

IN THE HIGH COURT OF SINDH AT KARACHI**Suit No. 1542 of 2016****Muhammad Amer Saeed & Others ----- Plaintiffs****Versus****Model Customs Collectorate of Customs
(East) & others ----- Defendants****For hearing of CMA No.10042/16 (U/O 39 Rule 1 & 2 CPC****Date of hearing(s): 11.07.2016, 13.07.2016 & 14.07.2016****Date of order: 14.07.2016.****Plaintiffs: Through Mr. Khwaja Shams-ul-Islam &
Imran Taj Advocates.****Defendants: Through Mr. Kashif Nazeer Advocate
along with Mr. Zubair Shah (Deputy
Collector (Appraisalment) East.****ORDER**

Muhammad Junaid Ghaffar, J. This is a Suit for Declaration and Injunction whereby the plaintiffs have impugned Assessment alert dated 22.4.2016, Audit observation dated 11.05.2016 and decision of the Classification Centre dated __ issued / finalized by the defendants for having been issued without any lawful authority and jurisdiction.

2. The facts as stated are that the predecessor in interest of the plaintiff entered into a CNG license agreement with defendant No. 3 for operating a CNG Station on the property bearing No. SNCC-9 Block 7/8, Karachi Co-operative Housing Society, Jauhar Road, Karachi for a

period of 15 years which is valid till 20.4.2017. The predecessor in interest of the plaintiff after having fulfilled the formalities was granted a provisional license dated 5.10.2000 in terms of Rule 7 of the Compressed Natural Gas (CNG) Production and Marketing Rules 1992, whereas, NOCs were also issued by defendant No. 3 as well as defendant No. 5. Subsequently, a marketing license dated 14.5.2003 was issued for a total term of 15 years with the option for renewal in accordance with Rule 7 of 1992 Rules. In 2005 the plaintiff purchased the whole setup from its predecessor in interest and the defendants including defendant No. 2 i.e. OGRA after having been satisfied with the completion of the formalities was pleased to allow the transfer of marketing license vide letter dated 10.8.2005 entitling the plaintiff to operate the CNG Station on same terms and conditions in addition to the already existing petrol Station on the said property. Since the license issued by defendant No. 2 was expiring on 4.10.2015 the plaintiff approached defendant No. 2 for its further renewal for five years in terms of Rule 7(2) of the 1992 Rules and deposited the requisite amount of Rs. 25000/- whereafter the defendant No. 2 vide its letter dated 6.1.2015 (wrongly dated as 6.1.2014) required the plaintiff to provide fresh NOCs from PSO / defendant No. 3 and valid explosive license from defendant No. 5. It is further stated that defendant No. 2 also wrote a letter to defendant No. 5 requesting reconfirmation of the explosive license issued to the plaintiff. It is the case of the plaintiff that the plaintiff having complied with all the requisite formalities has been denied renewal of the license in question by the defendants by asking for NOC / approval from defendant No. 2 and 5 without any lawful authority, hence instant Suit.

3. Learned Counsel for the plaintiff has contended that the license agreement with the Oil Marketing Company i.e. defendant No. 3 is valid till 2017, whereas, defendant No. 2 is raising frivolous objections for furnishing a fresh NOC from defendant No. 3 as well as from defendant No. 5 and on such pretext has refused renewal of the license in question which otherwise in law could not be denied. He has further contended that since there is a dispute of the plaintiff and other CNG stations with defendant No. 3 in respect of marketing fee which is pending before the Islamabad High Court after an arbitration award, therefore, the defendant No. 3 is causing hindrance in the smooth running of the plaintiff's business and at its behest the defendant No. 2 has refused renewal of the plaintiff's license. Learned Counsel has further contended that in terms of Rule 7(3) of the 1992 Rules, no application for renewal of the license is to be refused unless the licensee has been given an opportunity of being heard and in the instant matter, the defendant No. 2 has issued its impugned notice dated 20.6.2016 to defendant No. 4 for disconnection of the gas supply without following the procedure as provided in Rule 7 *ibid*.

4. Notices were issued on the listed application to the defendants and despite being served none had affected appearance whereas, the plaintiff's Counsel had pleaded urgency therefore, the matter has been heard and is being decided on the basis of material placed on record.

