

## IN THE HIGH COURT OF SINDH AT KARACHI

**Constitution Petition Nos.S-1575 to 1583 of 2017**  
**Constitution Petition No.S-1745 of 2017**

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DATE	ORDER WITH SIGNATURE(S) OF JUDGE(S)
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**Before: Mr. Justice Nazar Akbar**

Petitioner : Muhammad Akram in CP No.1575/2017 &  
Respondent No.4 in CP No.1745/2017

Petitioner : Muhammad Nadeem in CP No.1576/2017 &  
Respondent No.5 in CP No.1745/2017

Petitioner : Raees in CP No.1577/2017 &  
Respondent No.6 in CP No.1745/2017

Petitioner : Jamaluddin in CP No.1578/2017 &  
Respondent No.7 in CP No.1745/2017

Petitioner : Muhammad Sharif in CP No.1579/2017 &  
Respondent No.8 in CP No.1745/2017

Petitioner : Muhammad Irfan in CP No.1580/2017 &  
Respondent No.9 in CP No.1745/2017

Petitioner : Muhammad Ayaz in CP No.1581/2017 &  
Respondent No.10 in CP No.1745/2017

Petitioner : Muhammad Ismail in CP No.1582 & 1583 of  
2017 & Respondent No.11 in CP  
No.1745/2017

through Mr. Muhammad Nazir Tanoli,  
Advocate.

**Versus**

Respondent No.1 : Shri Mahant Baboo Lalgir Mahraj, in CP  
No.1575 to 1583/2017 & Petitioner in CP  
No.1745/2017.

through Ms. Tabassum Ghazanfar, advocate.

Respondent No.2 : Administrator Evacuee Trust Property Board.  
through Mr. Zahid Hussain, advocate.

Respondent No.3 : The Hon'ble District Judge (East) Karachi.

Respondent No.4 : The learned IIIrd Rent Controller (South)  
Karachi.

Date of hearing : **20.12.2018**

Date of Decision : **20.12.2018**

**JUDGEMENT**

**NAZAR AKBAR, J.** By this common judgment I intend to dispose of nine constitutions petitions since common questions of facts and law are involved in all these petitions. CP No.1575/2017 to 1583/2017 have been filed by the tenants and CP No.1745/2017 has been filed by the landlord. All the petitioners are aggrieved by identical Judgments dated **10.5.2017** whereby the District Judge, South Karachi has allowed **FRA No.101/2015, 103/2015 to 108/2015, 160/2016 & 161/2016** filed by the tenants against their eviction order dated **18.8.2015** from different shops by the Rent Controller in identical **Rent Cases No.64/2013, 65/2013, 68/2013, 70/2013, 71/2013, 67/2014, 69/2014, 72/2014 & 73/2014,** filed by the landlord/respondent No.1 and remanded rent cases with direction to the Rent Controller to decide the same afresh after giving full opportunity to the Evacuee Trust Property Board (ETPB) as well as concerned parties to place their case.

2. Briefly stated the facts of the case are that the landlord has filed eviction applications against the petitioners on the ground of default in payment of rent by them. The landlord averred in all cases that by virtue of Judgment dated **30.11.2010** and decree dated **03.12.2010** passed by the VI-Senior Civil Judge, Karachi South in civil suit No.878/1999 in his favour, he has become an absolute and exclusive owner of property No.TL 3/17, Sitla Mata Mandir, Risala Police Lane Road, Bimpura, Karachi (the demised premises). The Petitioners who are tenants in respect of **Shop No.G-4, to G-13, G-16, G-17, G-28 & G-29, Ground Floor** (the demised shops) in the demised premises were verbally intimated about the change of ownership and they were requested to pay monthly rent to the new landlord/respondent No.1 from **December, 2010** at the rate of

**Rs.3000/-** per month. It is averred that all the Petitioners/tenants failed to pay/tender monthly rent though they were bound to pay rent to the new landlord/Respondent No.1 within 30 days from the date of intimation of change of ownership. It was further averred that Respondent No.1/ landlord on **15.01.2013** also served legal notices under **Section 18** of Sindh Rented Premises Ordinance, 1979 (SRPO, 1979) to all of them through TCS but despite having received it, the Petitioners/tenants neither replied the same nor paid/tendered monthly rent. Therefore, landlord/Respondents No.1 filed rent cases on the ground of default for evictions of the Petitioners/tenants from the demised shops.

