

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

C.P. No. D-4725 of 2015
(Mansoor Ashraf Versus Province of Sindh and others)

Date	Judgment with signature of Judge
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Present:
Mr. Justice Aqeel Ahmed Abbasi &
Mr. Justice Muhammad Faisal Kamal Alam

Petitioner : Through M/s. Abdul Naeem Khan and Faisal Naeem, Advocate.

Respondents No.5 to 8 : Through M/s. Barrister Shah Nawaz and Zulfiqar Ali Sangi, Advocates.

Mr. Shahariyar Imdad Awan, learned AAG.

Dates of hearing : 06.05.2016, 20.05.2016, 26.05.2016 and 01.06.2016

Date of Judgment : 30.08.2016

JUDGEMENT

Muhammad Faisal Kamal Alam, J: Through instant Petition, the Petitioner is seeking, inter alia, restoration of his possession in respect of property bearing C.S.No:C-640/3, measuring 413-3 square yards, situated near Forest Office, Sukkur (subject property). Following relief has been claimed in the main Petition:-

“i) *To declare that the petitioner being lawful occupation/possession of the property bearing C.S.No:C-640/3, measuring 413-3 square yards, situated near Forest Office, Sukkur, could not be evicted/dispossessed from the said property without due process of law and that the act of the respondents No.2 to 8 in evicting/dispossessing the petitioner from*

the said property is illegal, malafide, without jurisdiction, without lawful authority and of no legal effect.

- ii) *To grant mandatory injunction directing the respondents to restore the possession of the petitioner over the property bearing C.S.No.C-640/3, measuring 413-3 square yards, situated near Forest Office, Sukkur and to deliver the possession of the said property to the petitioner.*
- iii) *To grant perpetual/permanent injunction, restraining the respondents No.5 to 8 either themselves or through their servants or any other agency from removing furniture, valuable articles, goods, equipments, other valuable things and documents of the petitioner which are lying in the property bearing No.C.S.No:C-640/3, situated near Forest Office, Sukkur, and also restraining the respondent No.5 from alienating the said property by way of sale gift, mortgage or creating third party interest or handing over physical possession of the said property to any other person except the petitioner.*
- iv) *To grant any other equitable relief which this Honourable Court deems fit under the circumstances of the case.*
- v) *To award the costs of the petition to the petitioner.”*

2. The dispute involved in the present Petition is primarily between Petitioner and private Respondents No.5 to 8; Respondent No.5 (Mst. Fareeda Zafar) is the owner of the subject property, whereas, Respondent No.6 is her husband and attorney and Respondents No.7 and 8 are family members of Respondents No.5 and 6. Official Respondents No.1 to 4 are Police Officials against whom the claim of Petitioner is that they in violation of their statutory obligation assisted and abetted the

above named private Respondents in forcibly dispossessing the Petitioner from the subject property.

3. Material facts for adjudicating the subject dispute in the present Constitutional Petition are that Petitioner and Respondent No.5 (Mst. Fareeda Zafar) entered into a tenancy agreement dated 01.08.2007 in respect of the above mentioned subject property to be used for commercial purpose.

4. In the intervening period, private Respondents also filed a Rent Application No.4 of 2014 (New No.47/2014) against the Petitioner for his eviction from subject property on the grounds of default and personal need, which is still sub judice before the Rent Controller / learned Ist Senior Civil Judge, Sukkur.

5. As per averments of Petition, subsequently, an Agreement of Sale dated 03.04.2013 was executed between private Respondents and the petitioner, according to which the subject property was sold to the Petitioner for a total sale consideration of Rs.2,20,00,000/- (Rupees Two Crore Twenty Lac) out of which Rs.60,00,000/- (Rupees Six Million) was paid in cash towards part payment / earnest money. It is further pleaded by Petitioner that since private Respondents were avoiding to complete the sale transaction, the Petitioner had to file a Suit for Specific Performance, that is, F.C. Suit No.107 of 2014, which was admitted by the concerned learned Senior Civil Judge on 14th May, 2014 and in response thereto the above named private Respondents have filed Written Statement, wherein, claim of Petitioner has been seriously refuted. Issues have been framed and the matter is set down for recording of evidence. Copies of the pleadings of the said F.C Suit are filed with the Memo of Petition as Annexures “E” to “H” respectively. The actual grievance of the Petitioner started when as per his averments, he was

dispossessed from the subject property on 13.12.2015 by the Respondents, which initially was challenged before the Court of learned Sessions Judge/Ex-Officio Justice of Peace, Sukkur by filing a Criminal Misc. Application No.1518 of 2015, in which the present private Respondents were named as proposed accused.

