

## IN THE HIGH COURT OF SINDH AT KARACHI

C.P No. S-198 of 2019

&

C.P No. S-570 of 2019

**Altah Ahmed** : Through Syed Ehsan Raza, Advocate  
Petitioner in C.P No.S-198 of  
2019 & Respondent No.1 in  
C.P No.S-570 of 2019

**Haji Muhammad Younus** : Through Mr. Badar - ul - Alam,  
Through his Legal Heirs, Advocate assisted by Mr. Fahad  
Petitioner in C.P No.S-570 of Mansoor Alam, Advocate  
2019 & Respondent No.3 in  
C.P No.S-198 of 2019

**Official Respondents** : Through Mr. Sagheer Ahmed Abbasi,  
Assistant Advocate General, Sindh

**Date of Hearing** : 16.03.2026

**Date of Judgment** : 06.04.2026

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### JUDGMENT

**Muhammad Saleem Jessar, J.-** By this single judgment, I propose to dispose of above said two constitutional petitions as both petitions have arisen from the same order/judgment passed by the Rent Controller and Appellate Court respectively.

2. By means of C.P. No.S-198 of 2019, applicant / landlord has assailed the order dated 31.07.2017 passed by IIIrd Rent Controller, Karachi East in Rent Case No. 151 of 2016, whereby he fixed the fair rent of the premises in question at the rate of Rs. 3856/- per month with the increase of 10% per annum and Judgment dated 16.01.2019 passed by Additional District Judge-V, Karachi East, whereby he upheld the order passed by the Rent Controller and

dismissed the FRAs filed by both parties. The petitioner has prayed for enhancement of fair rent to the extent of Rs. 60,000/- per month.

3. By means of C.P No. 570 of 2019, opponent/tenant has assailed aforesaid order and judgment with prayer to set aside the same.

4. Briefly, facts of the case are that petitioner in CP No.198 of 2019 and respondent No.1 in CP No.570 of 2019, namely, Altaf Ahmed, filed rent application under Section 8 of the Sindh Rented Premises Ordinance, 1979 (SRPO) for fixation of fair rent against tenant / opponent Mohammad Younus, who is petitioner in CP No.570 of 2019 and respondent No.3 in C.P. No.198 of 2019, stating therein that the applicant is the owner/landlord of shop No. 21, Saleem Plaza, Block-16, Gulshan-e-Iqbal, Main University Road, Karachi, which was let out to the opponent under tenancy agreement dated 19.07.1985 at the monthly rent of Rs. 1,800/- payable in advance on or before 5<sup>th</sup> of each English calendar month. It was further stated that since inception of tenancy the opponent did not increase monthly rent, whereas the prevailing rent of similar premises situated in the same vicinity was between Rs. 60,000/- to Rs. 100,000/- per month. It was further stated that costs of construction, repair, taxes and other charges have also been increased; besides, the annual property tax has also been increased. The grievance of the applicant / landlord was that the opponent has not enhanced a single penny towards monthly rent, although the rates of gold and other articles have been enhanced. It was prayed in the application to fix the fair rent of the subject shop at the rate of Rs. 60,000/- per month with effect from the date of filing of the application.

5. After service of notice, the opponent filed written statement, wherein he raised preliminary legal objections that the rent application is not maintainable under the law, hence is liable to be dismissed and that the applicant has approached the Court with unclean hands, thus he is not entitled to the relief sought for. On merits, the opponent denied averments of rent application filed by the applicant. The opponent further submitted that he had entered into tenement in question vide tenancy agreement dated 19.07.1985 for 11 months, which expired on 18<sup>th</sup> June, 1986 and since then the opponent is statutory tenant, thus the renewal of tenancy agreement is not required. The opponent admitted that he is paying monthly rent at the rate of

Rs. 1800/- since the date of inception of tenancy agreement. The opponent further denied that the rent of the similar tenements situated in the vicinity is between Rs. 60,000/- to Rs. 100,000/- per month. The opponent further added that at the time when he entered the tenement in question the rent of the similar shop in the vicinity was hardly Rs.500/-, but the applicant disclosed to the opponent that he wanted to shift to Germany along with his family, as such rent of the subject premises was fixed at the rate of Rs.1,800/- per month and it was mutually settled that rent would not be enhanced. The opponent further stated that the prevailing rent of the similar type of shop in the same vicinity was hardly Rs.2,500/- per month. It is further stated that the shop in question was very small, so the rent claimed by the applicant is unjustified. The opponent further submitted that he is already paying excessive monthly rent, so demand of fixation of fair rent by the applicant in the rent application is not justifiable and is based on *malafide*. The opponent prayed for dismissal of rent application.

