

**IN THE SUPREME COURT OF PAKISTAN**

(Appellate Jurisdiction)

**PRESENT:**

Mr. Justice Yahya Afridi  
Mr. Justice Syed Hasan Azhar Rizvi  
Mr. Justice Irfan Saadat Khan

**Civil Petition No.1278-K of 2023**

(Against the order dated 30.08.2023 passed by the High Court of Sindh, Karachi in C.P.No-S-1405 of 2019)

Alay Javed Zaidi

**Petitioner**

**Versus**

Habibullah & Others

**Respondent(s)**

For the Petitioner(s) : ...  
In person

For Respondents : N.R

Date of hearing : 07.02.2024

...  
**JUDGMENT**

**Syed Hasan Azhar Rizvi, J.-** Through this petition filed under Article 185(3) of the Constitution of the Islamic Republic of Pakistan, 1973, (**“Constitution”**) the petitioner has called in question the order dated 30.08.2023 passed by the High Court of Sindh, Karachi (**“High Court”**) whereby constitutional petition filed by him was dismissed.

2. The brief facts giving rise to the present petition are that petitioner entered into a tenancy agreement, in 1974, with one Mst. Rubina Rahim (**“previous landlady”**) in respect of the Ground floor of the building constructed on three commercial Plots No. 943-C, 944-C, and 945-C, (*each plot measuring 105 square yards*) and all admeasuring 315 square yards (*2835 square feet*) situated in Block-2, PECHS Karachi (**“subject tenement”**) for the commercial purpose at the rate of Rs. 3700/- per month. Since then the petitioner was in the possession of the subject tenement and carrying on his business. Respondent No.1 (**Habibullah**) through a

registered sale deed dated 23.09.2016, executed with previous landlady, purchased the building constructed on all the three plots wherein the subject tenement is situated.

3. The claim of the Respondent No.1 is that under his instructions notice under Section 18 of the Sindh Rented Premises Ordinance, 1979 (**"SRPO,1979"**) was issued to the tenants of the property where the subject tenement is situated in order to intimate the change of ownership with the request to pay rent to Respondent No.1.

4. On perusal of the record it reflects that the petitioner tendered the rent amount *vide* pay order No. 10157978 dated 27.12.2016 to previous landlady, which she returned to the petitioner along with the covering letter dated 31.12.2016 stated therein that the subject tenement has already been sold to Respondent No.1 and directed the petitioner to tender the rental amount of the subject tenement to Respondent No.1. Despite of acquiring knowledge *qua* change of the ownership of the subject tenement in the name of Respondent No.1, the petitioner intentionally and willfully continued to deposit the rent amount of the subject tenement in the Court of learned Rent Controller *vide* MRC No.39 of 2017.

5. Respondent No.1 filed an application dated 11.04.2017 against the petitioner for fixation of fair rent under Section 8 of SRPO, 1979 in the Court of learned Vth Rent Controller Karachi East (**"Rent Case No.182 of 2017"**) that was duly contested by the petitioner. The said application was allowed *vide* judgment dated 12.03.2018 and the learned Rent Controller enhanced the amount of rent from Rs. 3700/- to Rs. 425,250/- per month at the rate of Rs. 150 per square feet. *(Total 2835 sq.feet multiplied by 150 equal to Rs. 425,250/-)*

6. Being dissatisfied with the said judgment, both the petitioner and Respondent No.1 preferred their respective First Rent Appeals (**“First Rent Appeal No.70 of 2018 and First Rent Appeal No.75 of 2018 respectively”**) in the Court of learned District Judge, Karachi East.

7. Both the appeals were consolidated and decided by the learned District Judge *vide* common judgment dated 31.10.2019 thereby the amount of fair rent was modified and reduced from Rs. 425,250/- to Rs. 283,500/- (*at the rate of Rs. 100 per square feet*) per month. The judgment passed by learned District Judge was challenged by the petitioner before the High Court of Sindh by filing a constitutional petition (**“C.P.No-S-1405 of 2019”**) and the same was dismissed *vide* order dated 30.08.2023, impugned herein.

8. The petitioner, appearing in-person, contends that the impugned order of the High Court suffers from illegality and is perverse in law. Further contends that he had no information regarding the change of ownership in respect of subject tenement and the amount of fair rent is unjustified thus the impugned order is liable to be set aside.

9. We have heard the petitioner and perused the material available on record.

10. It is apparent from the available record that Respondent No.1 purchased the building, where the subject tenement is situated, *vide* registered sale deed dated 23.09.2016 executed by the previous landlady in favour of Respondent No.1. It has further brought on record that the petitioner tendered the rent amount *vide* pay order No. 10157978 dated 27.12.2016 to previous landlady, which she returned to the petitioner along with covering letter dated 31.12.2016 and informed that she has sold the subject

tenement to Respondent No.1 and directed to tender the rent amount to Respondent No.1.

11. In case of change of ownership of the rented premises, the new owner/landlord/landlady is duty bound under Section 18 of the SRPO, 1979 to intimate the tenant (s) about such change so that tenant(s) may tender the rent to the new owner/landlord. The record of the case in hand reveals that after change of ownership of the subject tenement, Respondent No.1 duly complied with the requirements as contained in Section 18 *ibid* and served a legal notice dated 02.11.2016 on the tenants of subject tenement.

