

ORDER SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P.No.2832/2019
Amjad Rafique
Versus
Capital Development Authority and others

S. No. of order / proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	05.08.2019	Ch. Tanweer Akhtar, Advocate for the petitioner.

Through the instant writ petition, the petitioner, Amjad Rafique, impugns the judgment dated 30.07.2019, passed by the Court of the learned Additional District Judge, Islamabad, allowing respondent No.1's revision petition against the order dated 17.07.2019, passed by the learned Civil Court. Vide the said order dated 17.07.2019, the learned Civil Court had directed the Capital Development Authority ("C.D.A.") to de-seal Plot Nos.140 and 141, Sector I-9/2, Islamabad ("the case property").

2. The facts essential for the disposal of the instant petition are that the Telecom Foundation (respondent No.2) had given the case property on rent to the petitioner. Admittedly, the validity of the rent agreement has expired on 31.05.2019.

3. Respondent No.2 had taken the case property on lease from M/s Carrier Telephone Industries (which has not been made a respondent in the instant petition). The case property had been allotted by the C.D.A. to the predecessor-in-interest of M/s Carrier Telephone Industries, which had been privatized by the Government of Pakistan in the year 2005 and its shares were purchased by M/s Siemens Pakistan Engineering

Company through a share purchase agreement dated 08.11.2015. The case property was declared surplus and surrendered to the C.D.A.

4. On 26.03.2014, respondent No.2 filed a suit for declaration and permanent injunction against M/s Carrier Telephone Industries etc., praying for a declaration to the effect that it is in lawful and legal possession of the case property as a lessee. Along with the said suit, respondent No.2 had also filed an application for interim injunction. The petitioner had filed an application under Order I, Rule 10 C.P.C. for impleadment as a respondent in the said suit. The ground taken by the petitioner in the said application was that respondent No.2 had leased the case property to the petitioner.

5. Vide order dated 15.05.2019, the learned Civil Court dismissed respondent No.2's application for interim injunction and allowed the petitioner's application under Order I, Rule 10, C.P.C. The said order dated 15.05.2019 was assailed by respondent No.2 in an appeal. It is an admitted position that the Appellate Court has not granted an injunction in favour of respondent No.2.

6. On 27.01.2017, the petitioner had filed a suit for declaration and permanent injunction against respondent No.2 and C.D.A. before the learned Civil Court. In the said suit, the petitioner had prayed for the grant of a mandatory injunction restraining the defendants in the said suit from committing a breach of the lease agreement dated 03.05.2016 executed between respondent No.2 and the petitioner's sole proprietorship.

As mentioned above, the said lease agreement expired on 31.05.2019.

7. Vide order dated 01.10.2018, the learned Civil Court stayed the proceedings in the suit instituted by the petitioner. The petitioner did not assail the said order dated 01.10.2018 any further.

8. It was these circumstances that the C.D.A. on 10.07.2019 sealed the case property. This prompted the petitioner to file an application for the de-sealing of the case property before the learned Civil Court. Vide order dated 17.07.2019, the learned Civil Court directed the C.D.A. to immediately de-seal the case property. The said order dated 17.07.2019 was assailed by the C.D.A. in revision petition No.25/2019. Vide impugned judgment dated 30.07.2019, the said revision petition was allowed and the said order dated 17.07.2019 was set-aside. The judgment dated 30.07.2019, passed by the learned Revisional Court has been assailed by the petitioner in the instant writ petition.

9. Learned counsel for the petitioner, after narrating the facts leading to the filing of the instant petition, submitted that since the petitioner's application for impleadment as a party in the suit instituted by respondent No.2 had been allowed by the learned Civil Court, injunctive relief should also have been granted to the petitioner; that although the proceedings in the petitioner's suit for declaration, etc. had been stayed, but respondent No.2's suit for declaration, etc. was still pending, and it remains to be decided whether respondent No.2 had a valid

claim of leasehold rights regarding the case property; that until respondent No.2's suit for declaration, etc. was decided by the learned Civil Court, the case property could not have been sealed by the C.D.A.; that the judgments/orders passed by the learned Courts below were at variance; that the order dated 17.07.2019, passed by the learned Civil Court was strictly in accordance with the law; and that the petitioner would suffer irreparably if the case property is not de-sealed. Learned counsel for the petitioner prayed for the writ petition to be allowed and for the impugned judgment dated 30.07.2019 to be set-aside.

10. I have heard the contentions of the learned counsel for the petitioner and have perused the record with his able assistance.

11. The facts leading to the filing of the instant petition have been set out in sufficient detail in paragraphs 2 to 8 above, and need not be recapitulated.

12. The petitioner derives his rights over the case property on the basis of the lease agreement dated 03.05.2016, executed between respondent No.2 and the petitioner's sole proprietorship. It is an admitted position that the said lease agreement expired on 31.05.2019.

13. Although in the said lease agreement, respondent No.2 has been described as a "lessor", it is an admitted position that the case property has not been allotted to respondent No.2 at any material stage.

14. Through a suit for declaration, etc. filed by respondent No.2, it sought a declaration to the effect that its possession over the case

property is lawful and legal. Respondent No.2 did not assert its ownership over the case property. In the said suit, it was *inter-alia* pleaded that the case property was given on lease to respondent No.2 by M/s Carrier Telephone Industries. As mentioned above, M/s Carrier Telephone Industries was privatized and its shares were transferred to M/s Siemens Engineering Co. Ltd. which has surrendered the case property to the C.D.A. With the surrender of the case property to the C.D.A., respondent No.2 could not seek the continuation of its leasehold rights over the case property.

15. Although the petitioner's lease agreement with respondent No.2 has already expired, even if it is assumed that the said lease agreement has not expired, the petitioner's rights over the case property would be contingent and dependent on the outcome of respondent No.2's suit for declaration, etc. against M/s Carrier Telephone Industries, etc. As mentioned above, respondent No.2's application for interim injunction has already been dismissed by the learned Civil Court, vide order dated 15.05.2019. It remains to be seen whether an appeal against the said order is allowed or not.

16. Since the case property has already been surrendered by its lawful allottee to the C.D.A.; since respondent No.2's status with respect to the case property was only that of a tenant of M/s Carrier Telephone Industries; and since the petitioner is only a sub-lessee of respondent No.2, I do not find any jurisdictional infirmity in the impugned

judgment dated 30.07.2019 so as to warrant interference in the Constitutional jurisdiction of this Court. Consequently, the instant petition is dismissed in *limine*.

**(MIANGUL HASSAN AURANGZEB)
JUDGE**

Ahmed
Ahtesham*