

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

SUIT NO. 1222 OF 2008

Plaintiff : Shah Muhammad, through Syed Sultan Ahmed, Advocate.

Defendant : Export Processing Zones Authority, through Mr. Khadim Hussain, Advocate

Date of hearing. : 30.04.2018.

J U D G M E N T

YOUSUF ALI SAYEED, J - The Plaintiff has brought this suit claiming damages/compensation as against the Defendant on the basis of allegations of wrongful dispossession from Plot No. 15, Sector C-VII, measuring 1000 square meters (the “**Subject Premises**”) situated within the Karachi Export Processing Zone (the “**KEPZ**”), as well as for misappropriation of the property from the Subject Premises by the Defendant’s personnel.

2. The case of the Plaintiff is that in terms of a letter dated 17.01.2003, the Defendant sanctioned the use of the Subject Premises by the Plaintiff for carrying on the business of importation, reconditioning/rebuilding and subsequent re-export of transportation and construction machinery under the name and style of ‘Achack Enterprises’, following which a General Agreement dated 28.01.2003 was executed between the parties in relation to the Subject Premises and the Plaintiff was granted a 30-year lease in respect thereof, but although the underlying terms and conditions encapsulated in such documents did not prescribe any condition as to export targets, the Defendant subsequently sought to impose the same upon the Plaintiff and, on the pretext of the Plaintiff’s

failure in that regard, issued an Order dated 22.11.2007 purporting to cancel the sanction granted to the Plaintiff in respect of the Subject Premises, and thereafter sealed the same on 20.08.2008 at approximately 1:30 PM, during the absence of the Plaintiff, when the Defendant's representatives allegedly assaulted members of the Plaintiff's staff and took away the Plaintiff's safety deposit box containing USD50,000/- and PKR1,500,000/- in case, as well as 5 laptop computers and other business machinery and records.

3. It is said that the Plaintiff addressed the Defendant on the matter vide letter dated 21.08.2008, but whilst the Plaintiff's employees were subsequently released (date and particulars unspecified), the Defendant refused to return the Plaintiff's money and property and, vide letter dated 22.08.2008, denied the assault/confinement of personnel or misappropriation /seizure of property and also took the position that the dispossession of the Plaintiff was lawful, hence the instant Suit, whereby it has been prayed that the Court:

- (a) Declare that the Plaintiff is the lessee of Plot No.15, Sector C-VII, Karachi Export Processing Zone, admeasuring approximately 1000 square meters and is in lawful possession of the same;
- (b) Restrain the Defendant from interfering with the Plaintiff's quiet possession of the said Plot and causing harassment and obstructions to the Plaintiff's business activities thereupon and order the Defendant to remove its locks from the gates of the said Plot;
- (c) Direct the Defendant to restore electricity and gas connection to the said Plot;
- (d) Declare that the Defendant's purported cancellation order dated 22.11.2007 is illegal, malafide, void ab initio and of no legal effect;

- (e) Direct the Defendant to restore the Plaintiff's safety deposit box together with all its contents including US\$ 50,000/- and Rs.1,500,000/- in cash, 5 computer laptops and the Plaintiff's business, machinery and vehicular documents and records;
- (f) Grant damages of Rs.10,000,000/-;
- (g) Grant costs of the suit;
- (h) Pass such further/additional order as may be necessary or expedient.

4. The Defendant entered appearance through counsel and filed its written statement wherein it was submitted that the Plaintiff had violated the terms and conditions of the General Agreement dated 28.01.2003 and failed to abide by the applicable binding directives, notifications and SRO's of the Customs Authorities and Federal Board of Revenue and the allegations of assault, detention and misappropriation were denied.

5. On 11.05.2017, out of the respective pleadings, the issues were settled as follows:

1. Whether the Defendant allot a Plot No.15, Sector C-VII measuring 1000 square meter to the Plaintiff and executed an agreement on 28.01.2003 for establishment of an Engineering Unit?
2. Whether the Defendant granted lease of subject Plot for 30 years and Plaintiff obtained NOC from Defendant to export some dumper vehicles?
3. Whether on 26.08.2007, the Defendant published a public notice for cancellation of the Plaintiffs' plot illegally on account of alleged failure of export commitments?

