

## IN THE HIGH COURT OF SINDH AT KARACHI

Constitutional Petition No. S-880 of 2013  
'M/s Sputnik Footwear vs. Divan Metharam Dharamda Trust and others'

Mr. Farooq Hameed Naek, Advocate for Petitioner  
Mr. Mukesh Kumar Karara, Advocate for Respondent No.1  
Mr. Raja Qasit Nawaz, Advocate for Applicant/ intervener Evacuee Trust Board.

Date of Hearing: 12.03.2026 and 21.04.2026  
Date of Announcement: 25.05.2026

### JUDGMENT

**MUHAMMAD HASAN AKBER J.:** The petitioner has assailed the Judgment dated 03.08.2013 passed by the learned VII Additional District Judge, Karachi South, in First Rent Appeal No. 133 of 2013 [**impugned Judgment**], and the Order dated 24.04.2013 passed by the learned VI Senior Civil Judge / Rent Controller, Karachi South, [**impugned Order**] in Rent Case No. 294 of 2011 [**RC 294/2011**], whereby ejectment application which was filed by Respondent No.1 on the ground of willful default in payment of rent, was allowed. These proceedings were conducted under the Sindh Rented Premises Ordinance 1979 [**SRPO**].

2. Pithy background of the case is that since April 1967, the petitioner has been the tenant of a public charitable '*Diwan Methram Dharmada Trust*' [**Trust**], in respect of Shop No.3, Ekanek Building, Plot No.13, SB-4, Zaibunnisa Street, Saddar, Karachi [**demised premises**]. It is common ground that there was no written rent agreement between the parties. The monthly rent at that time was Rs.214.50, which was subsequently enhanced to Rs. 400 per month. On 12.03.2011, the Respondent initiated Rent Case No.294 of 2011 against the petitioner (at page 47 of the Court file) on the ground of default in payment of monthly rent for a period of ten months from June 1977 to April 1978. The learned Rent Controller allowed such application, vide impugned Order, which was upheld in appeal vide the impugned Judgment, which is assailed herein. During the pendency of this petition, Evacuee Trust Properties Board [**ETB**] has applied as an Intervener to be arrayed as a party herein.

3. Heard learned counsels for Petitioner, Respondent No.1 and the Applicant/ Intervener ETB, and perused the material available on record with their able assistance.
4. The petitioner claims that *Diwan Methram Dharmada Trust* is a public charitable Trust/ the landlord, which had earlier initiated Rent Case No.1997 of 1977 [**RC 1997/1977**] under Section 13 of the Rent Restriction Ordinance, 1959 [**Ordinance 1959**] before the VIII Senior Civil Judge/ Rent Controller, Karachi, seeking ejectment of the petitioner on the ground of alleged unauthorized additions and alterations in the demised premises. The learned Rent Controller directed the petitioner, with the consent of both parties, to deposit the monthly rent @ Rs. 400/- from June 1977 till January 1978 with the Nazir of the Court by 20.03.1978, and to deposit future rent before the 15<sup>th</sup> of every calendar month until the decision of that case. In compliance thereof, the petitioner deposited rent for the months of June 1977 to April 1978 in a lump sum on 18.03.1978 and continued to deposit monthly rent regularly therein until December 1997. The rent was also withdrawn by the landlord in the said Rent Case No.1997 of 1977, which was ultimately rejected vide Judgment dated 16.12.1984. The Trust assailed the Judgment in First Rent Appeal No.88 of 1985 before this Court, which was also dismissed vide Judgment dated 10.01.1995. The Civil Petition for Leave to Appeal No.204-K of 1995 filed by the Trust was also dismissed by the Honourable Supreme Court of Pakistan, vide Judgment dated 01.01.1998.
5. Upon conclusion of the above proceedings, the petitioner approached Nazir of the Rent Controller to deposit rent for January 1998 in Rent Case No.1997 of 1977, but was informed that since the matter had been finally concluded till the Supreme Court, hence no further deposits could be made in that case and that he ought to freshly tender rent to the landlord. The petitioner therefore directly offered rent to the Trust in the second week of January 1998 through money order, which was refused, whereafter rent was remitted for January and February 1998 through money order dated 26.02.1998, which was also returned due to refusal to accept by the Trust to receive such payment. A second money order dated 20.04.1998 was similarly returned, whereafter Miscellaneous Rent Case No.613 of 1998 [**MRC 623/2018**] was filed under Section 10(3) SRPO before learned VIII Rent Controller, Karachi South. Such application was allowed vide Order dated 28.04.1998, with permission to deposit monthly rent from January 1998 onwards, which was accordingly deposited until December 2012.
6. Thereafter, rent for January 2013 to June 2013 was deposited in the present Rent Case No.294 of 2011 [**RC 294/2011**], which has been filed by Mr. Jitandara Prem Shahani under Section 15(2)(ii) SRPO on 17.03.2011, claiming himself to be a Trustee of the Trust and the authorised person on behalf of the Trust. It was alleged that a willful default in payment of rent from June 1977 till April 1978 was committed by the petitioner, and ejectment orders against the petitioner were sought. In its written reply, all allegations were denied, while relying upon various legal and factual aspects along with documents,

