

Order Sheet
IN THE HIGH COURT OF SINDH KARACHI
Constitutional Petition No.D-44 of 2022

Date	Order with Signature of Judge
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1. For order on Misc. No.385/2022 (Urgency)
2. For order on Misc. No.157/2022 (Exemption)
3. For order on Misc. No.158/2022 (Stay)
4. For hearing of main case

10.1.2022

Mr. Muhammad Ali Lakhani, advocate for the petitioner

1. Urgency granted.

2. Granted subject to all just exceptions.

3-4. Through the instant petition, the petitioner-Economic Engineering Company (Pvt.) Ltd is seeking multiple declarations, mainly to the effect that respondent-Karachi Port Trust (“**KPT**”) canceled the lease of the petitioner-company vide recommendation of the Board of Trustees’ letter dated 21.12.2017, is unlawful and illegal, whereby the Board rejected the request of the petitioner-Company for restoration/regularization of additional floors on Plot No.2, measuring 4181 square meters Bundar Road (M.A. Jinnah Road) Misc. Area, Kemari. It is, *inter alia*, contended on behalf of the petitioner-company that the subject land was granted to the petitioner-company on proprietary and possessory rights basis vide lease deed dated 16.3.2012, subject to the terms and conditions as prescribed in the lease deed; it is further contended that in terms of clauses 5 and 7 of the lease deed, the petitioner-company put forward the proposal to the respondent-KPT for construction as discussed supra and in the meanwhile, sought building approval from the Sindh Building Control Authority (“**SBCA**”); and, subsequently, such permission was duly granted to the petitioner-company vide letter dated 04.3.2006 issued by the SBCA to raise construction on the property to the extent of ground plus three additional floors. Learned counsel emphasized that SBCA has permitted to raise construction of the structure, housing-ground, and five additional floors. Per learned counsel, as soon as the construction commenced on the subject plot, the respondent-KPT raised the hue and cry to the extent that the subject construction is unauthorized and expressed their annoyance vide letter dated 17.2.2015 on the ground that the subject construction is in deviation of

building plan approved by KPT and SBCA; i.e. constructed excess covered area; started construction on 4th and 5th floor without the approval of KPT and raised construction on area i.e. compulsory open space. Learned counsel further argued that after the exchange of correspondence by and between the parties, the respondent-KPt issued a letter dated 22.1.2016, whereby they canceled the lease of the petitioner-company, unilaterally on other multiple frivolous grounds. Petitioner-company being aggrieved by and dissatisfied with the aforesaid action of issuance of the notice instituted Civil Suit No.308/2016 (Re. Economic Engineering Ltd. versus Karachi Port Trust and another) which remained pending before this Court; and in the meanwhile, the parties were directed to maintain status-quo insofar as the possession and construction as available at the site is concerned vide order dated 04.2.2016. The subject suit was proceeded to vide orders dated 10.3.2017 and 17.9.2021 and the same is still pending.

At this stage, we asked the learned counsel as to how this petition is maintainable in presence of lis of civil nature before the learned single Judge of this Court (O.S.), he replied to the query with the assertion that the basic recommendation of the respondent-KPT in the case of the petitioner is unlawful, illegal and ultra vires, the Karachi Building & Town Planning Regulations, 2002 (“**KB&TPR 2002**”). He further pointed out that the recommendation as discussed supra violates the directives issued in Suit No.308/2016; that the construction raised by the petitioner is permissible under KB&TPR 2002; that the petitioner is entitled to regularization of additional construction as per KB&TPR 2002. He lastly prayed for the direction to the respondents to rescind its recommendation as discussed supra and allow the petitioner-company to raise the construction and the same be regularized accordingly.

To appreciate as to whether the petitioner-company can vary the terms and conditions of lease deed dated 16.3.2012 and raise subject construction and whether the cancellation of lease dated 21.12.2017, which is also the subject matter of Suit No.308/2016, whereby the petitioner-company has already called in question the notice dated 22.1.2016 issued by respondent-KPT and subsequently the lease was canceled on 21.12.2017, learned counsel for the petitioner is directed to satisfy the Court in respect of the aforesaid queries on the next date of hearing. To come up **after two (02) weeks**. Let notice be issued to the respondent as well as to learned DAG.

JUDGE

JUDGE