

ORDER SHEET
THE HIGH COURT OF SINDH, KARACHI
C. P. No.S-1405 of 2019

Date	Order with signature of Judge
1.For orders on office objection. 2.For orders on CMA No.6548/2019. 3.For orders on CMA No.6549/2019. 4.For hearing of Main Case.	

Date of Hearing : 2 June 2023

Petitioner : Alay Javed Zaidi through Mr. Shahab Sarki, Advocate along with Mr. Ishrat Ghazali, Advocate.

Respondents No.1&2 : Habibullah & Others through Mr. Iftikhar Javed Qazi, Advocate.

Respondents No.3&4 : Nemo.

ORDER

MOHAMMAD ABDUR RAHMAN, J. This is a Petition that has been maintained by the Petitioner under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 as against a consolidated Judgement dated 30 October 2019 passed by IXth Additional District Judge (MCAC) Karachi (East) in FRA No. 70 of 2018 that has been maintained by the Petitioner and FRA No.75 of 2018 that had been maintained by the Respondent No.1 each as against the Judgement dated 13 March 2018 passed by the Vth Rent Controller Karachi (East) in Rent Case No.182 of 2017 on an application under Section 8 of the Sindh Rent Premises Ordinance, 1979 whereby the Vth Rent Controller Karachi (East) has in Rent Case No.182 of 2017 been pleased to fix the rent in respect of the tenement on the Ground Floor of Plots No.943-C, 944-C & 945-C, Block No.2, P.E.C.H.S. Karachi, admeasuring 315 Square Yards (hereinafter referred to as the "Said Tenement") from Rs.3,700/- per month to a rent of Rs.425,250/- per

month at a rate of Rs.150/- per square foot by the Vth Rent Controller Karachi (East) and which was reduced by the IXth Additional District Judge (MCAC) Karachi (East) to Rs. 233,500 per month at a rate of Rs. 100 per square foot.

2. Rent Case No.182 of 2017 being an application under Section 8 of the Sindh Rent Premises Ordinance, 1979 was instituted by the Respondent No. 1 before the Vth Senior Civil Judge & Rent Controller Karachi (East). The basic contention of the Respondent No. 1 in Rent Case No. 182 of 2017 was that the Respondent No. 1 had purchased the Said Tenement by a registered Conveyance Deed on 23 September 2016 from the previous owners and had therefore issued a letter under Section 18 of the Sindh Rented Premises Ordinance, 1979 informing the Petitioner and the Respondent No. 2 about the change in ownership of the Said Tenement and directing that rent should thereafter be paid to the Respondent No. 1. It was contended that the rent for the Said Tenement had not been enhanced from 1974 and after a period of 33 years, an increase in rent was mandated and keeping in mind that each of the factors mentioned in Section 8 of the Sindh Rented Premises Ordinance, 1979 had increased since 1974 the Respondent No. 1 was entitled to an increase in the rent of the Said Tenement. It was further averred that both the rate of gold and the devaluation of the Rupees should be taken into account at the time of the determination of the fair rent for the Said Tenement. The Vth Senior Civil Judge & Rent Controller Karachi (East) after affording all the parties the opportunity to adduce evidence was pleased to increase the rent of the Said Tenement from Rs.3,700/- per month to Rs. 425,250/- per month at the rate of Rs.150/- per Square Foot and which payment was liable to be made by the Petitioner from the date of the filing of the Rent Application after deducting the rent that was deposited in a MRC No. 39 of 2017, that had

been filed by the Petitioner, in eight equal monthly installments commencing from 1 April 2018 to 1 November 2018.

3. FRA No. 75 of 2018 was preferred by the Respondent No. 1 under Section 21 of the Sindh Rented Premises Ordinance, 1979 as against the order dated 12 March 2018 passed in Rent Case No.180 of 2017 seeking an increase in the fair rent payable by the Petitioner and the Respondent No. 2 to the Respondent No. 1, while FRA No. 70 of 2018 was maintained by the Petitioner against the same order seeking a reduction the fair rent payable by the Petitioner and the Respondent No. 2 to the Respondent No.

