THE HIGH COURT OF SINDH KARACHI

Present:
Mr. Justice Zulfiqar Ali Sangi

C.P. No. S – 80 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	:	Afzal 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.43 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.1109 of 2019 was dismissed, thereby maintaining the order whereby the petitioner's application under Section 8 of the Sindh Rented Premises Ordinance, 1979, seeking fixation of fair rent in respect of Flat No.102, Jillani Building, Plot No.TL-1, Survey No.27, D-3, Bheem Pura, Karachi ***(hereinafter referred to as the "demised premises")***, was dismissed.

2. Briefly stated, the case of the petitioner is that Haji Suleman Ilyas Trust is a registered charitable trust functioning under the management of Cutchi Memon Markazi Jamat Karachi and is the owner of immovable properties bearing New Survey Nos.TL-2/41 and TL-2/42, Survey Sheet No.TL-2, situated at Bheem Pura, Karachi. It was asserted that the respondent was occupying the demised premises, which had allegedly been provided to him in lieu of his earlier accommodation situated within the premises of Haji

Suleman Ilyas Trust, subject to the understanding that he would vacate the previous accommodation and subsequently pay rent in respect of the demised premises upon execution of a formal tenancy agreement. According to the petitioner, despite occupying the demised premises since 10.10.2015, the respondent neither vacated the previous accommodation nor paid any rent, nor did he execute a tenancy agreement, despite service of legal notice dated 11.04.2019. It was further asserted that the prevailing rental value in the locality was Rs.30/- per square foot and, accordingly, the monthly fair rent of the demised premises, comprising approximately 500 square feet, was claimed at Rs.15,000/-, besides arrears of Rs.720,000/- for the period from October 2015 to September 2019. Consequently, the petitioner instituted proceedings under Section 8 of the Ordinance for fixation of fair rent.

3. The respondent contested the rent application by filing written statement, wherein he specifically denied the existence of any relationship of landlord and tenant between the parties. His case was that he belonged to the family of Haji Suleman Ilyas, the founder of the Trust, and had been residing in the Trust premises without payment of rent. It was further asserted that, owing to the proposed reconstruction of the old building belonging to the Trust, the respondent, along with other family members and occupants, was temporarily shifted to Jillani Building on the understanding that alternative accommodation would be provided upon completion of the proposed construction. It was maintained that neither any rent was agreed upon nor any tenancy agreement was executed between the parties, and that the respondent had never occupied the demised premises in the capacity of a tenant.

4. The learned Rent Controller, after recording the evidence of both parties and hearing their respective counsel, dismissed the application vide order dated 03.02.2021, holding that the petitioner had failed to establish the foundational relationship of landlord and tenant between the parties. The petitioner challenged the said order through First Rent Appeal No.43 of 2021; however, the learned appellate Court, vide judgment dated 22.10.2021, dismissed the appeal and maintained the findings recorded by the learned Rent Controller. Hence, the instant constitutional petition.

5. Learned counsel for the petitioner contends that both the Courts below have failed to properly appreciate the documentary as well as oral evidence available on record and have arrived at erroneous conclusions by misreading and non-reading of the material evidence. He submits that the petitioner is a registered charitable Trust and the demised premises belongs to the Trust; therefore, the respondent, being in occupation thereof, is under an obligation to pay rent or, at the very least, use and occupation charges. He further contends that the respondent, during his cross-examination, admitted that no rent had ever been paid and no tenancy agreement had been executed, which, according to learned counsel, does not absolve him of his liability to pay the charges for occupation of the premises. He argues that the definition of rent under Section 2 of the Sindh Rented Premises Ordinance, 1979, is sufficiently broad to encompass use and occupation charges. He further submits that the respondent's denial of the petitioner's title is contrary to the documentary record produced before the learned Rent Controller and that the principle of estoppel is attracted against him. According to him, the Courts below have failed to consider the relevant legal provisions and authorities cited on behalf of the petitioner and have consequently committed material illegality and irregularity warranting interference by this Court. He, therefore, prays that the impugned judgments be set aside and the matter be remanded for determination of fair rent in accordance with law.

6. Conversely, learned counsel for the respondent supports the concurrent findings recorded by both the Courts below and submits that the petitioner has miserably failed to establish the very existence of a relationship of landlord and tenant, which is a prerequisite for invoking the jurisdiction of the Rent Controller under the Ordinance. He contends that the petitioner, in paragraph No.5 of its own rent application, categorically acknowledged that rent was to be paid only after execution of a tenancy agreement, thereby demonstrating that no tenancy arrangement had been concluded between the parties. He further submits that no documentary or oral evidence was produced to establish that the respondent had ever entered into a tenancy arrangement with the petitioner or had paid rent in respect of the demised premises. He also points out that the legal notice dated 11.04.2019, produced by

the petitioner itself, described the respondent as an illegal occupant, which is wholly inconsistent with the petitioner's subsequent assertion that he was a tenant. He maintains that the learned Rent Controller rightly dismissed the application for want of jurisdiction and that the appellate Court has correctly affirmed the said findings. He, therefore, prays for dismissal of the instant petition.

7. I have heard learned counsel for the parties and have gone through the available record with their assistance. The controversy requiring determination in the instant petition 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 invoke the jurisdiction of the Rent Controller under the Sindh Rented Premises Ordinance, 1979, for fixation of fair rent under Section 8 thereof.

