

## IN THE HIGH COURT OF SINDH, KARACHI

Suit No. 640 of 2008

**PRESENT:****Mr. Justice Arshad Hussain Khan.***Pakistan State Oil Company Limited*

vs.

*Cantonment Board Clifton and another*

Plaintiff: Pakistan State Oil Company Limited  
through Mr. Asim Iqbal, advocate

Defendant  
No.1: Cantonment Board Clifton & another  
through Mr. Ashraf Ali Butt, advocate

Date of Hg : 26.10.2017  
& Judgment:

**JUDGMENT**

**ARSHAD HUSSAIN KHAN, J.** The present suit was filed on 29.04.2008 against the defendants for declaration, permanent injunction and removal of illegal Billboard/Hoarding with the following prayers:-

- (a) Declaration that the construction/erection of a hoarding/billboard commenced in April, 2008 in front of the plaintiff's outlet/petrol pump, Qurban Service Station, ST-12, Punjab Chowrangi (Submarine Roundabout) Khayaban-e-Jami, Clifton, Karachi is illegal, malafide and of no effect.
- (b) Injunction restraining the defendants their gents or any other person acting/claiming under, through from or for them or any of them from raising construction/erection of any billboard/hoarding or any such thing upon/or in front of the plaintiff's outlet/petrol pump, further directing the defendants to dismantle any construction made upon the site and remove the same there from.
- (c) Cost of the Suit.
- (d) Any other or further relief that may be deemed fit and proper in the circumstances of the case.

2. Brief facts of the case as averred in the plaint are that the plaintiff is the leading oil importing and marketing company of Pakistan, controlled by the Ministry of Petroleum and Natural

Resources, Government of Pakistan, and is engaged in the business of selling of all kinds of petroleum products and dispensing CNG fuel, owns and operates petrol/fueling dispensing stations/outlets in Pakistan and also meets requirements of fuel of defence organizations. Besides all over Pakistan, the plaintiff also operates a retail outlet for petrol, products and CNG known as Qurban Service Station, located at ST-12, old Submarine Roundabout (Punjab Cowrangi), Khayaban-e-Jami, Clifton, Karachi [the outlet] for last many years. The plaintiff had acquired the outlet for its ideal location being a corner plot, accessible from all sides. The plaintiff in order to advertise its different products installed mega/large hoarding/billboard over the outlet. However, in the year 2007, defendant No.1 through its letter dated 30.07.2007 asked the plaintiff to remove the said hoarding on the grounds that in view of the loss of precious human lives and properties due to unprecedented windstorm, the government is contemplating to formulate new policy ensuring safety parameters, aesthetic value and uniformity of the design. The plaintiff in pursuance of the said direction removed its hoarding/billboard. It is also averred that the plaintiff was surprised when defendant No.1 started an abrupt installation of a billboard structure exactly in front of the plaintiff's outlet and since the said billboard was exactly in front of the plaintiff's outlet, which not only was causing difficulties to access the outlet but also blocking the view and the frontage and elevation of plaintiff's outlet. In this regard, the plaintiff on 23.04.2008 addressed letter to defendant No.1 but the same was neither responded nor installation of the said billboard/hoarding was discontinued. Consequently, the plaintiff having no option approached this Court and filed the present suit.

3. Upon notice of this suit, the defendants filed their respective written statements, wherein, besides taking preliminary objections regarding maintainability of the suit they have denied the allegations leveled in the plaint and have stated that the billboard installed by the plaintiff (PSO) on the top of petrol pump was in violation of the advertisement policy and hazardous to public safety, therefore, the plaintiff was asked to remove such hoarding/billboard. Further stated that the hoarding being installed by the defendants (Cantonment Board Clifton) neither blocks the access to the outlet nor hinders the view of

the plaintiff's outlet, hence the plea of the plaintiff is not based on the facts and suit is liable to be dismissed.

