

*ORDER SHEET***IN THE HIGH COURT OF SINDH, KARACHI**

*Before: Nadeem Akhtar, J&
Mohammad Abdur
Rahman, JJ,*

C. P. No. D – 8219 of 2017

Hamdani Brothers
Vs.
Federation of Pakistan & others

For orders as to maintainability of petition :

Petitioner: Through Mr. M. Ibrahim Azmi, Advocate
Respondent Nos.1 &3 : Nemo .
Respondent No.2: Through Mr. M. Akram Tariq, Advocate
Date of hearing: 14.11.2023

ORDER

MOHAMMAD ABDUR RAHMAN J. The Petitioner has maintained this Petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 as against an Order dated 15 September 2017 passed by the Revisional Authority/Secretary Ministry of Religious Affairs and Interfaith Harmony, Islamabad who had dismissed Case No. 3-129/2016-Rev and upheld an order dated 29 December 2014 passed by the Chairman Evacuee Trust Property Board, Government of Pakistan who had determined the rent of an Evacuee Trust Property bearing Unit No. M-R. 1/52, G-1 (Commercial) Murad Khan Road, Jodia Bazar, Karachi (hereinafter referred to as the "Demised Premises") at an amount of Rs. 3,000 (Rupees Three Thousand) per month.

2. The Petitioner is admittedly a tenant of the Respondent No.1 and holds the Demised Premises at a rent of Rs. 1,643 (Rupees One Thousand Six Hundred Forty Three) per month. It is admitted by both the Petitioner

and the Respondents that the Demised Premises, under Section 6 of the Evacuee Trust Properties (Management and Disposal) Act, 1975, vest in and belong to the Respondent No. 1 (hereinafter referred to as the “1975 Act”).

3. Section 3 of the 1975 Act constitutes an Evacuee Trust Property Board (hereinafter referred to as the “Board”) which is a body corporate and in which, under Sub-Section (1) of Section 4 of the 1975 Act, vests all the property which is designated as “Evacuee Trust Property”. Under Clause (d) of Sub-Section (2) of Section 4 of the 1975 Act a function of the Board is clarified to be:

“ ... *to sell dispose of, or **transfer** to such person or body, and on such terms and conditions, as the Federal Government, may direct or with the prior approval of the Federal Government make an endowment of, **or otherwise manage**, evacuee trust property consistent with the objects of this Act or **a scheme** or for any other object approved by the Federal Government.”*

(Emphasis is added)

Further under Clause (f) of Sub-Section (2) of Section 4 of the 1975 Act also included the right to:

“ ... *to assess or reassess the rent or lease amount of the evacuee trust property;*”

4. The Board, under Section 4 of 1975 Act, clearly having the power to transfer Evacuee Trust Property in accordance with a scheme had settled such a scheme, duly approved by the Respondent No. 1 under Section 30 of the 1975 Act, and which is entitled The Scheme for the Management and Disposal of Urban Evacuee Trust Properties, 1977 (hereinafter referred to as the “1977 Scheme”) to *inter alia* deal with issues pertaining to the renting of **built up** Evacuee Trust Property. the general terms which were elaborated in Clause 3 of the Scheme as under:

“ ... **3. Tenancy**

(i) The tenant of the Evacuee Trust Property shall hold the property subject to the provisions of the Act, the Scheme, rules and the instructions issued from time to time by the Evacuee Trust Property Board. Inter alia the tenancy would be subject to the following conditions:-

(a) That the tenant shall pay the monthly rent in advance by the 10th of each month and in case of annual lease, the lease money shall be paid by the 10th of the first month of the lease year.

(b) In case of default in payment by the above said due date surcharge @ 10% shall be charged.

(c) The tenant shall not make any addition / alternation or new construction without obtaining prior written permission from the competent authority of the Evacuee Trust Property Board.

(d) The tenant shall not transfer, assign, sublet or in any other manner alienate tenancy / lease to any person.

