

IN THE SUPREME COURT OF PAKISTAN
(ORIGINAL JURISDICTION)

PRESENT:

Mr. Justice Iftikhar Muhammad Chaudhry, CJ.
Mr. Justice Ch. Ijaz Ahmed
Mr. Justice Mahmood Akhtar Shahid Siddiqui

Human Rights Case No. 81 of 2009.

(Application by S.M. Ismail)

Attendance:

For complainant: In person.

Date of hearing: 16.06.2009

ORDER

As in this case already a petition has been filed on behalf of petitioner by Mr. Zulfiqar Khalid Maluka, ASC, therefore, this petition is dismissed.

Islamabad, the

16th June, 2009

A.Rehman/*

Honourable Chief Justice of Pakistan

Please put up
SUBJECT: HIGH HANDEDNESS OF CDA.

My Lord,

May I place the following before Your Lordship for your gracious orders;

- 5/8/08*
JA
1. That a piece of land measuring 150 x 90 feet on Embassy Road, G-6/4, Islamabad (the Site) alongwith another petrol pump site in Sector F-6 was leased out for ninety years to CDA's Staff Welfare Committee (SWC) by CDA from 1970 for a consideration of Rs. 150,000. The SWC as part of the lease terms was allowed to rent out the site to a suitable tenant for establishment of a petrol / filling station.
 2. That the SWC rented out the Site commencing from 1.1.1973 for a period of thirty years to me at a rent of Rupees one thousand per month, which was quite high at that time, allowing me to put up thereon at my cost a petrol/filling station which I commissioned in 1973. Much later in 1999 I added CNG facility with the permission of CDA and other relevant government authorities/agencies.
 3. That a year before expiry of thirty year rent agreement, I sought further extension of tenancy and offered to pay higher rent. SWC on 21.1.2002 agreed to extend tenancy for a further period of five years only subject to increased rent of Rs. 100,000 per month, a hundred times increase in the original rent, where upon I requested for a review. Negotiations held thereafter remained inconclusive. Threatened with eviction, I before the tenancy expired approached the civil court at Islamabad which on 5.3.2003 issued on CDA's/SWC undertaking a permanent injunction barring them from dispossessing me without due process of law. I also moved the Rent Controller in January 2003 for fixation of fair rent. The CDA / SWC were duly represented in the proceedings and have never challenged the jurisdiction of the learned Rent Controller under the Islamabad Rent Restriction Ordinance, 2001. The Rent Controller on 27.3.2003 fixed tentative rent of Rs. 20,000 per month which is being regularly deposited by me without default, to date.
 4. That however, in flagrant violation of the injunctive order of the civil court dated 5.3.2003 and pending fair rent fixation proceedings CDA / SWC chose to take the law in their own hands and without any court orders forcibly ejected me from the disputed premises and sealed them with all my valuable assets on 8.2.2004.
 5. That I filed a writ petition No.346/2004 and also approached the District & Sessions Judge, Islamabad who by his order dated 20.2.2004 had the premises de-sealed through the execution of the warrant of the same date by court bailiff and I was put back in possession of the disputed site.
 6. That the matter went up to honourable High Court, Lahore whose Division Bench held CDA's action to dispossess me as unlawful and directed SWC to extend the tenancy for another 30 years on payment of Rs.100,000 per month rent as per demand of SWC vide order

- (2)
- dated 28.6.2005 in ICA No. 161/2004. The rental of Rs.100,000 per month was paid directly to SWC from Sept.2004 to Nov. 2006 *in addition to Rs.20,000 per month* being deposited to date in the court of Rent Controller since January 2003.
7. That aggrieved by LHC's Division Bench order dated 28.06.2005 in ICA No.161/2004, CDA, (though not concerned with the tenancy agreement between SWC and myself) filed CPLA No.2577/2005 which was taken up by this August Court on 5.10.2006.
 8. That on my statement made at this august court's suggestion, I withdrew cases already decided from the High Court and this August court set aside Honourable High Court's orders as withdrawn and relegated parties to the position prior to the filing of writ petition and allowed the parties through mutual consent to seek civil remedy.
 9. That by misinterpreting this august court's order dated 5.10.2006, CDA, once again, chose to take the law in their own hand and in violation of the order dated 5.10.2006 of this august Court, forcibly occupied the site on 2.12.2006 without any court order / warrant, along with all my assets valued at Rs.40 million.
 10. As owing to dilly dallying tactics of CDA, the cases in the civil courts were not progressing my displaced employees sought this august court's gracious intervention through a petition and this august court vide its orders in CM No. 2875/2007 dated 30.1.2008 directed civil courts below to dispose of the pending cases preferably within two months without being influenced by this court's earlier order date 5.10.2006 in CA No. 1671 of 2005. This august court noted without being challenged by CDA's counsel the observation of ASC Justice (Retd) Gulzarrin Kayani that *CDA could not have taken possession of the suit property without due process of law in the light of this august court's order dated 5.10.2006.*
 11. That however CDA continues to illegally occupy the suit property causing huge recurring financial loss to me besides depriving scores of poor employees of their livelihood, of rent to the SWC and of facility to motorists of the areas.

It is humbly prayed that Your Lordship may direct CDA to vacate my business premises unlawfully occupied by them.

Yours most obediently



(S. M. Ismail)

Govt. Pensioner / Proprietor

Margala Service Station, Embassy Rd., G-6/4, Islamabad

November 13, 2008