

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

C.P No.D-4571 of 2019

[Muhammad Siddique v. Federation of Pakistan and others]

DATE	ORDER WITH SIGNATURE OF JUDGE(S).
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Before;

Mr. Justice Yousuf Ali Sayeed;

Mr. Justice Abdul Hamid Bhurgri.

Priority

1. For hearing of CMA No.19922/2019.
2. For hearing of main case.

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Date of hearing:- 08.10.2025

Mr. Malik Khushal Khan, Advocate for the petitioner.

M/S Aqib Hussain and Fayaz Ahmed Abro,

Advocates for respondents.

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Abdul Hamid Bhurgri, J.- In this petition, the petitioner seeks the renewal of lease in respect of a plot and a restraining order against the respondents from taking any adverse action.

2. The petitioner claims to be the lawful allottee of Plot No. C-18, measuring 405 square meters, situated at Boat Building Yard Area, West Wharf, Karachi, through an allotment and lease deed. He states that he subsequently constructed a hotel on the said plot. The petitioner submits that he has repeatedly approached the respondents for renewal of the lease and is willing to pay the requisite renewal charges; however, no action has been taken. He further submits that despite non-renewal, he has continued to pay the rent. The petitioner claims that while leases of other plots in the same vicinity have been renewed, his case has been treated in an arbitrary and discriminatory manner. He refers to Board Resolution No. 71 dated 20.01.2017, passed by the respondents, wherein a policy decision was sanctioned for renewal of leases up to 25 years in the Oil Installation Area and West Wharf locality, as both areas are not part of any future development scheme. Having found no remedy from the respondents, the petitioner has approached this Court seeking the following reliefs:

a) To declare that the act of the respondent is treating the petitioner with discrimination by not renewing the lease in favour of the petitioner of plot No.C-18, measuring 405 square meter situated at Boat Building Yard Area West Wharf Karachi is illegal and unlawful while the lease of the other plots in the same vicinity have been renewed by the respondents.

b) To direct the respondents to renew the lease in respect of plot No.C-18, measuring 405 square meter situated at Boat Building Yard Area West Wharf Karachi in favour of the petitioner subject to payment of renewal charges as received from the lessees of the surrounding plots of the petitioner's property.

c) To permanently restrain the respondents from taking any adverse action with regard to the petitioner's property i.e. plot No.C-18, measuring 405 square meter situated at Boat Building Yard Area West Wharf Karachi till disposal of the instant constitutional petition.

d) Any other relief which this Honourable Court may deem fit and proper.

e) Cost of the petition.

3. In their counter affidavit, the respondents submit that the plot in question was leased to the petitioner for the period from 26.05.2004 to 25.05.2014 for the purpose of "Boat Building Industry and other allied works related to port". They assert that the lease has since expired. It is further alleged that the petitioner has constructed a hotel on the premises in violation of the approved building plan dated 30.12.1999, and has also opened shops, with the first floor being used for residential purposes both in contravention of the lease terms.

4. Learned counsel for the petitioner submits that his client has become an easy target for coercive action by the respondents, who are seeking to unlawfully evict him. He contends that the plot was lawfully allotted to the petitioner and that the respondents, acting with mala fide intent and for ulterior monetary motives, are deliberately refusing to renew the lease. He further argues that the leases of similarly situated allottees in the vicinity have been renewed, and only the petitioner is being subjected to discriminatory treatment. He prays that appropriate relief be granted in the interest of justice.

5. Conversely, learned counsel for the respondents argues that the petition is not maintainable, is barred by laches, and that the petitioner has failed to fulfil the necessary obligations under the lease. He further submits that the petitioner was served with a final show-cause notice in 2019 due to violations of the lease terms. He contends that the petitioner has not approached the Court with clean hands and has fabricated a false narrative. The respondents claim they are proceeding in accordance with the law, particularly under the Port Authority (Building and Land) Recovery of Possession Ordinance, 1962, and the petitioner is therefore liable to be evicted. He prays for dismissal of the petition.

6. We have heard the learned counsel for the parties and examined the material available on record.

7. The record reveals that the petitioner was granted a lease vide deed dated 29.02.2013, which explicitly stipulated at paragraph No.5 that the lease would expire on 25.05.2014. Despite this, the petitioner remained in occupation of the premises well beyond the expiry, and approached this Court through the present petition in 2019 nearly five years later without furnishing any reasonable or lawful justification for such delay and, therefore, the petition is barred by laches, which constitutes a significant bar to discretionary relief under Article 199. In this regard, reliance is placed on ***State Bank of Pakistan through Governor and another v. Imtiaz Ali Khan and others (PLJ 2012 SC 289)***, wherein the Honourable apex Court has held as follows:-

“---Laches was a doctrine whereunder a party which may have a right, which was otherwise enforceable, loses such right to the extent of its endorsement, if it was found by the Court of law that its case was hit by the doctrine of laches/limitation---Right remains with the party, but he cannot enforce it-Limitation is examined by the Limitation Act, 1908 or by special laws which have inbuilt provisions for seeking relief against any grievance within the time specified under the law and if party aggrieved does not approach the appropriate forum within the stipulated period/time, the grievance though remains, but it cannot be redressed because

if on the one hand there was a right with a party which he could have enforced against the other, but because of principle of Limitation/laches, same right then vests/accrues in favour of the opposite party."

