

**IN THE HIGH COURT OF SINDH,
CIRCUIT COURT, HYDERABAD**

C.P. No.S-574 of 2011

Abdul Rehman Rajput	-----	Petitioner
	VERSUS	
District Judge Hyderabad & others	-----	Respondents

C.P. No.S-575 of 2011

Abdul Rehman Rajput	-----	Petitioner
	VERSUS	
District Judge Hyderabad & others	-----	Respondents

C.P. No.S-719 of 2011

Abdul Ali & another	-----	Petitioners
	VERSUS	
District Judge Hyderabad & others	-----	Respondents

C.P. No.S-720 of 2011

Akbar Allauddin & another	-----	Petitioners
	VERSUS	
District Judge Hyderabad & others	-----	Respondents

C.P. No.S-721 of 2011

Abdul Manan	-----	Petitioner
	VERSUS	
District Judge Hyderabad & others	-----	Respondents

C.P. No.S-173 of 2016

Ishaque Ahmed	-----	Petitioner
	VERSUS	
Jithendra & others	-----	Respondents

C.P. No.S-174 of 2016

Ameen Kharani	-----	Petitioner
	VERSUS	
Jithendra & others	-----	Respondents

C.P. No.S-175 of 2016

Ishaque Ahmed	-----	Petitioner
	VERSUS	
Jithendra & others	-----	Respondents

C.P. No.S-176 of 2016

Akber Kharani	-----	Petitioner
	VERSUS	
Jithendra & others	-----	Respondents

C.P. No.S-177 of 2016

Barkat Ali	-----	Petitioner
	VERSUS	
Jithendra & others	-----	Respondents

C.P. No.S-178 of 2016

Muhammad Ali	-----	Petitioner
	VERSUS	
Jithendra & others	-----	Respondents

Date of hearing: 21.09.2020

Date of announcement: 09.10.2020

M/s Muhammad Akram Tarique, Advocate for Petitioner in CP No. S-721 of 2011 & CP No. S- 173 of 2016

Mr. Rafique Ahmed, Advocate for Petitioner in CP No. S- 574 & 575 of 2011 & CP No. S- 177 & 178 of 2016

Mr. Nisar Ali Mughal, Advocate for petitioners in CP No. S- 719, 720 of 2011, CP No. S- 174, 175 & 176 of 2016

Mr. Suresh Kumar advocate for respondent No.1 in all petitions.

Mr. Atta Hussain Gaddi Pathan, advocate for ETPB.

Mr. Allah Bachayo Soomro, Additional Advocate General Sindh.

J U D G M E N T

ADNAN-UL-KARIM MEMON, J. These Constitutional Petitions arise out of different orders passed by learned Appellate Court in different First Rent Appeals, whereby the learned court while dismissing the Appeals of Petitioners maintained the orders passed by learned Rent Controller, Hyderabad in Rent Applications.

2. That since a common question of law is involved in all the captioned Petitions, therefore, the same are taken up and decided together.

3. The Petitioners have preferred these petitions, *inter-alia* on the following facts and grounds as follow:

4. That the predecessor in interest of Respondent No. 1 Prem Keval Ram Shahani (P.K. Shahani), let out subject Shops (described in the memo of Petition(s) on monthly rent to the Petitioners; the said predecessor-in-interest died on 19-11-2002; that a Notice under Section 18 of the Sindh Rented Premises Ordinance, 1979 was served upon the

Petitioners intimating that P.K. Shahani has died and they have become the new owners / landlords. Despite said notice, the Petitioners continued to deposit rent in Court and did not tender directly to the said successors. This led to the filing of Eviction Applications by the private Respondent (one of the heirs of Late P.K. Shahani) on the ground that the Petitioners have sublet the subject premises and committed default. The Petitioners contested by filing their objections / written statements but, admitted receipt of Notice under Section 18 of the Sindh Rented Premises Ordinance, 1979. The learned Rent Controller framed issues and the parties led evidence. Consequently, the learned Rent Controller after taking note of the above-specified admission of Petitioners ordered their eviction while holding that despite knowledge of the death of P.K. Shahani and devolution of ownership in favour of his heirs, the Petitioners failed to tender rent to them.