including rent receipts, statement of accounts and certified copies of Court proceedings, Orders, Judgments, etc. Respondent No.1 also filed an application under Section 16(1) SRPO seeking directions for the deposit of arrears of rent from June 1977 to April 2011. Vide order dated 28.05.2012, the petitioner was directed only to deposit future rent in RC 294/2011, instead of MRC 613/1998, but no order was passed regarding the alleged claim of arrears of rent, because the record showed that rent for such period was already deposited in the said RC 1997/1977.

7. Mr. Farooq Hameed Naek, learned counsel for the petitioner, has firstly pleaded that not only the maintainability of the subject Rent Case but the *locus standi* and authority of Mr. Jitandara Prem Shahani, who has filed the Rent Application, were also challenged by the petitioner in its written statement and subsequent proceedings. The argument was raised on the premise that neither any Trust Deed was filed with the Rent Case, nor the same was produced in evidence, nor any valid Trustees of the Trust exist, and because of which, no valid Resolution or Authority was filed with the Rent Case at the time of filing. He pointed out that there were only two Trustees in the Trust out of which the first Trustee expired in 2002, the other Trustee expired on 30.12.2010, and thereafter the present applicant/ *Mr. Jitandara Prem Shahani* has invalidly and illegally shown himself as assuming charge of the Trust, which is not in consonance with the applicable laws. He then drew attention to the Authority letter dated 31.12.2010, Exhibit A/1 and A/2 and pointed out various deficiencies therein to establish that the said person was not a valid or legal Trustee of the Trust. In A/2, the Resolution dated 31.12.20210 it was argued that the same has not been signed by any valid or legal Trustee, and based on such documents, *Mr. Jitandara Prem Shahani* did not have the authority to represent the Trust, or to initiate the RC 294/2011. Drawing attention to the undated Extract relied upon by the Respondent (at page 149 of the Court file) it was argued that the entire claim of ownership of the Trust was based upon a purported Gazette of Pakistan [Exhibit A/6 and A/7, pages 153, 155 of the Court file] which were neither Orders by the Government of Pakistan nor by the Government of Sindh, nor were these a proof of ownership, nor a proof of validity of the Trust or the Trustees. It was argued that instead, the same were mere Advertisements in the absence of any title document, which advertisements could have easily been advertised by anyone upon simple payment. Such advertisements neither create any title nor any right in favour of the applicant. Additionally argued without prejudice that even a mere Mutation entry does not create ownership under the law, nor is it proof of ownership.

8. Lastly, it was vehemently pleaded that no Trust Deed was filed with the application, nor was the same produced by the applicant during evidence, and therefore, the application itself was not maintainable and is liable to be rejected solely on this ground. Perusal of the record, landlord's Affidavit-in-evidence and deposition (at page 139 of the Court file) confirms such a position that despite clear objections raised by the

tenant in his written statement, no Trust Deed was produced nor exhibited by the Applicant side during evidence.

