

**IN THE HIGH COURT OF SINDH, CIRCUIT COURT,
AT HYDERABAD.**

Before:
Mr. Justice Miran Muhammad Shah.

Constitution Petition No.S-483 of 2024

Petitioner : Fawad Ghani Siddiqui son of
Dr. Abdul Ghani Siddiqui.
Through Mr. Ravi Kumar, Advocate.

Respondent No.1 : Mst. Fiza Saleem wife of Saleem Qazi.
Through Barrister Jawad Ahmed Qureshi,
Advocate.

Respondent (Official) : Through Mr. Muhammad Ismail Bhutto,
Additional Advocate General, Sindh.

Date of hearing : 30.05.2025.

Date of Order : 27.06.2025.

ORDER

Miran Muhammad Shah, J. Through this petition, the petitioner has challenged the Tentative Rent Order dated 05.09.2024 passed by the learned VIIIth Rent Controller, Hyderabad in the Rent Application No.71 of 2023, whereby an application under Section 16(1) of the Sindh Rented Premises Ordinance, 1979 was allowed only to the extent of future monthly rent of Rs.50,000/- in the rent case before the Nazir/COC of the trial Court, hence, the petitioner has filed the instant petition.

2. Succinctly, the facts of the instant petition are that on 13.05.2023, respondent No.1/applicant, through her attorney, filed Rent Application No.71 of 2023 under Section 15 of the Sindh Rented Premises Ordinance before respondent No.2, seeking ejectment of the petitioner/opponent from the premises known as Uqab Bakery, constructed on Plot No.34, Block-C, Unit No.7, Latifabad, Hyderabad. Respondent No.1 claimed to be the owner of the said premises and alleged that the petitioner was her tenant under an oral

agreement at a monthly rent of Rs.50,000/-. The eviction was sought on the ground of non-payment of rent since January 2020, despite repeated demands and a legal notice dated 18.04.2023. It was further alleged that the petitioner had been filing false and fabricated FIRs against the tenants of respondent No.1. Respondent No.1 also filed an application under Section 16 of the Sindh Rented Premises Ordinance. The application was supported by an affidavit of her attorney. The petitioner, in his written statement, raised legal objections to the maintainability of the rent application and categorically denied the existence of a landlord-tenant relationship. He asserted that plot No.34 and other adjoining plots were owned by the father of both the petitioner and respondent No.1, who passed away in 2009. The petitioner claimed to be a co-owner of Plot No.34 and stated that he had been running Uqab Bakery in his own right since 1995. He further denied receiving any notice and refuted the allegation regarding the lodging of any FIRs against the tenants of respondent No.1. The petitioner also filed a counter-affidavit in response to the application under Section 16 of the Sindh Rented Premises Ordinance. Subsequently, on 18.10.2023, the attorney of respondent No.1 filed an affidavit-in-evidence, along with supporting documents. Thereafter, the matter was being fixed for hearing of the application under Section 16 and for recording the evidence of respondent No.1. However, instead of proceeding with the recording of evidence, respondent No.2 took up the application under Section 16, heard the parties, and passed an order for payment of future rent through a diary sheet dated 05.09.2024. The petitioner applied for a certified copy of the tentative rent order, which was furnished on 17.10.2024. The petitioner submits that he has no other efficacious remedy available under the law. Hence this petition with the following prayers:-

- (i) Declaration that tentative rent order dated 05.09.2024 (Annex-1), having been passed by learned respondent No.2 in Rent Application No.71 of 2023 is without lawful authority and of no legal effect.

- (ii) Permanent injunction may be issued restraining the respondents from acting upon the order dated 05.09.2024 and in any manner from enforcing the same.
- (iii) Any other relief this Hon'ble Court deems fit may be granted.
- (iv) The costs of the petition be borne by the respondents.