(e) The tenant shall use the property only for the purpose for which the tenancy was granted / held by the tenant. If the tenant desires to use the residential premises for commercial purposes he shall apply to the District Officer / Competent Authority of the Evacuee Trust Property Board for the said purpose. Such Officer / Authority may grant the permission on such terms and conditions as to the rent and period as may be determined by the Competent Authority. The enhancement of rent on this account shall have no effect on periodical re-assessment of rent in accordance with the Scheme or instructions of the Evacuee Trust Property Board.

(f) The tenant shall be liable to pay the water, electricity and other charges / taxes.

(g) Omitted vide notification No. S.R.O._____(1)/2000 dated 14-09-2000.

(h) Any other condition that may be prescribed by the Evacuee Trust Property Board.”

5. Under the provisions of Clause 10 of the Scheme the power was conferred on the District Officer of the Board, as defined in Article (f) of Sub-clause (i) of Clause (2) of the Scheme, to assess or reassess the rent of the each sub-unit or property in accordance with the following procedure:

“ ... **10.(i)** *Assessment / re-assessment of rent of each sub-unit or property shall be made w.e.f 01-07-*

2006 by the District Officer concerned in the following manner:-

1. He shall assess or re-assess the rental value of each sub-unit or property keeping in view the market rent and rent of other properties in the vicinity in similar circumstances;

2. He shall make the proposed assessment or re-assessment of rent of the sub-unit or property openly available for inspection by the tenants and general public;

3. He shall give a notice to the general public and the tenant indicating proposed assessment or re-assessment of rent and shall give 15 days time from the date of receipt of notice, for filing objections, if any;

4. He shall fix the assessed or re-assessed rent of the sub-unit or property after giving opportunity of hearing to the tenant and objectionist, if any; and

5. He shall complete the entire process within a period of 60 days from the issuance of first notice, which may be further extendable by the Chairman on merit.

(ii) *The Chairman or the concerned Administrator may at any time, call for the record of any property, to check the correctness or propriety of assessment or re-assessment and fixation of rent of that property and may pass such orders as deemed fit after giving opportunity of hearing to the parties.”*

Once, the rent has been assessed, the District Officer has under Clause 11 of the Scheme been conferred with the power to re-assess or enhance the rent “after every six years” in accordance with the procedure laid down in Clause 10 and which in the case of an enhancement will be “at the rate of eight per cent per annum.”

6. It is common ground as between the Petitioner and the Respondent that the Petitioner is a tenant of the Demised Premises and which is an Evacuee Trust Property that was, prior to a reassessment being conducted, held by the Petitioner as against a rent of Rs.1,643 (Rupees one thousand

six hundred forty three only) per month. The Rent was, on 16 June 2006, assessed under Sub-Clause (i) of Clause 10 of the Scheme by the Assistant Administrator (who comes with the definition of the expression "District Officer") at Rs. 3,500 (Rupees Three Thousand Five Hundred) per month with effect from 1 July 2006. The Petitioner thereafter preferred an Appeal bearing No. 816 of 2006 as against the order of the Assistant Administrator under Sub-Section (a) of Section 16 of the 1975 Act, before the Administrator of the Board and who while allowing the Appeal, had reduced the rent to a sum of Rs. 3,000 (Rupees Three Thousand only) per month. It seems that thereafter the rent of the Demised Premises is being increased at a rate of 8% per annum in accordance with Sub-Clause (ii) of Clause 11 of the Scheme and which was objected to by the Petitioner and who preferred an appeal bearing Case No. PB/Appeal/45/09 under Sub-Section (b) of Section 16 of the 1975 Act before the Chairman of the Board and which was dismissed on 29 December 2014. The Petitioner thereafter preferred a Revision Petition bearing Case No. 3/129/2016-Rev under Section 17 of the 1975 Act before the Revisional Authority/ Secretary, Ministry of Religious Affairs and Interfaith Harmony, Islamabad and which was also dismissed on 15 September 2017. The Petitioner being aggrieved by the order dated 29 December 2014 passed by the Chairman of the Board in Case No. PB/Appeal/45/09 and the Order dated 15 September 2017 passed by the Revisional Authority/ Secretary, Ministry of Religious Affairs and Interfaith Harmony, Islamabad in Case No. 3/129/2016-Rev has maintained this Petition before this Court under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 impugning both of these orders.

