

ORDER SHEET  
**THE HIGH COURT OF SINDH, CIRCUIT COURT,  
HYDERABAD.**

**C.Ps. No.S-159, 166 to 169, 171, 173 to 187, 189 to 215, 217 to 252, 254 to  
256 of 2022.**

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<b>DATE</b>	<b>ORDER WITH SIGNATURE OF JUDGE</b>
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18.04.2022

Mr. Ayatullah Khwaja, Advocate for the petitioners.  
Mr. Imdad Ali Unar, Advocate for respondent No.1.  
Mr. Tarique Ali Jakhrani, Advocate for respondent No.2.  
Mr. Wali Muhammad Jamari, Assistant Advocate General.

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The petitioner claims to be a known construction company, developing building projects aimed to provide spaces for safe and secure investments for public at large, promising a handsome profit and claims to have constructed Boulevard Mall within the city of Hyderabad spread over 120,000 (one hundred twenty thousand) square feet covered area which was originally composed of small shops allotted to more than 750 allottees. Before the shops could have been handed out to the respective allottees, the petitioner entered into an agreement dated 21.05.2016 (Page 69-E) with such allottees individually promising them that it will procure leading national and multi-national brands to be housed in various large clusters of allotted shops and in return, it will pay rent at the rate of Rs.100 square feet per month inclusive of all the available taxes with specified annual increments. The agreement empowered the petitioner to act as an agent to look for the prospective tenants and negotiate terms of such rental agreements at its own, however keeping the rent promised in the Agreement dated 21.05.2016 payable to the allottees. It was very specifically provided for in the said agreement that in case an allottee was intending to sell his shop, he would be at liberty to do so however, would not disturb the possession of the prospective tenant in that clustered portion. Seemingly the petitioner brought in a number of tenants in those clusters and continued to pay

the rents as per the said agreement until September 2019 whereafter it is alleged by the allottees that the petitioner stopped making payment of the rent, which compelled the allottees to approach the learned Rent Controller by moving an application u/s 15 of SRPO 1979 for ejectment. Notwithstanding therewith that they also filed F.C Suit No.60/2020 earlier, which was rejected under Order 7 Rule 11 C.P.C on the petitioner's intervention.

2. During pendency of the said rent application, the allottees also made an application u/s 16(1) of SRPO for arrears of the rent. The said application was decided by the impugned order dated 12.02.2022, whereby the learned Rent Controller was pleased to allow the said application. The operating part of the said order is reproduced hereunder:-

***“8 Heard learned counsels for the parties as well as perused the pleadings. The applicant has stated in paragraph no.1 of the application that he got booked shop No.S-141 at second floor Boulevard Mall Hyderabad and after payment of consideration he was issued no objection certificate dated 21.05.2016. In written statement the opponent no.2 has not denied the fact of issuance of no objection certificate, however, opponent no.2 has claimed that the applicant being allottee of a small area can not question the operation and functioning of the project. He has further stated that in rent agreements it was categorically agreed that agreement with prospective tenants shall also be binding upon the present applicant. It is apparent from these pleadings of the parties that the allotment of space/premises and issuance of no objection certificate in respect of the suit property has not been denied by the opponent no.2 in written statement. Only objection raised by the counsel for opponent no.2 is that as per agreement (Annexure-G/1) of the application the applicant appointed opponent no.2 as landlord and as per clauses 6 & 10 the applicant is refrained to seek possession of the premises/space, therefore, ejectment application is not maintainable.***

***9 I am of the opinion that there is no denial that registered title in respect of the applicant has not been executed, however, it is also admitted fact that the applicant has paid full consideration of the premises/space and has been issued no objection certificate as well as opponent no.2 entered into the agreement (Annexure-G/1) with the applicant***

*to let out the premises/space and pay rent to the applicant as per clause no.4 of that agreement. Therefore, in my view the applicant has possessory rights in respect of the premises/space and the opponent no.2 by execution of agreement (Annexure-G/1) accepted right of the applicant to receive rent of the Premises, therefore, the opponent on the ground of not having registered title in favour of the applicant can not nonsuit the applicant.*

10 So far as the question of agreement (Annexure-G/1) is concerned, the learned counsel for the opponent has emphasized that as per clause-1 the opponent no.2 was appointed as landlord, therefore, he is not agent but he is landlord. As per definition of the landlord in Section 2-(f) of the Sindh Rented Premises Ordinance 1979 is that; "the owner of the premises includes a person who is for the time being authorized or entitled to receive rent in respect of such premises". Apparently, the opponent no.2 by virtue of agreement (Annexure-G/1) was authorized to enter into rent agreement with opponent no.1 and to collect rent on behalf of the applicant. In my view by virtue of this agreement the opponent no.2 was appointed as rent collector by the applicant and this agreement is not more than a contract of agency under section 182 of the Contract Act. For the sake of convenience and ready reference the Section 182 of the Contract Act is reproduced hereunder;