4. Whether the Defendant took away the valuable office record on 20.08.2008 alongwith US\$50,000/- and Rs.1,500,000/- in cash?
5. Whether the Plaintiff suffered losses till 24.04.2017 in his business US\$ 2,370,000/- due to illegal obstructions from the Defendants?
6. Whether the Plaintiff served number of letters alongwith letter dated 24.04.2017 on the Defendant wherein detail of damages is explained?
7. What should the decree be?

6. Evidence was recorded on Commission, during the course of which the Plaintiff and his supporting witnesses, namely Muhammad Irfan and Syed Adil Ahmed, filed their respective Affidavits-in-Evidence and were cross-examined accordingly, whereas the representative of the Defendant, namely Misbahur Rehman Jawad was firstly examined orally by counsel for the Defendant and then cross-examined by Plaintiff's counsel.

7. In support of his Affidavit-in-Evidence the Plaintiff inter alia produced copies of the terms of the original letter dated 17.01.2003 addressed by the Defendant, and photocopies of the General Agreement dated 28.01.2003 was executed and the Lease Deed, as well a Public Notice issued by the Defendant in the daily newspaper 'Jang' on 26.08.2007 regarding the cancellation of the sanction in respect of the Subject Premises, as well as various letters addressed by the Plaintiff to the Defendant.

8. Learned counsel for the Plaintiff broadly contended that the Plaintiff had a vested right to peaceable use and enjoyment of the Subject Premises in terms of the General Agreement and Lease, and had been deprived thereof as well as of his movables by the act of the Defendant, which, per learned counsel, constituted an actionable wrong compensable in damages as well as vide restoration of possession.

9. Conversely, learned counsel for the Defendant refuted the contention that the action taken by the Defendant was unjustified, and drew attention to Clause 1 of the General Agreement wherein it was stipulated as follows [**Sic**]:

“THAT THE INVESTOR AGREES TO ABIDE BY THE PROVISIONS OF ALL LAWS, RULES, REGULATION, BEY-LAWS AND TERMS AND CONDITION APPLICABLE TO EXPORT PROCESSING ZONE AT KARACHI.”

10. It was submitted by learned counsel for the Defendant that the Plaintiff had failed to comply with the prevailing rules and regulations, particularly SRO No.461/1(1) dated 12.06.2004 issued by the Federal Board of Revenue (the “**FBR**”), amending Rule 228 of the Customs Rules 2001, as applicable to Export Processing Zones, whereby the units within such Zones, including the KEPZ, were required to export at least 80% of their total production, and that the steps taken as against the Plaintiff as per the Public Notice of 26.08.2007 and the action that ensued were predicated on the said SRO due to the repeated failure of the Plaintiff to adhere to the dictates thereof.

11. Having considered the arguments advanced at the bar and examined the material on record in light thereof, the findings in relation to the Issues are as follows herein below.

12. As regards the issues arising for determination there appears to be no denial that the Defendant allotted the Subject Premises to the Plaintiff and executed the General Agreement dated 28.01.2003 in respect thereof followed by a lease. As such, Issues Numbers 1 and 2, as aforementioned, are answered in the affirmative to that extent.

13. As to Issue Number 3, there is also no dispute that a public notice towards cancellation of the sanction in respect of the Subject Premises was published on 26.08.2007, and the only question that remains is whether the issuance thereof and steps taken in pursuance were illegal, as averred by the Plaintiff, or justified and supported by due cause, as contended by the Defendant. In this regard, it merits consideration that the stance of the Plaintiff is that the action taken by the Defendant was on the basis of the Plaintiff's alleged failure to meet export targets when no such targets were prescribed or imposed in relation to the Plaintiff's occupation and use of the Subject Premises, whereas the contention of the Defendant is that the occupation and use of the Subject Premises was subject to adherence to all prevailing rules and regulations applicable to the KEPZ from time to time, including the relevant circulars and notifications of the FBR.

