

JUDGMENT SHEET  
**IN THE HIGH COURT OF SINDH,**  
CIRCUIT COURT, HYDERABAD.  
C.P.No.S-411 of 2012

DATE	JUDGMENT WITH SIGNATURE OF JUDGE
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1. For Katcha Peshi
2. For hearing of MA 5155/2012.
3. For hearing of MA 5156/2012.
4. For hearing of MA 5157/2012.

Petitioner	Wali Bhai Through Syed Ahsan Ali Shah Advocate.
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Respondents	Combined Investment (Pvt) Ltd, respondent No.3 Through Mr. Muhammad Hamayoon advocate.
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Date of hearing:	22.09.2014.
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Date of Judgment	<u>.10.2014.</u>
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**NAZAR AKBAR J:-** This constitutional petition has been filed by the petitioner against concurrent findings recorded by the learned Rent Controller in Rent Application No.13/2010 as well as learned appellate court in Rent Appeal No.02/2012 by their respective Judgments dated 16.11.2011 and 11.05.2012 whereby the ejectment of the petitioner was ordered from the commercial premises of ‘Palace Hotel’ on City Survey No.F/1165, Qazi Abdul Qayoom Road, Hyderabad (hereinafter referred to as the “**demised premises**”).

2. Briefly stated the facts leading to this petition are that the respondent No.3 filed rent case against the petitioner for his ejectment from the demised premises, which was leased out to the petitioner by its previous owner Mir Khalil ur Rehman and after his death, it was purchased by respondent No.3 from the Administrator of the estate of deceased Mir Khalil-ur-Rehman with the permission of this court. The last rate of rent was Rs.7000/- per month. The respondent No.3/applicant on acquiring the ownership served the

petitioner with notice dated 22.07.2000 under Section 18 of the Sindh Rented Premises Ordinance (hereinafter SRPO, 1979) regarding change of ownership of the demised premises and requested to enhance the rent from Rs.7000/- per month to Rs.75000/- per month with effect from June, 2000. The respondent No.3/landlord through the same notice also informed that the demised premises is required for personal bonafide need. Subsequently, the respondent No.3/ applicant served a legal notice dated **28.9.2000** which was replied by the petitioner on **19-10-2000** and ultimately respondent filed Rent Application alleging willful default in payment of rent since July,2000 along with personal need.

3. The petitioner/opponent filed his written reply and challenged the jurisdiction of learned Rent Controller, on the ground that the “premises” defined in **Section 2 (h)** of SRPO, 1979 does not include “hotel” and the demised premises is Palace Hotel (Ground + 4 floors) situated on C.S No.F/1165, Qazi Abdul Qayoom Road, Gari Khata, Hyderabad. He further averred that the demised premises is a commercial property and it was intended by the previous owner for the purpose of running a business by the name and style of “Al-Khalil Hotel”, but later on under construction demised premises was leased to the Petitioner/opponent to run commercial business of hotel i.e Palace Hotel, as such the demised premises is excluded from the provisions of rent laws and this fact has been concealed by the respondent. It was further averred that the lease amount was properly paid timely and up to the month of September, 2000 in the owner’s Bank Account No.2125, which was provided to him by previous owner at the time of initial lease agreement. Therefore the petitioner offered monthly lease money of Rs.7000/- for the month from October, 2000 to the respondent/opponent which on refusal was remitted through money order and ultimately deposited in the court of IV<sup>th</sup>

Senior Civil Judge, Hyderabad through Miscellaneous Rent Application No.746 of 2000.

4. The Manager of respondent / applicant namely **Ghulam Moinuddin** filed his affidavit in evidence at Ex.25. He produced agreement of lease at Ex.26, original Agreement of lease at Ex.27, original lease deed at Ex.28, original lease deed at Ex.29, original notice under section 18 of SRPO 1979 at Ex.30, original reply of notice at Ex.31, original legal notice at Ex.32, reply of legal notice at Ex.33, original lease agreement at Ex.34, original lease agreement at Ex.35, original letter, certified copy of Resolution duly passed by Board of Directors of the company on 1<sup>st</sup> December, 2009 at Ex.36 and thereafter closed his evidence side at Ex.47 dated 16.3.2011.

