THE HIGH COURT OF SINDH KARACHI

Present:
Mr. Justice Zulfiqar Ali Sangi

C.P. No. S – 79 of 2022
[Cutchi Memon Markazi Jammat Karachi vs. Kamran Anwar & others]

Petitioner	:	Cutchi Memon Markazi Jammat Karachi Through Syed Ehsan Raza, Advocate
Respondent No.1	:	Kamran Anwar 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.42 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.1108 of 2019 was dismissed. Through the latter order, the application filed by the petitioner under Section 8 of the Sindh Rented Premises Ordinance, 1979 ***(hereinafter referred to as "the Ordinance")*** for fixation of fair rent in respect of Flat No.104, Jillani Building, Plot No.TL-1, Survey No.27, D-3, Bheem Pura, Karachi ***(hereinafter referred to as "the demised premises")***, was dismissed on the ground that the relationship of landlord and tenant between the parties had not been established.

2. The facts, in brief, as emerging from the record, are that the petitioner, claiming to be a registered charitable trust under the name and style of Haji Suleman Ilyas Trust, managed by Cutchi Memon Markazi Jamat Karachi, through its authorized representative, instituted proceedings under Section 8 of the Ordinance, seeking fixation of fair rent of the demised premises at the rate of Rs.15,000/- per month. It was the case of the petitioner

that the respondent was inducted into the demised premises in or about October 2015, in lieu of his occupation of a portion of the property belonging to the Trust situated at New Survey Nos.TL-2/41 and TL-2/42, Survey Sheet No.TL-2, Bheem Pura, Karachi. According to the petitioner, it was mutually understood that the respondent would vacate the premises belonging to the Trust and would pay rent in respect of the demised premises upon execution of a formal tenancy agreement. However, the respondent neither vacated the former premises nor paid any rent in respect of the demised premises. It was further asserted that despite service of a legal notice, the respondent failed to execute a tenancy agreement or pay the alleged occupational charges. Hence, the application for fixation of fair rent was filed.

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 property without payment of rent. It was further contended that, owing to the proposed demolition and reconstruction of the existing building of the Trust, he, along with other family members and occupants, was temporarily shifted to the demised premises at the instance of the then Chairman of the Trust, namely Afzal Kothari, under a mutual understanding that alternative accommodation would be provided upon completion of the proposed construction. It was maintained that no rent was ever agreed upon, nor was any tenancy agreement executed between the parties. Accordingly, the respondent prayed for dismissal of the rent application.

4. The parties led their respective evidence, including affidavits-in-evidence, documentary material and cross-examination. Upon conclusion of the proceedings, the learned Rent Controller, vide order dated 03.02.2021, dismissed the application, holding that the petitioner had failed to establish the foundational 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 proved; that the authorized representative of the petitioner had admitted the absence of documentary evidence regarding the alleged tenancy;

and that the petitioner's own legal notice described the respondent as an illegal occupant of the demised premises. The said order was assailed by the petitioner through First Rent Appeal No.42 of 2021, which was also dismissed by the learned appellate Court vide judgment dated 22.10.2021, maintaining the findings recorded by the learned Rent Controller.

5. Learned counsel for the petitioner contends that both the Courts below have failed to appreciate the evidence available on record in its proper perspective and have misread and non-read material evidence. He submits that the petitioner is the owner of the property through registered documents and, therefore, the respondent cannot dispute its status or deny the obligation to pay rent or occupational charges. He further contends that the respondent has admittedly been occupying the demised premises and has refused to pay rent as well as execute a formal tenancy agreement. According to learned counsel, the definition of rent under the Ordinance is sufficiently broad to encompass use and occupation charges, and the learned Rent Controller was, therefore, competent to determine fair rent under Section 8 of the Ordinance. He further argues that the respondent is estopped from denying the petitioner's status and that both the Courts below have failed to consider the legal position and authorities cited on behalf of the petitioner. He accordingly prays that the impugned judgments be set aside and the matter be remanded for determination of fair rent.

