IN THE HIGH COURT OF SINDH AT KARACHI

High Court Appeal No.165 of 1992

Present:
Mr. Justice Irfan Saadat Khan
Mr. Justice Zafar Ahmed Rajput

Date of hearing: 28.01.2016.

Appellants: M/s. Pakistan Burmah Shell Limited through Mr. Muhammad Jamshed Malik, Advocate.

Respondent No.1: Karachi Port Trust (KPT) through Mr. Khaleeq Ahmed, Advocate.

Respondents N.2-19: Called absent, despite service.

J U D G M E N T

IRFAN SAADAT KHAN, J. This High Court Appeal has been filed against the judgment and decree dated 31.08.1992 and 01.10.1992, respectively, given by the learned Single Judge in Suit No.90 of 1986 filed for declaration, injunction and/or damages.

2. Briefly stated the facts of the case are that the appellants are a Public Limited Company incorporated in 1969 and are engaged in oil storage and distribution in Pakistan. Since the business of the Company is that of storage of the petroleum products they require a number of workers in this behalf. That somewhere in 1922 a plot of land measuring 793 square yards was obtained on lease by the predecessor of the present appellants namely Burmah Shell Company from the respondent No.1. That after the formation of the present appellant Company old Burmah Shell Company had

amalgamated to it. That somewhere in 1930 old Burmah Shell Company constructed 23 double storey quarters for its workers, however, due to the heavy rains in 1978 a considerable damage was caused to those quarters, which had become unsafe for human residence. The appellants then called upon their workers, occupying the said quarters, to vacate the same but the workers resisted the same. That in 1979 the lease entered between the appellants and the respondent No.1 expired and thereafter the appellants moved an application for the renewal of lease for a period five years. However, the respondent No.1 renewed the lease for one year only. Thereafter some negotiations took place between the appellants and the Petroleum Workers Union in 1984, wherein the Union undertook to get the quarters vacated on or before 30.04.1984. However, out of the 41 workers, only 23 vacated the quarters but some 18 workers refused to do so (who are arrayed as respondents No.2 to 19 in the instant High Court Appeal and also were party in the Suit bearing No.90 of 1986). It was the claim of the appellants that occupation of the quarters by the respondents No.2 to 19 is unauthorized and illegal, since they have violated the undertaking made by the Union. As the respondents No.2 to 19 had failed to cooperate with the appellants in vacating the quarters, the appellants decided to surrender the land to the respondent No.1. It was the claim of the appellants that since they had allegedly surrendered the property to the respondent No.1, it was the responsibility of the respondent No.1 to get the property vacated from the respondents No.2 to 19 and that the appellants were not required to pay rent to the respondent No.1 after 01.06.1984. It is in this backdrop that a Suit for declaration, injunction and/or damages was filed by the present appellants by

requesting that since the appellants had surrendered the land to the respondent No.1, they now have no liability /responsibility to pay the rent to the respondent No.1 w.e.f. 01.06.1984. They further sought directions from the Court against the respondents No.2 to 19 to pay a sum of Rs.54,000/- as compensation accrued from 01.05.1984 upto the date of filing of the suit and to further pay a compensation of Rs.36,000/- per annum from the date of the suit upto the date on which the said respondents vacate the quarters in their respective possession. Declaration was also sought with regard to cost and any other relief. The matter proceeded before the learned Single Judge, who framed the following two issues:

> *(1) Whether as alleged in para 12 of the plaint the defendant No.1 had accepted the surrender of the plot of land in suit with the 46 quarters standing thereon and had accepted the responsibility to evict 18 workers still occupying 18 quarters out of them? If so, its effect?*
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> *(2) To what reliefs, if any, the plaintiff is entitled?*

3. The learned Single Judge after examining the evidences and going through the record passed the judgment dated 31.08.1992, whereby both the issues were decided against the appellants and the suit was dismissed with cost and a decree in this regard was also made on 01.10.1992. It is against the said judgment and decree that the instant High Court Appeal has been filed.