3. The learned counsel for the petitioners submits that the order passed by Respondent No. 2 / learned Rent Controller is contrary to the facts, law, and principles of equity. It is contended that there is no mention of the date, month, year, or place of the alleged oral agreement between the parties. Furthermore, there is no indication of the period or specific months for which rent was allegedly paid by the petitioner. The Respondent No. 2 / learned Rent Controller committed a legal error in entertaining such a vague and frivolous rent application and in passing the impugned order. It is further submitted that, in view of the vague, inconsistent, and frivolous nature of the case, the matter was rightly fixed for recording evidence of the parties. However, the learned Respondent No. 2 / learned Rent Controller acted without jurisdiction in passing a tentative order at this premature stage. It is also submitted that in the rent application, Respondent No. 1 claimed ownership of Plot No. 34, yet failed to produce or rely upon any document of title. In the accompanying notice, Respondent No. 1 referred to a mutation entry pertaining to Plot No. 34, but the said entry was not produced before Respondent No. 2 / learned Rent Controller. Furthermore, it is submitted that neither in the rent application nor in the notice did Respondent No. 1 assert ownership of Plot No. 34 on the basis of any confirmation of an oral gift allegedly executed by the father of the parties. The copy of such document, along with other supporting papers, was produced for the first time along with the affidavit of the alleged attorney. Since the matter had already been fixed for evidence, the Respondent No. 2 / learned Rent Controller lacked the jurisdiction to pass a tentative order based solely on

a copy of the purported confirmation of oral gift without recording evidence. The learned counsel further submits that Respondent No. 1, in the notice, admitted that the petitioner is his brother, and did not dispute that Plot No. 34 was owned by the father of the parties, who died in 2009. Hence, the petitioner's claim of being a co-owner stands prima facie established. The order passed by the Respondent No. 2 / learned Rent Controller, therefore, results from a misreading of the pleadings and documents on record. It is also submitted that it was never disputed that the petitioner owned and possessed Uqab Bakery and had been running it since 1995, well before the alleged oral gift in 2001. There was no valid basis for Respondent No. 1 to claim ownership of Uqab Bakery. The impugned order is based on misreading and non-reading of the relevant pleadings and documentary evidence. Moreover, the rent application, the notice, the affidavit of the alleged attorney, the power of attorney, and the confirmation of oral gift are inconsistent and unreliable. The Respondent No. 2 / learned Rent Controller exercised jurisdiction not vested in him by passing the tentative rent order on the basis of such contradictory material. It is further submitted that the tentative rent order recorded in the diary sheet is vague, and the detailed impugned order lacks proper reasoning or justification, and is, therefore, liable to be set aside. Despite acknowledging that the determination of the landlord-tenant relationship required evidence, the Respondent No. 2 / learned Rent Controller exceeded his jurisdiction by passing the impugned order without conducting proper inquiry or trial. It is also pointed out that two of the three judgments relied upon by the Respondent No. 2 / learned Rent Controller involved cases where the landlord-tenant relationship was admitted, and the third judgment bears no relevance to the facts of the present case. Hence, the impugned order is not supported by any legal precedent and is liable to be set aside. Lastly, the learned counsel submits

that the order passed by the Respondent No. 2 / learned Rent Controller is based on conjecture, surmise, misreading, and non-reading of the pleadings and evidence on record, hence he prayed that instant Petition be allowed while setting aside the impugned order dated 05.09.2024.

4. On the other hand, learned counsel for Respondent No.1 argued that Respondent No.1 is the lawful owner of the demised premises, entered into a verbal tenancy agreement with the Petitioner under which the Petitioner was required to pay a monthly rent of Rs. 50,000/- Initially, the Petitioner complied with the terms and paid the rent. However, from January 2020 onwards, the Petitioner ceased paying the monthly rent, making him chronic defaulter in terms of rent payments. In light of this default, the Petitioner was served with a legal notice demanding the payment of the arrears of monthly rent. He, therefore, requested that the court direct the Petitioner, being the tenant, to deposit the arrears of rent at the rate of Rs. 50,000/-per month, effective from January 2020 and continuing onwards, along with future rent payments. However, he suggested that the rent amount so deposited by the Petitioner shall be kept in safe custody of the Nazir of this Court until disposal of the case. Finally, he contended that the Petitioner is indeed a tenant in the premises having been duly inducted as such for the agreed monthly rent. The Petitioner, after having initially paid the rent, defaulted on subsequent payments, leaving the Respondent No.1 with no choice but to seek recourse through rental proceedings, thereby pursuing the eviction of the Petitioner due to non-payment of rent. Learned counsel for Respondent No.1 submits that Respondent No.2 / learned Rent Controller has rightly passed the impugned order as per law and facts and does not need to be interfered. Lastly, he prayed for dismissal of the instant Petition. In support of his arguments, the learned counsel submitted a statement alongwith list of cases which are reported as

PLD 2007 SC 45, PLD 2009 SC 453, PLD 2018 SC 35, 2019 CLC 687 & 2024 YLR 1043.

