

IN THE HIGH COURT OF SINDH AT KARACHI

C.P No.S-181 of 2003

Present: Mr. Justice Nazar Akbar

Petitioner : Naimuddin & Company.
Petitioner present in person.

Respondent No.1 : M/s Ebrahim Brother's (Pvt) Ltd.

Respondent No.2 : III-Additional District Judge, Karachi West.

Respondent No.3 : III-Senior Civil Judge and Rent Controller,
Karachi West
(None present for respondents).

Date of hearing : 29.5.2018

Date of decision : 13.6.2018

J U D G M E N T

NAZAR AKBAR, J:- This constitution petition is directed against the concurrent findings of IIIrd Rent Controller Karachi (West) in Rent Case No.95/1999, whereby ejection application filed by Respondent No.1/Landlord was allowed by order dated **03.5.2000** and the III-Additional District Judge Karachi West dismissed FRA No.68/2001 by Judgment dated **18.2.2003** and upheld the said eviction order.

2. Precise facts of the case are that Respondent No.1/landlord had filed rent case No.95/1999 in respect of property bearing Room No.10, Ist Floor rear side in Ebrahim Building, 20 West Wharf Road, Karachi West (hereinafter the tenement) alleging default in payment of water charges and betterment taxes for the first time after 18 years vide debit Note dated 20.5.1998 for the year 1996-97, 1997-98 and 1998-99 amounting to Rs.2,690.00. The petitioner/tenant has refused to pay the water charges and betterment taxes. The Petitioner

filed written statement in which he raised preliminary objection to the jurisdiction of the learned Rent Controller on the ground that water, conversancy and betterment taxes were neither part of the rent nor liability of the tenants of the building as such no cause of action has accrued to Respondent No.1. It was also argued before the Rent Controller that the plot is owned by KPT and, therefore, Rent Controller has no jurisdiction to entertain the said ejectment application.

3. After recording evidence and hearing counsel for the parties, learned Rent Controller allowed the Rent application and directed the Petitioner to hand over the vacant possession of the tenement to Respondent No.1 within 30 days. On appeal, learned appellate Court after thorough examination of the evidence concluded that the order of Rent Controller is legal and proper and dismissed the appeal.

4. The Petitioner has preferred the instant petition against the concurrent findings on the question of default and on **02.4.2003** obtained order of suspension of impugned orders. Since then in almost 15 years the counsel for the Petitioner has only obtained adjournments. The record shows that from **10.4.2003** to **29.01.2015** on most of the dates Mr. Mumtaz A. Shaikh, advocate for the Petitioner remained absent or brief was held on his behalf. Then the Petitioner changed his lawyer and Mr. Danish Ghazi, advocate has appeared on behalf of the Petitioner on **3.4.2015**. Then from **20.10.2015** to **18.5.2018** counsel for the Petitioner Mr. Danish Ghazi has never appeared in this case and only brief was held on his behalf. On **18.5.2018** the Petitioner was present and stated before the Court that his counsel has returned the brief and he has sought time to engage another lawyer before the next date of hearing and the

matter was adjourned for **24.5.2018**. On **24.5.2018** Mr. Ishrat Ghazali, advocate filed power on behalf of petitioner and sought time to prepare the case and at his request the case was adjourned for **29.5.2018**. On **29.5.2018** the Petitioner was present but learned counsel for the Petitioner was called absent despite the fact that he has given a fixed date in 15 years old matter, therefore, I have reserved this case for judgment/order with directions to the parties to file written arguments, if any, within 10 days otherwise the petitions will be decided on the basis of record available. Written arguments have not been filed by anyone.

5. I have gone through the material available on record.

6. On examination of impugned judgments of Rent Controller as well as Appellate Court I found that the two Courts below have relied on the definition of rent in **Section 2(i)** of the SRPO, 1979 which says that rent include **water charges**, electricity charges and such other charges which are payable by the tenant but not paid. The evidence show that the landlord/Respondent No.1 has demanded water charges from the Petitioner and upon his refusal to make payment of water charges, even a registered post letter was sent by Respondent No.1 but it was not replied by the Petitioner. Even in written statement the Petitioner has not denied that Respondent No.1 has demanded water charges from the Petitioner. In para-6 of written statement it has been categorically stated by the Petitioner that "*it is specifically denied that water charges and betterment taxes are liable to paid to the applicant by the answering opponent*". Therefore, the default in payment of water charges was admitted even from day one and as it was rightly held by the learned Courts below with reference

to the statutory definition of rent. It was, in fact, statutory liability of the Petitioner.

7. As far as the question of jurisdiction raised by the Petitioner's counsel with reference to the existence of plot on the KPT land is concerned, suffice it to say that this question has already been answered in favour of Respondent No.1 by the Hon'ble Supreme Court in the case of Messrs Lalazar Enterprises (Pvt.) Limited Karachi vs. Messrs Oceanic International (Pvt.) Limited Karachi and others reported in **2006 SCMR 140**. Even otherwise the Petitioner in para-2 of his written statement has admitted that *the opponent (Petitioner) is lawful tenant in respect of the tenement referred in para under reply*, therefore, neither the question of jurisdiction nor the factual controversy of default in payment rent towards water charges suffers from mis-reading and non-reading of evidence.

8. In view of the above, the petition is dismissed alongwith pending application. The Petitioner is directed to vacate the tenement within 30 days from the date of this order. In case of his failure to vacate the same, the executing Court may issue writ of possession with police aid without notice to the Petitioner.

J U D G E

Karachi
Dated:13.06.2018.

*Ayaz Gul/P.A**