

## IN THE HIGH COURT OF SINDH AT KARACHI

Constitutional Petition No. S-2316 of 2018

*'Muhammad Aslam v. Muhammad Yakub'*

And

Constitutional Petition No. S-2317 of 2018

*'Muhammad Aslam v. Muhammad Yakub'*

Petitioners : Muhammad Aslam son of Mohammad Bashir, through Mr. Aamir Saleem, Advocate

Respondents No. 1 & 2 : Through Mr. Shariq Mubashir, AAG

Respondent No. 3 : Muhammad Yakub son of Mohammad Siddiq, through M/s Syed Jawad Hyder Rizvi & Arshad Mobeen Advocates

Date of Hearing : 14.04.2026

Date of Announcement : 25.05.2026

### J U D G M E N T

**MUHAMMAD HASAN (AKBER), J.-** Both these petitions are being decided through this consolidated Judgment, due to commonality of the issues, the parties, the subject matter, the evidence, the rent proceedings and the appellate proceedings therein.

2. In C.P No.2316/2018, the Judgment dated 24.09.2018 passed by the learned III<sup>rd</sup> Additional District Judge, Karachi (Central) in First Rent Appeal No.296 of 2017 [impugned Judgment] has been assailed, which has set aside the ejectment Order dated 31.10.2017 passed by the learned V<sup>th</sup> Rent Controller, Karachi (Central) in Rent Case No. 289 of 2012. In the said proceedings, Respondent No.3 is the tenant in respect of **Shop No.3** on the Ground Floor, Waris Manzil, Plot No. WS-14, Block-I, F.B. Area, Karimabad, Karachi [**demised premises**]. In the connected C.P No.2316/2018, the Judgment dated 24.09.2018 [**impugned Judgment**] passed by the same appellate Court in F.R.A No.295 of 2017 is challenged, wherein also the ejectment Order dated 31.10.2017 passed by the same Rent Controller in Rent Case No.290 of 2012 has been set aside. The demised premises in this second proceeding is **Shop No.4** on the Ground Floor of the same building [**demised premises**].

3. Teresely, Petitioner is the co-owner of a building known as Waris Manzil, constructed on Plot No. WS-14, Block-I, F.B. Area, Karimabad, Karachi [**said building**] by way of inheritance, which was originally owned by his late father. The Respondent No.3 was the tenant of the petitioner's late father in respect of both Shops 3 and 4 [**both demised premises**], whereas the monthly rent for each of the demised premises is Rs.1200/-. Upon the expiry of the petitioner's father, the Petitioner and other legal heirs became co-owners of the said building property. The Petitioner filed two separate Rent ejectment applications for both the shops against Respondent No.3 on the ground of personal *bona fide* need, claiming that he is running business of *kiryana*/ grocery store in two adjacent shops located on the Ground Floor of a house at Post Office Society, Sector 13/A, Gulzar-e-Hijri, Karachi, where he himself is on rental basis, and that he wishes to shift his said business from those rented shops to his own property, the demised premises, which are suitable for his said business.

4. The rent applications were contested, and in written statements, it was claimed that the shops were acquired in 1968 on a monthly rent of Rs. 71/- on '**pugri**' basis, and that lastly, the rent was Rs. 690/-. Further claimed that, upon the Petitioner's refusal to accept the rent, the same was deposited in Court. Respondent No.3 also relied upon an earlier Rent case No.357 of 2004, which was filed by Petitioner on the ground of default, which was rejected, and the appeal against such dismissal was also dismissed. In the present rent case, Issues were framed, and evidence from both sides was recorded, whereafter the ejectment applications were allowed. The question of personal *bona fide* need was answered in the 'Affirmative', and Respondent No.3 was directed to hand over possession of both the demised shops to the Petitioner within thirty days. Respondent No.3 preferred First Rent Appeals Nos. 295/2017 and 296/2017, which were allowed, and ejectment applications were dismissed, against which these petitions have been initiated under Article 199 of the Constitution.