The Honourable Supreme Court in the case of **Jawad Mir Muhammad and others v. Haroon Mirza and others reported in PLD 2007 SC 472**, has held as under:-

"Article 199. Constitution petition. Laches. Principles. Laches per se is not a bar to the constitutional jurisdiction and question of delay in filing would have to be examined with reference to the facts of each case. Question of delay/laches in filing constitutional petition has to be given serious consideration and unless a satisfactory and plausible explanation is forthcoming for delay in filing constitutional petition, the same cannot be overlooked or ignored subject to facts and circumstances of each case".

Likewise, in the case of **Asghar Khan and 5 others v. Province of Sindh through Home Secretary Government of Sindh and 4 others (2014 PLC (C.S) 1292)**, it was held as under:-

"We feel no hesitation in our mind to hold that the petition is hit by laches. The consideration upon which the court refuses to exercise its discretion where the petition is delayed is not limitation but matters relating to the conduct of parties and change in the situation. Laches in simplest form mean failure of a person to do something which should have been done by him within a reasonable time if remedy of constitutional petition is not availed within reasonable time the interference can be refused on the ground of laches. Even otherwise, grant of relief in writ jurisdiction is discretionary, which is required to be exercised judiciously. No hard and fast rule can be laid down for the exercise of discretion by the Court for grant of refusal for the relief in the exercise of extraordinary jurisdiction".

8. Additionally, the petitioner has materially breached the lease terms by using the premises for purposes entirely unrelated to the sanctioned use. Instead of engaging in "Boat Building Industry and other allied works related to port" as provided in the lease and approved building plan dated 30.12.1999, the petitioner has constructed a hotel, commercial shops, and is also using the premises for residential purposes. The petitioner, post-expiry of the lease, falls squarely within the definition of an "unauthorized occupant under clause h(ii) of the Port Authorities Lands and Buildings (Recovery of Possession) Ordinance, 1962, which is reproduced as under:-

"(h) "unauthorized occupant" means a person who is in occupation of any land or building without the permission of the Port Authority, and includes:-

(i).....

(ii) a person who remains in occupation of any land or building after the determination of the lease in respect of such land or building".

9. The petitioner has also approached this Court without clean hands. Notably, the final show-cause notice issued in 2019 was deliberately withheld from the petition, and the petitioner failed to disclose material facts relating to his misuse of the premises and pending proceedings. A person seeking equitable relief must make full, frank, and honest disclosure of all relevant facts. Reliance is placed on the case of **Muhammad Amir v. Umer Hayat and 5 others, 2010 CLC 1798 Lahore**, wherein the Court held as under:-

"The petitioner should approach this court with clean hands. This material concealment of facts not disclosing the filing of civil suit before the learned Senior Civil Judge, Sahiwal by the petitioner is sufficient ground for refusing the relief sought for in this writ petition. The petitioner cannot avail two remedies simultaneously. He is bound to choose either to avail the remedy of filing civil suit or filing this writ B petition. At a time petitioner has availed both the remedies".

Reliance is also placed on the case of **Lahore Development Authority through Director General, LDA, Lahore v. Mst. Shamim Akhtar and another, 2003 MLD 1543**, wherein following observation were made:-

"Since the petitioner does not approach this Court with clean hands, therefore, I am not inclined to exercise my discretion in favour of the petitioner as per principle laid down by the Hon'ble Supreme Court in the following judgments:- 1969 SCMR 141 (Abdur Rasheed's case), 1983 SCMR 1996 (Ghulam Mustafa's case), 1993 SCMR 1462 (Rana Muhammad Arshad's case)".

10. The lease deed clearly specifies the permitted use of the property as limited to "Boat Building Industry and allied works related to port". The relevant portion reads as under:

WHEREAS on the request of the party the KPT Board vide its Resolution No.151 (Item No.V) dated 13.12.2012 has sanctioned restoration/Renewal of lease period of **Plot No.C. 18** measuring **405, square meters** situated at Boat Building Yard Area, at West Wharf, Karachi, in the name of **Mr. Muhammad Siddique s/o Hassan Sher** for a period

commencing from 26.05.2004 to 25.05.2014 for the purpose of **Boat Building Industry & other allied Works related to Port**, but subject to the terms of the covenants in that respect herein after contained.