6. The official Respondents have filed their reply and have disputed the allegations against them as contained in the instant petition and contended that they were not involved in dispossessing the Petitioner from subject premises, nor they have anything to do with the private dispute between the parties.

7. Private Respondents have filed their comments / reply, wherein, they have also controverted the entire stance of Petitioner, and contended that no sale agreement (as mentioned above) was ever entered between the parties, which according to Respondents is a forged document and was prepared as a counter-blast to the rent proceedings filed by private Respondent No.5 as landlady of the subject property for evicting the Petitioner therefrom. Learned counsel for Respondents has vehemently argued that the cheques given by Petitioner to Respondent No.5 towards arrears of rent were also dishonored and Petitioner cannot justify to occupy the subject property as tenant. It is denied that Petitioner was illegally dispossessed by Respondents. Conversely, the stance of private Respondents is that under a Compromise Agreement, the Petitioner had voluntarily handed over the possession of the subject property to private Respondents. The said Compromise Agreement has been placed on record as Annexure “**R-I**” with the Comments / Reply of private Respondents.

8. On the other hand, Petitioner has filed Affidavit-in-Rejoinder and has categorically disputed the genuineness of above Compromise

Agreement (Annexure “R-1”), which according to petitioner, is a forged and bogus document. The Petitioner has also placed on record his objections filed to the said agreement in the above pending Suit No.107 of 2014 and Rent Case No.47 of 2014, before the learned Senior Civil Judge and Rent Controller.

9. We have heard learned counsel for the parties and have gone through the record of the case, including the above sub judice proceedings with their assistance.

10. Mr. Abdul Naeem Khan along with Mr. Faisal Naeem, learned Advocates representing the Petitioner have cited the following Judgments, primarily, on the issue of maintainability of Constitutional Petition and restoration of Petitioner’s possession in respect of subject property : -

- i. 1973 SCMR 90
[M. Ghani Versus M.A. Mullick & Brothers and 3 others)
- ii. 1970 SCMR 434
[Syed Mehdi Hasnain Versus Muhammad Ayub and another)
- iii. PLD 2000 Lahore 101
[Abdul Haq and 2 others Versus The Resident Magistrate, Uch Sharif, Tehsil Ahmedpur Est, District Bahawalpur and 6 others].
- iv. 1980 CLC 1119 [Azad J&K]
[Karam Dad and another Versus Azad Government of the State of Jammu & Kashmir and others].
- v. 1993 MLD 152 [Lahore]
[Muhammad Aslam Versus Station House Officer and others]
- vi. 1986 CLC 1408 [Karachi]
[Muhammad Farooq M. Memon Advocate Versus Government of Sindh through its Chief Secretary, Karachi].
- vii. PLD 2004 Karachi 60
[Nadir Khan Versus Town Officer (Municipal Regulation), Shah Faisal Colony, Karachi and another].

- viii. PLD 2008 Supreme Court 135
[Muslimabad Cooperative Housing Society Ltd. Through Secretary Versus Mrs. Siddiqa Faiz and others].
- ix. 2007 SCMR 1240 [Supreme Court of Pakistan]
[Sorgodha Textile Mills Limited through General Manager Versus Habib Bank Limited through Manager and another]
- x. 2005 SCJ 176
[Khalid Saeed Versus Mrs. Shamim Rizvan & others].
- xi. PLD 1999 Supreme Court 1126
[New Jubilee Insurance Company Ltd., Karachi Versus National Bank of Pakistan Karachi].
- xii. PLD 2014 Sindh 20
[Habib Metropolitan Bank Ltd Versus Administrator, Karachi Municipal Corporation, Karachi and 3 others].
- xiii. 2013 CLC 792 [Sindh]
[Shahnawaz Mallah and 2 others Versus Raza Muhammad Brohi and 8 others].
- xiv. PLD 1995 Supreme Court 423
[Multiline Associates Versus Ardeshir Cowasjee and 2 others].

