

# IN THE HIGH COURT OF SINDH AT KARACHI

Suit No.450 of 2003

[Pakistan Industries (Pvt) Limited .....v.....The Karachi Port Trust]

Dates of Hearing : 17.11.2021  
Date of Decision : 17.11.2021  
Plaintiff : M/s. Malik Naeem Iqbal, Muhammad Nasir & Ghulam Akbar Lashari, Advocates.  
Defendant : Mr. Abdul Razzak, Advocate.

## JUDGMENT

**Zulfiqar Ahmad Khan, J:-**This suit was filed seeking declaration, specific performance and permanent injunction with the following prayers:-

“(i) to declare that the defendant cannot charge such excessive amounts and that charging the same is unlawful, arbitrary, excessive, illegal and void.

(ii) to grant mandatory injunction directing the defendant to renew the lease of the plaintiff for a term of 50 years at the rate and subject to the terms and conditions on which it has renewed leases in similar cases of Beach Luxury Hotel Karachi Club and Karachi Yatch Club.

(iii) to grant an injunction against the defendant, their agents, their officers, subordinates, any person or persons acting for and on their behalf from charging the excessive amount being claimed;

(iv) cost of the suit, or,

(v) any other relief or reliefs as this Hon’ble Court may deem appropriate in the circumstances of the case.

2. The facts as described in the plaint are that the plaintiff is a warehouse storage service provider and for this purpose, the defendant granted lease in respect of plot bearing Nos. 3 & 9, Industrial Area, West Wharf, Karachi for a period of 25 years which

was extended with the passage of time. Plaintiff asserted that upon expiry of the latest lease, the defendant was approached through letters dated 30.12.1999 and 30.12.2000 wherein the plaintiff had requested for the renewal of the lease for further 25 years on the same terms and conditions, and the defendant in deference to the letters of the plaintiff, communicated to the plaintiff that the lease would be renewed in respect of plots at the enhanced rate of Rs.274.95 per square meter per annum for plot No.3 and at Rs.241.20 per square meter for plot No.9 excluding other ancillaries and taxes, while the plaintiff was paying only Rs.19.25 per square meter at that time. Plaintiff vociferously stated in plaint that the defendant had acted arbitrarily and such colossal increase of rent was unreasonable and had also addressed a representation to the defendant on 19.03.2003 for the renewal of the lease at some reasonable rates which was declined, therefore, filed the present suit.

3. In contra, defendant contested the suit by filing written statement asserting that plaintiff even did not accept the latest terms offered by the Board vide its letter dated 21.06.2003 in respect of plot No.3 where rent was reduced from 274.95 to Rs.100.61 per square meter per annum with 4% escalation each year instead of, the plaintiff having to pay rent of Rs.274.95 from 01.07.2001 to 30.06.2003 and thereafter on the reduced rates. Similarly in respect of plot No.9 defendant offered reduced rate of Rs.100.61 per square meter per annum from 01.07.2003 to 30.06.2005 instead of Rs.241.20 and plaintiff was directed to pay rent at the rate of Rs.241.20 from 01.07.2001 to 30.06.2003. It was further pleaded by the defendant that plaintiff did not accept the offers made by the defendant hence

it exposed itself to the conditions provided in the Lease Deed under the provisions of Karachi Port Trust Act, 1886 and Recovery of Land and Possession Ordinance, 1960 calling for re-possession of the plots.

4. Record indicates that on 03.09.2007, issues were framed and with mutual consent of the parties, Mr. Dilawar Hussain, Advocate was appointed as Commissioner for recording evidence. The issues settled by this court are as under:-

1. Whether the demand for increase in the lease rentals is reasonable?

2. Whether the plaintiff is entitled for renewal of lease of the suit property and if yes on what rates?

3. What should the decree be?

5. Mr. Malik Naeem Iqbal, learned counsel for the plaintiff presented the case of the plaintiff and contended that plaintiff is victim of discrimination. His main stance is that as per extract of minutes of defendant's Board held on 26.02.1998, the defendant renewed lease of Karachi Club, Lalazar Area for a term of 25 years at the rate of Rs.15 per square meter for nine years and at Rs.35 per square meter for the remaining term, and similar was the case of Karachi Yatch Club but the plaintiff was discriminated against. His next stance was that the defendant did not follow the criteria prescribed for increasing the rent.

