

IN THE HIGH COURT OF SINDH AT KARACHI

Present:
Mr. Justice Muhammad Shafi Siddiqui
Justice Mrs. Kausar Sultana Hussain

C.P. No. D-750 of 2020

Total Parco Pakistan Limited
Versus
Federation of Pakistan & others

Date of Hearing: 07.10.2020 & 09.10.2020

Petitioner: Through Mr. Abraiz Ali Khan Advocate.

Respondent No.1: Through Mr. Zahid Khan, Assistant Attorney General.

Respondent No.2 & 3: Through Ms. Amna Warsi and Ms. Ayesha Warsi Advocates.

Respondents No.4 : Not represented.

J U D G M E N T

Muhammad Shafi Siddiqui, J.- Petitioner M/s Total Parco Pakistan Limited filed this petition challenging the termination/vacation notice of 31.01.2020 in relation to a lease deed executed by respondent No.2 Civil Aviation Authority in favour of M/s Chevron Pakistan Limited, formerly known as Caltex Oil (Pakistan) Limited.

2. It is claimed in the petition that they (petitioner) took possession as lessee of the land measuring 1333.22 sq. yards situated at Stargate, Shakra-e-Faisal, Jinnah International Airport, Karachi, vide lease deed executed by respondent No.2 for a period of 30 years commenced from 19.07.1989. The period of lease expired somewhere on 18.07.2019.

3. It is claimed by the petitioner that a draft lease agreement was shared by respondent No.2 along with covering letter of 28.06.2001, which was eventually signed and registered in the above terms. It is claimed that before the lease deed was due to expire, respondent No.4

wrote a letter on 18.03.2019 stating therein that respondent No.2 in its 175th meeting conveyed grant of renewal period for another term of 30 years and consequently petitioner M/s Total Parco Pakistan Limited was required to pay the due amount through two crossed cheques for an extended period of lease covering premium and annual rent for first year. The petitioner then persuaded to pay Rs.1,699,861/- along with another cheque of Rs.29,775,246/- along with tax deduction certificates for the above referred claims and consequently requested for a lease deed format for execution.

4. However, it is claimed by the petitioner that on 31.01.2020 some representative appeared at site and informed them that they (petitioners) have trespassed the lands and consequently attempted to eject them. They also provided petitioner a letter of even date, which is subjected as "termination notice". Consequently petitioner filed this petition with the following prayer:-

- (i) Declare that the letter of 31 January 2020 issued by the respondent No.1 having reference JIAP/1397-20/045/KCES and subject "Termination Notice M/S Total Parco (Pvt) Ltd Petrol Pump Near Stargate At JIAP Karachi" is null and void and of no legal effect whatsoever.
- (ii) Declare that the act of sealing the said premises is in the circumstances provided above, unlawful and illegal.

5. Respondents No.2 and 3 on receipt of notice of this petition filed their joint parawise comments in which they have denied the relationship between petitioner and respondents. It is urged that the lease deed relied upon by petitioner is not concerned with the petitioner as it was executed between respondent No.2 Civil Aviation Authority and M/s Chevron Pakistan Limited, formerly known as Caltex Oil Pakistan Limited. The answering respondents have further denied the authority of respondent No.4 who issued them (petitioner) a letter for extension of another period of 30 years lease.

6. Respondents No.2 and 3 have relied upon the Minutes of 172nd and 175th Meeting of respondent No.2 and submitted that it was never agreed upon in such meetings to extend the period of subject lease in respect of the land, regarding which earlier lease was executed which ended in 2019, as referred above. They submitted that it is the policy of 1985 on the basis of which such leases were executed which policy has not been revised in any of the meetings relied upon by the petitioner. In support of their contention respondents No.2 and 3 have also filed copies of the aforesaid Minutes of Meeting to substantiate that there is nothing in it to supplement the arguments of the petitioner that Board of Civil Aviation Authority have decided to extend the tenure of the expired lease.

7. We have heard learned counsel for petitioner as well as that of respondents No.2 and 3 whereas no one has come forward on behalf of respondent No.4 and have also perused the material available on record.

8. At the very outset, the expired lease relied upon by the petitioner, was executed by respondent No.2 Civil Aviation Authority in favour of M/s Chevron Pakistan Limited, which lease ended in July 2019, but the petitioner has not been able to demonstrate as to how rights of M/s Chevron Pakistan Limited and/or Caltex Oil (Pakistan) Limited, devolved to petitioner i.e. Total Parco Pakistan Limited. They (petitioner) have not filed any document in this regard including that from Security & Exchange Commission of Pakistan (SECP), to substantiate if the name of M/s Chevron Pakistan Limited has been changed as Total Parco Pakistan Limited or if it is a case of merger and/or sale/acquisition of share etc. When the relationship between petitioner and respondents was denied, it was obligatory upon the petitioner to have at least supplemented their reply/claim with a rejoinder or at least they should have placed the documents to establish

the rights having been acquired by the petitioner as being successor of the original lessee.

