

HIGH COURT OF SINDH, KARACHI

C.P No.S-126 of 2014

PRESENT:

MRS. JUSTICE KAUSAR SULTANA HUSSAIN

M/s Herbertsons Pakistan Pvt. Ltd

Vs.

*The IIIrd Rent Controller & Senior Civil Judge Karachi (West)
& Others*

Petitioner: through Mr. Iftikhar Javed Qazi advocate

Respondent No.3: through Mr. S. Adnan Iqbal advocate

Date of Hearing: 20.02.2018

Date of Judgment: 18.05.2018

JUDGMENT

KAUSAR SULTANA HUSSAIN, J. The petitioner has impugned orders dated 06.02.2013, 29.11.2013 and 31.10.2009 of learned 3rd Rent Controller & Senior Civil Judge, Karachi (West) in Execution No.02/2010 & Rent Case No.60/2006, whereby, writ of possession was ordered to be issued in pursuance to directions given to the petitioner to handover vacant possession of the premises in question to the respondent No.3. The petitioner has also challenged judgment dated 25.11.2011 of learned IIIrd Additional District Judge, Karachi (West) passed in First Rent Appeal No.77/2010.

2. Relevant facts necessary for disposal of instant constitution petition are that the respondent No.3 M/s Adamjee Engineering Pvt Ltd previously registered in the name and style of Guest Keen & Nettlefolds Pakistan Ltd on 16.02.2006 had filed eviction application against the

petitioner M/s Herbertsons Pakistan Pvt Ltd under Section 15 of the Sindh Rented Premises Ordinance, 1979 on the ground of bonafide personal use. The case of the respondent No.3 is that they are the lessee of KPT with regard to Plot No.28 West Wharf Road, Karachi and in the year 1962 let out Bay No.03 constructed on the said plot to the petitioner through a written lease agreement dated 30.06.1962, subsequently, with the consent of both the parties, the petitioner was shifted in Bay No.01 of the same plot so much so on same terms and conditions of tenancy. At present the monthly rent of the said tenant is Rs.10,000/- per month. Prior to this, the respondent No.3 had instituted eviction proceedings against the petitioner on the ground of conversion of the said warehouse into a Wine Shop/Bar, resulting in causing great nuisance to adjoining offices/tenants and occupants, being Rent Case No.122/2002 before the Rent Controller, but the matter was dismissed on some technical grounds vide order dated 29.05.2002. The respondent No.3 has claimed that apart from engineering manufactures they are reputed exporters and importers of engineering components, accessories and raw material, for which they need the rented premises for their personal bonafide use in good faith to be used as site office/Godown/Warehouse as it is most convenient and fit for that purposes being very close to Karachi Port. The petitioner resisted the claim of the respondent No.3 by filing written statement. They admitted being tenant in the premises, however, denied the personal used as claimed by respondent No.3. According to the petitioner earlier the respondent No.3 had filed eviction application bearing Rent Case No.122/2002, which was dismissed and now the later has taken plea of personal need which is based upon malafide and they just want to evict the petitioner by hook or crook with a sole purpose to re-let the rented premises on higher rent after getting it vacated from petitioner.

3. As per record, both the parties led their evidence, thereafter, the learned IIIrd Rent Controller, Karachi (West) allowed the eviction application under section 15 of Sindh Rented premises Ordinance, 1979 vide order dated 31.10.2009. Being aggrieved, the petitioner preferred First Rent Appeal No.77/2009, which was dismissed by learned IIIrd Additional district Judge, Karachi (West), vide judgment dated 25.11.2011 and finally the learned trial Court allowed execution application bearing No.02/2010, vide order dated 06.02.013, resulting issuance of writ of possession followed by issuance of writ of possession with police, vide order dated 29.11.2013.

4. It is noted that petitioner being aggrieved with all the orders, referred in the very foregoing para, preferred instant constitution petition on single point concerning the jurisdictional error floated in the impugned orders that subject premises being property of Karachi Port Trust having exempted from application of provisions of Sindh Rented Premises Ordinance, 1979 in view of Notification No.VIII(3)501/75 dated 15.03.1981 issued by Government of Sindh.

5. Being adverting to the above question of law raised by the petitioner, it is necessary to justify the contentions of the respondent No.3 as to the maintainability of the instant constitution petition. Learned counsel for the respondent No.3 submitted that Manager of the petitioner's Company was not authorized person and no resolution has been shown. This contention was being refuted by the leaned counsel for the petitioner while pointing out extract from the minutes of the meeting of the Board of Directors of Herbertsons Pakistan (Private) Limited held on 02.11.2009 available on record. Careful examination of such resolution explicitly mandated Mr. Santosh Kumar to act on behalf of the petitioner Company in relation to Rent Case No.60/2006 as well as appeals arising out of that said matter, upto the level of Hon'ble Apex Court. Therefore,

the contention of the learned counsel for respondent No.3 has no weight and without substance.