5. I have gone through the material available on record as well as contentions raised by the learned counsel for the parties. Certain peculiar points have been raised, which require detailed deliberation. The first point concerns the question of the maintainability:-

1. Whether in the presence of a clear bar Under Section 21 of the Sindh Rented Premises Ordinance, 1979 an interim order can be challenged in a court of law? For brevity, the relevant portion of Section 21 is produced as "Any party aggrieved by an order, not being an interim order, made by the Controller may, within 30 days of such order, prefer an appeal to the District Judge having jurisdiction in the area where the premises in relation to which the order is passed".

6. In the light of the specific language used in the law, the question of whether an interim order can be challenged requires determination before deciding the issues raised in this constitution petition. The counsel for the petitioner being aggrieved by the interim rent order dated 05.09.2024, has invoked the constitutional jurisdiction of this Court after having no other alternate remedy at hand. It is yet to be seen whether the impugned order is patently illegal or otherwise. It is also yet to be seen whether on the face of it, a miscarriage of justice has taken place while passing the impugned order by the learned rent Controller. Such consideration forms the essential ingredients or basic requirements under Article 199 of the constitution of Islamic Republic of Pakistan, 1973. Despite the facts that the words used in Article 199(1), the High Court needs to be satisfied that no other adequate remedy is provided by law, when the concerned law in itself bars from seeking relief from any other laws against the interim order. However, the court has to go beyond the strict wording of the law to provide remedy relief to an aggrieved under the maxim "*ubi jus ibi remedium*" (where there is right, there is a remedy). However, there

are several case laws where constitutional petitions have been out rightly dismissed on the point of maintainability under Article 199 against an interim order passed by the Rent Controller. Such examples being PLD 2009 S.C 45, 2024 MLD 635, 2019 YLR 313 and 2019 YLR 474 and some of the few others of our own High court which are of the same view point. However, the facts remain that a person who remains aggrieved by rent controller's order must attain a relief. A claimant of the property concerned and being allegedly a co-sharer, his status must be determined before passing of any interim order. A co-sharer questions the mere assumption of him being the tenant, especially in absence of any rent agreement, whether written or oral. It is admitted fact in this rent case, that owner and tenant are real brother and sister, where sister claims ownership based on an oral deed made by her father in her favour. It is yet to be determined the genuineness of such document annexed in this constitutional petition as annexure G/1.

2. Now we come to the second question whether the learned Rent Controller passed the impugned order of interim rent under Section 16 (1) without determining the relationship of the owner and tenant in presence of a blood relationship between the two and whether such order was arbitrary in nature and should not have been passed until after framing of issues and deciding upon the relationship established.”?

7. The learned Rent Controller has undoubtedly followed the provision of law *ipso facto* and has not gone deeper into the controversy and has allowed the rent application of the landlord and passed an order for depositing of interim rent until the final disposal of the case. For the brevity of the matter, the provision of Section 16(1) is reproduced hereunder:-

16.(1).Where a case for eviction of the tenant has been filed, the controller shall on application by the landlord and after such summary inquiry as he deems fit to make, determine the arrears of the rent due and order the tenant to deposit the same within such period as the Controller may fix in his behalf and further direct the tenant to deposit monthly rent regularly on or before the tenth of every month, until final disposal of the case {..Provided that the Controller may direct that the arrears of rent approximately rent may be paid to the landlord through pay order, or by any other mode agreed to be the parties, or as directed by the Controller..}

8. However, the Section does allow for a “summary inquiry as he deems fit.” Such inquiry may not be restricted to determination of rent only. The learned rent controller may perhaps look into the controversies as well as background of each case on its own merits. As in this case particularly the tenant himself is a claimant as a co-sharer in the Subject Property hence his status needs to be established *vis-a-vis* the owner/his sister. It has also been admitted that the Petitioner/tenant has remained in possession of the said property since 1995. It is also an admitted position that during the lifetime of the father the Petitioner was in possession of the Property and also six years’ prior to the confirmation of oral gift in 2001. Since the death of the father in the year 2009 the claim of the Petitioner being one of the children as co-owner was *prima facie* established over the Property. The oral gift as relied upon by the Respondent as her entitlement to the ownership of the Property also requires evidence of the revenue staff and the concerned *mukhtiarkar* who is the custodian of such record. Since every case carries with itself certain peculiar facts which vary from case to case, hence, not only the provisions of the law is to be followed but the facts of the case are also to be heavily relied upon. Not being convinced by the case law submitted by both the parties I place my reliance upon a case law which is very identical to the facts of the

present case. For the brevity of the case, I hereby reproduce the relevant portion of case law of Honorable Supreme Court of Pakistan as 1992 SCMR 1149 (reproduce relevant portion):-

