

Present: Ch. Muhammad Masood Jahangir, J.

DISTRICT CRICKET ASSOCIATION, RAHIM YAR KHAN through President--Petitioner
versus

SECRETARY HEALTH, GOVERNMENT OF PUNJAB, LAHORE
and 7 others--Respondents

W.P. No. 2442 of 2008, heard on 21.3.2014.

Constitution of Pakistan, 1973--

----Art. 199--Constitutional petition--Public exchequer--Restrained to convert stadium into extended part of hospital--Land was transferred to sports department after spending huge amount--Provision of alternate stadium--Acquisition of land for construction of new stadium--Stadium was under construction at far off place from city--Supervision of university of P.H.S.--Validity--Under supervision of U.H.S. and medical students all over Punjab will be benefited to get admission and education in a better atmosphere, which facility can be considered to be more beneficial to interest of public-at-large than to interest of a group of sportsmen--An alternate most modern sports stadium after spending huge amount on reasonable area has been provided by respondents--Medical College is attached to DHQ, and better medical facilities will be available to public-at-large by consequent enhancement in number of professors and other medical staff--Constructed stadium is situated at far off place from city, which can be redressed/ accommodated through negotiations with local administration for provision of public transport on said route, but in any case for such reason alone a project of public welfare cannot be stopped to function--Petition was dismissed. [P. 928] A, B & C

Mr. Bilal Ahmed Qazi, Advocate for Petitioner.

Mr. Muhammad Farooq Warand, Advocate and Mr. Muhammad Tahir Saeed Ramay, AAG for Respondents.

Date of hearing: 21.3.2014.

Judgment

By filing the instant writ petition the petitioner has prayed as under:--

“Under the above circumstances, it is respectfully prayed that for enforcement of fundamental rights and avoidance of the breach of basic rights, this Hon’ble Court is requested to rescue the petitioner and inhabitants of the area from deprivation of the sports facility for the purposes of establishment of Medical College. For this purpose the process of taking possession of the site and launching of construction work may kindly be stopped and the respondents may be ordered to arrange for alternate, suitable and specious place for establishment of Sh. Zayed Medical College’s Building; for this purpose the area of Mahmood Stadium, its plots, grounds, buildings and fixtures may not be interfered with in any manner or form by the respondents. Any other relief suitable for the purpose may also be awarded, in the interest of law, justice and equity.”

The said prayer further had been amended by addition to earlier prayer as under:--

- (ii) That the order of the Board of Revenue respondent dated 23.10.2004, mentioned in the petition may kindly be declared as illegal *mala fide* and without lawful authority and same may kindly be quashed.
- (iii) That the mutation of possession No. 22492 and 5754 dated 09-12-2004 may kindly be declared as illegal, *mala fide* and without lawful authority and the same may kindly be quashed.
- (iv) That all the subsequent proceedings taken by the respondents to establish medical college in the land specified for stadium may kindly be declared as of no legal effect being illegal, *mala fide* and without lawful authority.
- (v) Any other remedy which this Hon'ble Court deems fit may be granted to the Petitioner.

2. The learned counsel for the petitioner started from the admitted facts and submitted that in 1953 Mehmood Stadium was constructed upon an area of 120 *Kanals* situated in the heart of Rahim Yar Khan city by the then Chief Minister of Bahawalpur State, which provided the pleasant atmosphere and became a major source of healthy and physical sports activities for the inhabitants of the area and different sports activities like table tennis, badminton, hockey, wrestling and especially Cricket are being performed therein since long in the said Stadium, which is a source of generating nursery of the above said sport's skill. The learned counsel for the petitioner further explained that no other stadium of such a standard is available throughout the Division and dozens of international and first class cricket matches have been played so far in the said stadium. The learned counsel also pointed out that D.H.Q. Hospital, Rahim Yar Khan is also existed nearby the said stadium and in past the former King/Sultan of United Arab Emirates awarded funds for upgrading the said D.H.Q. hospital, who graciously also sanctioned the establishment of Sh. Zayed Medical College which was established in 2003. He further submitted that prior to filing the instant writ petition it was learnt that for the extension of said medical college project the area of Mehmood Stadium was going to be taken over by Respondents No. 1 & 2 and a protest was propounded by the petitioner as well as the large number of public at their ends, but despite the said agitation through disputed Letter No. 4130-2004/3486-CL-II dated 23.10.2004 the disputed land measuring 116 *Kanals* and 7 *Marlas* under Mehmood Stadium has been transferred in favour of Health Department for extension of Sh. Zayed Medical College, Rahim Yar Khan. The learned counsel for the petitioner further added that in this regard Mutations of Possessory rights have also been sanctioned in favour of said department by violating the fundamental rights of the petitioner and other inhabitants.