5. The petitioner / opponent filed affidavit in evidence through attorney **Mr. Ameen Muhammad at Ex.54**. He produced attested copy of letter dated 28.5.1986 at Ex.56, attested copies of bills of Gas company at Ex.57/A to Ex.57/J, Attested copies of receipts of Sindh Employees Social Security institution of "Palace Hotel" for the year from 1977 to 1989 at Ex.58/A to Ex.58/H, 14 attested copies of Form HT4 in respect of Bank paid Challan of property tax of premises in Question (F-1165 Hotel) at Ex.60/A to 60/B, attested copies of reply legal notice dated 19.10.2000 alongwith copy of registry receipt bearing No.627, dated 10.10.2000 at Ex.61/A to Ex.61/B, attested copies of Money order No.1918 dated 18.10.2000, money order No.804 and 805 dated 14.11.2000 and two money order receipts are attached herewith, Attested copies of receipts dated 8.7.2010 through which monthly lease money / rent of Rs.7000 per month, for the month of June 2010 and July 2010 of premises at Ex.62/A to Ex.62/C. He produced original photograph (59) of premises at Ex.63/1 to Ex.63/59. He produced original sub-general power of attorney executed by Muhammad Ashraf at Ex.64.

Petitioner / opponent also examined witness No.2 namely **Muhammad Nadeem** at Ex.55 and thereafter closed his evidence side dated 28.5.2011.

6. The learned Rent Controller allowed the rent application by answering all the following four points for determination in affirmative.

1. Whether the rent application is not maintainable at law?
2. Whether notice under section 18 of Sindh Rented Premises Ordinance was sent by the applicant to the opponent?
3. Whether Petitioner / opponent has committed willful default in payment of rent of demises premises?
4. Whether the case premises is required by the applicant for personal bonafide use?
5. What should be the order?

7. The petitioner preferred First Rent Appeal No.02/2012 before learned District Judge, Hyderabad, which was dismissed by order dated 11.05.2012. These concurrent findings have been challenged by the petitioner on the ground of jurisdictional error in the impugned orders and misreading and non-reading of evidence through this constitution petition.

8. Learned counsel for the petitioner has contended that since the two Courts below have assumed the jurisdiction which was not vested in them by application of ouster of jurisdiction of Rent Controller in terms of **Section 2(h)** of the SRPO, 1979, this Court can declare impugned orders as nullity in law in exercise of powers under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973. He has further contended that this is also a case of non-reading and mis-reading of evidence by the Court in coming to the conclusion that the demised premises was not a 'Hotel' to exercise its jurisdiction which in fact was not vested in it. The counsel for the Respondent has supported the impugned orders and he claimed that there was no illegality in passing of these orders as Rent Controller has relied on

the contents of lease agreement between the petitioner and the previous owners in coming to the conclusion that the demised premises was not a “hotel” and thus rightly exercised its jurisdiction. He has further contended that the petitioner himself has invoked the jurisdiction of rent controller when he has deposited rent in Court under Section 10 of SRPO 1979. He has lastly contended that the concurrent finding of facts cannot be set aside by this Court in exercise of power under article 199 of the constitution of Pakistan.

9. I have heard learned counsel for the parties and perused the record as well as evidence led by the parties in detail with the help of counsel.

10. Learned counsel for the petitioner in order to show misreading and non-reading of evidence has referred to several such instances from the evidence on record and to begin with he has read **para-14** of written reply filed by the petitioner in which he has relied and produced, amongst other, the following documents.