(a) Sindh Rented Premises Ordinance (XVII of 1979)

.....S.16.....Constitution of Pakistan (1973), Art. 185(3)... Relationship by landlord and tenant....Denial ofLeave to appeal was granted to consider whether the issue about the relationship of landlord and tenant between the parties should have been framed and decided before passing the rent order under S.16(1), Sindh Rented Premises Ordinance, 1979.

(b) Sindh Rented Premises Ordinance (XVII of 1979)

.....S.16(1)... Relationship of landlord and tenant....Denial of...Tenant having denied relationship of landlord and tenant, Rent Controller instead of framing and deciding issue relating to the relationship of landlord and tenant between the parties passed the rent order directing tenant to deposit arrears of rent— Validity---Rent Controller before passing rent order, should have framed issue relating to the relationship of landlord and tenant and decided the same----Rent order being not warranted by law, order of ejectment passed due to non- compliance of rent order was also invalid.”

09. Another case law i.e. 2001 SCMR 338, which defines the mutation procedures and bars exclusion of heirs, which was done so in the case in hand, where the learned Rent Controller has placed a reliance upon the oral gift and to its confirmation and subsequently the mutation which was done so based on the said order in favour of only one legal heir. The case law further elaborates that upon the exercise of the jurisdiction by High Court in the rent matters writ of certiorari can be issued to correct the wrong. For the brevity of the case relevant portion of the case is reproduced:-

“(a) Constitution of Pakistan (1973)---

-----Art. 199---- West Pakistan Urban Rent Restriction Ordinance (VI of 1959), S.13----Constitutional petition---Writ of certiorari- Reappraisal of evidence----Exercise of jurisdiction by High Court--Scope---Ordinarily High Court in its Constitutional jurisdiction, does not undertake to reappraise evidence in the matters to disturb the findings of fact but the Court would certainly interfere where such findings are found to be based on non-reading or misreading of evidence, erroneous assumption of facts, misapplication of law, excess or abuse of jurisdiction and arbitrary exercise of powers----Where the District Court is the final Appellate Court and the Court in appropriate cases of special jurisdiction reverses the finding of the Trial Court on the

grounds not supported by material on record, the High Court can interfere with such findings by issuing writ of certiorari to correct the wrong committed by the Appealable authority. High Court can justifiably exercise its Constitutional jurisdiction as the same is supervisory as well as in aid and to subserve the cause of justice and to correct the wrong wherever the Court finds to have been committed being contrary to evidence and the law on the subject.

(b) West Pakistan Land Revenue Act (XVII of 1967)----

-----S. 42----- Mutation---- Document of title ---Proof of such document---Burden of proof---Mutation is not a document of title and such document by itself does not confer any title, right or interest---Burden of proof lies on the party who seeks to establish the genuineness of the transfer in his favour---- Although record of rights are not instrument of title but unless rebutted, presumption of truth is attached to them.

(c) West Pakistan Land Revenue Act (XVII of 1967)----

-----S. 42----- Mutation----Exclusion of heirs---Attestation on the basis of custom---Validity----No mutation can be entered and attested on the basis of custom excluding other legal heirs of the propositus.”

10. In light of assertions made and case law relied upon, I am firm upon the opinion that how a relationship of a brother and sister can be established as owner and tenant especially over a property which was originally owned by their real father and upon which the petitioner claims his right. This factual controversy cannot be decided in a writ jurisdiction simultaneously rent controller cannot be allowed to pass an order under section 16 (1) SRPO 1979 arbitrarily without diling upon ownership of a family property despite section 16 (1) being a provision which allows only summary inquiry.

11. Hence this CP No. S-483/2024 is **allowed** and only to the extent of determining the relationship of owner and tenant, I remand this matter back to the respondent no.2 (learned Rent Controller/ 8th senior Civil Judge Hyderabad) who shall first frame and decide the issue whether relationship, of landlord and tenant exists between the parties and thereafter take further action as maybe required under the law.

JUDGE

Manthar Brohi