

ORDER SHEET
IN THE HIGH COURT OF SINDH KARACHI

Suit No.1550 of 2022

DATE	ORDER WITH SIGNATURE OF JUDGE
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1. For hearing of CMA No.13683/2022
2. For hearing of CMA No.15559/2022

Khawaja Shams-ul-Islam, Advocate for the Plaintiff
Mr. Ali T. Ebrahim, Advocate for Defendants 1 to 3
Mr. Saad Siddiqui, Advocate for Defendant No.4 along with
Mr. Ahmed Nizamani, Advocate

Date of Hearing : 01.02.2023

Date of Order : 10.02.2023

AMJAD ALI SAHITO, J.: Through listed CMA No.13683/2022, learned counsel for the plaintiff seeks suspension the operation of the letter dated 21.08.2020 wherein **Port Qasim Authority (hereinafter called as “PQA”)** refused to grant right of way (road cutting permission) and further on the guise that the permission of **Right of Way (hereinafter called as “ROW”)** is available for the allottees of PQA. Consequently, this Court direct the Defendants 1 to 3 to immediately issue right of way in favour of the plaintiff’s industrial feeder meter and restrain the Defendants especially Defendants No.1 to 3, their agents, representatives, servants, subordinate or any one claiming on their behalf from harassing and interfering in the lawful business activities of the Plaintiff under the garb of the certificate of ROW in any manner whatsoever and/or taking any coercive action in any manner whatsoever, till final disposal of the Suit. This Court may further graciously be pleased to direct Defendant No.4/K-Electric that instead of waiting for the ROW certificate from the PQA, they should immediately provide a dedicated industrial feeder inside the Plaintiff’s factory and provide electricity from the industrial dedicated feeder instead of providing electricity from the katcha abadi residential load shedding area.

2. Learned counsel for the Plaintiff submits that Plaintiff factory has been established in 2017 and manufacturing motorcycle parts; that more than 15,000 employees are working including Engineers, Technicians and other field officers; that more than 50 Chinese

Engineers are also working inside the factory, besides they are also residing in the residential colony of the factory under heavy security; that for the purpose of grant of NOC of the ROW, the Defendants 1 and 3 are creating hindrance and Defendant No.2, who is a corrupt officer, demanded heavy bribe, which the Plaintiff refused; that for redressal of present controversy, Plaintiff's Management filed an application for 2 Mega Watts dedicated feeder for their factory Meter No.HTO-3920, Plot No.672, 673 (27 Acre) Bin Qasim Deh Joreji Taluka, District Malir Port Qasim; that in the year 2018 K-Electric provided electricity connection to the Plaintiff after completing all the formalities but the said supply provided to the Plaintiff from a residential and high loss feeder despite the Plaintiff requested to K-Electric for supplying electricity through dedicated industrial feeder. Learned counsel further contended that due to provision of electricity supply via residential and high loss feeder, most of the heavy duty machinery incurred an inevitable burnout because of inadequate voltage supply, moreover the plaintiff is facing incessant problems such as heavy fluctuation, breaker tripping on feeder and several cable faults since 2019 till date. Learned counsel further stated that K-Electric advised the plaintiff to bring road cutting permission, as such, the Plaintiff approached to Pakistan Railways, PQA and Bin Qasim Town for laying 2 Mega Watts feeder cable system from Port Qasim Grid to Plaintiff's factory; however, PQA refused to issue ROW and apprised the Plaintiff that PQA grid station is only for Port Qasim allottees and the Plaintiff is not among them, therefore, they cannot entertain or facilitate the permission. Learned counsel further contended that PQA has also granted permission to other factories/industries located in the same vicinity but refused to grant permission to the plaintiff's factory; that after completing all formalities, K-Electric had written two letters dated 11.05.2020 and 17.06.2020 to Director (P&D) and Chairman PQA respectively wherein the K-Electric requested to issue way leave approval / road cutting permission under Section 13-1 of Electricity Act, 1910 for installation of HT / LT Pole / laying LT cable. Learned counsel also submits that the Plaintiff made payment and charges to K-Electric through pay orders and if any amount is remaining, they are ready to pay to the K-Electric. Learned counsel for the Plaintiff submits that the Plaintiff has a prima facie case and balance of convenience is also lies in his favour. Lastly, prayed that the instant application may be allowed. In support of his contentions,

he has relied upon the cases reported as 2012 CLC 1738 (Al-Abid Silk Mills Ltd. vs. Karachi Electric Supply Company Ltd. and another, 2014 PTD 243 (Engineer Iqbal Zafar Jhagra and Senator Rukhsana Zuberi vs. Federation of Pakistan and others, 2019 SCMR 247 (Human Rights Case No.17599 of 2018), 2020 SCMR 1488 (Naimatullah Khan Advocate and others vs. Federation of Pakistan), 2020 SCMR 622 (Naimatullah Khan Advocate vs. Federation of Pakistan and others), PLD 2014 Sindh 344 (Mst. Hamra Ahsan vs. M/s. Karachi Electric Supply Co. through C.E.O.) and 2001 CLC 321 (M/s. Erum Heights Residents Welfare Association vs. Karachi Electric Supply Corporation Ltd. through Managing Director and 3 others).

