

**Judgment Sheet
IN THE LAHORE HIGH COURT
JUDICIAL DEPARTMENT**

Writ Petition No. 5268 of 2012

Rana Mehmood Ali Akhtar	Vs.	Chairman, EGMI etc.
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JUDGMENT

Date of hearing:	8.11.2018
Petitioner by:	Rai Bashir Ahmad, Advocate
Respondents No.1 to 3 by:	Mr. M. Akram Qureshi, Advocate/Legal Advisor, General Hospital, Lahore
Respondent No.5 by:	M/s Tallat Farooq Sheikh and Maqbool Ahmad Sheikh, Advocates

Muhammad Farrukh Irfan Khan, J.- Through the instant petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 the petitioner is seeking a direction to respondents No.1 to 3 to get vacated the mosque premises of the General Hospital, Lahore, which is allegedly being used for running a canteen/restaurant.

2. Brief facts of the case as stated in the instant petition are that in the year 1985 a Master Plan was prepared for construction of General Hospital, Lahore (“**the Hospital**”). Construction of a mosque on south-east corner of General Hospital, Lahore was also shown in the layout plan according to which a double storey mosque was constructed by raising pillars. On construction of the mosque respondent No.4/Maulana Muhammad Idrees was appointed as Imam/Khateeb of the said mosque. Five time prayers started at the

upper portion of the mosque while the ground floor was used for Juma Prayers and on the occasion of Eidain. It is alleged that since the ground floor was not being used for six days of the week it was utilized for outdoor patients for whole week except Friday. Later on Outdoor Patients Department was shifted to the North-East corner of the building of the hospital and ground floor of the mosque was vacated. In the month of January, 2012 respondents No.1 to 3 gave the ground floor of the mosque to a contractor for running a canteen/restaurant. This act of respondents No.1 to 3 has been challenged in the instant writ petition.

3. Learned counsel for the petitioner contends that in the Master Plan of the Hospital there did not exist any canteen/restaurant/shops on the ground floor of the mosque; that whole space including ground floor was allocated for mosque; that due to increase in population the number of patients of the hospital and visitors has enhanced substantially resulting in increase of number of Namazis in the mosque; that due to shortage of space the "Namaziz" do not find proper place for offering five time prayers; that the space allocated for mosque cannot be used for some other purpose but the respondents have allowed the contractor to run the business of canteen in the ground space of mosque, which is illegal, unlawful, against the injunctions of Islam and misuse of official authority; that according to the injunctions of Islam once a mosque is constructed on any piece of land then from earth to sky it is treated as a mosque; that by allowing to run a canteen on the place of the mosque respondents No.1 to 3 have transgressed their powers, just for some monetary gains which is

liable to be declared as illegal, unlawful and misuse of the official authority.

4. The writ petition has been contested by the respondents. Learned counsels for respondent No.5 submit that the petitioner does not come within the definition of an aggrieved person, therefore, he has no *locus standi* to file the instant petition; that prior to establishment of canteen the premises in question was being used as OPD by the hospital; that respondents No.1 to 3 had not informed respondents No.5/contractor that the space meant for the canteen was a part of the mosque; that it is yet to be determined that whether the disputed space is to be used for the mosque or for some other purpose and this question of fact can only be resolved by production of evidence; that this Court in exercise of powers under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 cannot go into factual controversy; that respondent No.5 has obtained the contract of the said canteen after complying with due process of bidding in which he offered the highest bid which was approved by the Board of Management of the Hospital; that respondent No.5/contractor has invested a huge amount on the establishment of the canteen. Learned counsel argued that respondents No.5 is in possession of the canteen under a lawful agreement, therefore, the instant writ petition is liable to be dismissed.

5. Arguments heard. Record perused.

6. In the report and parawise comments and during the course of arguments learned counsel for the contractor/respondent No.5 has

raised objection qua *locus standi* of the petitioner in filing the writ petition. In this regard suffice it to say that the case in hand is in the nature of public interest litigation and the petitioner has filed this petition as a *probono publico*. He is seeking a direction against the illegal use and unauthorized possession over ground portion of the mosque, which is meant for prayers by the public at large. He claims to be a regular “Namazi” of the said mosque. He even otherwise being the citizen of Pakistan has every right to invoke the jurisdiction of this Court for taking notice of abuse of trust and misuse of authority by the public functionaries. In the instant petition, the petitioner has alleged that the act of respondents No.1 to 3 allowing establishment of a canteen on the place of the mosque is illegal and unlawful as being in excess of the official authority and powers. The point raised and prayer made by the petitioner comes within the ambit and scope of sub-clause (ii) of clause (a) of Sub-Article (1) of Article 199 of the Constitution of Islamic Republic of Pakistan, 1973. The objection raised by learned counsel for respondent No.5 in this regard is held to be without any legal backing and thus not sustainable in the eye of law. In the case of Government of the Punjab through Secretary Food, Punjab Secretariat, Lahore and 4 others v. Naeem Sarwar (2011 YLR 3087) a Division Bench of this Court held as under:

“In case of the litigation, *probono publico*, a very strict interpretation of the term, an aggrieved person is not appreciated. Any person interested in performance of the functions by the concerned authorities in a lawful manner, may move the Court.

