

IN THE HIGH COURT OF SINDH, KARACHI

C.P. NO. D- 1406 OF 2009

PRESENT :**MR. JUSTICE NADEEM AKHTAR****MR. JUSTICE ARSHAD HUSSAIN KHAN**

Petitioners Through Mr. Abdul Waheed Siyal Advocate

Respondent No.2 Through Muhammad Sarfaraz Sulehry Advocate

Respondent No.3 Through Mr. Mian Muhammad Shah, Addl. A.G. Sindh

Respondent No.4 Through Muhammad Iqbal Chaudhry, Advocate.

Date of hearing / 22.11.2016
short orders

Date of judgment 14.12.2016
/ reasons:

JUDGMENT

ARSHAD HUSSAIN KHAN, J. The petitioners through the instant constitutional petition have prayed as follow:-

- a) *The respondents may be restrained to dispossess the petitioners from their respective shops mentioned in the Title and they may be directed to grant the Lease to Respondents No.8 to 42 after receiving the requisite charges, and further the acts of the respondent No.2 for sending the Notices to the Petitioners No.1 to 23, by showing them as tenant of respondent No.2.*
- b) *The respondents may also be restrained from occupying the front parking area of the shops as well as for raising and construction thereon, as well as restrain them from dispossessing the petitioners from their shops forever.*
- c) *To direct the respondents No.1 & 2 whoever is concerned to grant the Lease for 99 years to the Petitioners No.8 to 42, and avoid to discriminate them from the other citizens.*
- d) *During the pendency of the petition interim relief may also be granted for restraining the respondents from creating any third party interest in the properties of the shops in question, as well as from occupying the front parking area of the shops, and also refrain them from dispossessing the petitioners from their respective shops.*
- e) *Any other better relief, which this Honourable Court deem fit and proper according to the circumstances of the case.*

2. Brief facts arising out of the present petition as averred therein are that petitioners are occupants of their respective shops, mentioned in para-1 of the present petition, and carrying out their businesses of mechanical motor works since 1973. It is averred that said shops were handed over to the petitioners by respondent No.1 in the year 1973 in respect of the replacement of their earlier shops located at Khadda Market, Daryabad Lyari, Karachi and the petitioners were relocated to the present location, i.e. Mauripur road, Karachi. At the time of said relocation, it was promised by respondent No.1 that 99-years leases would be granted to the petitioners in respect of said shops very soon. As per the petitioners all the occupants in the vicinity have been granted lease, except petitioners No.8 to 42 who have been deprived of their valuable rights in respect of their shops. It is also averred that since 1973 the petitioners are in possession of the shops in question without any hindrances and interruption from any quarter and their possessions were never challenged in any court of law and or before any other forum. It is also averred that shops situated in the above said area belong to respondent No.1, who has granted 99-years leases to petitioners No.1 to 7, and rest of the petitioners have also been assured by respondent No.1 for grant of similar leases. It is also averred that one of the lessees namely, Muhammad Saleem son of Atta Muhammad against the notice issued by respondent No.2 in respect of his shops in the vicinity filed civil suit No.1012/2008 before this court wherein stay is operating and matter is still pending adjudication. As per the Petitioners the lease and physical possession of said Muhammad Saleem has been accepted by respondent No.2, as till to date respondent did not file legal proceedings for cancellation of lease in favour of the said Muhammad Saleem. It is also averred that shops in question as well as open parking area in front of the said shops are under the occupation of all the shops keepers / petitioners. As per the petitioners, said front area of the shops in question are being used for parking of long vehicles like trucks, trollers, dumpers and other vehicles which used to come for their repairs. Some officials of respondent No.2, having malafide intention have attempted to occupy the said front parking area of the shops in question, however said attempt was thwarted by the petitioners. Upon which, the said officials of respondent No.2 have become furious and has started blackmailing and pressurizing the petitioners by sending them notices wherein petitioners have been cited as tenant whereas the petitioners have never remained the tenants of anyone including respondent

No.2. It is also averred that respondent No.2 (KPT) is posing itself as the owner of land whereat the shops in question are situated, whereas actually the said land belongs to respondent No.1 which has granted leases to many of the occupants/petitioners. As per the petitioners, due to the hindrances and obstructions created by respondent No.2, the respondent No.1 is reluctant to grant 99-leases for the respective shops of petitioners No.8 to 42, which is sheer violation of fundamental rights guaranteed under the Constitution. It is also averred that the petitioners are also being discriminated upon as the other occupants of the shops in the vicinity have been granted 99-years leases whereas the petitioner No. 8 to 42 are denied. It is also averred that respondents No. 1 and 2, in connivance with each other are misusing their authority by putting the petitioners under constant fear of dispossession from their valuable properties by sending them notices and their officials, the acts of the respondents No.1 and 2 are illegal, unjustified, hence the present petition was filed.

