THE HIGH COURT OF SINDH KARACHI

Present:
Mr. Justice Zulfiqar Ali Sangi

C.P. No. S – 81 of 2022
[Cutchi Memon Markazi Jammat Karachi vs. Aslam Banothia & others]

Petitioner	:	Cutchi Memon Markazi Jammat Karachi Through Syed Ehsan Raza, Advocate.
Respondent No.1	:	Aslam Banothia through Mr. Irfan Ali, Advocate

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Date of hearing	:	04.11.2026
Date of decision	:	04.11.2026

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O R D E R

Zulfiqar Ali Sangi J.– Through the instant constitutional petition, the petitioner has called into question the judgment dated 22.10.2021 passed by the learned VIIth Additional District Judge (MCAC), Karachi South, in First Rent Appeal No.44 of 2021, whereby the appeal preferred by the petitioner against the order dated 03.02.2021 passed by the learned Vth Rent Controller, Karachi South, in Rent Case No.1110 of 2019 was dismissed, thereby maintaining the order whereby the petitioner's application under Section 8 of the Sindh Rented Premises Ordinance, 1979 ***(hereinafter referred to as "the Ordinance")*** for fixation of fair rent in respect of the subject premises was dismissed.

2. Briefly stated, the facts giving rise to the instant petition are that the petitioner, namely Cutchi Memon Markzi Jamat Karachi, through its authorized representative, claiming to be managing the affairs of Haji Suleman Elias Trust, instituted an application under Section 8 of the Ordinance before the learned Rent Controller, Karachi South, seeking fixation of fair rent in respect of Flat No.603, Jillani Building, Plot No.TL-1, Survey No.27, D-3, Bheem Pura, Karachi ***(hereinafter referred to as "the subject premises")***, at the rate of Rs.15,000/- per month, calculated at Rs.30/- per square foot for an area measuring approximately 500 square feet. The case set up by the petitioner was that respondent No.1 had been

accommodated in the subject premises against his undertaking to vacate the portion of House No.30, situated at New Survey Nos.TL-2/41 and TL-2/42, Survey Sheet No.TL-2, Bheem Pura, Karachi, belonging to Haji Suleman Elias Trust. It was further alleged that respondent No.1 neither vacated the said premises nor paid any rent in respect of the subject premises, and had subsequently accommodated respondent No.2 therein. According to the petitioner, although the rent had not initially been settled between the parties, the respondents were nevertheless liable to pay use and occupation charges, and, therefore, the petitioner sought fixation of fair rent with effect from October 2015.

3. The respondents contested the rent application by filing written statements, wherein they specifically denied the existence of any relationship of landlord and tenant between the parties. Their stance was that they were descendants of Haji Suleman Elias, the founder of the Trust, and had been residing in the premises situated at Bheem Pura in their own capacity. It was further asserted that, pursuant to a decision of the Trust management to demolish the existing structure and construct a new building, the residents had temporarily been shifted to Jillani Building without any arrangement for payment of rent or execution of tenancy agreements. The respondents also denied that the subject premises had been let out to them by the petitioner.

4. The parties led their respective evidence, produced documentary material and were subjected to cross-examination. Upon conclusion of the proceedings, the learned Rent Controller, vide order dated 03.02.2021, dismissed the rent application, holding that the petitioner had failed to establish the relationship of landlord and tenant between the parties. The learned Rent Controller, inter alia, observed that neither any written tenancy agreement nor any oral agreement of tenancy had been established through cogent evidence. It was also observed that the petitioner's own pleadings disclosed that the rent was to be paid only after execution of a tenancy agreement, whereas no such agreement had ever been executed. The learned Rent Controller further took notice of the legal notice dated 11.04.2019 issued on behalf of the petitioner, wherein the respondents had been described as illegal

occupants of the subject premises, which was found to be inconsistent with the petitioner's assertion that they were tenants.

5. Being aggrieved, the petitioner preferred First Rent Appeal No.44 of 2021 before the learned VIIth Additional District Judge (MCAC), Karachi South, which was dismissed vide judgment dated 22.10.2021. The learned appellate Court, after examining the pleadings and evidence available on record, concurred with the findings recorded by the learned Rent Controller and held that, in the absence of proof of a landlord-tenant relationship, the jurisdiction of the Rent Controller could not be invoked for fixation of fair rent under Section 8 of the Ordinance. Hence, the instant constitutional petition.

6. Learned counsel for the petitioner contends that both the Courts below have failed to appreciate the evidence in its proper perspective and have misread and non-read material available on record. He submits that the subject premises belong to Haji Suleman Elias Trust and that the petitioner, being the managing body of the Trust, was competent to seek fixation of fair rent. He further contends that respondent No.1, during cross-examination, admitted his occupation of the subject premises and expressed willingness to pay rent, which, according to learned counsel, sufficiently established the relationship of landlord and tenant between the parties. He further argues that the respondents, having occupied the subject premises, cannot avoid their liability to pay rent or use and occupation charges merely on the ground that no formal tenancy agreement was executed. He submits that the definition of rent under Section 2 of the Ordinance encompasses such liability and that the learned Courts below have failed to consider the relevant provisions of law as well as the authorities relied upon by the petitioner. He, therefore, prays that the impugned judgments be set aside and the matter be decided in accordance with law.

7. Conversely, learned counsel for the respondents supports the concurrent findings recorded by both the Courts below and submits that the petitioner has miserably failed to establish the foundational requirement of a landlord-tenant relationship. He contends that the respondents have consistently denied their status as tenants and

maintained that their occupation of the subject premises was merely temporary, pursuant to an arrangement made by the Trust management for accommodating the residents during reconstruction of the original building. He further submits that the petitioner itself admitted in its rent application that no rent had been settled and that payment thereof was contemplated only upon execution of a formal tenancy agreement, which admittedly never took place. He also refers to the petitioner's own legal notice, wherein the respondents were described as illegal occupants, and submits that such contradictory positions disentitle the petitioner from invoking the jurisdiction of the Rent Controller. He, accordingly, prays for dismissal of the instant petition.