6. After recording evidence of the parties and hearing learned counsel for respective parties, the Rent Controller partly allowed the rent application and fixed the rent of the premises in question at the rate of Rs.3,856/- per month with increase of 10% in the monthly rent per annum, vide order dated 31.07.2017. The said order was assailed by both parties by means of filing respective First Rent Appeals. The landlord prayed for enhancing the fair rent fixed by the Rent Controller, whereas the tenant assailed the fixation of fair rent and enhancement of 10% in the monthly rent per annum by the trial Court.

7. The Appellate Court after hearing learned advocates for the parties, dismissed both FRAs vide consolidated Judgment dated 16.01.2019. Against the said Judgment, both the parties have filed instant constitutional petitions.

8. I have heard learned counsel for the parties and have gone through the material made available before me on the record.

9. Learned counsel for the petitioner/landlord submitted that right from the date of tenancy agreement the opponent/tenant has not enhanced a single penny towards the monthly rent though in the surrounding area the existing market rent of the similar tenement is between Rs.60,000/- to Rs.1,00,000/- per month. The petitioner/landlord approached the tenant for enhancement of

monthly rent, who flatly refused to do so, hence he filed an application under Section 8 of the Sindh Rented Premises Ordinance, 1979 (SRPO, 1979), (available at page 119) being Rent Case No. 151 of 2016 Re: Altaf Ahmed Vs. Muhammad Younus. Learned counsel argued that the Rent Controller did not appreciate the law, so also did not take into consideration the criteria for fixing fair rent under Section 8 of the SRPO, 1979. Besides, Courts below also did not take into consideration the fact that the tenant has not enhanced the rent right from the inception of tenancy viz. 19.07.1985, therefore, by granting this petition, rent may be enhanced in terms of Section 8 read with Section 9 (2) of SRPO, 1979. Learned counsel further submitted that the Rent Controller was empowered/competent to enhance the rent in terms of Section 9(2) of SRPO, 1979. Hence, the order passed by the Rent Controller to that extent is justified. Lastly, he submitted that the tenant Muhammad Younus had expired on 09.11.2020 and an application (CMA No.9041/2019) was also filed by the counsel for tenant on 05.04.2021 in CP.No.S-570 of 2019, which was granted and counsel for the tenant filed amended title impleading legal heirs of the deceased, in C.P.No.570/2019. In support of his contentions, he placed reliance upon the cases of State Life Insurance Corporation Vs M/s. British Head & Footwear Store (2018 SCMR 581), Tariq Ali Baqar Vs. New Goodwill Computers & others (2011 SCMR 554), Volkart (Pakistan) Limited Vs. Intervin Pakistan Limited (2001 SCMR 671), M/s. Oceanic International (Put) Ltd. Vs. M/s. Lalazar Enterprises (2010 SCMR 737) and Mukhtarul Omar Vs. M/s. State Life Insurance Corporation (2009 YLR 204).

10. Conversely, Mr. Badar-ul-Alam, Advocate assisted by Mr. Fahad Mansoor Alam Advocate, appearing for other side, argued that the petition filed by the landlord is based upon facts, whereas the petition filed by tenant is based upon law, therefore, petition maintained by landlord/respondent is not maintainable. He further argued that in the first tenancy agreement there is no mention about the enhancement of rent in terms of Section 8 of SRPO, 1979, therefore, learned Rent Controller has not appreciated the law rather misread the evidence, hence has wrongly allowed such application filed by the landlord. According to him, enhancement of 10% rent per annum is also not justified. Learned counsel further submitted that since no clause regarding enhancement of rent at the rate of 10% per annum in agreement is adduced, hence Rent Controller has acceded his jurisdiction, therefore, it being hit by doctrine of non-reading and misreading of evidence, the impugned order /