5. Heard both learned counsel and perused the material available on record with their able assistance.

6. To attend to the tenant's first claim of '**pagri**', it would be relevant to first understand its concept, evolution and pre-partition historical background under rent laws, as traced by a Four-Member bench of the Honourable Federal Shariat Court in the case of **Ashfaq Ahmad**<sup>1</sup> in the following words:

"3. ....the concept of putting fetters on the right of owners of property to enjoy ownership rights finds its origin in the years of the Second World War when in big cities particularly the port towns of undivided India there fell a shortage of accommodation and it was deemed necessary by the erstwhile British Government to intervene and not only to regulate the rents of the' premises but also the right to lease

them to the tenants of their own choice. Thus tenancies were created not by agreements between landlord and tenant but by allotment orders. They were called statutory tenancies. Allotment of premises was made by the Rent Controller to one of a large number of competing aspirants of a particular premises and owners/landlords were bound to accept such tenants/allottees. These allotments continued in India and Pakistan even long after the war was over. Later in sixties they were discontinued.”

7. The concept of *pagri* in India, as discussed in detail in **Bawa Shiv Charan Singh's case**<sup>2</sup>, records that the term '*pagri*' finds its genesis in the Transfer of Property Act 1882, wherein the same was treated as consideration for a lease, which may be "*of a price paid or promised, or of money, a share of crops, service or any other thing of value, to be rendered periodically or on specified occasions to the transferor by the transferee*". It further elaborates that the initial amount paid for the acquisition of the leasehold right is known as '*premium*', '*pagri*', '*salami*' or by whatever name it may be called, which is in consideration of being let in possession. The consideration for relinquishment of the tenancy rights may be a lump sum amount called "*pagri*". The periodical payments in terms of money for the use and occupation of the premises are called rent or lease money. What distinguishes rent from '*premium*' is that the latter represents money paid as a price or a consideration for being let in possession. *Pagri* is a consideration for the creation or surrender of the property or the relinquishment of the leasehold rights. When the interest of the lessor is parted for a price, the price paid is called '*premium*' or '*salami*', and the periodical payments made for the continuous enjoyment of the benefits under the lease are in the nature of rent; the former is a capital receipt, whereas the latter is a revenue receipt. Parties may camouflage the real nature of the transaction by using clever phraseology, and therefore, it is not the form, but the circumstances of the transaction which would matter. The nomenclature used may not be decisive or conclusive, but it helps the Courts, having regard to the other circumstances to ascertain the intention of the parties. Lastly, the value of the tenancy rights may be called *pagri*, "*premium*", or '*salami*', etc., but it is an intangible property. Though intangible, it is materially valued.

8. In Pakistan, the history of *pagri* in the old areas of different cities, as discussed by the Honourable Supreme Court of Pakistan in **Muhammad Aslam and others**<sup>3</sup> was, that shops and apartments change hands from one tenant to another on

---

1. '*Ashfaq Ahmad & others v. Government of Pakistan & others*' (PLD 1992 FSC 286)

2. '*Bawa Shiv Charan Singh vs Commissioner of Income-Tax, Delhi*' 25(1984) DLT 275, ILR 1984 Delhi 625, [1984]149 ITR 29(Delhi)

3. '*Muhammad Aslam & others v. Hanif Abdullah and Brothers*' (2003 SCMR 1667)

payment of pagri, subject to change of receipt by the landlord in the name of the incoming tenant and the landlord only gets a fixed percentage of commission on the pagri amount for the change of receipt. But in case there is no change in receipt is made by the landlord, the incoming tenant in respect of the premises would not pay *pagri* amount to the original tenant, who in return would not hand over possession to the proposed incoming tenant, and the landlord would not be able to put him into possession of the premises. Consequently, the incoming tenant would not be put into an unauthorized possession of the premises by the original tenant, to entitle the landlord to sue the new occupant of the premises for sub-letting. The case law as developed in Pakistan on the issue of *pagri* reflects the following position:

(i). It was held by the Honourable Supreme Court of Pakistan in **Azizur Rahman, Shaikh Muhammad Yousaf** and **M. K. Muhammad**<sup>4</sup>, that *pagri* does not form the terms or conditions of a tenancy, and that in the context of tenancy rights, the concept of '*Pagri*' is held as contrary to public policy; and therefore, any supra-contractual arrangement which negates tenancy would not affect the maintainability of eviction proceedings.

