

HIGH COURT OF SINDH AT KARACHI

C.Ps. No.D-1191, 1193 & 1309 of 2008

Present:

Mr. Justice Irfan Saadat Khan

Mr. Justice Zafar Ahmed Rajput

Dates of hearing : 22.09.2015, 07.10.2015 & 19.10.15

Petitioner Muhammad Ahmed
in C.P. No.D-1191 of 2008

Petitioner Rana M. Sabir
in C.P. No.D-1193 of 2008

Petitioner Syeda Nasreen Fatima
& others in C.P. No.D-1309 of 2008

Through Mr. S. Hassan Imam,
Advocate

Respondent No.1, Karachi Cantonment
Board in all C.Ps.

Respondent No.2, Cantonment Executive
Officer in all CPs.

Through Mr. Muhammad Aslam
Chaudhry, Advocate

JUDGMENT

IRFAN SAADAT KHAN, J. The petitioners in all three petitions have prayed for cancellation /quashment of the notices issued by the respondent No.1 dated 02.6.2008 requiring the petitioners to vacate their respective shops within seven days. Since the subject matter of all the three petitions is the same, hence through this common judgment, we propose to dispose of all the three petitions in the following manner.

2. The petitioners are the tenants of Karachi Cantonment Board (hereinafter referred to as "the Board") who have given shops to the petitioners on rent in the years 1959, 1963, 1980 and 1989 respectively however in the year 1992 fresh lease deeds were executed between the Board and the petitioners. Thereafter a resolution bearing No.21(ii)(D

dated 26.07.1992 was passed by the Board wherein it was decided that the tenants of shops opposite to JPMC will reconstruct their shops at their own expense and they will also reduce the area of their respective shops in order to increase the width of the road leading from Askari Road towards the signal at Shahra-e-Faisal passing through Cardio Vascular Institute, Kidney Centre and JPMC for the smooth flow of the traffic. The petitioners agreed to that proposition and the respective shops of the petitioners thereafter were re-constructed and afresh letter dated 01.7.1992 was issued through which the rent of the shops of the petitioners was increased by 20%. It is averred that petitioners have kept their compromise by reducing the area on their respective shops but the Board did not widen the road. It is also averred that though on the one hand the petitioners have reduced the area of their respective shops but on the other hand the respondents have allowed the operation to a CNG station on the same road which has reduced the road by 23 feet. The Board has issued a notice /letter dated 02.06.2008 mentioning therein that since the road is further to be widened; hence, the petitioners were directed to vacate their respective shops as the same have to be demolished for maintaining a smooth flow of the traffic. It is against this notice that the present petitions have been filed.

3. Mr. Hassan Imam advocate has appeared on behalf of the petitioners in all of three petitions and has submitted that the action of the Board is arbitrary, illegal and uncalled for. He submitted that firstly there is no traffic jam on the road in front of shops of the petitioners, which could justify the Board to demolish the shops of the petitioners as the same is being discriminatory in violation of Article 25 of the Constitution of Islamic Republic of Pakistan. While elaborating his view point the learned counsel submitted that it was mutually decided between the petitioners and the Board that if the Board wants the tenants to vacate the shops, one month's prior notice is to be given to the tenants but no such notice was ever given to the petitioners/tenants. He submits that in the impugned letters/notices dated 02.06.2008 the petitioners were required to vacate the shops within a period of seven days which action is mala fide on the part of the Board. He submits that the petitioners are doing their business since quite some time and asking them to vacate the

shops within a period of seven days is violation of the terms of the agreement made between the petitioner and the Board. The learned counsel further submitted that had the Board taken the action as per the rent agreement, the position would have been different but in the instant petitions it is evident that the action of the Board is mala fide and against the terms of the agreement as entered between the petitioners and the Board through a valid rent agreement. He therefore in the end has prayed that the action taken by the Board is not in accordance with law and the notices dated 02.06.2008 issued by the Board may be vacated.

4. Mr. Muhammad Aslam Chaudhry, advocate has appeared on behalf of Board and has refuted the arguments of the learned counsel for the petitioners and has submitted that the action taken by the Board is in accordance with law. He further submitted that the road from Askari Road towards the signal at Shahra-e-Faisal is a very busy road and remains congested during peak hours hence the said notices were issued to the petitioners for vacating the shops within seven days. He was categorically asked a question that whether the said notices were in accordance with law and as per the rent agreement entered between the petitioners and the respondents, no plausible explanation is available with him in the regard.

5. We have heard both the learned counsel at considerable length and have perused the record.

6. It is seen from the record that some discriminatory treatment appears to have been made by the Board with the petitioners and with the CNG stations installed at the end of the road. We specifically directed vide order dated 22.9.2015 to the counsel for the respondents to furnish copies of correspondence made between the Board with regard to factual position of CNG station. However, we noted that in spite of affording opportunity no such correspondence was placed on record. On 07.10.2015 again the counsel for the respondent sought time on the ground that the matter has been referred to Station Commander, Station Head Quarter for his comments and on his request the matter was adjourned to 19.10.2015. However, while passing the order dated 07.10.2015 the counsel was categorically directed that if the relevant documents are not furnished on

the next date the matter would be decided on the basis of the material available on record. It is noted that on 19.10.2015 also counsel for the respondents No.1&2 made his appearance without any document meaning thereby that the counsel for the respondents has no material to dislodge the averments made by the learned counsel for the petitioners, hence the matter is decided on the basis of the material available on the record.

7. It is seen that whatever submissions made in the instant petitions have mostly remained un-rebutted. In the comments filed on behalf of the Board as per para 8 of the comments it has been admitted by the respondents that they are ready to serve one month notice on the petitioners meaning thereby that the respondents have admitted that the notices dated 02.06.2008 issued to them by giving seven days' time only is not in accordance with law. We therefore agree with the submissions made by the learned counsel for the petitioners that the Board should have taken the action in accordance with law and thus allow these petitions and vacate the notices dated 02.06.2008.

8. However, the Board would be at liberty to initiate fresh action against the petitioners, if so advised, but that should be in accordance with law and as per the clauses of the rent agreement entered between the petitioners and the Board. The Board is also directed that while initiating any action against the petitioners no discriminatory treatment should be made with them and their action should be uniform in respect of all the shops on the entire road including the CNG station; if they are to widen the road starting from Askari Road towards the signal at Shahra-e-Faisal.

9. Above are the reasons of our short order dated 19.10.2015 through which we have allowed the petitions. Listed applications are also disposed of accordingly.

JUDGE

JUDGE