8. It is an established principle of law that the relationship of landlord and tenant constitutes the very foundation of proceedings under the Sindh Rented Premises Ordinance, 1979. A party invoking the jurisdiction of the Rent Controller must first establish, through cogent and reliable evidence, that the person against whom proceedings are instituted occupies the premises in the capacity of a tenant. Mere ownership of the property, by itself, does not necessarily establish the relationship of landlord and tenant, nor does the mere occupation of premises automatically confer jurisdiction upon the Rent Controller. Such relationship may arise from an express or implied agreement or by operation of law; however, its existence must be established on the basis of the pleadings and evidence brought on record.

9. In the present case, a perusal of the rent application reveals that the petitioner itself pleaded in paragraph No.5 that the respondent was to pay rent after execution of a tenancy agreement containing specific terms and conditions regarding payment of monthly rent. This assertion assumes significance because the petitioner has not pleaded that any concluded oral tenancy agreement was entered into between the parties, nor has it identified any particular date or occasion on which such tenancy was created. Rather, the petitioner's own case proceeds on the premise that execution of a formal tenancy agreement and

determination of rent were matters yet to be settled between the parties. Furthermore, during his cross-examination, the authorized representative of the petitioner admitted that the respondent had never paid rent in respect of the demised premises or the accommodation previously occupied by him within the Trust premises. He also acknowledged that no documentary evidence had been produced to establish the alleged tenancy of the respondent. The petitioner, therefore, failed to substantiate its assertion through any independent documentary or oral evidence demonstrating that the respondent had been inducted as a tenant in the demised premises.

10. Another material circumstance, which has rightly been taken into consideration by the Courts below, is the legal notice dated 11.04.2019, produced by the petitioner as Exhibit A/5. In the said notice, the respondent was described as an illegal occupant of the demised premises. Such description is inconsistent with the petitioner's subsequent assertion that the respondent was occupying the premises as its tenant. The petitioner cannot, on the one hand, characterize the respondent as an illegal occupant and, on the other hand, invoke the jurisdiction of the Rent Controller on the assertion that he is a tenant, without establishing the legal basis upon which such relationship is claimed to have arisen.

11. The contention of learned counsel for the petitioner that the respondent is liable to pay use and occupation charges under the definition of rent provided in Section 2 of the Ordinance is also misconceived in the circumstances of the present case. The statutory provisions relating to rent cannot be interpreted in isolation so as to confer jurisdiction upon the Rent Controller in every case involving occupation of immovable property. The applicability of the Ordinance presupposes the existence of a relationship of landlord and tenant, and the provisions concerning fixation of fair rent under Section 8 cannot be invoked merely on the ground that a person is occupying premises belonging to another. In the absence of proof of the foundational relationship, the question of determining fair rent does not arise.

12. Similarly, the argument based upon the principle of estoppel is of no assistance to the petitioner. The respondent's denial of the

relationship of landlord and tenant cannot, by itself, be treated as an admission of tenancy, particularly when the respondent has consistently maintained that he was shifted to the demised premises temporarily as an alternative accommodation in lieu of his previous residence within the Trust premises. Whether such arrangement gives rise to any independent civil right or liability is a matter distinct from the question of existence of tenancy and cannot be determined in proceedings under Section 8 of the Ordinance without establishing the requisite relationship.

13. It is also noteworthy that the respondent's defence regarding his association with the founder of the Trust and his temporary relocation to the demised premises remained substantially unshaken during cross-examination. The petitioner did not produce any convincing evidence to rebut the said defence or to establish that the respondent had been inducted as a tenant pursuant to any express or implied agreement. In these circumstances, the mere production of documents relating to ownership of the Trust property could not, in the absence of proof of tenancy, satisfy the legal requirement for invoking the jurisdiction of the Rent Controller.

14. So far as the impugned judgment passed by the learned appellate Court is concerned, the record reflects that the learned appellate Court considered the material pleadings, the relevant admissions made by the petitioner's authorized representative, and the contents of the legal notice relied upon by the petitioner itself. The appellate Court also examined the reasoning adopted by the learned Rent Controller and concluded that no illegality or material irregularity had been committed in dismissing the rent application. The findings recorded by both the Courts below are based upon an assessment of the evidence available on record and do not appear to suffer from any misreading or non-reading of material evidence warranting interference in constitutional jurisdiction.

15. t is settled that the constitutional jurisdiction of this Court is not intended to provide another forum for reappraisal of evidence or substitution of findings merely because a different view may also be possible. Interference is warranted only where the impugned orders suffer from patent illegality, jurisdictional defect, perversity, or material misreading or non-reading of evidence resulting in failure

of justice. The petitioner has not been able to point out any such infirmity in the concurrent findings recorded by the Courts below.

16. In view of the foregoing discussion, I am of the considered opinion that the petitioner has failed to establish the existence of a relationship of landlord and tenant between the parties, which was a necessary prerequisite for invoking the jurisdiction of the Rent Controller under the Sindh Rented Premises Ordinance, 1979. Consequently, the learned Rent Controller rightly dismissed the application under Section 8 of the Ordinance, and the learned appellate Court committed no illegality or material irregularity in maintaining the said order. No ground for interference by this Court in its constitutional jurisdiction is, therefore, made out. Accordingly, the instant constitutional petition, being devoid of merit, is hereby **dismissed**, along with pending applications, if any. However, the observations made herein are confined to the controversy regarding the existence of the relationship of landlord and tenant for the purposes of proceedings under the Sindh Rented Premises Ordinance, 1979, and shall not prejudice the rights of either party to seek appropriate remedy before the competent forum in accordance with law.

JUDGE