3. The Petitioners/tenants on service of notice of rent case in their written statement denied relationship of landlord and tenant. They contended that they are tenant of ETPB and regular in payment of rent to the ETPB. They also contended that "*decree of Court of Law does not create any title*", therefore, the rent applications were not maintainable.

4. The Rent Controller after recording evidence and hearing learned counsel for the parties allowed all the Rent Applications and directed the Petitioners/tenants to hand over peaceful and vacant possession of the demised shops to the landlord/Respondent No.1 within **60 days**. The Petitioners/tenants filed **FRA No.101/2015 103/2015 to 108/2015, 160/2016 & 161/2016** against the said common but separate judgments before the appellate Court and all the rent appeals were allowed by identical judgments dated **10.05.2017** and rent cases were remanded to the Rent Controller with the following directions:-

*I am of the opinion that the impugned order is not sustainable under the law, I, therefore, set aside the same and remanded the case back to the Rent*

*Controller with direction to decide the same afresh after giving full opportunity to the Evacuee Trust Board as well as concerned parties to place their case. **The appellant/tenant is directed to deposit the monthly rent of the demised premises in the Rent Case as mentioned in the rent case. The respondent/landlord & Evacuee Trust Board shall not be entitled to withdraw the same till final disposal of the case. Appeal in hand is allowed accordingly.***

Surprisingly, all the Petitioners/tenants did not like the aforementioned order whereby their eviction orders were set aside and they challenged it through the constitution petition No.1575/2017 to 1583/2017. All the petitioners without prior permission of this Court have also impleaded Evacuee Trust Property Board as Respondent No.2 though the ETPB was not a party before the appellate Court as well as the Rent Controller.

5. Respondent No.1 has filed his objections to all the petitions filed by the tenants bearing CP No.1575/2017 to 1583/2017 and he has also challenged the correctness and veracity of the impugned judgment in said **FRAs** through a separate / counter **CP No.1745/2017**.

6. On **12.10.2017** Mr. Manzoor Hameed Arain, Advocate undertook to file power on behalf of respondent No.2. But the record shows that he has not filed any counter affidavit to these petitions nor filed any comments to contradict the stand taken by the landlord/respondent No.1 before the Rent Controller. It may be mentioned here that during pendency of FRAs, ETPB has filed an application under **Section 12(2) CPC** to set aside eviction order against the petitioners which had been dismissed by the Rent Controller and even ETPB's appeals against the dismissal of their application under **Section 12(2) CPC** had also been dismissed by some other appellate authority.

7. I have heard learned counsel for the parties and perused the record.

8. Learned counsel for the Petitioners admits that the Petitioners are tenants in the demised shops and the rent cases were filed by landlord/Respondent No.1 claiming rent from them after sending notice under **Section 18** of SRPO, 1979 to them. They have, however, contended that the petitioners were not tenants of respondent No.1 and once the learned Appellate Court has come to the conclusion that decree of Court of law in civil suit in favour of respondent No.1 was legally and factually incorrect, the rent appeals should have been allowed and rent cases ought to have been dismissed.

9. Learned counsel for the landlord in rebuttal has contended that Appellate Court has exceeded its jurisdiction in the rent matters by directing the Civil Court to amend the decree passed in civil suit without notice and hearing Respondent No.1, the Decree Holder. Learned counsel for respondent No.1/landlord has also pointed out that irrespective of the fact that order impugned was challenged by the petitioners/tenants, but there has been no order suspending the operation of the impugned order pending these petitions, therefore, the petitioners/tenants should have complied with impugned order to the extent of depositing monthly rent before Rent Controller. The petitioners/tenants have not deposited rent before the Rent Controller and therefore, without prejudice to the ultimate order in these petitions, the petitioners/tenants are guilty of violating the order to deposit rent in Court. This very conduct of the petitioner, according to her, renders them liable to be evicted from the demised shops on the ground of their failure to tender rent not only to landlord/Respondent No.1 after notice under **Section 18** of SRPO,

1979 but also on account of **not** depositing rent before the Rent Controller despite direction of the Appellate Court to them to tender monthly rent of the demised shops in rent case.

