

# IN THE HIGH COURT OF SINDH AT KARACHI

C.P. NO.S-343/2007

Petitioner: Board of Intermediate, Education, Karachi  
through its Secretary Bakhtiari Youth Centre,  
North Nazimabad, Karachi.  
through Mr. Tajjammul H. Lodhi, advocate.

Respondent : Hafeez-ul-Haq  
through Mr. Muhammad Tariq Siddiqui, advocate.

Date of hearing : 26.02.2020.

Date of announcement : **13<sup>th</sup> March 2020**

## JUDGMENT

**Salahuddin Panhwar, J:** Petitioner [Board of Intermediate Education Karachi] has challenged the concurrent impugned judgments/orders passed in rent jurisdiction, whereby eviction application as well its appeal, preferred by the petitioner, have been dismissed.

2. Precisely, relevant facts are that respondent was inducted as a tenant in the rented premises with the agreed rent of Rs.500/- per month, excluding electricity and water conservancy charges, through written tenancy agreement dated 01.05.1989. Petitioner sought eviction of the tenant on default and personal bonafide need on the plea that area is required for office purpose of the petitioner. However, when the petitioner could not succeed before the trial Court as well as appellate Court, hence, instant petition is filed.

3. Learned counsel for the respective parties reiterated their pleadings and relied upon the following case laws:

4. Decisions cited by the petitioner's side:

NLR 199 Civil 596, 2004 CLC 1985, 2001 SCMR 1197, 1996 SCMR 1178, 2000 SCMR 1292, 1998 SCMR 2119, 2006 SCMR 117, 1995 SCMR 1125, 2000 SCMR 1613, PLD 2003 Karachi 34, 2010 SCMR 1925, 2004 CLC 1326, 2002 SCMR 241, 1990 CLC 698 and 1991 SCMR 946.

5. Decisions cited by the respondent's side:

2003 MLD 480 [Karachi] and 2010 MLD 356 [Karachi].

6. I have considered arguments as raised by the respective parties coupled with impugned judgments/orders and evidence brought on record.

7. Learned trial Court has mainly relied upon the evidence with regard to open space available to the petitioner and on this plea has denied the right of eviction. Whereas, learned appellate court has agreed with the view of trial Court without further/complete adjudication.

8. At the outset, it needs be reiterated that this Court can competently reverse the findings of lower rent hierarchy if the same are found to be not in accordance with law. Reference is made to case of Mst. Mobin Fatima v. Muhammad Yamin & 2 Ors PLD 2006 SC 214.

"8. The High Court, no doubt, in the exercise of its constitutional jurisdiction under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 can interfere if any wrong or illegal conclusion are drawn by the Courts below which are not based on facts found because such an act would amount to an error of law which can always be corrected by the High Court. .... The findings of the appellate Court were cogent and consistent with the evidence available on the record. Its conclusions were in accordance with the facts found. **The finality was attached to its findings which could not be interfered with merely because a different conclusion was also possible.** The High Court, in the present case, in our view, exceeded its jurisdiction and acted as a Court of appeal which is not permissible under the law. Therefore, the High Court ought not to have undertaken the exercise of the reappraisal of the evidence.

9. Here, it is worth to add that landlord cannot be deprived of possession of a tenement on personal *bonafide* need which, *alone*, if established would be sufficient to take possession / control of tenement because landlord has preferential rights to *first* satisfy his own *personal bona fide* needs / requirements which (*preferential rights*) can't be denied merely on ground of interest of *tenant* in / with such tenement whose rights, for all purposes and intents, would remain *temporary* while that of a landlord are *permanent*. This has been the reason that right to seek ejection is available with landlord *only* not only on ground of *default* and personal *bona fide* need but includes:-

“15(2)(iii) the tenant has, without the written consent of the landlord

- (a) handed over the possession of the premises to some other person ;
- (b) used the premises for the purpose other than that for which it was let out;
- (c) infringed the conditions on which the premises was let out;
- (iv) the tenant has committed such acts as are likely to impair the material value or utility of the premises ;
- (v) the tenant has indulged in such activities as are causing nuisance to the neighbours ;

The above has been the reason that when it comes to plea of *personal bona fide need* the burden of the landlord stands discharged simply by saying so on Oath without being shattered. The availability of other shops / places cannot be pressed by tenant to defeat landlord because the same is prejudicial to such *preferential rights* of landlord whereby he (*landlord*) enjoys *absolute* prerogative to choose the best from available places. In the instant matter, the petitioner is an *institution* which does carry possibility of need of more space for adjusting students as well staff. It was categorically admitted by the respondent / tenant in his cross-examination that:-

“It is correct to suggest that as per notice demised shop is required by the Board of Intermediate Education for welfare of the students”.

The above discussed legal position as well said admission were *entirely* ignored by the learned lower Courts which is a, *prima facie*, illegality.

10. The lower Courts have also failed another *glaring* fact which was always sufficient to declare the respondent / tenant as *defaulter*. At this point, the term '*rent*' , so defined in the Ordinance, needs to be referred which reads as:-

“2(i). “rent” includes water charges, electricity charges and such other charges which are payable by the tenant but are unpaid”.

11. From above definition it needs no further discussion in saying that *legally* such charges (utility charges) do include in the term '*rent*' hence default towards such liability would be a *default*. Here, a referral to admissions, made by the respondent / tenant in his cross-examination, shall make the position clear. The same are reproduced hereunder:-

“It is correct to suggest that by way of letter dated 5.5.1997 I was served with the notice regarding my nonpayment of Rs.200/- per month in respect of electricity charges...I deposited Rs.18,000/- in respect of electricity charges at the rate of Rs.200/- per month. It is correct to suggest that again by way of letter dated 21. April 1997 I was informed that rate of electricity charges is enhanced from Rs.200/- to Rs.500/-per month. It is correct to suggest that I again deposited Rs.Seven Thousand Five Hundred in reply of said letter in respect of electricity charges of the demised premises. It is incorrect to suggest that after June 1998 I have not paid any penny in respect of electricity charges of the demised premises. Vol. says that I sent cheque which was returned by the landlord. ....It is correct to suggest that I am not paying rent with the Board of Intermediate Karachi. Vol says that I am depositing the rent in the court at the rate of rs.1000/- per month. It is correct to suggest that I am not depositing electricity charges in the court even.

Such fact, floating on the surface, was never appreciated by the learned lower Courts while recording the impugned judgments / orders.

12. Further, it is an admitted position that premises was rented out to the respondent only for purpose of running the PCO but he by making breach thereof using the premises for purpose of Photostat machine, PCO as well as cold drink articles in the demised premises. Therefore, it is quite safe to conclude that learned lower courts have not exercised their jurisdiction (s) properly and *fairly* hence this Court can competently undo such illegalities.

13. Accordingly, the impugned judgments/orders are not in accordance with law. Consequently, the same are set aside and the eviction of the respondent/tenant is allowed. However, the respondent shall evict the premises within three months from the date of this order.

Petition allowed.

Sajid

**J U D G E**