11. The above stance of Petitioner has been contested and converted by M/s. Barrister Shah Nawaz and Zulfiqar Ali Sangi, Advocates, representing private Respondents No.5 to 8, inter alia, on the ground that when proceedings are already pending before a competent forum below, then the Petitioner can avail his remedy in such sub judice proceedings before the learned Senior Civil Judge. It has been further argued by M/s. Barrister Shah Nawaz and Zulfiqar Ali Sangi, Advocates, representing the private Respondents, that the Petitioner instead of filing instant petition, can also seek his remedy under the Illegal Dispossession Act, 2005, which is an adequate and efficacious remedy, therefore, instant petition under Article 199 of the Constitution is not maintainable. It has been further argued that no writ can be issued against private persons, as according to learned counsel for respondents, instant Petition is primarily directed against private Respondents No.5 to 8, therefore, the

instant Constitution Petition merits dismissal. In support of their contention, following case law is relied upon_

- i. 2014 PLC (CS) 393 Supreme Court
[Abdul Wahab versus Habib Bank Ltd].
- ii. PLD 1975 SC 1974
[Salahuddin and 2 others Versus Frontier Sugar Mills and Distillery Ltd. Tokht Bhai and 10 others]
- iii. PLD 2015 Lahore 507
[Messers Millat Tractor Limited through Deputy General Manager Versus Muhammad Munir Ahmed and 3 others]
- iv. 2000 SCMR 238 SC
[Abdul Wahab Versus Habib Bank Ltd]
- v. 1999 YLR 2499 (Shariat Court (AJ&K)
[Abdul Wahab Versus Habib Bank Ltd]
- vi. 1994 SCMR 212 SC of India
[Mohan Pandey Versus Usha Rani Rajgaria]
- vii. 2014 CLC 1730 Sindh
[Akhtar Billo Versus Pakistan Industrial Development Corporation].
- viii. 2012 YLR 453 Sindh
[Mumtaz Ali Jahangir Versus Province of Sindh Through Secretary, (Revenue), Karachi].
- ix. 2011 SCMR 279 SC
[Anjuman Fruit Arhtian Versus Deputy Commissioner, Faisalabad]
- x. 2009 YLR 1504 Lahore
[Sarfraz Versus State]
- xi. 2010 CLC 232 Sindh
[Miss Rakshanda Khatoon Versus Nawab Din]
- xii. 2015 YLR 647 (Sindh)
[Shell Pakistan Ltd. Versus IVth Additional District Judge]
- xiii. 2014 MLD 23 Sindh
[Muhammad Anwar Versus Mir Rafique Ahmed Talpur]
- xiv. 2011 CLC 846 [Islamabad]
[Muneer Khan Versus Uzma Ufaq]
- xv. 2010 CLC 232 Sindh
[Miss Rakshanda Khatoon Versus Nawab Din]

12. In rebuttal M/s. Abdul Naeem Khan and Faisal Naeem, Advocates representing the Petitioner have argued that both the above mentioned sub judice cases are of different nature, whereas, instant Petition involves altogether different set of facts and the relief claimed relates to Petitioner's post dispossession scenario. According to learned counsel for Petitioner, invoking the provisions of Illegal Dispossession Act, 2005, would be an exercise in futility as concerned Police Officials, who have been impleaded in the instant Petition as Respondents No.1 to 4 are also in league with private Respondents No.5 to 8 and in such an eventuality there is every possibility that a bias Report would be submitted by the concerned SHO in terms of Section 5 of the above Illegal Dispossession Act, 2005, if called upon by the concerned Court. Petitioner's counsel further submitted that he is not seeking issuance of writ only against private Respondents but has also impleaded the police officials, who miserably failed to act in accordance with law, whereas, the Petitioner has already filed a Criminal Misc. Application No.1518 of 2015, before the learned Sessions Judge/Ex-Officio, Justice of Peace, Sukkur against their (Police) mala fides acts and connivance with the private respondents. It is further contended that as far as pendency of above two cases are concerned; remedy to restore the possession of Petitioner in respect of the subject property cannot be granted in rent proceedings and to seek such a remedy in the pending suit for Specific Performance, pleadings are to be amended, which will be a cumbersome exercise, whereas, the Petitioner is suffering losses on daily basis as his running business of Guest House in the subject property has been uprooted since 13th December, 2015.

