

IN THE HIGH COURT OF SINDH, KARACHI

Present:

Justice Mohammad Karim Khan Agha
Justice Khadim Hussain Tunio

C.P. No. D-4376 of 2020

Petitioner: M/s. Qadri Noori Enterprises through its proprietor Manzar Alam son of Khursheed Allam having business at Plot No. C-13, Boat Building Yard, West Wharf, Karachi.

Respondent No. 1: Trustees of the Port of Karachi, Established under KPT Act 1886, having its office at KPT building Eduljee Dinshaw Road Karachi through authorised officer (Estate Manager).

C.P. No. D-4377 of 2020

Petitioner: M/s. J&N Brothers having office at plot No. 4/16, Boat Building Yard, Opp: Chota Gate, Fish Harbour Authority West Wharf, Karachi through partner Khair Ullah son of Jinnah Ali r/o House No. ZC-32, Sector 1-A, Lines Area Re-Development Project, Karachi.

Respondent No. 1: Trustees of the Port of Karachi, Established under KPT Act 1886, having its office at KPT building Eduljee Dinshaw Road Karachi through authorised officer (Estate Manager).

C.P. No. D-4378 of 2020

Petitioner: M/s. A.S. Marine Enterprises, having office at Plot No. C-258, Zaman Town, Korangi, sector 4-F, Karachi through attorney Altaf Khan son of Ameer Khan r/o House No. 41, Block 1, Clifton, Karachi.

Respondent No. 1: Trustees of the Port of Karachi, Established under KPT Act 1886, having its office at KPT building Eduljee Dinshaw Road Karachi through authorised officer (Estate Manager).

C.P. No. D-4379 of 2020

Petitioner: Wali Ullah Khan son of M. Sharif Khan, r/o House No. C-115, Block-A, North Nazimabad, Karachi.

Respondent No. 1: Trustees of the Port of Karachi, Established under KPT Act 1886, having its office at KPT building Eduljee Dinshaw Road Karachi through authorised officer (Estate Manager).

C.P. No. D-4380 of 2020

Petitioner: Mumtaz Khan son of Sher Bahadur Khan, having business at Plot No. F-18, Boat Building Yard, West Wharf, Karachi r/o Mohallah Bangali Para, Near Muhammadi Masjid, Pak Muslim Burma colony, Karachi.

Respondent No. 1: Trustees of the Port of Karachi, Established under KPT Act 1886, having its office at KPT building Eduljee Dinshaw Road Karachi through authorised officer (Estate Manager).

C.P. No. D-4381 of 2020

Petitioner: Mian Zaman Shah through his attorney Waqar Alam son of Khursheed Alam, r/o House No. 380-O, O Area, Korangi No. 3, Karachi.

Respondent No. 1: Trustees of the Port of Karachi, Established under KPT Act 1886, having its office at KPT building Eduljee Dinshaw Road Karachi through authorised officer (Estate Manager).

C.P. No. D-4382 of 2020

Petitioner: Muhammad Siddique son of Hassan Sher, having business at Plot No. C-18, Boat Building Yard, West Wharf, Karachi through his Attorney Kamran Tareen son of Muhammad Ayub, r/o Madina Gate, Landa Bazar, Taj Peshawri Market, Fishry, Karachi.

Respondent No. 1: Trustees of the Port of Karachi, Established under KPT Act 1886, having its office at KPT building Eduljee Dinshaw Road Karachi through authorised officer (Estate Manager).

C.P. No. D-4383 of 2020

Petitioner: Ch. Sultan Mehmood son of Ch. Ali Shan, having business at Plot No. E-1, Al-Mansoor Restaurant, Fish Harbour, West Wharf, Karachi.

Respondent No. 1: Trustees of the Port of Karachi, Established under KPT Act 1886, having its office at KPT building Eduljee Dinshaw Road Karachi through authorised officer (Estate Manager).

C.P. No. D-4384 of 2020

Petitioner: Ashfaq Ahmed son of Nooran Syed, having business at Plot NO. F-1, Kala Pani, Boat Building Yard, West Wharf, Karachi through his attorney Muhammad Saleem son of Ghulam Qadir, r/o Mohallah Madni Pur, AhmedPur, Estate, District Bahawalpur.

Respondent No. 1: Trustees of the Port of Karachi, Established under KPT Act 1886, having its office at KPT building Eduljee Dinshaw Road Karachi through authorised officer (Estate Manager).