9. With respect to the authorization of a person to file a Rent Application, the Honourable Supreme Court of Pakistan, in the case of '**HBL v. Zelins Limited and others**' (2000 SCMR 472) declared that if an objection was raised about the competence and authority of the officer instituting ejectment proceedings against the tenants, burden fell upon the officer to establish that the person instituting the ejectment proceedings was authorized in that behalf, and where such burden was not discharged by the officer at any stage of the proceedings, application for ejectment in circumstances were not maintainable.

10. Again, in '**Messrs A.M. Industrial Corporation Limited v. Aijaz Mehmood and others**' (2006 SCMR 437), the Honourable Supreme Court declared that:

*"the Appellate authority dismissed ejectment application of petitioner-company on sole ground that person who signed the ejectment application was not authorized by petitioner company through a resolution of Board of Directors nor any Power of Attorney was executed in his favour for institution of ejectment proceeding.... Person, who instituted ejectment proceeding on behalf of the company being not duly authorized, no legal defect or error of jurisdiction was found in the view taken by High Court, which was not open to any exception and...Petition for leave to appeal was dismissed".*

11. In '**Abdul Fayyaz Khan v. III Additional District Judge, Karachi, South and 4 others**' (2012 C L C 793), it was held by His Lordship Justice Syed Hasan Azhar Rizvi, that:

*"I hold that in the instant case objection was raised about the competency of the trustee of the Trust instituting ejectment proceeding under the Rent laws against the tenant of the Trust, burden falls upon the Trust to establish that the person instituting ejectment proceeding was authorized by the Trust in that behalf. In the instant case neither the alleged Trustee of the respondent No.3 filed the Trust Deed before any of the Court nor any authorization/resolution to file ejectment case had been filed in the Court of Rent Controller or Appellate Court. Mere filing a photocopy without production of the original, which had not specifically authorised the alleged Trustee to file ejectment proceeding against the petitioner cannot be considered and relied upon. Hence, the Respondent No.3 had not discharged the burden that Dr. Zarksis H. Anklesaria had authority to file the Rent Case."*

12. Mr. Mukesh Kumar Karara, the learned Advocate for Respondent No.1, during the course of his arguments, candidly admits that no Trust Deed was produced in evidence, neither before the Rent Controller nor before the learned appellate Court, which position is also reflected from the record. Yet, he attempted to rely on a photocopy now filed by ETB with its application under Order I rule 10 CPC. for the first time in this Court, however the same could not be considered at this stage firstly, because the law is very clear on the point that while considering a Judgment passed after a complete trial, a document which was not part of the evidence or record before

the learned trial court or the appellate Court, cannot be looked into, especially at the stage of hearing of a Constitutional Petition. Reference in this regard can be made to the cases of '*Rana Abdul Aleem Khan v. Idara National Industrial Co-Operative Finance Corporation through Chairman Punjab Cooperative Board for Liquidation, Lahore and another*' (2016 SCMR 2067), '*Abdul Ghaffar V. Additional District Judge and others*' (2018 YLR 1474), '*Tehsil Municipal Administration D.I. Khan through T.M.O. and another V. District Judge, D.I. Khan and 4 others*' (2010 CLC 333). Secondly, the implications of non-production of such a material document on the maintainability of the Rent Application itself were neither discussed by the learned Rent Controller nor by the learned appellate Court. Thirdly, the effect of such non-production on the *locus standi* of the person claiming to be the authorised officer of the Trust (*Mr. Jitandara Prem Shahani*) was also neither discussed by the learned trial Court nor by the learned appellate Court.

13. From the record, it appears that the objections regarding “**maintainability of the Rent Application filed on behalf of the Trust**”, and “**locus standi of the person claiming to be the authorised person on behalf of the Trust**” (*Mr. Jitandara Prem Shahani*), were questions touching the root of the case so also Jurisdiction of the learned Rent Controller under SRPO, and therefore the same ought to have been clearly discussed in detail, and decided by both the Courts below. Nonetheless, it appears from both the impugned decisions that such an exercise was not carried out and the same are conspicuously absent in both the impugned decisions.