3. The learned counsel for the petitioner has argued that establishment of Sports Complex was one of the purposes for advancement of public welfare while the errcction of other project cannot be declared to be substituted for the above said earlier project and even the other project may also be going to be established for the welfare of the public. He further stressed that under the Local Government laws, it is necessary that the facility of sports must be provided to the inhabitants as a matter of right, that while issuing the disputed letter dated 23.10.2004 and sanctioning Mutation No. 22492 and 5754 dated 9.12.2004 the TMA has also even not been taken into confidence. In the fag end of his arguments the

learned counsel for the petitioner mainly mooted that an amenity plot which was reserved for the welfare of the public cannot be utilized or converted while scarifying and violating the fundamental rights enshrined in Article 26 of the Constitution of Islamic Republic of Pakistan, 1973. He lastly relied upon the judgments reported as *Shehri-CBE through General Secretary and 15 others vs. Lahore Development Authority through Chairman and 6 others* (PLD 2012 LAHORE 362), (PLD 2006 SC 514), *Moulvi Iqbal Haider vs. Capital Development Authority and others* (PLD 2006 SC 394) and (2010 SCMR 885) and prayed that while invoking the constitutional jurisdiction the respondents be restrained to convert the Mehmood Stadium into an extended part of the Sh. Zayed Medical College and respondents be also directed to restore the status of public stadium.

4. Conversely the learned counsel for the Respondents No. 1 & 4 submitted that in the interest of public *vide* Notification dated 10.3.2003 1st Phase of Sh. Zayed Medical College, Rahim Yar Khan was established by the Government of Punjab after spending Rs.30.551 million from the public exchequer and then the Colony department after obtaining approval from Board of Revenue transferred State land measuring 116 *Kanals* 7 *Marlas* under the possession of Mehmood Stadium whereas 720 *Kanals* of further land owned by Provincial Government has also been given free of cost for extension of said Medical College *vide* letter dated 23.10.2004 and Mutations regarding the change of transfer of the disputed property were also got sanctioned whereupon possession of property of disputed stadium has already been taken over by the TMA. He further explained that an amount of Rs.8.265 million rupees had also been reserved *vide* order No. S.O.(Dev-I) 37-2/2004 tinted 21.6.2004, a contract was awarded to a renowned construction firm, the work is under progress at the disputed site from the day first and millions of rupees from the public exchequer have already been spent over the extended project of the medical college so far. He further pointed out that the petitioner is well aware of the progress of the above stated project from the day first and the writ petition is also hit by the principle of latches. He next explained that in lieu of the above project a reasonable piece of land has also been transferred to the Sports Department and an International Stadium has also been established in Rahim Yar Khan after spending a huge amount. It is argued that basic demand of the petitioner being smelt out from the bare reading of the writ petition is demand of an alternate stadium, which desire has already been fulfilled, therefore the instant writ petition be dismissed as there is left no grievance to the petitioner. He also placed his reliance upon the judgments reported as *Mst. Asmat-Un-Nisa and another vs. Government Of N.W.F.P. through Secretary Industries and others* (2010 SCMR 480), *Syed Nazar Abbas Naqvi vs. Commissioner, Sargodha Division, Sargodha and 29 others* (1996 SCMR 1277), *Haji Muhammad Ashraf and another vs. Development Authority Muzaffarabad through Chairman and another* (1995 CLC 596) and *Muhammad Khan vs. Federation Of Pakistan through Secretary, Communication, Islamabad and 4 others* (2012 CLC 101).

5. Arguments heard record perused.

6. The perusal of Para-13 and 14 of writ petition is relevant, which for ready reference are reproduced hereunder:--

“13. That it was learnt that the Respondents No. 1 & 2 have agreed to hand over whole of the area of Mahmood Stadium for establishment of a new building for said proposal on

the ground that in whole of the city as well as throughout the District there is no alternate of the sports stadium other than the sole/unique Mahmood Stadium. It was objected time and again that if at the cost of the establishment of Medical college, the people of Rahim Yar Khan District are deprived of a big sports stadium, it would be great irreparable loss to the physical activities of the generation, upon which it was assured time and again by the authorities that Medical College will not be established at the sport unless and until alternate sports stadium is made available according to the aspiration of the people of Rahim Yar Khan. In this respect the press clipping of newspapers Annexure “E to E/2” are attached herewith.