6. It was contended by the learned counsel for the respondent No.3 that impugned orders passed by respective forums on 31.10.2009, 25.11.2011 and 06.02.2013 in Rent Case, First Rent Appeal and Execution Application, respectively, whereas this constitution petition has been preferred after about 02 years of eviction order of Rent Controller as well as dismissal of First Rent Appeal, as such hit under limitation Act. He further submitted that the petitioner neither took the plea of laches of jurisdiction before the Rent Controller nor at the stage of First Appellate Court. He has further submitted that ignorance of law is no excuse and the plea so taken at this stage is suffering from principle of laches, while confronting with the said submissions, the learned counsel for the petitioner has argued that through instant constitution petition, the question of law has been urged, which directly fetters the entire proceedings conducted by the Rent Controller as well as appellate Court. He further argued that under constitutional jurisdiction provided to this Court to entertain such petition regarding question of law irrespective of the time limits or ever even raised at a first time. Having considered the submissions advanced by the learned counsel for the petitioner, I have carefully examined the record. It may be mentioned here that in cases reported in 2004 SCMR 1947 and 2005 SCMR 1388 it has held that when a Court suffers from want of inherent jurisdiction, no amount of consent or acquiescence in the proceedings can invest such Court with such jurisdiction and no question of waiver or estoppel is attracted in such circumstances. In another case reported in 2006 YLR 2399 Lahore, it was held that question of law not raised before the Court below, can be taken up at any time and there is ample power vested in High court under section 115 CPC to pass any order which, in the circumstances of the case,

is required by the law. In case reported in PLD 2007 Lahore 507, it was held that constitution petition is maintainable where order is without jurisdiction. In another case reported in 1999 MLD 268 Supreme Court AJ&K, it was held that when injury complained of a continuing wrong, mere delay in filing the writ petition did not justify to stay hands from going into the merits of the petitions and decide the same on merits. To be true the question of law so brought in this constitution petition was neither taken before the Rent Controller, nor raised before the appellate forum, yet in view of the verdicts/observations of the apex Court highlighted above, it is settled principle that a question of law, if not taken before the Courts below, can be adjudicated and question of waiver, estoppel or limitation not attracted. Since instant constitution petition is only revolves around question of law, as such there appears no reason to discard the same on technicalities.

7. Coming to the point at issue the learned counsel for the petitioner at the time of arguments, in fact, has not seriously challenged the findings of the learned Rent Controller as well as appellate Court on the point of personal bonafide use, but laid much emphasis on the plea that the property being of K.P.T the proceedings could not be initiated before the Rent Controller. Precisely stated the argument is that since the Government of Sindh vide its Notification No.VIII(3)501/75 dated 15.03.1981 had exempted the properties belonging to K.P.T from application of the provisions of the Sindh Rented Premises Ordinance, 1979, therefore, Rent Controller as well as appellate Court could not proceed with the matter and all the proceedings right from the beginning were illegal and without any lawful authority.

8. Conversely the learned counsel for respondent No.3 has made vehement opposition to above contention and argued that tenant in question has no nexus with Karachi Port Trust, it was sub-leased to the

respondent No.3. He has further argued that tenement in question was let out to the petitioner by the respondent No.3 and no exemption as provided in the referred notification available to tenancy between the parties.

9. Much emphasis is on Notification dated 15.03.1981, Government of Sindh, same is reproduced for ready reference:

“No.VIII(3)501/75- In exercise of powers conferred by sub-section(2) of section 3 of the Sindh Rented premises Ordinance, 1979 and suppression of all orders issued previously, the Government of Sindh are pleased to exempt the premises belonging to Karachi Port Trust, Karachi from the application of the Sindh Rented premises Ordinance, 1979.”

10. It would be advantageous to quote the section 3 of the Ordinance, 1979, which speaks about its applicability, which is as follows:

“3. Applicability - (1) Notwithstanding anything contained in any law for the time being in force, all premises other than those owned or requisitioned under any law, by or on behalf of the Federal Government or Provincial Government, situated within an urban area, shall be subject to the provisions of this Ordinance.

(2) Government may, by notification, exclude any class of premises or all premises in any area from operation of all or any of the provisions of the Ordinance.”

11. Adverting the question of law raised, it is noted in case of Mrs. B.S Khan versus Pakistan State Oil Company Limited (1989 SCMR 75), the four members Bench of Hon’ble Supreme Court of Pakistan while dealing with the similar position as in hand, thrashed out the same in detail and held that lessee was not competent to file case against sub-lessee. The very jurisdiction of Rent Controller found to be wanting, questions raised on merits in rent case could not be attended to in appeal.

12. (b) Sindh Rented Premises Ordinance (XVII of 1979)

S..3. West Pakistan Urban Rent Restriction Ordinance. Sec.3.. exemption from provisions Ordinance could be granted to premises or

rented land as deferred in the ordinances...Common feature of definitions was that they all concerned immoveable property and same concurred relationships or intense in such property.. Exemption and non-exemption as such determined status of immoveable property i.e. as an emptied property or as a non-exempted property...Neither context nor scope of law, nor express language of provisions of section 3 leave any manner of doubt about what was exempted from provision of ordinance.