4. Mr. Muhammad Jamshed Malik Advocate has appeared on behalf of the appellants and submitted that the order passed by the learned Single Judge is not in accordance with law as he has not considered the various facts going to the roots of the case. He further submitted that the learned Single Judge has erred in placing reliance

on the letter dated 12.05.1984, as the question of alleged meeting of the officers of the appellants with the officers of respondent No.1 had remained unproved. He further submitted that the learned Single Judge has also erred in observing that there was no material available with regard to handing over of the possession of the land to the respondent No.1. He further submitted that the learned Single Judge has further erred in not considering the fact that persuasion of the appellant to the respondent No.1 to take over the possession of the quarters occupied by the respondents No.2 to 19 amply justified the stand of the appellants that the plot of land had been handed over by the appellants. He further submitted that the learned Single Judge also has not considered the notices issued by the respondent No.1 to the respondent No.2 to 19 regarding their illegal occupation, which amply proves that possession of the property was with the respondent No.1. He further submitted that the learned Single Judge has also not considered the fact that in C.P. bearing No.D-690 of 1984, filed by the workers against the appellants as well as respondent No.1, the respondent No.1 has categorically admitted that they are the owners of the land in question, however when the matter proceeded before the learned Single Judge the respondent No.1 resiled from their statement by stating that the possession of the quarters was never handed over by the appellants to them. He further submitted that the learned Single Judge has also incorrectly observed that due to the non-availability of the counter-affidavit of the respondent No.1 the factor of handing over the possession had remained unproved, whereas according to the learned counsel on this count the learned Single Judge should have decided the matter in favour of the appellants. He further submitted that the learned Single

Judge was not justified in observing that the letters written by the respondent No.1 to the respondents No.2 to 19 were only with regard to the encroachment and not with regard to the possession. He submitted that only an owner of a property could write a letter to either his tenant or licensee for vacating the said premises and since it was the respondent No.1 who had the possession that is why they had written letters to the respondents No.2 to 19. Hence according to him for all practical purposes it has to be inferred that possession of the property was with the respondent No.1 and not with the appellants. He further submitted that if this was not the position then under what authority the respondent No.1 issued letters to the respondents No.2 to 19, which aspect has totally been ignored by the learned Single Judge. He further submitted that the learned Single Judge has also ignored the evidence of Defence Witness and has stated that the same could not be relied upon, which as per learned counsel for the appellants is an erroneous observation. He further submitted that the learned Single Judge was not justified in observing that certain relevant documents were not produced on the record. He further stated that the learned Single Judge was not justified in observing that since the respondents No.2 to 19 were not licensees but lessees of the appellants hence provisions of the Sindh Rented Premises Ordinance, 1979, were attracted. He further submitted that the learned Single Judge was not justified in observing that the appellants were not entitled for compensation. He, in the end, submitted that the order passed by the learned Single Judge suffers with a number of illegalities /irregularities hence the same may be set aside by granting the relief prayed in the suit. In

support of his above contentions, the learned counsel has placed reliance on the following decisions:

i. *Govindrao v. Sarjabai* ***(AIR 1926 Nagpur 62)***

ii. *Mrs. B.S. Khan v. Pakistan State Oil Co. Ltd.* ***(1987 SCMR 577)***

iii. *Mrs. B.S. Khan v. Pakistan State Oil Company Ltd.* ***(1989 SCMR 75)***

iv. *Trustees of the Port of Karachi v. Messrs Hyesons Commercial and Industrial Corporation Limited* ***(1990 CLC 1116)***

v. *Pakistan State Oil Company Limited v. Khaliq Raza Khan* ***(1994 CLC 1866)***

vi. *Messrs Yasmin Plastic Industries v. Messrs Eastern Express Co. Ltd.* ***(1996 CLC 475)***

vii. *Director of Schools and others v. Zaheeruddin and others* ***(1996 SCMR 1767)***

viii. *Khaliq Raza Khan v. Messrs Pakistan State Oil Company Limited* ***(1998 SCMR 2092)***

ix. *Messrs Lalazar Enterprises (Pvt.) Limited, Karachi v. Messrs Oceanic International (Pvt.) Limited, Karachi* ***(2006 SCMR 140)***

x. *Messrs Shaheen Freights Services through Proprietor v. Messrs Ebrahim Trust through Managing Trustee and 3 others* ***(2010 CLC 878)***

xi. *Messrs Forbes Forbes & Campbell Co., through Company Secretary v. Messrs Ebrahim Trust through Managing Trustee and 2 others* ***(PLD 2010 Karachi 170)***

xii. *Saddar Din v. Deputy Inspector-General of Police (Investigation), Capital City Police, Lahore and 6 others* ***(PLD 2009 Lahore 585)***

xiii. *Ata Ullah Khan and others v. Mst. Surraya Parveen* ***(2006 SCMR 1637)***

xiv. *Usman v. Labour Appellate Tribunal and another* ***(1984 CLC 2782)***

5. Mr. Khaleeq Ahmed Advocate has appeared on behalf of the respondent No.1 and has vehemently refuted the arguments of learned counsel for the appellants He submitted that the learned

