THE HIGH COURT OF SINDH KARACHI

Present:
Mr. Justice Zulfiqar Ali Sangi

C.P. No. S – 78 of 2022
[Cutchi Memon Markazi Jammat Karachi vs. Ashraf Banothia & others]

Petitioner	:	Cutchi Memon Markazi Jammat Karachi Through Syed Ehsan Raza, Advocate
Respondent No.1	:	Ashraf Banothia through Mr. Irfan Ali, Advocate

====

Date of hearing	:	04.11.2026
Date of decision	:	04.11.2026

====

O R D E R

Zulfiqar Ali Sangi J.– The petitioner, through the instant constitutional petition filed under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, has called into question the judgment dated 22.10.2021 passed by the learned VIIth Additional District Judge (MCAC), Karachi South, in First Rent Appeal No.41 of 2021, whereby the appeal preferred by the petitioner against the order dated 03.02.2021 passed by the learned Vth Rent Controller, Karachi South, in Rent Case No.1107 of 2019 was dismissed, thereby maintaining the order whereby the petitioner's application under Section 8 of the Sindh Rented Premises Ordinance, 1979 (***hereinafter referred to as "the Ordinance")*** seeking fixation of fair rent in respect of the subject premises was dismissed.

2. Briefly stated, the case of the petitioner is that Haji Suleman Ilyas Trust is a registered charitable trust, managed by Cutchi Memon Markazi Jamat, Karachi, and is the owner of immovable properties bearing New Survey Nos.TL-2/41 and TL-2/42, Survey Sheet No.TL-2, situated at Bheem Pura, Karachi. It was asserted that respondent No.1 was provided Flat No.503, Jilani Building, Plot No.TL-1, Survey No.27, D-3, Bheem Pura, Karachi, against the premises previously occupied by him in the property of the Trust, with an understanding that he would vacate the earlier premises and subsequently pay rent in respect of the premises allotted to him

upon execution of a formal tenancy agreement. However, according to the petitioner, respondent No.1 neither vacated the earlier premises nor paid any rent in respect of the subject premises, despite service of legal notice. It was further claimed that the prevailing rental value of the subject premises was Rs.30/- per square foot, amounting to Rs.15,000/- per month, and, accordingly, the petitioner instituted proceedings under Section 8 of the Ordinance seeking fixation of fair rent at the aforesaid rate.

3. The respondent No.1 contested the rent application by filing a written statement, wherein the very relationship of landlord and tenant between the parties was denied. His specific stance was that he belonged to the family of Haji Suleman Ilyas, the founder of the Trust, and had been residing in the Trust premises as a family member without payment of rent. It was further asserted that, owing to the proposed reconstruction of the Trust property, he, along with other occupants, had temporarily been shifted to Jilani Building on the understanding that alternative accommodation would be provided upon completion of the proposed construction. It was maintained that neither any tenancy agreement was executed nor was any rent settled between the parties.

4. The learned Rent Controller, after recording the evidence of the parties and hearing their respective counsel, dismissed the application vide order dated 03.02.2021, principally on the ground that the petitioner had failed to establish the relationship of landlord and tenant between the parties. The petitioner, being aggrieved, preferred First Rent Appeal No.41 of 2021, which was also dismissed by the learned VIIth Additional District Judge (MCAC), Karachi South, vide judgment dated 22.10.2021, with the observation that no illegality or material irregularity had been committed by the learned Rent Controller warranting interference. Hence, the instant constitutional petition.

5. Learned counsel for the petitioner contends that both the courts below have failed to properly appreciate the documentary as well as oral evidence available on record. He submits that the subject premises admittedly belong to the Trust and that respondent No.1, having occupied the same, cannot avoid his liability to pay rent or use and occupation charges merely on the

ground that no formal tenancy agreement was executed. He further contends that the definition of rent under the Ordinance encompasses use and occupation charges and, therefore, the learned Rent Controller was competent to determine fair rent under Section 8 thereof. He further submits that the denial of ownership by respondent No.1, despite the registered documents produced by the petitioner, attracts the principle of estoppel. According to learned counsel, the findings recorded by the courts below are contrary to the evidence on record and suffer from misreading and non-reading of material evidence. He, therefore, prays that the impugned judgments be set aside and the application for fixation of fair rent be allowed.

6. Conversely, learned counsel for respondent No.1 supports the concurrent findings recorded by the courts below and submits that the petitioner has failed to establish the foundational requirement of a landlord-tenant relationship between the parties. He contends that ownership of the property, by itself, does not establish the relationship of landlord and tenant, particularly when the very nature and circumstances of respondent No.1's occupation have been specifically disputed. He further submits that the petitioner's own pleadings demonstrate that no rent was settled and that payment of rent was contemplated only after execution of a formal tenancy agreement. He also draws attention to the legal notice issued by the petitioner, wherein respondent No.1 was described as an illegal occupant, which, according to him, is inconsistent with the petitioner's subsequent assertion that he was a tenant. He, therefore, submits that both the courts below have rightly declined to exercise jurisdiction under the Ordinance and that the instant petition is liable to be dismissed.

7. I have heard learned counsel for the parties and have carefully examined the available record, including the judgments impugned herein. The controversy requiring determination is whether, in the facts and circumstances of the case, the petitioner succeeded in establishing the relationship of landlord and tenant between the parties so as to invoke the jurisdiction of the Rent Controller for fixation of fair rent under Section 8 of the Ordinance.

