

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

Revision Applications No.55 to 67 of 2019

Muhammad Tobria and others in connected petitions.
Versus
The Board of Trustees KPT& others

Date	Order with signature of Judge
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Dated: 13.04.2021

Malik Khushhal Khan for applicants.

Mr. Hakim Ali for respondents in RA Nos.55 to 61 of 2019.

Mr. S. Izhar Haider Rizvi for respondents in RA Nos.62 to 67 of 2019.

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Heard the counsels.

This bunch of cases involves a common question as to whether applicants were lawfully ousted from the Court in pursuance of Section 87 of the Karachi Port Trust Act, 1886, which ended up in rejection of complaints.

Applicants filed their respective suits as Suit Nos.620 to 632 of 2018 for declaration and permanent injunction in respect of their respective properties which were the subject matter of the suits. An application for extension of "lease" was filed with the authority of KPT and was declined, followed by issuance of notice of eviction. This led to filing of suit. On issuance of notice and summons of suit by trial Court, an application under order VII rule 11 CPC preferred that ended up in rejection of the complaints on the count that the suits were barred under section 87 of the ibid Act and hence no action could have been initiated against any officials of the Karachi Port Trust in respect of anything done or purporting to have been done in pursuance of the aforesaid Act without giving to such person one month's previous notice in writing of

the intended suit and of the cause thereof, nor after six months from the accrual of the cause of such suits.

The licences on which respondents were relying were expired somewhere in 2013. After the expiry of the alleged licences the Karachi Port Trust started receiving amount as being “lease money” and a period of lease was also disclosed in the challans issued by Karachi Port Trust to applicants though separately describing them as licensee as well. The initial lease period was shown as 01.04.2013 to 31.03.2014 (one year). Learned counsel for applicants submits that title of the documents i.e. licence agreements, which too an expired one, does not describe the status of the applicants as the determining factors of the status of the applicants is other than the description provided in the documents. Subsequent correspondence and intention is pivotal in assessing status of applicants.

Respondents’ counsel on a query thrice admitted that the applicants are in physical possession of the premises as it is in their complete control and lock and key and they do not require permission for an entry and exit from the premises. This is a crucial statement as far as status of the applicants and intention of parties are concerned.

In this primary examination perhaps the respondents have not demonstrated to have passed the criteria and test to adjudge them (applicants) as licencees. Since the rental receipts were issued for a lease period, as available on record, therefore, notice under section 87 of the KPT Act for the eviction cannot be read to have been issued in pursuance of the aforesaid Act as a lessee cannot be evicted without due process of law. Hence, such action is not deemed to have been taken or purported to have been taken under the ibid Act. Similarly on account of urgency anticipating alleged eviction, suit ought to have been filed for the security of interest in the property. When an action was not deemed to have been taken under the Act, the barring provision of Section 87

would not apply and plaint in this regard for a colourable exercise of powers by official of KPT cannot be rejected under order VII rule 11 CPC. It requires a trial as to whether action was in accordance with law or otherwise. The appeal preferred by the applicants met the same fate as it was dismissed.

There is a very thin line margin between a lease and licence and irrespective of as to what is defined in the documents itself, it is the intention of the parties which could ultimately determine relationship and status.

The first case in this regard that perhaps came up for consideration before the Hon'ble Supreme Court was of Abdullah Bhai v. Ahmad Din reported in 1964 SC 106.

A lease under Transfer of Property Act is defined as transfer of an interest in the immovable property. The ownership of immovable property consists of a number of rights and the owner of such property when he creates a lease, transfers to the lessee a part or some parts of rights of ownership which may include right of enjoyment of the property for a period, for consideration. During the continuance of lease the right of enjoyment of the property belongs to the tenant/lessee and not the landlord/lessor. The right of ownership as well as right of which it is composed, are rights in rem i.e. it may pass on under the law and not in personem and by the lease a right in rem is transferred to the lessee whereas in case of a license, it is only seen as a permission to do something which in the absence of such permission would be unlawful. It does not confer any right in physical property.

When this yardstick is applied to the case in hand, it seems that the plaint was rejected in a rush as respondent's counsel has conceded that the physical possession is being enjoyed by the applicants and they are in full control of the premises including its lock and keys with construction on it and no permission is required for applicants' ingress

and egress from the authority of KPT. The physical enjoyment of a property and its complete control and lawful possession is in fact one of the ingredients of ownership which rights seems to have been transferred by KPT to the applicants which is recognized as a right in rem. Hence prima facie it is not a description in the document but intention of the parties that may lead to decisive conclusion.

In the case of Delta International Ltd. v. Shyam Sundar Ganeriwala reported in 1999(2) SCR 541, a judgment from Indian jurisdiction, same views were formed i.e. though an agreement of licence may have been executed or created but if contrary expression is deducible then it cannot be ignored as the intention of the parties would supersede the description of the party in a document.

In the case of Pervaiz Hussain v. Arabian Sea Enterprises reported in 2007 SCMR 1005 alleged licencor Arabian Sea filed suit for mandatory injunction seeking restraining order against occupant and an interim order was obtained which apparently was maintained by a Division Bench of this Court whereby occupant's/Perwez Hussain's appeal against injunctive order was dismissed treating them as being a licensee. It was argued before Hon'ble Supreme Court that since they are paying rent, they cannot be treated as licensee and there was sufficient material on record for a prima facie case of the petitioner/occupant, before Hon'ble Supreme Court. The Hon'ble Supreme Court considered the case and the status of the parties, which was yet to be determined in the said suit, and allowed the appeal by setting aside the two orders i.e. of learned Single Judge and of Division Bench to the extent indicated in the order which orders of learned Single Judge and Division Bench perhaps restricted the entry of occupant/alleged licensee.

In the case of M.N. Clubwala v. Fida Hussain Saheb reported in AIR 1965 SC 610 the Hon'ble Supreme Court was of the view that the

determination of transaction depends upon the intention of the parties and intention has to be ascertained by conduct of the parties.

The only question before this Court is whether in view of facts and circumstances of the case plaint was rightly rejected or the trial Court and the appellate Court erred in law while rejecting the plaints.

I am of the firm view that the issue of notice of eviction to an occupant of the nature as described above is not warranted under the law and on such threat of eviction he cannot wait for a period mentioned in the barring section i.e. Section 87 of KPT Act and is not covered by any of the provisions of Act when status of applicants is adjudged as lessee in the last challan issued. It needs trial for a conclusive determination. When the applicants claimed to have been in occupation as lessee by virtue of challan issued to them the status of licensee was not carried forward and altered to a status of lessee by virtue of such challan and the descriptions provided therein. This is at least tentative view which should have been formed.

Be that as it may, it is only a tentative analyses and it is premature stage for a conclusive determination as trial Court should have commenced, by enabling/allowing parties and disposing of the lis in accordance with law.

I, therefore, in view of above facts and circumstances deemed it appropriate to allow these revisions by setting aside the orders of the two Courts below whereby plaints were rejected and the findings were maintained by the appellate Court, with directions to trial Court to expeditiously proceed with the matters after framing issues and recording of evidence, if desired and required, and disposed them of in six months' time on merit.

Judge