8. I have heard the learned counsel for the parties and examined the available record with their assistance. The controversy requiring determination is whether, in the facts and circumstances of the case, the petitioner succeeded in establishing the relationship of landlord and tenant between the parties so as to attract the jurisdiction of the Rent Controller under the Ordinance for fixation of fair rent.

9. It is an established principle of law that the existence of a relationship of landlord and tenant is a foundational jurisdictional requirement for invoking the provisions of the Ordinance. The initial burden to establish such relationship rests upon the party asserting it, and the same must be discharged through confidence-inspiring, cogent and legally admissible evidence. Mere ownership of the property, by itself, does not necessarily establish the relationship of landlord and tenant, nor does the mere occupation of premises by a person automatically confer upon such occupation the legal character of tenancy. The nature of possession and the circumstances in which it commenced are material considerations for determining the relationship between the parties.

10. In the present case, a perusal of the rent application itself reveals that, according to the petitioner's own version, the subject premises were allegedly provided to respondent No.1 against an arrangement whereby he was required to vacate the premises situated in Haji Suleman Elias Trust, and that the rent was to be paid only after execution of a tenancy agreement containing specific

terms and conditions regarding payment of monthly rent. Thus, the petitioner's own pleadings do not disclose that any monthly rent had been mutually settled or that a concluded tenancy arrangement had come into existence between the parties. Rather, the execution of a tenancy agreement was projected as a future arrangement, which admittedly never materialized.

11. It is equally significant that the petitioner's authorized representative, during cross-examination, admitted that the respondents had never paid rent in respect of the subject premises. He also failed to produce any documentary material establishing the alleged tenancy or any witness who could substantiate the petitioner's assertion that the subject premises had been let out to respondent No.1. No specific date or period of commencement of the alleged tenancy was established through reliable evidence. Consequently, the mere assertion that the respondents were occupying the subject premises was insufficient to establish that such occupation was pursuant to a relationship of landlord and tenant.

12. Another material circumstance which cannot be overlooked is the legal notice dated 11.04.2019 (Exh.A/5) issued on behalf of the petitioner, wherein the respondents were described as illegal occupants of the subject premises. Such description is inconsistent with the petitioner's subsequent assertion that the respondents were tenants. The petitioner cannot simultaneously maintain that the respondents were illegal occupants and, at the same time, seek fixation of fair rent on the premise that they were tenants, without first establishing the legal character of their occupation. The said inconsistency further weakens the petitioner's case.

13. Learned counsel for the petitioner has placed considerable reliance upon the statement of respondent No.1 recorded during cross-examination, wherein he expressed willingness to pay rent. However, such an isolated answer cannot be read in disregard of the entire evidence, particularly when the respondents had consistently denied the existence of a landlord-tenant relationship in their written statement as well as in their affidavits-in-evidence. The learned Rent Controller has rightly considered the said statement in the context of the overall evidence and found that it did not amount

to an admission establishing tenancy. A stray or isolated answer elicited during cross-examination, particularly when considered against the consistent stance of a party and the remaining evidence, cannot by itself discharge the initial burden resting upon the petitioner.

14. The contention that the respondents are liable to pay use and occupation charges under the definitions contained in Section 2 of the Ordinance is also misconceived in the circumstances of the present case. The provisions relating to rent cannot be invoked independently of the foundational relationship contemplated under the Ordinance. The petitioner was first required to establish that the respondents occupied the subject premises in the capacity of tenants. In the absence of such proof, the question of determining fair rent under Section 8 of the Ordinance did not arise. Any claim concerning alleged unauthorized occupation or recovery of use and occupation charges, if otherwise maintainable, would have to be pursued before the competent forum in accordance with law.

15. It is also pertinent to observe that the petitioner has placed reliance upon documents concerning ownership of the property and its authority to manage the affairs of the Trust. However, even if the petitioner's ownership or authority to represent the Trust is accepted for the sake of argument, the same does not dispense with the independent requirement of establishing the relationship of landlord and tenant with the respondents. The issue before the Rent Controller was not merely whether the petitioner had an interest in the property, but whether the respondents occupied the subject premises under a tenancy created by or on behalf of the petitioner. On this material aspect, the petitioner failed to produce any convincing evidence.

16. The learned appellate Court has independently examined the material available on record and affirmed the findings of the learned Rent Controller. Both the Courts below have concurrently concluded that the petitioner failed to establish the relationship of landlord and tenant between the parties. No material illegality, jurisdictional defect, misreading or non-reading of evidence, or perversity has been pointed out which may warrant interference by this Court in its constitutional jurisdiction. It is settled that concurrent findings

of fact recorded by the Courts below are not ordinarily to be disturbed in constitutional jurisdiction unless such findings are shown to be perverse, arbitrary, based on misreading or non-reading of material evidence, or otherwise suffering from an error of law. No such exceptional circumstance is made out in the present case.

17. For the foregoing reasons, I find that the impugned judgment dated 22.10.2021 passed by the learned VIIth Additional District Judge (MCAC), Karachi South, in First Rent Appeal No.44 of 2021, as well as the order dated 03.02.2021 passed by the learned Vth Rent Controller, Karachi South, in Rent Case No.1110 of 2019, do not suffer from any illegality or infirmity warranting interference by this Court in exercise of its constitutional jurisdiction under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973. Consequently, the instant constitutional petition, being devoid of merit, is hereby **dismissed**. There shall be no order as to costs.

JUDGE