

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

Const. Petition No.S-353 of 2024

Petitioner : Nihal Khan through Mr. Muhammad Arshad S. Pathan, Advocate.

Respondent No.1 : Wali Mohammad Thebo Mr. Irfan Ahmed Qureshi, Advocate

Respondent No.2&3 : The State, through Mr. Ghulam Murtaza Mallah, Assistant Prosecutor General

Date of Hearing : 18.8.2025.

Date of Judgment : 17.11.2025.

ORDER

TASNEEM SULTANA, J:-This constitutional petition is directed against the order dated 22.08.2024 passed by the learned 1st Additional District Judge, Tando Allahyar (hereinafter referred to as the Appellate Court), whereby First Rent Appeal No. 08 of 2023 preferred by respondent No. 1 was allowed and the order dated 20.11.2023 passed by the learned 1st Rent Controller, Tando Allahyar (hereinafter referred to as the Rent Controller) was set aside and the matter was remanded for decision afresh on merits. The petitioner has filed the present petition with the following prayers:-

- a) To issue writ declaring that the order dated 22.08.2024 passed by the learned 1st Additional District Judge, Tando Allahyar, in F.R.A. No. 08 of 2023 allowing the appeal illegally and unlawfully, as there exists no relationship of tenant and landlord between the petitioner and respondent No. 1, both being purchasers of the same plot under valid agreements;
- b) To declare that there exists no relationship of tenant and landlord between the petitioner and respondent No. 1 as both are purchasers of property bearing C.S. No. 298/1, Ward-A, Unner Para, Court Road, Tando Allahyar, having equal share of 50-50 each, and that such agreement of sale is already in existence and under trial in the shape of a Suit for Specific Performance; thus, in presence of the order in F.C. Suit No. 157 of 2020 and its appeal, continuation of tenancy is not legally sustainable;
- c) To restrain the Trial Court from proceeding with the matter and suspend the operation of the impugned order

dated 22.08.2024 passed by the learned 1st Additional District Judge, Tando Allahyar, in F.R.A. No. 08 of 2023;

- d) Any other relief which this Honorable Court may deem just and proper.

2. The brief facts leading to this petition are that respondent No. 1 purchased the property bearing C.S. No. 298/1, Ward-A, Unner Para, Court Road, Tando Allahyar, through a registered sale deed executed by its previous owners. The petitioner was tenant of the former owner, late Nazar Muhammad s/o Muhammad Essa, in respect of Office No.3 admeasuring 20 sq.ft. under a tenancy agreement dated 30.04.2007 executed on non-judicial stamp paper. After the demise of Nazar Muhammad in 2017, his legal heirs two widows Mst. Siyani and Mst.Khanzadi and one son Ashique Hussain developed disputes inter se regarding receipt of rent, whereupon the petitioner moved a Miscellaneous Rent Application under Section 10(3) of the Sindh Rented Premises Ordinance, 1979 seeking permission to deposit rent before the Rent Controller.

3. Subsequently, in the year 2022, respondent No.1 became owner of the entire property, inclusive of the **subject premises**, through a duly registered conveyance deed. After assuming ownership, he fulfilled the statutory formality prescribed under Section 18 of the Sindh Rented Premises Ordinance, 1979 by issuing a notice to the petitioner, intimating him about the change in ownership and calling upon him to execute a fresh tenancy agreement and to pay rent to him accordingly. The petitioner, however, neither responded to the notice nor tendered rent, thereby constraining respondent No.1 to institute an eviction application under Section 15 of the Ordinance on the grounds of default and personal bona fide need. The learned Rent Controller, without affording opportunity of evidence or hearing on merits, dismissed the eviction application summarily vide order dated 20.11.2023. Aggrieved thereof, respondent No.1 preferred First Rent Appeal No.08 of 2023, which was allowed by the learned Appellate Court, setting aside the Rent Controller's order and remanding the matter for decision afresh on merits in accordance with law.

