

IN THE HIGH COURT OF SINDH AT KARACHI

Present:
Mr. Justice Muhammad Shafi Siddiqui

C.P. No. S-2695 to 2699 of 2017

Syed Muhammad
Versus
Noorullah & others

Date of Hearing: 30.03.2021

Petitioner in all petitions: Through Mr. Rehman Aziz Malik Advocate

Respondents: Nemo.

J U D G M E N T

Muhammad Shafi Siddiqui, J. - These five petitions involve common questions of law and facts between same parties hence are being disposed of by this common judgment. Petitioner is ordered to be evicted by the Rent Controller and appellate Court maintained it.

Brief facts:-

2. Respondent No.1 filed eviction applications in respect of five tenements in use of petitioner, under section 15 of Sindh Rented Premises Ordinance, 1979 on the ground of default after service of notice under section 18 of ibid law. Receipt of notice under section 18 was however denied by the petitioner. First written statement claimed to have been filed through attorney of petitioner on 07.04.2016, was stated to be forged and fabricated one, which was subsequently discarded by the Rent Controller. Petitioner then filed written statements on 03.05.2016 on which parties contested their case.

3. The relationship in the said written statements was seriously denied along with ownership of respondent No.1. It is further stated that the Rent Controller had no jurisdiction to proceed with the matter and that the respondent No.1 had no locus standi to file instant cases.

Petitioner claimed to be in possession of the subject premises as being its owner, while PT-1 (Property Tax-1) of the respondent No.1 was denied to be a title to establish ownership and could at best be used for taxation purpose as levied by the provincial government.

4. An application under section 16(1) of Sindh Rented Premises Ordinance, 1979 was also filed by respondent No.1 which was contested by the petitioner by filing legal objections in reply thereto. The Rent Controller allowed the application vide order dated 23.09.2017 with directions to pay arrears of rent for the months of January and February 2016 and the rent for onward period at the agreed monthly rent of Rs.29000/- and future monthly rent for every month till 10th of each calendar month. The aforesaid order was challenged through CP No.S-1770 of 2016 and after hearing the counsels the impugned order was suspended. Record reveals that it was withdrawn on 18.04.2018 as by that time Rent Controller had already finally adjudicated the controversy between the parties. Issues including relationship between parties were framed by Rent Controller.

5. Before the trial Court respondent No.1 filed affidavit-in-evidence and produced certain documents including PT-1. He also examined other witnesses. Similarly, petitioner filed his affidavit-in-evidence and produced CNIC. The witnesses were subjected to cross-examination. The Rent Controller allowed the rent case on 09.08.2017, directing petitioner to vacate the demised premises on the ground of default.

6. Being aggrieved of the order of the Rent Controller, petitioner preferred their respective First Rent Appeals before respondent No.2, which were dismissed on 24.11.2017 through impugned judgments.

Arguments:-

7. With the above set of facts, learned counsel for petitioner submitted that the Rent Controller had absolutely no jurisdiction to

proceed with the referred rent applications as the respondent No.1 had no title over the property and that the PT-1 on which reliance was placed is not a document of title to confer ownership over the property. He, without prejudice to these, further submitted that the relationship has to be proved independently irrespective of the fact whether petitioner had title documents or if PT-1 could be considered as a document to enable the respondent to recover rent and assert himself as being a landlord of the petitioner. He submitted that proper course for the Rent Controller would be to have referred the parties to approach civil Court for determination of title.

Findings with reasons:-

8. I have heard learned counsel for petitioner and perused material available on record. However respondents' counsel was called absent without any intimation.

9. Petitioner claimed to be in possession of the premises prior to the issuance of PT-1 in favour of respondent No.1. The written statements on which petitioner's counsel has relied upon is at page 151 as Annexure P/4 and since contents of all five written statements are almost identical therefore contents of any one written statement is being considered on behalf of all petitioner for the purposes of present proceedings, which is CP No.S-2695 of 2017, the leading file.

10. In paragraph 4 the petitioner conceded at least to the extent that he was inducted in the premises as tenant. The contents of said paragraph 4 are produced as under:-

“4. Contents of para 4 are denied being false and baseless. However, it is submitted that the Opponent was tenant in respect of said godowns prior to 2005 and the Opponent purchased the same from the erstwhile owner at the rate of Rs.10,700/- per square yards and paid Rs.5,00,000/- for each Godown.”

