

ORDER SHEET  
**IN THE HIGH COURT OF SINDH AT KARACHI**  
Suit No. 1414 of 2019

DATE

ORDER WITH SIGNATURE OF JUDGE

**Plaintiff No.1:** Supreme Terminals (Pvt.) Ltd.,  
Through Mr. Khalid Jawed Khan,  
Advocate.

**Plaintiff No.2:** Supreme General Trading LLC.  
Through Mr. S. Mahmood Alam  
Rizvi, Advocate.

**Defendant No.1:** Qasim International Container  
Terminal through Mr. Khawaja  
Shamsul Islam, Advocate and Mr.  
Imran Taj, Advocate.

**Defendants No.2 to 5:** Modern Terminal Operator & others  
through Mr. Muhammad Ali Lakhani  
and Mujtaba Sohail Raja, Advocates.

**Defendant No.6:** FBR through Mr. Mr. Kafeel Ahmed  
Abbasi, DAG.

**Defendant No.8:** The Collector of Customs (Exports),  
Through Mr. Khalid Rajpur,  
Advocate.

**Defendant No.9:** Muhammad Afzal DM (Legal).

For hearing of CMA No. 11561/2019 (U/O 39 Rule 1 & 2 CPC)

**Dates of Hearing:** 16.09.2019 & 18.09.2019

**Date of Order:** 23.09.2019

**ORDER**

**Muhammad Junaid Ghaffar J.** This is a Suit for Damages, Declaration and Injunction and primarily seeks a declaration that the Plaintiffs, pursuant to issuance of SRO 585(I)/2019 dated 23.05.2019 is fully entitled to operate its business operations as an Off Dock Terminal. Whereas, defendant No.1, who is the terminal operator at Port Qasim, has no lawful authority or jurisdiction to

refuse, obstruct or delay the loading and unloading of cargo being handled through the Plaintiff's terminal to or from vessels for import or export. The listed application seeks interim relief to the extent of defendant No.1 in these terms.

2. The precise facts, as stated are that Plaintiff No.1 has been granted a license to set up an Off Dock Terminal ("CFS Terminal") by Federal Board of Revenue, whereas, Plaintiff No.2 has been allotted land bearing Plot No. BBA/SB/03, admeasuring 20.0 Acres, South West Industrial Zone, by Port Qasim Authority (**PQA**) and both Plaintiffs have entered into a joint venture for such purposes. Defendant No.1 is the Container Terminal Operator at PQA pursuant to an Agreement between them and handles the operations of containers at PQA, whereas, the cargo to be imported into or exported from Pakistan including the cargo handled through the Off Dock Terminal is to be done by defendant No.1 and allegedly defendant No.1, on the basis of some legal notice issued on behalf of defendant No.2 to 5, has refused to load such cargo on the vessels on behalf of the Plaintiff; hence instant Suit.

3. Learned Counsel for the Plaintiffs has contended that PQA allotted the land in question to Plaintiff No.2 vide Allotment Letter dated 20.01.2011 and till May, 2019 such land was being utilized for rendering services to defendant No.1 for handling of containers since 2015, which agreement has expired in June, 2019. Per learned Counsel earlier PQA had made an attempt to cancel the allotment of the land in question against which Suit No. 2366/2015 was filed and the order of cancellation was suspended, which is still in field. According to him on 23.05.2019, on an application of the Plaintiffs, FBR after fulfilment of all codal formalities has issued SRO 585(I)/2019 dated 23.05.2019, whereby, the Plaintiff No.1 has been declared to be a Customs Port for clearance of goods to be imported or exported through defendant No.1 under Sections 9 & 10 of the Customs Act, 1969. Per learned Counsel Defendant No.1 being aggrieved has challenged this notification and the license by filing Suit No. 1263/2019, wherein, no interim orders have been passed and the matter is still pending. According to him now through defendants No.2 to 5, who are also operating Off Dock Terminal(s) in similar manner as being done by the Plaintiffs, have filed Petition

