

# HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

## **C.P No. S-667 of 2022**

[Allaudin versus Pakistan Qaimkhani Education Trust & another]

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[Allaudin versus Pakistan Qaimkhani Education Trust & another]

## **C.P No. S-669 of 2022**

[Qamaruddin versus Pakistan Qaimkhani Education Trust & another]

## **C.P No. S-670 of 2022**

[Qamaruddin versus Pakistan Qaimkhani Education Trust & another]

## **C.P No. S-671 of 2022**

[Z.A Khan versus Pakistan Qaimkhani Education Trust & another]

## **C.P No. S-672 of 2022**

[Qamaruddin versus Pakistan Qaimkhani Education Trust & another]

## **C.P No. S-673 of 2022**

[Abdul Aziz versus Pakistan Qaimkhani Education Trust & another]

## **C.P No. S-674 of 2022**

[Imamuddin versus Pakistan Qaimkhani Education Trust & another]

## **C.P No. S-679 of 2022**

[Muhammad Khubaib Siddiqui versus Pakistan Qaimkhani Education Trust & another]

## **C.P No. S-680 of 2022**

[Muhammad Shabbir & Ikram versus Pakistan Qaimkhani Education Trust & another]

## **C.P No. S-681 of 2022**

[Muhammad Jahangir & another versus Pakistan Qaimkhani Education Trust & another]

## **C.P No. S-682 of 2022**

[Attaullah & another versus Pakistan Qaimkhani Education Trust & another]

## **C.P No. S-683 of 2022**

[Riazuddin versus Pakistan Qaimkhani Education Trust & another]

## **C.P No. S-684 of 2022**

[Muhammad Yaqoob versus Pakistan Qaimkhani Education Trust & another]

## **C.P No. S-685 of 2022**

[Muhammad Usman Ghani versus Pakistan Qaimkhani Education Trust & another]

## **C.P No. S-686 of 2022**

[Shabbir & sons versus Pakistan Qaimkhani Education Trust & another]

## **C.P No. S-687 of 2022**

[Rizwan Khan versus Pakistan Qaimkhani Education Trust & another]

## **C.P No. S-688 of 2022**

[Idrees Ahmed versus Pakistan Qaimkhani Education Trust & another]

## **C.P No. S-691 of 2022**

[Mirza Nadeem Baig versus Pakistan Qaimkhani Education Trust & another]

## **C.P No. S-692 of 2022**

[Shahabuddin versus Pakistan Qaimkhani Education Trust & another]

Petitioners : Through Mr. Ghulam Sarwar Qureshi advocate  
 Respondent No.1 Through Mr. Jahanzeb Baloch advocate  
 Date of hearing : 10.10.2022  
 Date of decision : 10.10.2022  
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## **ORDER**

**ADNAN-UL-KARIM MEMON, J-** Through captioned petitions, petitioners have impugned the interlocutory orders dated 10.08.2022 (**impugned orders**) passed by learned Rent Controller Cant. Area, Hyderabad in Rent Application Nos.05, 06, 07, 08, 09, 10, 11, 12, 13, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24 & 26 of 2018 (**Rent Applications**), whereby the petitioners were directed to pay rent amount at the rate of Rs. 15,000/- per month from February 2022 and onwards within 15 days.

2. Facts of the matter in bird's eye view are that the respondent-Pakistan Qaimkhani Education Trust /landlord filed Rent Applications under Section 17(2) of Cantonment Rent Restriction Act, 1963 against the petitioners/tenants in respect of different Shops situated in Kaimkhani Shopping Centre, Qazi Abdul Qayoom Road/ Makki Shah Road Hyderabad (**rented premises**) and during pendency of above rent applications, respondent/landlord preferred applications under Section 7 of the Act, 1963, for increase of rent, the said applications were allowed by impugned orders with direction to opponents/petitioners to pay rent amount @ Rs.15,000/- per month from the Month of February 2022 and onwards within 15 days from the date of impugned orders. Petitioners being aggrieved by and dissatisfied with the aforesaid orders have preferred these petitions