13. At this juncture, it is very necessary to observe that since the authenticity of two documents, that is, (i) Agreement of Sale dated

03.04.2013 and (ii) Compromise Agreement (Annexure “R-1”) have been seriously disputed by the parties and these documents are also part of contentious issues in the above mentioned pending cases; Civil Suit and Rent Application, therefore, any observation mentioned in this Judgment should not be construed as any finding with regard to validity or otherwise of above two documents.

14. Since the question of maintainability has been raised, therefore, it is to be decided first in the light of Judgments cited by the parties, particularly the case law relied upon by the learned counsel for respondents in this regard. The first case of Abdul Wahab and others reported in 2014 PLC (C.S.) 393 (Abdul Wahab Versus Habib Bank Ltd) relates to service matter of employees and their termination from a private Bank, which admittedly does not have statutory Rules and the Hon’ble Supreme Court on the basis of such fact has held that a policy decision of a private corporate entity is not amendable to writ Jurisdiction. The second Judgment of Hon’ble Supreme Court (Haji Muhammad Ashraf Versus The District Ministry, Quetta and three others) reported in 2000 SCMR 238 was in respect of a property, regarding which, though a Civil Suit was pending but at the same time basic allotment of Petitioner (of that case) was under question by the official Respondents and so was his subsequent possession and there were other serious allegations against him. These factors weighed with the Apex Court to hold that writ jurisdiction was wrongly invoked. Both the above cited cases are distinguishable and the ratio laid therein is not applicable to the present case at hand. Similarly, another reported Judgment of this Court; 2012 YLR Page 453 (Mumtaz Ali Jahangir Versus Province of Sindh) is also distinguishable as in that case a Constitution Petition was preferred in respect of Government owned

Bungalow, which was allotted to brother-in-law of Petitioner (of the above cited case), which was later got evicted by official Respondents by invoking Provision of Sindh Public Property (Removal of Encroachment) Act, 1975. In that case learned Division Bench of this Court has held that where triable issues (*emphasis added*) are involved, which can be resolved at other fora, then writ jurisdiction under Article 199 of the Constitution is barred. A decision from Indian jurisdiction, which has been reported in 1994 SCMR Page-212 (Mohan Pandey Versus Usha Rani Rajgaria) is also not applicable in the present set of circumstances, as in that case too issue of handing over of possession illegally to one of the parties was involved. One of recent Judgments relied upon by Respondents' side is 2014 CLC Page-1730 (Akhtar Billo Versus Pakistan Industrial Development Corporation), in which learned Division Bench has dismissed the Constitution Petition, inter alia, by holding that adequate remedy is available under the Illegal Dispossession Act, 2005. Facts of this case are that a Civil Suit was also pending in respect of disputed land and there was a serious contest amongst the parties with regard to possession of the land involved. Distinguishing factor between the above cited case and the present Constitution Petition (before us) is that it is an admitted position that present Petitioner-Mansoor Ashraf was in possession of the subject property and secondly his tenancy has been admitted by private Respondents.

15. During pendency of instant petition, site inspection was also ordered by this Court in respect of suit property and a comprehensive Report in compliance thereof has been filed by the Commissioner along with Photographs, which though has been objected to by private Respondents, however, to the extent of detail of inventory items only,

whereas, according to respondents, the said articles are to be adjusted against arrears of rent.