9. The petitioner's reliance on 175th meeting of Civil Aviation Authority is very specific in terms of paragraph 4 of the petition. Respondents have filed both the Minutes of 172nd and 175th Meeting. The 172nd Minutes of Meeting does provide an overall picture as to the policy of the Civil Aviation Authority; the subsequent meeting recorded as 175th Meeting of Civil Aviation Board does not suggest that the Board has acceded or even considered the extension of lease of any of the land where petrol pumps are operating. 172nd Meeting in terms of Agenda No.4 only relates to land at Islamabad Airport to airlines and technical ground support on lease basis through a private treaty and that too at Islamabad. This has been reconsidered under Agenda Item No.15 of 175th meeting. Paragraph 44 in consequence of Agenda Item No.15 discussed and allotment/lease for a term of 30 years plus 30 years for the airline to acquire land, which is reproduced as under:-

“44. Director Commercial & Estate apprised that his presentation is seeking decisions in two key areas in order to facilitate investments at the New Islamabad International Airport. The first required some amendments in the prevalent land lease policy where as the second required approval for grant of lease on long term basis i.e. 30 years plus another 30 years.”

10. The conclusion arrived at and/or decision reached by Civil Aviation Authority at paragraph 49 should be read with as Agenda Item No.15 which only relates to allotment of Civil Aviation Authority's land to airlines on lease basis and nothing beyond that. The subject lease which has already expired, arisen out of 4th Meeting of the Standing Committee of Board of Civil Aviation Authority on 12.05.1985.

11. By issuing a letter of 31.01.2020 respondent No.2 has done nothing wrong. In fact it was a legal and civilized way to issue them a letter as the lease was expired and consequently they (respondents)

issued a letter for vacation of the subject land and they have all right under the law to issue such letter in respect of expired lease.

12. In substance the petitioner is arguing for the performance of alleged offer of respondent No.4. In order to make it materialize petitioner may seek its enforcement but cannot enjoy the land after its lease expiry by filing this petition. The authority of the respondent No.4 who allegedly issued a letter and that too on the basis of 175th Meeting of the Civil Aviation Authority Board is seriously questioned. Had it been specifically decided under any Agenda taken up in 175th Meeting that the commercial/non-commercial leases including that of M/s Chevron Pakistan Limited are extendable, it would not have been a debatable question of facts. However, neither petitioner was able to demonstrate that it was a decision in the Board's meeting that the lease is extendable for another period of 30 years nor the authority of respondent No.4 was clarified in this regard. It thus required thorough probe through evidence, which is not permissible under constitutional jurisdiction of this Court.

13. The primary relief is claimed in respect of a letter of termination/vacation and respondents have done nothing wrong by issuing such letter. The case of the petitioner for performance could only be possible if those questions do not require factual analyses whereas in the case in hand not only the authority of respondent No.4 itself is challenged but the contents of the two Minutes of Meeting are to be deliberated upon to arrive at a just and fair conclusion.

14. We are not commenting about the status of the petitioner, whether or not they have devolved or acquire the rights of their predecessor or that they do not have any right after expiry of the lease rather we are of the view that merely challenging the notice of termination, which is their (respondents) right under the law, cannot

give rise to a cause of action to the petitioner to challenge its legality, unless the enforcement of an alleged offer is asked by petitioner independently. They (petitioner) just want to occupy the land without any lawful extension of lease. The respondents have not threatened for any dire consequences in the letter of cancellation. Indeed a lawful procedure would be followed by respondent/Civil Aviation Authority on account of termination and there is nothing in the letter to suggest that they (respondents) are adamant to take an unlawful action. Had the respondents been so adamant, they would not have issued this termination letter and rather have taken an action directly. We, therefore, cannot declare this termination letter to be unlawful, null and void as prayed for, since it has been issued lawfully after expiry of the lease period. Moreover, petitioner has not been able to demonstrate their lawful occupation since previous/expired leases were not between them and no documents have been filed to establish that are successor of previous lessee. Hence, we dismissed instant petition along with listed applications by a short order on 09.10.2020. The petitioner, however, may approach Civil Court, as they deem fit and proper for performance of the alleged offer, which is accepted by the petitioner.

15. Above are reasons of our short order dated 09.10.2020 whereby instant petition was dismissed.

Dated:

Judge

Judge