1. Both Appeals were heard by the IXth Additional District Judge & MCAC Karachi (East) and who by a common judgment dated 31 October 2019 was pleased to modify the order dated 12 March 2018 passed in Rent Case No. 180 of 2017 and to reduce the rent payable from Rs.425,250/- per month to a monthly rent of Rs. 283,500/- at the rate of Rs.100/- square foot and which would be payable from the date of the filing of Rent Case No. 182 of 2017 after deducting the amount deposited in MRC No.39 of 2017 and which amount would be payable in sixteen equal monthly installments commencing from 30 November 2019.

4. Being aggrieved and dissatisfied by the consolidated Judgement dated 30 October 2019 passed by the IXth Additional District Judge (MCAC) Karachi (East) in FRA No. 70 of 2018 and FRA No.75 of 2018, the Petitioner maintains this Petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 and contends that while under Section 8 of the Sindh Rented Premises Ordinance, 1979 the Rent Controller has the jurisdiction to adjudicate as to the fair rent that would be payable in respect of a tenement, on the basis of the evidence adduced against the criteria mentioned in that section it was incumbent on the Vth Rent Controller Karachi (East) in the Judgement dated 13 March 2018 passed in Rent Case

No.182 of 2017 to pass a speaking order which should justify the increase of rent from Rs.3,700/- per month to Rs. 425,250/- per month. He further contended that there was no basis that existed in law for such an increase to be sustained and stated that no evidence had in fact been adduced before the Vth Rent Controller Karachi (East) in Rent Case No.182 of 2017 to fix the Fair Rent at Rs. 425,000 per month or for that matter by the IXth Additional District Judge (MCAC) Karachi (East) in FRA No. 70 of 2018 and FRA No.75 of 2018 to fix the rent at Rs. 283,500/- per month.

5. Mr. Iftikhar Javaid Qazi entered appearance on behalf of the Respondent No. 1 and while relying on a decision reported as **Singer Pakistan Limited vs Arshad Riaz Fazail and 2 others**¹ stated that it was settled that concurrent findings of two courts should not generally be disturbed by this Court in its jurisdiction under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973. He further contended that in a decision of this Court reported as **A. Abdul Khaliq Shah, Halwa Sohan Merchant vs. District Judge, Karachi East and others**² it was held that questions of fact, such as reevaluation of rent, should not be reconsidered by this Court in its jurisdiction under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973. He next relied on the decision reported as **Mukhtarul Omar vs. Messrs State Life Insurance Corporation of Pakistan and 2 others**³ to state that there was no limit to the amount that the Rent Controller could fix fair rent. He continued by relying on a decision reported as **Oceanic International (Private) Limited vs. Messrs Lalazar Enterprises**⁴ to state that while considering an issue of fixing a fair rent the Rent Controller had jurisdiction to go beyond the evidence recorded and to take judicial notice on the basis of his personal knowledge regarding factors

¹ 2013 CLC 739

² 2004 MLD 13

³ 2009 YLR 204

⁴ 2009 MLD 911

involved in the determination of fair rent. He also relied on a decision reported **Abdul Rehman vs. Zia ul Haque Makhdoom**⁵ to submit that the payment of an amount as Pagri would not have any bearing on the Rent Controller while he fixes the fair rent of a tenement under Section 8 of the Sindh Rented Premises Ordinance, 1979. He next relied on the decisions reported as **State Life Insurance Corporation vs. Messrs British Head and Footwear Stores and others**,⁶ **Raab Coffe House vs. Muhammad Bakhsh & Sons. Through Mangining Partner**,⁷ and **Habib Bank Ltd. vs. Rais Ahmed Khan**⁸ to state that the Rent Controller can look into any one of the factors or a combination of the factors mentioned in Section 8 of the Sindh Rented Premises Ordinance, 1979. While fixing the Fair Rent he contended that as per the decision of the Supreme Court of Pakistan reported as **Volkart (Pakistan) Ltd., Karachi vs. Interavia Pakistan Limited, Karachi**⁹ it has been held that the Rent Controller had the requisite jurisdiction to fix the rent from the date of the filing of the application and that as per the decision reported as **Mazharul Islam vs. Mst. Mafia**¹⁰ a new landlord was entitled to be paid rent from the date of his becoming the owner of a tenement.