16. We may observe that pendency of above two cases in respect of subject property reflects that Petitioner was in possession of subject premises as a tenant, and was running his business of Guest House under the name and style of 'Decent City Guest House'. As far as justification given by the private Respondents for ejecting the Petitioner from the subject property during pendency of Rent Case and the Suit for Specific Performance, on the basis of some purported Agreement (Annexure "R-1") is concerned, the authenticity of such agreement has not only been vehemently disputed by the Petitioner in his affidavit-in-rejoinder, but the same has also been denied and objected to by the Petitioner in the above mentioned two cases, and the relevant record of such proceedings containing the Application under Section 151 of CPC, under which the said compromise has been filed by private Respondents and the written objections thereto, have been appended in the present Petition with the Affidavit-in-Rejoinder of Petitioner. Even otherwise, if according to Respondents, the possession of the said property was handed over by Petitioner himself, then the rent proceeding would have been withdrawn by the private Respondents by now, but, said Rent Case is still pending adjudication. Therefore, without observing anything about the authenticity of either of the documents / Agreements (Annexure "R/1") relied upon by private Respondents or the Sale Agreement (ibid) relied upon by present Petitioner, the factual controversy does not in fact remain factual, but becomes an undisputed fact that present Petitioner was dispossessed from the subject property by not following the due process of law as there is no order from competent Court requiring the petitioner to be evicted from subject premises. Consequently, the only

question now remains to be answered is that the Petitioner, who admittedly was inducted as a tenant by the present private Respondent No.5 in the subject premises for running his business (Guest House), if subsequently dispossessed during pendency of Rent Case and Suit for Specific Performance without due process of law and in the absence of any order by competent Court of jurisdiction, then what remedy the present Petitioner has. Section 13 of the Sindh Rented Premises Ordinance, 1979, (**SRPO**) unequivocally provides that no tenant shall be evicted from the demised premises except in accordance with provision of SRPO, 1979. Secondly, **SRPO** being a special law has been promulgated to regulate the relationship of landlord and tenant and eviction of tenant on various grounds as enumerated under Sections 14 and 15 of SRPO, 1979. In this regard, two reported decisions-1991 SCMR Page-864 (Iqbal Younus Versus Kishwar Jehan) and PLD 1987 Karachi Page-287 (Mrs. Rafiq Begum through her legal heirs Versus Mrs. Mahmooda Wahidina) are of relevance, wherein it is held, that the object of **SRPO** is to regulate respective rights and interests of owner / landlord and a tenant in respect of a rented premises within urban area and this statute (**SRPO**) has been termed as a piece of social legislation. Considering the fact that present Petitioner was a tenant of Respondent No.5 in respect of subject property, then he can only be evicted therefrom under the **SRPO** and for which the Rent proceedings against the present Petitioner is already pending before the learned Ist Senior Civil Judge / Rent Controller, Sukkur. Petitioner's interest as a tenant is safeguarded under a special statute, viz. **SRPO**, which means that if the Petitioner (as a tenant) has some right under SRPO, then he must also have a remedy. One remedy, as argued by the learned counsel for Respondents is that the Petitioner should seek restoration of his possession either in pending proceedings (as referred above) or may file

an altogether fresh case under the Illegal Dispossession Act, 2005; and the other remedy as argued by learned counsel for petitioner, is to file Constitutional Petition under Article 199 of the Constitution seeking restoration of his possession, if taken away during pendency of a Rent Case or Suit for Specific Possession, in the absence of any order by the competent Court of jurisdiction. It is an admitted fact that Petitioner was running a business of a Guest House in the subject premises and after his dispossession from the subject property not only his statutory entitlement under **SRPO** is violated but also his right to do business, which is a fundamental right under Article 18 of the Constitution of Pakistan, and is on a much higher footing than that of a statutory right. More so, such an abrupt dispossession of Petitioner from the subject property during pendency of above mentioned proceedings besides being dubious is also violative of Article 10-A of the Constitution, which pertains to the right of a citizen to a fair trial; as Petitioner even before pronouncement of an order by the learned Senior Civil Judge / Rent Controller, Sukkur, in the above pending cases in respect of subject premises, has been apparently dispossessed from the subject property without due course of law.

