 for period of five years uptill 30.04.2023; that respondent No.1 issued letter of vacation, which has been given to the petitioner without due course of law and all the articles have been removed from the said premises by respondent No.1.

3. Learned counsel for the petitioner confronted regarding maintainability of instant writ petition, whereby he contends that the respondent No.1 has violated terms of the agreement and it is duty of this Court to restore possession of leased premises.

4. Conversely, learned counsel for respondents No.1, 3 & 4 contends that Hon'ble Supreme Court of Pakistan has taken notice of all the actions and allotment of the land worth billion of rupees by CDA to M/s Gun & Country Club at throwaway price through Suo Motu Case No.14/2011, in which direction was passed vide order dated 09.07.2018 and the management and operation of the M/s Gun & Country Club has been transferred to respondent No.3/Pakistan Sports

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Board for long term, which has subsequently been confirmed through the report submitted by the Secretary Ministry of Inter Provincial Coordination dated 27.07.2018 and the Apex Court through subsequent order dated 13.11.2018 approved new committee to run affairs of M/s Gun & Country Club and as such the authority has been extended upto 31.12.2019; that the petitioner has no legal right as the agreement executed between the petitioner and the Club is illegal, which has been executed without any legal authority and the petitioner was informed through different notices to remove the articles and despite clear warning no action was taken by the petitioner side as the space area allocated for Spa & Saloon facilities is result of illegal action of the then officials; that the matter can be agitated before the Court of competent jurisdiction for breach of terms of the contract.

5. I have heard the arguments and perused the record.

6. Perusal of the record reveals that the petitioner is mainly aggrieved with the termination of lease letter dated 17.12.2018 issued by Coordination Management Committee, Gun & Country Club duly constituted by Hon'ble Supreme Court, in which it has been reiterated that the land of Gun & Country Club does not belong to the Club rather the land belongs to Government of Pakistan and its affairs shall be run by Management Committee of Inter Provincial Coordination initially, whereby Management Committee was constituted, which has decided in its meeting dated 15.12.2018 to cancel the contract, which was illegally procured.

7. Keeping in view above background, it has been observed that a contract was executed by the then Secretary of the Gun & Country Club with the petitioner regarding lease of Spa & Saloon facilities but surprisingly the land does not belong to the Club at first instance as held by the Apex Court vide order dated 09.07.2018 in Suo Motu Case No.14/2011. Paras 5 & 6 of the said order is reproduced as under:-

*"5. We would also like to highlight that the resolution dated 30.09.2002 upon which the Club has placed reliance to justify its occupation of approximately 37 acres of land in its possession is neither a deed of transfer nor a deed or document of lease or licence. Further, it has not been issued by a competent authority. Resultantly such resolution has no legal validity or sanctity and is therefore of no legal consequence for the conferment or vesting of any rights relating to the land in the unauthorized and illegal possession/occupation by the Club. After the property has been taken over, the Survey*

*General of Pakistan shall conduct a demarcation of the entire 145 acres which was given to PSB specifically the land on which the shooting range and the club building has been constructed and the Marquee has been built. The report must be submitted with this Court within a period of two weeks. The expenses in this behalf shall be borne by PSB.*

*6. The Club shall be run by PSB until further orders of this Court and till a permanent plan for long term running and operation of the Club is approved by this Court. Re-list in the last week of August, 2018."*

8. However, on the basis of said order of Apex Court, the committee was notified by Ministry of Inter Provincial Coordination, who submitted report dated 27.07.2018 before the Apex Court, where-after Apex Court passed further direction and even notified another committee to deal with the affairs of the Club vide order dated 13.11.2018 passed in CMA No.9421/2018 in Suo Motu Case No.14/2011, even the Committee was further allowed to extend its working till 31.12.2019 vide order dated 15.01.2019 passed in CMA No.11230/2018 in Suo Motu Case No.14/2011. All these actions clearly spell out that the authority is vested with the new Committee constituted by the order of Hon'ble Supreme Court on its judicial side, however, issue relating to the termination of contract cannot be settled under Constitutional jurisdiction, especially when question relating to status of the Club has been settled in orders of Apex Court as such the petitioner may avail remedy before the Court of competent jurisdiction for breach of the terms of the contract. Reliance is placed upon **2010 CLC 812 (Government of Punjab through Secretary Food vs. Madina Jute Mills Limited through Director)**, wherein it has been held that contractual obligation cannot be enforced in Constitutional petition. Similarly detailed view has also been given in **PLJ 2010 (Lahore) 182 titled Muhammad Ashraf...vs...UBL, etc**, wherein it was held as under:-

*"21. Now coming to third question which the Honourable apex Court has proposed, for decision that whether Constitutional Jurisdiction of High Court extends to enforcement of contractual obligation.*

*The High Court normally in the exercise of its Constitutional Jurisdiction does not entertain a petition to enforce a civil liability arising out of contract or breach thereof. The Court leaves adjudication of such issues to the Court of plenary jurisdiction, under the general law. The remedy through a civil suit is admirable as all the issues and controversies are resolved after proper appraisal and appreciation of evidence. It gives high quality justice as against the decisions rendered in summary proceedings. The litigation in regular suit is adequate and suitable as each claim and counter claim of contesting parties is*

*ascertained according to its peculiar facts with due determination, although the process is lengthy and sometimes consumes years to attain finality. The litigant has to pay the price in the form of time, money and talent for high quality justice, the individual claims and inter-parties disputes require determination according to the discipline and before the Court or a forum which is established for resolution of such dispute. The system of the Courts can function properly only when matters are left to be decided in the Courts of plenary and general jurisdiction. Entertaining Constitutional petitions in the matters which can effectively be decided in accordance with law in the Court of general jurisdiction, would result into limiting the jurisdiction of the Courts of plenary jurisdiction. Liberal exercise of jurisdiction in constitutional petitions, will also portray that confidence in such Courts, is not reposed in imparting justice. Interference in the writ jurisdiction, regarding enforcement of contractual obligations, invariably and unhesitatingly, in every case where the Government or public functionary is involved, the result would be appalling, disquieting and disconcerting. Pendency of litigation in the High Courts is burgeoning day by day and the High Courts are already overburdened. Entertaining Constitutional Petitions in contractual obligation, will further add to the backlog. The Constitutional jurisdiction cannot be invoked merely on the plea that one of the contracting party is Government or public functionaries and the Government commands dominating position. Routine contractual disputes between the private parties and public functionaries are to be resolved through regular suits, instead of approaching High Court in its Constitutional Jurisdiction. The High Courts and the Honourable apex Court has consistently viewed that enforcement of contractual obligation or redressal of breach thereof, can adequately be redressed through a regular suit."*

9. Keeping in view above mandate, instant writ petition is misconceived, therefore, the same stands **dismissed**. However, the petitioner may agitate all the grounds before the Court of competent jurisdiction, if so, advised.

**(MOHSIN AKHTAR KAYANI)**  
**JUDGE**

R.Anjam