

IN THE HIGH COURT OF SINDH AT KARACHI

C.P. NO.S-309/2019

Petitioner : Pakistan State Oil Company Limited,
through Mr. Khalid Mehmood Siddiqui, advocate.

Respondents : Marine Services (Pvt) Ltd and two others,
Mr. Jaffar Raza advocate for respondent No.1.

Intervener : Aftab Aziz Bachani,
through Mr. Mushtaq A. Memon advocate.

1. *For hearing of CMA No.81/2021.*
2. *For hearing of CMA No.3788/2020.*
3. *For hearing of CMA No.1488/2019.*
4. *For hearing of CMA No.1096/2019.*
5. *For hearing of main case.*

Date of hearing : 2nd and 8th February, 2021.

Date of announcement: 8th March, 2021.

J U D G M E N T

SALAHUDDIN PANHWAR, J. Briefly stated, facts of the case are that the applicant/respondent No.1 filed the rent application under section 15 of the Sindh Rented Premises Ordinance, 1979 for eviction of opponent/petitioner, contending that the Marine Services (Pvt) Ltd. was established in 1976 along with terminal handling Company to provide professional agency services and integrated system of cargo operation represented by Muhammad Masood Ahmed Usmani through Board Resolution dated 17.03.2015; that petitioner is Karachi based Pakistani State Owned Multinational Petroleum Corporation involved in marketing and distributors of petroleum products; that respondent is owner of the subject property by virtue of lease deed dated 02.01.2014 for a period of 20 years and respondent entered into an agreement with the petitioner through sub lease deed dated 10.07.2000 to grant the lease of the property for a period of 05 years in favour of petitioner for installation and operation of the petrol pump; that petitioner is tenant in respect of said property and since 10.07.2000 the appellant installed the petrol pump; that above sublease deed expired on 31.12.2004 and no new sub

lease deed or agreement has been executed between the parties, therefore, the property to date is illegal; that the appellant has also defaulted in payment of rent since more than 02 years from 01.10.2012 to date and still continued and such acts are contrary to the arrangement between the parties and all applicable rent laws therefore, they are liable to be ejected from the tenement; that respondent also requires the case premises for its own personal bonafide use, hence they prayed that:

- (i). To direct the opponents to give peaceful and vacant possession of the property to the applicants on the grounds mentioned in the instant application.
- (ii). To direct the opponents to pay the arrears of rent to the applicants.
- (iii). Cost of the proceedings. .
- (iv). Any other relief that this Hon'ble Court may deem fit and proper in the circumstances of the case.

2. Petitioner denied the allegations of respondent No.1 before the courts below including relationship of landlord and tenant between the parties. It was contended that parties had executed rental lease agreement for a term of five years vide registered sub lease deed dated 10.07.2000 which was extendable for further fifteen years subject to renewal of head lease from KMC in favour of respondent, since the head lease has been renewed and the respondent raised no objection after completion of 5 years period and continued to accept rental up to December 2013 on the basis of registered sub lease deed thus the sub lease deed, has automatically been extended for complete 20 years up to 31.12.2019 and the respondent is bound by the terms and conditions as cited in the said lease agreement till its expiry; that ejection application was filed on false and vexatious ground in order to dispossess the petitioner from business place by hook or crook and same is clearly hit by section 17 of SRPO, 1979; that the dispute of whatsoever nature

raised on any account between the lesser and lessee, (respondent and petitioner) the same is to be referred for arbitration to the General Manager of petitioner company or his nominee or company's designated officer, whose decision shall be final and binding upon the parties; that rent application was baseless and misconceived having been filed on whimsical grounds; petitioner is a sub-lessee of plot No.PPS-07 (PROV) CL-1(Previously CL-2) Civil Lines Quarters, admeasuring 532 sq. yards at Ziauddin Ahmed Road, near Jinnah Court, Karachi, whereupon a petrol pump namely "STERLLING FILLING STATION, was installed by the petitioner and respondent company is the sub-lessor in respect of said premises vide registered sub lease deed dated 10.7.2000, having registered No.2109, MF Roll No.U-21010/193 dated 19.07.2000 initially executed for five years mandatorily extendable for further 15 years at monthly rent of Rs.20,000/- with five years' advance rent amounting to Rs.12,00,000/- with to 10 percent increase after every five years; that sub lease-deed between the parties was extendable for next 15 years subject to renewal of head lease by KMC and KMC has renewed /extended the sub lease for further 20 years vide lease deed dated 02.01.2014 hence sub lease between the parties before the court has been automatically extended for complete 20 years upto 31.12.2019. It was further contended that there is no relationship of landlord and tenant between the parties, instead it is of lesser and lessee, governed by sub-lease dated 10.07.2000; petitioner company through its predecessor has been in possession of the plot since year 1956 and has made huge investment over the plot where they are operating the fuel pump; that respondent had never asked the petitioner to vacate the rented premises nor they refused to accept the lease rentals being paid by petitioner after 31.12.2004 and lease rental up to 31.12.2013 was accepted on the basis of said sub lease deed and no default has been made by petitioner; that as per agreed terms pursuant to

