

**IN THE HIGH COURT OF SINDH AT KARACHI**

BEFORE:  
Mr. Justice Muhammad Shafi Siddiqui

C.P. No. S-1679 and 1680 of 2017

Mrs. Tahmina Amir Khumbati & another  
Versus  
Akbar Ali & others

Date of Hearing: 27.04.2018 and 25.05.2018

Petitioners: Through Mr. R.F. Virjee Advocate

Respondents No.1 to 3: Through Mr. Badrudduja Khan Advocate.

**J U D G M E N T**

**Muhammad Shafi Siddiqui, J.**- These two petitions impugned the order of the appellate Court whereby the quantum of rent enhanced in terms of order of the Rent Controller in pursuance of an application under section 8 of Sindh Rented Premises Ordinance, 1979 was modified by enhancing lump sum rate of rent as well as in terms of its effective date. Rent Case No.562 of 2012 was filed by the respondent for fixation of fair rent. The parties recorded their evidence and the points for determination framed by the Rent Controller are as under:-

1. *Whether the applicant is entitled for fixation of fair rent in respect of the subject tenement?*
2. *Result?*

2. Based on evaluation of the evidence and consideration of the four factors, by providing a cumulative effect, the Rent Controller fixed the rent at the rate of Rs.25 per sq. foot however it was made payable w.e.f. 01.01.2014 (a date in between filing of application and order) and the differential amount to be deposited within a period of 30 days with future rent on or before 10<sup>th</sup> of each English calendar month.

3. Aggrieved of the order both the petitioners and respondents filed their respective appeals; petitioners/tenants filed appeal in respect of

quantum of rent while the respondents/landlords filed appeal in respect of effective date of enhancement. Both the appeals i.e. FRA No.198 of 2017 and FRA No.08 of 2016 were heard and decided by a common judgment. The appellate Court, on consideration of the facts and circumstances and the contention of the counsels, fixed the rent at Rs.6000/- per month including taxes from the date of institution of application under section 8 of Sindh Rented Premises Ordinance, 1979. The petitioners aggrieved of such judgment filed these petitions.

4. It is the case of the petitioners/tenants that since it is a Pugree-fetched premises therefore the strict principles of Section 8 of Sindh Rented Premises Ordinance, 1979 would not apply and relied upon the case of Sultan Ali v. Khatija Bi reported in 1995 CLC 1441 in this regard.

5. Learned counsel for the petitioners further argued that the referred rent agreements of similar and adjacent premises also do not distinguish as to whether those premises were also Pugree-fetched premises since it is admitted that a sum of Rs.10,000/- was paid at the time of acquiring subject property on rent and hence relying on the referred lease agreements or quantum of rent to claim and/or allow similar benefits would not be just and proper.

6. On the other hand, learned counsel for respondents/landlords, submitted that the question of Pugree is irrelevant as far as determination of fair rent is concerned. He relied upon the judgment in the case of Ismail v. Mst. Sher Bano reported in 1988 SCMR 772, Abdul Rehman v. Zia-ul-Haq Makhdoom reported in 2010 CLC 99 and Abdul Haq v. Sayed Basharat Ali reported in PLD 1985 Karachi 200 and submitted that the findings of the appellate Court were not correct as the reference of the premises fetching rate of rent on sq. foot basis were cited. It is argued that the referred agreements disclosed the area as

well as quantum of rent and hence the rate per sq. foot could have been calculated by the appellate Court.

7. Counsel for respondents further submitted that despite the fact that they have not filed any petition against the order of the appellate Court, respondents could still maintain all those grounds and objections which went against the respondents before the appellate Court as they were not aggrieved of the order in the real sense to file petition.

8. I have heard the learned counsel and perused the material available on record.

9. As far as the determination of fair rent is concerned, it is almost the concurrent findings of two Courts below. The Rent Controller fixed the rent at the rate of Rs.25 per sq. foot whereas the appellate Court was of the view that the references cited by the respondents and their counsel were of lump sum value and no references was cited which could enable the respondents to claim such fixation of fair rent at yardstick of per sq. foot.

