

**IN THE HIGHT COURT OF SINDH AT KARACHI**

(Original Civil Jurisdiction)

Suit No. 567 of 2004

1. **Sindh Institution of Urology and Transplantation**  
a statutory university established under the Sindh Institution of Urology and Transplantation Ordinance, 1990 having its principal office at Dow Medical College and Civil Hospital off M. A. Jinnah Road Karachi-74200
2. **Aga Khan University and Medical College Foundation**  
a company incorporated under Section 42 of the Companies Ordinance, 1984 having its registered office at Patel Manzil annexe 43-3A, Bloch VI, PECHS Karachi.
3. **The Aga Khan University**  
a statutory university established under the Aga Khan University Order, 1983 having its principal office at Stadium Road Karachi-74800
4. **Shaheed Zulfiqar Ali Bhutto Institute of Science and Technology**  
a statutory university established under Shaheed Zulfiqar Ali Bhutto Institute of Science and Technology Act, 1995 having its principal office at 4<sup>th</sup> Floor, Sheikh Sultan Trust Building No.2 Beaumont Road Karachi

.....**PLAINTIFFS.**

**VERSUS**

1. **Nestlé Milkpak Limited**  
A public limited company having its registered office at 308, Upper Mall Lahore.
2. **Province of Sindh**  
through the Chief Secretary Government of Sindh, Sindh Secretariat, Sindh Secretariat Building Karachi.
3. **Secretary Land Utilization Department**  
Government of Sindh Camp Office Karachi.
4. **The Environmental Protection Agency**  
Through the Director General Sindh Environmental Protection Agency Plot No.ST-2/1, Sector 23 Korangi, Karachi.
5. **The City District Government Karachi**  
Through the District Coordination Officer Civil Centre, Gulshan-e-Iqbal, Karachi

.....**DEFENDANTS**

**THE HIGH COURT OF SINDH AT KARACHI**

**Suite No. 567/2004**

**Order**

- Dates of hearing:** 19.08.04, 7.09.04, 8.9.04, 6.10.04, 7.10.04 & 25.10.04.
- Plaintiffs:** Sindh Institute of Urology & Transplantation And Others  
through Mr. Qazi Faez Isa, Advocate.
- Defendant No. 1:** Nestlé Milkpak Limited through M/s. Wasim Sajjad, Ali  
Wasim Sajjad and Arshad Tayebally, Advocates
- Def. No. 2 to 4:** Province of Sindh & Others through Mr. Abbas Ali, Addl.  
Advocate General, Sindh
- Defendant No. 5:** Call absent

*S. ALI ASLAM JAFRI, J:-* By this order I propose to dispose of CMA No. 3717/2004 under Order XXXIX Rules 1 & 2 read with Section 151 CPC, filed on behalf of the plaintiffs praying therein that pending the disposal of the suit the defendant No. 1 (Nestlé Milkpak Limited ) be restrained from raising any construction with a view to set-up and operate a bottled-water factory in Deh Chuhar area of Karachi, known as ‘Education City’ as the same is contrary to educational and health use, for which such land can be used. The other application is CMA No. 5343/2004 filed on behalf of the defendant No. 1(Nestlé Milkpak Limited) under Order XXXIX Rule 4 r/w. Section 151 CPC for vacation of stay order dated 24.5.2004 through which defendant No.1 (Nestlé Milkpak Limited ) has been restrained from initiating any commercial/ industrial activity including set-up of a bottling-plant in the area. In support of both these applications affidavits have been filed by the respective parties, which have been controverted through counter-affidavits and rejoinders. Since the out-come of both these applications shall be same, hence both are being disposed of by this single order.

