

Judgment sheet

IN THE HIGH COURT OF SINDH AT KARACHI

Present

Mr. Justice Muhammad Jaffer Raza

Constitution Petition No. S – 1105 of 2024

Muhammad Shahid Petitioner.

Versus

Zaheer Ahmed & others Respondents.

Constitution Petition No. S – 1106 of 2024

Shakeel Ahmed Petitioner.

Versus

Zaheer Ahmed & others Respondents.

Constitution Petition No. S – 1107 of 2024

Rizwan Hyder Petitioner.

Versus

Zaheer Ahmed & others Respondents.

Constitution Petition No. S – 1108 of 2024

Naveed Ahmed Petitioner.

Versus

Zaheer Ahmed & others Respondents.

Mr. Naveed Ahmed, Advocate for the Petitioners in all the petitions.
Ms. Sadaf Gul, Advocate for Respondent No.1 in all the petitions.
Mr. Ahmed Khan Khaskheli, A.A.G.

Dates of Hearing: 19.03.2025 & 10.04.2025.

Date of announcement: 29.04.2025

J U D G M E N T

MUHAMMAD JAFFER RAZA – J: By this single judgment I will dispose of the above-mentioned Constitutional Petitions. The instant petitions have been filed impugning the judgment dated 15.08.2024. Facts of the petitions are summarized as follows:

2. The Respondent No.1 has filed four rent cases, details of which are given as under: -

Sr. No.	C.P. No.	F.R.A. No.	R.C. No.	Parties name in Rent Case
1	1105/2024	32/2024	449/2020	Zaheer Ahmed v. Shaheed
2	1106/2024	30/2024	450/2020	Zaheer Ahmed v. Shakeel
3	1107/2024	36/2024	451/2020	Zaheer Ahmed v. Faisal & Rizwan
4	1108/2024	29/2024	452/2020	Zaheer Ahmed v. Naveed

3. Common facts in all the above mentioned petitions are that Respondent No.1 filed the above mentioned rent cases under Section 15 of the Sindh Rented Premises Ordinance, 1979 (“**SRPO**”) on the grounds of default and personal bonafide need. The relevant paragraphs of the rent applications are reproduced below: -

“That despite of receiving the notice dated 15.05.2020 as well as the notice of intimation of change of ownership dated 01.06.2020 by the Opponent/Tenant the Opponent/Tenant has failed to pay the rent of due from August 2019 up till month of June 2020 of the demised premises to the Applicant/Landlord and as such has committed willful default in payment of rent. As a consequence thereof, the Opponent/Tenant is liable to be evicted from the demised premises on the ground of default in payment of rent under Section 15(2)(ii) of the Sindh Rented Premises Ordinance, 1979.

Moreover, the Applicant/Landlord requires the demised premises in good faith for the bonafide purpose of setting up a business therein for himself, as the Applicant/Landlord intends to open up his own business in the demised premises. It is further submitted that the Applicant/Landlord has no other premises available to him for the purpose of starting the above said business. Whereas, the demised premises is located in the commercial area of the Mahmoodabad and is the most viable place for the Applicant/Landlord to start his own business. Hence, the Opponent/Tenant is liable to be evicted from the demised premises on the ground of personal bonafide need of the Applicant/Landlord under Section 15(2)(vii) of the SRPO, 1979.”

4. Thereafter the learned Rent Controller vide judgment dated 17.01.2024 allowed the rent application on both the grounds. Thereafter, the Petitioners have filed First Rent Appeals as reflected in the table above and the same were dismissed vide impugned judgment dated 15.08.2024.

5. Learned counsel for the Petitioner has stated that there are a total of four tenements/shops and the Opponents/Tenants/Petitioners in the above-mentioned petitions have been in possession for over 25 years. He has further argued that the said Tenants/Petitioners have not committed any default. Further he has stated that there is no relationship of Landlord and Tenant between the Petitioners and Respondent No.1 and the Petitioners were Tenants of the mother of the said Respondent. He has during the course of arguments with regard to receipt of the notice under Section 18 of SRPO, stated that he approached the original owner several times to determine the actual ownership of the property. He has further averred that the Gift Deed on the basis of which Respondent No.1 is claiming ownership has already been challenged before the Civil Court in Civil Suit No.1457/2019 and 1458/2019. The said Suits, according to him, have been filed by the legal heirs of the deceased mother of Respondent No.1 i.e. siblings of Respondent No.1.

6. Conversely learned counsel for Respondent No.1 has argued that there are concurrent findings of the Courts below which do not require any interference by this Court in its constitutional jurisdiction. She has further argued that mother of Respondent No.1 has gifted the subject property to the said Respondent in the year 2019 and the Petitioners during their cross-examination have admitted to the execution of the above mentioned Gift Deed. Moreover, she has argued that the Petitioner has no nexus with the above-mentioned suits as the same have been filed by her siblings.