"NOW THIS INDENTURE WITNESSTH that in pursuance of the above said B.R and in consideration of the rent, covenants and conditions hereinafter reserved and contained and on the part of the Tenants to be paid, performed and observed the Board do hereby demise unto the Tenants. ALL THAT plot of **ground No.C-18**, situated in **Boat Building Yard, West Wharf at Karachi** containing by admeasurement **405 square meters** or thereabouts be the same title more or less bounded on /or towards the:-

NORTH BY : 60-0 WIDE ROAD
 SOUTH BY : PLOT NO.A-5
 EAST BY : PLOT NO.A-4
 WEST BY : 50-0 WIDE ROAD

which with its dimensions and abutments are more particularly described and delineated on the **Plan No.4529** dated **24.01.2013** here to annexed and there coloured for the purpose of **Boat Building Industry & other allied works related to port** hereinafter referred to as the *PREMISES*"

11. Despite this, the petitioner has carried out commercial construction of a hotel and shops, and has used the premises for residential purposes. This is a blatant breach of lease terms and zoning regulations, and undermines the public purpose for which land in the port area is allotted. The principle of public trust prohibits the use of public land for unauthorized commercial gain by private parties.

12. The petitioner's reliance on Article 25 of the Constitution is misplaced. Equality before the law is guaranteed only in lawful circumstances. If any similarly placed lessees have obtained renewal of lease in violation of law, such illegality cannot be invoked as a ground to claim equal treatment. The Hon'ble Supreme Court has consistently held that Article 25 cannot be invoked to perpetuate or seek parity in illegality. Reliance is also placed on the case of *Irshad Bibi and others v. Member Board of Revenue and another* (**1995 SCMR 797**), wherein the Honourable Supreme Court has held as under:-

"We have noticed that on the basis of the above litigation, the petitioners have been in possession of the suit land even after the expiry of about 15 years from the date of the expiry of the above original lease of 10 years. In other words, the petitioners have enjoyed in fact about 3 renewals of the leases of 5 years each. In this view of the matter we are inclined A to

hold that besides the reason found favour with the learned Judge in Chambers, the petitioners have no case for the grant of leave. The petitioners cannot go on enjoying the land on the basis of the lease which had expired in 1970".

13. Furthermore, lease renewal is not a vested right. It is a contractual right, contingent upon lawful conduct and compliance with the lease terms. A lessee in breach of the terms of lease and misusing public land cannot invoke constitutional jurisdiction to compel renewal. The petition involves serious and disputed questions of fact, including the nature and extent of unauthorized use, the legal effect of the show-cause notice, and the factual parity with other lessees. These questions require resolution through evidence, which cannot be undertaken in constitutional jurisdiction. In the case of **Syed Iqbal Hussain Shah Gillani v. Pakistan Bar Council through Sectary, Supreme Court Bar Building Islamabad and others, 2021 SCMR 425**, Honourable Supreme Court observed as under:-

"Thus, the matter involves a factual dispute requiring a factual inquiry and accordingly demands an evidential probe to resolve factual controversy between the parties. However, we are in no manner of doubt that while exercising jurisdiction under Article 199 of the Constitution, this was not a fit case for the High Court to launch into an exercise of undertaking a factual inquiry and recording evidence which the High Court correctly declined to do".

Reliance is also placed on the case of **Mst. Kaniz Fatima through legal heirs v. Muhammad Salim and 27 others (2001 SCMR 1493)**, the Honourable Supreme Court has held as under:-

"Even otherwise such controversial questions could not be decided by High Court in exercise of powers as conferred upon it under Article 199 of the Constitution of Islamic Republic of Pakistan".

Similarly, in **Anjuman Fruit Arhtian and others v. Deputy Commissioner, Faisalabad and others (2011 SCMR 279)**, following observations were made:

"The upshot of the above discussion is that learned single judge in chambers has rightly declined to exercise his constitutional jurisdiction in view of various controversial questions of law and facts which can only be resolved on the basis of evidence which cannot be recorded in exercise of constitutional jurisdiction. The petition being devoid of merit is dismissed and leave refused".

14. It is settled law that grant of relief under Article 199 is discretionary in nature and not to be exercised in favour of a party guilty of delay, concealment, and violation of law. Public land is a national asset held in trust for public benefit, and its continued unauthorized occupation cannot be validated through constitutional jurisdiction.

15. In view of the foregoing analysis, the petition is found to be barred by laches, tainted by material concealment, involves disputed questions of fact, and is otherwise devoid of merit. Accordingly, the petition stands ***dismissed***.

JUDGE

JUDGE

Ayaz Gul