6. Conversely, learned counsel for the respondent supports the concurrent findings recorded by the Courts below and submits that the petitioner has 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. He contends that the petitioner's own pleadings and evidence establish that no tenancy agreement was executed and no rent was ever fixed or paid by the respondent. He further submits that the respondent was shifted to the demised premises temporarily as an alternative arrangement in lieu of his previous accommodation in the Trust property and that such occupation cannot, in the absence of any agreement or other legally recognized basis, be treated as a tenancy. He also points out that the petitioner's own legal notice described the respondent as an illegal occupant, which is inconsistent with its

subsequent assertion that he was a tenant. He, therefore, submits that the concurrent findings are based upon proper appraisal of the evidence and call for no interference in constitutional jurisdiction.

7. I have heard learned counsel for the parties and examined the available record with their assistance.

8. The controversy requiring determination in the instant petition is whether, in the absence of proof of a relationship of landlord and tenant between the parties, the petitioner could invoke the jurisdiction of the Rent Controller under Section 8 of the Ordinance for fixation of fair rent in respect of the demised premises. Before examining the merits of the rival contentions, it would be appropriate to observe that the jurisdiction of the Rent Controller under the Ordinance is attracted where the relationship of landlord and tenant, as contemplated by the relevant provisions of the Ordinance, is established. The determination of fair rent presupposes the existence of such relationship and cannot, by itself, be employed as a means to create or establish a tenancy where the foundational relationship is disputed and remains unproved.

9. In the present case, a perusal of the rent application itself reveals that, according to the petitioner's own assertion, the respondent was to pay rent only after execution of a tenancy agreement containing specific terms and conditions regarding payment of monthly rent. The relevant averment in paragraph No.5 of the rent application reads as follows:

> *"The opponent shall pay the rent after execution of tenancy agreement with specific terms of payment of monthly rent."*

The aforesaid assertion is of considerable significance, as it demonstrates that, according to the petitioner's own case, the execution of a formal tenancy agreement and determination of the terms of payment of rent were contemplated for the future. The petitioner, however, has not been able to establish through any documentary or oral evidence that such agreement was subsequently executed or that any independent oral tenancy arrangement was entered into between the parties.

10. It is an established principle that the initial burden to establish the existence of a relationship of landlord and tenant rests upon the party asserting such relationship. In the instant case, the petitioner was, therefore, required to establish through cogent and convincing evidence that the respondent occupied the demised premises in the capacity of a tenant. Mere assertion of ownership over the property or the factum of occupation by the respondent, without establishing the legal basis upon which such occupation commenced, would not, by itself, suffice to establish a tenancy. The petitioner has failed to discharge this initial burden. It is also evident from the evidence that the authorized representative of the petitioner admitted that no rent had ever been paid by the respondent in respect of the demised premises or the premises previously occupied by him in the Trust property. He further admitted that no documentary evidence had been produced to establish the alleged tenancy. The petitioner also failed to produce any independent witness who could substantiate its assertion that the respondent had been inducted as a tenant pursuant to an oral arrangement. Significantly, no specific date or period of commencement of the alleged tenancy was established through the evidence brought on record.

11. Conversely, the respondent consistently maintained that he belonged to the family of the founder of the Trust and had been shifted temporarily to the demised premises in consequence of the proposed reconstruction of the Trust property, without any agreement to pay rent. The learned Rent Controller, upon examining the evidence, particularly the cross-examination of the parties, observed that the material assertions made by the respondent regarding the circumstances in which he came into occupation of the demised premises had not been effectively challenged by the petitioner. No material has been brought before this Court to demonstrate that the said finding is perverse or based upon a misreading of the evidence.