judgment passed by the Rent Controller and Appellate Court respectively, are liable to be set aside, more particularly when the landlord had not adduced a single document showing existing market rate in respect of similar premises in the vicinity. He further submitted that since the Judgment passed by the Appellate Court in rent hierarchy was final, therefore, petition filed by the landlord is not maintainable. In support of his contentions, he placed reliance upon the cases of Moinuddin Ghorri & another Vs. Administrator of M/s. Saint Francis Church (Trust) through Attorney & 2 others (PLD 2014 Sindh 194), Shakeel Ahmed & another Vs. Muhammad Tariq Farogh & others (2010 SCMR 1925), S. Abdul Khaliq Shah, Halwa Sohan Merchant & another Vs. District Judge, Karachi East & others (2004 MLD 13) and Muhammad Latif Vs. District Judge Karachi South & others (2009 YLR 2234).

11. Learned Assistant Advocate General, Sindh supported the impugned Order / Judgment and opposed both the petitions in view of dicta laid down by the Superior Courts particularly in the case of Shakeel Ahmed & another Vs. Muhammad Tariq Farogh & others (2010 SCMR 1925). He further submitted that no doubt the parties had not mentioned specific clause for enhancement of rent in the agreement in terms of Sections 8 and 9 of SRPO, 1979, yet when the statute itself provides said particular clause, mere non-mentioning of the same in the tenancy agreement shall not oust the jurisdiction of Rent Controller.

12. Before touching the merits of the case, in the first instance, I would like to deal with the legal objection raised on behalf of the tenant viz. respondent in C.P. No.S-198 of 2019, regarding maintainability of the said constitutional petition filed by the landlord. It may be observed that normally concurrent findings of facts cannot be interfered with in exercise of constitutional jurisdiction of this Court; however, such findings could be interfered in exceptional circumstances. For instance, if the trial Court has either misread the evidence on record or while assessing or evaluating the evidence, had omitted from consideration of some important piece of evidence which had direct bearing on the issues involved in the case or where approach of the Courts below was perverse.

13. In this connection, reference may be made to the case of **STATE LIFE INSURANCE CORPORATION OF PAKISTAN Vs. Messrs BRITISH HEAD**

**AND FOOTWEAR STORES and 3 others**, reported in **2017 C L C Note 228 [Sindh]**, where while relying upon the judgments of Honourable Supreme Court, it was held as under:

*"I deem it proper to deal with, in the first instance, the point of maintainability of the constitutional petition before adverting to the merits of the case. Learned counsel for the respondent has challenged the maintainability of the instant petition on two grounds i.e. the petition has been filed against the concurrent findings of the two Courts below and that it suffers from laches. So far as the issue of concurrent findings is concerned, it may be observed that normally concurrent finding of fact cannot be interfered with in exercise of constitutional jurisdiction of this Court, however, such finding could be interfered if the court below has either misread the evidence on record or while assessing or evaluating the evidence had omitted from consideration some important piece of evidence which had direct bearing on the issues involved in the case. Such finding would also be open to interference where approach of the courts below was perverse. In this context if any authority is needed, reference can be made to 2006 SCMR 1304, 2006 SCMR 1410, 2004 SCMR 59, 2005 YLR 2535 and PLD 2007 Karachi 347."*

14. In instant case, the trial Court ignored the stand taken in the pleadings of the landlord that cost of construction, repair charges, cement, BAJRI, labor charges, all types of taxes, food, gold, dollar and all other living standard things have been enhanced enormously rather same are touching to sky and even the Rent Controller in his judgment has also made such observations but while fixing the fair rent, the trial Court has not taken into consideration such important aspect of the case although the same has been included in the ingredients of Section 8 of the SRPO, 1979 on the basis whereof, fair rent is to be fixed by the Rent Controller, and instead has based its finding on the tenancy agreements filed by the tenant in respect of similar premises in the vicinity only.