17. We are not inclined to accede to the contention of learned counsel for the respondent that possession can be restored only by way of Civil Suit or through a Complaint under Illegal Dispossession Act, 2005, particularly in a case where the relationship of tenant and landlord as well as the possession of tenant in respect of such premises is not disputed. We are also of the view that if a rent case is pending before a competent forum and a tenant has been thrown out by his landlord through force, then the concerned Rent Controller, who is seized of the matter, can on an application filed by a tenant to this effect, and after hearing the parties, is also empowered to restore the possession of that

tenant in respect of the rented premises (in appropriate cases). Reason for such conclusion is; (i) that under the scheme of **SRPO**, if a Rent Controller can restore amenities, like electricity, gas or water, of a tenant under Section 11 and put a tenant back into possession in terms of Sub-Sections (3), (4) of Section 15 and 15-A, even after passing of an eviction order, then the Rent Controller can also restore the possession of a tenant if the latter (tenant) is evicted illegally even before passing of an ejectment / eviction order; (ii) it is a settled principle that if the Court / Tribunal or authority has the power to grant final relief, then even in the absence of an express provision, it can also grant an interim relief; (iii) it is also a trite principle of law that no one should be allowed to reap benefits from his wrongful acts; a tenant thrown out of a rented premises during pendency of proceedings should not be left to seek a remedy of mere restoration before different available fora under the law. This will not only make that tenant remediless but will also render the law of SRPO redundant and ineffective, as the landlord may resort to such illegal act of dispossessing a tenant from a rented premises in total disregard of Rent Case pending before the Rent Controller. Mere availability of alternate remedy does not mean and cannot be construed to provide an absolute bar for invoking the writ jurisdiction under Article 199 of the Constitution in appropriate cases, in order to prevent abuse of authority and process of law. An alternate remedy if not adequate and efficacious for a citizen, resort can be made to invoke constitutional jurisdiction, if requirements of Article 199 are otherwise attracted, to ensure that purpose of any law may not be defeated, and (iv) an implied objective of law is to ensure an orderly behaviour in a society and if on one hand a wrongful act is left unattended on the basis of certain technicalities and on the other hand a victim of wrongful act is left to run from pillar to post, then in due course of time, an orderly system of a

society would be diminished and will be replaced by a disorderly and intolerant behaviour as well as lawlessness.

18. Issues involved in the present case are of peculiar nature as discussed hereinabove, in particular, violation of fundamental right(s) of a citizen / Petitioner is a serious issue and must be remedied at the earliest. Therefore, we are inclined to follow ratio decidendi of the case cited by the Petitioner and reported in 2005 Supreme Court Judgment (SCJ) Page-176 (Khalid Saeed Versus Mrs. Shamim Rizvan & others), wherein, inter alia, it was held that despite pending of Civil Suit a Constitution Petition is maintainable, particularly when nature of reliefs claimed in both matters are different. In this regard, an earlier Judgment of Hon'ble Supreme Court reported in PLD 1975 SC Page 244 (Salahuddin and 2 others Versus Frontier Sugar Mills and Distillery Ltd. Tokht Bhai and 10 others) is also relevant and rule laid therein is applicable to the present case.

19. In these circumstances, the case law relied upon by the Petitioner's side is applicable to the extent that if a tenant is evicted / dispossessed from a rented premises in violation of law then his possession can be restored by invoking writ jurisdiction, therefore, we accept this Petition to the extent that all the Respondents are directed to forthwith put the Petitioner back into possession of the subject premises bearing C.S.No:C-640/3, measuring 413-3 square yards, situated near Forest Office, Sukkur, and return the items belonging to the Petitioner as mentioned in the inventory prepared by the Commissioner appointed by this Court.

20. It is also clarified that both the above cases pending adjudication before the learned Senior Civil Judge / Rent Controller, Sukkur, should

be decided expeditiously and preferably within 02 (two) months from today and no unnecessary adjournment should be granted to any party and even a single adjournment should entail a cost. It is further clarified that observations made hereinabove shall not prejudice the trial and final outcome of the above mentioned proceedings, which will be decided on its own merits.

JUDGE

JUDGE