14. The next argument from the petitioner’s side was that the Rent Application was filed after a delay of 34 long years, and therefore, the same was also hit by the principles of ‘*waiver*’ and ‘*laches*’. It was argued that the alleged period of default pertained to the period June 1977 till April 1978 whereas the ejectment application was filed in the year 2011, i.e. after a period of 34 years, therefore the principles of *waiver* by conduct and *laches* were fully applicable. In response to the above, Mr. Karara, learned Advocate for Respondent No.1, simply submitted that the principles of *waiver* and *laches* are not applicable at all to rent proceedings under SRPO, whereas the reason for the delay was due to the death of the Trustees. No legal precedent to support his submissions was relied upon by the Respondent’s side. With due reverence, I couldn’t principally agree with Mr. Karara’s line of argument. The term ‘*waiver*’ implies an intentional relinquishment of a known right after knowledge of facts, and forbearance to enforce the right, and assumes the existence of an opportunity for choice, between relinquishment and enforcement of the right.

15. A quick survey on the applicability of principles of *waiver* and *laches* on rent proceedings in Pakistan takes us to the Honourable Supreme Court’s pronouncement in the case of '*Mst. Kulsoom Naz v. Dr. Itifaq Hussain and another*' (2012 SCMR 177) where in it was declared that where the landlord had been withdrawing rent from the office of Rent Controller regularly and did not allege default, but for the first time

filed ejectment application with respect to an alleged default committed seven years ago by the tenant, the principles of acquisition and waiver by his conduct would be applicable and ejectment proceedings would not be maintainable.

16. In '*Asghari Begum v. Baji Dubash*' (PLJ 1991 Karachi 145), Justice Nasir Aslam Zahid observed that, where the default was alleged for the period October 1982, but the ejectment application was filed on 21.04.1988, it was held that ejectment of the tenant could not be ordered. It was further held that if the rent for the period had become time-barred and it could not be recovered through legal proceedings, the application under section 15 SRPO on the ground of default for such time-barred rent cannot be maintained, and ejectment of the tenant could not be ordered.

17. The ratio settled by Justice Sajjad Ali Shah, in two different cases of '*Muhammad Usman v. Fazal Karim*' (1981 CLC 104) and '*Adam Ahmad Thaqia v. Muhammad Hanif*' (1988 CLC 1703) was that where an objection to non-payment of rent was not made for about 8 years, such an objection was belated and was held to have been condoned by the landlord's conduct. In the latter case, his Lordship declared that where landlord knowingly relinquished his right to apply for ejectment when tenancy agreement was in existence during which four alleged defaults were committed, whereas after expiry of tenancy agreement, two defaults were committed, and landlord filed application after he had accepted payment of arrears of rent from tenant and when no rent was due, such conduct of landlord would constitute implied waiver on his part so also unclean hands, and such proceedings were held as not maintainable.

18. Justice Ajmal Mian, in the next case of '*Muhammad Yunus v. Dr. S. Muzammil Ali*' (1981 CLC 327) declared that where even after commission of default, the landlord continuously accepts rent without any protest and does not initiate ejectment proceedings within a reasonable time, it would be presumed that the landlord has waived such default.

19. In '*Pakistan State Oil Company Limited v. Sikandar A. Karim and others*' (2005 CLC 3), Justice Muhammad Sadiq Leghari declared that in rent matters, where provisions of the Limitation Act, 1908 do not apply, then the principle of *laches* would play a role. It was further held that the silence of the landlord for 10 years after the alleged default was sufficient to constitute *waiver*, and the ejectment proceedings would be hit by the principles of *laches*.

20. Justice Zaffar Hussain Mirza, in the last case under discussion, of '*Muhammad Ahmad V. Mrs. Qamar Anwar Sheikh*' (1980 CLC 664) held that upon committing default, a tenant is liable to be ejected, unless a case of waiver on the part of the landlord is made out. It was further declared that ejectment of a tenant cannot be sought based on arrears of rent for a period falling beyond the limit of three years from the date of institution of proceedings.

