

ORDER SHEET
THE HIGH COURT OF SINDH, KARACHI
CP NO. S-51 of 2022

Petitioner : Muhammad Iqbal & Others through
Iftikhar Javaid Qazi, Advocate.

Respondent No.1 : Muahmmad Ashraf & Others through
Mr. Muhammad Khalid, Advocate .

Respondents No.2
& 3. : Nemo

Date of hearing : 17.04.2023:

ORDER

Mohammad Abdur Rahman, J. This is a Petition that has been maintained by the Petitioner under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 impugning a Judgement dated 17 November 2021 passed by the XIIth Additional District Judge Karachi (South) in FRA No. 70 of 2021 by which the XIIth Additional District Judge Karachi (South) allowed FRA No. 70 of 2021 in effect set aside an order dated 31 March 2021 passed by the XIth Rent Controller Karachi (South) in Rent Case No 680 of 2019 and remanded the matter to the XIth Rent Controller Karachi (South) with directions to appoint a commissioner to carry out an inspection and thereafter having heard both the Petitioner and the Respondent No. 1 to decide the matter *de novo*.

2. The Petitioners are the owners of Flat no. 14 Ghayasuddin Qureshi Building, H.U.I./58 Mama Road, Harchund Roy Quarter, Ramaswami, Karachi (hereinafter referred to as the "Said Tenement") which the Petitioners had let to the Respondent No. 1 at a monthly rent of Rs. 375 per month.

3. The Petitioners had maintained Rent Case No. 680 of 2019 being an application under Section 8 of the Sindh Rented Premises Ordinance, 1979 before the XIth Rent Controller Karachi (South) seeking the fair rent of the Said Tenement to be determined by the XIth Rent Controller Karachi (South). Rent Case No. 680 of 2019 was contested by the Respondent No. 1 who in his Written Statement had inter alia called for the Rent Controller to have the Said Tenement inspected so as to verify its status as against other similar tenements of the area and thereafter to assess the fair rent. Despite such a prayer being made in the Written Statement, Rent Case No. 680 of 2019 was decided on 31 March 2021 by the XIth Rent Controller Karachi (South), without an inspection being carried out of the Said Tenement, who granted the application and increased the rent of the Said Tenement to a sum of Rs. 19, 550 per month from the date of the filing of Rent Case No. 680 of 2019 and which amount was subject to an annual increase in accordance with the provisions of Section 9 of the Sindh Rented Premises Ordinance, 1979.

4. Being aggrieved by the Order dated 31 March 2021 passed by the XIth Rent Controller Karachi (South) in Rent Case No. 680 of 2019, the Respondent No. 1 preferred an appeal under Section 21 of the Sindh Rented Premises Ordinance, 1979 before the XIIth Additional District Judge Karachi (South) bearing FRA No. 70 of 2021 alleging that:

- (i) the Respondent No. 1 in his Written Statement had called for the Rent Controller to have the Said Tenement inspected in terms of clause (c) of Section 20 of the Sindh Rented Premises Ordinance, 1979 so as to compare the Said Tenement with other similar tenements in the area to assess the fair rent and on which no issue was framed by the XIth Rent Controller Karachi (South) in Rent Case No. 680 and hence there was no adjudication on this issue; and

- (ii) the XIth Rent Controller Karachi (South) in Rent Case No. 680 of 2019 had failed to properly appreciate the evidence that had been adduced by the Petitioner and the Respondent No. 1 in Rent Case No. 680 of 2019.

5. The XIIth Additional District Judge Karachi (South) after hearing both the Petitioner and the Respondent No. 1 was pleased to grant FRA No. 70 of 2021 and directed that:

- (i) the order dated 31 March 2021 passed in Rent case No. 680 of 2019 in effect be set aside;
- (ii) in terms of clause (c) of Section 20 of the Sindh Rented Premises Ordinance, 1979 the Xith Rent Controller Karachi (South) should appoint a Commissioner to inspect the Said Tenement in terms of determining its condition for the purpose of assessing its fair rent;
- (iii) the XIth Rent Controller Karachi (South), after taking into account the report that was presented to XIth Rent Controller Karachi (South) in Rent Case No. 680 of 2019 by the Commissioner and the evidence adduced by the Petitioner and the Respondent No. 1 was directed to rehear the Petitioner and the Respondent No. 1 and *de novo* determine the fair rent of the Said Tenement.

