

**ORDER SHEET**  
**IN THE HIGH COURT OF SINDH AT KARACHI**  
Suit No.288 of 2020

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DATE	ORDER WITH SIGNATURE OF JUDGE
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For hearing of CMA No.6462 of 2020 [U/o 39 R.1&2 CPC]

**27.01.2022**

Dr. Amjad Hussain Bukhari, Advocate for the plaintiff  
M/s Ali Almani and Akber Sohail, Advocates for defendant No.1  
Mr. Ghulam Hussain Korai, Advocate for defendant No.2

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**ORDER**

**Muhammad Shafi Siddiqui, J.**- This is a suit filed by Pakistan House International Limited [PHIL] for declaration that defendant No.2/Port Qasim Authority [PQA] allotted to the plaintiff a Plot of land bearing No.71, admeasuring 1-0 acre, situated in Bulk & Containerized Liquids Storage Area, South Western Zone, Port Qasim, Karachi for the purposes of handling and storing of petrochemical raw material and feedstock and further declaration that the plaintiff is lawfully authorized to permanently handle and store on non-exclusive basis the Styrene Monomer [SM], Linear Alkaline Benzene [LAB], Mixed Hydro Carbon [MHC] and Ethyle Hexanol [EH] without any permission, payments, NoC or intimation to defendant No.1 through MW-1 Jetty of defendant No.2 on the payment of use of MV-1 Jetty charges to defendant No.2.

2. Brief facts of the case are that the plaintiff was allotted by defendant No.2 a plot of land bearing No.71, admeasuring 1-0 acre, South Western Zone of Port Qasim for the purposes of handling and storing petrochemicals raw material and feedstock for the importers.

3. The plaintiff claimed to have establish a public custom bonded storage terminal at Port Qasim to facilitate its customers/importers on cost effective basis as alleged. The Collector of Customs, PQA issued public warehouse license on the said plot No.71 in year 2010 for handling and storage of liquid, semi-liquid all sort including edible, inedible oils, industrial chemical, petro chemical DP, non-DP cargo that is being renewed annually. As against this, the plaintiff contended that the implementation agreement was executed in the year

1996 between defendant No.1 and defendant No.2 giving exclusivity to defendant No.1 to handle and store chemicals specified in the agreement of 1996.

4. As against this exclusive right though the plaintiff seeks in the main suit a declaration to permanently handle cargo even in respect of exclusive items of defendant No.1, an interim injunction application has also been filed that during pendency of the suit, the defendants be restrained from unlawful interference and harassment with the handling and storage of petrochemicals, raw materials, feedstock and Styrene Monomer at plaintiff's tank terminal at Port Qasim Authority.

5. This interim relief of the plaintiff is seriously opposed by defendant No.1. Defendant No.1 filed counter affidavit alongwith attachments. For reason best known to No.2 [PQA], neither any counter affidavit nor any written statement is filed till date though suit is pending since 18.2.2020.

6. The defendant No.1 claimed to have an exclusive agreement i.e. an exclusive right to handle and store all liquid chemicals and gaseous liquid chemical except LPG. Mr. Almani has taken me to the exclusive items of the implementation agreement which amongst other include `Styrene Monomer` as being one of the exclusive item to be handled by defendant No.1 under implementation agreement alone. In addition, to these exclusive items disclosed in the implementation agreement, there are other petrochemical raw materials/feedstock as well which is being handled by defendant No.1 and stored at the project on non-exclusive basis.

7. I have heard learned counsel and perused the materials available on record.

8. The plaintiff in the instant case is relying on an allotment of plot No.71, admeasuring 1-0 acre, situated in Edible Oil & Molasses area of Port Qasim Authority whereby the authority was pleased to allow for the purposes of handling of petrochemical raw material & feedstock subject to the condition that the plaintiff is bound to follow Fast Track International Health Safety Enforcement HSC Code on the terms incorporated therein. This allotment meant for the purposes of handling cargo of petrochemical raw material and feedstock and does not include the Styrene Monomer, exclusivity of which is

being enjoyed by defendant No.1, under Implementation Agreement. The execution of which is not under challenge. It is claimed to have been sanctioned under the provisions of PQA, 1973 and since it is not challenged, no comments required.

9. The public warehouse license as disclosed by the plaintiff in relation to plot No.49, Edible Oil & Molasses area of Port Qasim in relation to liquid and semi-liquid, including edible/inedible oils, industrial, chemicals, petro chemical, DP and non-DP cargo, however, this is for the purposes of public warehousing and will not operate as a terminal operating license for the purposes exclusive/non-exclusive items as described in the implementation agreement which includes some chemicals to be exclusively handled by Engro Vopac Terminal Ltd [EVTL]. This implementation agreement granted exclusive concession right and license to design, finance, ensure, construct, test, commission, complete, operate, manage and maintain the terminal on built, operate and transfer basis. Article 3.2 of this implementation agreement includes a list of several categories which are to be exclusively handled by defendant No.1. The exclusive items disclosed in Article 3.2 is inclusive but not exhaustive. It includes Styrene Monomer [SM] Linear Alkaline Benzene [LAB] which is being claimed by the plaintiff. The license of the plaintiff issued by FBR is in fact for public bonded warehouse which too was later in time after implementation agreement of defendant No.1 and defendant No.2 which grants exclusive handling of various chemicals and to establish its terminal. This exclusivity was never challenged ever since these bonded warehouse licenses were extended. For the sake of convenience of the plaintiff, Mr. Almani submitted that the customers of the plaintiff may approach defendant No.1 for effective handling of the cargo and after it being handled at defendant No.1's Jetty and transported to the plaintiff's facility through the pipeline at the fee to be paid to defendant No.1, the grievance could be redressed. The plaintiff claims to have enjoyed same facility at Keamari where he was not precluded from handling Styrene Monomer [SM], Linear Alkaline Benzene [LAB] at Keamari. As one time opportunity defendant No.1 handled the goods [SM] exclusive of the plaintiff, however, it does not become a license for the plaintiff to continue with this self devised mechanism. Although the defendant No.1 is enjoying exclusive handling of some of the chemicals as disclosed in the implementation agreement but defendant No.2 being regulator

has ensured that defendant No.1 be not allowed to manipulate the situation as PQA is regulating the fee being claimed by defendant No.1 with regard to handling the cargo, exclusively enjoyed by defendant No.1.

10. This being the situation, I was not inclined to grant injunction as the rights in respect of the Styrene Monomer are being exclusively enjoyed by defendant No.1 under the implementation agreement.

These are the reasons for dismissing the injunction application by short order dated 24.1.2022.

**J U D G E**

Karachi:

Dated:27.01.2022