7. I have heard learned counsel for the parties and perused the record. At this juncture it is relevant to peruse the cross-examination of Respondent No.1 to ascertain as to whether the said Respondent has been able to establish a case for ejection. I have perused the entire cross-examination of the Applicant/Respondent No.1 conducted by the counsel for the Petitioners on 16.05.2022. It is apparent on the bare reading of the said cross-examination that not a single question was put to Respondent No.1 in respect of the personal

bonafide need. The plea of the Applicant/Respondent No.1 in this respect has gone unshaken and un rebutted. Furthermore, it is most ironic to note that no suggestion was made by the learned counsel for the Petitioners in the said cross-examination in reference to default, therefore, the plea of the Applicant/Respondent No.1 with regard to the alleged default also remained unshaken and un rebutted. It was specifically admitted by some of the Petitioners that they were in knowledge regarding notice under Section 18 of SRPO and the Gift Deed executed in favour of the Applicant/Respondent No.1. It has already been held by me in the case of of **M/s. Gizri Corporation Pvt. Ltd. v. Pakistan Industrial Development Corporation Pvt. Ltd. & another¹** that ejection proceedings must follow in cases where the plea has gone un rebutted and unshaken. Further it was held that it is not up to the tenant to dictate as to how and in what manner, the landlord/owner will use the tenement in question.

8. The arguments advanced by the learned counsel for the Petitioners in reference to the inability of the said Respondent to start his own business is therefore without any substance. It is the decision and choice of the landlord as to how he wants to start his business even if the same is to his detriment. Reliance in this regard can be placed in the following cases: -

- **Jehangir Rustom Kakalia vs. State Bank of Pakistan²**

“Rule laid down in the cases mentioned above is that on the issue of personal need, assertion or claim on oath by landlord if consistent with his averments in his application and not shaken in cross-examination, or disproved in rebuttal is sufficient to prove that need is bona fide.”

- **Wasim Ahmad Adenwalla vs. Shaikh Karim Riaz³**

“3. Leave was granted to consider the contention that the plea of personal requirement was not bona fide as a flat was available in the same premises which A the Respondent did not occupy. The learned counsel for the appellant contended that the Respondent is residing in a bungalow in Defence Housing Authority and that it is not imaginable that he would shift in a small house in a dingy and congested locality. He further contended that during the pendency of the case a portion of the house, which was an independent apartment, fell vacant, but the Respondent did not occupy it and rented it out to the tenant. On the

¹ C.P. No. S – 320 and 321 of 2024

² 1992 SCMR 1296

³ 1996 SCMR 1055

basis of these facts it is contended that the Respondent's need is neither genuine nor bona fide. So far the first contention is concerned the learned counsel for the Respondent stated that the Respondent is residing in a rented house with his son in the Defence Housing Authority. The contention of the learned counsel for the appellant therefore does not hold water because firstly, the Respondent is not residing in his own house, but is residing with his son who has rented out a house in that area, and secondly, in these circumstances if a landlord chooses to reside in his own house which may be in a locality which is much inferior and congested than the place where he is residing on rent, it cannot be termed as mala fide. It is the choice of the landlord to choose the house or the place where he wants to reside."(Emphasis added)

- **Rabia Jamal v. Mst. Nargis Akhtar**⁴

"22. On the basis of the above decisions of the Supreme Court of Pakistan, it is apparent that once the landlord has adduced evidence by stating that they require the Said Tenement for their personal use in good faith, thereafter the burden shifts on the tenant to show either that the landlord did not require the Said Tenement for her personal use in good faith or that the Said Tenement could not be used by the landlord for the purpose as indicated in the Application under clause (vii) of Sub-Section (2) of Section 15 of the Sindh Rented Premises Ordinance, 1979. However, while raising such a contention it is not open to the tenant to allege mala fide on the part of the landlord by adducing evidence to state that the landlord had alternative premises or for that matter that the landlord had alternative premises that were more suitable for the needs of the landlord. This right to choose from amongst a host of properties that are available to a landlord as to which of those properties the landlord requires for their personal use vests solely with the landlord to the exclusion of all others."(Emphasis added)

9. Any adjudication on Section 15 (2) (vii) would be deficient without referring to the accountability mechanism provided for under Section 15-A of the SRPO.

10. The provision was introduced to ensure that ejectment proceedings are not abused and due protection is given to the tenant in cases where the landlord/owner has misused the provisions of the Ordinance. A restriction of one year has been placed on the owner/landlord in case the owner/landlord wishes to rent out the property to another tenant. This accountability mechanism perfectly balances the low evidentiary threshold placed on the owner/landlord regarding personal need.

⁴ C.P. No.S-495/2023 Order dated 21.07.2023

11. The protection given, which is also available to the present Respondent, has been expounded in the following judgments, relevant parts of the same are reproduced: -

a) **Mst. Zubeda through her son and General Attorney
versus Muhammad Nadir.**⁵

“Sufficient protection has been postulated in section 15-A of the Sindh Rented Premises Ordinance, 1979 which in the event of use of premises other than personal use not only postulates punishment for the landlord but also provide an effective mechanism for restoration of the possession to the evicted tenant before the Controller who would be entitled to exercise such authority on due consideration of the facts. Since the law provides an alternate and effective remedy to defuse the impression of the respondent, I think the apprehension is not well founded in the present state of circumstances.”

b) **Mst. Dilshad Bibi versus Ramzan Ali.**⁶

“Keeping in view the only restriction imposed on the personal need by way of section 15-A of the SRPO as well as authorities quoted by the petitioner and the evidence brought on record the petitioner has proved that the shop is required for personal need to be used by her son and no doubt has been created in this respect. The apprehension of the respondent that the petitioner may let out the premises after obtaining the same to other tenant is covered by section 15-A of the SRPO which remove the above apprehension.”

12. In the light of what has been held above, the judgments of both the Courts below does not require any interference by this Court. Accordingly, all the four petitions are dismissed with no order as to costs.

J U D G E

Nadeem Qureshi “PA”

⁵ 1999 MLD 3011

⁶ 2006 CLC 1853