Single Judge after going through the entire record has rightly come to the conclusion that possession of the land was never handed over by the appellants to the respondent No.1. He submitted that no document whatsoever was produced either before the learned Single Judge or before this Bench to prove that possession of the land was handed over by the appellants to the respondent No.1. He further submitted that no document with regard to the alleged meeting of the officers of the appellants with that of the respondent No.1 was ever produced to show surrendering of the land by the appellants and acceptance of the same by the respondent No.1. He further submitted that the appellants had played smartly by filing a suit against the respondents No.1 as well as 2 to 19 as they wanted to kill two birds with one stone. To elaborate his viewpoint, the learned counsel submitted that the appellants firstly claimed that they had surrendered the plot to the respondent No.1, which in fact they had not, by keeping aloof themselves by not paying the rent of the said property and secondly to get rid of the dispute with regard to the occupation of the land by the respondents No.2 to 19 by stating that since they had surrendered the property to the respondent No.1, hence, it was the responsibility of the respondent No.1 to get the same vacated from the respondents No.2 to 19. He further submitted that the learned Single Judge quite rightly refused to consider the averments of the witness Sajjad Mehmood, an officer of the appellants, as the said witness has simply talked about the circumstances under which the possession was demanded by the appellants from the respondents No.2 to 19. He further submitted that perusal of the record would reveal that the learned counsel appearing in the suit has candidly conceded that there was no direct

evidence to prove that the respondent No.1 in fact had resumed the possession of the land. He further submitted that the order passed by the learned Single Judge is in accordance with law and does not require any interference. He states that the decisions relied upon by the learned counsel for the appellants are quite distinguishable and have no relevancy with the case in hand. He, therefore, prays that this High Court Appeal may be dismissed with cost.

6. None appeared for the respondents No.2 to 19 despite service.

7. We have heard both the learned counsel at length and have also perused the record and the decisions relied upon by the counsel for the appellants.

8. Perusal of the record reveals that Burmah Shell Company Limited, predecessor of the present appellants, obtained the land in question way back in 1922 and built thereupon 46 quarters for the residence of its workers and allotted the same to them. However due to heavy rains in 1978 several quarters were badly damaged. The company then instructed the occupant/workers to vacate the same and in case they continue to occupy that will be on their own risk and the company will not be responsible for any loss. In order to accommodate the workers the appellants, as per their assertion, applied in the year 1980 for renewal of lease for a period of 5 years w.e.f. 01.04.1981 since lease was to expire w.e.f. 31.03.1980. The lease was then extended by the respondent No.1 for a period of one year only on the condition that it will be the responsibility of the appellants that no temporary or permanent encroachment shall be made on the land given on lease. Thereafter a dispute arose between

the appellants and the Workers Union since as per the union if any loss is occurred due to the demolition of the building, which was in dilapidated condition, the company will be held responsible whereas the appellants company advised the workers to vacate the quarters otherwise they will be responsible for the damages, if any caused to them or to their families. It is also a matter record that due to the falling of the debris some workers suffered injuries. It is also an admitted position that only the respondents No.2 to 19 did not vacate the premises whereas some 23 other occupants vacated the same. It is also a matter of record that the appellants made a suggestion to the workers for deduction of a monthly amount from their salaries so that the building could be renovated but the workers did not agree to that proposal also. It is also a matter of record that petition bearing C.P. No.D-690/1984 was filed by the workers but the said matter was patched up between the parties when an assurance was given by the appellant as well the respondent No.1 that they will act strictly in accordance with law. It is also an admitted position that the appellants applied for a fresh lease after 01.04.1981 but the respondent No.1 declined to renew the same however the possession of the land at no point of time was handed over to the respondent No.1. It is also an admitted position that as per the terms of lease the respondent No.1 was entitled at any time for resumption of the land by giving a notice to that effect to the appellants. It was the claim of the appellants that they had applied for extension of lease on the ground to initiate repair work on the said quarters, which was not done by them. It is also an admitted position that various letters for vacation of the quarters were issued to the respondents No.2 to 19 by the appellants. It is also a matter of record that though the appellants