(ii). In **Muhammad Ashraf's case**<sup>5</sup> the Honourable Supreme Court declared that when a tenant was unable to establish the existence of the arrangement of *pagri* between the parties, the same could not be adjusted against rent.

(iii). The ratio settled in the cases of **Raees Ahmad Pasha, Zehra Begum** and **Azizur Rahman**<sup>6</sup> was that, the statutory right of a landlord to eject a tenant on the ground of personal need could not be abdicated in consideration for a '*pagri*', nor would it disentitle the landlord from seeking ejection of a tenant on the ground of his personal need.

(iv). Based upon the above principles, it was further concluded in **Mrs. Tahira Dilawar Ali Khan**, and in a large number of **other cases**<sup>7</sup> that payment of *pagri* to the predecessor of a landlord was not a hindrance or bar against seeking eviction of the tenant under SRPO.

---

4. '*Azizur Rehman V. Pervaiz Shah & Others*' (1997 SCMR 1819); '*Sheikh Muhammad Yousaf v. District Judge, Rawalpindi & 2 others*' (1987 SCMR 307); '*Messrs M. Qasim v. Sharbat Khan*' (1992 MLD 1225); '*M.K. Muhammad and another v. Muhammad Abu Bakkar*' (1993 SCMR 200); '*Saeed Muhammad v. Mehrullah and another*' (PLD 1996 Quetta 48)

5. '*Muhammad Ashraf V. Ismail and 4 others*' (2000 SCMR 498); '*M.K. Muhammad and another v. Muhammad Abu Bakar*' (1993 SCMR 200); '*Mrs. Nargis Latif v. Mrs. Feroz Afaq Ahmed Khan*' (2001 SCMR 99)

6. '*Raees Ahmed Pasha V. Kamaluddin and others*' (2004 MLD 587); '*Zehra Begum v. Pakistan Burma Shell*' (PLD 1984 SC 38); '*Azizur Rehman v. Pervez Shah*' (1997 SCMR 1819).

(v). The Honourable Supreme Court declared in **Sheikh Muhammad Yousuf, Muhammad Sharif**, followed by decisions in **Muhammad Sami alias Sharbati, Haji Khair Muhammad** and **Nargis Bano**<sup>8</sup> that even if it is presumed that a goodwill amount was paid in respect of demised shops, even then it would not debar the respondent/ landlord from seeking eviction of the petitioner on the ground of his personal bona fide need.

(vi). In **M. K. Muhammad**<sup>9</sup> it was held that charging of *pagri* or premium as a consideration for grant, renewal or continuance of tenancy having been prohibited under the Ordinance, any agreement between parties in that respect, was void, not binding on parties, that no right could be created on that basis, and no benefit could accrue to any party under such a void agreement.

(vii). It was declared in **Malik Islam Akbar**<sup>10</sup> that the right to eject a tenant is a statutory right of the landlord under SRPO, which could not be nullified even by a written agreement between landlord and tenant.

(viii). Identical principles have also been applied to the cases wherein a tenant claims to have executed a sale agreement with the landlord for the purchase of the same property under his possession as a tenant. For the purposes of creating rights in the property, though such a sale-purchase transaction stands on a higher footing, than a claim of *pagri*, however it has been consistently held by Courts in Pakistan in **Rabia Bibi** and **numerous other cases**<sup>11</sup> that an ejectment application could not be stayed or stalled on such ground or claim of purchase of property by tenant, nor could pendency of a suit for specific performance of agreement by a tenant be a valid ground to bar eviction proceedings of such a tenant.

