

Judgment sheet

IN THE HIGH COURT OF SINDH AT KARACHI

Present

Mr. Justice Muhammad Jaffer Raza

Constitution Petition No. S - 1080 of 2024

Muhammad Ali
through Attorney Abbas Ali Petitioner

Versus

Nazaz Ali and others Respondents

Constitution Petition No. S - 1081 of 2024

Abbas Ali Petitioner

Versus

Nazaz Ali and others Respondents

Constitution Petition No. S - 1082 of 2024

M/s. Muhammadi Snack Bar
through Abbas Ali Petitioner

Versus

Nazaz Ali and others Respondents

Constitution Petition No. S - 1083 of 2024

M/s. Ramzani Bakery
through Abbas Ali Petitioner

Versus

Nazaz Ali and others Respondents

Constitution Petition No. S - 1084 of 2024

M/s. Khairabad Tea Shop
through Abbas Ali Petitioner

Versus

Nazaz Ali and others Respondents

Constitution Petition No. S - 1161 of 2024

Sheikh Nazaz Ali Petitioner

Versus

M/s. Ramzani Bakery Respondent

Constitution Petition No. S - 1162 of 2024

Sheikh Nazaz Ali Petitioner

Versus

M/s. Khairabad Tea Shop Respondent

Constitution Petition No. S - 1163 of 2024

Sheikh Nazaz Ali Petitioner

Versus

Muhammad Ali Respondent

Constitution Petition No. S - 1164 of 2024

Sheikh Nazaz Ali Petitioner

Versus

Muhammadi Snack Bar Respondent

Constitution Petition No. S - 1165 of 2024

Sheikh Nazaz Ali Petitioner

Versus

Abbas Ali Respondent

Date of hearing : 29.04.2025.

Date of announcement : 14.07.2025.

Syed Maqbool Hussain Shah, Advocate for the Petitioners in C.Ps 1161 to 1165 of 2024 and advocate for the Respondent in C.Ps1080 to1084.
Barrister Rehman Aziz Malik, Advocate for the Respondents in C.Ps 1161 to 1165 of 2024 and Advocate for the Petitioners in C.P 1080 to 1084.

J U D G E M E N T

Muhammad Jaffer Raza, J: Through this common Judgment, the aforementioned Constitutional Petitions shall be adjudicated. The common facts in all the above mentioned petitions are that they have impugned the judgments dated 21.08.2024 passed in First Rent Appeals emanating from the orders dated 20.09.2023 in Rent Cases filed under Section 8 of the Sindh Rented Premises Ordinance, 1979 (“**the Ordinance**”). The details of the Rent Cases and the subsequent appeals shall be tabulated later in the instant judgment for clarity.

2. Brief facts of the case are that the Landlord is one of the co-owners in respect of the building known as “State View Building” situated at Survey Sheet No.R.Y.9, I.I. Chundrigar Road, Karachi. In the said building several tenements are located and the Landlord filed rent cases for fixation of fair rent under Section 8 of the Ordinance against the Tenants, details of which are tabulated below:-

DETAILS OF RENT CASES

Rent Case	Parties name	Property /tenement
738/2021	Nazaz Ali v. Muhammad Ali	Go-down, Store and a room, Collectively admeasuring 200 sq. ft. on the ground floor.
739/2021	Nazaz Ali v. Abbas Ali	A room, and a store with bathroom, collectively admeasuring 357.50 sq. ft. on the ground floor.
740/2021	Nazaz Ali v. M/s Mohammadi Snack Bar	Shop No.3 admeasuring 525 sq. ft, on the ground floor and portion No.3 admeasuring 90 sq. ft. on Mezzanine floor.
741/2021	Nazaz Ali v. M/s Ramzani Bakery	Shop No.2 admeasuring 881 sq. ft. on ground floor and portion No.2 admeasuring 425 sq. ft. on Mezzanine floor.
742/2021	Nazaz Ali v. M/s Khairabad Tea Shop	Shop No.1 admeasuring 198 sq. ft on the ground floor and portion No.1 admeasuring 460 sq. ft. on Mezzanine floor.