6. The Petitioner being aggrieved by the Judgement dated 17 November 2022 passed by the XIIth Additional District Judge Karachi (South) in FRA No. 70 of 2021 has preferred this Petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 and through their Counsel Mr. Iftikhar Javaid Qazi, has submitted that:

- (i) there was sufficient evidence on the record of the XIth Rent Controller Karachi (South) in Rent Case No. 680 of 2019 to

determine the fair rent of the Said Tenement and there was no cause to permit an inspection of the Said Tenement to be carried out; and

- (ii) in the event that an inspection was to be carried out of the Said Tenement, such an inspection could only be carried out by the XIth Rent Controller Karachi (South) and not by a commissioner as such the power contained in clause (c) of Section 20 of the Sindh Rented Premises Ordinance, 1979 could not be delegated.

In support of his contentions, Mr. Iftikhar Javaid Qazi has relied on a decision of a Division Bench of this Court which is reported as **Parvez Impex vs. Mst. Nazir Begum**¹ where it was held that when an application was moved for the appointment of a commissioner, such power to appoint a commissioner could only be exercised for the examination of a witness within the purview of clause (d) of Section 20 of the Sindh Rented Premises Ordinance, 1979 and could not be exercised to appoint a commissioner to examine a tenement; such inspection necessarily could only be done by the Rent Controller himself. Mr Iftikhar Javaid Qazi also relied on the case reported as **Zia ul Haq Makhdoom vs. Abdul Rehman**² which also advanced the same proposition

7. Mr. Muhammad Khalid, appeared on behalf of the Respondent No. 1 and contended that there was no illegality or infirmity in the Judgement dated 17 November 2022 passed by the XIIth Additional District Judge Karachi (South) in FRA No. 70 of 2021. He contended that the Judgement passed by the XIIth Additional District Judge Karachi (South) in FRA No. 70 of 2021 was in consonance with law and should be upheld. He did not rely on any case law to support his contentions.

¹ 1989 CLC 374

² 2014 YLR 1255

8. I have heard the counsel for the Petitioner and the Respondent No.1 and have perused the record. It is apparent that although no separate application had been moved by the Respondent No. 1 under any of the provisions of Section 20 of the Sindh Rented Premises Ordinance, 1979 such a prayer had in fact been made by the Respondent No.1. in its written statement and on which no issue was framed by the XIth Rent Controller Karachi (South) in Rent Case No. 680 of 2019 . Mr. Iftikhar Javaid Qazi had during his arguments not challenged the right of the XIIth Additional District Judge Karachi (South) in FRA No. 70 of 2021 to inspect the Said Tenement but has only stated that keeping in mind the provisions of Section 20 of the Sindh Rented Premises Ordinance, 1979 such a power could not be delegated to a commissioner.

9. Section 20 of the Sindh Rented Premises Ordinance, 1979 states that:

- “ ... Subject to this Ordinance, the Controller and the appellate authority shall, for the purpose of any case under this Ordinance, have powers of a Civil Court under the Code of Civil Procedure, 1908 (Act V of 1908), in respect of only the matters, namely
- (a) Summoning and enforcing the attendance of any person and examining him on Oath;
 - (b) Compelling production or discovery of documents
 - (c) Inspecting the site; and
 - (d) Issuing commission for examination of witnesses or documents.”