6. Mr. Abdul Razzak, learned counsel represented the defendant/ KPT. According to him, there is no case of discrimination and plots of the plaintiff are far from the Lalazar and Karachi Club which was admitted by plaintiff's witness in his cross examination. He further

pointed out that the Board has unfettered discretion to renew the lease and fix the rent.

7. Heard the arguments and perused the evidence.

**Issue No.1**

8. Record reflects that Defendant vide its Board Resolution No.202 dated 30.09.1998 renewed leases in respect of plots No.73-A/1 and 173/2 granted to Beach Luxury Hotel at the rate of Rs.30/- per square meter. It is a matter of fact that Beach Luxury Hotel is located on M.T. Khan Road. The defendant/KPT admits that the area where the Beach Luxury Hotel is located is much more valuable than the area where the suit plots are located. Similarly, vide defendant's Board Resolution dated 26.02.1998, lease of plot No.7-B Lalazar Area was also renewed for a term of 25 years at the rate of Rs.15 per square meter to Karachi Club and lease of Karachi Yatch Club was also renewed for similar term at the rate of Rs.35/- per square meters. While renewing the lease of the plaintiff, undoubtedly demand for Rs.241.20 and Rs.274.95 per square meter is highly exorbitant. It is settled proposition of jurisprudence that the object of good governance cannot be achieved by exercising discriminatory powers unreasonably or arbitrarily and without application of mind, but such objective can only be achieved by following rules of justness, fairness and openness in consonance with command of Constitution enshrined in different Articles 4 and 25 of the Constitution, 1973 which is supreme law of this country.

9. Record further shows that the plots which were leased out to the plaintiff were open plots on which plaintiff raised permanent

structures at its own cost. The fact that the main object of leasing out plots by KPT was to facilitate the purposes for which KPT was established, which objectives must always be kept in mind while determining the rentals. None of the provisions of the KPT Act permit the defendant to make leasing a source of earning revenues. Record also reflects that the defendant reduced the rent to the extent of Rs. 100 per square meter from 241 or 274 on its own motion. Such reduction itself reflects inherent arbitrariness and establishes the fact that instead of applying some rationale, the defendant has applied rule of thumb otherwise there was no rationale to demand enhancement of Rs.241.20 and Rs.274.95 upto 30.06.2003 and then reduce it to Rs.100.61 with effect from 01.07.2003. It is a fact that the area of Beach Luxury Hotel is more expensive than the suit property. It is also evident from the defendant's own Table available at page No.167 (Annexure C of written statement) which shows that MT Khan Road where Beach Luxury Hotel is located fetches about 75% more rental than the West Wharf area where the suit properties are located. This table further shows that the rate of rentals of different areas with progressive increase in lease rentals at the rate of 7% per annum for plots situated in West Wharf (where the plaintiff's plots are located) comes to Rs.82.13 which is much less than the impugned demand.

10. As no evidence was led as to the legal question of prescribed increase in rentals, with the assistance of the counsel of KPT Manual by Estate Department was called which was last revised in the year 1983. Clause 118 of Chapter 13 of the Manual pertained to rent enhancement. The said clause is reproduced as under:-

“118. The Board may, as and when considered necessary, frame or alter the scale of rent and charges to be levied for the Trust’s open lands or buildings, keeping in view the situation, utility, importance and demand of the lands and buildings in question, as also the Schedule of rate of other organizations for lands and buildings, cost of construction, reclamation and/or development, if any, etc. etc. They may also lay down procedure, formula and basis for working out licence fee/rent for various types of tenancies. The rent and charges shall be of the following nature:-

(a) RENT/LICENCE FEE

This shall be the rate per square meter per annum for open land, or a fixed sum for built-up premises, to be charged periodically from the Board’s allottees/licensees/tenants in accordance with the Agreement/Licence/Lease and shall apply to the cases where lands or buildings are given on licence fee or rental basis.

