

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
Suit No.777 of 2022

DATE: **ORDER WITH SIGNATURE(S) OF JUDGE(S).**

1. For hearing of CMA No.8125/2022
2. For orders on Nazir's Report dt. 26/5/2022

27.05.2022

M/s. Jahanzeb Awan and Shahan Karimi, Advocates for the Plaintiff.

M/s. Ashraf Ali Butt and Rehmatunisa, Advocates for Defendants No.2 and 3.

2. Nazir's Report dated 26.05.2022 is taken on record subject to any objection.

Mr. Ashraf Ali Butt, Advocate, has filed Written Statement as well as Counter Affidavit to the injunction application, same are taken on record. Mr. Talha Makhdoom, Advocate, has filed his Vakalatnama on behalf of Defendant No.4 and a Statement along with certain documents, which are also taken on record. Counsel for Defendant No.4 states that matter between Defendant No.4 – Landlord and Defendant No.2, is also *sub judice* before this Court in C. P. No. D – 4551 of 2019, in which, under the Court's order, certain amounts have been deposited with the Nazir of this Court.

1. Learned counsel for Defendants No.2 and 3 has seriously opposed this injunction application and has referred to Section 65 of the Cantonment Board Act, 1924, *inter alia*, that tax although is recoverable from the owner of the property, but in default, it can be recovered from the occupant(s), who then can claim its reimbursement from the actual owner. He further states that interest of Plaintiff is covered under this statutory provision and

secondly, tenant cannot maintain a suit of the nature against a Cantonment Board in respect of the taxation. He has referred to the order passed in number of petitions – C. P. No. D – 4418 of 2019, order whereof is at page-25 of the Written Statement.

Learned counsel for Plaintiff has stated that already Nazir's Report is on record that Plaintiff Bank has discharged its liability under the Tenancy Agreement by making payment of conservancy charges.

Arguments heard and record perused.

It is not disputed position that under the Tenancy Agreement, obligation of payment of property tax is of Defendant No.4, being Landlord, under Clause-4 of the Lease Agreement (*at page-45*). With regard to the contention of learned counsel for Defendants No.2 and 3 about maintainability of present suit, in my considered view, Order, he has referred to, is completely distinguishable. In the present case, Plaintiff has not challenged the authority of Cantonment Board / Defendant No.2 to impose or levy the property tax. The prayer clause also does not question authority of Defendant No.2 – Cantonment Board Faisal for imposition of any tax. The main grievance of the Plaintiff is that without any proper notice, Branch / Premises has been sealed.

Closure of Branch / Premises of Plaintiff is directly linked to commercial activity / trade, which is one of the fundamental rights; which cannot be compromised in the manner as is done by Defendant No.2. No specific statutory provision has been pointed out during arguments to show that Cantonment Board has this specific power to seal the Branch / Premises of the Plaintiff in such a situation. This penal consequence cannot be said to be an implied authority of Defendant No.2, but it has to be expressly mentioned in their parent statute viz. Cantonment Act, 1924.

In view of the above, the Cantonment Board is directed to de-seal the Branch / Premises immediately, that is, today and the generator, purportedly lifted by Defendant No.2, should also be returned to the Plaintiff. However, notwithstanding, to the pendency of petition / litigation between Defendants, the Plaintiff will deposit current demand towards property tax as mentioned in the latest Notice of Demand (*Annexure 'F'*) to the tune of Rs.1,140,104/- with the Nazir of this Court within a week. The said amount will be invested in any some profit bearing scheme by the Nazir and will not be disbursed till further orders.

In view of the above, injunction application [C.M.A. No.8125 of 2022] stands disposed of.

Adjourned.

Riaz / P.S.

Judge