

**IN THE SUPREME COURT OF PAKISTAN**  
(Appellate Jurisdiction)

**PRESENT:**

Mr. Justice Muhammad Ali Mazhar  
Mr. Justice Syed Hasan Azhar Rizvi

**Civil Petition No.492-K of 2023**

[Against the order dated 28.02.2023 of the  
High Court of Sindh, Karachi passed in C.P. No.S-1067 of 2019]]

Akhtar Kamran since deceased through  
legal heirs

...Petitioner(s)

**Versus**

Pervaiz Ahmed and others

...Respondent(s)

\* \* \* \* \*

For the Petitioner(s) : Mian Mushtaq Ahmed, ASC  
Muhammad Iqbal Chaudhry,  
AOR

For the Respondent(s) : N.R.

Date of Hearing : 26.04.2023.

**JUDGMENT**

**Syed Hasan Azhar Rizvi, J:-** Through this petition for leave to appeal, filed under Article 185(3) of the Constitution of the Islamic Republic of Pakistan, 1973, the petitioner has assailed the judgment dated 28.02.2023 passed by the High Court of Sindh, Karachi, whereby his Constitutional Petition No.S-1067 of 2019 was dismissed.

2. Succinctly, facts of the case leading to filing of this petition are that the respondent, Pervaiz Ahmed, being owner of the premises in question initiated proceedings for fixation of fair rent against his tenant/petitioner, Akhtar Kamran (*predecessor-in-*

*interest of the petitioners*), by filing a rent case bearing No.367/2010 on 18.10.2010 under Section 8 of the Sindh Rented Premises Ordinance, 1979 (*the Ordinance*) before the Rent Controller, Karachi (East). It was the case of the respondent that the petitioner is his tenant in respect of shop No.4, ground floor, Khayam Chambers situated on Plot No.190/A-1, Block No.2, PECHS Society, Karachi. It was alleged that after lapse of several years, the rate of inflation was substantially increased which affected the economic norms and conditions and, therefore, the maintenance of the property became expensive, however the petitioner is paying the rent at the rate of Rs.11,401/- per month, which is less as compared to the prevailing rent at the adjoining locality of the area. The petitioner was asked verbally as well as through legal notice dated 20.10.2010 for increasing the rent, but he failed to do so. After due deliberations, the application of the respondent was allowed by the Rent Controller and fair rent was fixed as Rs.70,000/- per month from the date of institution of the application with 10% per annum increase in future *vide* judgment dated 15.09.2015. Aggrieved of the above, the petitioner filed FRA No.132 of 2015 before VIIIth Additional District Judge, Karachi (East), which was allowed and the case was remanded to the Rent Controller for decision afresh *vide* judgment dated 18.08.2018.

3. After remand of the case, IIIrd Rent Controller, Karachi (East) *vide* judgment dated 07.09.2018, after hearing both the parties, fixed the rent of the premises in question at Rs.97,974.47 per month with 10% per annum further increase. The petitioner preferred FRA No.151/2018 before IIIrd Additional District Judge, Karachi (East) which was dismissed through the judgment dated 06.08.2019. The petitioner invoked the constitutional jurisdiction of the High Court of Sindh, Karachi by filing Constitutional Petition No. S-1067 of 2019, which too met the fate of dismissal *vide* judgment dated 28.02.2023, hence this petition.

4. The learned counsel for the petitioner states that the High Court of Sindh has not taken into consideration the facts and circumstances of the case in its true perspective; that the lease agreement executed with the respondent was unregistered, thus was not admissible in evidence; that the impugned judgment is suffering from misreading and non-reading of evidence and while fixing the rent, the Rent Controller has not taken into consideration the rent agreement of the adjoining premises which have lesser rent than the premises in question. In support of his contentions, reliance is placed to the cases reported as Zaheer Ahmad versus Government of Sindh and another (1999 MLD 2881), Muhammd Farooq M. Memon versus Government of Sind through its Chief Secretary, Karachi (1986 CLC 1408),

Mohammad Gul Kakar versus Province of Baluchistan (PLJ 1979 Quetta 66), Abdul Majid Mia versus Moulvi Nabiruddin Pramanik and 3 others (PLD 1970 SC 465), Messrs Zay Square Garments Industries and others versus Messrs Sindh Industrial Trading Estates Ltd. (2004 CLC 1276), State Life Insurance Corporation of Pakistan and another versus Messers British Head and Footwear Store and others (2018 SCMR 581), Abdul Rehman versus Zia-ul-Haque Makhdoom and 2 others (2010 CLC 99), Messrs Oceanic International (Pvt.) Limited versus Messrs Lalazar Enterprises (Pvt.) Limited and others (2010 SCMR 737), Muhammad Akram and another versus Mst. Farida Bibi and others (2007 SCMR 1719), Messrs Olympia Shipping and Weaving Mills Ltd. Versus State Life Insurance Corporation of Pakistan (2001 SCMR 1103), Allies Book Corporation through L.Rs versus Sultan Ahmad and others (2006 SCMR 152), Muhammad Nawaz alias Nawaza and others versus Member Judicial Board of Revenue and others (2014 SCMR 914), Malik Bahadur Sher Khan versus Haji Shah Alam and others (2017 SCMR 902) and Mst. Hajiyan Ayesha Bibi versus Zahid Hussain (2001 SCMR 1301).