3. The learned Rent Controller disposed of all the rent cases tabulated above by passing similar orders dated 20.09.2023. The operative part of the said orders is as follows:-

“The rent is enhanced to @ Rs.150/- per square foot per month, excluding utility and other charges from the date of filing of the case till the opponent remains in possession of the premises as tenant with directions to the opponent to deposit the part month rent in the Court at enhanced rate of Rs.150/- per square foot excluding utility and other charges from the date of the filing of application till the date of this order within 60 days.”

4. Being aggrieved and dissatisfied with the above orders of the learned Rent Controller, the Tenants filed First Rent Appeals, details of the same are tabulated below:-

DETAILS OF FIRST RENT APPEALS

FRA No.	Parties name	In Rent Case No.
282/2023	Muhammad Ali v. Nazad Ali	738/2021
283/2023	Abbas Ali v. Nazad Ali	739/2024
284/2024	M/s Muhammadi Snack Bar v. Nazad Ali	740/2021
285/2023	M/s Ramzani Bakery v. Nazad Ali	741/2021
286/2023	Ms. Khairabad Tea Shop v. Nazad Ali	742/2021

5. The learned Appellate Court disposed of all the above First Rent Appeals by passing the Impugned Judgment. The operative part of the said judgment is as follows:-

“For the reasons discussed herein above, I am of the firm view that increase in rent is called for however in absence of direct evidence, the increased from Rs.3.99 to Rs.150 per month fixed by the trial Court primarily being influenced from demand of the Respondent is not sustainable however for what has been discussed herein above, the rate of rent is fixed at Rs.120 per square feet per month excluding the utility charges seems justified which the Appellant is required to pay from filing of rent application within 10% increase per annum in due compliance of Section 09 SRPO 1979 which is to take affect accordingly, as such the impugned judgment/order passed by the Rent Controller is hereby modified in above terms accordingly.”

6. Both the parties are aggrieved with the aforementioned Impugned Judgments and have filed the instant Constitutional Petitions, details of which are tabulated below:-

C.P. Nos.	F.R.A. No.	Rent Case No.
C.P. S-1080/2024 C.P. S-1163/2024	F.R.A. No.282/2023	R.C. No.738/2021
C.P. S-1081/2024 C.P. S-1165/2024	F.R.A. No.283/2023	R.C. No.739/2021
C.P. S-1082/2024 C.P. S-1164/2024	F.R.A. No.284/2023	R.C. No.740/2021
C.P. S-1083/2024 C.P. S-1161/2024	F.R.A. No.285/2024	R.C. No.741/2021
C.P. S-1084/2024 C.P. S-1162/2024	F.R.A. No.286/2024	R.C. No.742/2021

7. Considering the convoluted nature of the proceedings it will be expedient to refer to the respective parties as Landlord and Tenant to avoid any confusion which may surface in the understanding of the instant judgment. For further clarity it is specified that Petitions bearing numbers 1080-1084 of 2024 have been preferred by the Tenant and petitions bearing numbers 1161-1165 of 2024 have been filed by the Landlord.

8. Prior to recording the contentions of the learned counsels it will be expedient to succinctly state that the Rent Applications preferred by the Landlord were allowed by the learned Rent Controller by fixing the fair rent at Rs.150/square foot to be paid from the date of the application. Thereafter, the learned Appellate Court reduced the quantum determined by the learned Rent Controller to Rs.120/square foot. The finding regarding the date from which it was to be paid, remained unaltered. The Landlord is only aggrieved with the order of the learned Appellate Court, whereas the Tenant has impugned both orders in the instant petitions.

9. Learned counsel for the Landlord has argued that the Impugned Judgment is liable to be set aside as no cogent reasons have been assigned for reduction of the fair rent stipulated by the learned Rent Controller. He has averred that the fair rent of the tenements in question is over Rs.350/square foot