- i) The attested copy of **letter dated 28.5.1986** sent by the previous owner Mr. Khalil-ur-Rehman of premises in question to opponent namely Wali Bhai at the address of **Palace Hotel**.
- ii) Attested copies of bills of Indus Gas Company of Palace Hotel during the **year 1974** to 1988.
- iii) The attested copies of receipts of Sindh Employees Social Security Institution of Palance Hotel during the **year 1977** to 1989.
- iv) The attested copies of **form HT4** in respect of Bank paid challans of Palace Hotel Tax/duty during the **year 1974** to 1977.
- v) The attested copy of **form P.T-10**, Bank paid challan of property tax of premises in question (F-1165 Hotel) for the year 2008, 2009 and certificate of No Dues in respect of property/**F-1165 Hotel** given by the Excise & Taxation Officer, **Property Tax-1** Hyderabad.

and asserted that all these documents were filed by the petitioner with his affidavit-in-evidence and even exhibited as Ex.56, Ex.57/A to 57/J. Ex.58/A

to Ex.58/H. Ex.60/A to 60/B along with 59 photographs of the hotel clearly showing that the premises is a hotel premises and in the cross-examination none of these documents were disputed or challenged. The counsel for the petitioner has further argued that even an application was filed under **Section 20** of SRPO, 1979 for inspection of the demised premises. It was allowed on **12.7.2011** by consent of the respondent and the learned Rent Controller on **28.9.2011** practically inspected the demised premises as reflected in the diary of the Trial Court dated **28.9.2011** but the learned Rent Controller has not filed any inspection report nor he has even mentioned in the impugned order that an inspection of the demised premises was carried. Likewise even at the Appellate stage on **6.1.2012** after pointing out that the learned Rent Controller has not placed on record the site inspection report a similar application was filed for site inspection under **Section 20** of the SRPO 1979 in FRA No.02/2013 on which only notice was ordered but said application has not been disposed of by the appellate authority.

11. In rebuttal Learned counsel for respondent No.3 has not been able to controvert the record available in two R&Ps. However he insisted that the conversion of building to a hotel was subsequent to the demised premises handed over to the petitioner and therefore it was unilateral act. When asked regarding the official documents showing “hotel” his simple reply was that it was liability of the petitioner and it has been shown as hotel in the property taxes by the petitioner. However, it is admitted position that all these documents were in the knowledge of the original owner and the Respondent as the property was shown in the wealth tax return by the owners and not by the petitioner.

12. The controversy between the parties was mainly on the point whether the demised premises being Hotel Palace should have been treated so and the

Rent Controller should have stayed away from entertaining the rent application in obedience to the law in terms of **Section 2 (h)** of SRPO 1979, which reads as follow:-

**Section-2 Definitions.** – In this Ordinance, unless there is anything repugnant in the subject or context,--

- (a) . . . . .
- (b) . . . . .
- (c) . . . . .
- (d) . . . . .
- (e) . . . . .
- (f) . . . . .
- (g) . . . . .
- (h) **“premises” means a building or land, let out on rent, but does not include a hotel;**

However, such issue was not framed by the Rent Controller in so many words but answered in negative in an indirect way while holding that the rent application was maintainable in answer to the point for determination that whether the rent application is not maintainable.

13. The burden of proof was in fact on the respondent/applicant to prove by cogent evidence that the demised premises was converted into a hotel by petitioner since they have brought the case for ejectment of the petitioner who in reply to legal notice has taken the stand that the demise premises is a hotel. The respondent neither in their notice under **section 18** of SRPO, 1979 nor in legal notice dated **28.9.2000** has disclosed the nature of business for which the demised premises was let out nor alleged change of use by the petitioner. Even after reply to their legal notice dated **19-10-2000** (Ex.33) when the stand of the petitioner was known to them, the respondent did not invoke the provisions of **Section 15(2)(iii)(b)** of SPRO, 1979 for ejectment of the petitioner on the ground of change in purpose for which the demise premises was let out to the petitioner without written consent of respondent. The provision of **clause (b) of subsection (iii)** of section 15 of SRPO, 1979 which were missing from the pleadings of respondent are:-

- (iii) the tenant has, without the written consent of the landlord--
- (a) -----
- (b) used the premises for the purpose other than that for which it was let out.