3. Mr. Ghulam Sarwar Qureshi learned counsel for petitioners has argued that impugned orders are opposed the law, facts and equity; that earlier learned Rent Controller passed order dated 21.10.2010 in respect of rented premises, whereby the petitioners were directed to deposit future monthly rent as well as arrears and opponents filed their objections clearly stating that they already had been depositing rent in the Court of III<sup>rd</sup> Senior Civil Judge / Rent Controller Hyderabad and respondent could easily withdraw the said rent; however, instead of such withdrawal of rent respondent filed applications under Section 17(9) of the Act *ibid* for striking of the defense of petitioners, which were allowed vide order dated 3.3.2021; that said order was challenged before this Court in Rent Appeals, wherein orders passed by Rent Controller were set-aside and the matter was remanded, leaving the respondents to withdraw the deposited rent; and, in case of failure learned Rent Controller / III<sup>rd</sup> Senior Civil Judge Hyderabad was directed to transfer the said amount to learned Rent Controller Cantonment Area. Per learned counsel, after passing of the above

order by this Court learned Rent Controller Cantonment Area was precluded to pass any order on application filed under Section 7 of the Act *ibid*, as according to the order of this Court the respondent could only file a fresh application in case the petitioners commit default, but no such case is existing as opponents are regularly depositing the rent thus the question of default is no more available with the respondents. Learned counsel emphasized that the application under Section 7 of the Act was devoid of merits and not maintainable in terms of the order passed by this court in the aforesaid proceedings. Learned counsel referred to clauses of rent agreement and argued that there is no existence of condition of fair rent, thus the respondents are stopped to claim such relief of fair rent by way of applications. Learned counsel further argued that in terms of rent agreement, the respondent could only enhance the rent up to 10% after every three years, which period has not yet elapsed; therefore, the applications filed by the respondent under Section 7 of the Act, 1963 is in direct conflict with the prayer clauses of rent applications as such no relief could be granted to the respondents; that opponents/petitioners besides paying rent and goodwill amount have also helped the respondent Trust, and also worked out for betterment of Trust; that learned Rent Controller has not assigned any cogent, convincing reasons to allow the applications for fair rent at the enhanced rate. He lastly prayed for setting aside the impugned orders, having been passed in violation of law.

4. Mr. Jahanzeb Baloch learned counsel for respondent trust has raised questions over the maintainability of these petitions, on the premise that interlocutory orders of Rent Controller could not be assailed in constitutional petition. He, however, while supporting the impugned orders argued that rented premises were rented out to petitioners in the year 1995 on the prevailing market value of that relevant time; however, now the general value of rent has been increased in terms of market forces, as such before filing applications under Section 7 of the Act *ibid*, petitioners were advised, via letters, to increase the rent amount, as per prevailing market value keeping in view the increase in rental values of building, cost of construction and devaluation of rupee to the extent of Rs.35,000/- to Rs.40,000/- per month, but they failed to do so. He emphasized that there appears to be a reasonable justification for such an approach so made by the trial court when admittedly the premises in question are situated at Qazi Abdul Qayoom Road/ Makki Shah Road Hyderabad which is known commercial area having high rates. He next argued that there has been an increase in the property tax which, too, is indicative of the fact that there has been an increase in the annual value of premises and the aforesaid factum was properly appreciated by the rent controller. He prayed that the Order passed by the trial court while fixing the fair rent is liable to be maintained.

5. I have heard learned counsel for the parties on the subject issue and perused the record with their assistance.

6. First and foremost, the question of maintainability of the instant petition is required to be addressed, for the said purpose, Section 24 of the Cantonments Rent Restriction Act, 1963, needs to be looked into in its entirety. For ease of reference, the said Section is reproduced below:

24. Appeal.---(1) Any party aggrieved by an order, not being an interim order, made by the Controller may, within thirty days of such order, prefer an appeal to the High Court.

(2) The High Court may, pending the final disposal of the appeal, make an order staying further proceedings or action on the order of the Controller: Provided that no such order shall be made if the appeal has been preferred from an order made under sub-section (6) of section 17A.

(3) The High Court shall, after perusing the record of the case and giving the parties an opportunity of being heard and, if necessary, after making such further enquiry either by itself or by the Controller as it may deem fit, make an appropriate order which shall be final.

(4) No order of the Controller except by an appeal under this section, and no order of the Appellate Court made under this Act shall be called in question in any Court by any suit, appeal, or other legal proceedings."

