IN THE HIGH COURT OF SINDH, KARACHI

C.P.No.S-611 of 2011

Pakistan State Oil Company (Pvt.) Limited

vs.

Mst. Zulekha Khanum and 6 others

Before: Mr. Justice Zulfiqar Ahmad Khan

Date of Hearing	:	30.05.2016.
Petitioner	:	Through Mr. Syed Masroor Ahmed Alvi, Advocate
Respondents	:	Through Mr. Khalil Ahmed Siddiqui, Advocate for the Respondents.

JUDGMENT

Zulfiqar Ahmad Khan, J.:- Petitioner, the national State oil company of Pakistan (P.S.O.), is aggrieved by the Judgment dated 06.05.2011, passed by the learned Vth Additional District Judge, Karachi (East) in F.R.A. No.211/2010 in terms of which, the learned Court accepted appeal filed by the Respondents (landlords) and set aside the Judgment dated 26.03.2010, by the Vth Rent Controller (East) passed in Rent Case No.91/2002, and directed the Petitioner (tenant) to vacate the premises in question and hand over its vacant and peaceful possession to the Respondents within sixty days.

The perusal of the case file shows that upon its presentation on 31.05.2011, the Petitioner sought interim injunction against the operation of the impugned judgment and that an application of Mr. Saad Alam Karim, the dealer of P.S.O. was also made under Order 1 Rule 10 C.P.C, wherein he wanted to become an Intervener to this constitutional petition since he wanted to purchase the property in question by himself. The Court vide its order dated 14.10.2015 finally dismissed the said application of the intended Intervener.

The grievance of the Respondents is that they having rented out the said premises to P.S.O. on 02.11.1968 @ rent of Rs.2,500/- per month for a term of 10 years, despite lapse of over 47 years, the Petitioner is still paying the same rent of Rs.2,500/- and despite all possible efforts including an application moved to the Rent Controller, which was decided in favor of the landlord, for one reason or the other, P.S.O. is still occupying the said premises and paying rent of Rs.2,500/- pursuant to the rent agreement dating back to 1968.

By way of background, it is noted that the landlords filed an application bearing No.91/2002 under section 15 of the Sindh Rented Premises Ordinance, 1979 (SRPO) in the Court of VIIIth Rent Controller, Karachi, which was allowed on 29.09.2004 on the ground of default of payment of rent and the personal bona fide use of the landlords. P.S.O. filed its First Rent Appeal bearing No.206/2004 in the Curt of IInd Additional District Judge, Karachi (East) against the said order. However, after long delay, the learned Appellate Court remanded the matter back by his order dated 11.04.2009 with the directions to decide the point of jurisdiction first after hearing both the parties' counsel and then to decide the matter afresh. In the first round of the proceedings, the learned trial Court was pleased to pass the ejectment order on merits after reading the proper evidence and findings of all the issues including point of jurisdiction. Following issues were framed in the first round of proceedings:

1). Whether the Opponent has sublet the case premises in violation of the Lease Agreement?

2). Whether the Opponent has committed willful default?

3). Whether the Applicant required the property for his personal bona fide need?

4). Whether the ejectment application is not maintainable in law; and

5). What should the decree be?

While the issue No.4 related to ejectment was discussed in the Rent Controller's order dated 27.09.2004 on page No.7 under paragraph 4, the learned Vth Additional District Judge, Karachi (East) in his Judgment dated 11.04.2009 sent the matter back on the issue of jurisdiction, notwithstanding in my view it was properly and adequately dealt with by the learned trial Court in the first instance.

Be that as it may, the landlords preferred an appeal against the said order of 27.09.2004 on the point of jurisdiction before the trial Court as the latter had already decided the same. The learned Vth Rent Controller, after hearing on the sole point of jurisdiction made a specific order on 26.03.2010 and dismissed the application of the Respondents for ejectment against the said order. Respondents filed FRA No.211/2010 before the Vth Additional District Judge, Karachi (East) and the said Court allowed the instant F.R.A. and set aside the orders dated 26.03.2010 vide its judgment dated 06.05.2011, which is impugned through this appeal.