4. On the pleadings of the parties following issues filed by the plaintiff were adopted as Court Issues on 17.05.2010.

1. Whether the suit is barred/not maintainable?
2. Whether the defendant No.2 may be granted right to install a huge billboard/hoarding, close to plaintiff's petrol/CNG station on public road blocking the view, exposer of plaintiff's petrol/CNG station and its advertisement display and/or access thereto?
3. Whether the defendant No.2 has any property rights in the space where it has installed the billboard? Whether the installation of billboard by defendant No.2 is bonafide?
4. Whether the defendant No.1 could grant permission/licence to install billboard to defendant No.2 without inviting objections and without hearing persons effected? What is the effect?
5. Whether the plaintiff is disentitled to have an advertisement board display on its petrol/CNG station?
6. What should the decree be?
7. Costs of the suit?

5. Subsequently, the Commissioner for recording of evidence in the matter was appointed, who after completion of commission submitted report. From perusal of the said report, it appears that upon notice of the Commissioner, only plaintiff filed affidavit-in-evidence of his witness, whose examination-in-chief was also recorded subsequently, wherein certain documents were produced on record as Exh: P/1 to P/27. The defendants, after examination-in-chief of the plaintiff's witness, despite various notices and ample opportunities failed to cross-examine the plaintiff's witness, resultantly the side of defendants to cross-examine the plaintiff's witness was closed. Thereafter, again notices were issued for the defendants' evidence, however, despite notices the defendants again failed to appear in the witness box to substantiate their stance in the case. Consequently, the side of the defendants to lead evidence was closed.

6. Learned counsel for the plaintiff during his arguments while reiterating the contents of the plaint and the affidavit-in-evidence of the plaintiffs has urged that since the sufficient documentary evidence are available on record, which according to him the defendant neither denied nor the witness of the plaintiff was cross-examined, therefore, the stance of the plaintiffs has gone un-rebutted and unchallenged. Not only this, the defendants neither put themselves for evidence nor any witness was examined on their behalf to substantiate the stance taken by them in their written statements. Furthermore, the documents produced by the plaintiffs in the matter clearly substantiate the case of the plaintiff. He further urged that it is well-established principle of law that a written statement contains averments of a party, which are to be proved through cogent evidence. If a party does not produce any evidence to support the contents of its written statement, the averments contained in the written statement cannot be taken into consideration and treated as evidence. It is also urged that in the present case this Court vide order 15.2010 confirmed the injunction order passed earlier on 29.04.2008 with the consent of the defendants, therefore, this suit may be disposed of in terms of the order dated 29.04.2008. Learned counsel for the plaintiff in support of his stance in the matter relied upon the cases of *CLIFTON CENTRE ASSOCIATION (CCA), CLIFTON, KARACHI through General Secretary V. CITY DISTRICT GOVERNMENT through Nazim-e-Aala, Municipal Building, Karachi and 3 others (PLD 2003 Karachi 477)* and *CLIFTON AND DEFENCE TRADERS WELFARE ASSOCIATION through General Secretary vs. PRESIDENT CLIFTON CANTONMENT BOARD, KARACHI and 4 others (PLD 2003 Karachi 495)*

7. Learned counsel for defendant No.1 in his arguments while reiterating the contents of the written statement has contended that all the billboards and the hoardings including one the subject matter of the present proceedings have already been removed from the city in compliance of directions of the Honourable Supreme Court and hence, the present suit has become infructuous. The learned counsel for the plaintiff did not controvert the statement made by the learned counsel for defendant No.1 in respect of the removal of the subject billboard, however he vehemently denied that his suit has become infructuous.