11. Petitioner claimed to be tenant of the respective godowns prior to 2005 and thereafter he claimed to have purchased the same from erstwhile owner. The name of erstwhile owner from whom it was acquired by petitioner is not disclosed in this para but what was admitted is his induction in the premises as being tenant which could be crucial for the determination of his (petitioner's) status with regard to the premises in question. In the entire pleadings i.e. written statement as well as affidavit-in-evidence it is nowhere alleged as to how and in what manner and from whom they purchased the property. It is only a statement and nothing beyond.

12. On the other hand Respondent No.1 claiming himself to be the "landlord" filed his affidavit-in-evidence and produced notice issued under section 18 of Sindh Rented Premises Ordinance, 1979 along with registry receipts. The reply of the notice is also available but this reply is not admitted to have been issued on behalf of petitioner, along with tenancy agreement, which is also claimed to be a fraudulent one.

13. Respondent No.1/landlord was cross examined. In addition to respondent No.1, two witnesses i.e. the previous landlords from whom the alleged rights of possession under Sindh Urban Immovable Property Tax Act 1958 and rules framed thereunder, were acquired, also filed their affidavit-in-evidence i.e. Muhammad Rafiq who filed/exhibited prior PT-1 and Muhammad Anis.

14. The "PT-1" produced by the previous landlord i.e. Muhammad Rafiq disclosed two names i.e. Muhammad Rafiq and Muhammad Anis. They both have separately filed their affidavit-in-evidence and were duly cross examined. The premises were stated to be in a Katchi Abadi. It was also admitted in evidence that the possession was/is being regulated by Sindh government through PT-1 form under ibid Act of 1958. On a query in cross the previous landlord Muhammad Rafiq replied

that he purchased the plot/ premises by way of an agreement in the year 1970. The agreement though was not produced except PT-1 of Sindh government.

15. As far as other co-landlord is concerned i.e. Muhammad Anis, no material question was put to him except that on the basis of PT-1 form rights of possession of the premises was sold out to respondent (new landlord/respondent).

16. Syed Muhammad petitioner herein as being alleged tenant filed his affidavit-in-evidence and in terms of his defence in the written statement denied the relationship of tenant and landlord but has filed nothing to claim ownership except copy of CNIC along with his affidavit-in-evidence. He was subjected to cross-examination wherein he has shown his ignorance as to whether the property situated at Jungle Compound (subject premises) is being dealt with and/or managed on the basis of PT-1 issued by Excise & Taxation Department. He admitted that he has not disclosed name of person from whom any rights were acquired by him, either as a tenant or owner, other than Muhammad Rafiq and Anis.

17. Though petitioner claimed to have purchased the property in the year 2005 but nothing was brought on record in this respect. He had already conceded that he was inducted in premises as tenant prior to 2005 which is a crucial statement. In the cross only, when he was inquired that he has not disclosed name either of the owner or landlord from whom he claimed to have acquired right, he surreptitiously gave name of one Afzal Iqbal. However, his whereabouts were not known to him. He has also categorically stated that despite he came to know about issuance of PT-1 in the name of respondent No.1, he has not initiated any legal proceedings. He has not disclosed as to how the alleged amount of Rs.5 lacs was paid to alleged owner Afzal Iqbal. He

denied to have entered into any rent agreement in this regard. He denied to be the tenant of Muhammad Rafiq and Muhammad Anis.

18. With this set of pleadings and evidence the trial Court held that relationship existed between the parties and that rent was liable to be paid by the petitioner to respondent No.1 and since such defence was found fatal as relationship was denied, therefore, no probe was required for rate of rent or as to whether rent was paid or offered in time. Since relationship was absolutely denied in view of pleadings as held by Rent Controller, the tenant is liable to be evicted from the demised premises. The order of eviction was maintained by the appellate Court who concurred with the findings of the Rent Controller.

19. The basic fact which may be crucial for the purposes of deciding status of the petitioner was that in paragraph 4 of the written statement the petitioner pleaded himself to be tenant as inducted prior to 2005.