While learned counsel for the Petitioner tossed a volley of arguments, one of which was that since Respondents No.1 to 3 had sold their share in the said property to Respondents No.4 & 5, they had no personal bona fide need, resultantly before in the trial Court, the Respondents filed an application under Order 1 Rule 10 for impleading the Respondents No.4 & 5 (newly added landlords) as party. It is surprising to note that the Petitioner did not seem to have any objection on the intended sale of the said premises to its own dealer/agent, however, it had raised very strong objection to such partial sale alleging that while Respondent No.1 having sold its share, how the rest of the Respondents could claim that they have need for the said property for their personal bona fide use? A review of the file shows that the Respondents filed the ejectment application for the personal bona fide need of the Respondent No.3, who is the son of Mst. Yasmin, one of the co-owner and landlord, whose right was

still intact in the proceedings as she did not sell her share in the said property.

When the counsel opened his arguments on 16.05.2016, the counsel was asked to satisfy this Court as to the very maintainability of the instant constitutional petition filed under Article 199 of the Constitution. As an answer thereto, the learned counsel candidly submitted that since there was no alternate remedy available to the tenant against the last order passed in F.R.A., it has preferred the instant petition under Article 199 solely on this ground. Counsel's attention was drawn to the Article 23, as well as, Article 24 of the Constitution, with regards the constitutional rights of citizens in respect of their properties and the manner such rights could be deprived of in accordance with law with specific emphasis on the right to enjoy the property being granted by constitution (Art.23) and deprivation thereof being regulated by law under Art 24. The counsel's attention was further drawn to the case of Mrs. Samina Zaheer Abbas v/s. Hassan S. Akhtar (2014 YLR 2331), where in the similar circumstances, petitioner challenged a judgment passed in F.R.A. After a detailed and lengthy discussion, the Hon'ble Court reached to the conclusion basing its foundations on the Apex Court's Judgment (reported as PLD 1981 SC 246), where the Apex Court observed that *writ petitions are argued before the High Courts as if they were regular second appeals and noted that the learned Judges of the High Court take great pains to reappraise the evidence and to consider each and every contention raised by the petitioner's side before deciding the petition without realizing that, more often than not, such petitions are merely a device to circumvent the amendment in the law and to defeat the obvious intention of legislature namely, the speedy determination of the case under the Urban Rent Restrictions Ordinance, the Court held that such frivolous applications not only cause the poor litigants to incur unnecessary expenditure, but also result in the wastage of valuable public time and, therefore, be*

discouraged by the High Courts. The Hon'ble Apex Court further held that *it has been repeatedly held that a Tribunal having jurisdiction to decide the matter is competent to decide it rightly or wrongly and the mere fact that any other conclusion could be arrived at from the evidence does not make it the case of interference in exercise of a constitutional jurisdiction*.

The counsel was advised in the hearing of 16.05.2016 to assist the Court in reaching to a conclusion as to why and under what circumstances the instant petition proposes a different scenario as compared to the one that has already been so well decided by the Apex Court's said judgment and the ratio of which has been followed in a recent judgment of this Court in the case of 2014 YLR 2331. The counsel's attention was also drawn towards the case decided as 2001 SCMR 338, where the Apex Court very eloquently laid down the dictum, as to the circumstances where Article 199 would be applicable. These possibilities were read out to the counsel as being (1) non-reading/misreading of evidence, (2) an erroneous assumption of facts, (3) misapplication of law, (4) access or abuse of jurisdiction and (5) arbitrary exercise of powers; which are the only windows through which, a Court acting under its constitutional jurisdiction is mandated to view such appeals while exercising certiorari writs under Article 199 of the Constitution. The Counsel was also particularly asked to assist the Court with regard to findings on the constitutional rights of tenants in Pakistan specifically and around the world generally. The counsel was informed that constitutions being the expression of the State only confer rights as against the State, or broadly speaking, as against the public authorities, how come private disputes between landlords and tenants could be opened up before Courts exercising their constitutional jurisdictions? In the last hearing, the learned counsel while commencing his arguments made promises to contain his arguments within the ambit of the parameters laid down by the Apex Court through the judgment reported as 2001 SCMR 338, (to which I

will revert in the later part of this order) however, with regards to any finding on the constitutional rights of tenants, the learned counsel drew a blank.