8. I have heard the learned counsel for the parties and have perused the record as well the order dated 05.05.2016 passed by the Hon'ble Supreme Court on CMA No. 209-K of 2014 in CP No. 152-K of 2011, and my findings on the issues involved are as follows:-

**Issue No. 1:**

This issue has been framed on the basis of objections raised by the defendants in their respective written statements that the suit is barred by section 42 and 56 of Specific Relief Act 1877 and that plaintiff has no right which could be enforced. Though the defendants' counsel did not choose to argue the said issue, yet I feel it appropriate to address this issue. Since the present suit is a declaratory one as the Plaintiff in the instant case, on the basis of right acquired to operate a retail outlet for its petroleum products for commercial exploitation, seeks declaration that the construction/erection of a hoarding/billboard by the defendants on a public road in front of the plaintiff's outlet/petrol pump, causing difficulties to access the outlet, blocking the view and the frontage and elevation of plaintiff's outlet, is illegal, malafide and of no legal effect. In the present case the plea of the plaintiff is that the defendant invades or threatens to invade the plaintiff's "right to enjoyment of property". Right to enjoy property is not simply a right to possess and occupy the property. By enjoyment of the property, it also includes the right to free ingress, and egress, right to reap benefit. One of the most important right which in this commercial world has acquired a significant importance is right of view or exposure to and from the particular property. More particularly when such property is of a commercial nature. People are more attracted towards the shops and establishment when it is exposed to the general view. Office premises may be more beneficially enjoyed in a multi-storeyed Buildings when it has an over view of scenic landscaping of the city environment. Any invasion or encroachment of such right to enjoy the property was recognized as far back as in the case of Campbell v. Mayor, Aldermen, and Councillors of the Metropolitan Borough of Paddington (1911) 1 King's Bench Division 869. In the said case, plaintiff was in possession of a house in London from the windows of which there was an uninterrupted view of part of a certain main thoroughfare along which it was announced that a public

procession of the Kings funeral was to pass. Plaintiff let out first and second floors of the house for view of the processions. The Metropolitan Borough erected a stand to accommodate the members of the Council and their friends to view the processions obstructing the view from the windows on the first floor of the plaintiff's house. Some more perspective viewers refused to hire the premises of the Plaintiff on account of such obstruction. Plaintiff brought a claim to recover damages for wrongful interference with the use and enjoyment of the house. Such claim for damages was allowed and maintained by the Appellate Court as well. Reliance in this read is placed on the case of *CLIFTON CENTRE ASSOCIATION (CCA), CLIFTON, KARACHI through General Secretary V. CITY DISTRICT GOVERNMENT through Nazim-e-Aala, Municipal Building, Karachi and 3 others (PLD 2003 Karachi 477)*

At this juncture, it would be advantageous, for reference's sake to reproduce Sections 42 and 54 of Specific Relief Act as under:

**“42. Discretion of Court as to declaration of status or right.** Any person entitled to any legal character, or to any right as to any property, may institute a suit against any person denying, or interested to deny, his title to such character or right, and the Court may in its discretion make therein a declaration that he is so entitled, and the plaintiff need not in such suit ask for any further relief”

**“54. Perpetual injunctions when granted.** Subject to the other provisions contained in, or referred to by, this Chapter, a perpetual injunction may be granted to prevent the breach of an obligation existing in favour of the applicant, whether expressly or by implication.

When such obligation arises from contract, the Court shall be guided by the rules and provisions contained in Chapter II of this Act.

When the defendant invades or threatens to invade the plaintiff's right to, or enjoyment of, property, the Court may grant a perpetual injunction in the following cases (namely):

- (a) where the defendant is trustee of the property for the plaintiff ;
- (b) where there exists no standard for ascertaining the actual damage caused, or likely to be caused, by the invasion;
- (c) where the invasion is such that pecuniary compensation would not afford adequate relief;

- (d) where it is probable that pecuniary compensation can not be got for the invasion;
- (e) where the injunction is necessary to prevent a multiplicity of judicial proceedings.