C.P. No. D-4385 of 2020

Petitioner: Abdul Razzaq sono of Khadim Hussain, having business at Plot No. F-16, Boat Building Yard, West Wharf, Karachi

Respondent No. 1: Trustees of the Port of Karachi, Established under KPT Act 1886, having its office at KPT building Eduljee Dinshaw Road Karachi through authorised officer (Estate Manager).

C.P. No. D-4386 of 2020

Petitioner: M/s. Mehran Enterprises having office No. 301, Ahmed Arcade, BC-3, Block 5, Clifton, Karachi through attorney Abid Ali Khan son of Gul Wali Khan r/o House No. ZC-16, Sector I, Lines Area Re-Development Project, Karachi.

Respondent No. 1: Trustees of the Port of Karachi, Established under KPT Act 1886, having its office at KPT building Eduljee Dinshaw Road Karachi through authorised officer (Estate Manager).

Malik Khushhal Khan, advocate for all the petitioners.

Mr. Bashir Ahmed, advocate for respondents in CPD 4376, 4377, 4378, 4380, 4384 and 4386 of 2020.

Ms. Nasima Mangrio, advocate for respondent in CPD 4383 and 4385 of 2020.

Mr. Muhammad Shafiq, advocate holding brief for Mr. Qamar Abbas, advocate for the respondent in CPD 4379, 4381 and 4382 of 2020.

Date of hearing: **20.04.2023**

Date of decision: **28.04.2023**

JUDGMENT

KHADIM HUSSAIN TUNIO, J- The captioned petitions involve a common question of law, arising out of separate ejectment applications filed by the respondent No. 1, Karachi Port Trust and its Trustees through their authorised officers against various tenants who have all preferred separate *lisses* before this Court. Facts common to the above petitions are

that each of the above eleven petitioners were allotted various pieces of lands of different measurements at **Boat Building Yard, West Wharf Karachi** and since the allotments, the petitioners enjoyed their allotments as tenants of the respondent No. 1. Notably, each of the eleven petitioners also paid security fees, other applicable charges and the lease charges paid to the respondent No. 1. On the expiry of the lease, the petitioners were asked to leave the premises for the use of KPT and on their refusal, applications were filed before the Judicial Magistrate-III Karachi West (*hereinafter referred to as the "concerned Magistrate"*) by the respondent No. 1 seeking ejection. The concerned Magistrate, after hearing the parties, ordered for the renewal of the agreement between the petitioners and respondent No. 1 against which KPT preferred appeals before the learned Additional District and Sessions Judge-X Karachi West (*hereinafter referred to as "Appellate Court"*). After deliberations, the matter was remanded back to the concerned Magistrate by the Appellate Court through various orders dated 31.08.2020. Now, all the petitioners have challenged the impugned judgments passed by the learned Appellate Court and as such this bunch of petitions is being decided through this common judgment having identical facts with only variations in the measurement of the land and identity of the tenant of the allotted plots.

2. Learned counsel for the petitioners have jointly contended that the impugned judgment passed by the Appellate Court is bad in law; that the initial allotment was for 99 years and then various other allottees were granted a 25 year extension for which the petitioners are also entitled, but have been discriminated against by the KPT; that the petitioners were in lawful possession of the properties in question and despite no written extension, KPT had continued to receive rent and other charges involving the allotted properties and have continued receiving this same which amounts to renewal of the allotment period; that after the impugned judgments were passed, the petitioners approached the respondent No. 1 through applications for renewal of their allotments like other allottees who were granted such extensions and the said applications are still pending; that the Appellate Court failed to consider why KPT required the subject lands allotted to the petitioners and as such has committed gross illegality by setting aside the order passed by the concerned Magistrate. In

support of their contentions, they have cited the case of Abdullah Bhai and others v. Ahmad Din (*PLD 1964 SC 106*), Pervaiz Hussain and another v. Arabian Sea Enterprises Limited (*2007 SCMR 1005*), Haji Abdul Aziz v. Karachi Port Trust and another (*2010 MLD 1916*), Muhammad Yousaf and others v. Trustees of the Port of Karachi through Estate Manager and 2 others (*2020 YLR 578*), Muhammad Tobria v. The Board of Trustee through Chairman and 6 others (*2021 YLR 2278*) and two cases of the Supreme Court of India titled Delta Intl. Ltd. v. Shyam Sundar Ganeriwalla and others (*C.A Nos. 2198-99 of 1999*) and M.N Clubwala and others v. Fida Hussain Saheb and others (*C.A No. 151 of 1963*).