A reference in this regard was made by the Court towards Article 26(3) of the Constitution of South Africa, which seemingly is the only constitution that I came across during the research on the subject, wherein rights of tenants are protected through constitutional provisions. Article 26(3) of the constitution of South Africa provides as under:

> *"No one may be evicted from their home, or have their home demolished, without an order of Court made after considering all relevant circumstances. No legislation may permit arbitrary evictions."*

Except for the above referred provision being part of the South African Constitution, no other constitution crossed my eyes where some direct protection has been granted to the tenants against evictions. Inverse of the same, however, was found from the study of the Indian constitution where the right to hold property, originally protected as a fundamental right under Article 19(1)(f), has been taken away by the 44th Amendment to the Indian constitution. Having removed this 'right to property' as a fundamental right and replaced by the newly added Article 300-A, where such right is only declared as a legal right, effect of the said amendment is that since the right to property is no longer remains a fundamental right (but only a legal right), a person does not have a right to file a writ in the Indian Supreme Court under Article 32 for the infringement of such fundamental right. He can now either file a suit against the Government, or under restricted conditions, file a writ under Article 226 of the Indian constitution before a High Court.

It is exactly for the above reasons, the learned counsel was put to notice that under the Constitution of Pakistan no parallel provisions for the protection of tenant's fundamental rights (as provided for in the South

African constitution) are available, nor Article 23 has been removed from the Constitution of Pakistan (unlike India, where para material Article 19(1)(f) has been removed), and in the presence of Article 24 where right to property and the manner in which such rights could be deprived of are provided for, no constitutional petition in the given circumstances could arise on account of any dispute between the landlord and tenant. Notwithstanding therewith, there are no possible seams or creases that can be filled to bring about constitutionality to such private disputes, and in the instant case where the tenant is enjoying the property (about a thousand square yards of land on main University Road where it is running its petrol pump at the rent of Rs.2,500 per month) there is no positivity or fairness in the conduct of the tenant to even let it walk through any doors purportedly opened by the Constitution for it.

Upon such submission, the learned counsel had no response except that he drew the attention of this Court to the window opened by the Apex Court's via its Judgment of 2001 SCMR 338, where the Apex Court held that matters related to tenancy could be agitated under Article 199, if the dispute could fall within the five circumstances already mentioned hereinabove. The counsel was asked specifically to assist this Court as to which of the circumstances enlisted in the 2001 Judgment (Supra), are applicable in the instant case. On this exposition, the learned counsel took the Court to the issue of alleged 'non-reading/misreading of evidence'. The counsel submitted that he was not allowed to cross the Applicant, who filed his affidavit (annexed on page 71). However, this assertion was immediately repudiated by the learned counsel appearing for the Respondents, who drew the Court's attention to page 81, wherein the said cross was detailed over two-and-a-half pages. As to another objection about non-reading/misreading of the evidence, the learned counsel alleged that in paragraph 14 of the affidavit-in-evidence of the Applicant in Rent Case No.91/2002, a prayer was made stating that "*unless the opponent is*

ejected from the premises I shall be seriously prejudiced" The counsel contended that by mere use of the letter "I", it appears that it was only one and not all of the partners, who were interested to have the said premises evicted from the tenant, however, this assertion was also repudiated by the counsel for the respondents, who referred to clause 2(f) of the SRPO, where the term "landlord" has been defined to mean owner of the premises including a person, who for the time being authorized or entitled to receive rent in respect of such premises. The counsel contended that Courts have elaborated landlord to include a single partner, which is the instant case. As third line of his arguments, the learned counsel for the Petitioner contended that the procedure provided for in section 19 of the SRPO was not followed. To which, counsel for the Respondents submitted that this procedure has been prescribed to be followed by the Rent Controller and in the instant case the order impugned is not the one passed by the Rent Controller rather it is the order of the appellate court which is impugned here, and interestingly the findings of the Rent Controller were in favor of the Petitioner, so if there has been any irregularity by not following any process prescribed by Section 19 of the SRPO, it repudiates the case of the Petitioner and not that of the Respondents. Besides this issue, the learned counsel failed to bring any other considerable argument that could fit five possibilities envisaged by the Apex Court in 2001 Judgment (Supra).