15. Apart from above, it is also surprising that although the tenant also has filed constitutional petition against the same order / judgment passed by the Courts below respectively, and claims his petition to be maintainable but has raised objection to the maintainability of the petition filed by landlord although the same has been filed against the very same order / judgment. It is well settled law that a party cannot be permitted to approbate and reprobate at the same time.

16. Now, adverting to the merits of the case, as the relevant provision of law for adjudicating upon the points involved in the instant case, is Section 8

of SRPO, 1979, therefore, it would be advantageous to reproduce hereunder the contents of Section 8 of the SRPO, 1979:

(1) The Controller shall, on application by the tenant or landlord determine fair rent of the premises after taking into consideration the following factors:-

- a) the rent of similar premises situated in the similar circumstances in the same or adjoining locality;
- b) the rise in cost of construction and repair charges;
- c) the imposition of new taxes, if any, after commencement of the tenancy; and
- d) the annual value of the premises, if any, on which property tax is levied.

17. From bare perusal of the above provision of law, it seems that the Rent Controller while deciding the application under Section 8 of the SRPO for fixation of fair rent, shall take into consideration the four factors as enumerated in the said Section; however, the landlord is not under a legal obligation to prove the existence of all the four conditions during the course of trial, rather availability of any one of the said conditions is sufficient to enhance the monthly rent of the demised premises by the Rent Controller.

18. In this connection, reference may be made to the case of **MOINUDDIN PARACHA Vs. Messrs. NOVATRIS PHARMA PAKISTAN LTD. and 2 others**, reported in 2015 YLR 947 [Sindh], wherein this Court held as under:

*“12. Section 8 of Sindh Rented Premises Ordinance, 1979, provides a mechanism for determination and fixation of the fair rent of the rented tenement. In section 8, four conditions have been envisaged for taking into the consideration while dealing with issue of fixation of fair rent i.e. the rent of similar premises situated in the similar circumstances or adjoining locality; the rise in cost of construction and repair charges; the imposition of new taxes, if any, after commencement of the tenancy; and the annual value of the premises, if any, on which property tax is levied. Section 8 did not impose any restriction or barrier upon the Rent Controller for the quantum or limit of rent while invoking his jurisdiction under said section to deal and adjudicate the question of fixation of the fair rent. However, the Rent Controller while determining the fair rent, has to consider the material strictly within the provisions as envisaged in section 8, Sindh Rented Premises Ordinance, 1979. It is also not mandatory that all the four conditions mentioned in section 8 must exist and proved by the claimant party during the course of the trial, but any one of the above referred conditions, if proved satisfactorily, is sufficient to enhance the monthly rent of the demised premises.”*

19. Honourable Supreme Court while deciding the case of **STATE LIFE INSURANCE CORPORATION OF PAKISTAN and another Vs. Messrs. BRITISH HEAD AND FOOTWEAR STORES and others**, reported in **2018 SCMR 581**, held as under:

*“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.”*

20. In view of above legal position, the plea raised on behalf of the tenant that the landlord has not produced any rent agreement of the similar premises in the same vicinity in support of his prayer for fixation of fair rent at the rate of Rs.60,000/-, is not tenable.

21. It is in the knowledge of even a common man that cost of construction, repair charges, cement, BAJRI, labour charges, all types of taxes, food, gold, dollar and all other living standard things have been enhanced enormously rather same are touching to sky. Besides, the cost of electricity units has also been enhanced alarmingly.

22. It seems that the tenement in question was rented out in the year 1985 viz. more than forty years ago and during this long period not a single penny was enhanced by the tenant towards monthly rent. In the year 1985 the price of one tola of gold in Karachi was about Rs.2200 (Rupees Two Thousand Two Hundred Only), whereas at present one tola of gold is valued at about 5 Lacs of Rupees, meaning thereby the value of gold has been increased more than 200 times during this period. Likewise, the cost of construction material has been increased about 30 times.