(b) PREMIUM

Occupancy value for lease-hold rights in the land let out on premium-cum-rental basis calculated at the rate of bid per square meter for the leased area, the rent being concessional, in such cases.

The rate of Premium shall be fixed by capitalising the applicable rent prevalent at a particular time at the rate of interest allowed by the Bank on fixed deposit, from time to time.

However, notwithstanding the above, the K.P.T. Board shall be competent to fix the Base Rent or change the percentage of escalation or the formula for working out Rent or Premium, as the case may be, and as deemed fit by them from time to time.”

11. A perusal of clause 118 reflects that board may, as and when considered necessary, frame or alter the scale of rent and charges to be levied by the Trust for open lands or buildings, keeping in view the situation, utility, importance and demand of the lands and buildings in question, while considering the Schedules of rate of other organizations for lands and buildings, cost of construction,

reclamation and/or development, if any. It appears that no such pre-requisite exercise was completed before the rates were increased from Rs. 16-25 to Rs. 274 and later on reduced to Rs. 100 which is challenged through the instant suit. This court through its order dated 09.10.2006 tentatively fixed the rate of Rs.60 per sq. meter for both the plots and directed the plaintiff to deposit Rs.40 with the KPT and Rs. 20 with the Nazir of this court. Nazir has admitted receipt of these amounts. The said order of learned Single Judge was impugned by the defendant by filing HCA 457 of 2006 and a learned Division Bench of this Court vide order dated 30.10.2008 disposed of the appeal holding that the impugned order of learned Single Judge passed in this suit was well reasoned. The respective constituent of the order passed by learned Division Bench in HCA No.457/2006 is reproduced hereunder:-

“...In a well reasoned order learned Single Judge taking into consideration all aspect of the matter determined tentative rent at the rate of Rs.60/- per square meter per annum. It further appears that respondent was charging rent at the rate of Rs.14.76 per square meter per annum as per lease executed on 01.07.1975 in respect of plot No.9 and Rs.19.25 in respect of plot No.3. The appellant renewed lease in respect of Beach Luxury Hotel at the rate of Rs.30/- per square meter per annum whereas said hotel is situated at more prime location than the plot of the respondent. The apprehension of the appellant that in case the Court come to the conclusion that the rent demanded by the appellant was according to market rate and respondent left the premises then it would become impossible for the appellant to recover the said amount is unfounded as appellant has leased out open plots on which respondent has raised permanent structure at his own cost and used the same for storage facility for iron steel scrap etc., and further installed weighbridge. Discretion exercised by the learned Single Judge while fixing the tentative rental per square meter per annum cannot be said arbitrarily exercised of discretion to call for any interference. The interest

of the appellant is safeguarded by restraining the respondent from creating third party interest or part with the possession of the property in question....”

12. In the given circumstances, it appears that admittedly the exercise contemplated by Clause 118 was not carried out before enhancing rent, therefore, the question that whether the rent was reasonable or not is decided in favour of the plaintiff to say that the increase did not meet the legal requirement put forth in clause 118, therefore, tentative rates valued by this court at Rs. 60 per sq. meter of which Rs.40 was paid to KPT is adhered to as there is no reason to interfere in this rate. Issue is accordingly answered in negative.

13. With regard to issue No.2, as competency of the plaintiff for renewal of lease and his possession is not in challenge except on the ground of non-payment of enhanced rent, which has been challenged through this suit and admittedly Leases for both the plots were earlier extended for a term of 25 years earlier and if this tenure had expired during the pendency of this suit where a status quo order was operating as of 25.04.2003, let lease period be extended as per law for the further terms of 25 years from the date hereof for each plot. Issue No.2 is accordingly answered in affirmative.

14. Suit is accordingly decreed as prayed in above terms with no order as to costs.

JUDGE