With regard to the issue of personal bona fide use, the counsel for the Petitioner also challenged the honesty of such use, but when his attention was drawn to the impugned order, wherein a detailed reasoning has been given by the appellate court on this issue, the counsel had to shun his arguments on this account. Notwithstanding therewith, the learned counsel continued to make general remarks that the impugned order is illegal, without satisfying the Court on this general point or to discharge the onus posed by the Apex Court in the said 2001 Judgment

(Supra) to appropriately dilate on the illegality in the order impugned. I therefore would not wish to revisit this assertion unless it is so alleged in the light of the Apex Court Judgment of 2001 (Supra) which, the learned counsel completely failed to bring to the surface during his lengthy trail of arguments.

Before reaching to a conclusion, I cannot restrain myself from observing the apathy and selfish conduct of the Petitioner, who entered into a contract of using the property of the landlord for a term of ten years as back as in 1968 @ Rs.2,500/- per month, as since that (ill fated) day the Petitioner is continuously using the said premises at the same rate disregarding rights of the owners of the said property and at the same time injected (by consenting to) the interveners to buy the said property from the landlords so that commercial establishment set up on that piece of land continues to churn money for the Petitioner and at the same time wanted to freeze poor landlord's rights to sell or transfer the said land to any third party. This cannot be expected from any equitable person let alone the Petitioner who is the largest State enterprise, who ought to become an example of public-good. One cannot also ignore the odyssey that despite embodying such negativity and unfairness from its conduct, the Petitioner wants to take shelter of the Constitution to continue riding upon the poor landlords' helplessness.

I, for the above quoted reasons, see this petition merely a device to defeat the aim of the legislation towards speedy determination of rent cases as this petition solely aims to cause the landlords incur unnecessary expenditure as well as wastage of their valuable time by keeping them away from the enjoyment of their constitutional rights over their property. In the light of the dictum laid down by the Apex Court (as reported in PLD 1981 SC 246) that High Courts, while exercising their constitutional jurisdiction, to discourage rent related writ petitions or to entertain cases

which subordinate tribunals are competent to decide. Once the matter has been decided by the rent controller and its appeal having been preferred and a decision therein also pronounced, the right to appeal to a party in rent matters (not being a perpetual one) ceases to exist any further, unless the last order falls in anyone of the five circumstances enumerated by the Apex Court in the case reported as 2001 SCMR 338. Thus in the best interest of equity, justice and good conscious, I am of the view that the Petitioner be made to pay equitable compensation for the commercial and opportunity losses suffered by the Respondents after the year 1978, when the term of the rent agreement expired.

I therefore order appointment of the Nazir to determine profits made by the Petitioner from the use of the Respondents' premises from the year 1978 till date, and after deducting the miniscule sum of Rs.2,500/- per month for the equal number of months such sum was actually paid to the Respondents, order repatriation of 25% of such profits made by the Petitioner to the Respondents' accounts. Nazir's fee is fixed at Rs.20,000 to be borne by the Petitioner, and at the same time the Petitioner is ordered to vacate the said premises and handover peaceful possession thereof to the Respondents within seven days from the date hereof, failing which M.I.T-II of this Court is directed to take stock of the plant, machinery and equipment present on the Respondent's property and submit a report to this Court within a week's time in order to dispose of such assets to recoup for the above referred losses caused to the Respondents. Notwithstanding therewith, this would not, even in the interim, stop the Respondents to enjoy rights to their said property and to plan execution of the said land's future beneficial exploitation.

The Petition stands disposed of in the above terms.

Karachi: 14th June, 2016 Judge