5. Insofar as the facts as stated hereinabove are concerned, they do not seem to be in dispute to the extent that initially the predecessor in interest of the plaintiff entered into a license agreement with defendant No. 3 on 20.4.2000 for a period of 15 years which appears to be valid till

19.4.2017. Thereafter the plaintiff had purchased the business from its predecessor in interest with the permission of defendant No. 3 who vide its letter dated 6.7.2005 issued a No Objection certificate addressed to defendant No. 2 in respect of purchase of the business by the plaintiff. Thereafter defendant No. 2, vide its letter dated 10.2.2005, also accepted and allowed such transfer of license in favour of the plaintiff, with certain conditions attached thereto. Accordingly, the license issued by defendant No. 2 on 14.5.2003 stood expired on 4.10.2015 however, the plaintiff approached defendant No. 2 well in time, for further renewal in terms of Rule 7 of the 1992 Rules. The defendant No. 2 after scrutinizing the request for renewal asked the plaintiff to furnish a fresh NOC from defendant No. 3 and so also a valid explosive license as required under the Explosive Act. In this regard, it further appears that the plaintiff was issued a Show Cause Notice dated 14.1.2016 for compliance and upon the plaintiff's failure to fulfill the requisite formalities a reminder dated 15.3.2016 was also issued. It further appears that upon plaintiff's failure to respond to both these Show Cause Notices and the letter, disconnection directions dated 20.6.2016 were issued to defendant No.4 and by the time instant application was being argued the gas supply stood disconnected by defendant No. 5. The only argument which has been put forth on behalf of the plaintiff is to the effect that since earlier the NOC was issued by defendant No. 3, whereas, the license agreement with the said defendant is still valid till 2017, therefore, the plaintiff is not required to produce any fresh NOC from defendant No. 3 to defendant No. 2 for renewal of its license. However, I am not inclined to agree with such contention as the license agreement with defendant No. 3 is independent and cannot be made basis to seek renewal of marketing license issued by defendant No. 2

which admittedly stands expired. Thereafter the plaintiff was required to furnish a fresh NOC from defendant No. 3 for renewal of its license which admittedly the plaintiff has failed to manage. Even while hearing the listed application the plaintiff's Counsel was given an option to approach defendant No. 2 for affording an opportunity of hearing and for passing a reasoned order as contended in view of the Rule 7(3) of the 1992 Rules, however, such option was not exercised and the Counsel contended that insofar as a fresh NOC is concerned the plaintiff is not in a position to obtain the same from defendant No. 3. Not only this the plaintiff has also failed to place on record a valid Explosive License issued by defendant No. 5 which even otherwise is a prerequisite for maintaining and renewal of its license. The explosive which has been placed on record is valid till 31.12.2006 whereas, an attempt has been made to place on record some copies of the purported challans issued in favour of defendant No. 3, however, even such challans are not readable, whereas, no valid explosive license has been placed on record. Moreover, it further reflects that the said Explosive License has been issued in the name of defendant No. 3 and not the plaintiff. It appears that the plaintiff has failed to fulfill the requisite formalities for renewal of its license as demanded by defendant No. 2, therefore, a proper Show Cause Notice was issued followed by a reminder and the plaintiff has failed to respond to both of them.

6. Even otherwise it is settled law that issuance of License under the law in such circumstances is at the most, only a privilege and does not confer a vested right as it is often required as a condition precedent to the right to carry on some lawful business. [***See Landirengo Pakistan (Pvt) Limited v. Federation of Pakistan & Others (2013 MLD 601-***

DB-SHC]. Such licenses are always subject to fulfillment of certain conditions, and upon failure to do so, can result in suspension and or cancellation of the same. In the circumstances, the defendant No. 2 was left with no other choice but to direct defendant No. 4 to disconnect the supply of gas which appears to be a proper course of action insofar as defendant No. 2 is concerned. The plaintiff has miserably failed to make out a prima facie case and neither the balance of convenience lies in his favour, nor any irreparable loss would be caused to the plaintiff. The plaintiff has failed to make out a case for grant of injunction, and accordingly by means of a short order dated 30.6.2016 listed application was dismissed and above are the reasons for such dismissal.

J U D G E

ARSHAD/