3. Conversely, learned counsel for the respondent No. 1/KPT contended that various inquiries have been opened up before the NAB to investigate illegal allotments; that the concerned Magistrate while acting as an authorized officer did not have the jurisdiction under the Port Authorities Land and Buildings (Recovery of Possession) Ordinance 1962 to order renewal of the allotments of the petitioners; that the allotments of the petitioners have expired in the years 2013 and 2014 and they have continued occupying the allotted properties illegally; that the petitioners kept avoiding vacating of the properties and forced the KPT to file complaints for their eviction; that the order passed by the concerned Magistrate violated the provisions of clause 'a' and 'b' of sub-section 1 of section 4 of the Port Authorities Land and Buildings (Recovery of Possession) Ordinance 1962; that the impugned judgments passed by the Appellate Court are well reasoned and do not call for any interference by this Court. They have placed reliance on the unreported case of Muhammad Usman v. Trustees of the Port of Karachi (*Const. Petition No. D-7642 of 2019*) and cases reported as Malik Muhammad Khaqan v. Trustees of the Port of Karachi (*2008 SCMR 428*) and Nafees Ahmed v. Trustees of the Port of Karachi through Estate Manager and 2 others (*2022 CLC 1333*).

4. We have heard the counsel for the respective parties and perused the record available before us.

5. Vis-à-vis the retrieval of designated properties, the Judicial Magistrate's powers are governed by the Port Authorities Lands and

Buildings (Recovery of Possession) Ordinance 1962 (*hereinafter referred to as the "Ordinance of 1962"*). This said ordinance is a *lex specialis* enacted with the aim of expeditiously recovering possession of lands or buildings belonging to Port Authorities, as stated in its preamble. Accordingly, section 4 thereof lays down a summary procedure for determining a complaint, presumably to prevent disputes between Port Authorities and their lessees from stalling the administration, development, and operation of the ports. In the present petitions, the allotment of the petitioners had expired after a period of 99 years and when asked to vacate the premises, the petitioners refused. Following this, eviction complaints were filed by the respondent No. 1 before the Judicial Magistrate-III, Karachi West. Under the said ordinance in S. 4(1), the Magistrate has two remedies, one for each party at his disposal. Under sub-clause (a), the Magistrate may permit such a person (*the person being the allottee*) to continue in occupation of the land or building, subject to such conditions as may be specified in the order; or under sub-clause (b) to direct such a person to vacate the land or building and deliver the possession to the Port Authority and to order removal of any structures, if any. In accordance with section 3(1) of the aforementioned ordinance, and in consonance with section 111(a) of the Transfer of Property Act, 1882, one of the circumstances that leads to the termination of an allotment/lease is the expiration of the fixed period. This is distinct and autonomous from any other grounds that a lessee breached a covenant of the lease, or agreed to vacate the land/building if required for the port's use. Upon such determination of the allotment/lease, "notwithstanding anything contained in any other law for the time being in force or in any contract", the Port Authority is authorized to demand the lessee's eviction from the demised land/building.

6. The petitioners, through their counsel, have acknowledged that they sought the renewal of their allotments only after the Appellate Court's impugned judgment was rendered, i.e., after the expiration of the allotment period. Based on this ground alone, the concerned Magistrate or the Appellate Court could have directed the petitioners to vacate the premises, but for the receipts evidencing the petitioners' payment of dues. In this regard, the concerned Magistrate, after hearing the parties and taking into account all relevant factors and materials, could have ordered

the petitioners to continue occupying their allotted lands or directed them to vacate the concerned properties. However, what the concerned Magistrate could not have done was to order the KPT to renew the petitioners' allotments, as neither the initial allotment orders nor the provisions of the Ordinance of 1962 permit such renewal. By doing so, the concerned Magistrate exceeded his jurisdiction and disregarded the provisions of the Ordinance of 1962, assuming the role of a Civil Court. Consequently, the Appellate Court rightly observed that the changed circumstances, i.e., continuance of payment, NAB references involving misuse of authority, warrant the rehearing of respondent No. 1's case for the eviction of the petitioners rather than an outright eviction of the petitioners.

7. The judgments passed by the learned Appellate Court, being legal and well-reasoned do not require any interference by this Court and as such are all up-held. Consequently, captioned constitutional petitions filed by the petitioners challenging the same are dismissed being meritless. Pursuant to earlier directions of the learned Additional District and Sessions Judge-X Karachi West, learned trial Court/Judicial Magistrate-III Karachi West is directed to proceed with the matter and dispose of the same within 30 days from the date of receipt of this judgment without fail. The parties are directed to appear before the trial Court on 02.05.2023 without claiming further notice. Office is directed to send the R&Ps back to the trial Court along with a copy of this judgment for compliance.

J U D G E

J U D G E