4. Learned counsel for the petitioner, while assailing the impugned order, argued that the learned Appellate Court failed to properly appreciate the factual and legal controversy involved in the matter. It was contended that no relationship of landlord and tenant exists between the parties, as the petitioner himself is a purchaser of the

same property under a valid agreement of sale executed with respondent No.1, and that both parties claim ownership over distinct portions of the same premises. Learned counsel submitted that the dispute between the petitioner and respondent No.1 is essentially civil in nature, involving questions of title and ownership, which are already sub judice before the competent civil court in a suit for specific performance. It was further urged that, in presence of such pending civil proceedings, the initiation or continuation of proceedings under the Sindh Rented Premises Ordinance, 1979 is without lawful authority, as the existence of a landlord-tenant relationship is a sine qua non for invoking jurisdiction under the said Ordinance. According to the learned counsel, the Appellate Court overlooked these material aspects and proceeded to remand the matter mechanically, without first determining whether the tenancy relationship was legally subsisting.

5. Conversely, learned counsel for respondent No.1 supported the impugned order and argued that the learned Appellate Court has rightly set aside the Rent Controller's order, as respondent No.1 is the lawful owner of the premises by virtue of a registered sale deed. It was submitted that after purchase, respondent No.1 duly complied with the statutory requirements by serving a notice under Section 18 of the Sindh Rented Premises Ordinance, 1979 upon the petitioner, intimating him about the change of ownership and requiring him to execute a fresh tenancy agreement and to pay rent accordingly. Despite receipt of such notice, the petitioner neither responded nor tendered rent, thereby committing default within the meaning of the Ordinance. Learned counsel further contended that the plea of ownership set up by the petitioner is a mere afterthought, raised with mala fide intent to avoid payment of rent, and that pendency of civil litigation regarding title does not suspend the relationship of landlord and tenant, which continues until the civil court determines ownership conclusively. In support of his submissions, learned counsel placed reliance upon *Nazir Khan v. Nadia Ali Butt* (2024 SCMR 452), *Muhammad Ali v. Ali Gohar* (2024 MLD 1655), *Mst. Samina Begum v. Muhammad Haq Nawaz Khan* (2023 MLD 103), *Muhammad Salik Athar v. Muhammad Obaid* (PLD 2023 Sindh 411), *Adam Khan v. Ghulam Rasool* (2023 CLC 129), *Abdul Rasheed v. Magbool Ahmed* (2011 SCMR 320), *Muhammad Iqbal Haider v. Vth Rent Controller* (2009 SCMR 1390), *Syed Imran Ahmed v. Bilal* (PLD 2009 SC 546), *Waheedullah v. Mst.*

Rehana Nasim (2004SCMR 1568) and Haji Jumma Khan v. Haji Zartin Khan (PLD 1999 SC 1101).

6. Heard. Record perused.

7. The learned Appellate Court, upon thorough examination of the record, rightly observed that **respondent No.1 appears as lawful owner of the premises by virtue of a registered sale deed**. The petitioner himself, while asserting that respondent No.1 had made a commitment to transfer the property in his name after execution of the sale deed, has admitted that the property presently stands in the respondent's ownership. The petitioner, being tenant of late Nazar Muhammad, had earlier filed an application under Section 10(3) of the Sindh Rented Premises Ordinance, 1979 seeking permission to deposit rent, which amounts to acknowledgment of the tenancy relationship. After the transfer of ownership, respondent No.1 complied with the legal procedure by serving a notice under Section 18 of the Ordinance, yet the petitioner neither replied nor tendered rent. The learned Appellate Court, therefore, concluded that the findings of the Rent Controller were the result of misreading and non-reading of material evidence and that the order dismissing the eviction application was not sustainable in law. Consequently, the case was demanded for decision afresh on merits in accordance with law.