*182. An "agent" is a person employed to do any act for another or to represent another in dealings with third persons. The person for whom such act is done, or who is so represented, is called the "principal".*

11. Applicant has annexed rent receipts to with the application which reveal that opponent No. 2 was paying rent of Rs. 16548/-, after deduction of tax of Rs.25/- to the applicant till August 2019. The applicant has stated in paragraph No. 8 of the application that opponent No. 2 stopped payment of rent since September 2019. The opponent No. 2 in his written statement has stated that during audit it was found that the Company already paid excess amount to the applicant and other allottees therefore, it was advised to all the allottees to come in contract, settle the account and to take their dues. Perusal of these pleading makes it clear that the opponent No. 2 stopped payment rent on account of excessive payment. In my opinion instead of stopping payment of rent, the opponent No. 2 ought to have approached proper forum for his grievances, on account of excessive payment. It is well settled principle of law that no one should be a judge in their own cause, therefore, the applicant have breached terms of agency by stopping payment of rent.

**12** *There is no ambiguity that as per section 201 of the Contract Act the agency can be terminated by principle, for the sake of convenience and ready reference Section 201 of the Contract Act is reproduced hereunder;*

**201.** *An agency is terminated by the principal revoking his authority; or by the agent renouncing the business of the agency; or by the business of the agency being completed; or by either the principal or agent dying or becoming of unsound mind; or by the principal being adjudicated an insolvent under the provisions of any Act for the time being in force for the relief of insolvent debtors.*

**13** *In my view by serving legal notice (Annexure-B) wherein the applicant has specifically mentioned that; “it is noteworthy here that basically your legal status is agent/rent collector, not owner and principal can revoke and resign at any time, so do not treat yourself as owner as licenser, even otherwise, be that it may be, from today you have no legal status to continue rental contract with brands/tenants of our clients”.*

**14** *In my view by stating such clause the applicant has revoked the authority of opponent no.2 in terms of Section 201 of the Contract Act. The opponent no.1/tenant is also party in the present proceedings and in my view the filing of this rent case is sufficient notice to the opponent regarding revocation of authority of the opponent no.2.*

**15** *In view of aforesaid discussion I am of the considered view that the opponent no.2 has no right/authority to collect the rent from opponent no.1 after revocation of agreement (Annexure G/1), therefore, opponent no.1 is directed to deposit the rent with the Nazir of this Court from the month of March 2022 (the rent shall be deposited till 10th of succeeding month of each English calendar month).*

**16** *So far as the arrears of rent are concerned, as discussed above that the opponent no.2 was agent of the applicant, therefore, the rent collected by the agent on behalf of the principal cannot be recovered from the agent in rent proceedings and the appropriate remedy in such condition is filing of suit. I have respectfully perused case laws relied by learned counsel for the opponent No. 2 and 3, however, same are not applicable to the facts and circumstances of the present case.”*

3. While the learned counsel for the petitioner has taken many stances during these lengthy hearings, however having been defeated in all fronts, finally requested the Court that he would be inclined to not to press these Constitutional Petitions and would comply with the directions given in the impugned order dated 12.02.2022 if one week's time is granted to the petitioner as substantial payments have to be outpocketed.

4. Counsel for the respondent No.1 in the presence of Dr. Usman Memon who is representing various allottees consented to the request of the petitioner's counsel however, demanded that alongside complying the impugned order, the petitioner who had chosen to not to pay the utility bills for a long time, which have accumulated to the tunes of crores of rupees, and where eventual liability of making payment thereof will fall upon the allottees, the petitioner be directed to make payment of such utility bills forthwith. This request is accepted by the petitioner's counsel who sought 30 days time to ensure that all utility bills will be paid upto date and to submit a copy whereof with the Additional Registrar of this Court.

5. In these enabling circumstances, counsel for the respondent No.1 also requested that the court of learned Rent Controller be directed to expeditiously dispose of the application u/s 16(2) forthwith, to which the counsel for the petitioner requested that one month time be granted to the said court in this regard, which proposal is also accepted by the respondent No.1's counsel and made part of this order.

6. In the given circumstances these petitions are dismissed as not pressed with the undertakings give and covenants made hereinabove by the respective sides which are made order of this court and be adhered too expeditiously.

JUDGE

