

**IN THE HIGH COURT OF SINDH  
AT KARACHI**

**SUIT NO. 1330 of 2008**

Plaintiff : Muhammad Ansar, through Syed Sultan  
Ahmed, Advocate.

Defendant : Export Processing Zones Authority,  
through Mr. Khadim Hussain, Advocate

Date of hearing. : 30.04.2018

**J U D G M E N T**

**YOUSUF ALI SAYEED, J** - The Plaintiff has brought this suit claiming damages/compensation as against the Defendant on the basis of allegations of wrongful dispossession from Plot No.10, Sector B-X, measuring 1175 square meter (the “**Subject Premises**”) situated within the Karachi Export Processing Zone (the “**KEPZ**”).

2. The case of the Plaintiff is that in terms of a letter dated 23.12.2002, the Defendant sanctioned the use of the Subject Premises by the Plaintiff for carrying on the business of importation, reconditioning/rebuilding and subsequent re-export of transportation and construction machinery under the name and style of ‘M/s. Pak Engineering, following which a General Agreement dated 28.01.2003 was executed between the parties in relation to the Subject Premises and the Plaintiff was granted a 30-year lease in respect thereof,

3. It is submitted that although the underlying terms and conditions encapsulated in such documents did not prescribe any condition as to export targets, the Defendant subsequently sought to impose the same upon the Plaintiff and, on the pretext of the Plaintiff's failure in that regard, sealed the Subject Premises on 20.08.2008 at approximately 3:00 PM, during the absence of the Plaintiff, without any cancellation notice having been issued, hence the instant Suit, whereby it has been prayed that the Court:
  - (a) Declare that the plaintiff is the lessee of Plot No.10, Sector B-X admeasuring 1175 square meters situated within the Karachi Export Processing Zone pursuant to the Lease Deed dated 28.1.2003 and is in lawful possession of the same;
  - (b) Declare that the Plaintiff is entitled to continue operating its industrial unit within the Zone and carry on manufacturing and export activities in connection therewith in accordance with law and the General Agreement dated 28.1.2003;
  - (c) Restrain the Defendant from interfering with the Plaintiff's quiet possession of the said Plot and causing harassment and obstructions to the Plaintiff's business activities therefrom and order the Defendant to remove its locks from the gates of the said Plot;
  - (d) Grant damages of Rs.10,000,000/-
  - (e) Grant costs of the suit;
  - (f) Pass such further/additional order as may be necessary or expedient.
  
4. The Defendant entered appearance through counsel and filed its written statement wherein the allegations levelled by the Plaintiff were denied and it was submitted that the Plaintiff had violated the terms and conditions of the General Agreement dated 28.01.2003 and failed to abide by the applicable binding directives, notifications and SRO's of the Customs Authorities and Federal Board of Revenue.

5. On 11.05.2017, out of the respective pleadings, the issues were settled as follows:

1. Whether the Plot No.10, Sector B-X measuring 1175 square meter was allotted to the Plaintiff, and central agreement was executed by the Plaintiff with the Defendant?
2. Whether the Defendant granted 30 years lease deed dated 28.01.2003 for subject plot in favour of the Plaintiff?
3. Whether on 26.08.2007, the Defendant published a public notice for cancellation of the plaintiffs' plot illegally on account of alleged failure of export commitments?
4. Whether the Defendant taking action against the Plaintiff on 20.08.2008 illegally and without due course of law?
5. Whether the Defendant causes damages to the Plaintiff due to illegal action and created obstacles in his business?
6. Whether the Plaintiff is entitled of damages of Rs.30,000,000/- ?
7. What should the decree be?

6. Evidence was recorded on Commission, and in the absence of the Plaintiff during the course of such proceedings, his son, namely Akhtar Ansar, filed his Affidavit-in-Evidence on the strength of a Power of Attorney issued in his favour by the Plaintiff, and was cross-examined accordingly, whereas the representative of the Defendant, namely Misbahur Rehman Jawad was firstly examined orally by counsel for the Defendant and then cross-examined by Plaintiff's counsel.

7. In support of his Affidavit-in-Evidence, the Plaintiff's witness inter alia produced copies of the letter dated 23.12.2002 addressed by the Defendant, photocopies of the General Agreement dated 28.01.2003 and the Lease Deed, as well a Public Notice issued by the Defendant in the daily newspaper 'Jang' on 26.08.2007 regarding the cancellation of the sanction in respect of the Subject Premises.
  
8. Learned counsel for the Plaintiff broadly contended that the Plaintiff had a vested right to peaceable use and enjoyment of the Subject Premises in terms of the General Agreement and Lease, and had been deprived thereof as well as of his movables by the act of the Defendant, which, per learned counsel, constituted an actionable wrong compensable in damages as well as vide restoration of possession.
  
