

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Present:

Mr. Justice Muhammad Ali Mazhar
Mr. Justice Irfan Saadat Khan

**Civil Petitions No.563-K to 595-K of 2024 and
Civil Petitions No.612-K and 613-K of 2024**

Against the judgment dated 03.04.2024 passed by High Court of Sindh, Karachi in CPs No.S-490, S-488, S-491, S-492, S-497, S-498, S-501, S-502, S-509, S-510, S-512, S-514, S-518, S-520, S-521, S-524, S-525, S-526, S-530, S-532, S-538, S-544, S-545, S-551, S-552, S-554, S-555, S-556, S-557, S-558, S-550, S-560, S-562, S-522 and S-549/2010

M/s Haque Traders	(CP 563-K/24)
M/s OMAL Sons Corporation	(CP 564-K/24)
M/s Mian & Sons	(CP 565-K/24)
M/s Muhammad Anwar & Co.	(CP 566-K/24)
M/s RAAS International Trading	(CP 567-K/24)
M/s Younus Sattar	(CP 568-K/24)
M/s Ateeq Trading & Co.	(CP 569-K/24)
M/s Khalid Agencies	(CP 570-K/24)
M/s Zahid Amin Sethi	(CP 571-K/24)
M/s Muhammad Amin	(CP 572-K/24)
M/s Gul Bano	(CP 573-K/24)
M/s Malik Abdul Islam	(CP 574-K/24)
M/s Khawaja Muhammad Javed	(CP 575-K/24)
M/s Firdous Agencies	(CP 576-K/24)
M/s Hajiani Kherunissa	(CP 577-K/24)
M/s Sajjad Ahmed	(CP 578-K/24)
M/s Haji Ahmed Haji Usman	(CP 579-K/24)
M/s Sea Line Services	(CP 580-K/24)
M/s Haji Ahmed Brothers	(CP 581-K/24)
M/s Hafeez-ur-Rehman	(CP 582-K/24)
M/s Ali Haroon Enterprises	(CP 583-K/24)
M/s Rana Abdul Nasir	(CP 584-K/24)
M/s Shahid Amin	(CP 585-K/24)
M/s Zainul Hussain	(CP 586-K/24)
M/s Ghulam Muhammad & Sons	(CP 587-K/24)

M/s Muhammad H.A. Rehman	(CP 588-K/24)
M/s Abdul Waheed	(CP 589-K/24)
M/s M.A. Hanfi Brothers	(CP 590-K/24)
M/s Sultan Enterprises	(CP 591-K/24)
M/s Manzoor Co	(CP 592-K/24)
M/s SW & Sons	(CP 593-K/24)
M/s Tangera Brothers	(CP 594-K/24)
M/s Consolidated Trading Corporation	(CP 595-K/24)
Moazzam Ali Khan	(CP 612-K/24)
M/s Khurram Corporation	(CP 613-K/24)

.....Petitioners

Versus

Sheikh Abid & Co. Pvt. Ltd. and others	...Respondents
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For the Petitioner:	Mrs. Abida Parveen Channar, AOR (in all cases) Mr. Saeed-uz-Zaman, AHC (in CPLA 563-K/24 with Court's permission)
For the Respondents:	N.R.

Date of Hearing:	19.07.2024
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Muhammad Ali Mazhar, J. The aforesaid civil petitions for leave to appeal are directed against the judgment dated 03.04.2024, rendered by the High Court of Sindh, Karachi, in CPs No.S-490, S-488, S-491, S-492, S-497, S-498, S-501, S-502, S-509, S-510, S-512, S-514, S-518, S-520, S-521, S-524, S-525, S-526, S-530, S-532, S-538, S-544, S-545, S-551, S-552, S-554, S-555, S-556, S-557, S-558, S-550, S-560, S-562, S-522 and S-549/2010, whereby the constitution petitions were dismissed and the order passed by the Rent Controller for fixation of the fair rent and the judgment passed by the Appellate Court in the First Rent Appeals were affirmed.

2. Mr. Saeed-uz-Zaman, Advocate High Court, has filed CMA No.669-K/2024 in the CPLA No.563-K/2024 for permission to represent the petitioner. On the basis of grounds raised in the aforesaid Civil Miscellaneous Application, it is allowed and we permitted the learned counsel to argue the case.