sub lease deed the lease rentals in advance for the period from January 2014 to December, 2014 vide cheque No.6698368 dated 03.01.2014 and lease rent in advance for the period from January 2015 to December, 2015 vide cheque No.06713475 dated 05.01.2015 at the mutually agreed rate of lease rent was sent to the respondent but they refused to accept the same with malafide intention and ulterior motive to create a ground of default vide their letter No.MSL-PS0/0115/15 dated 15.01.2015 and demanded therein an exorbitant lease rent of Rs.5 lac per month which is absolutely illegal, illogical and unjustified. It is next stated that the respondent has no ground or basis to discontinue the tenancy with the appellant thus the appellant was left with no option but to approach to deposit lease rentals in the competent court to save their skin from technical default and deposited up to date lease rentals in the name of respondent's company in MRC 307/2015 hence petition is liable to be dismissed.

3. Heard the respective parties; perused the record *carefully*.

4. Learned counsel for petitioner has referred various documents with the plea that appellate court failed to discuss the evidence brought on record by the tenant. He has referred some portion of evidence with regard to admission of landlord that landlord is not a dealer of any petroleum company. According to learned counsel that this is not an ordinary case of personal bonafide need wherein landlord can take plea of his personal use but here the demised premises is a fuel station hence question of personal bonafide need is important but that aspect was not considered by the appellate court. Since petitioner is an oil company and dealership is with the intervener who preferred application under order I Rule 10 CPC before the trial court but same was dismissed hence he failed to challenge the same. Learned counsel for respondent has taken plea that intervener failed to

challenge the order passed by the trial court hence he has no right to be heard at this stage of writ jurisdiction. Whereas learned counsel for intervenor contends that necessary or proper party can be heard at any time and writ jurisdiction is completely independent; this court has ample power to allow intervenor as he will suffer loss; besides intervenor has filed application contending therein that lease in favour of respondent is no more in existence as same has been cancelled by the KMC.

5. In response to claim of the *intervener* to be '**necessary party**' under plea of his being '**dealer**', it would suffice to refer the relevant portion of the judgment (authored by me) in the case of (*Shahi Syed vs. Total Parco Marketing Limited and another*) Suit No.920/2015 as the same in details answer to such position. The relevant portion reads as:-

"..... The *litigation* (ejectment proceedings) between defendant No.1 and defendant No.3 has *admittedly* ended in favour of the defendant No.3, therefore, the plaintiff *legally* cannot seek an exception to such earned right of defendant No.3 merely by referring to his status of '**dealer or operator**'. No suit shall sustain against a *person* unless it is *prima facie* established that one (*plaintiff*) has an *independent* legal character against such person nor *legally* one can keep an earned right with reference to act or omission of some other person else a *lis* shall never serve its purpose and object which otherwise is meant determination of right through *judgment* and enforcement of such right through *decree*. In the instant matter, it is not a claim of the plaintiff that he (*plaintiff*) ever entered into any direct agreement with defendant No.3 but his all claims, rights and interests are under or through defendant No.2 which too to the extent of '**dealer & operator**' hence present plaintiff was / is to sail or sink with defendant No.2. One *legally* cannot escape the principle of '**sail or sink**' if he / she, as the case may, has no direct relation with the *owner* but claiming under lessee / tenant, purchaser or *licensee* even nor he / she can claim a legal proceeding to be not binding merely for reason of his / her impleading because, these persons, without any hesitation, do not normally qualify the term '**necessary party**'. In the case of *Pakistan Burmah Shell Ltd. v. Khalil Ahmed* (PLD 1996 Karachi 467) it was held that:

'The applicant cannot claim to be tenant or sub-tenant or sub-lettee even if he is a dealer of the appellants he has no right to be added or impleaded in the ejectment proceedings which initiated between the appellants and respondents i.e landlord and tenant'.