6. I have heard the Counsel for the Petitioner and the Respondent No. 2 as well as the Counsel for the Respondent No. 1 and have perused the record. The jurisdiction of the Rent Controller to fix a “fair rent” is conferred by Section 8 of the Sindh Rented Premises Ordinance, 1979 and which reads as under:

“ ... 8. Fair Rent

⁵ 2010 CLC 99

⁶ 2018 SCMR 581

⁷ 2013 MLD 239

⁸ PLD 2017 Sindh 542

⁹ 2001 SCMR 671

¹⁰ PLD 1991 SC 835

The Controller shall, on application by the tenant or landlord determine fair rent of the premises after taking into consideration the following factors:—

(a) the rent of similar premises situated in the similar circumstances, in the same or adjoining locality;

(b) the rise in cost of construction and repair charges;

(c) the imposition of new taxes, if any, after commencement of the tenancy; and

(d) the annual value of the premises, if any, on which property tax is levied.

(2) Where any addition to, or improvement in, any premises has been made or any tax or other public charge has been levied, enhanced, reduced or withdrawn in respect thereof, or any fixtures such as lifts or electric or other fittings have been provided thereon subsequent to the determination of the fair rent of such premises, the fair rent shall, notwithstanding the provisions of section 9 be determined or, as the case may be, revised after taking such changes into consideration."

These provisions have come to be interpreted by the Supreme Court of Pakistan in the decision reported as **Messrs Olympia Shipping And Weaving Mills. Ltd Vs. State Life Insurance Corporation of Pakistan**¹¹

wherein it was held that:

" ... *Apart from the considerations stipulated in section 8. of the Ordinance it is a matter of common knowledge that there has been enormous inflation in the cost of living, cost of construction, maintenance, renovation and upkeep of the urban properties. **So far as the law is concerned, section 8 does not lay down any fetters on the power of the Rent Controller or the Appellate Authority to fix the fair rent from a particular date. It would thus, follow that very wide discretion has been conferred by law on the Rent Controller to fix the fair rent from the date of application or from the date of order and in suitable' cases even from a date between the two events. The discretion vested in the Rent Controller as well as the Appellate Court is, however, not arbitrary or whimsical. Discretion in fixing the fair rent as well as the period from which it would be made payable is to be exercised judiciously with great care and caution, being in the nature of public trust. No inflexible rule of law could be laid down as to date of payment of fair rent because it would depend on the facts and circumstances of each case.** ...*

16. Viewed in the light of the language employed by the Legislature and the earlier precedents it may be observed that four factors incorporated in law are in the nature of guiding principles for the Rent Controller for determination of fair rent. The cumulative effect of all these factors being quite relevant and helpful in arriving at a just conclusion must be given due weight. Nevertheless, common ground available in most of cases would be the prevalent market rent of the similar premises situated in similarly circumstances in the same or adjoining locality. **It may thus, be made clear that existence of all the four conditions is not the**

¹¹ 2001 SCMR 1103

invariable rule of law and presence of all factors in a case might lead to appreciation in determining rate of rent for the purpose of fair rent. Absence of any of the factors would not, in any case, prejudice the case of the applicant before the Rent Controller.

(Emphasis is added)

As is apparent the Supreme Court of Pakistan has hereinabove clarified two issues:

- (i) when determining the “Fair Rent” while it is incumbent on the Rent Controller to consider the four factors mentioned in Section 8 of the Sindh Rented Premises Ordinance, 1979, but it is not necessary that each of those four factors must be present for the Rent Controller to exercise such a jurisdiction and the Rent Controller has the right to exercise his jurisdiction if any one or more of the factors indicated in Section 8 of the Sindh Rented Premises Ordinance, 1979 exist.¹²

- (ii) While a discretion vests with the Rent Controller to determine the date from when the “Fair Rent” should become payable by the tenant e.g. from the date of the filing of the application or the date of the judgement or in installments such a discretion should not be exercised arbitrarily and should be exercised in the nature of a “public trust.”¹³

7. On the basis of the above principles as settled by the Supreme Court of Pakistan I am left to consider as to whether there was any evidence of any of the four factors that are contained in Section 8 of the Sindh Rented Premises Ordinance, 1979 for the Vth Rent Controller Karachi (South) in

¹² See also *Muhammad Farooq Vs. Abdul Waheed Siddiqui And Others* 2014 SCMR 630, *State Life Insurance Corporation Of Pakistan And Another Vs. Messrs British Head And Footwear Stores And Others* 2018 SCMR 581; *Akhtar Kamran (Deceased) Through Legal Heirs Vs. Pervaiz Ahmed And Others* 2023 SCMR 1147