and learned Rent Controller by fixing the rent at Rs.150/square foot has taken a view which can only be described as “lenient”. However, he stated that he will be satisfied if the order of the learned Rent Controller is upheld. He has further argued that the tenement is located in the midst of the commercial hub of Karachi on main I.I. Chundrigar road, opposite Shaheen Complex. He has averred that the Tenants have been in possession of the tenements in question for over 25 years and have been reluctant to pay rent commensurate to the rental value of the tenement in question. This, according to the learned counsel, is despite the fact that the Tenants use the tenements in question to operate their commercial ventures. Learned counsel has further argued that similar tenements within the same locality fetch approximately Rs.350/ square foot and the present Tenants are paying rent at a paltry sum of Rs. 3.99/square foot. He has contended that the rent has not been increased for decades and the rent being paid by the Tenants (before the learned Rent Controller in MRCs filed by the Tenants) is unacceptably disproportional to the rental value of the tenements. Lastly, he has prayed for the Impugned Order to be set aside and for a direction to the tenants to pay rent at the rate and period stipulated by the learned Rent Controller.

10. Conversely, learned counsel for the Tenants has argued that the rent being paid by the Tenants currently at Rs.3.99/square foot is double of what the said Tenants were paying earlier. He has contended that the Landlord has been unable to establish a case for increase of rent and none of the ingredients enumerated under Section 8 have been proved by the said Landlord. He has further argued that the premises is in a dilapidated condition and the Landlord has not carried out the necessary repairs. He has agreed that the tenements in question are located in the commercial hub of Karachi and the Tenants being represented by him, are operating commercial ventures from the same. However, he has contended the tenements are not analogous to other properties in the vicinity due

to the derelict building in question. Further he has argued that the commercial ventures being operated on the tenements mostly operate during office hours and therefore the rent being paid currently is commensurate to the rental value of the tenements given the peculiar facts advanced by him. He has lastly prayed for setting aside of orders passed by the Learned Appellate Court and Rent Controller and consequential dismissal of the Rent Applications preferred by the Landlord.

11. I have heard both the learned counsels and perused the record. Prior to rendering a finding and adjudicating the present matter it is imperative to note that during the course of hearing I specifically asked the counsel representing the Tenants, the fair rent, according to him, of the tenements in his possession. In this regard the learned counsel failed to make a categorical statement. He reiterated his stance regarding the Landlord being unable to establish his case under Section 8 of the Ordinance.

12. The law pertaining to fair rent is now well settled and the instant adjudication will place reliance on the judgement of the Hon'ble Supreme Court in the case of **State Life Insurance Corporation of Pakistan and another v. Messrs British Head and Footwear Store and others**¹ wherein the Hon'ble Court held as under:-

"In the instant case the appellant out of four factors, as provided under section 8 of the Ordinance, 1979, according to record have proved the last three. As to the fourth factor, as provided in clause (a), we find sufficient evidence produced by the landlord to prove the rent of similar premises situated in the similar circumstances, in the same or adjoining locality which was not accepted by the Courts below and in our opinion this is the only controversy where the evidence adduced by the respective parties in terms of the leave granting order need to be re-examined. At this juncture we would like to reiterate that by now it has been settled by this Court that it is not necessary for a landlord to prove hike in respect of all four factors as detailed in section 8 of the Ordinance, 1979, or that all four factors must co-exist in each and every case seeking fixation of fair rent." (Emphasis added)

¹ 2018 SCMR 581

13. The above-noted judgment was cited with approval by the Hon'ble Supreme Court recently in the case of *Akhtar Kamran (Deceased) through Legal Heirs Versus Pervaiz Ahmed and others*² wherein it was held as under:-

7. We have minutely gone through the pleadings of the parties and scanned the documents/evidence available on the record. It reflects that the relationship of the petitioner and the respondent is not denied. The rise in cost of construction, repair charges, taxes etc. has been increased and labour charges have also been enhanced which fact need not to be proved through documentary evidence and the same also cannot be ignored while determining the fair rent.

8. Moreover, as per time honour principle, while determining the fair rent, the Court is required to take into consideration all ingredients, which are reducing the value of money with each passing month. (Emphasis added)

14. It is evident, as expounded in the judgments referred above, that the all the factors listed in Section 8 of the Ordinance need not be proved by the Landlord, or the Tenant, as the case may be. It is also admitted that the tenements are situated in the commercial hub of Karachi from where the Tenants operate their commercial establishments. The Landlord in this respect filed the above-noted rent applications and thereafter filed his respective affidavit in evidence. It is evident from the perusal of the cross examination of the Landlord that no specific question was posed to the Landlord regarding most of his averments in the affidavit in evidence, pertaining specifically to the location, rental value and increase in taxes in paragraphs number 11-13 of the said affidavit. In this regard the claim of the Landlord went unrebutted, to the detriment of the Tenant.