(ix). and in such circumstances, as held in the case of **Kassim and others**<sup>12</sup>, the landlord would be fully entitled to recover rent from the tenant until the civil Court passes a decree in favour of the tenant,

---

7. 'Mrs. Tahira Dilawar Ali Khan and others v. Mst. Syeda Kaneez Sughra and others' (PLD 2007 Karachi 50); 'Muhammad Ishaque Qureshi v. Zahir Hussain Jafri and 2 others' (PLD 2013 Sindh 245); 'Raees Ahmed Pasha V. Kamaluddin and others' (2004 MLD 587); 'Muhammad Salik Athar through Attorney v. Muhammad Obaid and 3 others' (PLD 2023 Sindh 411); 'Messrs Diamond Rubber Mills v. Syed Amir Ali and 3 others' (2005 YLR 2158).

8. 'Sheikh Muhammad Yousuf v. District Judge, Rawalpindi and 2 others' (1987 SCMR 307); 'Mohammad Sharif v. Iftikhar Hussain Khan' (1996 MLD 1505), 'Muhammad Sami alias Shabrati V. Model Civil Appellate Court' (2023 CLC 1906), 'Ahmad v. Haji Khair Muhammad' (1992 CLC 2504), 'Nargis Bano v. Rehman Bhai' (1993 CLC 266).

9. 'M.K. Muhammad and another v. Muhammad Aboobakar' (1991 MLD 801)

10. 'Malik Islam Akber v. Mustafa Hussain' (1992 CLC 1753)

11. 'Iqbal v. Rabia Bibi' (PLD 1991 SC 242), 2008 CLC 1134, 'Baboo Din v. Nasroo' (1995 MLD 1460), 'Shahzada Gulzar v. Bashir Baig' (1996 CLC 1293), 'Muhammad Yaqoob v. Mohsin Ali' (1999 CLC 1173), 'Saeed Khan Gul zad Gul v. Muhammad Ibrahim' (1986 CLC 2577), 'Abdul Kareem Khan v. Mst. Zahida Khan' (2008 YLR 2434)

12. 'Kassim & others v. S. Raheem Shah & others' (1990 SCMR 647)

9. As is evident from the above settled principles, a claim of *pugri* even if agreed in writing, would not *per se* debar a landlord from claiming the premises for his personal *bona fide* need. In the instant case, firstly, there is no written agreement between the parties on the alleged transaction of *pagri*. Secondly, the landlord denies tenant's claim of *pagri*. Thirdly, the petitioner/ landlord has claimed the demised shops for his personal *bona fide* need to start his own business. His statement on oath in this regard remained unshaken during cross-examination. No evidence or material, contrary to such assertion of the landlord, was brought on record by the Respondent side. It was settled long ago by the Honourable Supreme Court in **Tauheed Kahnun, F. K. Irani** and **Mehdi Nasir Rizvi's cases**<sup>13</sup>, that where a landlord's statement on oath on the issue of personal need is consistent with the application and is not shaken in cross-examination or disapproved in rebuttal, the same is sufficient to prove the *bona fides* of such claim. Applying this test, the petitioner's claim and evidence on this point have remained consistent. No circumstance was available on record to show that the landlord's desire to use his own property was tainted with malice or any evil design. Such a claim, being consistent with the case pleaded, has to be accepted on its face value and given due weight, as was rightly done by the learned Rent Controller, which approved the petitioner's claim on the ground of his personal need.

