

# THE HIGH COURT OF SINDH, KARACHI

**Present:**

Mr. Ahmed Ali M. Shaikh, Chief Justice &  
Mr. Justice Adnan Iqbal Chaudhry.

**Constitution Petition No. D - 7641 of 2019**

[Muhammad Usman versus Trustees of the Port of Karachi and Others]

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Petitioner(s) : Muhammad Usman through Mr. Malik Khushhal Khan, Advocate.

Respondent No.1 : Trustees of the Port of Karachi, through Ms. Nasmia Mangrio, Advocate, and Mr. Khaliq Ahmed, Deputy Attorney General for Pakistan.

Respondents 2 and 3 : Nemo.

Date of hearing : 25-05-2022

## **JUDGMENT**

**Adnan Iqbal Chaudhry J.** - By these petitions the Petitioner seeks a writ against concurrent orders passed by Judicial Magistrate-III, West Wharf, Karachi, and then by the Additional Sessions Judge-X, Karachi West to evict the Petitioner respectively from Plot No. A-36 (C.P. No.D-7641/2019) and Plot No. A-36/1 (C.P. No.D-7642/2019) under the provisions of the Port Authorities Land and Building (Recovery of Possession) Ordinance, 1962. The parties being common, as also the underlying facts and law, both petitions are being decided by a common order.

2. The facts, in brief, are that by letter dated 14-03-2013 issued by the Karachi Port Trust [KPT], the Petitioner was granted "*Temporary Allotment of Plot No. A-36, measuring 125 square meters at Boat Building Yard at West Wharf Karachi*" for a period of 12 months against a license fee of Rs. 277.46 per square meter per annum and a security deposit of

Rs. 34,683. Sometime thereafter, the Petitioner was also allotted the adjacent Plot No. A-36/1 measuring 125 square meters. Though a copy of the allotment letter of the latter plot does not appear on the record, the fact that such allotment was made and on the same terms and conditions as of the former plot, was not disputed before us by either side. Both plots are hereinafter referred to as 'the demised plots'.

3. It was also not disputed that by notices dated 13-06-2017 under section 3(1) of the Port Authorities Land and Building (Recovery of Possession) Ordinance, 1962, the KPT called upon the Petitioner to vacate the demised plots on the ground that the allotments thereof had expired respectively on 17-03-2014 and 09-04-2015; and that the demised plots were also required for port expansion. The Petitioner did not comply. Hence, to evict the Petitioner from the demised plots, the KPT filed Complaint No. 1779/2017 and Complaint No. 1768/2017 under section 3(3) of said Ordinance before the 'Authorized Officer' viz. the Judicial Magistrate notified for such purpose by the Federal Government under section 2(b) of the Ordinance.

4. The Petitioner's defense before the Judicial Magistrate was that the demised plots were being used by him for the purposes of towing boats, and these plots were situated in such a manner next to the water that the KPT could not put them to any other use. The learned Judicial Magistrate held that the demised plots had been granted to the Petitioner on a temporary basis, and under clause 6 of the allotment letter he was bound to vacate the same when called upon to do so by the KPT. Therefore, vide order dated 31-07-2019 passed separately in both Complaints, the learned Judicial Magistrate allowed KPT's Complaints and directed the Petitioner to vacate the demised plots within 30 days failing which the SHO KPT shall assist the KPT in taking possession. The Petitioner preferred Criminal Appeal No. 18/2019 and Criminal Appeal No. 16/2019 before the Additional Sessions Judge under section 5 of the Port Authorities

Land and Building (Recovery of Possession) Ordinance, 1962. The appeals too were dismissed vide separate judgments dated 18-09-2019. However, the learned appellate court observed that the Petitioner may apply to the KPT for a fresh lease, and if the KPT intends to lease the demised plots further then preference shall be given to the Petitioner, otherwise the Petitioner shall vacate them within 30 days. Apparently, no such lease was granted by the KPT.

5. Heard the learned counsel and perused the record.

6. Learned counsel for the Petitioner submitted that *vide* clause 3 of KPT's Board Resolution No. 129 dated 23-04-2015, the KPT had decided to renew all allotments that expired before 01-07-2015, and thus the Petitioner's allotments stood renewed automatically. He further submitted that by Board Resolution No. 71 dated 16-02-2017, the KPT had decided that plots such as the demised plots were not required by the KPT for port expansion, and thus eviction sought on the ground of port expansion was false. Firstly, both of these submissions were never pleaded by the Petitioner before the *fora* below. Secondly, both Board Resolutions relied upon do not even support the submission made. KPT's Board Resolution No. 129 dated 23-04-2015 clearly dealt with '*revision of rental structure*', not with renewal of allotments. Clause 3 thereof only provided that revision in KPT's rental structure will be effective from 01-07-2015 and leases/licenses expiring before such date will be renewed as per the existing rental structure. It does not say that allotments/leases that had already expired stood renewed. As regards KPT's Board Resolution No. 71 dated 16-02-2017, that was with regards to long-term leases in the oil installation area of the port, whereas the demised plots were situated at the boat building yard, industrial area of the port. Therefore, none of the grounds now being urged by learned counsel have any force.

