

IN THE HIGH COURT OF SINDH, CIRCUIT COURT,  
HYDERABAD

Constitutional Petition No. S – 102 of 2024  
(Ali Nawaz Mughal v. Mst. Neelum & another)

Petitioner: Ali Nawaz Mughal, through  
Mr. Aamir Iqbal Memon, Advocate.

Respondent No.1: Mst. Neelum Mughal through  
Rao Muhammad Jawaid, Advocate.

Respondent No.2: II-Senior Civil Judge, Nawabshah,  
District Shaheed Benazirabad

Date of hearing : 05.4.2024

**ORDER**

**Khadim Hussain Soomro, J.:-** Through this Constitutional Petition, the  
Petitioner seeks the following relief(s):-

"i. Declare that the impugned interim order dated 09.01.2024,  
passed by the Court of learned II-Senior Civil Judge/ Rent  
Controller Shaheed Benazirabad/ respondent No.2 is unlawful  
against the facts and law, and such order is liable to be set-aside;

ii. This Hon'ble Court may kindly be pleased to call the R&P  
from the Court of learned II-Senior Civil Judge/ Rent Controller  
Shaheed Benazirabad/ respondent No.2 and after perusal, the  
R&Ps set-aside the order dated 09.01.2024;

iii. After set-aside the order dated 09.01.2024, this Hon'ble  
Court may kindly be issue the directions to learned trial Court for  
implead the above Intervenor/ petitioner as the most necessary  
party and proper verifying the Rent Agreement dated 28.4.2023,

and the matter may be decided on the merits, after providing the full opportunity to the parties;

iv. Any other relief that this Honourable Court may deem appropriate."

2. Brief facts of the case are that the petitioner has impugned an order dated 09.01.2024 passed by learned II-Senior Civil Judge/ Rent Controller, Shaheed Benazirabad R.A. No.06/2023 re. Mst. Neelum vs. Kamran and others, whereby the tenants Kamran Khan and Hafiz Zahid Ali ("tenants") were directed to pay the rent as per Section 16(1) of the Sindh Rented Premises Ordinance, 1979 of every month from January 2024.

3. Learned counsel for the petitioner submits that the petitioner claimed to be the bonafide purchaser of the rented premises, which he purchased through an agreement dated 04.10.2023 for lawful consideration from the respondent in the presence of witnesses and the same is attested by Notary Public and the respondent No.1 was not competent to execute the Rent Agreement in favour of said tenants; that there was no relationship of landlord and tenants between the respondent No.1 and the said tenants; that the Rent Agreement dated 02.6.2022 is a false and manipulated document; that the petitioner moved an application under Order 1 Rule 10 C.P.C. for joining him as a party in the above-cited rent application, which is pending adjudication before the Rent Controller, however, during the pendency of his application, the learned Rent Controller passed an order whereby tenants were directed

to remit the rent, which is illegal, unlawful and without jurisdiction and the same is liable to be set aside.

4. Learned counsel for respondent submits that there is a relationship of landlord and tenants between the respondent and the said tenants and such Rent Agreement dated 28.6.2022 was reduced into the writing between them, and an amount Rs.36,300/- was fixed for monthly rent; that in violation of the terms and conditions of the Rent Agreement, the tenant namely Kamran had sublet the rented premises to Hafiz Zahid Ali by altering rented premises without prior permission from the respondent; that the said tenants also committed willful default in the payment of rent from the month of October 2022 to onwards; that neither respondent executed Sale Agreement in favour of the petitioner nor received sale consideration amount as alleged nor handed over the possession to him; that the Sale Agreement is a forged and manipulated one. He lastly requested that the Petition is liable to be dismissed.

5. I have heard the learned counsel for the parties and perused the material available on record.

6. The record reveals that respondent No.1 filed an application under Section 16(A) of the Sindh Rented Premises Ordinance, 1979, against the tenants, which was allowed by the Rent Controller vide order dated 09.01.2024, whereby the tenants were directed to deposit the previous as well as current rent amount in Court. The impugned order was passed against the tenants who had not challenged the same before this Court, but the petitioner has come forward by impugning the order of the Rent Controller, which is apparently not against him. When the petitioner has

not been joined as a party, he has no locus standi to file the instant petition. The right, which is the foundation of an application under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, is a personal and individual right. The legal right may be a statutory right or a right recognized by the law. A person can be said to be aggrieved only when a person is denied a legal right by someone who has a legal duty to perform relating to the right. There must not only be a right but a 'justiciable' right in existence to give jurisdiction to the High Court in the matter. Unless whatever is right, personal or otherwise. The petitioner has failed to establish the right. Furthermore, under Art.199, it can only be invoked to enforce rights and does not create a right.