bearing No.D-4384/2019 and on 27.06.2019, an order has been passed on the basis of which the defendants No.1 to 5 are denying and curtailing the rights of the Plaintiffs to do business of cargo handling. Per learned Counsel it is the case of the Plaintiffs that defendant No.1 and defendants No.2 to 5 are hands in gloves and after failure of defendant No.1 to get any favorable orders in their Suit, the Petition has been filed malafidely and the order passed thereon is being misused and misapplied by defendant No.1. Per learned Counsel a consignment was processed and delivered to defendant No.1 on 6.9.2019 for loading the same on to the Vessel; but under the garb of the order passed in the petition and a legal notice issued on behalf of defendants No.2 to 5, such cargo was not loaded on to the vessel causing serious financial losses to the Plaintiffs. According to him the Custom authorities also directed defendant No.1 not to refuse the loading of the cargo; however, the defendant No.1 has still not complied with such directions. Learned Counsel has further contended that the learned Division Bench has not suspended the SRO in question or the license issued in favor of the Plaintiffs, whereas, the order is only to the extent that defendants No.2 to 5 (petitioners) shall not be discriminated or put in a disadvantageous position, which according to the learned Counsel is not an order, whereby, defendant No.1 could have refused the loading and handling of the cargo brought into the terminal through the Plaintiffs. Learned Counsel has then referred to Rule 556(d) of the Customs Rules 2001 and has contended that defendant No.1 is bound under the Customs Rules not to refuse any handling of the cargo. He has further argued that PQA has also approved the grant of such license, and therefore, the Plaintiffs are being deprived of their right to do lawful business. Insofar as the question of land and its ownership is concerned, he has contended that the same is pending in another Suit, and therefore, that question is not to be decided in these proceedings. In view of these submissions he has prayed that the application be allowed as Plaintiffs' two consignments and shipments have already been refused causing irreparable loss to the Plaintiffs.

4. Learned Counsel for defendant No.1 has contended that Defendant No.1 has constructed and is operating the container

terminal at PQA pursuant to an agreement, which gives first right of refusal to defendant No.1 in case any other terminal is permitted to be constructed within PQA. Learned Counsel has read out various clauses of the agreement in question including Clauses 8.3.1, 8.5, 8.5.2 and has argued that defendant No.1 is within its rights to refuse loading and handling of any cargo being brought to its terminal. Per learned Counsel, the plot in question is not owned by the Plaintiffs, whereas, it ought to have been allotted to defendant No.1 as per the agreement, whereas, the Plaintiffs have not yet complied with the requirements for issuance of an Off Dock Terminal Licence, and therefore the Notification dated 23.05.2019 cannot be acted upon. According to him, his clients have acted pursuant to a legal notice issued on behalf of defendants No.2 to 5 supported by order dated 27.06.2019 passed by the learned Division Bench of this Court; hence the defendant No.1 has acted in accordance with law. He has further argued that by permitting the Plaintiffs to load cargo from their Off Dock Terminal would amount to putting the defendants No.2 to 5 in a disadvantageous position for which the Division Bench has restrained, and therefore, no case is made out. Per learned Counsel once the very allotment of the property to Plaintiff No.2 is dubious and non-transparent, then the entire transaction, including issuance of licence to them is an illegality, whereas, the case is already sub-judice in the Suit filed by defendant No.1, therefore, the application be dismissed. In support of this proposition, he has relied upon the case of ***Messrs. Mustafa Impex, Karachi and others v. The Government of Pakistan through Secretary Finance, Islamabad*** and others reported as **PLD 2016 SC 808**.

5. Learned Counsel for Plaintiff No.2 has adopted the arguments of learned Counsel for Plaintiff No.1, and has relied upon the map / lay out plan of the area to justify allotment of Plot in question.