15. It is admitted between the parties that the tenancy has been in existence for many decades without any notable increase in the rate of rent. I concur with the learned Appellate Court that the cost of living, taxes, cost of construction, and inflation has increased manifold and the quantum of rent currently being paid by the Tenants is not commensurate to the rental value of the tenements in

² 2023 S C M R 1147

question. This is over and above the significant devaluation of the rupee. It is held in light of the judgment in the case of **Akhtar Kamran (supra)** that there was no burden on the Landlord to establish these judicially noticeable facts through cogent documentary evidence. Moreover, this court in the case of **Messrs Oceanic International (pvt.) Ltd. Versus Messrs Lalazar Enterprises, and others**³ held that for determination of fair rent the court can use its own knowledge as a tool for adjudication in addition to the evidence led by the respective parties. In paragraph number 8, which I concur with, it was held as under:-

“8. It will be pertinent to mention that by bringing evidence on a particular issue the purpose of evidence of the parties is that exact factual position as well as relevancy of the connected material be brought to the knowledge of the Court to enable it to pass an order. In certain situations the Court/Judge has its own knowledge in respect to the facts or material which is connected with the issue involved in the case. For example the environmental condition, pollution in the country, poverty and increase in the price etc., therefore, if knowledge of the Court itself is beneficial towards the decision of one issue then there is no restriction under the law that said knowledge cannot be exercised. The factors in section 8 of the SRPO towards determination of enhancement of rent are mostly relevant to the general public knowledge and the Presiding Officer of the Court itself a member of the public can have the knowledge in that respect. The learned Additional District Judge has also considered in the instant case increase in the labour charges and although this is no factor given in section 8 of the SRPO but overall situation going on in the country can be apprehended by the Court itself to visualize overall impact of the inflation and increase on the existing rent and rent can accordingly be enhanced.” (Emphasis added)

16. The factors enumerated in the paragraph above cannot be ignored by the court whilst determining fair rent. Moreover, the Tenants did not lead any evidence with regard to their assertions vis-a-via fair rent of the tenements in question, and left that burden entirely to be discharged by the Landlord. What is however detrimental to the case of the Landlord is the failure to lead evidence of the prevailing rent in the same vicinity. In this regard I concur with the reduction of fair rent made by the learned Appellate Court and hold

³ 2009 MLD 911

that the said reduction is in light of the principles highlighted above and maintains a much needed equilibrium.

17. As already noted above, the contesting parties did not examine any other witness in support of their respective contentions and in this regard I concur with the finding of the learned Appellate Court wherein it has been correctly observed that the reliance of the learned Rent Controller on a document authored by an estate agent, without examining the said author, is untenable.

18. At this juncture it will be prudent to adjudicate the date from which the fair rent ought to be paid by the Tenant. In this regard the Hon'ble Supreme Court has laid down guidelines, most notably in the case of *Messrs Victor Restaurant through Partners v. State Life Insurance Corporation of Pakistan*⁴ wherein it was held as under:-

"5. In the normal circumstances, the fair rent is required to be enforced from the date of application, as the said data is the date from which the fair rent is to be determined after keeping in view the conditions mentioned in section 8 of the Ordinance. However, if the learned Rent Controller fixes the other date he can take the date but for that he must assign reasons to do so. Thus there is no fault in the order of learned High Court in concurring with the order of the Rent Controller. Therefore, the same is maintained."

19. In light of the dicta settled in the judgment reproduced above it is held that both the courts below have correctly held that the fair rent, as determined by the respective courts, is to be paid from the date of the application.

20. In light of the foregoing no case for interference is made out. All the listed petitions are dismissed. The Tenant is directed to pay the fair rent, from the date of the rent application, as determined by the learned Appellate Court. No order as to cost.

JUDGE

Nadeem Qureshi "PA"

⁴ 2010 SCMR 745