10. Perusal of provisions of Section 8 reveals that it enables the landlord to move an application for determination of fair rent. It may well be on the basis of any yardsticks, be it on the basis of sq. foot or lump sum. It is the quantum of rent found payable by Rent Controller, to be fetched by the landlord and payable by tenant, which would matter. It would make no difference either to the tenant or to the landlord if the fetched rent is determined in terms of sq. feet or lump sum. If sum of Rs.6000/- is determined as fair rent it can always be reduced to per sq. foot by dividing the rate of rent with the area of the premises in sq. feet. Section 8 of Sindh Rented Premises Ordinance, 1979 does not restrict the Rent Controller to decide and determine the fair rent on any of the yardsticks. It was left upon the Rent Controller as well as

appellate Court who may, by giving reasons, decide the application and/or appeal vis-à-vis fair rent.

11. Insofar as Pugree issue is concerned Section 8 of Sindh Rented Premises Ordinance, 1979 was not dependent upon this factor. There are only four yardsticks and if the area where the subject premises is situated is a Pugree-fetched area, then the tenant could have filed references of the same premises in the similar locality/in the same vicinity fetching rent, for the determination by Rent Controller. Mr. R.F. Virjee himself has argued/admitted that the subject premises is situated in an area where all around the premises were obtained on Pugree basis. Hence, there was nothing to prevent petitioners from giving references of all such premises situated adjacent or in the vicinity obtained on Pugree.

12. The respondents have filed agreements of the similar premises in the same or adjoining locality and on the preponderance and evaluation of entire evidence, a cumulative effect was given by the two Courts below.

13. Insofar as the judgment of Sultan Ali (Supra) is concerned perhaps this contention was not taken into consideration; neither it was raised that where shops in the entire area are pugree-fetched then references of the adjacent or similar premises in the same locality would also be of Pugree-fetched premises hence I consider the order of the lower appellate Court to be in accordance with law and discretion with reference to effective date of enhanced rent was also exercised in accordance with law and hence no interference is required.

14. As far as contention of learned counsel for respondents as to raising objections and/or assailing the impugned judgment despite the fact that he has not challenged such order of the appellate Court is

concerned, Mr. Badardujja Khan relied upon the case of Ismail v. Sher Bano reported in 1988 SCMR 772 wherein it has been observed by the Hon'ble Supreme Court as under:-

*“We have carefully considered the arguments of the learned counsel for the parties. Apparently the finding on the issue of default) of payment of rent arrived at by the Rent Controller was based on' misreading of evidence on record. However, he had decided the eviction petition in favour of the landlady Mst.Sher Bano respondent on another ground namely the premises being required for her bona fide personal use. Therefore, there was no question of her filing cross-objections or cross-appeal in the instant case. The appeal in this case was filed by the tenant i.e. Ismail appellant and the learned Single Judge while hearing the same under section 21(3) of the Sind Rented Premises Ordinance was empowered to reverse the finding of the Rent Controller on the issue regarding default in payment of rent decided in favour of the appellant even in the absence of any cross-appeal/ objection by the landlady i.e. Mst.Sher Bano respondent.*

*In the light of the above discussion we do not find any substance in this appeal which is accordingly dismissed. There shall be no order as to costs.”*

16. The principle set by the Hon'ble Supreme Court was with reference of appellate Court when parties enjoy the first right of appeal. This is a petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 and is only discretionary. Such rights, as available to parties while exercising the right of appeal or cross-appeal/ objections or even in their absence, may not be available to them under constitutional jurisdiction and they were required to maintain separate lis in respect of that part of the judgment of which they are aggrieved of.

17. In view of the above both the petitions, along with pending applications, were dismissed by a short order on 25.05.2018 and above are reasons for the same.

Dated:

Judge