From the perusal of above provisions, I am of the humble opinion that section 42 of the Specific Relief Act do give a right to institute a suit to any person who has any right as to any property. As discussed above, such right read with 'Right of Enjoyment of a property as postulated under section 54 of the Specific Relief Act do give such right to a Plaintiff who could establish that the right to view and exposure of his commercial establishment is of some beneficial interest to him. Right to life as has been expounded by the Honourable Supreme Court in Shela Zia's case reported in PLD 1994 SC 693 as approved in 'Costal Livina's case' in 1999 SCMR 2882 that Right to Life is not merely a vegetative living. Likewise, right to property or right to carry on business in a property are also recognized under the Constitution, 1973. Such right to property is not be interpreted in narrow sense but must be given a broader perspective and meaning more particularly in present commercial environment where every bit of commercial premises or establishment has its due importance and pecuniary benefit. The upshot of the above discussion is that the suit is maintainable.

9. **Issues No.2 and 4:** Since these issues are connected with each other therefore, the same are taken up together. From the perusal of the record it appears that the plaintiff through instant proceedings, inter alia, has sought Declaration that the construction/erection of a hoarding/ billboard in front of the plaintiff's outlet/petrol pump is illegal being not only hampering the access to outlet, blocking the view and the frontage and elevation of plaintiff's outlet but also being on the public property. During the course of the arguments, learned counsel for defendant No.1 has very candidly stated that all the billboards and the hoardings including one the subject matter of the present proceedings have already been removed from Karachi city in compliance of directions of the Honourable Supreme Court. While considering the statement of the learned counsel for defendant, I have also perused the aforesaid order dated 05.05.2016, passed by the

Hon'ble Supreme Court on CMA No. 209-K of 2014 in CP No. 152-K of 2011 and perusal thereof transpires that the Honourable Supreme Court, while dealing with the issue of installation/permission/right to install the Billboards and Hoardings in city on public properties has held that there is no law which permits, K.M.C., DM.C., Cantonment Boards or any other agency in Karachi to install Billboards or Hoardings on a public property. Such an act on the part of permission granting agency is against the civil rights of the citizens. For the sake of ready reference relevant portions of the said order are reproduced as under:-

“ 4. We have heard Mr. Abdul Rehman as *amicus*, the learned Additional Attorney General for Pakistan, Advocate General and Administrators of District Town Committees. There is no law which permits, K.M.C., DM.C., Cantonment Boards or any other agency in Karachi to install Billboards or Hoardings on a public property. Such an act on the part of permission granting agency is against the civil rights of the citizens. The civil rights of the citizens cannot be hampered with by erecting the Billboards or Hoardings on the civic amenity meant for the use and benefit of public at large besides such an act would endanger the life and property of the common man.

5. As a first step, we are of considered view that no Billboard or Hoarding can be permitted to be installed on any public property as defined in the preceding paragraph by any authority under the garb of by-laws, which militate the civil rights of the public at large. Therefore, all the concerned authorities are directed to immediately remove all the Billboards/Hoardings installed without permission within their jurisdiction within 15 days from today and report compliance.”

[Emphasis supplied]

Since under Article 189 of the Constitution of Pakistan 1973, the law declared by the Supreme Court of Pakistan is binding on all Courts in Pakistan, therefore, in the circumstances, and in the light of the above decision of the Honourable Supreme Court, I am of the considered view that the controversy involved in the instant matter is covered by the above pronouncement of Honourable Supreme Court whereby it is declared that no Billboard or Hoarding can be permitted to be installed on any public property as defined in the said decision by any authority under the garb of by-laws, which militate the civil rights of the public at large. These issues are answered accordingly.



10. **Issues No.3 & 5:** Since none of the counsel argued on these issues, therefore, no findings are required to be made.

11. **Issues No.6 and 7:** In view of the findings on the above issues that no Billboard or Hoarding can be permitted to be installed on any public property by any authority under the garb of by-laws, which militate the civil rights of the public at large, the suit is disposed of.

JUDGE

*Jamil\*\*\**