7. Mr. M. Ibrahim Azmi entered appearance on behalf of the Petitioner and maintained that other shops in the vicinity are being charged less rent than the Petitioner and as such both the order dated 29 December 2014 passed by the Chairman of the Board in Case No. PB/Appeal/45/09 and the

Order dated 15 September 2017 passed by the Revisional Authority/ Secretary, Ministry of Religious Affairs and Interfaith Harmony, Islamabad in Case No. 3/129/2016-Rev were in fact discriminatory and violated the Petitioners fundamental right as conferred to him under Article 25 of the Constitution of the Islamic Republic of Pakistan, 1973. He prayed that both the orders should be set aside and directions should be given to the Respondents to reassess the rent for the demised premises on the basis of the rent that had been charged by the Respondents for other tenements in the area. He did not rely on any case law in support of his contentions.

8. Mr. Akram Tariq representing the Respondent No. 2 contended that both the order dated 29 December 2014 passed by the Chairman of the Board in Case No. PB/Appeal/45/09 and the Order dated 15 September 2017 passed by the Revisional Authority/ Secretary, Ministry of Religious Affairs and Interfaith Harmony, Islamabad in Case No. 3/129/2016-Rev had been passed within the jurisdiction of each of the respective authorities and suffered from no illegality or infirmity and hence the Petition was not maintainable and liable to be dismissed. He also did not rely on any case law in support of his contentions.

9. We have heard both the Counsel for the Petitioner and the Respondent No. 2 and have perused the record. It is to be noted that the Petitioner has not argued that the actions of either the Chairman of the Board in passing the order dated 29 December 2014 in Case No. PB/Appeal/45/09 or the actions of the Revisional Authority/ Secretary, Ministry of Religious Affairs and Interfaith Harmony, Islamabad in passing the Order dated 15 September 2017 in Case No. 3/129/2016-Rev were passed in excess of either of their jurisdictions under the 1975 Act or that the assessment of rent was not made by each of them in accordance with the Scheme. The Petitioner has rather premised his arguments alleging discrimination i.e. that each of those authorities had assessed the rent of

other Evacuee Trust Properties, that were similar to the Demised Premises, at a rate lower than the rent that had been determined by the Respondents for the Demised Premises.

10. We have considered the arguments of the Petitioner and are unable to bring ourselves to agree with him. To allege discrimination, it would have been incumbent on the Petitioner to bring before either the Revisional Authority/ Secretary, Ministry of Religious Affairs and Interfaith Harmony, Islamabad in Case No. 3/129/2016-Rev or before the Chairman of the Board in Case No. PB/Appeal/45/09 or even before this Court some admitted documentary proof to indicate that the rent of premises similar to the Demised Premises had been assessed by either of the Respondents at a rent which was less than the rent that had been assessed for the Demised Premises or that the Respondents had failed to assess some other similar premises which is Evacuee Trust Property and are maintaining the rent of that property at a rent lower than the rent determined for the Demised Premises. Regrettably, the Petitioner has not attached any documentation to indicate that he had placed such evidence either before the Revisional Authority/ Secretary, Ministry of Religious Affairs and Interfaith Harmony, Islamabad in Case No. 3/129/2016-Rev or before Chairman of the Board in Case No. PB/Appeal/45/09 and has also failed to bring such evidence before this Court to impugn either of those orders on the ground of discrimination. That being the position we see no infirmity or illegality that can be demonstrated by the Petitioner in either of those two orders and which to our mind renders this Petition as not maintainable. This Petition must therefore be dismissed.

11. For the foregoing reasons having found that there is no infirmity in either the order dated 29 December 2014 passed by the Chairman of the Board in Case No. PB/Appeal/45/09 or in the Order dated 15 September 2017 passed by the Revisional Authority/ Secretary, Ministry of Religious

Affairs and Interfaith Harmony, Islamabad in Case No. 3/129/2016-Rev and there being not proof that had been adduced by the Petitioner before either of those forums or before this Court of any discriminatory behaviour, we had dismissed this Petition on 14 November 2023 and these are the reasons for that order.

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