20. The petitioner while making such statement of alleged purchase has not realized the burden he took over. There is a marked difference in the probative value of entering into possession for the first time as tenant, and continuing in possession with claim of change in its nomenclature¹. Where occupant claiming his continuous possession as other than original character, it is expected that some trustworthy evidence in furtherance of his subsequently claimed character would be shown, failing whereof his admitted character would concur (Reliance²).

21. He thus has not demonstrated as to how such status was changed or could have been changed though he claims to have allegedly purchased the property from erstwhile owner but he himself was in serious doubt when he did not mention either in the written statement or in the affidavit-in-evidence the name of the owner. It was just at the time of cross-examination that he revealed that it was someone by name

¹ AIR 2011 SC 3774

² AIR 2003 SC 3542.

of Afzal Iqbal and that too without support of any document. The induction of petitioner as being tenant thus would continue to prevail irrespective of such defence that petitioner allegedly purchased the subject property, as it was never proved nor even attempted to.

22. Undoubtedly the previous PT-1 was issued in the name of two individuals jointly i.e. Muhammad Rafiq and Muhammad Anis. PT-1 issued to the predecessor of respondent No.1 is available along with affidavit-in-evidence of Muhammad Rafiq. PT-1 was issued under Sindh Urban Immovable Property Tax Act, 1958 and the rules framed thereunder also of 1958.

23. For the purposes of proceedings under section 15 of Sindh Rented Premises Ordinance, 1979, at least to the extent of grounds other than personal requirement could be maintained by a “landlord” who may not be the owner, in terms of definition 2(f) provided under ibid Ordinance. It provides that landlord means owner of the premises and includes person who is for the time being authorized or entitled to receive the rent in respect of such premises. Section 15 of the ibid Ordinance uses the word “landlord” who seeks eviction of tenant and is eligible to make application to the Controller and the Controller was under the obligation to direct the tenant to put the landlord in possession of the premises, as provided in different sub-clauses of subsection 2 of section 15 except however if it is a case of personal requirement. Thus, the landlord not necessarily be the owner of the premises for maintaining such application. He could have been a person who is authorized and entitled under the law to receive the rent in respect of the premises.

24. I now proceed if this PT-1 issued by Sindh Government under Sindh Urban Immovable Property Tax Act, 1958 and rules framed thereunder could be deemed to have authorized a person who was found in constructive possession at the time of issuance of PT-1 to

enable him regulate his possession and to recover the rent or maintain an application in case of non-compliance or violation of Sindh Rented Premises Ordinance, 1979, so far as tenant's responsibilities are concerned.

25. Petitioner's induction in the subject premises was as tenant, which the petitioner himself admitted in the written statement and evidence hence there cannot be a departure from this statement that his induction was only as tenant. There is not an iota of evidence to demonstrate that he (petitioner) ever purchased subject property, either through written agreement of sale or otherwise. Mere statement that they have purchased the property for the purpose of present controversy is not enough to alter their status as discussed supra. So on the basis of the pleadings of the petitioner his status as being of tenant cannot be disturbed.

26. A plethora of judgments were cited by the petitioner's counsel that PT-1 does not constitute or confer title. Learned counsel for petitioner on this point has cited the judgments in the cases of Haji Faqir Muhammad³, Mst. Parveen Bibi⁴, Muhammad Naeem⁵, Haji Mohammad Ramzan⁶, Mian Muhammad Amin⁷, Saleh Muhammad⁸ There is no cavil to this submission and proposition however while arguing he lost sight of definition of landlord⁹. This case is governed by special law i.e. Sindh Rented Premises Ordinance, 1979. The definition of 'landlord', as provided under section 2(f) of the ibid Ordinance includes the person who is for the time being authorized or entitled to receive rent in respect of such premises.