The issue as to whether the Rent Controller has the power to delegate the right to inspect a tenement has been determined by a Division Bench of this Court, as has been correctly pointed out by Mr. Iftikhar Javaid Qazi, in the decision reported as **Parvez Impex vs. Mst. Nazir Begum**³ wherein it was held that:⁴

³ 1989 CLC 374

⁴ *Ibid* at pg. 375-377

“ ... In the instant case, the Court will have to decide whether the Rent Controller has the power to issue commission for an inspection of the site keeping in view the provisions of the Ordinance and the other relevant enactment. In this regards, it may be pertinent to refer section 20 of the Ordinance, which provides as follows:-

Sec. 20 Power of Civil Court. (1) Subject to this Ordinance, the Controller and the appellate authority shall, for the purpose of any case under this Ordinance, have powers of a Civil Court under the Code of Civil Procedure, 1908 (Act V of 1908), in respect of only the matters, namely:-

- (a) summoning and enforcing the attendance of any person and examining him on oath:-
- (b) compelling production or discovery of documents;
- (c) Inspecting the site; and
- (d) issuing commission for examination of witness or documents.

5. A plain reading of the above section indicates that the Controller and the appellate authority for the purpose of any case under the Ordinance have been conferred powers of a Civil Court under the Code of Civil Procedure, 1908 in respect of only the matters mentioned in sub-clauses (a) to (d) namely, summoning and enforcing the attendance of any person and examining him on oath; compelling production or discovery of documents; inspecting the site; and issuing commission for examination of witnesses or documents. If we were to construe the above provision of the Ordinance strictly the contention of Mr. Gulab M. Rang, learned counsel for the petitioner, that the Rent Controller has no power to issue a commission for the inspection of the site seems to be correct. The power is given to the Rent Controller and the appellate authority to inspect the site. Mr. Gulab M. Rang has referred to Rule 18 of Order XVI of the Code of Civil Procedure, 1908 which empowers a Court to inspect any property or thing concerning with any question which may arise at any stage of a suit. The above provision seems to be parallel to clause (c) of section 20 of the Ordinance, which entitled the Rent Controller and the Appellate Court to inspect the site. Whereas, Mr. Munawar Malik, learned counsel for the respondent No. 1, has referred to Rule 9 of Order XVI of the Code of Civil Procedure, 1908, which provides that in any suit in which the Court deems a local investigation to be requisite or proper for the purpose of elucidating any matter in dispute, or of ascertaining the market value of any property or the amount or any mesne profits or damages or annual net profits, the Court may issue a commission to such person as it thinks fit directing him to make such investigation and to report thereon to the Court. If the above provision is applicable to a proceeding before the Rent Controller, the Rent Controller would be competent to issue a commission for the inspection of the site. However, we find from the language used in section 20 of the Ordinance that the Rent Controller and the appellate authority have been conferred powers of a Civil Court only in respect of the matters

mentioned in clauses (a) to (d) of section 20 of the Ordinance and not in respect of any other matter. The power to issue a commission is confined to the issuance of commission for examination of the witness under clause (d). of section 20 of the Ordinance, which powers will not include the power to issue a commission for the inspection of the site, which is to be done by the Rent Controller or by the appellate authority itself. The use of word only in section 20 of the Ordinance is indicative of the fact that the law-makers did not wish to vest in or confer the powers of the Civil Court to the Rent Controller and the appellate authority in respect of all the matters, which are provided for in the Code of Civil Procedure, 1908 but the powers were given only for limited purposes specified therein.

6. We are, therefore, of the view that the first order passed by the Rent Controller for the inspection of the site was in consonance with the provisions of the Ordinance but the second order directing the party to name an Advocate for inspection of the site was not in consonance with the provision of the Ordinance and, therefore, we allow the above petition to the extent of declaring the impugned order dated 13-9-1987 as being without lawful authority and of no legal effect. However, it will be open to the learned Rent Controller to inspect the site personally herself in case she wishes to inspect the same in terms of the order dated 21-7-1987."