23. So far as the plea of the tenant that the applicant / landlord had disclosed to him that he wanted to shift Germany along with his family, therefore, monthly rent of the premises in question was mutually fixed @ Rs.1,800/- and it was agreed between the parties that no enhancement would be made in the rent. In this connection, suffice it to say that the opponent / tenant has not produced any tangible evidence / material in support of such plea. Neither in the tenancy agreement dated 19.07.1985 there is mention of such understanding between the parties, nor any single witness has been examined by the tenant in this regard. Even otherwise, for the sake of

arguments, if it is presumed that such understanding was made between the parties, the same cannot bar the jurisdiction of the Rent Controller to fix the fair rent, so also to pass order for enhancement of monthly rent per annum.

24. In this context, reference may be made to the case of *Tariiq Ali Baqar Vs. New Goodwill Computers and others* (2011 SCMR 554) wherein it was held as under:

*“5. To determine the fair rent, on an application filed by the landlord or tenant, is the exclusive jurisdiction of the Rent Controller and any agreement between the parties not to seek determination of fair rent cannot bar the jurisdiction of the rent controller, if that has not been already done. The court would not permit one of the contracting parties to take advantage of an unusual or onerously terms/considerations, as it would deprive the other party from his legitimate rights.”*

25. Now advertent to the increase of 10 percent monthly rent per annum, as ordered by the Rent Controller and affirmed by the Appellant Court, it may be observed that the relevant provision in this respect is Section 9 of SRPO, 1979, therefore, for the sake of ready reference, the contents of the same are reproduced hereunder:

**“9. Limit of fair rent.**-(1) where the fair rent of any premises have been fixed no further increase thereof shall be affected unless a period of 03 years has left from the date of such fixation or commencement of this Ordinance, whichever is later.

(2) The increase in rent shall not, in any case, exceed ten percent per annum on the existing rent.”

26. From perusal of the above-quoted provision of law, it seems that the fair rent determined by the Rent Controller cannot be increased before three years from the date of fixation of the fair rent, but in any other case, the rent can be increased up to ten percent (10) per annum as permitted by and envisaged in Section 9(2) of the Ordinance.

27. In this context, reference may be made to the case of *Dr. SUNIL ANAND HOTWANI Vs. ABDUL WAKEEL and 2 others*, reported in 2023 C L C 1279 [Sindh], wherein this Court held as under:

*“Under Section 8, the Rent Controller, on the application of the landlord or the tenant, has the power to determine fair rent of the rented premises after taking into consideration the factors specified in the said Section. Like Section 7(5) of the Act of 1963, subsection (1) of*

*Section 9 of the Ordinance of 1979 provides that where the fair rent of any premises has been fixed no further increase therein shall be effected unless a period of three years has elapsed from the date of such fixation. It may be noted that subsection (2) of Section 9 ibid provides that the increase in rent shall not, in any case, exceed ten percent (10%) per annum on the existing rate. The provisions of Section 9 ibid clearly show that the fair rent determined by the Rent Controller cannot be increased before three years, but in any other case the rent can be increased up to ten percent (10) per annum as permitted by and envisaged in subsection (2) ibid."*

28. Now presuming, for the sake of arguments, that the monthly rent of the premises in question would have been increased at the rate of 10 percent per annum, as provide in subsection (2) to Section 9 of the SRPO, 1979, then even without fixing the fair rent, the monthly rent of the premises in question would have crossed Rs.70,000/- per month. In this view of the matter, the increase in rent by 10 percent per annum, as ordered by the trial Court and affirmed by the Appellate Court, is quite justified. However, as provided subsection (1) to Section 9 of the SRPO, 1979 such increase cannot be effected before expiry of a period of three (3) years from the date of fixation of fair rent.

29. The upshot of above discussion is that the order passed by the trial Court dated 31.07.2017 is modified to the extent that instead of Rs.3,856/- per month, the fair rent is fixed at the rate of Rs. 35,000/- (Rupees Thirty Five Thousand only) per month from the date of filing of application for fixing fair rent, with increase of 10% per annum from the month April, 2019. **Consequently C.P No. S-198 of 2019 filed by the landlord namely Altaf Ahmed is partly allowed to the above extent, whereas C.P No. S-570 of 2019 filed by the tenant is hereby dismissed.**

**JUDGE  
HEAD OF CONST. BENCHES**

Karachi  
Dated. 06.04.2026  
Approved for Reporting