7. It is clear and obvious that the order dated 10.8.2022 which is impugned before this Court is an interlocutory order, had not finally decided the lis and was passed to safeguard the interests of all who prima facie are interested in the property. It is settled law that when the Statute does not provide the right of appeal against certain orders, the same cannot be challenged through constitutional jurisdiction of High Court to gain similar objective. Where a Statute has expressly barred a remedy which is not available to a party under the Statute, it cannot be sought indirectly by resorting to the constitutional jurisdiction of High Court. Under such circumstances, the Honorable Supreme Court has held in the recent judgment that such orders cannot be challenged under the guise of invoking the constitutional jurisdiction of this Court because the same would tantamount to negating the provisions of Statute itself and rendering the bar imposed by the legislature in the interest of expeditious disposal of rent matters redundant. The Honorable Supreme Court directed that the High Court exercising constitutional jurisdiction must be fully cognizant and conscious of this Rule and strictly adhere to the same in the interest of advancing the policy of law and delivering expeditious justice under the law and the Constitution.

8. Going ahead, in the present case, Petitioners have called in question the vires of rent order dated 10.8.2022, passed by learned Rent Controller Cantonment Area Hyderabad in interlocutory rent applications, an excerpt whereof is as under:-

“This order will dispose of the application U/S 7 of Cantonment Rent Restriction Act 1963 dated 26.08.2020 filed by the applicant’s

counsel for fixing the fair rent amount. Notice was extended to the other side but till today no written objections were filed by the opponent hence, the matter was fixed for the arguments. Heard arguments of the counsel for the applicant who contended that the applicant prior to the filing of this application advised the opponent to increase the amount of rent of the rented premise as per the prevailing market value due to the increase in rental values of the building, cost of construction and devaluation of PKR, etc, to the extent of Rs. 35,000/- to Rs. 40,000/- per month but the opponent did not pay the same, hence this application. On the other hand, the counsel of the opponent opposed the contentions of the counsel for the applicant and argued that the rent amount has already been increased as per the terms and conditions of the rent agreements hence, the present application is meritless. Heard arguments and after perusal of the record, it transpires that the subject shop was obtained by the opponent on rent in the year 1999 on the prevailing market value of that time, while at present the general value of rent has been raised but the opponent is being depositing the rent amount on the previous rate which is liable to be increased. In view of the above discussion the application in hand is hereby allowed with directions to the opponent to pay the rent amount at the rate of Rs. 15,000/- per month from February 2022 and onwards within 15 days from the date of this order.”

9. The main theme of arguments of counsel for petitioner that the applications filed by the respondents under Section 7 of Cantonment Rent Restriction 1963 were devoid of merit and not maintainable in terms of Section 7(5) of Cantonment Rent Restriction 1963. As the tenancy continued except in the case of an addition, improvement or alteration carried out at the landlord's expense and at the request of tenant which was/is not existing in the present cases. That the respondents could only raise the rent to 10% after every three years, thus the applications filed by the respondents were / is in direct conflict with prior clauses of rent applications; that there existed no condition of enhancement of rent and as per terms and conditions of agreement the petitioners are paying rent to the respondents. The learned counsel referred to various documents attached with the memo of petitions and argued that in the earlier round of litigation this court vide order dated 31.01.2022 disposed of first rent appeals by setting aside the impugned order dated 03.03.2021 and remanded to learned Rent Controller. Thus the decision of learned Rent Controller is not under the Cantonment Rent Restriction Act 1963 and is liable to be set aside.

10. It appears from the record that the petitioners have not complied with the order dated 10.08.2022 and directly approached this court against the decision of learned Rent Controller in constitutional petition under article 199 of the Constitution of Islamic Republic of Pakistan 1973.

11. It appears from the record that learned trial court simply increased the rent amount at the rate of Rs. 15000/- per month from February 2022 and onwards and the said direction has not been complied with, though no consequences have been provided in the order passed by the Rent Controller.