6. Learned Counsel for defendant No.8 i.e. Collector of Customs has supported the Plaintiff's case and contended that a proper notification is in field, which has been issued after scrutiny and on compliance of the requisite conditions, therefore, defendant No.1 is bound to act accordingly and permit handling and loading of cargo at their terminal brought through the Plaintiffs. According to him the

department has already issued a letter to defendant No.1, directing compliance of the notification in question and not to create any hurdles.

7. Learned Counsel for Defendants No. 2 to 5, at the very outset, has raised an objection regarding allegations of connivance between defendant No.1 and his clients and has contended that they have no concern with defendant No.1 as there is no joint ownership or business relations for that matter. According to him in their petition, a detailed order has been passed restraining respondents from putting his clients into discrimination or in a disadvantageous position, whereas, the official respondents including PQA and Custom Authorities are facilitating the Plaintiffs, which amounts to putting his clients into a disadvantageous position. Per learned Counsel in terms of Section 10 of the PQA Act 1973, the Master Plan of the entire area cannot be changed or altered without approval of the Federal Government, whereas, the plot in question is not in the CFS village, which was established for the purposes of Off Dock Terminals, and therefore, the grant of licence, if any, is in violation of law; hence cannot be acted upon. Per learned Counsel the Plaintiffs' plot is situated at a distance of 400 meters from the terminal of defendant No.1, whereas, the plots of defendants No.2 to 5 are at distance of approximately 14 kms from the said terminal; hence the issuance of licence and the permission to operate is putting his clients into a disadvantageous position. Per learned Counsel the very allotment of the Plaintiffs is in dispute as it stands cancelled, and therefore, no licence could be granted to the Plaintiffs. He has further contended that PQA has chosen not to come forward and give their stance; and it is his case that they are acting in support of the plaintiffs. Learned Counsel has also referred to Sections 26 and 30 of the PQA Act 1973 and has contended that no plan of the area could be amended; hence the Plaintiffs have no case. He has further argued that since damages have been claimed and identified; hence no injunction can be granted by this Court. In support he has relied upon the cases of ***Puri Terminal Ltd. v. Government of Pakistan through Secretary, Ministry of Communications and Railways, Islamabad and 2 others*** reported as **2004 SCMR 1092** and ***Sayyid***

***Yousaf Husain Shirzi v. Pakistan Defence Officer's Housing Authority and 2 others*** reported as **2010 MLD 1267**.

8. Mr. Muhammad Afzal Deputy Manager (Legal), PQA had affected appearance before the Court on 16.09.2019 after issuance of notices and had sought time to engage a Counsel; however, on the next date no one has turned up on behalf of PQA.

9. While exercising his right of rebuttal, learned Counsel for the Plaintiffs has placed on record certain photographs and submits that they clearly reflect the joint interest of defendant No.1 with defendant No.2, therefore, denial to this extent is incorrect; however, according to him the Plaintiffs case does not rests on this, as according to him the Plaintiffs grievance is primarily against Defendant No.1. He has argued that under the garb of legal notice issued on behalf of defendants No.2 to 5, the defendant No.1 has shown its reluctance to allow loading of the cargo in question, however, per learned Counsel if the Division Bench would have been inclined to agree with the contention so raised by defendants No.2 to 5 then the very notification in question and the license as well, would have been suspended; however, this is not the case, therefore, under the garb of order dated 27.06.2019, the plaintiffs are being denied their lawful rights to conduct business. Per learned Counsel putting into a disadvantageous position would only be possible, if the official respondents are helping the Plaintiffs as against defendants No.2 to 5 either in getting any support for procuring business or otherwise benefiting financially; however, this is not the case as merely issuance of license and running of business operations of similar nature as is being done by defendants No.2 to 5; does not amount either discrimination or giving advantage. He has prayed for grant of the listed application.

