

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

R.A No. 117 / 2016

Date

Order with signature of Judge

Present: Mr. Justice Nazar Akbar

Applicant : **Gulzar Khan**
through Mr. Malik Khushad Khan,
advocate.

Respondent No.1: **Karachi Port Trust,**
through (none present)

Respondent No.2: **The Estate Manager,**
through Mr. Bashir Ahmed advocate.

Respondent No.3: **VIII-Addl. District & Sessions Judge**
Karachi (West)

Respondent No.4: **VIII-Sr. Civil Judge Karachi (West)**

Date of hearing : **17.05.2018**

Decided on : **17.05.2018**

JUDGMENT

NAZAR AKBAR, J:- This revision is directed against the judgment dated **21.12.2016** whereby VIIIth Addl. District Judge, (West) Karachi, dismissed Civil Appeal **No.85 of 2016**, filed by the applicant and maintained the judgment & decree dated **27.08.2016** passed by VIIIth Civil Judge, Karachi, (West) in Suit **No.349/2015**. The applicant has preferred this revision application against the concurrent findings.

2. Briefly, the facts of the case are that the applicant filed civil suit for declaration and permanent injunction against Respondent Nos.1 & 2 in respect of an unnumbered/unidentified plot at MT Khan Road on the backside of Old DG Office Karachi (hereinafter the suit plot). The applicant claimed to be bonafide and lawful allottee in possession since 02.5.2014 against payment only on the basis of

charges of NOC by him alongwith an application for NOC through a cheque of Rs.10,000/-. Respondent No.1 is a Trust established under the Karachi Port Trust Act, 1886 and administer its properties by way of grant of long terms leases / allotment in respect of the properties in the port area and the KPT property to the prospective tenants / leases / allotment on the terms and conditions contained in the documents itself. All these documents contains renewal clauses. Respondent No.2 is the Estate Manager of Respondent No.1. The applicant alleged that he has fulfilled its all obligations but apprehends illegal action on the part of the respondents in pursuance to their visit of the suit property. On account of emergency involved and apprehended illegal action of dispossession, no notice as required under **Section 87** of the KPT Act, 1886 given to the applicant. The applicant averred that the existing terms and conditions of the lease / allotment for various reasons and grounds are neither reasonable nor justifiable both on law and therefore, any exercise of authority for vacation of the plot by respondent No.1 and 2 is illegal. The applicant spent huge amounts on the development of the plot in question, as the respondents No.1 & 2 when handed over the said plot to the applicant and the applicant had to level it with sand filings, so as to make it fit for the allotment purpose. Thereafter, the applicant filed the suit for declaration and permanent injunction. Then Respondents No.1 & 2 filed application under Order VII Rule 11 CPC, whereby the trial Court rejected plaint of the applicant. The applicant preferred civil appeal bearing No.**85/2016**, which was also dismissed, hence the applicant preferred the instant Revision Application.

3. It is contended by the learned counsel for the applicant that the trial Court in its order dated **27.8.2016** has not specifically mentioned the arguments of counsel for the applicant regarding maintainability of the application of the Respondents No.1 & 2 as it was without supporting affidavit and as per **Rule 539 of Sindh Civil Court Rules**, every Misc. Appln. is to be supported with an affidavit. It is also averred that while deciding the appeal learned Appellate court has also not considered the law point while passing judgment in Civil Appeal No.**85/2016**, therefore, impugned order dated **27.8.2016** as well as judgment passed in Civil Appeal No.85/2016 may also be set aside. It is further urged that it is well settled proposition of law that cases should be decided on merits and technicalities be avoided. Learned counsel further averred that both the Courts below have passed the impugned judgment and order in an arbitrary manner which is contrary to the prayer and against the principle of natural justice. Malik Khushal Khan, learned counsel for the applicant has lastly contended that he is lawful allottee of the KPT property; he cannot be evicted from the property without following the provisions of **Port Authorities Lands and Buildings (Recovery of Possession) Ordinance 1962**.

4. In reply Mr. Bashir Ahmed, learned counsel for the respondent urged that order passed by the Courts below are proper and do not require any interference of this Court. It is further averred that possession was taken over by them after dismissal of suit on **31.08.2016** and no order of status quo was communicated to them. The applicant is encroacher and not entitled for benefit of the ordinance; that notice under **Section 3** of the ordinance is not issued by respondent and same is also bogus like allotment order. It is

contended that there are rules governing allotment of KPT land and it's ancillary matters. The appellant had not submitted any proof as to how he came in possession or as to how and when he applied for such allotment. The estate manual of KPT provides for all eventualities and argument of applicant that there are "no rules" in KPT is totally incorrect. Even any proof of payment of rent to KPT has not been placed on record by the applicant and proof of encashment of alleged cheque of Rs.10,000/- in favour of KPT. The said cheque was never handed over to KPT nor cheques are received like that. The plaint is liable to be rejected due to violation of mandatory **Section 87** of the KPT Act, 1886. The board of director of KPT are not made party which is violation of **Section 4** of the KPT Act, 1886. It is further averred that the applicant was an encroacher and did not deserve any sympathy from the Court of law.

5. I have heard the arguments advanced by learned counsel for the parties and perused the record.

6. Learned counsel for the applicant has repeatedly relied on NOC for unidentified plot on M.T Khan Road claimed to have been issued on **09.5.2014** and available at page-95 of the file. He has not produced any other document whatsoever to prove even the remote title for claiming allottee or licensee on the land of Karachi Port Trust. As also discussed by the appellate Court, perusal of this NOC and cheque annexed with this Revision Application at page-97 of the file are dubious documents. The NOC is not on the official document and does not even give details of the authority who has issued this NOC. Even the address of the applicant Gulzar Ali is not mentioned on this NOC. This NOC can be used by the applicant for any other piece of land since it does not identify any piece of land. In the plaint and in

the so-called NOC it is not possible for any judicial mind to locate even on Google Map the plot in question. The NOC says that the applicant shall submit pay-order of Rs.10,000/- in the name of KPT and the learned counsel does not dispute that no pay-order was submitted. He also admits that there is no proof of the fact that the so-called cheque had been encashed in favour of any of the account maintained by different offices/departments of KPT. The learned counsel for the applicant in fact had no case and, therefore, any so-called claim for protection of unidentified plot by forged authorities land/building Recovery of Possession Rules was not applicable for him. Learned trial Court has also elaborately discussed this point with reference to case-law, therefore, I need not to elaborate it further in this judgment.

7. In view of the above this Revision Application was dismissed by short order dated 17.5.2018 and these are the reasons for the same.

JUDGE

Karachi
Dated: 17.07.2018

SM