This decision was followed in the case reported as reported as **Zia ul Haq Makhdoom vs. Abdul Rehman**.⁵ Aside from the fact that the decision of the Division Bench of this Court in **Parvez Impex vs. Mst. Nazir Begum**⁶ is binding on me I cannot find any fault in the logic that has been interpreting Section 20 of the Sindh Rented Premises Ordinance 1979 i.e. that when a specific power has been given to appoint a commission in clause (d) of Section 20 of the Sindh rented Premises Ordinance, 1979 to record evidence and such a power having not been mentioned in clause (c) of Section 20 of the Sindh rented Premises Ordinance, 1979 to inspect a tenement; the intention of the legislature was to not allow for an inspection to be carried out by commission and which power therefore could only be exercised by the Rent Controller seized of the lis. As such I am of the opinion that the Judgement dated 17 November 2021 passed by the XIIth Additional District Judge Karachi (South) in FRA No. 70 of 2021 to the

⁵ 2014 YLR 1255 at pgs. 1261-1263

⁶ 1989 CLC 374

extent that it directs the XIth Rent Controller Karachi (South) in Rent Case No. 680 of 2019 **to appoint a commissioner** to inspect the Said Tenement is illegal as no right to delegate the power to inspect a tenement has been conferred in clause (c) of Section 20 of the Sindh Rented Premises Ordinance, 1979. The matter having been raised by the Respondent No. 1 in its Written Statement in Rent case No. 680 of 2019 should have led the XIth Rent Controller Karachi (South) to frame an issue in the lis and which having not been done would amount to an infirmity in the order dated 31 March 2021 passed by the XIth Rent Controller Karachi (South).

10. Having found that it was incumbent on the XIth Rent Controller Karachi (South) in Rent Case No. 680 of 2019 to have inspected the Said Tenement personally and which the XIth Rent Controller Karachi (South) in Rent Case No. 680 of 2019 had failed to do, I am constrained to reject Mr. Ifritkhar Javaid Qazi second argument that there was enough evidence on the record of the court to determine the fair rent under Section 8 of the Sindh Rented Premises Ordinance, 1979. Under clause (a) of Sub-Section (1) of Section 8 of the Sindh Rented Premises Ordinance, 1979 the Rent Controller is mandated to determine the fair rent of the Said Tenement keeping in mind “the rent of similar premises situated in the similar circumstances, in the same or adjoining locality”. By examining the Said Tenement the XIth Rent Controller Karachi (South) in Rent Case No. 680 of 2019 would be able to ascertain whether the evidence of rent that had been adduced by the parties in respect of tenements were or were not in fact “similar” in nature to the Said Tenement. The XIth Rent Controller Karachi (South) in Rent Case No. 680 of 2019 having failed to exercise his jurisdiction in this regard and which it was incumbent on him to do, the XIIth Additional District Judge Karachi (South) in the Judgement dated 17 November 2021 passed in FRA No. 70 of 2021 has correctly held that the matter should be remanded to the XIth Rent Controller Karachi (South) to determine the fair rent of the Said Tenement Rent Case No. 680 of 2019

after having carried out the inspection of the Said Tenement and hearing the Petitioner and the Respondent No. 1 de novo.

11. In the facts and circumstances, the Petition is allowed to the extent that the direction that was given by the XIIth Additional District Judge Karachi (South) in the Judgement dated 17 November 2021 passed in FRA No. 70 of 2021 directing the XIth Rent Controller Karachi (South) in Rent Case No. 680 of 2019 to appoint a commissioner to inspect the Said Tenement is set aside with the direction that the Judgement dated 17 November 2021 passed by the by the XIIth Additional District Judge Karachi (South) in FRA No. 70 of 2021 should be read to mean that the Rent Controller in Rent Case No. 680 of 2019 should himself inspect the Said Tenement and on the basis of such an inspection and taking into account all the evidence already recorded to reassess the fair rent of the Said Tenement, within two (02) month from the receipt of this order after hearing both the Petitioners and the Respondent No. 1. The parties shall appear before the Rent Controller on 5 August 2023 for further proceedings in terms of this order. Let this order be communicated to the XIth Rent Controller Karachi (South) through the learned District Judge Karachi (South) for compliance. This Petition therefore is partially allowed in the above terms. All listed applications stand disposed of accordingly with no order as to costs.

JUDGE

Karachi dated 15 July 2023