And yet the Rent Controller accepted the contention of respondent/applicant in the impugned ejectment order that:-

*“initially the rented premises was rented out to the opponent for business residential purpose and not for “Hotel” purpose and the subsequent conversion of building for hotel purpose, unilaterally by the opponent would not alter the nature of premises as it was originally stood so as to exclude same from the provisions of SRPO, 1979.”*

However, the learned Rent Controller failed to appreciate that this contention was not borne out from the pleading of respondent as it was not alleged in the rent application that the petitioner has converted the demised premises into hotel subsequently. Once such contention was raised, the initial burden was on the respondent to prove by cogent evidence that some other business was run by the petitioner in the same premises before starting the “Hotel” business. I have also examined affidavit-in-evidence of the sole witness of respondent namely Ghulam Moinhuddin and even in his affidavit-in-evidence it has not been stated by the respondent/landlord that the demised premises was subsequently converted by the petitioner into hotel. The innocent respondent simply averred in the rent application that the petitioner is defaulter (**Section 15(2)(ii)** of SRPO, 1979) and the premises is required for personal bonafide use (**Section 15(2)(vii)** SRPO, 1979) as if the respondent has never visited the famous “Hotel Palace” of Hyderabad nor by **2010** they came to know that the premises which was acquired by them in **2000** was a “Hotel” not only on the ground but even in the official record of various government departments/institutions namely Sui Southern Gas, Property Tax Section of Excise and Taxation department, Social Security Institution etc right from **1974-75** when the lease agreements



were signed by the original owner and the petitioner. The learned Rent Controller on question of maintainability has also referred to lease agreement Ex.26, Ex.27, Ex.28 to find out only one word “business/residential” purposes without appreciating that business was not specified and hotel business cannot be excluded from the purpose for which the premises was let out unless the landlord/respondent alleges so in his pleading and proves it with cogent evidence. The various agreements of lease simply mention “business / residential”. In fact nothing has been said and proved by the respondent/landlord to discharge his burden that how a rent case was maintainable in respect of the demised premises in which hotel was in operation from day one. The respondent has not even pleaded this fact to challenge the stand taken by the petitioner in his reply to legal notice nor the respondent has produced any evidence in order to make a positive assertion that the original owner has rented out the demised premises for any other business than business of hotel. The argument of the respondent’s counsel quoted above from the impugned order of ejectment was out of pleadings and devoid of any support from the averments of rent application and evidence. Such argument was of no consequences even if it was supported by case law. It is by now a settled law that any fact which had not been specifically pleaded could not be proved by leading evidence nor raised during the course of arguments. Anything stated outside the scope of averments in the pleading cannot be looked into. The rule of *secundum allegata et probate*, not only excludes the element of surprise, but also precludes the party from proving what has not been alleged or pleaded as held by the Hon’ble Supreme Court in the recent judgment reported in **2014 S.C.M.R. 914** (Muhammad Nawaz @ Nawaz Vs. Member Judicial B.O.R).

14. The case of petitioner was that the demised premises has been a “hotel” and in support of his claim the petitioner has placed on record several documents which dates back to **1974** when the demised premises was let out to the petitioner. The claim of the petitioner that he has acquired on lease an incomplete building which was under construction was admitted by the respondent/landlord in cross examination when his sole witness stated that:-

*“it is correct to suggest that Mir Khalil-ur-Rehman Khan leased out rented premises to opponent with structure and after that opponent raised some construction and finishing in the structure. I do not know whether 8 rooms constructed on first floor, 10 rooms constructed on every floor from second floor to 4<sup>th</sup> floor for the use of Hotel.*  
.....  
*..... It is correct to suggest that on 28 May, 1986 Mir Khalil-ur-Rehman Khan wrote a letter to Wali Bhai on the address of Palace Hotel Qazi Abdul Qayoom Road Hyderabad. It is correct to suggest that in that letter only Al-Khalil has been mentioned with (in) respect (of) property No.F/1165 Qazi Abdul Qayoom Road Hyderabad. It is correct to suggest that in that letter Mir Khalil-ur-Rehman Khan has also mentioned that opponent has been authorized to obtain approval from H.D.A. for any amendment, alteration, addition, in the construction of building. It is correct to suggest that opponent has filed all utility bills, income tax documents, and certificate of income tax in which Hotel Palace is mentioned. (Under lining is provided)..... ”*  
.....

