

# IN THE HIGH COURT OF SINDH, KARACHI

*Before: Muhammad Iqbal Kalhoro &  
Mohammad Abdur Rahman, JJ,*

**HCA No. 149 of 2018**

Government of Sindh & others

Vs.

Ahmed Saeed & others

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Appellant: Mr. Muhammad Hisham Mahar, Assistant  
Advocate General, Sindh.

Respondents: Mr. Yousuf Molvi, Advocate.

Date of hearing: 5 August 2025

Date of decision: 5 August 2025  
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## **J U D G E M E N T**

**MOHAMMAD ABDUR RAHMAN, J:** Through this appeal maintained under Section 3 of the Law Reforms Ordinance, 1972, read with Section 15 of Ordinance X of 1980, the Appellants impugns a judgment dated 6 March 2018 and Decree dated 19 March 2018 passed by a learned Single Judge of this Court in Suit No.1755 of 2008.

### **A. FACTS**

2. The Respondents' father was the owner of Plot No.V-C-8/17, Nazimabad, Karachi, admeasuring 216 square yards (hereinafter referred to as the "Said Property"), and which was meant for residential use.

3. It seems that a school was running illegally on the Said Property and Martial Law Regulation 118 of 1972, which later became Martial Law Regulation 118 (Sindh Amendment) Act, 1972 nationalized all schools in the Province including the school that was operating on the Said Property.

4. In or around 2007, the Respondent No.1 instituted Rent Case No.206 of 2007 seeking eviction of the Appellants from the Said Property. The Appellants opposed this Rent Application on the grounds that the

provisions of Sindh Rented Premises Ordinance, 1979, on account of the exception contained in Section 3 of the Sindh Rented Premises Ordinance, 1979 and on account and Notification No.VIII (3) SOJ/75 dated 29 July 1980 excluded the jurisdiction of that Court. The objections raised by the Appellants were sustained and Rent Case No.206 of 2007 was dismissed on 4 December 2008.

**B. Suit No. 1755 of 2008**

5. On the dismissal of Rent Case No.206 of 2007, Suit No.1755 of 2008 was maintained before this Court seeking the following relief:

- “ ...
- A. Decree for payment of mense profit at tentatively valued at Rs.5,000/per month till the Dec 2008 works out to be Rs.16,45,755/= (Rupees sixteen lac, forty five thousand seven hundred and fifty five only), and onwards with an increase of 10% after every three years, (based on the permissible increase as per the SRPO, 1979) till the date when vacant and peaceful possession of the Suit Property that is House No. V-C-8/17, Nazimabad, Karachi, is handed over to the Plaintiffs and all the claims/out standings are recovered in favour of the Plaintiff jointly and severely from the defendants.
  - B. Decree of Rs.2.5 million for all the damages caused to the Suit Property against the defendants jointly and severely.
  - C. Decree of Rs.1 million tentatively valued for the Plaintiff suffering on account of illegal possession of the suit property by the defendants may be granted to the Plaintiffs from the defendants jointly and severely.
  - D. Direct the defendant No.3 or any other person(s) in possession of the Suit Property that is House No. V-C-8/17, Nazimabad, Karachi, to vacate and handover the peaceful and vacant of the same to the Plaintiffs.
  - E. Restraint the defendants or any other person(s) acting and claiming any right under them from creating any third party interest in the use and possession of the Suit Property that is House No. V-C-8/17, Nazimabad, Karachi in what so ever manner.
  - F. Grant such other relief as this Honorable Court deems just and proper in the circumstances of the suit.
  - G. Grant the cost of the Suit.”

6. Interim orders were passed on 31 May 2013 and 7 June 2013 directing for certain amounts to be paid by the Appellants to the Respondents No.1 to 5. On another interim application an inspection of the Said Property was carried out by the Architect Syed Zia A. Jaffery, who stated that the condition of the Said Property was dangerous and

which could not to be used for habitation let alone to accommodate school children.