The land contiguously in Deh Chuhar area of Karachi was identified to be designated for exclusive use of health and educational purposes and named as ‘Education City’, Prominent health and education related organizations of the country like the Sindh Institution of Urology and Transplantation, the Aga Khan University and Medical College Foundation, the Aga Khan University, Shaheed Zulfiqar Ali Bhutto Institute of Science and Technology, Sindh Madressatul-Islam Board’s for Quaid-e-Azam public School, Newport Institute of Communication & Economics, Sir Syed University of Engineering & Technology, Shaukat Khanum Memorial Cancer Hospital & Research Centre and Ziauddin Medical University invested huge amount of their money and acquired large portion of the land in the said area.

These organizations were at that time informed by the Chief Secretary, Government of Sindh and the Secretary Land Utilization Department, Government of Sindh that the said land earmarked for Education City would not be permitted to be used for any purpose other than the stated amenities of health or education. The Governor of Sindh, as well as City Nazim fully supported and promoted the idea of Education City and affirmed that collaboration between all stake holders and City Government is very important. Such a public declaration was made by Governor of Sindh in the year 1999. In order to ensure the integrity of the Education City and to ensure that no one buys land in the Education City area under any mistake or misapprehension, the City District Government Karachi issued office order dated 17.2.2003 ordering that “henceforth no transaction, regarding the Sale of the land, Renewal of the lease, Conversion, Exchange and Transfer shall be allowed” in Deh Chuhar.

In the meantime, Nestlé Milkpak Limited that is the Pakistan chapter of the multinational Nestlé having a major and possibly an overwhelming majority share in the bottled water industry in Pakistan, in order to increase its profitability in its water business had elected to set-up a water bottling plant close to Karachi City by tapping into and making free use of sub-soil water aquifer lying underneath the Education City area in order to make huge profit. Nestlé Milkpak Limited subsequently acquired 20 acres of land in the Education City area, though such acquisition was legally defective. It had applied for and was allotted a comparatively small area of 20 acres of land in Na-class No. 108, Deh Chuhar for industrial/commercial purposes under Section 10(1) of the Colonization of Government Land Act, 1912, vide letter dated 25.10.2003 after bye-passing Industries Department. A 99 years lease was granted out of Na-class No. 108, however, the said number was changed from Na-class No. 108 to Na-Class No. 106 and such corrigendum was issued illegally and unauthorizedly with malafide intentions by the Secretary, Land Utilization Department, Government of Sindh. In fact this piece of 20 acres was carved out of the land measuring 300 acres out of Na-class No. 106 of Deh Chuhar already granted to Shaheed Zulfiqar Ali Bhutto Institute of Science and Technology.

The construction and setting-up of the plant was objected on various grounds including that it is in violation of Section 12 of Pakistan Environmental Protection Act, 1997 and free use of sub-soil water aquifer in huge quantity can cause serious prejudice to the availability of water for use of the organizations that had invested in the Education City and other institutions to be set-up in the area. Exploitation of natural resources for financial gain by Nestlé Milkpak Limited by tapping into the aquifer through tube wells and draining out the same is environmentally degrading and non-sustainable use of a natural resources as by its own showing they were attracted to the area on account of availability of sub-soil aquifer and its commercial exploitation. The second objection was that Nestlé Milkpak Limited had not obtained requisite permission under the Canal and Drainage Act, 1873, inter-alia, under Section 16 and 20 thereof. It was further contended that Nestlé Milkpak Limited had started raising construction on the land without seeking prior approval of KBCA and the construction being illegal could be sealed and demolished under Section 7-A of the SBCO Ordinance. The set-up of a factory in the area would prove to be a complete nuisance to the educational and health institutions as it will create traffic jams and accidents are bound to happen whereas good education and health require a quiet, peaceful and serene atmosphere. It would be a harbinger for other industrial units and factories and Education City would effectively be