7. The demised plots are "land" defined in section 2(c) of the Port Authorities Land and Building (Recovery of Possession) Ordinance,

1962 to mean “..... land ..... which vests in, or is in the possession or under the management or control of a Port Authority, and is used or held for purposes connected with the administration and working of the port.” Though ‘allotment’ is defined separately in section 2(a) of the Ordinance, but in defining ‘lease’, section 2(d) includes within it “an allotment” and states that “lease” has the same meaning as in the Transfer of Property Act, 1882”. Therefore, section 3 of the Ordinance which deals with the determination of a lease, applies also to an allotment. Sections 3(1) and 4 of the Ordinance provide grounds and procedure for evicting a lessee/allottee as follows:

**“3. Eviction of out-going lessees and unauthorized occupants from land.-**

**(1)** If, on the expiry, whether before or after the commencement of this Ordinance, of the period of any lease in respect of any land or building of which a Port Authority is the lessor, or on the determination of such lease on the ground of breach of any covenant or in pursuance of a condition in the lease imposing any obligation on the lessee to give up possession of the demised land or building in the event of such land or building being required for the purposes of a Port Authority, the lessee refused or failed, or refuses or fails, to vacate and deliver vacant possession of such land or building to the Port Authority, then, notwithstanding anything contained in any other law for the time being in force or in any contract, such Port Authority may, by notice in writing, require such lessee to vacate and deliver vacant possession of such land or building, and to remove structures, if any, erected or built thereon by him, within such time as may be specified in the notice.

**(2)** If the Port Authority is satisfied, after making such enquiry as it may think fit, that a person is an unauthorized occupant of any land or building, it may, by notice in writing, require such person to vacate such land or building, and deliver vacant possession thereof to it, and to remove structures, if any, erected or built thereon by him, within such time as may be specified in the notice.

**(3)** If any person to whom a notice is issued under sub-section (1) or sub-section (2) –

- (a)** fails to comply with the notice, the Port Authority shall make a complaint in writing to that effect to the Authorized Officer; or
- (b)** vacates the land or building, but does not remove the structures thereon, the Port Authority may take possession of such land or building and demolish such structures.

**4. Proceedings before Authorized Officer.--** (1) Upon receipt of complaint under section 3, the Authorized Officer shall forthwith issue notice to the person against whom the complaint has been made calling upon him to show cause why he should not be evicted from the land or building occupied by him, and after giving such person an opportunity of being heard, and if necessary, after making

such further enquiry as he may think fit, the Authorized Officer, shall, by an order in writing, either-

- (a) permit such person to continue in occupation of the land or building, subject to such conditions as may be specified in the order; or
  - (b) direct such person to vacate and deliver to the Port Authority vacant possession of the land or building, and to remove structures, if any, erected or built there-on by him, within the period specified in the order.
- (2) If any person fails to comply with a direction under clause (b) of sub-section (1), the Authorized Officer may, notwithstanding anything contained in any other law for the time being in force, but subject to any order on appeal under section 5, enter upon the land or building to which the direction relates, and evict such person by such force as he may consider necessary, and demolish any or all of the said structures.
- (3) No person shall be evicted under sub-section (2) between sunset and sunrise."

8. The Port Authorities Land and Building (Recovery of Possession) Ordinance, 1962 is special law promulgated, as per its preamble, for speedy recovery of possession of lands or buildings belonging to Port Authorities. Hence, section 4 thereof provides a summary procedure for determining a complaint, the intent apparently being that disputes between Port Authorities and its lessees are not prolonged to stall the administration, development and working of the ports.

9. Under section 3(1) of the Ordinance, as under section 111(a) of the Transfer of Property Act, 1882, one of the events leading to determination of an allotment/lease is by the expiry of the period fixed therein, which is separate and independent of the ground that the lessee committed breach of a covenant of the lease, or that the lessee had agreed to vacate if the land/building was required for use of the port. Once the allotment/lease is so determined, then "notwithstanding anything contained in any other law for the time being in force or in any contract", the Port Authority is entitled to call upon the lessee to vacate the demised land/building.

10. There is nothing to show that after expiry/determination of the Petitioner's allotments by efflux of time those were ever renewed by the KPT. Therefore, independent of the ground of port expansion, the

KPT was entitled under section 3(1) of the Port Authorities Land and Building (Recovery of Possession) Ordinance, 1962 to evict the Petitioner on the ground of expiry of his allotments. Having concluded so, we do not see any reason for interfering with the order of eviction. Both petitions are dismissed. The Petitioner shall vacate the demised plots forthwith.

**JUDGE**

**CHIEF JUSTICE**