

ORDER SHEET
LAHORE HIGH COURT, LAHORE
(JUDICIAL DEPARTMENT)

W.P. No. 187944/2018

Sikandar Mahmood (deceased)
 through legal heirs, etc.

Versus

Lahore Development Authority,
 etc.

S.No. of order/ Proceeding	Date of order/ Proceeding	Order with signature of Judge and that of parties or counsel, where necessary.
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20.01.2021	Mr. Zain Sikandar, Advocate for petitioners. Sahibzada Muzaffar Ali, Legal Advisor, LDA.
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This constitutional petition is directed against order of 22.03.2018, passed by respondent No.2 pursuant to the direction issued by this Court in constitutional petition bearing No.109525/2017, in terms of order dated 23.11.2017.

2. Facts are straightforward. Petitioner is desirous of seeking commercialization of subject matter properties, details where are provided in the petition and has applied for grant of permission. It is the claim of the petitioner, as stated by learned counsel, that commercialization fee claimed is contrary to the spirit of applicable rules, in particular sub-rule (4) of rule 31 of LDA Land Use Rules, 2014 (Rules, 2014), besides being excessive in quantum. Since the matter rests on the interpretation of rule 31(4) it is appropriate to reproduce it;

“31(4). The fee for temporary or annual commercialization shall be charged on annual basis at the rate of 1.25% commercial value of the total land owned as provided in the valuation table.”

3. Respondent No.2 rejected claim of the petitioner. Petitioner claimed that commercialization fee has to be determined only on the basis of commercial value of the land, to the exclusion of the existing structure / building raised on the properties.

4. It is pertinent to mention that during pendency of instant petition, Rules, 2014 were repealed and Lahore Development Authority Rules 2020 (Rules, 2020) were promulgated, effective from 5th August 2020. Under the Rules, 2020, rule 34 [Chapter VIII] deals with Temporary commercialization, wherein sub-rule (4) of rule 34 of Rules, 2020, prescribes benchmark rate, at which commercialization fee is to be computed, and mechanism for ascertaining commercial value of the land in terms of the valuation table. Rule 34(4) is by and large similar to rule 31(4) - except the change underlined -, which for convenience is reproduced hereunder;

“34(4). The fee for temporary or annual commercialization shall be charged on annual basis at the rate of 1.25% commercial value of the total land owned as per prevailing valuation table.”

[difference is underlined]

5. Learned counsel for the petitioner contends that commercialization fee, in terms of rule 31(4) of Rules, 2014, has to be calculated / determined exclusively on the basis of land in question, to the exclusion of any structure / building raised thereupon. Submissions are

emphasized by referring to rule 31(5)(h) and 6(c) of Rules, 2014 - to draw distinction between land simplicitor and building / structure thereupon. Further submits that valuation table for the year 2014, prepared in terms of section 27-A of the Stamp Act 1899, shall form the basis for ascertaining commercialization value, which valuation table was applicable at the time of promulgation of Rules, 2014, and value determined on the basis of valuation table, subsequently issued for the year 2017-2018, is unlawful. Reference is made to definition of the valuation table in rule 2(oo) of Rules, 2014. It is expedient to reproduce rules 31(5)(h), 6(c) and 2(oo) of Rules, 2014, which are as under:-

“(h) no structural changes shall be allowed in the buildings after grant of temporary or annual commercialization and in case of any alteration in the structure or permitted use, the permission shall be liable to be cancelled and the fee deposited for commercialization shall stand forfeited”.

6(c). The Authority shall not allow conversion of a building, plot or land reserved for educational institution, healthcare institution, post office, police station, place of worship or any other plot sold by a public Authority at reserve price for a specific use”.

2(oo) “Valuation Table” means the Valuation Table notified under the Stamp Act 1899 (II of 1899).

6. Learned counsel representing Lahore Development Authority, submits that petition is not maintainable in the wake of availability of an alternate remedy in terms of rule 27 of Rules, 2014 and rule 28 of Rules, 2020. Further submits that land, as defined in Lahore

Development Authority Act 1975, section 3(o), land includes building constructed / structures raised upon it.