3. The brief facts of the case are that the respondent No. 1, being owner of the building (Abid Chamber) constructed on Plot No.6/9, Sharah-e-Liaquat, New Challi, Karachi, had filed individual rent cases against the petitioners for fixation of fair rent by the Rent Controller under Section 8 of the Sindh Rented Premises Ordinance, 1979 ("Ordinance"). In the first round, the Rent Applications were decided by the Rent Controller *ex-parte* but on filing First Rent Appeals by the petitioners, the *ex-parte* orders were set aside and the petitioners were allowed to file their written statement in the rent cases within one month. After recording evidence and hearing the arguments of the parties, the learned Rent Controller fixed the fair rent of the rented premises at the rate of Rs. 09/- per sq. foot per month from the date of presentation of the application. Being aggrieved, the petitioners filed First Rent Appeals but after hearing, the Appellate Court dismissed all the appeals. Being aggrieved against the concurrent findings recorded by the Rent Controller and the appellate Court, the petitioners filed the aforesaid Constitution Petitions but the Sindh High Court by means of impugned consolidated judgment dismissed all the petitions.

4. The learned AOR appearing for the petitioners and the learned advocate appearing on special permission argued that the order of the learned Rent Controller is based on misreading of evidence which failed to advert to the requirements of fixing fair rent under Section 8 of the Ordinance. It was further averred that the landlord failed to produce any witnesses to prove the prevailing rent in the same locality with comparable rented premises. It was further contended that the Rent Controller failed to discuss the facilities available in other buildings as compared to the tenement in issue including the inadequate amenities in the rented premises. It was further avowed that the rented premises were obtained on the basis of lump sum rent but the landlord filed the application for fixation of rent on the basis of square foot, which was against the terms and conditions of tenancy. It was further argued that the landlord demanded the exorbitant rate of

rent without any lawful justification which aspect was also ignored by the lower fora.

5. Heard the arguments. The order of the Rent Controller depicts that the evidence was adduced by the authorized representative of the landlord to satisfactorily prove the increase in taxes, water charges, cost of construction, repair charges and rate of rent in the same building and locality, but the evidence of such authorized person was not shattered during the cross-examination by the tenants. On the contrary, the tenants in the cross-examination admitted that since July 1997, they are paying the same rate of rent. It was further admitted by them that no receipt or documents were available to show the payment of the *pugri* (goodwill) amount. They also admitted that since July 1997 the rate of rent has not been enhanced with the further admission that taxes have been enhanced with the passage of time. After recording the evidence and arguments of the parties, the learned Rent Controller, keeping in mind the criteria provided under Section 8 of the Ordinance for fixation of fair rent, rightly fixed the fair rent of the demised premises at Rs. 9/- per square foot per month payable from the date of application instituted for fixation of fair rent. It also reflects from the record that the landlord claimed to have borne heavy expenditure for the renovation of building including sanitary work, making two lifts serviceable, and revamping the electricity wiring but such assertions could not be refuted by the tenants in the evidence. The learned Appellate Court in the First Rent Appeals also appreciated the entire evidence led by the parties to get the drift of whether the claim of fair rent was justifiable or not *vis-à-vis* the application filed for the fixation of fair rent and the order of the learned Rent Controller with the line of reasoning. The landlord's authorized witness, in the affidavit of evidence, jotted down all necessary details including the details of the other tenants in the same building, who have already increased the rent after considering the relevant factors that justified the enhancement of rent including the development work carried out by the landlord. The said representative also deposed that the taxes and repair charges have been increased tremendously. The proceedings of the lower fora also expound that in many cases, the petitioners/tenants, after filing of the written statements, disappeared from the scene, and in some rent cases failed to lead the evidence and

even did not conduct cross-examination of the landlord's representative/witness or even in their turn could not lead any evidence that would inspire confidence or was sufficient to rebut the claim of the landlord. Hence, for all practical purposes, the testimony of the landlord's representative remained unshaken and unrebutted; hence, it was rightly cogitated by the learned Rent Controller as convincing and trustworthy beyond question. The impugned judgment of the learned High Court in paragraph 13 reflects that at an earlier time, the same landlord filed rent cases against some other tenants of the ground floor of the same building and fair rent was fixed to Rs.9/- per square foot, which order was not only affirmed by the learned High Court but was also maintained by this Court and even the Review Petitions were also dismissed.

6. In fact, the objectivity of promulgating the Ordinance was to make effective provisions for regulating the relations between landlords and tenants and protect their interests in respect of rented premises within urban areas. According to Section 2 (a) of the Ordinance, the term "building" means any building or part thereof, together with all fittings and fixtures therein, if any, including any garden, garage, out-house and open space attached or appurtenant thereto. Since we are dealing with the issue in the context of fixation of fair rent, therefore, it would be expedient to highlight its definition provided in Section 2 (c) of the Ordinance according to which "fair rent" means the fair rent of any premises determined by the Controller under this Ordinance.