10. On the contrary, in both FRAs, the Rent Controller's findings were set aside on three grounds. The first ground for refusal was that the Petitioner did not approach the Court with clean hands because in the subject building, only car denting and painting businesses are being operated, and no grocery shop is being operated by any other person in the same building, which casts doubts on the genuineness of the Petitioner's personal need. Such a finding appears to be beyond the mandate under SRPO, which places no such restriction or bar on a landlord to compulsorily operate the same type of business, as the other tenants of the subject building do, nor does it require a landlord to prove that his intended business matches the existing character of the businesses in the same building or locality. Such a unique condition finds no basis in the law. The Petitioner clearly stated on oath that he is operating a *kiryana*/ grocery business in rented premises, and now he intends to shift his business to his own property. No evidence to the contrary was brought on record, hence such a finding is uncalled for.

---

13. 'Tauhid Khanum v. Muhammad Shamshad' (1980 SCMR 593), 'Messrs F.K. Irani & Co. Vs. Begum Feroze' (1996 SCMR 1178), 'Mehdi Nasir Rizvi v. Muhammad Usman Siddiqui' (2000 SCMR 1613)

11. The second ground for rejection by the appellate Court, that the Petitioner did not disclose the earlier Rent case against the same tenant, is untenable since the earlier rent case was filed on the ground of willful default, which was disallowed till the appellate stage; hence, the same had no nexus with the subsequent independent claim of the petitioner for personal bona fide need. The causes of actions in both the proceedings were completely distinct under SRPO. Unsuccessful conclusion of the earlier rent case on the ground of default would not create a bar against a subsequent rent case filed for his personal need by the same landlord against the same tenant.

12. The third ground for rejection by the learned appellate Court was that the Petitioner had previously obtained ejectment orders against tenants of two other shops in the same building and had thereafter rented out those shops to new tenants at a higher rent. Such a finding was factually flawed, since the earlier tenants were evicted in the year 2004, whereas the instant cases were filed in the year 2012, i.e. after around 8 years. Moreover, SRPO does not restrict a landlord for his entire lifetime on this issue. Another matter of record, which was also ignored, was that after the above earlier evictions, litigation arose *inter se* legal heirs/ co-owners, which further complicated matters between the legal heirs and therefore the earlier evictions remained unutilized to some extent. Each ejectment application must be decided on its own merits based on the evidence led in such a case. The Appellate Court drew an adverse inference without any finding that the need stated in the present case was false or fabricated. The said conclusion amounts to conjectural reasoning without realising the efflux of substantial time.

13. In the present case, the Petitioner examined himself on oath, filed his affidavit in evidence, and was subjected to cross-examination, and his case was approved by the Rent Controller. The Appellate Court's observation that the trial Court committed gross negligence by ignoring the real controversy, is a sweeping statement, without any support of any specific analysis of the evidence. The treatment of the element of *bona fide* need by the learned appellate Court was also not in consonance with the law. No *mala fide* could be established against the personal bona fide need of the landlord in the present rent cases.

14. The decisions of the two courts below are in conflict with each other, and the law is settled that this Court is empowered to interfere under writ jurisdiction where the Appellate Court has ignored material evidence, or has relied upon irrelevant considerations, or has drawn inferences that are not supported by the record, or where the reasoning is based on conjectures, rather than evidence. The above

detailed discussion clearly reflects that in the impugned Judgments by the learned Appellate Court, settled principles of law on the issue of personal need have been ignored. On the contrary, such restrictions were applied, which otherwise do not find any place under the Ordinance 1979. The impugned Judgments, therefore, warrant interference under the writ jurisdiction.

15. Upshot of the above discussion is, that the instant petitions are allowed, and the impugned Judgments dated 24.09.2018 in both petitions are set aside. Both the Orders dated 31.10.2017 passed by the learned V<sup>th</sup> Rent Controller, Karachi (Central), in Rent Cases 289/2012 and 290/2012 are upheld, and both the ejectment applications are allowed. Since these rent proceedings were initiated in the year 2012, and fourteen years have already passed, the Respondent No.3 is therefore directed to hand over vacant and peaceful possession of both the demised premises to the Petitioner within thirty days from the date of this Judgment. R&P be returned to the learned trial Court.

Both these petitions, along with pending applications, are allowed in the above terms, with no order as to costs.

**JUDGE**