7. Arguments heard. Record perused.

8. Submissions that commercialization fee has to be computed, at the rate prescribed, on the basis of commercial value of the land exclusively, without valuing the structure / building are bordering absurdity. It is evidently clear upon reading of rule 31(1) of Rules, 2014, that temporary commercialization is allowable, subject to fulfilment of conditions, both qua the land and property – which reference to expression property, in the context of the of the subject, is meaningful. Buildings / structures raised upon the land underneath, forms an integral part of the land when examined in terms of the definition of land in section 3(o) of the Lahore Development Authority Act, 1975. It is expedient to reproduce definition of land, which reads as:-

“land” includes earth, water and air, above, below or on the surface and any improvements in the structure customarily regarded as land and benefits arising out of land and things attached to earth or permanently fastened to earth”

9. Undoubtedly, when assessed in the context of the controversy regarding determination of commercialization fee, land, inclusive of the structures raised / buildings constructed, is factor of production. In these circumstances, argument of exclusion of such component - structures raised / buildings constructed upon land – of land undermines the mandate of the law

and spirit of rules. Therefore, no exception can be pleaded in this behalf, nor any such exemption / concession is allowed in the rules, which clearly suggests inclusion of buildings / structures upon land, commercialization whereof is sought, as a part of wholesome asset for the purposes of ascertaining commercial value thereof. There is no gainsaying that commercialization allowed, temporary or otherwise, according to the terms and conditions under relevant rules, is not restricted to permission granted to raise permissible commercial building / structure but also to undertake commercial activities, qua the structures / buildings constructed and existing at the time of assessment of commercial value thereof. Reference to rule 31(5)(h) and 6 (c) of Rules 2014 is inapt, both of which deal with different matters, bearing no nexus to present controversy.

10. This matter has another facet. Commercialization of an immovable property is being sought – in which context expression property was used in rule 31(1) of Rules, 2014. Immoveable property is defined in section 2 (31) of the General Clauses Act 1956, which defines that *‘immovable property shall include land, benefits to arise out of land, and things attached to the earth’*. Definition is by and large similar to the definition of Land in LDA Act, 1975, which suggests that structure raised / building

constructed formed part of the land, which cumulatively constitute an immovable property. Hence, its legal to ascertain commercial value of the land, in totality, inclusive of any structure / building thereupon – which for all intent and purposes is construed as things attached to the land and benefits arising out of land. In view of aforesaid, reference to total land in rule 31(4) of Rules, 2014 or 34(4) of Rules, 2020 certainly includes land with structures / buildings, where such structures are existing / available at the time of determination of commercial value. The expression land cannot be construed in restrictive sense but in wide context to promote the purpose and intent of the rules dealing with commercialization.

11. The submission that valuation table for the year 2014 would be applicable for determining the commercial value of the land / property is misconceived. It is evident that temporary commercialization is allowed on annul basis, which indicates that commercialization fee would be determined, independently for each particular year, on the basis of the valuation table available and applicable, showing assessed commercial value of the land, either with or without structure(s) / building(s), as the case may be. The powers exercised for issuance of valuation table is not under challenge. Rule 31(4) of Rules 2014 provides no caveat / qualification

qua the applicability of valuation table for a particular year. During the course of the submissions, it is apprised that valuation table, for the year 2017-2018 has identified the value of the land and structures raised thereupon separately. Be that as it may, it is not for this court to proceed to ascertain the rationality of the decision to value the land and building / structure separately. For the purposes of present controversy, it is declared that no illegality is found in the order impugned and valuation table, notified and applicable at the time of computation of commercialization fee, shall be benchmark for such determination – be it declaring the value of the land and structures / buildings thereupon separately or otherwise.

12. The objection regarding availability of alternate remedy is overruled, since the matter is pending from 2018 – and earlier constitutional petition was filed in the year 2017, which was disposed of with directions – and question of interpretation of Rules is raised, it is, therefore, decided on merits. It is clarified that request for permission of commercialization of the property(ies) of the petitioners shall be considered in the light of the law, Rules and valuation table available and applicable, as the case may be. This court is not inclined to direct determination of commercial value of the property(ies) as per valuation table available at the time of filing of instant petition or during its pendency, but according to

the valuation table as applicable, when need for determination / assessment of commercial value arises. During the course of deciding the matter, I lay my hands on the judgment in the case of Associated Engineering Concern (PVT) Ltd. through Chief Executive Officer/Authorized Signatory V. Lahore Development Authority through Director General and others (PLD 2019 Lahore 478), wherein the facts and controversy is not similar to the matter at hand, hence ratio laid therein is not relevant for the purposes of this decision.

13. This petition is devoid of merits and same is, therefore, dismissed. No order as to the costs.

(Asim Hafeez)
Judge

*M. Nadeem.

Approved for reporting.

JUDGE.