5. Resultantly, the Petitioners filed their respective Appeals which also met the same fate.

6. Mr. Muhammad Akram Tariq, learned counsel for the Petitioners has mainly contended that the Rent Applications were not maintainable and were liable to be dismissed. About the question of default and sublet, learned counsel contended that the entire rent since August 1987 is being deposited in Court after Late P.K. Shahani refused to receive the same. It was, therefore, contended that no default in payment of rent has been committed. Learned counsel further submitted that private Respondent in all the Petitions claims to be the owner based on a mutation in his name in the City Survey Record but, the mutation does not create any right, title, or interest; that the subject premises is owned and controlled by the Evacuee Trust Board, therefore, the petitioners do not recognize the heirs of P.K. Shahani as owners of the premises in question. It is next contended that the subject premises were declared as evacuee trust properties by the Chairman, Evacuee Trust Properties Board, Lahore vide Order dated 06.2.2013. And, because of change of ownership, the Petitioners used to pay a monthly rent to the Evacuee Trust Board, and such Tenancy Agreement dated 01.4.2013 was executed between the parties in some of the cases. It is next contended that the legal heirs of P.K. Shahani namely Raj Kumari, Prem Shahani, etc. approached the Honorable Supreme Court by filing Civil Appeal No.1443 of 2019 against the Order dated 30.5.2019 passed by this Court in C.P. No. D-3270 / 2017. The Honorable Supreme Court vide judgment dated 12.2.2020 held as under:-

“7. We have also considered the various claims of the trust deed. In our view, the submission by learned counsel for the appellants, that the properties listed in Schedule III did not form part of the trust

created by Mr. Gidumal is correct. Furthermore, the amendment made to the trust deed in 1920, relied upon by learned counsel for the Board, do not, with respect, create any doubt or confusion in this regard. Thus, in our view the record unambiguously shows the following. Firstly, Mr. Kevalram was never an evacuee within the meaning of the 1975 Act. Secondly, the subject property was not the subject of the trust. It follows that on both these counts judgment must be in favor of the appellants. The Secretary to the Federal Government, who had made the order in revision, had reached the correct conclusion. The order of the Chairman under s.8 was clearly erroneous and merited being set aside.

8. The learned Division Bench has, by means of the impugned judgment, made an order of remand so that “the issues raised before us should be properly thrashed out under the touchline of law of evidence” (page 11). Earlier, in para 10, the learned Division Bench had noted the contention raised by learned counsel for the Board (the petitioner before the High Court) that “certain documents were not in possession of the petitioner at the time of previous litigation”. We are, with respect, not at all satisfied that the anxiety expressed by the learned Division Bench in this regard was correct. The matter had to be dealt with within the ambit of 1975 Act and, more particularly, s. 8 thereof which had been invoked and applied by the Chairman. Matters extraneous to this statutory framework could not be entertained, either by the Chairman or the Secretary. It was properly dealt with by the Federal Government, whose order under s. 17 ought to have been upheld. No case for remand was made out. The petition filed by the Board ought to have been dismissed. The learned High Court, with respect, erred materially in coming to the contrary conclusion. We hold accordingly.”

7. Learned counsel for the Petitioners relied upon the statement dated 23.9.2020 and photocopies of paid rent receipts; that the Review Application against the judgment rendered by Honorable Supreme Court in Civil Appeal No.1443 of 2019 is pending, therefore, the ownership of private respondent to the subject property is yet to be determined. They further relied upon the cases of Allied Bank Limited Vs. M. Shafi through legal heirs and others (2011 MLD 371), Muhammad Iqbal Vs. Mirza Begum and others (1992 MLD 1257) and Mst. Anar Begum Vs. The Settlement & Rehabilitation Commissioner Multan and others (PLD 1973 Note 85). He lastly prayed that since Respondent No.1 failed to substantiate his claim on the issue of default as well as sublet, therefore, these Petitions may be allowed as prayed.

8. M/s. Rafiq Ahmed and Mr. Nisar Ali Mughal, Advocates for the Petitioners have adopted the arguments of Mr. Muhammad Akram Tariq, learned counsel for the Petitioners in CP No. S- 721 of 2011 & CP No. S- 173 of 2016.