9. Conversely, learned counsel for the Defendant refuted the contention that the action taken by the Defendant was unjustified, and drew attention to Clause 1 of the General Agreement wherein it was stipulated as follows [**Sic**]:

"THAT THE INVESTOR AGREES TO ABIDE BY THE PROVISIONS OF ALL LAWS, RULES, REULATION, BEY-LAWS AND TERMS AND CONDITION APPLICABLE TO EXPORT PROCESSING ZONE AT KARACHI."
  
10. It was submitted by learned counsel for the Defendant that the Plaintiff had failed to comply with the prevailing rules and regulations, particularly SRO No.461/1(1) dated 12.06.2004 issued by the Federal Board of Revenue (the "**FBR**"), amending Rule 228 of the Customs Rules 2001, as applicable to Export Processing Zones, whereby the units within such Zones, including the KEPZ, were required to export at least 80% of

their total production, and that the steps taken as against the Plaintiff as per the Public Notice of 26.08.2007 and the action that ensued were predicated on the said SRO due to the repeated failure of the Plaintiff to adhere to the dictates thereof.

11. Having considered the arguments advanced at the bar and examined the material on record in light thereof, the findings in relation to the Issues are as follows herein below.
  
12. As regards the issues arising for determination there appears to be no denial that the Defendant allotted the Subject Premises to the Plaintiff and executed the General Agreement dated 28.01.2003 in respect thereof followed by a lease. As such, Issues Numbers 1 and 2, as aforementioned, are answered in the affirmative to that extent.
  
13. As to Issues Numbers 3 and 4, there is also no dispute that a public notice towards cancellation of the sanction in respect of the Subject Premises was published on 26.08.2007, and the only question that remains is whether the issuance thereof and steps taken in pursuance were illegal, as averred by the Plaintiff, or justified and supported by due cause, as contended by the Defendant. In this regard, it merits consideration that the stance of the Plaintiff is that the action taken by the Defendant was on the basis of the Plaintiff's alleged failure to meet export targets when no such targets were prescribed or imposed in relation to the Plaintiff's occupation and use of the Subject Premises, whereas the contention of the Defendant is that the occupation and use of the Subject Premises was subject to adherence to all prevailing rules and regulations applicable to the KEPZ from

time to time, including the relevant circulars and notifications of the FBR. In that the regard, the evidence of the Defendant's witness cites SRO No.461/1(1) dated 12.06.2004 issued by the FBR, as referred to by counsel and mentioned herein above, whereby the units within the KEPZ were required to export at least 80% of their total production, and it was clarified by the witness that the sanction in favour of the Plaintiff had been restored by the Defendant subject to compliance with the said SRO and that the Defendant had in fact offered the Plaintiff an out of Court settlement on that basis, which could not bear fruit due to the Plaintiff's lack of compliance. Indeed, Paragraph 4 of the Written Statement of the Defendant also clearly indicates such a stance and supports the contention of the Defendant's witness, and learned counsel for the Defendant stated that the Defendant remained willing to permit the Plaintiff to resume its operations subject to the Plaintiff's adherence to its obligations and compliance with relevant laws, rules and regulations. However, conversely, learned counsel for the Plaintiff submitted that the Plaintiff was not ready to merely accept restoration of the sanction in the absence of damages and adjustment of losses and waiver of ground rent.

14. As regards Issues Numbers 5 and 6, it merits consideration that whilst the latter Issue alludes to a loss of Rs.30,000,000/-, the claim to damages espoused in the prayer is only that of Rs.10,000,000/- and there was no evidence brought on record to satisfactorily prove a claim to either extent. Indeed, the so called detail of losses specified in paragraph 16 of the affidavit-in-evidence of the Plaintiff's witness is lacking in basis and, as aforementioned, unsupported by corroborative material. Furthermore, in terms of the written statement, it had been represented by the Defendant that the plaintiff could reassume possession of the plot and recommence his activities subject to compliance of

the prevailing rules and regulations, and the evidence of the Defendant's witness is consistent on this aspect. As such, it even otherwise cannot be said that the Defendant was responsible for the plaintiff's continued divestiture from the property, so as to support a claim for damages on account of protracted ouster. Accordingly, Issues Numbers 5 and 6 remain unproven.

15. In view of the foregoing observations and findings, it is apparent that the Plaintiff has failed to make out a case so as to demonstrate an entitlement to damages, as claimed. However, in view of the Defendant's own assertion that the Plaintiff may resume its operations subject to adherence to its obligations, it is accordingly directed that the Plaintiff may resume its operations at the Subject Premises for the remaining period under the 30-year lease, subject to fulfilment of its obligations thereunder as well compliance of its obligations in terms of the General Agreement and the relevant laws, rules and regulations applicable to the KEPZ, including the relevant Circulars and Notifications of the FBR. The suit is decreed in the foregoing terms. There is no order as to costs.

Karachi  
Dated \_\_\_\_\_

JUDGE