21. This can be seen from the above discussion and precedents that even a delay of eight years by the landlord was considered to be hit by the principles of *waiver* and *laches*, whereas in the facts of the present case, the period of default alleged was from June 1977 to April 1978, whereas the Rent Case No.294/2011 was filed by the Respondent on 12.03.2011 i.e. after a lapse of 34 years. The Rent Statement in the Rent case No.1997/1977, wherein rent was being deposited by the tenant since 1977 also reflects that from time to time, rent was being withdrawn by the landlord. As already recorded above, the next MRC.613/1998 was filed on 28.04.1998, after dismissal of the Trust's earlier CPLA by the Honourable Supreme Court, whereafter not only the Court allowed the tenant to deposit rent, but wherein the landlord itself filed an application for withdrawal of rent, which was allowed by consent of both parties and the consent Order for withdrawal was also passed thereon. Despite the above position, perusal of the impugned Order and Judgment reveals that none of the above aspects, which, despite being material for establishing the allegations of 'willful default' against the petitioner and touching the root of the rent proceedings under SRPO, have not been properly addressed in light of guidance enunciated by the superior Courts, as discussed in the above pronouncements.

22. The questions as to what constitutes a 'willful default' and what are a landlord's obligations to prove such an allegation have been deliberated in detail by the Honourable Supreme Court in '*Hirjibhai Behrana Dar-E-Meher through Attorney v. Messrs Bombay Steel Works, Partnership Firm, through Partner*' (2001 SCMR 1888) in the following words by Justice Javed Iqbal:

“.....The eviction application cannot be succeeded merely on the basis of alleged default, which is required to be proved by the landlord. "Default" imports an element of gross negligence, dishonest withholding of rent and something more than mere non-compliance which certainly would imply greater responsibility for satisfactorily establishing "wilful" or "deliberate" avoidance, or "intentional non-performance of obligation regarding deposit of rent by tenant." (Habib Bank Limited v. Amanullah 1986 CLC 2917, Muhammad Yamin v. Mashroofullah Khan 1980 CLC 848, Najmuddin v. Zamir Ahmad PLD 1982 Kar. 188, Muslim Commercial Bank v. Karim Bakhtiar PLD 1988 Quetta 1.) "The most liberal interpretation that has been given to the word covers only defaults which are unavoidable or are due to causes, for which the defaulter is, in no way; responsible. Ghulam Muhammad Khan Lundkhor v. Safdar Ali, (PLD.1947 SC 530). Let me mention it clear here at this juncture that the landlord cannot be allowed to take benefit and adopt tactics to make out a ground for eviction on the allegation that a default has been committed which leads us to the consideration whether in the facts and circumstances of the case any default has been committed or otherwise.”

23. Again, in '*Muhammad Alam v. Noor Muhammad*' (1973 SCMR 606) a Three-Member Bench of the Honourable Supreme Court, in a Judgment authored by Justice Muhammad Yaqub Ali, declared that default in payment of rent, being a mixed question of law and fact, even concurrent findings of such facts can be reversed.

24. The next submission from Mr. Naek was premised upon sections 1 and 27 of the SRPO 1979, claiming that the alleged period of default pertained to the year 1977-1978 i.e. before promulgation of the SRPO, whereas the Rent application was filed under the SRPO 1979. The SRPO was promulgated on 21<sup>st</sup> November 1979, which was the date from which such law was effective, and therefore it could not have been made applicable to the alleged default with retrospective effect. Per learned counsel, neither under section 1(2) nor under section 27 of the SRPO could any such rent application have been filed with retrospective effect. It was further contended that issues pertaining to basic jurisdiction of the Court, like territorial jurisdiction, pecuniary jurisdiction and subject matter jurisdiction etc., are always looked into by every Court as a matter of duty, at the time of institution and before admitting a *lis*. To establish that SRPO was not applicable with retrospective effect and the present alleged default is not covered under SRPO, reliance was placed upon '**Pakistan State Oil Company Limited v. Abdul Khalique Gandakwala**' (1999 SCMR 366). Again, such a crucial legal question, touching the root of the Jurisdiction of the learned Rent Controller, should have been properly attended to and decided, yet both the impugned decisions are silent on this point.