³ 1989 CLC 252

⁴ 2007 CLC 1106

⁵ 1999 MLD 1342

⁶ PLD 1967 Peshawar 380

⁷ 1982 CLC 1770

⁸ 1984 CLC 916

⁹ Sindh Rented Premises Ordinance, 1979

27. The status of respondent's predecessors Muhammad Rafiq and Muhammad Anis who were earlier issued PT-1 are not disputed. PT-1 issued to them is filed along with affidavit-in-evidence of Muhammad Rafiq which is available at page 257 of leading file. This PT-1 is issued in terms of Sindh Urban Immovable Property Tax Rules, 1958. It contains nomenclature of the property, designation of the property, name, parentage, caste and residence of owner and name, parentage, caste of the occupier, if different from the one to whom PT-1 was issued, total area of the site land in question, size of building, number of stories, rooms and condition of the building, apart from other relevant statistics. This has been issued to recover gross annual rent, if the property has been rented out by the owner or the one who was found in constructive possession and consequently to whom PT-1 was issued. Since the property was rented out by the then owner or the one who was in constructive possession and PT-1 was issued, the gross annual rental value was assessed and was being recovered by the concerned department of excise & taxation office.

28. This PT-1 was then followed by another PT-1, which is claimed by the respondent No.1. This PT-1 then followed by notice under section 18 of Sindh Rented Premises Ordinance, 1979. While recovering taxes in terms of the gross annual rental value, as assessed by authority under *ibid* Act, constructive possession of the respondent No.1 had been identified and regulated. It may not constitute the ownership but it does authorize the one who was found in constructive possession, to regulate his possession as required under the law. This was thus a *jura* possession recognized by Sindh Urban Immovable Property Tax Act and rules framed thereunder of 1958. Thus having constructive *jura* possession with reference to property in question, an authoritative recognition in the shape of PT-1 was issued.

29. This PT-1 would enable the respondent No.1 to deal with his possession as deem fit and proper under the law. It is not in dispute that respondent No.1 was and is responsible for payment of annual gross rental value and it is not in dispute that in terms of Section 14 of Sindh Urban Immovable Property Tax Act, 1958, the tax recoverable from any person on account of any building or land, if found in arrears, it shall be lawful for the proscribed authority to serve upon any person paying rent in respect of that building or land or any part thereof to the person from whom the arrears are due, a notice for the recovery of such taxes may be issued to the tenants or one from whom such taxes are required in terms of PT-1. It also enables the authority that if a person willfully fails or neglects to comply with the notice, the authority may after giving him an opportunity of being heard proceed against him as it could have proceeded under the provisions of this act against the defaulter of the tax.

30. Thus, in my view this PT-1 authorizes respondent No.1 to deal with this property as deem fit and proper and a lawful notice under section 18 of Sindh Rented Premises Ordinance, 1979 was issued to the petitioner to apprise him about the current situation as to the change of PT-1 and authority of new landlord.

31. Even if for any given reason a notice under section 18 of Sindh Rented Premises Ordinance, 1979 could be ignored, as it is said by the petitioner that it was not served, then service of notice of the ejectment application itself is sufficient to apprise him about the fact of change of nomenclature as far as PT-1 is concerned. Similarly, the respondent No.1 stepped into the shoes of previous landlord to whom PT-1 was issued under *ibid* Act of 1958.

32. Insofar as case of *Rehmatullah v. Ali Muhammad* reported in 1983 SCMR 1064 is concerned, the two parties were in dispute over the

premises without any admission of induction as being tenant, and there was in fact a dispute of title which could not have been probed by Rent Controller under Sindh Rented Premises Ordinance, 1979. There is no dispute over a legal fiction that a person who has been authorized for the time being to recover rent can also proceed under Sindh Rented Premises Ordinance, 1979. In the instant case the respondent No.1 proceeded has been authorized to deal with the property to the extent of constructive possession while he was issued PT-1 under the ibid Act of 1958.

33. Insofar as non-mentioning of godown numbers in PT-1 is concerned, it is immaterial as those numbers are privately issued numbers whereas the authority under the ibid Act proceeded on the basis of survey numbers. PT-1 filed along with eviction application available at page 103 of the leading file i.e. CP No.S-2695 of 2017 also at the foot of this document disclosed that this is a change of nomenclature in respect of person who was in constructive possession. It may not be read as a title document whereby the ownership is being changed but it does lawfully read as a document issued to a person from whom taxes are being recovered on account of him being in constructive possession and thus authorized to initiate proceedings under Sindh Rented Premises Ordinance, 1979.

34. In the light of above, discussion I am of the view that the impugned judgments of Courts below do no call for any interference and hence all five petitions are dismissed along with pending applications.

Dated: 08.04.2021

Judge