14. In that the regard, the evidence of the Defendant's witness cites SRO No.461/1(1) dated 12.06.2004 issued by the FBR, as referred to by counsel and mentioned herein above, whereby the units within the KEPZ were required to export at least 80% of their total production, and it was clarified by the witness that the sanction in favour of the Plaintiff had been restored by the Defendant subject to compliance with the said SRO and that the Defendant had in fact offered the Plaintiff an out of Court settlement on that basis, which could not bear fruit due to the Plaintiff's lack of compliance. Indeed, Paragraph 4 of the Written Statement of the Defendant also clearly indicates such a stance and supports the contention of the Defendant's witness, and learned counsel for the Defendant stated that the Defendant remained willing to permit the Plaintiff to resume its operations subject to the Plaintiff's adherence to its obligations and compliance with relevant laws, rules and regulations. However, conversely, learned counsel for the Plaintiff submitted that the Plaintiff was not ready to merely accept restoration of the sanction in the absence of damages and adjustment of losses and waiver of ground rent, and also filed a Statement to that effect on behalf of the Plaintiff.

15. As regards Issues Numbers 4 and 5, it merits consideration that in respect of the alleged incursion by the Defendant on the Subject Premises, the Plaintiff states that he had knowledge thereof through an employee, but does not name such person. Furthermore, he states that he, along with two other employees, namely Irfan and Adil, then reached the Subject Premises and saw that the Defendant's officials had placed their own lock. Whilst it is alleged that three employees

of the Plaintiffs company were picked up and forcibly taken away by the Defendants security staff, none of those persons was produced as a witness. On the contrary, the only other witnesses were Irfan and Adil, each of whom filed an identical affidavit-in-evidence, but only to the extent of stating that a phone call was received by the Plaintiff on 20.08.2008 at 12:30 PM, allegedly informing him of an incident at the KEPZ involving the Defendant's staff as well as misappropriation of property. Needless to say, neither of these witnesses had themselves engaged in the telephonic conversation or had any empirical knowledge of the alleged incident, and it is evident that their testimony in that regard was merely hearsay based on what they were told by the Plaintiff. The failure to produce the persons who were allegedly present during the time of the incursion and who allegedly detained by the Defendants officials also serves to cast some further doubt on the matter. It has also been stated that on more than one occasion the defendant made overtures to the plaintiff in an endeavour to amicably resolve the matter and offered a sum of US dollars 1,700,000 as compensation as well as waiver of the rent for a period of 10 years, but that such offer was not accepted by the plaintiff. However, other than the bare assertions made in the affidavits-in-evidence, no positive proof as to misappropriation, loss or damage was brought on record, either by the Plaintiff or supporting witnesses. Furthermore, in terms of the written statement, it had been represented by the Defendant that the plaintiff could resume possession of the plot and recommence his activities subject to compliance of the prevailing rules and regulations, and the evidence of the Defendant's witness is consistent on this aspect. As such, it even otherwise cannot be said that the Defendant was responsible for the plaintiff's continued divestiture from the property, so as to support a claim for ensuing damages on account of protracted ouster. Accordingly, Issues Numbers 4 and 5 remain unproven.

16. Turning to Issue Number 6, it is noteworthy that the letter dated 24.04.2017 mentioned therein is a letter purportedly addressed by the Plaintiff to the then Prime Minister of Pakistan and copied to other state functionaries, as well as to the Chairman of the KEPZ. Whilst earlier letters purportedly sent by the Plaintiff to the KEPZ in respect of the matter were placed on record, it merits consideration that the Plaintiff's exposition of the dispute, as contained in such letters, cannot be considered as proof of its contents and probative as to the subject of damage, hence of little or no material bearing on the matter, especially in the absence of corroborative evidence, as aforementioned.
17. In view of the foregoing observations and findings, it is apparent that the Plaintiff has failed to make out a case so as to demonstrate an entitlement to restitution of movables or damages, as claimed. However, in view of the Defendant's own assertion that the Plaintiff may resume its operations subject to adherence to its obligations, it is accordingly directed that the Plaintiff may resume its operations at the Subject Premises for the remaining period under the 30-year lease, subject to fulfilment of its obligations thereunder as well compliance of its obligations in terms of the General Agreement and the relevant laws, rules and regulations applicable to the KEPZ, including the relevant Circulars and Notifications of the FBR. The suit is decreed in the foregoing terms. There is no order as to costs.

JUDGE

Karachi
Dated _____