25. The last argument from the petitioner's side, without prejudice to the above legal contentions, was that for the deposit of rent in Court under section 10 SRPO, a refusal by the landlord to receive rent was not mandatory. Such contention was contested by Mr. Karara, who claimed that the requirement of sending a money order was mandatory. Mr. Naek relied upon '**Azeemuddin v. Mst. Attiqa Begum through Attorney and 2 others**' (2008 CLC 1499) wherein, in exercise of Constitutional Jurisdiction, Justice Ali Sain Dino Metlo, while dilating upon the absence of consequences with the words "**as far as may be**" and "**may**", as used in section 10(2) SRPO, declared the same as 'directory' and not 'mandatory'. It was held that it is not necessary that before depositing rent with the Rent Controller, it should be sent by postal money order, and the modes prescribed under the provision are not exhaustive, but are independent of each other, and neither of the two modes is dependent upon the other or excludes the other. Hence, a tenant may opt for any mode without first trying the other. On factual plain, it was concluded that the refusal of the landlady to receive rent directly was not the only justification for opting for other modes under the provision and that her avoidance was an added justification which could be inferred from the conduct of the landlady. It was lastly concluded that when more than two years before the filing of the ejectment case, the tenant had been depositing rent with the Rent Controller, and the same was within the knowledge of the landlady; therefore, the tenant could not be ejected on such a ground of technical default. His further reliance was on the cases of '**Syed Bahauddin v. Mst. Afsar Saeed**' (1984 CLC 1998), '**Muhammad Iqbal v. Liaquat Dawood Kukda**' (1999 MLD 1842), '**Rohail and 11 others v. Ahmad and 25 others**' (2003 YLR 1233), '**State Life Insurance Corporation of Pakistan, Karachi v. M/s.-Siddique Tailors**'.

26. Lastly, Mr. Raja Qasit Nawaz, learned Advocate for **ETB** prayed for allowing his application [**CMA No.2618 of 2019**] filed by ETB under Order 1 Rule 10 read with Section 151 CPC., read with Article 199 of the Constitution, as an intervener to become party to these proceedings, on the strength of Notification dated 15.07.1963 and other relevant documents annexed with the application, based whereon ETB claims rights over the subject property. The application has been filed by ETB through its Deputy Administrator, Southern Zone. ETB claims that the subject property forms part of the subject building constructed on Plot No.13, S-B-4, Zaibunnisa Street, Saddar, Karachi, which belongs to Diwan Metharam Dharmada Trust, a public charitable trust established by a Declaration of Trust dated 21st April 1911 at Hyderabad, Sindh. It claims that the said property has been notified as Evacuee Trust Property vide Gazette Notification of the Government of Pakistan No.1(12)/63 dated 15th July 1963. In its counter affidavit to such application Respondent No.1 contends that the Trust and its properties were declared non-evacuee by the competent forums during the period 1950 to 1964; that those orders have attained finality and cannot be called into question at this stage; and that a similar application filed by the same intervener in F.R.A. No.15 of 2016 relating to an adjacent property was also dismissed, which Order has also attained finality. Reliance was also placed upon the cases of '*ETP v. Mst. Zakia Begum*' (1992 SCMR 1313), '*Khurshid Ahmad and others v. Rana Mumtaz Ahmad and others*' (2016 SCMR 679), '*ETP v. Ali Bahadur*' (PLD 2011 SC 126), '*Auqaf Department, Punjab Lahore v. Secretary Ministry of Religious Zakat, Ushar and Minorities Affairs, Government of Pakistan, Islamabad*' (2009 SCMR 210), '*ETP and others v. Ahmed and others*' (2004 SCMR 440), '*Member BOR Punjab v. Mst. Siddiqan through legal heirs and another*' (2015 SCMR 1712). In response, Mr. Karara relied upon Judgments dated 12.02.2020 passed in CPLA No.K-1443/2019 and Civil Review Application No.K-314/2020 and another Judgment passed in a case filed by ETB on an adjacent property. I am mindful of the fact that if the application is allowed at this stage, the existence of the entire Rent Application and proceedings would be jeopardised, which will seriously prejudice Respondent No.1, whereas rejection of this application will deprive the institution ETB of its right to a fair trial and right to produce proof of its claimed ownership, if any, before the Court of first instance. It may even prejudice the rights of the tenant in either case. Hence, this application is also being treated at the conclusion of this Judgment.