¹³ See also *Khyber Insurance Company Limited vs. Pakistan National Shipping Corporation* PLD 1994 SC 725

Rent Case No. 182 of 2017 or for that matter the IXth Additional District Judge (MCAC) Karachi (East) in FRA No. 70 of 2018 and FRA No.75 of 2018 to exercise their jurisdiction to determine the fair rent of the Said Tenement. It is apparent that it is common ground as between the Petitioner and the Respondent No. 1 that the rent of the Said Tenement has not been increased from the year 1974 up to the year the 2017. Be that as it may, it cannot be said that the Rent Controller can unilaterally increase the rent simply because the rent has not been increased from the year 1974 up to the year 2017, it remains incumbent on the Rent Controller to examine the evidence adduced and on such a basis to assess what the "Fair rent" of the Said Tenement should be within the perimeters of the factors mentioned in Section 8 of the Sindh Rented Premises Ordinance, 1979.

8. I have perused the evidence and it seems that the evidence that was adduced by the Respondent No. 1 were property tax invoices and which do show a progressive increase of the annual rental value of the property as assessed by the Province of Sindh under the provisions of Sindh Urban Immovable Property Tax Act, 1958. This document would certainly come within the perimeters of clause (d) and, to my mind, clause (c) of Section 8 of the Sindh Rented Premises Ordinance, 1979 and which would show that the annual rental value that was assessed by the Province of Sindh in the year 2008-2009 at a sum Rs. 29,212.33 per month when compared as against the existing rent of Rs. 3,700 would amount to a near 800% increase in such rates. In addition the Petitioner had in his deposition also candidly conceded that the rent of a residential flat in the same building was being tendered at the rate of Rs. 50,000 per month and which would be a factor that the Rent Controller could look into in terms of clause (a) of Section 8 of the Sindh Rented Premises Ordinance, 1979. There being evidence of three of the four elements of Section 8 of the Sindh Rented Premises Ordinance, 1979 the Vth Rent Controller Karachi (East) in Rent Case No.

182 of 2017 has assessed the Fair rent of the Said Tenement to be Rs.425,250/- per month at a rate of Rs.150/- per square foot.

9. While examining the rationale applied by the Vth Rent Controller Karachi (East) in Rent Case No. 182 of 2017 it seems that the Court took into account the location of the property and the increase in taxes and the rent of residential premises in the area and came to the conclusion that a rent of Rs. 150 per square foot was "Fair Rent". The issue was reconsidered in the consolidated Judgement dated 30 October 2019 by IXth Additional District Judge (MCAC) Karachi (East) in FRA No. 70 of 2018 that has been maintained by the Petitioner and FRA No.75 of 2018 wherein that Court while examining the evidence decreased the rent to Rs. 233,500 per month at a rate of Rs. 100 per square foot for the Said Tenement. Having examined the evidence I do not think that the rent that has been assessed was not based on the evidence available or for that matter that a speaking order has not been passed in the Judgement dated 30 October 2019 passed by the IXth Additional District Judge (MCAC) Karachi (East) in FRA No. 70 of 2018 and FRA No.75 of 2018. Clearly if a residential flat in the same building would fetch a rent of Rs. 50,000 per month, a large commercial shop on the ground floor would be a far more valuable property and should be assessed at a higher rate. Needless to say, the fair rent having being determined in the Judgement dated 30 October 2019 passed by the IXth Additional District Judge (MCAC) Karachi (East) in FRA No. 70 of 2018 and FRA No.75 of 2018, within the limits prescribed in Section 8 of the Sindh Rented Premises Ordinance, 1978, I am therefore of the opinion that clearly there would be no basis for me to overturn such a finding in my jurisdiction under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 and which does decision does not merit any interference. This Petition must therefore fail.

10. For the foregoing reasons, I am of the opinion that there is no illegality or infirmity in the consolidated Judgement dated 30 October 2019 passed by the IXth Additional District Judge (MCAC) Karachi (East) in FRA No. 70 of 2018 and FRA No.75 of 2018 and the modification of the Judgement dated 13 March 2018 passed by the Vth Rent Controller Karachi (East) in Rent Case No.182 of 2017 was correct. This Petition is therefore misconceived and is dismissed with no order as to costs.

J U D G E

Karachi Dated: 30 August 2023.

Nasir P.S.