9. Mr. Atta Hussain Gaddi Pathan learned counsel representing Evacuee Trust Property Board has also adopted the arguments of the above named learned counsel for the Petitioners.

10. Mr. Suresh Kumar, learned counsel for private Respondent in all Petitions has supported the impugned judgments/orders passed by both the

courts below and argued that in rent matters, the Constitutional Jurisdiction of this Court is limited and confined only to ascertain whether the lower courts have flouted the statute or failed to follow the law relating thereto; that in the instant case, neither there is any jurisdictional error nor any perversity, illegality or infirmity in the impugned judgments/orders passed by both the courts below; besides, there is no misreading or non-reading of evidence by both the courts below which could warrant the interference of this Court and prayed for dismissal of instant Petitions. In support of his contention, he relied upon the cases of Muhammad Ramzan Vs. Ahmed Bux (1991 SCMR 716), Irshad Ahmed & others Vs. Allah Ditta & others (1998 SCMR 948), Pakistan State Oil Company Limited Karachi Vs. Pirjee Muhammad Naqi (2001 SCMR 1140), Mst. Yasmeen Khan Vs. Abdul Qadir & others (2006 SCMR 1501), Sardar Muhammad Vs. Khwaja Muhammad Nazar (2004 CLC 289), Saifullah Vs. Muhammad Bux & others (2003 MLD 480) and Tariq Niaz Vs. Masooda Begum (1991 CLC 1733).

11. I have heard learned counsel for the parties, perused the material available on record and case-law cited at the bar.

12. I am of the considered view that the sole testimony of the landlord is sufficient to establish the issue of default and sublet of rented premises if the landlord's statement on oath is consistent with the averments made in the Ejectment Application. It is also well settled that the said testimony of the landlord when not rebutted in cross-examination, the burden on the landlord stands discharged. Secondly, Petitioners failed to prove their case before the Rent Controller as well as before Appellate Court which committed no illegality by appreciating the law laid down by Honorable Supreme Court in its various pronouncements. On the aforesaid proposition, I am fortified with the case law decided by the Honorable Supreme Court in the case of the Pakistan Institute of International Affairs Vs. Naveed Marchant and others (2012 SCMR 1498).

13. On the point of default in payment of rent, it is now well-settled that even when Notice under section 18 of the Sindh Rented Premises Ordinance is not dispatched, or if dispatched, is not received by the tenant, the initiation of rent proceedings in Court is in itself a Notice to the tenant about the change of ownership. And, the tenant is liable to tender rent directly to the new landlord within thirty (30) days of the receipt of notice of the legal proceedings. In the case of Muhammad Yousuf Vs. Mairajuddin reported in 1986 SCMR 951, it was held that if the notice about the change of ownership was not served, this by itself would not amount to the absence of a relationship of landlord and tenant. The eviction application itself is to be treated as notice and if rent is not

tendered directly to the new landlord within the statutory period of 30 days of the knowledge of change of ownership then the tenant becomes liable for eviction. In the case of Habib Bank Limited Vs. Sultan Ahmed reported in **2001 SCMR 678**, the tenant acquired knowledge about the transfer of ownership in favour of a new landlord on two occasions i.e. when the application under Order I rule 10, C.P.C. was filed, and, secondly, when the landlord instituted an ejectment application against the tenant and despite knowledge of change of ownership through such proceedings, rent was not tendered to the new landlord. In such circumstances, it was held that it was a case of willful default in payment of rent making tenant liable for eviction. Therefore, this Court in its constitutional jurisdiction finds no legal justification to interfere in the concurrent findings of both the Courts below.

14. I hereby conclude by holding that the decision of Rent Controller and Appellate Court is fair and just, hence, the same are maintained. These Petitions are dismissed with direction to the Petitioners to vacate the subject premises and hand over its vacant and peaceful possession to the private Respondent within sixty (60) days from the date of receipt of this judgment. In case of failure, petitioners shall be evicted from the subject premises without any notice with police aid.

JUDGE