27. Having considered all the above arguments from both sides and also considering the multiple aspects of this case, it appears that formidable issues for consideration have been raised *qua* maintainability of the Rent Case *inter alia*, on the grounds of lack of Jurisdiction of the learned rent Controller; lack of *locus standi* of the person claiming to be the authorised Trustee; effect of non-production of the Trust Deed; maintainability of the Rent Case under the principles of *waiver* and *laches*; the extent and effect of mandatory or directory nature of requirements under section 10 SRPO; the consent Orders passed while depositing rent and the effect of repeated withdrawal of rent by the landlord;

and the lack of Rent Controller's jurisdiction on retrospective applicability of SRPO on the period of alleged default etc. Record reflects that neither any Issues nor any Points for Determination on the above were framed by the learned Rent Controller or the learned appellate Court, nor any of these crucial questions appear to have been properly addressed by the learned Courts below. Another crucial issue touching the root of the Jurisdiction and proceedings under SRPO, has now been introduced now due to filing of application by ETB, which claims ownership over the subject property based on its Gazette Notification of 1963, which again could be fatal to the very maintainability of the Rent Application, touching the root of the relationship between the parties and may change the entire complexion of the proceedings. The same could also not be attended by the learned trial Court or the appellate Court for the simple reason that such an application has been filed for the first time before this Court. Any decision on the said application at this stage may also prejudice the rights of either party. The Constitutional jurisdiction to interfere in concurrent findings of fact can be invoked where there is a jurisdictional error, a glaring error of law, or a finding that is perverse and not supported by any material on record. Reference in this regard can be made to '*Allies Book Corporation through L.Rs. v. Sultan Ahmad and others*' (2006 S C M R 152), '*Utility Stores Corporation Pakistan Limited v. Punjab Labour Appellate Tribunal and others*' (PLD 1987 SC 447), '*Muhammad Sadiq v. Punjab Labour Court No.1, Lahore and another*' (PLD 1988 SC 633); and '*Messrs Olympia Spinning and Weaving Mills Ltd. and another v. State Life Insurance Corporation of Pakistan*' (2001 SCMR 1103). In the present case, since both the learned Courts below have not exercised jurisdiction vested in them by failing to decide core questions of law and fact going to the root of the Jurisdiction and the controversies as discussed above, and a third claim has now been raised by ETB, such position makes it a classic case, fit for interference under the writ jurisdiction of Article 199 of the Constitution of Pakistan 1973. Considering all the above factors, the impugned Judgments warrant interference under the writ jurisdiction. I am therefore of the humble view that in the given circumstances, it would be most appropriate if the above-discussed complicated questions of law and facts are decided by the learned Rent Controller, so that a complete, fair and proper decision on merits is reached after allowing due opportunity of hearing to all the parties.

28. Upshot of the above discussion is that the instant petition is allowed; the impugned Judgment and the impugned Order are hereby set aside; and the matter is remanded back to the learned Rent Controller with directions to firstly decide the application filed by ETB under Order I rule 10 CPC., within 30 days of receipt of this Order. The application shall be decided based upon whatever material/affidavits/ counter affidavits/ rejoinder already been filed by the parties. In case of grant of such application, the Rent Controller shall first decide the question of maintainability of the Rent Case No.294 of 2011. In case of rejection of such application, the learned Controller shall decide the Issues of 'Maintainability of the Rent Application', 'Jurisdiction of the Rent Controller under

SRPO' and 'willful default', after hearing the parties, based upon the evidence already recorded by the parties, and without allowing any fresh or further evidence from either side. Such exercise shall be completed within a period of ninety (90) days from the date of receipt of this Order. Office is directed to return the R&P to the learned trial Court, along with a set of copies of the ETB's application CMA 2618/2019, its Counter Affidavits and Rejoinders, if any.

The instant petition, along with pending applications, stands disposed of in the above terms.

**J U D G E**