3. On the other hand, learned counsel for Defendants 1 to 3 / PQA submits that the Plaintiff has converted Na-class land for poultry farm purpose for 30 years into agriculture / industrial / commercial land for 99 years. He further contended that the Plaintiff falls within the territorial jurisdiction of Land Utilization Department, Board of Revenue, Government of Sindh, as such, the Plaintiff has set up its industry outside territorial jurisdiction of Defendant No.1 Industrial Estate. He further added that initially the land was granted for poultry farm purpose but the same was converted for industrial / commercial purpose; that as per Section 11-1 of the Policy, Defendant No.1 is also entitled to reject any application made to it in relation to grant of ROW; that the Plaintiff is not allottee of Defendant No.1; that as per recommendation of NESPAK and in order to avoid expand the road due to increase in the volume of cargo being transported via PQA main road; that Defendant No.1 is in the process of rehabilitation and expansion of road, as such, it has also advised to other allottees to shift their lines/cables that have been laid down on the subject road; that despite plaintiff having no right to demand ROW from Defendant No.1 in relation to the subject road, grant of such right is simply impossible as there is no space/corridor available for laying of cables pursuant to the planned expansion of the same. He lastly prays for dismissal of the instant application. In support of his contentions, he has relied upon the cases reported as 2011 SCMR 226 (Nisar Ahmed vs. Masood Akhtar and others), Judgment dated 23.11.1928 (Jit Singh vs. Gujranwala Electric Supply Co. Ltd.), PLD 2017 Lahore 723 (GEPCO and others vs. Arshad Mehmood)

and 1986 CLC 150 (National Cement Industries Ltd. vs. Karachi Electric Supply Corporation Ltd. and 2 others).

4. Learned counsel for K-Electric admitted that they have written two letters mentioned above to the PQA for grant of ROW under Section 11-1 of Electricity Act, 1910 for installation of LT cables; however, he submits that there is some outstanding amount against the Plaintiff as the said amount is paid subject to the permission of PQA they will provide a dedicated industrial feeder.

5. Heard and perused the material on record.

6. Admittedly, the Plaintiff's factory has been established in 2017 and manufacturing motorcycle parts having more than 15000 employees including 50 Chinese Engineers. Uninterrupted electricity is a fundamental right of every citizen as the energy has great importance in our daily lives. It is part of our lives from aircrafts to cars, television to cellphone, air-condition to water heating, pharmaceutical to plastic and fertilizer to cement; energy makes it possible. In the instant case, the Plaintiff has paid more than 5 crore to the Defendant No.4 for providing it dedicated industrial feeder for uninterrupted electricity as previously, Defendant No.4 was providing electricity to the Plaintiff via electric supply from residential and high loss feeder, as such, heavy duty machinery in the plaintiff factory burnout due to un-advocacy voltage supply. After completing all the formalities, Defendant No.4 wrote two letters to Defendant No.1 / PQA referring Section 11-1 of Electricity Act, 1910 for installation of LT Cables. It is appropriate to reproduce the relevant para of Section 13(1) of the Electricity Act which is as under:

***“Where the exercise of any of the powers of a licensee in relation to the execution of any works involves the placing of any works in, under, over along or across any street, railways, tramway, canal or waterway, the following provisions shall have effect, namely:-
a)
b).....
c).....”***

7. In reply to the letters, PQA simply informed the Plaintiff that the ROW is only available for allottees of PQA as the Plaintiff factory does not fall within the territorial jurisdiction of PQA, therefore, their request cannot be entertained under the rule and

policy. Learned counsel for Defendant No.1 invited attention of this Court to Section 11 which is available at Page-529 that on application made by a party, the Board or Chairman or D.G. (P&D) may grant Wayleaves License or Right of Way (ROW) Lease for the purpose of laying overhead or underground transmission lines or cables, pipelines or for construction of drain, hereinafter termed as Services. He further invited attention of this Court to Subsection (iv) which says that on receipt of remarks of the concerned departments the concerned official is of the opinion that a "Wayleave"/Right of Way cannot be granted, he shall inform the applicant accordingly. Further, subsection (viii) of the above provides that Way-leaves/Right of Way fee and charges shall be levied at such rates as may be fixed by the Board from time to time. Learned counsel for the Plaintiff also submitted that PQA/Defendant No.1 has granted permission to the Plaintiff neighbouring industrial consumers namely M/s. Naushaba Naeem Industries, M/s. Lucky Industries, M/s. Daulat Bano Industries and M/s. Nisan Ghandara in the same vicinity and adjacent to Plaintiff boundary walls, as such, he claims that Defendant No.1 is discriminating with the Plaintiff and refused his request. He has also provided photocopy wherein he has stated that there is no paka road and the PQA has not constructed paka road but from the dedicated industrial feeder to the Plaintiff factory the Katcah road has been built and now Defendant No.1 has also provided ROW to Indo Textile for which a picture provided by learned counsel for the Plaintiff shows that they have also dug out for installing underground cable.

8. Doctrine of equality as contained in Article 25 of the Constitution enshrines the golden rules of Islam it states that every citizen, no matter howsoever, must be accorded equal treatment with similarly situated persons. Basic rule for the exercise of such discretion and reasonable classification is that all persons placed in similar circumstances must be based on reasonable grounds in a given set of circumstances but the same in any case must not offend the spirit of Article 25 of the Constitution. Defendant No.1 while rejecting the permission of ROW to the Plaintiff on the ground that it does not fall within the territorial jurisdiction has not disclosed that under what circumstances PQA has provided above mentioned four industries the ROW. Further, while filing WS, Defendant No.1 has provided

explanation only that there is no space/corridor available for laying of cables pursuant to the planned expansion of the same. Further the picture available on record shows that there was no development work on the said road and it is simply katcha road and PQA also granted permission to the Indo Textile Mills, hence the Plaintiff is entitled for same relief, which is granted to four others. In view of the above, the instant application is allowed. Defendant No.1 is directed to issue permission to Right of Way (ROW) to the Plaintiff enabling it to get supply to dedicated industrial feeder subject to the fee and charges as fixed by the Board from time to time in view of Subsection (viii) of Section 11 of the Policy. Needless to mention that the Plaintiff shall pay the remaining charges, if any, to the K-Electric.

JUDGE

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