The courts below not only ignored the evidence of the respondent quoted above but also failed to properly appreciate the contents of Lease agreements which confirmed the stance of the petitioner that under construction/structure of building was acquired on lease. The first agreement of lease is dated **18.6.1974** (Ex.26) and the second agreement of lease just after three months of the first one is dated **30.9.1974**, (Ex.27) and it contains, amongst other, the following recital:-

AND WHEREAS the LESSOR has constructed (7) rooms with attached bath in about half portion of the big hall on the first floor of the building at his own costs and **intends to construct** (7) rooms in the remaining portion of the said hall and (4) rooms in the hall on the Mazanine floor of the building at his own costs.”

And in lease deed executed on **08.9.1976** (Ex.28) it has clearly been mentioned that the lessee (the petitioner) has constructed rooms:-

AND WHEREAS the lessee has constructed (14) rooms with attached baths in the big hall **on the first floor** and (4) rooms in the hall **on the Mazanine floor** of the building at his own costs on the clear understanding that the construction so erected being an accretion to the building shall become the property of the Lessor without payment of any compensation or value of the Lessee and in consideration thereof the Lessor shall not enhance the agreed rent of Rs.4,000/- p.m. upto 31<sup>st</sup> day of May, 1978.

Above referred recital was even repeated in the lease agreement dated **01.6.1986** (Ex.29) which was followed by letter dated **28-05-1986** (Ex.33) wherein the previous owner has given written permission to make any addition, alteration in the construction of building with approval of Hyderabad Development Authority.

15. The learned Rent Controller failed to take note of (i) the first ever sui gas bill dated **26.6.1974** for Hotel Palace at Qazi Abdul Qayum Road, Gari Khata, Hyderabad, (2) receipts of Social Security Contribution from **June 1977** onwards in respect of the establishment of Hotel Palace (3) Form HT.4 showing payment of taxes and duties on Hotel right from **1974-75**, (4) the property tax paid by the petitioner on behalf of owner Mir Khalil-ur-Rehman describing the property as Hotel in the record of Excise & Taxation department and (5) even letter of the original owner Mir Khalil-ur-Rehman dated **28.5.1986** in which he has mentioned address of petitioner as Hotel Palace at Qazi Abdul Qayum Road, Hyderabad. The dates and timing of these documents and the date of beginning of the tenancy are very material to appreciate the business run in the demised premises. The first agreement of lease relied upon by the respondent is dated **18.6.1974** when building was incomplete and it was intended to be used or constructed for Hotel business and that is why even sui gas connection was obtained before the actual start

of the Hotel business in the name of Hotel Palace. The registration of demised premises in all relevant official record from **1974-75** is by the name of “Hotel Palace”. In the face of documentary evidence it cannot be said that of all the persons Mir Khalil-ur-Rehman, the father of journalism in Pakistan, right from **June 1974** till his death some time in **1992** was not aware of the fact that the petitioner was running a hotel business in the demised premises.

16. In his almost two pages of discussion on issue No.1 about maintainability of rent application, the Rent Controller consumed one page in discussion on **Section 27** of SRPO 1979 and half page on the definition of hotel. Strangely enough when he referred to definition of hotel he relied on a case law **NLR 1966 UC 546**, to explain the concept of hotel and building from the said citation. Unfortunately this citation has never been published. I have been informed by the Librarian of Judges library of Sindh High Court that he was unable to trace this citation because learned Judge has not even mentioned names of the parties so as to enable us to reach to the citation. The Rent Controller has not discussed that how this citation was relevant. The discussion in **section 27** of SRPO, 1979 in the impugned judgment was also out of context of the controversy between the petitioner and respondent. The learned Rent Controller has closed his eyes from the several documents which were produced by petitioner and the contents of these documents (Exhibits) were neither challenged in cross nor any other documents were produced by respondent in rebuttal to claim that at any point of time the building was used for any other purpose than “hotel” business. Not only that the Rent Controller failed to register his observation on inspection of demised premises on **28.9.2011** as well as the original photographs which were exhibited by the petitioner in evidence and have not been disputed by the counsel for the respondent. The Rent Controller failed to appreciate that

respondent has not discharged his burden on the issue of maintainability of rent application. However, the petitioner has proved that from day one “Hotel” was run in the demised premises within the knowledge and consent of previous owner and yet the Rent Controller concluded that the rent application is maintainable meaning thereby the demised premises was not “hotel” by ignoring entire evidence of petitioner and declared that:-

Moreover from the entire evidence of opponent and documentary proof opponent has failed to prove that previous landlord Mir Khalil-ur-Rehman was rented out case premises for the business of hotel. In the light of above discussion, I am of the humble view that the present rent application is maintainable at Sindh Rented Premises Ordinance, 1979, hence the point is answered as not proved.