had stated that they “INTEND” to surrender the said plot to the respondent No.1 but in fact had never surrendered the same but have stated that since they had the “intention” to vacate the plot hence they were absolved from any responsibility /liability pertaining to that plot and they were not liable to pay any rent after 01.06.1984. This assertion of the appellants in our view is contradictory to their own averments as available on record. It is also an admitted position that since the quarters were constructed by the appellants, as per the terms of lease, therefore it was their responsibility to remove /demolish the building and the structure thereupon and to handover peaceful possession to the respondent No.1. It is also an undeniable fact that at no point of time the appellants removed the structure, which they were legally obliged to. Hence in our view the appellants could not be absolved of the responsibility to get the land vacated from the respondents No.2 to 19, which was their contractual obligation as mentioned in the lease. It was averred by the appellants that the possession of the land would be handed over and necessary arrangements in this behalf may be made by the respondent No.1 for taking over the possession but never handed over the same, which is evident from the various notices issued by the respondent No.1 to the appellants in this regard. It is also seen from the record that in the letters dated 19.08.1984 addressed by the respondent No.1 to respondents No.2 to 19 was with regard to the encroachment made by them and in the said letter those respondents were duly addressed as workers and employees of the appellants hence the assertion of the appellants that since an action for removal of the respondents No.2 to 19 was initiated by the respondent No.1 the same proved that the possession of the land was with them is misconceived and

contrary to the record. It is further seen that the appellants even approached the Labour Court for ejectment of the workers from the said quarters. However not only the Labour Court but the Labour Appellate Tribunal also dismissed the appeals in limine on the ground that CBA has no authority to enter into an agreement with the appellants for vacation of the quarters. The High Court in C.P. No.D-417/89 and C.P. No.D-43/89 also vide order dated 10.05.1989 rejected the contention of the appellants, when the order of the Labour Tribunal/Court were challenged by the appellants. It is further noted that the learned Single Judge has categorically observed that much emphasis has been laid by the appellants on the letter dated 12.05.1984, which has not even been endorsed by the witness hence the question of surrendering the land to the respondent No.1 by the appellants had remained unproved. It is also seen that apart from the examining Sajid Mehmood; an officer of the appellants company, no other witness was produced by the appellants and that witness also in cross-examination has not supported the averments of the appellants. It is further seen from the record that though it was claimed that in the letter dated 12.05.1984 a so called surrendering of the land was made but since the witness of the appellants has not confirmed the averments of the said letter, therefore, the question of so called surrendering of the land has become dubious and could not be relied upon. It is further noted that the counsel representing the appellants had conceded before the learned Single Judge that there was no direct evidence available with the appellants with regard to surrendering the land but stated that in view of circumstantial evidence it could be assumed that the possession of the land has been resumed by the respondent No.1. In

our view the learned Single Judge was quite justified in observing that the appellants have miserably failed to prove with regard to resumption of the possession of land by the respondent No.1. We, therefore, under the circumstances, find no justification to interfere in the order passed by the learned Single Judge, so far as the possession of the land is concerned and the responsibility of payment of rent after 01.06.1984 is concerned. So far as the contention raised by the learned counsel for the appellants with regard to observation of the learned Single Judge on the applicability of Sindh Rented Premises Ordinance 1978 (SRPO) is concerned, we are afraid this ground also is not available with the learned counsel. The learned Single Judge has simply observed that the provisions of SRPO are attracted and appellants could only evict the respondents No.2 to 19 under the relevant provisions of the said Ordinance as the respondents No.2 to 19 were the allottees of the appellants and not that of respondent No.1. This observation, in our view was with regard to the relationship between the appellants and the respondents No.2 to 19 and not with regard to the relationship between the appellants and the respondent No.1. Hence the various decisions relied upon by the learned counsel are of no help to him.

9. The upshot of the discussion is that we see no justifiable reason to interfere with the order passed by the learned Single Judge, which is hereby upheld and the instant High Court Appeal is dismissed.

JUDGE

JUDGE