13. (c) Sindh Rented premises Ordinance (XVII) of 1979)

Sec..3, 15 & 27---- Sindh Government Notification no. VIII (3) SIJ/75 dated 15th March, 1981.. Default in payment of rent premises in question exempted from provisions of Rent Ordinance by virtue of notification dated 15th March, 1981..... Appellant was lessee of land of Karachi Port Trust, whereas respondent was in occupation of land of Karachi Port Trust given to them by lessee whose rights were to extend of recovery of rent---Lessee, held, could not invoke jurisdiction of Rent Controller in respect of land of Karachi Port Trust, which stood exempted by virtue of notification dated 15th March, 1981----Lessee was not competent to file case against sub-lessee – The very jurisdiction of Rent Controller found to be wanting questions raised on merits in rent case could not be attend in appeal.”

14. The same view was followed in cases of Pakistan State Oil Company Limited Versus Khaliq Raza Khan (1991 CLC 1866 Karachi) and Muhammad Asghar & another Versus Khola Khan (1995 CLC 564 Karachi).

15. It would not be out of place to mention here that another view was also expressed in case of M/s. Lalazar Enterprises (Pvt) Limited, Karachi Versus M/s. Occanic International (Pvt) Limited, Karachi and others (2006 SCMR 140) by two members bench of Honourable Supreme Court of Pakistan concerning the point at issue, expressing and holding that :-

Sindh Rented Premises Ordinance (XVII of 1979) ..

Ss 3(2) & 2 (4).....Government of Sindh Notification No. VIII (3) SOJ/75 dated 15.3.1981.....Interpretation of S. 3(2), Sindh Rented Premises Ordinance, 1979 and the scope of expression “Premises” as defined in S. 2(h) of the Ordinance... Object of law behind the enactment of Section 3 of

the Ordinance and the notification issued there under was to exclude properties owned by or belonging to the Federal Government or the Provincial Government from the operation of the provisions of Sindh Rented Premises Ordinance, 1979....in present case a building had been constructed by a third party and it had been let out to a private person and was neither requisitioned by the Federal Government, nor by the Provincial Government... Exemption from operation in favour of such premises, would not arise under any circumstances.

16. I have vetted the facts of the present case in juxtaposition with the guidelines so set in the aforesaid respective verdicts of the Hon'ble Apex Courts, the notification issued by the Government of Sindh, reflects the all premises belongs to the Federal Government or the Provincial Government, whether owned or requisitioned under any law, by or on behalf of any of the Government, situated with an Urban Area are exempted from the operation of the provisions of the ordinance, 1979. In view of language used in the notification, infers an unequivocal meaning that it is the "Premises" requires interpretation for extending such exemption. It may be mentioned here that the expression "Premises" has been provided in section 2(h) of the Sindh Rented Premises Ordinance, 1979 to mean a building or land, let out on rent but does not include a hotel. In the same line, the Hon'ble Apex Court in the reported cases, referred above, held that exemption as provided under Section 3 of the Rent Ordinance could be extended to "Premises" building or "rented land" as defined in the ordinance and such exemption or non-exemption determines on the basis of status of the immovable property. Careful examination of record of present case, it appears that there is no dispute with regard to the relationship of landlord and tenant between the parties, having admitted by the petitioner. Admittedly, Karachi Port Trust leased out plot No. 28, Warehouse, Area, West Wharf, Karachi to the appellant, which has been renewed time to time. It is also an undisputed fact that tenancy between the petitioner and respondent No. 3 commenced through

an agreement of sub-lease dated 30.6.1962, whereby Godown situated an West Wharf Reclamation between West Wharf Road and Mansfield import yard and known as Bay No. 2 let out to the petitioner by the respondent No. 3, and subsequently by consent, the petitioner was shifted to Bay No. 3 of the same size. On examination of tenancy agreement between the parties, it found to be concerning a Godown/Bay and not relating to land right leased out to respondent No. 3 by Karachi Port Trust. It is inferred from the notification dated 15.3.1981 issued by the Government of Sindh that the intent behind issuance of such notification is to safe guard and secure the land hold rights and interests therein of Karachi Port Trust being prime port agency of the Country and not to restrict or interfere the litigation between two private parties as it does not serve any purpose as to the interest of Karachi Port Trust.

17. Section (3) of the Ordinance, also clearly speaks about the applicability that all premises owned or requisitioned under any law by the Federal Government or Provincial Government shall be exempted from the operation of this Ordinance.

18. It transpires from the above discussion, that the plot of land was not Godown/Bay and therefore, does not cause within the purview of exemption as stipulated in section (3) of the Ordinance and notification dated 15.3.981 issued by the Government of Sindh, the case law cited by the learned counsel for the petitioner do not coincide with the circumstances of present case and also quite distinguishable. I accordingly dismissed the present Constitution Petition and maintained the judgment of learned appellate Court with no order as to cost.

Dated: 18.05.2018

JUDGE