10. In the case in hand the Petitioners/tenants admit that notice of change of ownership of the demised shops from landlord/respondent No.1 were received by all of them. Therefore, when they admit that they were in possession of the demised shops as tenants and they were not claiming ownership for themselves then they were under an statutory duty to tender rent to the new owner of the demised shop within 30 days from the moment they have received the intimation of transfer of ownership of the demised shops in terms of **Section 18** of SRPO, 1979 by sale, gift, inheritance **or by such other mode**. Only a notice from new owner under **Section 18** of the SRPO, 1979 to the petitioners/tenants was enough. Section 18 of SRPO, 1979 is reproduced below:-

**18. Change in ownership.** *Where the ownership of a premises, in possession of the tenant has been transferred by sale, gift, inheritance **or by such other mode**, the **new owner** shall send an intimation of such transfer in writing by registered post, to the tenant and the tenant shall not be deemed to have defaulted in payment of the rent for the purpose of clause (ii) of sub-section (2) of section 15, if the rent due is paid **within thirty days** from the date when the intimation should, in normal course, have reached the tenant.*

The petitioners/tenants on receiving the said notice have, however, refused to tender the rent to the new owner / respondent No.1 on the ground that **“the decree of Court of Law does not create any title”**. In fact the decree of Court of law can also be one of the **“such other mode”** of transfer of ownership of the demised shops in possession of the petitioners/tenants for which the expression **“or by such other mode”** has been used in **Section 18** of SRPO, 1979. The decree of the Court of law was in respect of the demised shops in

possession of the petitioners/tenants and definitely it was not against them. It was against their previous landlord/owner who was even party to the suit in which the said decree was issued. It is also settled law that the tenants have no right to question the title of the landlord as held by the Hon'ble Supreme Court in the case of Messrs Habib Bank Limited vs. Sultan Ahmed and another **(2001 SCMR 679)**

Hon'ble Supreme Court has held as under:-

10. *Before parting with the judgment we would also like to observe that the tenant has no right to demand title documents from the landlord on receipt of notice within the meaning of section 18 of the Ordinance because **no sooner notice is served upon him or it is otherwise conveyed to him either in the judicial proceedings or by some other reliable source he is bound to accept the new owner as his landlord** as held in the cases of Muhammad Ashraf v. Abdul Hameed and others (1982 SCMR 237(2) and Suleman and another v. M.A. Mallick (1988 SCMR 775). (emphasis provided)*

The petitioners/tenants on receiving a notice under **Section 18** of the SRPO, 1979 were supposed to protect their right as tenants in the demised shops in their possession by tendering rent to the person who has sent them the notice. It did not happen in the cases in hand and the Petitioners/tenants in defiance of the mandate of **Section-18** of SRPO, 1979 not only failed to fulfill their statutory duty but also themselves set aside decree of Court of law by declaring “*that mere decree of Court of law does not create any title*” Irrespective of the fact that the Court orders were right or wrong as long as the orders of Court of law are in field the said orders have to be respected by all and sundry including the Rent Controller as well as the petitioners/tenants. More so when the previous owner of the demised shops who was party to the judgment and decree and he has not challenged it before any appellate forum.

11. The contention of the learned counsel for petitioners/tenants that on amending or modifying the decree in suit No.878/1999, the rent cases should have been dismissed by the appellate Court instead of the same being remanded is misconceived. The learned Appellate Court under **Section 21** of SRPO, 1979 was not seized of an appeal against any order of a civil Court declaring title of suit property. The Courts while exercising authority under rent law have no jurisdiction to decide or even comment on the title / ownership of the property in possession of a tenant and if Rent Controller or appellate Court under rent law does so it would be negation of settled principle of rent laws by the Superior Court.

12. The perusal of para-9 to 17 of the impugned order shows that learned appellate Court while exercising power under **Section 21** of SRPO, 1979 seems to have acted like Civil appellate Court dealing with an impugned judgment & decree in the civil suits. The learned Appellate Court has even called R&P of Civil Suit No.878/1999 and examined its findings on each issues in the said judgment, and without notice to landlord/respondent No.1 and even to the Evacuee Trust Property Board who were party to the said suit, modified the decree in para-17 of the impugned judgment in **First Rent Appeals** in the following terms:-

*17. On examining of the record and proceedings of the **Suit No.878/1999**, it appears that there was no legal & factual justification for preparation of the above referred decree dated 03.12.2010 prepared in the above Suit, perhaps it was the result of over-sight or clerical mistake, which required to be prepared afresh in accordance with the judgment. **The Presiding Officer of the Court of learned VI-Senior Civil Judge, Karachi South is directed to prepare the fresh decree accordingly.***

*Copy of this judgment be sent to the learned VI Senior Civil Judge, Karachi South for compliance & report.*



The powers of Rent Controller and Appellate Court to exercise powers Civil Courts under Civil Procedure Code in rent proceeding are specific and limited by **Section 20** of SRPO, 1979 which reads as follows:-

**20. Power of civil Court.—(1)** Subject to this Ordinance, **the Controller and the appellate authority shall**, for the purpose of any case under this Ordinance, **have power of a Civil Court** under the Code of Civil Procedure, 1908 (Act V of 1908), **in respect of only the matters**, namely:-

- (a) summoning and enforcing the attendance of any person and examining him on oath,
- (b) compelling production or discovery of documents;
- (c) inspecting the site; and
- (d) issuing commission for examination of witnesses of documents.