7. In order to achieve the payment of fair rent of the premises by the landlord or even by the tenant of the rented premises, a rent case can be filed by both under Section 8 of the Ordinance before the concerned Rent Controller, who has the statutory duty to fix the fair rent of the rented premises after taking into consideration (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. A further rider is provided under sub-section (2) that where any addition to, or improvement in, any premises has been made or any tax or other public charge has been levied, enhanced,

reduced or withdrawn in respect thereof, or any fixtures such as lifts or electric or other fittings have been provided thereon subsequent to the determination of the fair rent of such premises, the fair rent shall, notwithstanding the provisions of Section 9 be determined or, as the case may be, revised after taking such changes into consideration. It is somewhat noticeable that the legislature has allowed a remedy under Section 8 of the Ordinance for making an application not only by the landlord for determination of fair rent of the premises but also by the tenant to safeguard the interest of the tenant against the exorbitant or unrealistic demand of rent by the landlord. Sanguine to the fulfillment of consideration required to be fulfilled before fixation of fair rent by the Rent Controller, it is clearly provided under Section 9 of the Ordinance that where the fair rent of any premises has been fixed, no further increase thereof shall be effected unless a period of three years has elapsed from the date of such fixation or commencement of this Ordinance, whichever is later. While sub-section (2) of Section 9 accentuates that the increase in rent shall not, in any case, exceed ten percent per annum on the existing rent.

8. It is clearly elucidated in Section 20 of the Ordinance that the Rent Controller and the appellate authority for the purpose of deciding any case under this Ordinance have powers of a Civil Court under the Code of Civil Procedure, 1908 ("CPC") in respect of only (a) summoning and enforcing the attendance of any person and examining him on Oath; (b) compelling production or discovery of documents; (c) inspecting the site; and (d) issuing commission for examination of witnesses or documents. In tandem, Section 22 commands and connotes the way that every final order passed under this Ordinance shall be executed by the Controller and in order to attain the finality and avoid multiplicity of proceedings, it is further provided in this special law, confined to a prescribed field of action or operation, that all questions arising between parties and relating to the execution, discharge or satisfaction of the order shall be determined by the Controller and not by a separate suit, with an explanation that in the execution proceedings relating to the order of ejectment, no payment, compromise or agreement shall be valid unless such payment, compromise or agreement is made before or with the permission of the authority passing the order.

9. What is fair rent? Indeed, the determination of fair market rent is an essential component of any rented premises, not only for the landlord but also for the tenant. A proper determination of fair rent helps in avoiding the occasion of charging the rent too high or too low, therefore multiple parameters and benchmarks have been fixed in the Ordinance for the assistance of the Rent Controller which he must watch out for and mull over at the time of fixing fair rent of any rented premises in his jurisdiction. There is no standardized formula of "one-size-fits-all" or any other orthodox method which can be applied across the board or universally for every rented premises but each rented premises has its own features such as its location, property category and size, parallel rent statistics, and distinctiveness, therefore, the Rent Controller is obligated to follow, with a conscious approach, the yardstick/indicators provided under Section 8 of the Ordinance for determination of fair rent with regard to such particular rented premises for which an application has been made for determination of fair rent before him. It is not the intent of the legislature that at the time of fixing fair rent by the Rent Controller for any premises, the litmus test of all constituents and characteristics provided under Section 8 of the Ordinance should be present in unison or conjointly, but such conditions are provided as a yardstick which are required to be considered by the Rent Controller. The opposing party cannot claim that all conditions should work together or be congregated with strict proof on the touchstone of conditions word by word, but in our view, if one or two grounds are proved satisfactorily and others are not, even in that set of circumstances, the Rent Controller may fix the fair rent proportionately and equitably, being mindful to the proven grounds; but cannot decline the application on the ground that the applicant has failed to prove or substantiate all preconditions as *sine qua non* for fixation of fair rent as provided under Section 8 of the Ordinance.

10. Indubitably, the purposefulness of exercising jurisdiction under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, is to foster justice, and if the error is so patent, the High Court can interfere. Even the concurrent findings, recorded erroneously by the for below, may not be considered so revered or untouchable that it cannot be upset. The impugned judgment divulges that all relevant factors and grounds raised were properly considered and answered by

the learned High Court and the same does not require any interference by this Court. The concurrent findings of the three courts neither suffer from any illegality or material irregularity affecting the merits of the case nor are the same based on any misreading or non-reading of evidence. The learned counsel for the petitioners also failed to convince us that there is any factual, legal or jurisdictional error in the impugned judgment which may warrant any interference by this Court. However, the learned counsel for the petitioners, as a fallback position, made a request that the petitioners may be allowed to pay the arrears of rent in installments. In our view, it is a matter between the landlord and tenants, therefore the petitioners may approach to the landlord and now all such questions can only be decided by the Rent Controller under Section 22 of the Ordinance.

11. As a result of the above discussion, all aforesaid civil petitions are dismissed and leave is refused.

Judge

Judge

KARACHI
19th July, 2024
Mudassar/[☆]
Approved for reporting