In the case of Atta Ullah Khan Malik v. Federation of Government of Pakistan through President of Pakistan and 3 others (2010 PLD Lahore 605), another Division Bench of this Court has held as under:

“Any citizen or person (part of the public) has “sufficient Interest” and is, therefore, an aggrieved person under Article 199 of the Constitution, if public property is being acquired, held, used, or disposed of by public functionaries in violation of the law. Public functionaries as trustees of the people, cannot have any personal interest in any public property, therefore, if there is any abuse of trust or violation of law, it qualifies any member of the general public as an “aggrieved person” with the right to invoke the constitutional jurisdiction of this Court, subject to fulfilling other requirements of Article 199.”

Reliance is also placed on the case of Messrs Adam Sugar Mills Limited and 2 others v. Trading Corporation of Pakistan (Pvt.) Ltd. and 8 others (2006 P.Cr.L.J.263). In the case of Multiline Associates v. Ardshir Cowasjee and 2 others (PLD 1995 SC 423) the August Supreme Court of Pakistan while dealing with the case of construction of high rise buildings on the question of “locus standi” of the petitioners in para 29 of it’s judgment has observed as follows:

“For the facts and reasons, and case-law on the subject of *locus standi* as mentioned above, we find that even though some writ petitioners are shown to be residing at distances far away from the building in dispute and one writ petitioner is shown to be residing in close proximity of the building in dispute and since the area is same, requirement of *locus standi* as contemplated under Article 199 of the Constitution is to have extended scope as this case has characteristics of public interest litigation and the writ petitioners are pro bono publico.”

In these circumstances, I am of the firm view that the petitioner falls within the definition of an “aggrieved person” and he has locus standi to file this petition as contemplated in Article 199 of the Constitution of Islamic Republic of Pakistan, 1973. The objection as to maintainability of the instant writ petition is rejected.

7. Maintainability of this petition is also attacked by learned counsel for the respondents on the alleged ground of this being involving disputed questions of fact. This argument again has no force

for the reason that the writ petitioner in support of his claim has mainly relied upon the Master Plan of the Hospital, which is an official document. Since the whole case of the petitioner is based on official record, therefore, it cannot be said to be a matter involving disputed questions of fact. Reliance in this regard is placed on the case of Rehan Hassan Naqvi v. Pakistan Defence Officers' Housing Authority through Secretary (2000 CLC 1535) in which it has been held that “where material on record was sufficient to decide the issue in dispute or no controversial and intricate questions of fact were involved which could only be decided after evidence of parties was recorded, Constitutional petition was maintainable.”

8. In the report and parawise comments as well as during the course of arguments learned counsel for respondents No.1 to 3 has taken the stance that the place where respondent No.5/Contractor has established a canteen is not part of the mosque. On the contrary learned counsel for the petitioner pleaded that existence of “Mehrab” on the ground floor of the mosque is enough proof of the fact that the area where respondent No.5 is running canteen is part of the said mosque. Learned counsel in order to support his contention has also placed on record some snaps of the mosque taken from different directions. This Court, vide order dated 15.7.2014, issued a direction to the learned Additional Advocate General, Punjab to ensure submission of layout plan and sanctioned building plan of Lahore General Hospital. Despite issuance of repeated directions by this Court, the respondents failed to produce on record the layout plan and sanctioned building plan of the hospital for a pretty long time.

However, the building plan has now been produced before this Court by the learned counsel for the petitioner, which is attested by the Executive Engineer, 3rd Buildings Division, Lahore. Perusal of the site map shows existence of a mosque on south-eastern corner of the hospital. Adjacent to the mosque the space described in the site map as “J” is shown to be “Left over requirements other than canteen”. From this fact it is evident that canteen is not proposed to be constructed on the ground floor of the mosque. The whole of the area underneath the mosque is meant for prayer. So, the site map which is the basic document to resolve the controversy between the parties does not suggest or prove the existence of canteen on the ground floor of the mosque in any manner.