12. Another significant aspect of the matter is the legal notice dated 11.04.2019, produced by the petitioner during the proceedings as Exhibit A/5. A perusal thereof reveals that the respondent was described by the petitioner itself as an illegal occupant of the demised premises. Such description is materially

inconsistent with the petitioner's subsequent assertion that the respondent was its tenant. Although the description of an occupant in a legal notice cannot, in every circumstance, be treated as conclusive of the legal relationship between the parties, the same constitutes a relevant circumstance which was rightly taken into consideration by the Courts below while assessing the petitioner's own case and the evidence produced in support thereof.

13. The contention of learned counsel for the petitioner that the respondent is estopped from denying the relationship of landlord and tenant on account of the petitioner's ownership documents is equally misconceived. Proof of ownership of the property and proof of the relationship of landlord and tenant are two distinct matters. Even if the petitioner's ownership over the property is accepted, such ownership, by itself, does not establish that the respondent entered into possession of the demised premises as a tenant. The petitioner was required to establish the latter relationship independently, which it failed to do. The principle of estoppel cannot be invoked to dispense with the requirement of proving the essential jurisdictional facts upon which the statutory jurisdiction of the Rent Controller depends.

14. Likewise, the argument that the definition of rent under Section 2 of the Ordinance includes use and occupation charges does not advance the petitioner's case. The question of liability to pay occupational charges, if any, is distinct from the question whether a relationship of landlord and tenant exists so as to attract the jurisdiction of the Rent Controller. The mere fact that a person is occupying premises does not automatically bring such occupation within the ambit of the Ordinance. Unless the foundational relationship contemplated by the statute is established, the provisions relating to fixation of fair rent under Section 8 cannot be invoked. Any claim founded upon an independent right or obligation concerning occupation of the property would have to be pursued before the competent forum in accordance with law.

15. I have also examined the impugned judgment passed by the learned appellate Court. It appears that the learned appellate Court considered the pleadings of the parties, the evidence recorded by the learned Rent Controller, the admissions made by the petitioner's

authorized representative during cross-examination and the contents of the legal notice produced by the petitioner. Upon such appraisal, the learned appellate Court concurred with the conclusion that no tenancy agreement, whether oral or written, had been established between the parties. The appellate Court also rightly noticed that the petitioner's own pleadings contemplated execution of a tenancy agreement in future, thereby undermining its assertion that a tenancy had already come into existence.

16. The grounds raised in the instant petition, in substance, seek reappraisal of the evidence and substitution of the concurrent factual findings recorded by the two Courts below with a different conclusion. However, no specific jurisdictional defect, material illegality, perversity or misreading and non-reading of evidence has been demonstrated which would warrant interference by this Court in exercise of its constitutional jurisdiction. Mere disagreement with the conclusions drawn by the Courts below, particularly where such conclusions are supported by the material available on record, does not furnish a lawful basis for invoking the extraordinary constitutional jurisdiction of this Court. It is also pertinent to observe that the petitioner has not been deprived of any remedy otherwise available to it under the law. The dismissal of the application under Section 8 of the Ordinance, on account of failure to establish the relationship of landlord and tenant, does not adjudicate upon any independent proprietary or possessory rights which the petitioner may otherwise be entitled to assert before the competent forum. I, therefore, refrain myself from expressing any opinion on the merits of such rights.

17. For the foregoing reasons, I am of the considered view that both the Courts below have rightly appreciated the controversy in the light of the pleadings and evidence available on record. The petitioner has failed to point out any illegality, jurisdictional infirmity, material irregularity or perversity in the impugned judgments warranting interference by this Court in its constitutional jurisdiction. Consequently, the instant constitutional petition, being devoid of merit, is hereby **dismissed**, and the impugned judgment dated 22.10.2021 passed by the learned VIIth Additional District Judge (MCAC), Karachi South, as well as the

order dated 03.02.2021 passed by the learned Vth Rent Controller, Karachi South, are maintained.

18. Needless to observe that the observations made hereinabove are confined to the controversy involved in the instant petition and shall not prejudice the rights and contentions of either party in any independent proceedings before the competent forum.

19. The petition stands dismissed accordingly.

JUDGE