17. The appellate court, too, has ignored evidence of the petitioner and misdirected itself when the learned appellate court observed that the petitioner had **not** pleaded that prior to his induction, hotel was runs in the demised premises. In the first place the respondent had not pleaded case of “conversion of premises from the purpose for which it was let out” (**section 15(2) (iii)** of SRPO, 1979). Secondly, as is evident from lease agreements quoted in earlier part of judgment that the petitioner was admittedly inducted in an under construction building and the petitioner was the first tenant and he run hotel business in the premises and the original owner time and again has allowed him addition and alteration in the construction of the building to suit the requirements of hotel business. Likes Rent Controller the approach of the appellate court on the issue of maintainability of rent application was wrong from the point of view of burden of proof on issue No.1 that the rent case was maintainable. The burden was wrongly placed on the petitioner/tenant by the appellate court in holding that petitioner had **not** pleaded that the premises was used as hotel prior to his induction. In fact, the burden was on the respondent/landlord to plead and prove that the premises was let out for some other business and subsequently it was converted into

hotel by the petitioner. Therefore the appellate court also misapplied the law of evidence to uphold the issue of maintainability of rent case in favour of respondent/landlord against the law and the evidence of the parties.

18. The courts below have examined the issue of maintainability of rent case from a wrong angle. The observation of learned Rent Controller that the burden of proof of issue No. 1 lies upon the petitioner/tenant was contrary to the requirement of **Article 117** of the Qanoon-e-Shahadat Order, 1984. The appellate court too failed to apply the basic principle of law of evidence that the burden of proof is always on a party who desires a court to give judgment in his favour as to any legal right or liability which is always dependent on the existence of facts which the party asserts affirmatively and not upon the party who denies if for a negative is usually incapable of proof. In view of the denial of the petitioner that the building in question is not the “premises” as defined under **section (2)(h)** of SRPO, 1979, the entire burden of proof of existence of the fact that the provision of rent laws were applicable on the “premises” in question was on the landlord/respondent. The respondent/landlord has not led any evidence to prove that the premises was let out for a purpose other than a hotel and that it has been subsequently converted into a hotel by the petitioner and therefore the very basis that the onus to prove that the rent case was maintainable lay upon the petitioner was wrong in law. I am fortified in coming to this conclusion from the law reported in **P.L.D. 1982 S.C. 465** (Allahdin Vs. Habib) and followed in **1988 M.L.D. 2526** (Ishtiaque Ali Vs. Muhammad Nasiruddin) coupled with the provisions of **Article 117** of the Qanoon-e-Shahadat Order, 1984.

19. The contention of the learned counsel for the respondent that the petitioner himself has approached the Rent Controller by depositing rent in court under **section 10** of SRPO, 1979 is misconceived. The issue of

maintainability of rent case hinged around the definition of “premises” and the jurisdiction of Rent Controller was barred since the premises was a hotel. The findings of the Rent Controller that the Rent Controller had the jurisdiction was contrary to the evidence as well as it was a result of misinterpreting and non-reading of the evidence and therefore it ought to have been decided in favour of the petitioner. The Rent Controller in the facts of the case had no jurisdiction to entertain the rent application in respect of the “premises” of a hotel. It is well settled principle of law that the jurisdiction can neither be conferred nor taken away by the parties or by their conduct or even by their consent. I am not impressed by the argument that the Rent Controller had the jurisdiction to entertain the rent application in respect of the premises which was a hotel right from day one only because the petitioner has approached the court of Rent Controller and ignored the statutory embargo in terms of **section (2) (h)** of SRPO,1979 that the premises does not include a hotel. It is the case of lack of jurisdiction and the jurisdiction cannot be said to have been conferred on the Rent Controller by default as the petitioner has himself once approached the Rent Controller.