14. That in the near past, it was learnt that the respondents under the garb of their authorities were going to demolish the building of Mahmood Stadium and also to take possession of whole of the area of Mahmood Stadium for launching the construction work of Medical College, without providing the alternate as well as suitable facility or the facility or the people of Rahim Yar Khan, hence one Ch. Abid Hussain, Senior Vice President, D.C.A. Rahim Yar Khan submitted the application before the Prime Minister of Pakistan who sought for the comments of D.C.O. (Respondent No. 3) in this connection but no such report in respondent to the letter issued from Prime Minister Secretariat has been furnished. Photocopy of the letter is attached as Annexure “E”.

The perusal of said part of the instant writ petition speaks volume that the petitioner's desire was provision of an alternate stadium. The said desire of the petitioner has already been compensated by the respondents/Government on the request of TMA, which had released 25 million of rupees for the acquisition of land for the construction of a new stadium. Moreover, land measuring 45 *Kanals* 13 *Marlas* plus 40 *Kanals* 8 *marlas*=totaling 86 *Kanals* 1 *Marla* had been transferred for establishment of Sports Stadium *vide* mutations No. 24511 dated 21.3.2009 and 14644 dated 21.3.2009 while a further piece of land owned by Auqaf Department measuring 64 *Kanals* and 13 *Marlas* has also been handed over to the Sports Department where the Stadium had already been established. The copies of mutations, letter and photographs have been appended by the respondents alongwith their reply and through CMs Diary No. 3935 for production of documents, which reflect that a modern Stadium has been established in Rahim Yar Khan. The petitioner has not denied these facts either by placing some documents in rebuttal or during the course of arguments, but it is being objected merely on the ground that the said Stadium is under construction at a far off place from the city. The above said reflection of record has clarified that as demanded by the petitioner an alternate Stadium has already been provided by the respondents/Government. The view of the photographs of the disputed site produced by the respondents on file regarding previous Mahmood Stadium reflects that building of the stadium had become dilapidated and was near to collapse rather some of portions of the said Stadium were put down to earth with the passage of time as it was constructed in the year 1953 (61 years ago), Whereas from the view of the photographs of newly constructed Stadium, which are also available on file, the same appears to be a symbol of modern concept of architect.

7. The case law referred to by the counsel for the petitioner is of great importance but with due respect I will must say that said judgments run on different footings.

In *Maulvi Iqbal Haider's case (supra)* the land of Jubilee Park situated in Sector F-7 Islamabad had been allowed by CDA to be converted into a Mini Golf Course and the land

in this behalf was leased out to a private person on commercial basis. In other case of CBE Sheri (supra) the land of Doongi Ground (Park/Playground) situated in Gulberg Schcme-II, Lahore was allowed to be converted into Cinema Theatre and Shopping Arcade i.e. for the commercial use by private person. In *Suo Motu* Case No. 3 of 2006 the City District Government had planned for development of multistoried car parking plazas at various locations in the city. Moreover, in the other *Suo Motu* Case No. 10 of 2009, a piece of land situated in populated part of Karachi city which was used for playground and park was leased out for Wholesale Centre.

8. In all the said referred cases the amenity plots/parks/playgrounds/open spaces reserved in a master plan were proposed to be converted into commercial use without providing alternate land, whereas in the present case the situation is different. No doubt that the land of a Sports Stadium has been transferred/controverted, but for another pious public welfare and after providing a newly constructed most modern stadium. With utmost respect to my mind through the project in hand the area of Shaikh Zayed Medical College, Rahim Yar Khan has been extended, which is working under the supervision of University of Punjab Health Sciences, Lahore and the medical students all over the Punjab will be benefited to get admission and education in a better atmosphere, which facility can be considered to be more beneficial to the interest of public-at-large than to the interest of a group of sportsmen keeping in view the fact that an alternate most modern Sports Stadium after spending huge amount on the reasonable area has been provided by the respondents. Moreover, the said Medical College is attached to the DHQ, Hospital, Rahim Yar Khan and better medical facilities will be available to the public-at-large by the consequent enhancement in the number of Professors and other medical Staff. The only main grievance voiced by the learned counsel for the petitioner is that the newly constructed stadium is situated at far off place from the city, which can be redressed/accommodated through negotiations with the local administration for provision of public transport on the said route, but in any case for this reason alone a project of public welfare cannot be stopped to function.

9. For the foregoing discussion, I do not find any good ground to interfere in the matter as the petitioner has lost any cause of action and *locus standi* to maintain this writ petition, which is dismissed accordingly.

10. Before parting with this judgment I would like to pay thanks to Mr. Bilal Ahmed Qazi, Advocate for the petitioner and Mr. Muhammad Farooq Warand, Advocate for the Respondents No. 1 & 4 who provided their able assistance for a considerable time.

(R.A.) Petition dismissed