In another case of *Pakistan State Oil Company Ltd. v. Sikander A. Karaim & others* (2005 CLC 3), it is held that:

*'12. No doubt, the lease agreement did permit the tenant to sublet the demised property **yet there was no privity in between the landlord and the sub-lessee. The sub-lessee got the lease***

from the lessee / tenant, therefore, he could not be acknowledged as co-tenant. It was rightly argued that the sub-lessee has to sail or sink with the tenant.'

The above legal principle is sufficient to hold that order to extent of dismissal of claim of the '*intervener*' as '**necessary party**' was rightly declined.

I would further add that plea of '**cancellation of lease of the landlord/respondent**', so raised by petitioner, is also of no legal help in advancing its (petitioner's) case because the petitioner, nowhere, denied its induction into premises by the respondent / landlord rather the petitioner admits status of the respondent / landlord by making claim of payment of the rent / lease money. I would add that subsequent cancellation of the lease shall never be an excuse for the tenant to claim any other right and entitlement which he / she, as the case may be, agreed by him / her while his / her induction into *premises* as '**tenant**' because in '**rent matters**' the title and legal character are never decided but scope thereof is limited to affairs between '**landlord & tenant**'; particularly where such cancellation is pending adjudication. Reference is made to the case of *Liaquat Ali v. Fayasuddin* (2020 SCMR 1816) wherein it is held as:-

"4. In the first place we note that the ground urged, by learned ASC for the petitioner before us was not urged before the High Court as we do not find any discussion on it in the impugned judgment. Be that as it may, we have noted that the High Court has proceeded to decide the case on the premises that admittedly the petitioner was inducted in the premises as tenant by respondent No.1 and such dispute between respondent No.1 and Evacuee Trust Property Board was in litigation, by cancellation of PTD, the relationship of landlord and tenant between respondent No.1 and petitioner could not cease as it will continue. We agree with the reasons assigned by the learned Judge for non-suiting the petitioner, as learned ASC for the petitioner was unable to show us any illegality in the findings of learned Judge in the impugned Judgment. So far the question of application of section 3 of the Ordinance is concerned, we are not at all persuaded to agree with the submission of learned ASC as admittedly the petitioner was inducted as tenant in the demise shop by respondent No.1 who was owner at that time and although the PTD in favour of respondent No.1 may have been cancelled but this fact alone is not sufficient to make the petitioner tenant of Evacuee Trust Property Board for that matter regarding cancellation of PTD is in dispute between respondent No.1 and

Evacuee Trust Property Board and pending before the relevant forum. In view of the above, the petition is dismissed and leave refused."

Needless to mention that with regard to cancellation of lease it has come on record that such civil litigation is pending, hence such plea is of no help for the petitioner. I would also add that plea of non-existence of relationship of landlord and tenant is also misconceived which, per record as well conduct of the petitioner / tenant, including that of payment of rent / lease money, was rightly answered.

6. Now, I would take up another plea, so raised by the learned counsel for the petitioner, to the effect that issue of personal *bona fide* need was not properly attended by the two court (s) below because while making adjudication on such issue the status of the *premises* as 'PP (petrol pump)' was never appreciated. The perusal of the record shows that status of the *premises* is undeniably one as 'PP (petrol pump)' hence the same, *legally*, can't be used for any other purpose except the one for which it is mandated by the 'lessor'. I would insist that though *legally* the landlord is not required to give detail (s) of the business which he / she, as the case may be, likes to open / run and that it is also prerogative of the landlord to choose one of the *premises* out of available number of properties on rent but such principles, I would add, shall be available for ordinary *premises* only which, one to remember, is not the case in instant matter. None would take an exception that the burden to prove *personal bona fide need* was / is also the duty and obligation of the landlord which he / she, as the case may be, shall stand discharged in the manner, as provided by law which is reiterated in the case of Pakistan Institute of International affairs v. Naveed Merchand & Ors (2012 SCMR 1498) as:-

“10. The claim of appellant as regard their personal need, when examined on the basis of their word to word pleadings in paragraphs Nos.4 and 5 of the rent application and the affidavit in evidence of their witness leaves no room for doubt open for discussion on the subject of their choice and preference which has already come on record and remained un-shattered and un-rebutted from the side of respondents Nos.1 and 2. In these circumstances, subsequent developments which might have been relevant in some other cases are of no help to improve the case of respondents Nos.1 and 2 before the High Court in exercise of its jurisdiction under Article 199 of the Constitution. It will be nothing, but reiteration of settled legation position that the statement on oath of the landlord as regards claim of their / his personal need un-shattered in cross-examination and un-rebutted in defence evidence is to be accepted by the Court as bona fide. Moreover, the choice lies with the landlord to select any of the tenement for his personal need and for this purpose the tenant or the Court have no *locus standi* to give their advice for alternate accommodation.”