8. It may be out of place to mention that the appellate Court while deciding First Rent Appeal has observed as under:

6. From the perusal of record and written objections filed by the respondents/opponent it transpires that at present the appellant/ applicant is recorded owner of the premises by way of purchase through registered sale deed. The respondent/ opponent has himself stated that the property is in the name of appellant/ applicant who had made commitment with him before purchasing the same that after execution of the sale deed in his favour he will transfer the same to the respondent/opponent meaning thereby at present the property is registered in the name of appellant/ applicant and he as per record is legal and lawful owner of the same. The record further shows that the respondent/opponent being tenant of late-Mazar Muhammad himself filed the civil misc. application under section 10(3) of the Sindh Rented Premises Ordinance 1979 for depositing the rent in the court on the ground that after the death of Nazar Muhammad his legal heirs due to dispute between them were not receiving the rent from him and his such application was allowed by the Rent Controller to deposit the rent in court but he only deposited the rent for one time and thereafter failed to deposit the same. It shows that the respondent/opponent is tenant of the premises and after the death of Nazar Muhammad he was continuing the tenancy as statutory tenant without executing the fresh agreement with his legal heirs. The record

further shows that the appellant/applicant after purchase of the premises adopted the legal procedure and issued the notice under section 18 of the Sindh Rented Premises Ordinance to the respondent/opponent regarding the change in ownership and requested him to execute the fresh rent agreement with him and also pay him the rent but the said notice as per appellant/applicant was not replied by the respondent/ opponent. The procedure is provided in the Sindh Rented Premises Ordinance that in case the tenant after the change of ownership pay the rent to the new landlord, he will not be adjudged as defaulter and in case of failure the landlord would be at liberty to file the rent application under section 15 of the Sindh Rented Premises Ordinance for eviction of the tenant on the ground of default. In the present case in hand the finding of the learned trial court that appellant/applicant had not produced the rent agreement or any other document with his application appears to be without backing of record and not sustainable under the law. Thus, under the circumstances I am of the considered view that the impugned order passed by the learned Rent Controller is result of misreading and non-reading of the material brought before him and is not sustainable under the law, therefore, the same is liable to be set aside and the Rent application be remanded to the learned Rent Controller to decide the same afresh on merits in accordance with law.

9. It is settled proposition of law that the constitutional jurisdiction of this Court under Article 199 of the Constitution of Pakistan 1973, is supervisory in nature and cannot be invoked to reappraise evidence or resolve disputed questions of fact. In matters arising under the Sindh Rented Premises Ordinance, 1979, such jurisdiction is confined to examining whether the subordinate courts have acted within the bounds of their authority and in conformity with law. Unless any jurisdictional defect, illegality, or mala fide is demonstrated, interference is not warranted. In the present case, the learned Appellate Court has merely remanded the matter to ensure that both parties are afforded full opportunity to substantiate their respective claims before the competent forum, which course of action is consistent with settled judicial principles and does not call for interference in constitutional jurisdiction.

10. The Honourable Supreme Court in **Murad Khan and others v. Mst.Humaira Qayyum and others (2025 SCMR 739)** has categorically held that while exercising jurisdiction under Article 199 of the Constitution, the High Court is not to act as a Court of appeal nor to substitute its own findings for those of the subordinate forums; and that where the order of a Court or Tribunal is found to suffer from any jurisdictional infirmity or misreading of evidence, the proper course is to remand the matter for decision afresh in accordance with law instead of entering into factual appreciation. In the present case,

the Appellate Court has adopted the very course approved by the Apex Court by remanding the eviction application for adjudication on merits; hence no interference is warranted in constitutional jurisdiction.

11. In view of the foregoing discussion, the impugned order does not suffer from any illegality, irregularity, or jurisdictional defect warranting interference by this Court in its constitutional jurisdiction. Consequently, this constitutional petition, being devoid of merit, is dismissed while maintaining the order dated 22.08.2024 passed by the learned Appellate Court.

JUDGE

Shabir/P.S