20. The contention of respondent’s counsel that the concurrent findings recorded by the Rent Controller and the Appellate court on question of fact cannot be interfered with by this court under article 199 of the Constitution of Islamic Republic of Pakistan, 10973 is not relevant in the facts of the case in hand. The concurrent findings of both the courts below were not based on proper appraisal of evidence and due application of law as discussed above. Both the courts below have misapplied the law of evidence and almost refused to comment or take in account an over whelming evidence placed on record by the petitioner that the premises has been used as a hotel and it was within the knowledge of the previous owner who had been in frequent

communication with the petitioner at every stage of alteration and addition in the construction of building by the petitioner from **first** floor in 1974 to the **4<sup>th</sup>** floor in 1986. The courts below failed to appreciate that the documentary evidence filed by the petitioner before the Rent Controller had not been challenged by the Respondent in cross examination to remotely suggest that these documents were not in the knowledge of the previous owner or subsequent owner after the death of the original owner and therefore the courts below in terms of **Article 2(1)(c)** and **132(2)** of the Qanun-e-Shahadat Order, 1984 ought to have inferred on the basis of these documents that the premises has always been a hotel contrary to their findings that it has been subsequently converted into hotel which was neither the case of the respondent nor the respondent led any evidence to this effect. The unchallenged statements of the petitioner should have been given full credit by Rent Controller. In this context I find strength from the judgment reported in **1991 SCMR 2300** (Mst. Noor Jehan Begum through LRs ..Vs.. Syed Mujtaba Ali Alvi). Therefore as held by superior courts in number of cases that the concurrent findings of facts if found contrary to the evidence and result of misapplication of law the high court can interfere therewith because the conferment of jurisdiction on a court of law is to render a findings on proper appraisal of evidence and due application of law and not otherwise. In this context I again rely on the recent judgment of the Hon'ble Supreme Court **2014 S.C.M.R. 914** wherein the concurrent findings of facts when set aside by the Hon'ble High Court in exercise of constitutional jurisdiction were upheld by the Hon'ble Supreme Court by relying on earlier judgment reported in **P.L.D. 1987 S.C. 447** and the authoritative discussion of **Lord Denning** on the said proposition in his famous book "**The Discipline of Law**". The relevant portion from the recent judgment by Hon'ble Supreme Court is reproduced herein below:-



“8. The argument that when all the fora functioning in the revenue hierarchy concurrently held that the appellants were occupying the land in dispute in their capacity as tenants, such finding being one of fact could not have been interfered with by the High Court under Article 199 of the Constitution of Islamic Republic of Pakistan, has not impressed us as a finding does not become sacrosanct because it is concurrent. It becomes sacrosanct only if it is based on proper appraisal of evidence. The finding of the fora functioning in the revenue hierarchy despite being concurrent was not based on proper appraisal of evidence and due application of law, therefore, the High Court was well within its jurisdiction to interfere therewith. For the very condition for conferment of jurisdiction on a Court of law is to render a finding on proper appraisal of evidence and due application of law. If and when it would do otherwise, it would go outside its jurisdiction. Such order can well be quashed in exercise of Constitutional jurisdiction of the High Court. An order thus passed cannot be protected because the repository of such jurisdiction has the jurisdiction to pass it. Lord Denning in his well known book "the Discipline of law", while commenting on orders of this nature at page 74, observed as under:--

"This brings me to the latest case. In it I ventured to suggest that whenever a tribunal goes wrong in law, it goes outside the jurisdiction conferred on it and its decision is void, because Parliament only conferred jurisdiction on the tribunal on condition that it decided in accordance with the law".

Another paragraph of this book at page 76 also merits a keen look which reads as under:--

"I would suggest that this distinction should now be discarded. The High Court has, and should have, jurisdiction to control the proceedings of inferior courts and tribunals by way of judicial review. When they go wrong in law, the High Court should have power to put them right. Not only in the instant case to do justice to the complainant. But also so as to secure that all courts and tribunals, when faced with the same point of law, should decide it in the same way. It is intolerable that a citizen's rights in point of law should depend on which judge tries his case, or in what court it is heard. The way to get things right is to hold thus: No court or tribunal has any jurisdiction to make an error of law on which the decision of the case depends. If it makes such an error, it goes outside its jurisdiction and certiorari will lie to correct it."