7. The legal maxim 'Ubi jus ubi remedium' (wherever there is a right, there is a remedy). As mentioned above, the maxim establishes a fundamental legal principle, affirming that an individual has a lawful entitlement to a concomitant recourse to initiate legal proceedings in a court unless the Court's jurisdiction is precluded. According to the rule of jurisdictional prudence, the courts usually show the restraint with the directions to the parties first to take the recourse of an alternate and or equally effective mechanism and framework of remedy provided rather than to take departure to surpass or circumvent such remedy. Reliance can be placed in the case of the Government of Punjab through the Secretary, Schools Education Department, Lahore and others v. Abdur Rehman and others (2022 S.C.M.R. 25). Admittedly, the petitioner exhausted the remedy by filing an application under order 1 rule 10 C.P.C. in the rent application as well as a suit for specific performance of the contract on the basis of the sale agreement, and both the proceeding

are pending adjudication let the trial court to decide the fates of these proceedings in accordance law. Consequently the instant Petition is not maintainable.

8. It is important to note that there is a notable distinction between writs under Article 199 (1)(a)(ii) & (b)(ii) of the Constitution of the Islamic Republic of Pakistan, 1973, when it comes to the aggrieved person. Specifically, a writ of Certiorari can only be initiated by an aggrieved person, and it is solely the aggrieved person who has the authority to seek a declaration in a writ of Certiorari. In order to bring a case before the High Court based on constitutional jurisdiction, it is necessary to demonstrate that one's legal or fundamental rights have been violated, and he must have a locus standi or be an aggrieved party. However, in this particular case, the petitioner did not meet the criteria of being aggrieved; he claimed his right on the basis of the sale agreement, which does not create any right, title or legal character, as per the counsel for the petitioner, he has filed a Suit for Specific Performance of the Contract which is pending adjudication before the Court of competent jurisdiction. Reliance is placed upon *Montgomery Flour and General Mills Ltd., Montgomery v. Director, Food Purchases, West Pakistan and others* PLD 1957 (W.P) Lahore 914; *Imran Khattak and another v. Ms. Sofia Wagar Khattak, PSO To Chief Justice and others* 2014 SCMR 122; *Hafiz Hamadullah v. Saifullah Khan and others* PLD 2007 SC 52 and *N.W.F.P. Public Service Commission and others v. Muhammad Aril and others* 2011 SCMR 848 rel. In other words, the right that forms the basis of an application under Article 199 of the Constitution is personal and individual. Legal rights can be either

statutory rights or rights recognized by the law. One can argue that a person is considered aggrieved only when they are deprived of a legal right by someone obligated to fulfil it. There must be a valid and enforceable right in existence for the High Court to have jurisdiction in the matter. Without establishing a valid and substantiated right, whether personal or otherwise, no order can be issued under Article 199. In the present case, the petitioner failed to substantiate a right that can be enforced through the petition. The reliance can be placed on a plethora of case laws, such as the case of *Rifat Parveen v. Selection Committee Principal, Bolan Medical College* PLD 1980 Quetta 10; *Sheoshankar v. M.P. State Govt.* A.I.R. 1951 Nag. 58; *Sheoshankar v. the State* I.L.R. 1951 Nag. 646; *O. M. Parkash v. The State* A.I.R. 1955 All. 275; *Balochistan Bar Association v. Govt. of Balochistan* PLD 1991 Quetta 7; *Jibendra Kishore Achharyya Chaudhory and 58 others v. The Province of West Pakistan and Secretary Finance and Revenue Depatt. Govt. of East Pakistan* PLD 1957 SC 9; *Golam Sarwar Mollan v. Election Tribunal* PLD 1965 Dacca 86; *Pakcom Limited v. Federation of Pakistan* PLD 2011 SC 44; *Shirin Munir v. Government of Punjab* PLD 1990 SC 295; *Muntizma Committee v. Director, K.A.* PLD 1992 Kar. 54; *Mahmoona v. Ilam Din* PLD 1984 Lah. 228; *A.F. Farms and Industries v. Development Commr* A.I.R. 1953 Assam 155; *Mahboob Khan v. Deputy Commissioner* A.I.R. 1953 Assam 145 and *Dineshcharan v. State of MB* A.I.R. 1953 Madh-B 165 ref.

9. Reverting to the claim of the petitioner and respondent, the claim of the petitioner is on the basis of the Sale Agreement, the genuineness of which cannot be decided in a writ jurisdiction; consequently, no

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observation can be given regarding the Rent Agreement, i.e., between the respondent and the tenants, who are not before this Court. Furthermore, this Court cannot make any observations regarding the relationship between landlord and tenants. Let the trial Court decide the same after leading evidence, preferably within three months from the date of this Court.

These are the reasons of my short order dated 04.5.2024. Instant Petition stands dismissed.

JUDGE

asim/pa