

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

Present:

Mr. Justice Muhammad Iqbal Kalhoro J.
Mr. Justice Agha Faisal J.

C.P.No.D-4658 of 2020

Nafees Ahmed ----- Petitioner
Versus

Trustee of the Port of Karachi
Through its Estate Manager and others----- Respondents

Malik Khushhal Khan, advocate for Petitioner.
Ms. Nasima Mangrio, advocate for respondent No.1.

06.04.2022.

ORDER

MUHAMMAD IQBAL KALHORO J: Petitioner was allotted a Plot No.39 measuring 100 Square meters situated at Timber Pond Area, Karachi by Karachi Port Trust Authorities vide allotment order dated 20.11.2012 for a period of one year on temporary basis against certain terms and conditions stated therein. On expiry of conceived term, petitioner was issued a notice u/s 3 of the Port Authorities Lands and Buildings (Recovery of Possession) Ordinance, 1962 (the Ordinance 1962) to vacate the said plot. The petitioner, instead of considering compliance, filed a Civil Suit No.1888/2017 before this Court challenging the notice, but apparently did not succeed to get any interim order.

2. Ultimately, KPT failing to get possession of the plot filed a complaint u/s 3 (a) (3) of the Ordinance, 1962 before learned Civil Judge and Judicial Magistrate-III Karachi West, being Authorized Officer, for the same purpose. Proceedings thereof culminated in a decision dated 31.01.2020 directing the petitioner to vacate the plot within a period of 30 days. The petitioner however preferred appeal against the said judgment u/s 5 of the Ordinance, 1962 which has been dismissed vide impugned judgment rendered on 31.08.2020 by learned Additional District & Sessions judge-X, Karachi West.

3. When the petition was taken up first time in the court on 20.10.2020, petitioner was asked to satisfy about its maintainability. Today we have heard learned counsel for the parties on the same point so also on merits of the case.

4. Learned counsel for petitioner while referring to various case laws (2020 YLR 578, and 2021 YLR 2278) has argued that as no other adequate remedy is available to the petitioner plus so many other petitions of like nature are pending and stay orders are operating in favour of petitioners, the petition is competent. In addition, he has submitted that petitioner has been paying rental charges to KPT which it has accepted without a demur, as such his status is of a lessee and not a licensee. Therefore, the complaint against him was unsustainable and void *ab initio*.

5. Learned counsel for KPT however does not, evident from her submissions, seem to agree with such line of arguments. She states that in law there was only one remedy available to the petitioner to challenge the original order of the learned Magistrate passed u/s 5 of the Ordinance, 1962 which he has already availed and failed. Hence, this petition is not maintainable. She has relied upon 2008 SCMR 428 and unreported order dated 02.04.2019 passed in C.P.No.D-2011 and others of 2019 by this court.

6. We have considered submissions of the parties and perused material available on record including the case law. There is no dispute over the fact that KPT allotted the plot to petitioner as a licensee through an allotment order (Page 31) on temporary basis against certain terms and conditions. This document, in clause 16, stipulates that in case petitioner fails to vacate the land on a notice given as such, then, among others, he would be still liable to pay occupation charges of the land plus mesne profits. Learned counsel for KPT states that charges which the petitioner after the notice of vacating the plot has been paying to KPT is not rental charges but are the charges incurred on him in terms of clause 16 of the allotment order. Petitioner has not filed any document to rebut this position of KPT either before this court or before the forums

below and we have no means to doubt it when it is so clearly provided in the allotment order.

7. But, be that as it may, we want to clarify that while exercising constitutional jurisdiction we cannot proceed to decide a controversy, which has its genesis in facts, and determine whether the petitioner has been paying rental charges or the charges in terms of clause 16 of the allotment order. The controversy before us, for a decision, is whether the jurisdiction exercised by the two courts below is defective and suffers from any illegality. The Ordinance, 1962 envisages entire procedure for KPT to follow for vacating a premises from a licensee/allottee after he fails to respond to the notice issued to him for such purpose. KPT can file a complaint u/s 3 before the Authorized Officer (the Magistrate) for this purpose and this is exactly what KPT did after the petitioner chose to challenge its notice instead of complying with it.

8. In the course of complaint, the learned Magistrate afforded a full opportunity of hearing to petitioner and, after recording all his pleas including one of having filed a civil suit against the notice, decided in favour of KPT and directed petitioner to vacate the premises. When petitioner challenged this decision before the appellate Court, he was again, as a matter of law, given an unhindered chance to present his case. Only after that, the appellate Court, on the basis of scrutiny of material and relevant provisions of the Ordinance, 1962, has decided against the petitioner reiterating the same directions to him. The Ordinance, 1962 provides for remedy of one appeal only u/s 5 to a person aggrieved by an order passed u/s 4 on a complaint u/s 3 by KPT. That remedy petitioner has already availed where he raised all the points which he has said in tautology before us without adding anything substantial to inspire change of mind.

9. On legal front also, petitioner has miserably failed to enthuse confidence and point out any illegality or impropriety in exercise of jurisdiction by both the courts below in deciding the case against him. In view of foregoing, we are of the view that the question as to whether petitioner is a lessee

or a licensee is not before us in *sensu stricto* nor the same can be determined, in isolation, in the proceedings arising out of an appeal deciding right of the petitioner to stay or not in the plot as a licensee. Apart from above, and with all exceptions, we have also noted that this petition has been filed by some Attorney of the petitioner whom he has put into possession of the plot as is reflected from ground No.1 (Page 7 of the file). Clause 12 of the allotment order reads that any assignment or sublicensing of any interest in regard to the land or any part thereof is prohibited. Clause 17 stipulates that in the event of infringement of any one or more of the conditions, temporary allotment would stand cancelled. When we asked learned counsel to explain this flagrant violation of the allotment order and petitioner's status in the wake thereof, he decided to remain content on an evasive reply. On this aspect of the case also, therefore, we find the petitioner in a serious jeopardy to contest the case on merits.

10. We, therefore, in view of above discussion find the petition incompetent both on merits and in law, and dismiss it accordingly along with application, if any pending.

JUDGE

JUDGE

A.K