

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
Suit No.13 of 2010

Date	Order with signature of Judge
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1. For hearing of CMA 11694/09
2. For hearing of CMA 718/12
3. For hearing of CMA 7037/16
4. For hearing of CMA 7038/16
5. For hearing of CMA 7039/16
6. For hearing of CMA 12313/16
7. For hearing of CMA 12314/16
8. For hearing of CMA 13149/16
9. For examination of parties/settlement of issues

18.09.2018

Mr. Kh. Shamsul Islam, Advocate for the plaintiff
Mr. Sufiyan Zaman, Advocate for the defendant
Alleged contemnors Muhammad Khawar Jameel, Nasir Hidayat
Khan, alleged contemnors in person

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1 to 4 & 6 to 9) Deferred.

5) Plaintiff has moved this application under Order XII Rule 6 CPC for decreeing the suit on admission. Learned counsel for the plaintiff in support of the application draws Court's attention to paragraph 20(a) page 203 of the Written Statement dated 07.05.2010 filed by the Defendant where said the defendants consented that they were ready to hand over possession of the subject plots to the plaintiff. Relevant paragraph of the said Written Statement is reproduced as under:-

“20. That, the defendant prays as under:-

- a) Defendant is ready to hand over possession of the 12-plots to plaintiff.
- b) GR being charged from the plaintiff according to the license agreement signed by plaintiff on September 22, 2006, hence, direct him to follow the parameter of the license agreement.
- c) That, the act of plaintiff is un-lawful.”

Per counsel, since that date, for one reason or the other the said defendant is not handing over land's possession to the plaintiff to the extent that it was alleged that the said land was later on licensed to another entity namely M/s. Saltex (Pvt.) Ltd, who made an application to be joined as a party, which application was dismissed by this Court's

order dated 09.04.2018. Excerpts of the said order are reproduced hereunder:-

“I have heard all the learned Counsel and perused the record. Though extensive arguments were made on behalf of the plaintiff even in respect of merits of the case and it would suffice to observe that instant Suit was filed on the ground that after allotment of plots, and signing of Licence Agreement, possession was not handed over, whereas, time and gain demand of Annual Rent was raised which according to the plaintiffs case, could only be demanded once possession is handed over. On 30.12.2009, an order was passed to maintain status quo till 14.01.2010. On 14.01.2010 a Counsel appeared on behalf of the Defendant and undertook to file Vakalatnama and then it was observed that interim orders passed earlier to continue. Subsequently, on 19.04.2010 again an order was passed and the Defendant was restrained from claiming any demand invoking Clauses 29, 30 and 31 of the License Agreement and it was further ordered that no coercive action is to be taken against the Plaintiff till next date of hearing. These two orders were and are in field, and it is not the case of the defendant that they were ever recalled. Thereafter, it appears that CMA No. 718/2012 was filed on behalf of the Plaintiff seeking directions to the Defendant to pay the amount of US\$ 78,000 on the ground that since no plots have been allotted and no possession has been given, therefore, the money be returned. On this counter affidavit was filed wherein, the request of the Plaintiff has been disputed and no offer was ever made to refund the amount. In such circumstances, on the one hand admittedly the possession was not handed over, and thereafter, when the Plaintiff sought refund of his money, the same was also disputed, therefore, the stance of the learned Counsel for Defendant that Plaintiff has abated its claim is not appropriate and justified. Even otherwise such application is pending and no order(s) have been passed.

It is also a matter of record that the two orders as above passed by the Court were and are in field and have never been recalled. The conduct of the defendant in this matter appears to be not only unwarranted but apparently reflects a contemptuous mindset as if the pendency of the Suit before this Court is of no consequence. It is immaterial for the present purposes that what relief is being sought and what relief will be ultimately granted (as the Court can always mould the relief). It may be of relevance to state that clause 30 of the Licence Agreement even provided for cancellation of licence if there is a default. This resultantly would mean depriving the plaintiff from any claim of possession of the plots and for that a restraining order is already in filed. Such conduct and attitude of a public functionary has to be deprecated by the Court, as it is the primary duty and responsibility of such functionaries to act in a fair and non-partisan manner. There wasn't any exigency in the matter, and even if it was, then the proper course would have been to seek leave from the Court as admittedly the matter is pending and is being contested by the plaintiff since long. The defendant should not have acted in haste and without following the due process of law. The defendant is well aware that restraining / status quo orders were operating since filing of the suit. Now merely for the fact that some application has been filed by the Plaintiff seeking return of the money, the orders to maintain status quo must not be construed by the defendant as to have been withdrawn or vanished. This is not for the defendant to do so and the only recourse was to approach the Court. It is settled law that when notice of the injunction application is issued it is expected that the Government Institution and their functionaries will assist the