converted into another industrialized zone. The whole Education City area would become polluted, over crowded, dangerous and dirty area. It was lastly urged that the institutions would not have made any investments in the Education City area if they knew that the land therein would be allowed to be put to industrial or commercial use. It has therefore been prayed that it be declared that defendant No.1 have no right, title or interest in Na-Class No. 106, Deh Chuhar Karachi. A direction has been sought against defendant No.1 to vacate possession of 20 acres of land in Na-Class No. 106 Deh Chuhar Karachi. Cancellation of such agreements dated 12.11.2003 and all other title documents has also been prayed. A further declaration has been sought that defendant No.1 cannot build, construct or set-up an industrial unit or factory in Deh Chuhar area and should be restrained for doing so. Another declaration has been sought that the land in Education City area in Deh Chuhar Karachi can only be allotted for education and or health services in accordance with the statement of conditions and applicable law and rules. A further direction has been sought against defendant No. 2, 3 & 4 not to allot any land in Deh Chuhar or Education City area of Karachi for other than education or health purposes. judgment from the High Court of Kerala (India) delivered by K. Balakrishnan Nair, J. in Writ Petition No. 3492 of 2003 (G) to show that petition filed by Perumatty Grama Panchayat against State of Kerala and Hindustan Coca-Cola Beverages Private Limited and others was allowed justifying the cancellation of the license of Coca-Cola Company in view of excessive exploitation of ground water by the said Company resulting in acute drinking water scarcity in Perumatty Panchayat and nearby places. In a very detailed judgment after examining the point as to whether decision of the Panchayat that company should not be permitted to extract ground water was legal, it has been held as under:-

“Ground water is a national wealth and it belongs to the entire society. It is a nectar, sustaining life on earth. Without water, the earth would be a desert. At present, there is no law governing the control or use of ground water, submits the learned Senior Counsel for the 2<sup>nd</sup> respondent. The Kerala Ground Water (Control and Regulation) Act, 2002 has not so far been enforced. Therefore, the Senior Counsel submits, the 2<sup>nd</sup> respondent is free to extract any amount of ground water, which is available underground in the land owned by it. As a good neighbor, it may have a moral obligation not to make excessive use of ground water, so as to affect the persons in the neighborhood, it is submitted. Legally there are no fetters on the right of the 2<sup>nd</sup> respondent to extract ground water, it is pointed out. The Rule of law saves every action of the individual, which is not expressly prohibited by law, it is contended. Therefore, unfettered right is claimed to extract ground water”.

Principle 2 of Stockholm Declaration, 1972 has been referred which reads as follows:-

“The natural resources of the earth, including the air, water, land, flora and fauna especially representative samples of natural eco-systems, must be safeguarded for the benefit of present and future generations through careful planning or management, as appropriate”.

A reference has also been made to an observation from the Supreme Court of India in the case of **STATE OF TAMILNADU vs. HIND STONE (1981(2) SC 205)** at page 212 which is reproduced as follows:-

**“6. Rivers, forests, minerals and such other resources constitute a nation’s natural wealth. These resources are not to be frittered away and exhausted by any one generation. Every generation owes a duty to all succeeding generations to develop and conserve the natural resources of nation in the best possible way. It is in the interest of mankind. It is in the interest of the nation”.**

As a result of discussion made above, I find that a prima facie case for grant of injunction has been made out in favour of the plaintiffs. Balance of convenience also appears to be in their favour because once the process of extracting the water in such a huge quantity is allowed to operate, each day, each hour, and each minute water deposits in the aquifer would diminish rapidly and shall adversely affect the rights of plaintiffs to use the underground water according to their genuine needs which shall amount to an irreparable loss to them. Resultantly, CMA No. 3717/2004 is granted and the interim order dated 24.5.2004 as extended from time to time is hereby confirmed till decision of this suit. In the meantime, the defendant No.1 (Nestlé Milkpak Limited ) is restrained from initiating any commercial/industrial activities, including setting up of a bottling plant in the area. Consequently, CMA No. 5343/2004 filed on behalf of defendant No.1 is dismissed.

**Karachi**

**Dated: 30.11.2004**