

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

CP NO.S-974/2019

Date	Order with signature of Judge
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1. For orders on office objection as at A
2. For order on CMA No.4339/2019
3. For hearing of main case.

12.03.2020

Mr. Fayyaz Ahmed advocate for petitioners.
Mr. Khalique Dad Khan, Treasurer, Zeenat-ul-Islam Trust.

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Salahuddin Panhwar,J:- Heard learned counsel for petitioner. He has taken plea that being part of the management of Mosque, many shops were constructed and shops in question were, however, raised in his personal capacity hence he is keeping both shops within compound of the mosque; that plot was allotted by the Secretary, Sindh Workers Welfare Board which letter is available at page 77 which categorically shows that no further construction should be made without prior permission of the Board. It is further contended that on the basis of photographs placed by the opponent, Rent Controller and the Appellate Court decided the issue against present petitioners. It is further contended that there is dispute between two management, one relates to two shops wherein one dispensary is being run by the present petitioners on welfare basis, hence impugned judgments are not in accordance with law.

2. While perusal of impugned judgments it reflects that plea of section 92 CPC was also taken to dispute *locus standi* of the respondent with regard to eviction application. Perusal of judgments of both courts below by keeping in juxtaposition with arguments, raised by learned counsel for petitioners, it is pertinent to mention here that there is no dispute with regard to construction raised by

the petitioners being part of management of the Mosque and at present petitioners have dis-associated from the management of the mosque and running their clinic in some independent capacity, according to them, on the basis of welfare. This issue is raised by petitioners' counsel that property relates to the Sindh Workers Welfare Board and entitlement authorized by the Assistant Engineer, Sindh Workers Welfare Board which, *prima facie*, was limited to raising of construction of mosque only, hence commercial use by the management of the mosque is completely illegal and even plea of such use for welfare is of any legal weight to disturb concurrent findings of two courts below. Petitioners' counsel is ready to hand over the possession to Sindh Workers Welfare Board for the interest of workers and not to the management of the mosque. The petitioners legally can't take any advantage by making such statement as admittedly shops were erected within the boundary of the mosque and these are not two shops only, according to the counsel, mosque management has also converted a Madrasah into a school. The affairs of respondent no.1 are to run through management which includes right to rent out its shop (s) as well possession thereof. Since both courts below have recorded findings that petitioner has remained tenant however there is admission that these shops were constructed while petitioners were part of the management hence dispute with regard to *locus standi* of the respondent No.1, suing the petitioner being management of Dar-ul-Uloom Usmania Jamia Masjid is without any force. Needless to mention that in writ of certiorari this court has limited scope and has only to examine the judgment of the trial court while keeping in view that whether same are result of misreading or non-reading of evidence or passed without lawful authority?. If answer is, *prima facie*, yes only then findings can be

disturbed; merely possibility of another conclusion, however, is no ground for disturbing findings of lower rent authorities, including that of appellate Court which is *final authority*. Accordingly instant petition is dismissed however petitioners shall hand over possession of the shops to the management within eight months date of this order.

3. While parting this order it would be relevant to refer page 77 which is authorization by the Assistant Engineer, Sindh Workers Welfare Board with regard to allotment of the land. This letter creates smoke on the screen and doubt on allotment order because *legally* an Assistant Engineer is not competent to decide fate of property of the Board. Accordingly, Secretary Sindh Workers Welfare Board shall conduct enquiry with regard to allotment of the plot whether same was already reserved for mosque and whether commercial use of that plot is legal and in accordance with law as well competence of authorizing office. In case enquiry opines that same is illegal, Sindh Workers Welfare Board shall take action in accordance with law and sue relevant party which, otherwise, was / is duty of the Board i.e to take initiatives for protection of its properties. Office shall communicate this order to the Chairman and Secretary, Sindh Workers Welfare Board.

J U D G E