9. Besides the site map the existing building structure of the mosque which shows location of “Mehrab” of the mosque on the ground floor leads to an irresistible conclusion that whole of the area of mosque on the ground floor is part of the mosque. There is nothing on the record to show that the Board of Management PGMI/Lahore General Hospital, Lahore had ever decided to convert the ground floor of the mosque into canteen or to allow its use other than for offering prayers nor sought amendment in the Master Plan from the competent authority so as to segregate the area of the mosque from the ground floor which is a part of the same structure. Even in the Agreements of lease entered into between the Board of Management and the Contractor/respondent No.5 for the period from 3.3.2010 to 2.3.2015 and 24.1.2017 to 25.1.2022 the location of canteen is not mentioned.

Clause 3 of the former agreement, executed in Urdu language, is reproduced hereunder:

3- کینٹین کے لیے جگہ انتظامیہ طے کرے گی۔ اور مجوزہ نقشہ کے مطابق ٹھیکیدار کینٹین کو تعمیر کرے گا۔ اور گورنمنٹ کے (Boot) کے مطابق ہو گی۔

In the latter agreement Clause 3 reads (in Urdu) as under:

3- ٹھیکے دار مقرر کردہ جگہ پر ہی کینٹین چلانے کا پابند ہو گا تا ہم کسی بھی وجہ سے تبدیلی جگہ کینٹین باہمی مشاورت سے کیا جائے گا اور اسکے اخراجات ہسپتال برداشت کرے گا۔

Respondents have failed to bring on record any document to prove that the Board of Management of the Hospital had ever decided to allocate the ground floor of the mosque for running a canteen. I have gone through the minutes of meeting of the Board of Management PGMIL/Lahore General Hospital, held on 13.1.2010. Against the Agenda Item regarding extension of canteen contract for five years, the following was resolved:

“The Board agreed that a new canteen may be established in premises of Lahore General Hospital, Lahore. It was decided that it may be established on Build Operate and Transfer (BOT) basis. Fresh bids may be invited through newspaper. Contract will be renewable annually, maximum upto a period of five years. First right of refusal may be given to the current contractor.”

A minute perusal of the above decision of the Board reflects that in the said meeting the Board had decided to establish a new canteen in the premises of Lahore General Hospital, Lahore on Build Operate and Transfer Basis. However, the location of the said canteen was not decided in the said meeting or even thereafter. The ground floor of the mosque was part and parcel of the mosque, therefore, it could not be

allowed to be substituted for a new location for the canteen which was awarded on the basis of “Build, Operate and Transfer”. The requirement of “Build, Operate and Transfer” clearly implies for the provision of a dedicated building where the contractor would invest his money to build and operate a canteen, the lease rights whereof would be given to him. Even the letter No.Canteen/3919/LGH, dated Lahore the 23rd January, 2012, written by the Principal, PGMI, Lahore General Hospital, Lahore to M/s Munj International/respondent No.5, informing them about acceptance of their bid does not mention the site proposed by the Hospital for construction of the canteen. In these circumstances, it appears that the Management of the Hospital has allowed respondent No.5/Contractor to establish canteen on the ground floor of the mosque without making any decision in the meeting of the Board. Respondents No.1 to 3 have allowed establishment of the canteen on the area of the mosque in complete disregard of the master plan and in total oblivion of the fact that according to the injunctions of Islam and Shariah any place once declared as mosque cannot be used for any other purpose. The continuation of the canteen in the space meant for a mosque and which forms an integral part thereof being the inner part or ground floor of the same premises would definitely undermine its sanctity, cleanliness and purity besides becoming a continuous source of disturbance for the people offering prayers in its upper portion. Admittedly, a canteen is a place where people generally enter and sit in a free and relaxed mood for consuming food etc. and where making noise, cracking jokes, using slang language, hustle bustle, playing

songs and music are common phenomenon. The respondents have thus illegally and unlawfully converted the ground floor of the mosque into a canteen. By doing so, respondents No.1 to 3 have acted in excess of their powers and authority, vested in them by the law.

10. In view of above, the instant petition is allowed and respondents No.1 to 3 are directed to get vacate the ground floor of the mosque where respondent No.5 is running a canteen, within a period of one month. Since respondent No.5 is a bona fide contractor, he will be provided alternate place by respondents No.1 to 3 for the remainder period of his contract.

(MUHAMMAD FARRUKH IRFAN KHAN)
JUDGE

Announced in open Court on 15.1.2019.

JUDGE

Approved for reporting.