5. We have considered the submissions of the learned counsel for the petitioner at length and perused the material available on the record with his able assistance.

6. The language of Section 8 of the Ordinance, *prima facie*, requires the Rent Controller to consider all the ingredients mentioned therein. It provides complete mechanism and procedure for determining fair rent, which for ease of reference is reproduced hereunder:-

*“(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 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.*

*(2) ..... ”*

In the case reported as State Life Insurance Corporation of Pakistan and another versus Messers British Head and Footwear Store and others (2018 SCMR 581), 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. In fact the prime factor has always been the prevalent market rent of the similar premises situated in similar circumstances, in the same or adjoining locality and in the instant case all the Courts below have totally ignored the evidence produced by the landlord to prove this factor primarily on the ground that the evidence produced by the landlord though was in respect of similar premises situated in similar circumstances, in the same locality but the building in which the premises was situated was relatively a new one and secondly, that the parties had agreed for a lump sum rent instead of per square feet and therefore, increase claimed in rent on the basis of per square feet could not be allowed.*

*In our opinion the restraint exercised by the Court below from fixing fair rent on per square feet basis for the reason that the parties had agreed to a rent on lump sum basis totally appears to be misplaced, suffice is to observe that determination of fair rent is the sole domain of the Rent Controller and even an agreement between the parties barring each other from approaching the Rent Controller for getting fixation of fair rent cannot operate as a bar to the jurisdiction of the Rent Controller of fixing fair rent. Reference can readily be made to the case of Tarig All Bagar v. New Goodwill Computers (2011. SCMR 554). On the same principle the agreement between the parties for payment of lump sum rent cannot be a clog on the powers of the Rent Controller to fix fair rent on square feet basis, in accordance with the prevailing norms and to ensure that the fair rent so determined is in consonance with the quantum of rent of similar premises situated in similar circumstances in the same or adjoining locality.”*

7. We have minutely gone through the pleadings of the parties and scanned the documents/evidence available on the record. It reflects that the relationship of the petitioner and the respondent is not denied. The rise in cost of construction, repair charges, taxes etc. has been increased and labour charges have also been enhanced which fact need not to be proved through documentary evidence and the same also cannot be ignored while determining the fair rent. Though the respondent/applicant has produced original tenancy agreement (Exh.A/3) executed in 2006 between the respondent/landlord and M/s Universal Network System Private Limited in the same building in respect of shop No.5 admeasuring 480 square feet and the rent of the said premises was Rs.63,160/- which comes to Rs.131.58 per square feet whereas the petitioner has submitted the tenancy agreements of shop of other buildings situated in Block-6. It is noted that the rate of shop No.5 was Rs.63,160/- and was enhanced to Rs.84,950/- per month from 01.11.2009 as per revised tenancy agreement dated 29.09.2006. Hence, the trial Court fixed the fair rent of shop No.4, subject matter of the petition, on the basis of calculation at the rate of Rs.131.58 per square feet. As per calculation, the fair rent of the subject shop comes to  $744.6 \times 131.58 = 97,974.47$ . When the respondent/landlord filed Rent case No.367/2010 in October, 2010 in respect of the subject shop before the Rent Controller the tenant of shop No.5 in the same building was paying the

rent of smaller shop than the shop in question in the same building at the rate of Rs.84,950/- per month.

8. Moreover, as per time honour principle, while determining the fair rent, the Court is required to take into consideration all ingredients, which are reducing the value of money with each passing month. The premises in question is situated at Block-2, Khayam Chambers, PECHS Society, Karachi, whereas other shops to which the petitioner has made reference are not of the same building, thus cannot be taken into consideration while determining the fair rent.

9. We find that IIIrd Rent Controller, Karachi *vide* judgment dated 07.09.2018 has rightly determined the fair rent of the premises in question which (*decision*) was maintained upto the High Court and we are in complete agreement with the same. There are concurrent findings of all the *fora* below which cannot be interfered with unless those are perverse, arbitrary, capricious or fanciful. No misreading and non-reading has been noticed.

10. Regarding judgments/case law, cited at the bar by the learned counsel for the petitioner, the same are distinguishable to the facts and circumstances of the instant case. Learned counsel for the petitioner has not been able to make out a case for interference in the instant jurisdiction.



11. For what has been discussed above, the petition being devoid of merit is dismissed and leave to appeal is declined.

**JUDGE**

**JUDGE**

**Karachi,**  
the 26<sup>th</sup> April, 2023  
NOT APPROVED FOR REPORTING  
*Ghulam Raza/\**