3. Upon service of notice of this petition, the respondents filed their respective comments.

4. Respondent No.2 (KPT) in its comments while denying the allegation levelled in the petition have stated that shops in question have been constructed un-authorizedly on Plot No.15.D at Mauripur road and in the adjoining area of the Plot. A joint survey was carried out by KMC and KPT in which it revealed that 62 shops are situated within Karachi Port Trust limits. KPT offered to regularize these shops by leasing to the occupants for a period of 25 years. It is contended that the occupants of the shops filed C.P.No.906 of 1998 in this Court which was decided in favour of the KPT and thereafter the occupants have been issued notices, either to accept terms and conditions or to vacate the premises / shops. Out of 62 shops, occupants of 28 shops got leases in their favour from KPT. Rest of 34 occupants neither accepted terms and conditions nor have got lease executed in their favour from KPT and are still occupying KPT land unauthorisedly. It is also stated that KPT has issued reminders to rest of 34 occupants who have not accepted the terms and conditions of allotment / regularization. Their representatives were called and asked to accept the offer who refused to do so where after notices have been issued under Land Control (Karachi Division Act 1952). The occupants refused to accept it, finally the same were delivered through KPT

police. It is also stated that area in front of the shops in question does not belong to the petitioners, it is KPT land and it has not been allotted to anyone, and further illegal occupation must be removed by the shop keepers / petitioners, as they are not willing to accept the terms and conditions offered to them. It is also stated that no one else has any right to allot the area without title to the property in question, which belongs to KPT only. As per KPT, the property in question does not belong to respondent No.1(KMC) and in this regard KPT has annexed the verified joint survey report of KMC and KPT which shows the land in question belongs to KPT.

5. Respondent No.1 in its para-wise comments while denying the allegations in the petition has stated that petitioners are unauthorized occupants over the KMC / KPT land. It is also stated that the land in question belongs to two different institutions i.e. KMC / KPT. There is no sanctioned layout plan ever approved by any authority. The Lease Deed produced by the petitioners are invalid because the same have been executed by one of the officials without any authority. The petitioners having no title over the property in question are not entitled to any relief as claimed in the present petition.

6. We have heard learned counsel for the petitioners and respondents as well as learned Addl. A.G. Sindh and with their assistance perused the record.

7. The petitioners through the instant petition seek direction to the respondents to issue 99-years lease in their favour on the basis of their possession. The claim of the petitioners is that they had been put into the possession of shops in question by respondent No.1 in the year 1973 in respect of the replacement of their earlier shops located at Khadda Market, Daryabad Lyari, Karachi. However, nothing is available on record which could substantiate the said stance of the petitioner even remotely. On the other hand, the respondents have denied the said assertion of the petitioners and claim that their possession is unauthorized and in spite of respondent No.2's offer for regularization of their occupation in respect of shops in question, the petitioners are not ready to get the same regularized. In such a situation where the controversy in respect of title of petitioners has been raised, the petitioners do not have any locus standi to maintain the present petition as it is well-settled that the question of title and possession cannot be resolved except through proper trial and

evidence, which exercise cannot be gone into writ jurisdiction of this Court. In this regard, reliance can be placed on the case of Federation of Pakistan and 2 others v. Major (Retd.) Muhammad Sabir Khan (PLD 1991 SC 476).

8. It may also be stated that the Article 199 of the Constitution casts an obligation on the High Court to act in the aid of law and protects the rights within the framework of Constitution and this extraordinary jurisdiction of High Court may be invoked to encounter and collide with extraordinary situation and non-availability of any alternate remedy under the law where the illegality of the impugned action of an executive or other authority can be established without any elaborate enquiry into complicated or disputed facts. It is worth mentioning that it is mandatory and obligatory for a party invoking the Constitutional jurisdiction to establish a clear legal right, which should be beyond any doubt and controversy. Controverted questions of fact, adjudication on which is possible only after obtaining all types of evidence in power and possession of parties can be determined only by the courts having plenary jurisdiction in matter. Reliance can be placed on the case of Anjuman Fruit Arhtian and others vs. Deputy Commissioner, Faisalabad and others (2011 SCMR 279).

9. The upshot of the above, we are of the considered view that the alleged legal right and entitlement of the petitioners are controversial which cannot be decided in the present constitutional petition, hence the same is liable to dismissed being not maintainable in law. However, the petitioners are left at liberty to seek their remedy before the proper forum in accordance with the law.

Foregoing are the reasons for our short order dated 22.11.2016 whereby the petition along with listed application was dismissed with no order as to cost.

JUDGE

JUDGE