

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
Constitutional Petition No. S-709 of 2024
(Mrs. Pinky Parwani v Addl. Controller of Rents Cantonment Board Clifton & others)

Date	Order with signature of Judge
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Mr. Justice Adnan-ul-Karim Memon

Date of hearing and order:-16.2.2026

Mr. Naeem Suleman advocate for the petitioner
Mr. Adeel Aslam Rana advocate for the respondent
Mr. Abdul Jalil Zubedi AAG

ORDER

Adnan-ul-Karim Memon, J Petitioner Mrs. Pinky Parwani has filed this petition under Article 199 of the Constitution of 1973 with the following relief:-

- a. *That this Hon'ble Court may be pleased to set-aside the impugned order dated 09.05.2014 passed in rent case No. 61 of 2023 by the Respondent No.1/learned Additional Rent Controller;*
- b. *That this Hon'ble court may be pleased to suspend the operation of the order passed by the No.1/learned Additional Rent Controller dated 09.05.2024 in the Rent case No. 61 of 2023;*
- c. *That this court may be directed to No.1/learned Additional Rent Controller to frame the preliminary issue for deciding he relationship of the landlord and tenant is exists or not;*
- d. *Restrain the respondents, their agents, servants, officers, employees and/or any person claiming through or under the Respondents specifically the respondent No.1 from further proceedings with the Rent Case No. 61 of 2023 filed against the petitioner by respondent Nos. 2 & 3.*

2. The Petitioner has challenged the order passed by the learned Additional Controller of Rents, Clifton Cantonment, Karachi, whereby a tentative rent order was issued without first adjudicating the existence of the relationship of landlord and tenant between the parties. It is submitted that the Preamble of the Cantonment Rent Restriction Act, 1963 clearly provides that the said Act applies only in cases where such a relationship exists for the control of rent and eviction of tenants. It is urged that the Petitioner has specifically denied his status as a tenant. An excerpt of the order is reproduced as under: _

"09.05.2024

Applicant No.2 along with her counsel is present. Opponent's Counsel is also present. Opponent's counsel gave a proposal that he is ready to resolve the dispute regarding payment of default as well as expenses which were incurred by the opponent towards repair/maintenance of the property. The applicant No.2 candidly denied having any negotiation with the opponent and stated that he has exhausted such offers in the pat which bore no fruit.

The counsel for the opponent filed rent account statement along with its copy which is received by the learned counsel of the applicant. Learned counsel of the parties heard on application under Section 17(8) of the Cantonment Rent Restriction Act, 1963.

The applicant No.2 stated that only two cheques of Rs. 6 lac each were given by the opponent and since then not a single penny has been given.

The opponent is directed to submit rent immediately in Court at initial rent rate on or before 30.05.2024. The dispute of increase an existing monthly rent shall be decided at final stage. Case is adjourned to 30.05.2024 for further proceedings.

3. Learned counsel emphasized that in terms of the MOU dated 18.11.2019 executed between the parties, Clause-1 provided that rent of Rs.400,000/- per month would become effective only from the date of handing over of the premises after completion of the required works by Respondents No.2 and 3. Clause-4 of the MOU further obligated the Respondents to provide K-Electric and gas connections, flooring of the building and stairs, bathrooms, sewerage and water lines, indoor whitewash, electrical points and a functional lift. Similarly, Clause-2 of the tenancy agreement stipulated that tenancy would commence only after handing over of the premises with the agreed works completed by the owners. The Petitioner's counsel submits that the tenancy never commenced, as the Respondents failed to fulfill their contractual obligations, including provision of basic facilities such as electricity, gas, flooring and lift, despite the Petitioner having incurred an amount exceeding Rs.80,000,000/- on the premises. Consequently, in the absence of fulfillment of the agreed requirements, the Petitioner cannot be treated as a tenant. It is further contended that once the relationship of landlord and tenant is denied, which goes to the root of the jurisdiction of the Rent Controller, the rent Court cannot pass a tentative rent order without first determining such relationship by framing a preliminary issue. In the absence of proof of such relationship, the rent application itself is not maintainable and is liable to be dismissed, as mere ownership does not establish the existence of landlord-tenant relationship. He argued that it is a settled principle of law that where the relationship of landlord and tenant is disputed, the Rent Controller must first decide the same before passing any tentative rent order. The impugned order having been passed without first satisfying the jurisdictional requirement is therefore without lawful authority and amenable to writ jurisdiction of this Court. Furthermore, he asserted that Section 20(c) of the Sindh Rented Premises Ordinance, 1979 empowers the Rent Controller to conduct inspection personally; however, in the present case a Commissioner was appointed for inspection, which was beyond the jurisdiction of the Rent Controller as held by this Court in various judgments. In view of the foregoing submissions, he prayed that the instant petition may be allowed as prayed.

4. The learned counsel for the private respondent has denied the allegations and prayed for dismissal of the petition.

5. From the perusal of the impugned order as well as the record, it transpires that the learned Rent Controller proceeded to pass a tentative rent order under Section 17(8) of the Cantonment Rent Restriction Act, 1963, directing the petitioner/Opponent to deposit rent at the initial rate. However it is urged that without first determining the fundamental jurisdictional fact, i.e., the existence of relationship of landlord and tenant between the parties, as the Petitioner has categorically denied his status as a tenant on the ground that the tenancy was conditional upon handing over of the premises after completion of agreed works, which admittedly were not fulfilled by the Respondents, therefore, according to the Petitioner, the tenancy never commenced.

6. It is a settled principle that the existence of a landlord-tenant relationship is a jurisdictional requirement for a Rent Controller. If such a relationship is specifically denied, the Rent Controller must determine it as a preliminary issue before assuming jurisdiction. In its absence, any order, including a tentative rent order, would be subject to final determination on the subject issue.

7. In the present case, the learned Rent Controller has not examined whether a landlord-tenant relationship exists between the parties.

8. Accordingly, without touching the merits of the case, the impugned tentative rent order shall remain in abeyance. The learned Rent Controller is directed to first frame and decide the preliminary issue regarding the existence of a landlord-tenant relationship strictly in accordance with law before proceeding further.

9. The petition along with pending application(s) is disposed of in these terms.

JUDGE