

Order Sheet

IN THE HIGH COURT OF SINDH, KARACHI

Constitutional Petition No.D-6849 of 2016

PRESENT:

Mr. Justice Nadeem Akhtar
Mr. Justice Arshad Hussain Khan

Date of hearing: 15.12.2016

Mr. Abdul Baqi Lone, Advocate for Petitioner.

ARSHAD HUSSAIN KHAN, J. The petitioner through the instant petition has sought following reliefs:-

- a) *To direct respondent No.1 to take action against the respondents 3 to 10 for illegally took over the subject i-e plot No. SB- 1 & 2.*
- b) *To direct respondents 3 to 10 not to dispossess the petitioner from the subject property till the final decision of this petition.*
- c) *To restrain respondent No.2 to take over the plant and machinery fixed at the subject premises till the decision of the instant petition.*
- d) *To direct respondent No.1 to take departmental inquiry of respondents.3 & 4 for their illegal act.*
- e) *To direct respondents No.3 to 10 to produce the original documents and lay out plan of the subject property before this Hon'ble Court.*
- f) *That any other relief may kindly be granted, which this Hon'ble Court may deem fit and proper in the circumstances."*

1. The brief facts leading to filing of the instant petition as averred therein are that the petitioner is a licensee / dealer of respondent No.2- Pakistan State Oil [PSO] in latter's retail outlet namely M/s. FJK Service station located at SB-1 & 2, Block-4 & 5, Al-Hilal Cooperative Housing Society, KDA Scheme No.7,

University Road, Karachi [subject premise]. It is averred that respondent No.2 established the said retail outlet in the year 1993 under company finance [CF] category. Previously one Ghulam Abbas Shaikh was appointed dealer of the said outlet however, subsequently, in the year 2009 the petitioner was inducted as dealer of the said outlet by respondent No.2. It is also averred that respondent No.2 acquired the subject premises from predecessor of respondents 6 to 8 in 1968 through a long term lease for running petrol pump on monthly rental of Rs.2500/-. In the year 2000, respondents 6 to 8 sent legal notice for vacation of the subject premises whereafter ejectment proceeding was filed which went upto the Hon'ble Supreme Court where respondent No.2 did not press its leave to appeal. The respondents 6 to 8 during the pendency of the ejectment proceedings sold out their 47.5% share in the property to respondents 9 to 10. It is also averred that the petitioner developed corporate clientele and constantly supplying Petroleum Oil Lubricants [POL] to them on 60 to 90 days credit. Further averred that in the event, the said retail outlet is closed the petitioner will be suffered losses of millions of rupees. The petitioner seeing the attitude of respondent No.2, in order to save his business at the subject premises offered respondents 6 to 10 to purchase the subject premises and for that purposes the petitioner got lay out plan to ascertain the actual area of the property whereupon it revealed that the subject premises was shown as parking area of respondent No.5. From the said layout plan the petitioner also came to know that the total area of the subject premises is 541.88 whereas the area leased out to the predecessors of respondents 6 to 8 was 1192 Sq. Yds. It is also averred that respondents 6 to 10 have illegally encroached upon the public land and therefore they are not entitled to get the subject premises vacated from the petitioner. Furthermore, the claim of ownership of respondent No.6 to 10 are based on fake and bogus indenture of lease obtained through committed fraud upon the court. It is also averred that the petitioner is entitled to claim damages of Rs.25 Million from respondent No.2. The petitioner having no other efficacious remedy approached this court and filed the present petition.

2. From the perusal of memo of petition, it appears that the status of the petitioner in respect of subject premises is merely that

of a licensee of respondent No.2, who had admittedly granted the license to the petitioner vide dealership license agreement to operate the petrol pump for company finance site at subject premises.

3. It is well settled that 'license' is a personal privilege to do some particular act or series of acts on the land without possessing any estate or interest therein, and is ordinarily revocable at the will of the licensor and is not assignable. Thus, a license is not a contract between the licensor and licensee but a mere personal permit therefore a license is distinguishable from an 'easement', which implies an interest in the land and a "lease" or right to take the profits of land. Whereas a legal right in its strict sense is one which is an ascertainable claim, enforceable before Courts and administrative agencies. In its widest sense, a legal right has to be understood as any advantage or benefit conferred upon the person by a rule of law. Thus, license with respect to property is a privilege to go on premises for a certain purpose, but does not operate to confer on, or vest in, licensee any title, interest, or estate in such property. Reliance is placed on the case of Zafar Ali v. The State (2008 YLR 2071).

4. From the perusal of the petition, it is also transpired that the petitioner raised disputed question of fact which even otherwise can not be decided in this extraordinary jurisdiction which is intended primarily, for providing an expeditious remedy in a case where the illegality of the impugned action of an executive or other authority can be established without any elaborate enquiry into complicated or disputed facts. Controverted questions of fact, adjudication on which is possible only after obtaining all types of evidence in power and possession of parties can be determined only by courts having plenary jurisdiction in matter and on such ground constitutional petition is incompetent. Reliance is placed on the case of Anjuman Fruit Arhtian and others v. Deputy Commissioner, Faisalabab and others (2011 SCMR 279).

5. Keeping in view the above fact when this Court put the question of maintainability of the present petition vis-à-vis *locus standi* of the petitioner in respect subject premises, the learned counsel failed to satisfy the court on this point.

6. The upshot of the above discussion, we are of the considered view that the petitioner being a licensee dose not have any locus standi to maintain the present petition and as such the same is not maintainable. Consequently, the present petition along with listed application is dismissed in limine with no order as to cost.

JUDGE

JUDGE

Jamil*