In the case of Utility Stores Corporation of Pakistan Limited v. Punjab Labour Appellate Tribunal and others (PLD 1987 SC 447), the Hon'ble Supreme Court held as under:--

"It is not right to say that the Tribunal, which is invested with the jurisdiction to decide a particular matter, has the jurisdiction to decide it "rightly or wrongly" because the condition of the grant of jurisdiction is that it should decide the matter in accordance with the law. When the Tribunal goes wrong in law, it goes outside the jurisdiction conferred on it because the Tribunal has the jurisdiction to decide rightly but not the jurisdiction to decide wrongly. Accordingly, when the tribunal makes an error of law in deciding the matter before it, it goes outside its jurisdiction and, therefore, a determination of the Tribunal which is shown to be erroneous on a point of law can be quashed under the writ jurisdiction on the ground that it is in excess of its jurisdiction."

Even otherwise, the Courts of law are not supposed to perpetuate

what is unjust and unfair by exploring explanation therefor. They should rather explore ways and means for undoing what is unjust and unfair. In this view of the matter, the impugned judgment which is based on proper appraisal of evidence and due application of law merits no interference.

21. The inescapable conclusion of the above discussion is that the Rent Controller has unlawfully assumed the jurisdiction which was barred in respect of the hotel premises and thus the order of learned Rent Controller was without jurisdiction. And order passed by a tribunal or Court without jurisdiction is always void and nullity in law as observed by the Hon'ble Supreme Court in the cases reported in PLD 1973 SC 236 and PLD 1975 SC 331. In the case of Raunaq Ali v. Chief Settlement Commissioner and others (**PLD 1973 SC 236**), the Supreme Court held as follows: -

“It is now well-established that where an inferior Tribunal or court has acted wholly without jurisdiction or taken any action beyond the sphere allotted to the tribunal by law and, therefore, outside the area within which the law recognizes a privilege to err’, then such action amounts to a usurpation of powers unwarranted by law and such an act is nullity; that is to say, the result of a purported exercise of authority which has no legal effect whatsoever.”

In the case of the Chief Settlement Commissioner, Lahore v. Raja Muhammad Fazil Khan and other (**PLD 1975 SC 331**), it has been held as follows: -

“An order is to be treated as void only when it is made by a court, tribunal, or other authority, which had no jurisdiction either as regards the subject-matter, the pecuniary value or the territorial limits where the dispute arose. Such an order would amount to a usurpation of power unwarranted by law’, and accordingly it would be a nullity.”

In view of above legal and factual position the order of the learned Rent Controller was void and therefore, issue No.2 in FRA No.02/2012 that whether the impugned ejectment order dated 16.11.2001 is void and illegal ought to have been decided by the appellate Court in affirmative and the appeal should have been dismissed on the strength of above mentioned case law as well as the case law reported in **PLD 2001 SC 514 LAND**

ACQUISITION COLLECTOR, NOWSHERA and others ..Vs..SARFARAZ KHAN and others and it was cited before the Appellate Court by the counsel for the petitioner. In this case the Hon'ble Supreme Court held as follows:-

The question of limitation may not, therefore, arise in respect of a judgment which is a nullity in law, void or ultra vires the statutes or the constitution. In point of facts, if an order is without jurisdiction and void, it need not even be formally set aside as has been held in the cases of Ali Muhammad v. Hussain Bakhsh PLD 1976 SC 37 and Ch. Altaf Hussain and others v. The Chief Settlement Commissioner PLD 1965 SC 68.

The above case law was not followed by the learned Session Judge Hyderabad only because he himself has failed to apply correct legal preposition of law that the Rent Controller had no jurisdiction to entertain the rent application.

22. The upshot of the above discussion is that this petition is allowed as the findings of learned Rent Controller and Appellate Court were not based on proper appraisal of evidence and due application of law. Consequently the same are set aside, and the rent case No.13/2010 stand dismissed.

JUDGE

Hyderabad  
Dated:\_\_\_\_\_