8. It is a settled principle of law that the jurisdiction of a Rent Controller under the Ordinance can be invoked only where the relationship of landlord and tenant between the parties is established. The mere assertion of ownership over the premises, or the fact that a person is occupying a particular property, would not, by itself, be sufficient to establish such relationship. The party invoking the jurisdiction of the Rent Controller is initially required to establish, through cogent and reliable evidence, the legal relationship on the basis of which the statutory jurisdiction is sought to be exercised. Such relationship may be established through a written or oral tenancy arrangement or otherwise in accordance with law; however, the mere occupation of premises does not automatically confer the status of a tenant upon the occupant.

9. In the present case, a perusal of the rent application reveals that the petitioner itself pleaded in paragraph No.5 that the subject premises had been provided to respondent No.1 on the understanding that rent would be paid after execution of a tenancy agreement containing specific terms and conditions regarding monthly rent. This assertion assumes significance, particularly when the petitioner has not been able to identify any specific date on which the alleged tenancy was created, nor has it produced any written agreement or other reliable evidence demonstrating that respondent No.1 had entered into a tenancy arrangement with the Trust. Even during the evidence, the authorized representative of the petitioner admitted that respondent No.1 had never paid rent in respect of the subject premises or the earlier premises situated within the Trust property. Thus, the foundational fact necessary for invoking the jurisdiction of the Rent Controller remained unsubstantiated.

10. It is also relevant to observe that the defence of respondent No.1 was not confined to a simple denial of the tenancy relationship. Rather, he furnished a specific explanation regarding the circumstances in which he came into occupation of the subject premises, asserting that he was a descendant of the founder of the Trust and had been shifted temporarily to Jilani Building in consequence of the proposed reconstruction of the Trust property. The learned Rent Controller noticed that the material assertions

made by respondent No.1 in his affidavit-in-evidence regarding his family relationship and temporary shifting had not been effectively controverted during cross-examination. The petitioner also failed to produce any independent witness or documentary evidence establishing that respondent No.1 had been inducted as a tenant.

11. Another significant aspect of the matter is the legal notice dated 11.04.2019 issued on behalf of the petitioner, wherein respondent No.1 was described as an illegal occupant of the subject premises. Such description is apparently inconsistent with the petitioner's subsequent assertion that respondent No.1 was occupying the premises in the capacity of a tenant. Although the mere description of an occupant as an illegal occupant in a legal notice would not, in every circumstance, conclusively determine the legal character of possession, the same is certainly a relevant circumstance to be considered while examining the petitioner's own case. When read together with the absence of any tenancy agreement, non-payment of rent and failure to establish any oral tenancy arrangement, the aforesaid circumstance further weakens the petitioner's claim.

12. The contention of learned counsel for the petitioner that the definition of rent under the Ordinance includes use and occupation charges is also not sufficient to overcome the fundamental deficiency in the petitioner's case. The provisions relating to rent or use and occupation charges cannot be construed in isolation so as to confer jurisdiction upon the Rent Controller in every case where a person occupies premises owned by another. The applicability of such provisions necessarily depends upon the existence of the relationship contemplated by the Ordinance. In the absence of proof of such relationship, the question of determining or fixing fair rent under Section 8 does not arise. The distinction between a tenant and an occupant claiming possession on an independent or different basis cannot be obliterated merely by describing the amount claimed as use and occupation charges.

13. Likewise, the argument founded upon the principle of estoppel is misconceived in the circumstances of the present case. The question of ownership of the property and the question of existence of a landlord-tenant relationship are distinct matters. Even if the

petitioner's ownership of the subject premises is established through registered documents, such ownership, by itself, does not establish that respondent No.1 entered into possession in the capacity of a tenant. The petitioner was still required to establish the legal basis upon which the relationship of landlord and tenant was alleged to have arisen. The mere denial of ownership by respondent No.1, therefore, cannot substitute the evidence necessary to establish the foundational relationship for the purposes of the Ordinance.

14. I have also examined the impugned appellate judgment dated 22.10.2021. The learned appellate court has considered the material aspects of the controversy, particularly the petitioner's own pleading regarding execution of a future tenancy agreement, the admissions made by its authorized representative during cross-examination, the absence of documentary proof of tenancy and the contents of the legal notice issued to respondent No.1. The learned appellate court, after independently examining the record, concurred with the conclusion reached by the learned Rent Controller. I find that the conclusions drawn by both the courts below are based upon the evidence available on record and are neither arbitrary nor perverse. It is by now well settled that the constitutional jurisdiction of this Court under Article 199 of the Constitution is not intended to provide another forum for reappraisal of evidence or substitution of findings of fact merely because another view may be possible. Interference with concurrent findings recorded by the competent courts is warranted only where such findings are shown to be the outcome of misreading or non-reading of material evidence, patent illegality, jurisdictional defect or perversity. In the present case, learned counsel for the petitioner has not been able to point out any such infirmity in the impugned judgments which may justify interference by this Court in its constitutional jurisdiction.

15. For the foregoing reasons, I am of the considered view that the petitioner has failed to establish any jurisdictional error, illegality or material irregularity in the concurrent judgments passed by the courts below. The impugned judgment dated 22.10.2021 passed by the learned VIIth Additional District Judge (MCAC), Karachi South, as well as the order dated 03.02.2021 passed by the learned Vth Rent Controller, Karachi South, do not call for interference by this

Court. Consequently, the instant constitutional petition, being devoid of merit, is hereby dismissed, along with pending applications, if any. There shall be no order as to costs.

JUDGE