10. I have heard all the learned Counsel and perused the record. The facts as stated appear to be that as of today Plaintiff No.2, pursuant to allotment dated 20.01.2011 is owner and in possession of Plot No. BBA/SP-03 admeasuring 20 Acres in South Western Industrial Zone of PQA. It further appears that PQA vide its letter dated 19.11.2015 issued a notice of cancellation of allotment which was challenged in Suit No.2366/2015 and vide order dated

24.11.2015 the said impugned notice has been suspended and parties have been directed to maintain status quo. It further appears and is not in dispute that by virtue of Notification dated 23.05.2019 the Plaintiff No.1 has been issued a licence on the property in question to operate as an Off Dock Terminal in terms of Sections 9 & 10 of the Customs Act 1969. It is a matter of record that such notification has been impugned and challenged by defendant No.1 in Suit No.1263/2019 on the ground that the very allotment of land is illegal, whereas, the Plaintiff is not entitled for grant of any such license; however, no restraining orders have been passed in that Suit. It further appears that thereafter defendants No.2 to 5 have filed a Petition bearing No.D-4384/2019 impugning the same SRO dated 23.5.2019, whereby, the Plaintiffs have been granted license for an Off Dock Terminal, and on 27.06.2019, certain orders have been passed. For the present purposes in this Suit neither the ownership of the property or for that matter, the question of any rights of defendants No.1 to 5 in respect of property can be adjudicated. In fact, the Plaintiffs' case is not even premised on such issue. Their case is that pursuant to the grant of licence and for the reasons that in the Suit of defendant No.1 as well as in the petition of Defendant No.2 to 5, there are no restraining orders, the Plaintiffs cannot be denied their right to conduct lawful business of handling of containers coming in and out of their Off Dock Terminal and its handling and loading at the port by defendant No.1. Their further case is that order of learned Division Bench dated 27.06.2019 is being misapplied and rather the defendants No.1 to 5 being hands in gloves are taking undue advantage of said order, which in categorical terms does not puts a restraint on the lawful business of the Plaintiffs. It is their further case that on the basis of some legal notice issued by defendants No.2 to 5 to defendant No.1, operations of the Plaintiffs' containers handling has been refused / suspended. To have a better and clear understanding of the issue in hand it would be advantageous to refer to the said order dated 27.06.2019 which reads as under:-

- “1. Granted.
2. To be complied with within seven days.

3. Granted subject to all just exceptions.

4-5. Through instant petition, Petitioners have challenged the Notification SRO 585(I)/2019 dated 23.05.2019 issued by the Secretary (Law & Procedure), Federal Board of Revenue, whereby, according to the learned counsel for the Petitioner, Respondent No.5 i.e. Supreme Terminals (Pvt.) Limited, a cargo freight service provider has been declared to be a customs port for clearance of goods to be imported and exported within the terminal area, which according to the learned counsel for the Petitioner, is prohibited under the Port Qasim Act, 1973 and also against the Policy, whereas, it is also violative of PQA Master Plan. Per learned counsel, impugned notification is also violative of Sections 9 and 10 of the Customs Act, 1969 and the Petitioners have been placed in a disadvantageous position.

Let pre-admission notice be issued to the Respondents as well as learned DAG for 05.7.2019, when comments, if any, shall be filed by the Respondents with advance copy to the learned counsel for the Petitioner. In the meanwhile Respondents are directed to ensure that Petitioners may not be discriminated or placed on a disadvantageous position pursuant to impugned Notification and may be provided an opportunity to explain their position in this regard.”