Court in administration of justice and they will not try to change the factual position unilaterally to their advantage, in normal circumstances. Reference in this regard may be made to the case of *Noor Muhammad Vs. Civil Aviation Authority and another* reported in 1987 CLC 393 upheld in *Civil Aviation Authority Vs. Noor Muhammad* reported as PLD 1988 Karachi 401 by observing that it is desirable that a defendant should not take any action after the service of notice of a stay application with the intention to render the stay application infructuous, as it may create complications for him. This was later followed by another Division Bench of this Court in the case of *Muhammad Naved Aslam v E.D.O Revenue* (2016 CLC Note 132).

From the overall assessment of the facts as above it appears that an attempt has been made to frustrate the entire Suit of the Plaintiff and in my considered view, the Defendant ought to have approached the Court before making any allotments to the Applicants. Now due to this act an applicant is before the Court for its impleadment in terms of Order 1 Rule 10 CPC. In this case only Sub-Rule(2) of Rule 10 ibid is relevant, and it is trite law that the Court has wide discretion to fill in a defect relating to necessary or proper party and this can be done even without an application to that effect. It is needless to state that a necessary party is one, without whom no proper order can be made effectively, whereas a proper party is one, in whose absence, although, effective order can be made but presence of such party is a necessity for a complete and final adjudication of the questions involved in any proceedings. The exercise of such powers is the judicial discretion of the Court which has to be exercised after examining the peculiar facts and circumstances of each case as there is no hard and fast rule for such exercise of discretion which is mostly dependent on facts.”

Learned counsel for the Applicant has also drawn Court’s attention to the fact that EPZ though a Government entity is continuously represented by battery of private lawyers, which act has been seriously scrutinized by the apex Court and reported in the case of Messers Shifa International Hospital, Islamabad v. Commissioner of Income Tax/Wealth Tax, Islamabad (PLD 2017 SC 134). Relevant portion of the said judgment is reproduced herein under:-

“23. It may be mentioned that the present Chief Justice of this Court, Hon’ble Mian Saqib Nisar, when he was a judge of the Lahore High Court, had taken exception to the engagement of a private counsel by the Punjab Housing Department in September 2007. The learned Judge took umbrage at the waste of public resources, particularly when the office of the Advocate General had a budget of seventy nine million rupees, therefore, there was no justification to expend an amount of one million rupees on private counsel which was a waste of resources. Justice Mian Saqib Nisar (as he then was) observed that the Government was causing loss to the national exchequer by engaging private counsel despite the availability of enough law officers to dispense its work. This matter was also reported in the media (English newspaper ‘Dawn’ published on September 19, 2007).

24. It is regrettable that governments persist in engaging private advocates for no justifiable reason, which practice must

now stop. If the procedure as mentioned above (in paragraph 22 above), or a better one prescribed by governments, is not followed before engaging a private advocate then any statement made before a court or comments/written statement that are filed would not be binding on the concerned government. Moreover, to pay the fee of such private advocate would constitute financial impropriety by the person who does so on behalf of the government, subjecting him/her to disciplinary act on in accordance with the applicable law.”

The very purpose of creating Export Processing Zones, as evident from the governing law is to promote export from the country. The dispute in relation to these plots is pending for the last eight years, which paints a shocking picture. EPZ is contesting this case with tooth and nail as if it as a estate broker and this act has neither facilitated export, nor helped a private entity to setup a plant in EPZ to improve export from Pakistan. All EPZ is doing is to create hurdles in plaintiff's way by adopting mischievous means one after the other, which one could say is a clear sign that EPZ is utterly incompetent to run its affairs and wasting national resources/exchequer by acting in a manner that deprives the country from valuable exports.

In these changed times, there is no room for such attitudes. State organs have to facilitate entrepreneurs with objectives to improve economy, create more jobs and bring more revenues to the country. Some lessons are to be learned in this regard.

In the circumstances I am of the view that the greater interest of justice will only be served by letting private entrepreneurs (i.e. the plaintiff) commence use of land designated to it for which payments have been received by EPZ, by handing over possession of the suit plots to the plaintiff as an outcome of this application having been allowed by this order, which was so consented by EPZ in terms of its Written Statement dated 07.05.2010.

A copy of this order be sent to the Secretary, Ministry of Industries as well as Chairman National Accountability Bureau.

Judge