7. On 18 November 2013, the following issues were framed in Suit No.1755 of 2008:

- " ...
1. *What is the effect and current status of Martial Law Regulations No.118/1977 under which the suit property/running school of the plaintiff was taken over by the Defendant No.1 and subsequently transferred to the Defendant No.2?*
  2. *Whether the Defendants No.2 and 3 have committed the default in payment of rent to the Plaintiffs hence they are liable to handover possession to the Plaintiff?*
  3. *Whether the Defendants are liable to pay compensation/damages for illegal use of Plaintiff's property?*
  4. *What should the decree be?"*

and whereafter evidence was led by both the parties.

8. At the date of final hearing, it was found that the Appellants had maintained M.R.C. No. 668 of 1990 and deposited rent therein. The Court thereafter put certain questions to the Respondents, who admitted that a sum of Rs.134,650/- was paid as arrears of rent for the period from 1 July 2000 to 30 June 2013 to the Respondents and that thereafter no rent had been paid.

9. The learned Single Judge after perusing the evidence held that:

- (i) Martial Law Regulation 118 of 1977 did not give proprietary rights to the owner of the property as held in the case of **Board of Foreign Mission of the Presbyterian Church Vs. Government of the Punjab** (1987 SCMR 1197) and **Director of Schools and others Vs. Zaheeruddin and others** (1996 SCMR 1767).
- (ii) That the Appellants defaulted in the payment of rent of the Said Property and were also running school on a residential property in violation of Regulation 18-4.2 of the Karachi Building & Town Planning Regulation, 2002.

- (iii) That the Defendants had withdrawn their claim of mesne profit and damages and hence no order was passed thereon.

On the basis of the above finding a decree was passed in the following terms:

- “ ... (i) rent at the rate of Rs. 1000/- (Rupees One Thousand Only) per month from 01.07.2013 till today, that comes to Rs. 56,000/- (Rupees Fifty Six Thousand Only), within a fortnight from today.
- (ii) the Defendants will withdraw the amounts, which they have deposited in MRC No. 668 of 1990 and will pay the same to Plaintiffs within four weeks from today;
- (iii) the Defendants shall hand-over the vacant, physical and peaceful possession to Plaintiffs forthwith and if they have made any unauthorized structure on the premises/suit property then the same shall be removed by the Defendants and their employees at their own costs and expense; and
- (iv) looking at the conduct of Official Defendants and in view of the discussion in the preceding paragraphs, the Plaintiffs are also granted costs of the present proceeding.”

**D. Contentions on Behalf of the Appellants**

10. Mr. Muhammad Hisham Mahar, learned Assistant Advocate General, Sindh entered appearance on behalf of the Appellants and contended that in the circumstances the payment of the sum of Rs.56,000/- was unwarranted and should be withdrawn. He did not rely on any case law in support of his contentions.

**E. Contentions on behalf of the Respondents**

11. Mr. Yousuf Molvi, entered appearance on behalf of the Respondents and stated that the Respondents No.1 to 5 are the owners of Said Property and were entitled to be paid rent and that there was no illegality of infirmity in the order passed by the learned Single Judge

**F. Judgement**

12. We have heard Mr. Muhammad Hisham Mahar, learned Assistant Advocate General, Sindh representing the Appellants and Mr. Yousuf Molvi, learned counsel for the Respondents and have perused the record.

13. The impugned order passed by the learned Single Judge has held that a sum of Rs.56,000 was liable to be paid by the Respondents to the Appellants at the rate of Rs.1000 per month from 1 July 2013 till 19 March 2018. We are in complete agreement with the learned Single Judge that the default having been admitted by the Appellants, such amount would be claimable by the Respondents No.1 to 5 and in the circumstances find no basis for denying such damages to be awarded to the Respondents No.1 to 5 as clearly of the Respondents could resort the provision of Transfer of Property Act, 1882 and the Contract Act 1872 to maintain a claim of damages in terms of breach of payments under the rental arrangement as between the parties for the use of the Said Property. That being said the Appeal must be dismissed

14. For the foregoing reasons, there being no material irregularity or illegality in the order dated 6 March 2018 passed by the learned Single Judge in Suit No.1755 of 2007, this Appeal is misconceived and is dismissed along with all pending application(s) with no order as to costs.

JUDGE

JUDGE

Nasir/