11. Perusal of the aforesaid order reflects that after recording the contention of the Petitioners Counsel that SRO No. 585(I)/2019 dated 23.05.2019 issued in favour of the Plaintiffs is prohibited under the Port Qasim Act, 1973 and is also violative of their Master Plan and so also in violation of Sections 9 & 10 of the Customs Act, 1969, the learned Division Bench while issuing notice to the respondents has been pleased to observe *that in the meanwhile respondents are directed to ensure that Petitioners may not be discriminated or placed on a disadvantageous position pursuant to impugned notification and may be provided an opportunity to explain their position in this regard.* On a plain reading and perusal of the said order, it appears that the contention of defendants No.1 to the effect that passing of such order is restraining them from entertaining the handling of containers / business operations of the Plaintiffs is incorrect. The learned Division Bench has only observed that Petitioners i.e. Defendants No.2 to 5 may not be discriminated or placed on a disadvantageous position; however, neither the impugned notification, whereby, the Plaintiffs have been issued a licence to operate an Off Dock Terminal was suspended; nor the Customs Authorities, or for that matter PQA, were restrained in any manner pursuant to the said notification. As of today, the said notification is in existence and creates a right in favor of the Plaintiff, whereas, the Customs Authorities and PQA *per-se* have not acted in any manner, which could be termed as discrimination or putting defendants No.2 to 5 in a disadvantageous position. Defendant No.1’s

refusal to allow loading and or unloading of containers from their Container Terminal brought or handled through the Plaintiffs, purportedly in response to the legal notice issued on behalf of defendants No.2 to 5 is incorrect and appears to be a wrong interpretation of the order passed by the learned Division Bench. It further appears that defendants No.2 to 5 are already operating similar Off Dock Terminal(s) and there is no impediment or hindrance in their business operations, insofar as defendant No.1 is concerned. Therefore, it is in fact the Plaintiffs, who are being put into a disadvantageous position as against defendants No.2 to 5 by refusal of defendant No.1. It further appears that the Collector of Customs Port Qasim has already written a letter to Defendant No.1 after passing of order dated 27.6.2019 and has asked them not to refuse handling of containers of Plaintiffs; however, despite such directions they have failed to make compliance.

12. Learned Counsel for Defendant No.1 had though relied upon the Agreement with PQA and had argued that in terms of the said agreement it is within the rights of the Defendant No.1 to refuse or allow handling of any containers, as they wish to; however, while confronted he failed to refer to any of the clauses of the Agreement referred to in this regard. The clause(s) referred to in his arguments do not cater for any such situation. Moreover, it needs to be appreciated that the Container Terminal of Defendant No.1 is situated within the Port Area and they have been given exclusive rights to construct and operate the same; however, they still remain a Port Authority in all legal sense, and therefore, in absence of any such specific provision, no authority can refuse to handle containers of any one party and allow the same to another. It is not their business domain in fact. What they can do is to charge for their services and that's all. It is not their domain as to who has been granted land and license to act as an Off Dock Terminal, until they have made out a case before a competent forum, and in this matter they have already filed their Suit and have not been able to get any restraining order to that effect. And finally it need not be reiterated that Defendant No.1 is also a license holder of FBR / Customs, and is to work under the Customs Act and Custom Rules, 2001, and violation of such provisions may also entail consequences including

cancellation of their license. In these circumstances, their stance does not appear to be justified in any manner, coupled with the fact that containers of Defendant No.2 to 5 (Off Dock Terminal owners) are being handled / loaded by them, without raising any objection whatsoever. It may further be noted that the question that Plaintiffs plot is at a distance of 400 meters from the Terminal of Defendant No.1 as against that of Defendants No.2 to 5 which are 14 KMS away, is in fact not a question of being in any disadvantageous position or being discriminated, as it is purely a question of economic and business viability of one against the other. Is such like businesses parties do have such advantages and or disadvantages at the same time; but then if this is not, then all businesses would be equal in terms and no competition would be left. In fact and as rightly contended that by grant of license to the Plaintiff more competition would emerge and this will benefit the importer and or exporter giving them options and choices to choose an Off Dock Terminal on their own volition.

13. In view of hereinabove facts and circumstances of this case, it appears that the Plaintiffs have made out a prima facie case for grant of an injunction as balance of convenience also lies in their favor, whereas, irreparable loss would be caused to them, if injunctive relief is refused, and therefore, the listed application is allowed as prayed.

Dated: 23.09.2019

**J U D G E**

Ayaz P.S.