13. The direction of the appellate court to send copy of an order in rent appeal arising from a decision in rent case by the court of IIIrd Senior Civil Judge and Rent Controller Karachi South to the court of VIth Senior Civil Judge Karachi South to amend the decree in civil suit passed by the said Senior Civil Judge is the worst example of exercising jurisdiction under rent laws. It is held by superiors courts time and again that the Rent Controller or the Appellate authority under the rent laws is not supposed to decide the question of title or ownership of the property in possession of tenant and if the issue of relationship of landlord and tenant is complex then in appropriate cases it should be left for the civil court to decide it instead of deciding it by the court of Rent Controller. In the case in hand the Appellate authority has remanded a rent case to the Rent Controller to decide the issue of relationship between the tenant and new landlord by re-examining the issue of ownership/title of the demised shop already decided by a civil court in favour of Respondent No.1 only because the decree of Court of law has not been accepted by the

tenants as title in favour of Decree Holder, though the Judgment Debtor in the said decree has not shown any grievance against it. How can a Rent Controller examine a judgment and decree of civil court whereby Respondent No.1 has rightly or wrongly been declared owner of the demised shops? Even an appellate court cannot confer jurisdiction on its subordinate court to examine and decide an issue which is otherwise out of the preview of the court. Learned counsel for the petitioner and even Respondent No.2 (Evacuee Trust Property Board) admits they were not put to notice by the learned District Judge East Karachi even after calling R&P of Suit No.878/1999 before modifying / altering the decree in **Suit No.878/1999** during the hearing of **First Rent Appeals**. The counsel for respondent No.1 was also not on notice by the Rent Appellate Court while examining R&P of Civil Suit, therefore, the landlord has also impugned the order of remand of rent case and modification of decree by the Rent Appellate Court in exercise of jurisdiction under **section 21** of SRPO, 1979 through cross petition.

14. In the above factual matrix, I am of the considered opinion that the leaned Rent Appellate Court on 10.5.2017 by interfering in the civil judgments and decree dated **03.12.2010** which has already attained finality since no appeal had been preferred by anyone, and that too, even without giving even notice to the parties has exercised power not vested in him and therefore the order of modification / preparation of fresh decree and remand of rent case was facially perverse and void. The impugned remand order whereby Rent Controller has been directed to hear even judgment debtor / previous owner of demised shops while dealing a rent case filed by Decree Holder as owner of demised shops against the tenant is amenable to constitutional jurisdiction of this court. In coming to this conclusion I am fortified by the recent judgement of the Hon'ble Supreme Court

reported as Allahditta and others versus Member (Federal) Board of Revenue (**2018 SCMR 1177**). The relevant observations of Supreme Court are reproduced below.

This is not an absolute rule. An order of remand that is facially perverse or without jurisdiction or otherwise void can be interfered with, like any other order (see Ghulam Rasool (supra)). The constitutional power to judicially review an order of remand passed by the Board of Revenue is not in any manner curtailed or abridged by the precedents cited above. Infact, the principle that emerges from the wisdom of the precedents is that, for reasons narrated above, the constitutional court must approach and examine a remand order passed by the Board of Revenue with care and circumspection, so as to sparingly interfere with it, unless of course, the remand order is facially perverse, without jurisdiction or otherwise void. Amenability of writ jurisdiction against a remand order is in this context and subject to above conditions.

15. In view of the above facts and law all the petitions were disposed of by a short order on **20.12.2018** whereby impugned order was set aside and consequently order of preparation of fresh decree in Suit No.878/1999 and remand of rent cases were declared null & void. The Petitioners/tenants were directed to vacate the demised shops within **30 days**. The Executing Court shall issue writ of possession without further notice to them with police aid and with permission to break open the locks in case the Petitioners/tenants fail to vacate the demised shops within 30 days. These are the reasons for the short order.

JUDGE

Karachi  
Dated:01.01.2019

Ayaz Gul/P.A