12. Besides the above, this court has already dealt with such issue as raised in the present proceedings vide order dated 23.09.2022 passed by this court in C.P No. S-648 of 2021 with the following findings

“Where a fair rent of any premises has been fixed no further increase therein shall be effected unless a period of three years has elapsed from the date of such fixation. It may be noted that the sub-section (2) of Section 9 *ibid* provides that the rent increase shall not, in any case, exceed ten percent (10%) per annum on the existing rate, which is in lying with the decision of the Hon’ble Supreme Court in the case of Abdul Latif and another V/S Messrs Pharmacie Plus (2019 SCMR 627). Section 9 of the act 1963 clearly shows that the fair rent determined by the Rent Controller cannot be increased before three years, but in any other case, the rent can be increased up to ten percent (10%) per annum as permitted by the law. Moreover, the above stipulation for a periodical increase in the monthly rent is in line with Section 9(2) thereof and was enforceable as held by the Supreme Court in Abdul Latif Case *supra*. Thus, the rent orders passed by the Rent Controller were not illegal and or without jurisdiction, as portrayed by the petitioners. It is well settled that a tentative rent order is passed under law. Compliance thereof must be made by the tenant. The impugned orders are in accord with the law laid down by the Hon’ble Supreme Court. The petitioner has not been able to point out any illegality or infirmity in the findings of the learned Rent Controller below calling interference by this Court under its constitutional jurisdiction.”

13. Adverting to the other issues raised by the counsel for petitioners, it is well-settled that a tenant becomes statutory tenant if the agreement between him and the landlord expires but he continues to retain the possession of rented premises even after expiration of agreement; and, in such an event, the rights and obligations of the parties are governed on the same terms and conditions as stipulated in the agreement. It was held by Hon’ble Supreme Court in Mrs. Zarina Khawaja V/S Agha Mahboob Shah (PLD 1988 SC 190) that the terms and conditions of an expired agreement continue in operation to the extent that is not repugnant to rent law, and the same shall be enforceable whenever it is so required under the law. Similarly, in Abdul Latif and another V/S Messrs Pharmacie Plus (2019 SCMR 627), the Hon’ble Supreme Court was pleased to hold that where the tenant continues to occupy the tenement after expiry of agreement, covenants of agreement continue to apply except such covenants that conflict with the provisions of applicable rent law. It may be noted that the stipulation in the agreement regarding renewal of tenancy with 10% increase in monthly rent at the time of each renewal is not disputed by the petitioner nor was it denied by him in his written statement before the Rent Controller. It is not his case that upon expiration of agreement the tenancy stood terminated or some other terms and conditions were agreed by the parties. Thus, upon expiration of agreement, the status of petitioner became admittedly that of statutory tenant, and the parties were bound by the terms and conditions of agreement. In view of the above, the contention that 10% increase was only subject to fresh renewal by mutual consent of the parties is not tenable.

14. I shall now deal with the question raised by learned counsel for the petitioners that the Rent Controller had no jurisdiction to direct the petitioners to pay

monthly rent at enhanced rate mentioned in the expired agreement. In this context, I may refer to the case of Abdul Latif supra wherein a tentative rent order was passed by the Rent Controller under Section 17(8) of The Cantonment Restriction Act, 1963, directing the tenant to deposit the rent with 7% increase therein in terms of the agreement. The record does not show that the appeal was filed by the petitioners against the tentative rent orders.

15. The issue of increase of rent, suffice it to say that the Hon'ble Supreme Court in the above-cited authority has held that the parties are free to agree to a fixed rate of rent or a rate that is variable to be increased either by certain amount or by certain percentage of existing rent after specified period to which there is no prohibition in law; the periodical increase agreed by the parties under tenancy agreement has to be regarded as rent determined by an agreement between them; an increase, which is not unilateral but is with the mutual consent of both the parties, cannot be subsequently disputed by the tenant unless it is called in question through an application made.

16. For fixation of fair rent; only a unilateral increase in rent or where fair rent has been fixed by the Rent Controller cannot be increased unless a period of three years has elapsed; and, if the tenant does not file any application for fixation of fair rent, the consequence of non-payment of agreed rent within the period prescribed by law would amount to commission of default in payment of rent and would make him liable for eviction. The appeal filed by the landlord was allowed by Hon'ble Supreme Court by setting aside the order of this Court and maintaining the order of eviction of the tenant passed by the Rent Controller.

17. Learned counsel for the petitioners has not been able to demonstrate any legal, procedural or jurisdictional error, defect, or flaw in the impugned interlocutory orders of rent controller that may furnish the basis for interference by this court in its constitutional jurisdiction.

18. In the above circumstances, the petitions being misconceived and not maintainable are dismissed along with pending applications.

JUDGE