7. Here, it is also worth to refer that the burden in proving a claim has been lightened for landlord in proving the *personal bona fide need* because of the protection, available to a tenant, within meaning of the Section 15-A of the Ordinance, therefore, when the *premises* under proceedings is not the one of **ordinary nature** then the landlord would always require to prove his / her claimed *personal bona fide need* with reference to specific use and nature of the premises. I therefore find substance in such *plea* of the petitioner. I have also examined the adjudication on such *issue* which, for sake of convenience, is reproduced hereunder:-

“16. As far as the findings of the learned Rent Controller on point of personal bonafide need is concerned. It may be observed that the learned Rent Controller through impugned order also allowed eviction of the appellant/tenant on the ground of personal requirement of the demised premises by the respondent/landlord, which has been challenged by the former in this appeal. On this point, it was claimed by the respondent/landlord that demised premise is required to them for their personal bonafide need. Whereas, the appellant/tenant denied such version of the respondent/landlord and contended that same is baseless, fake, false and misleading as the subject plot falls in 'PP" (Petrol Pump) category which was leased by KMC to the respondent/landlord for the purpose of installation of petrol pump only, and any business activity other than petrol pump could (not) be established and operated thereon. The burden of proof lay on the shoulders of the respondent/landlord that the demised premises required for personal use in good faith. On evaluation of evidence of the respondent /landlord, it is revealed that same remained un-shaken & un-shattered owing the fact that nothing has been brought on record

under which it could spelt out that the version of the respondent/landlord tainted or based upon any mala fide intention. What to speak of any malice in the claim of the respondent/landlord concerning personal requirement of demised premises, the own representative/witness of the appellant during his cross-examination categorically admitted that the respondent/landlord had approached to the appellant/tenant **for the dealership of the said petrol pump so much he also admitted that respondent/landlord is required the premises for his personal bona fide need.** In such a situation, there are number of verdicts of the Hon'ble apex Courts that if the statement of the landlord remains un-shaken on the point of personal need of the demised premises, same should be believed. Reliance is placed on 1995 SCMR 1125. As per Section 15 (2)(vii) of Sindh Rented Premises Ordinance, 1979, the landlord/owner is under obligation to prove the ground of personal requirement in good faith. The version of the respondent/landlord regarding the personal bonafide need of the demised premises has been found un-shaken. There was no substantive valid evidence that the demand of the landlord in respect of the demised premises is malafide or for some motivated purpose. Even otherwise, the Sindh Rented Premises Ordinance, 1979 has specifically provides the remedy under Section 15-A to the tenant that where the landlord who has obtained the possession of a building under Section 15(vii) of the Ordinance, re-lets the premises to other person, or put it to a use other than personal use, the tenant will be entitled to get the possession restored to him. In absence of the any concrete evidence no resumption would be drawn that the claim of the landlords/owners for personal use of the demised premises is un-fair and not in good faith. The Rent Controller in the impugned order has properly appreciated the material on the point of the personal use of the landlord/owners according to law, required no interference."

8. The perusal of the above, *prima facie*, shows that the plea *did* was mentioned but nothing was referred in details for accepting the claim of the landlord/ respondent which, otherwise, was necessary to accept the plea of *personal bona fide need* of the landlord / respondent for such like premises, meant for '**PP petrol pump**'; there is claim of non-appreciation of the record and material with reference to specific nature of the *premises* therefore, I find it in all fairness that parties should have a fair and proper opportunity to prove their *respective* claims whether it be in nature of '*for* or *against*' as such right is guaranteed and protected by Article 10-A of the Constitution. Therefore, without going into much details, because of any prejudice onto merits of case, I deem it fit that this is a case of remand hence instant petition is allowed, impugned judgment is set aside with direction to the appellate court to decide the issue of personal bonafide need as fresh after hearing the

parties and referring all documents and evidence, preferably within **two months**. Accordingly instant petition is allowed. Listed applications are disposed of.

J U D G E

IK