12. The petitioner has asserted throughout the proceedings before *lower fora* that said notice was not served upon him. However, it transpires from the record that proper evidence was adduced at the trial stage wherein it has been admitted by the petitioner in his cross examination that previous landlady refused to accept the amount of rent and also informed the petitioner *vide* her letter dated 31.12.2016 to send the same to new landlord as she sold the property to Respondent No.1

13. Despite of acquiring knowledge about the change of ownership of subject tenement, the petitioner avoided/neglected/refused to pay the rent to the Respondent No.1 rather he continued to deposit the rent amount in the name of previous landlady *vide* MRC No.39 of 2017 in the Court of learned Vth Rent Controller Karachi East which constitutes a willful default on the part of petitioner. Reference may be made to the case of *Ghulam Samdani v. Abdul Hameed*,<sup>1</sup> wherein it has been held that when tenant(s) after having the knowledge that the

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<sup>1</sup> 1992 SCMR 1170

subject tenement were sold to another person continued depositing the rent in favour of previous landlady, such conduct of tenants amounts to willful default and *malafide* on the part of tenant(s).

14. It is a settled proposition of law that even institution of application for eviction would be deemed to be substantial compliance of the provisions of Section 18 of the SRPO, 1979. Reference in this regard may be made to the case of *Syed Azhar Imam Rizvi v. Mst. Salma Khatoon*,<sup>2</sup> wherein it has been held that:-

“The receipt of the copy of the ejectment application and knowledge gained thereby would constitute due notice and it will have to be treated as substantial compliance of section 13-A of the Ordinance.”<sup>3</sup>

15. In the same vein, the institution of application for fair rent by Respondent No.1 can be deemed to be a sufficient intimation to the petitioner regarding change of ownership in respect of subject tenement. In view of this, petitioner’s contention that he had no information regarding change of ownership cannot sustain.

16. Regarding fair rent of subject tenement, Section 8 of the SRPO, 1979 being relevant, is reproduced as under:-

“8. (1) The Controller shall, on application by the tenant or landlord determine fair rent of the premises after taking into consideration the following factors:—  
 (a) the rent of similar premises situated in the similar circumstances, in the same or adjoining locality;  
 (b) the rise in cost of construction and repair charges;  
 (c) the imposition of new taxes, if any, after commencement of the tenancy; and  
 (d) the annual value of the premises, if any, on which property tax is levied.”

Bare reading of the *ibid* provision indicates that while determining the fair rent four factors as stated above must be taken into consideration.

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<sup>2</sup> 1985 SCMR 24

<sup>3</sup> Section 13-A of the West Pakistan Urban Rent Restriction Ordinance, 1959 is pari material to section 18 of the Sindh Rented Premises Ordinance, 1979.

17. It is a settled principle of law that it is not necessary that all these four factors must co-exist, rather one or two grounds are sufficient. In the case reported as *State Life Insurance Corporation of Pakistan and another v. Messers British Head and Footwear Store and others*,<sup>4</sup> this Court while dealing with the proposition of fair rent observed as under:-

“In the instant case the appellant out of four factors, as provided under section 8 of the Ordinance, 1979, according to record have proved the last three. As to the fourth factor, as provided in clause (a), we find sufficient evidence produced by the landlord to prove the rent of similar premises situated in the similar circumstances, in the same or adjoining locality which was not accepted by the Courts below and in our opinion this is the only controversy where the evidence adduced by the respective parties in terms of the leave granting order need to be re-examined. At this juncture we would like to reiterate that by now it has been settled by this Court that it is not necessary for a landlord to prove hike in respect of all four factors as detailed in section 8 of the Ordinance, 1979, or that all four factors must co-exist in each and every case seeking fixation of fair rent.”

18. Record of the case further reveals that the subject tenement is situated in the commercial area of Block-2, PECHS which is the heart of Tariq Road near Jheel Park and in the vicinity there are prestigious shopping centers and markets of various items where the rent is very high. In surrounding buildings to the subject tenement the rate of rent is high, therefore, in comparison to the prevailing rate, the rent of subject tenement i-e. Rs. 3700/- per month appears to be meager, furthermore, these facts have not been rebutted and denied by the petitioner before the Court of learned Rent Controller, either in his written statement or in his evidence. However, petitioner himself has admitted in his cross examination that the subject tenement is commercial property and in commercial use.

19. Furthermore, since the date of commencement of

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<sup>4</sup> 2018 SCMR 581

tenancy (*in 1974*) for about last 50 years till date there has been a manifold enhancement in the cost of construction, property taxes, municipal charges and government taxes. It was the case of Respondent No.1 before the learned Rent Controller that during entire tenure of tenancy, since 1974 to 2017 (*forty three years*), the prices of the properties and rate of rent of commercial properties in that area have been increased exorbitantly in as much as the cost of construction, maintenance, and repairs has increased by 8000%, the taxes by 6000%, the labor charges by 1000% and the cost of land by 8000%, however, the monthly rent was not enhanced since 1974. Moreover, it has come on record that the exchange rate of US \$ was equivalent to Rs.9.9 in the year 1974, thereafter, it increased from time to time and in the year 2017, it was Rs.105 per US \$ whereas the rate of 10 gram of gold in the year 2017 was Rs. 50,950/-. Hence, the rent of Rs. 3700/- per month is very meager of the commercial property as compared to the other commercial premises in same vicinity.

20. In the present case, Respondent No.1 has adduced sufficient evidence before the trial Court and justified the enhancement of rent as per the parameters of Section 8.

21. There are concurrent findings by three courts below. This Court does not normally go beyond the findings of the *fora below* unless it can be shown that those are perverse, arbitrary, fanciful or capricious which, in our candid view, is not the position in the instant case.

22. The judgments/order passed by the learned Rent Controller, the appellate Court and the High Court are well reasoned and based on proper appreciation of all factors, either factual or legal. Neither any misreading and non-reading nor any

infirmity or illegality has been noticed on the record which could make a basis to take a view other than the High Court. The petitioner has failed to make out a case for interference.

23. Consequently, this petition being devoid of merit is hereby dismissed. Leave is refused.

Judge

Judge

Judge

**Karachi**  
7th February 2024  
Approved for reporting.  
*Paras Zafar, LC/*