

**IN THE HIGH COURT OF SINDH, CIRCUIT
COURT HYDERABAD**

C.P No. S-123 of 2025

[Ziaul Hussain Qazi v. Riaz Hyder & another]

Petitioner : Ziaul Hussain Qazi through Mr. Sameeullah Rind, Advocate.

Respondent No.1 : Riaz Hyder through Mr. Aghis-u-Salam Tahirzada, Advocate.

Respondent No.2 : Mr. Allah Bachayo Soomro, Additional Advocate General Sindh along with SIP Abdul Latif Rajper SHO PS Nasarpur, District Tando Allahyar.

Date of Hearing : **02.02.2026.**

Date of Judgment : **02.02.2026.**

JUDGMENT

RIAZAT ALI SAHAR. J. - Through this constitutional petition, the petitioner has challenged the judgment dated 20.03.2025 passed by the learned 2nd Additional District Judge, Tando Allahyar, in First Rent Appeal No.01/2025. The said appeal was filed by respondent No.1 against the judgment dated 15.01.2025 passed by the learned Rent Controller/1st Senior Civil Judge, Tando Allahyar, whereby Rent Application No.13/2024 filed by the petitioner was allowed and the ejection of respondent No.1 was ordered. However, in appeal, the learned Appellate Court reversed the findings of the Rent Controller and dismissed the rent application. Hence, the petitioner has sought following reliefs:-

- A. Call for the record and proceedings of the Rent Application and FRA from the learned trial and appellate courts respectively and after its examination and scrutiny as to its legality, validity, propriety and correctness, allow the petition, set aside the impugned judgment of the learned appellate court and maintain the judgment of the learned Rent Controller.
- B. Costs of the petition may be saddled upon the respondent No.1.
- C. Any other relief(s) which this Honourable Court deems fit, just and proper in favour of the petitioner.

2. The background of the case is that the petitioner instituted a rent application under Section 15 of the Sindh Rented Premises Ordinance, 1979 seeking ejectment of respondent No.1 and recovery of arrears of rent. He stated that his father, Ghulam Murtaza Qazi (since deceased), was owner of various properties bearing C.S. Nos. 541, 542, 543, 544, 553, 553/A, 554, 555, 556 and 557 situated in Ward "B", Nasarpur, District Tando Allahyar, whereupon shops were constructed and let out to different tenants. After demise of his father on 16.08.2022, the property devolved upon the petitioner and his sister Fouzia. He further stated that on 01.01.2004, father of the petitioner orally inducted respondent No.1 as tenant in one shop formed out of C.S. Nos. 553, 553/A and 554 at monthly rent of Rs.150/-, which was subsequently enhanced to Rs.5000/- per month. Being close relatives, no written agreement was executed and no rent receipts were exchanged. After death of the petitioner's father, respondent No.1 stopped payment of rent despite repeated demands. Legal notice dated 20.04.2024 was served, but to no avail.

3. Respondent No.1 contested the rent application by filing written objections, denying the petitioner's claim and disputing ownership. Upon completion of pleadings, the learned Rent Controller framed issues, evidence was recorded but respondent No.1 failed to substantiate his defence. Consequently, vide judgment dated 15.01.2025, the learned Rent Controller allowed the rent application and ordered ejectment. Aggrieved thereof, respondent No.1 preferred First Rent Appeal, which was allowed by the learned 2nd Additional District Judge, Tando Allahyar, vide judgment dated 20.03.2025, whereby the order of the Rent Controller was set aside. Hence, the present constitutional petition.

4. Notice was issued to the respondents. On 28.11.2025, learned counsel for the petitioner submitted that the respondent No.1 Ghulam Mustafa is raising construction over the subject property, whereas, learned counsel claimed that the subject property belongs to Town Committee Nasarpur, as such, a detailed report was called from Chairman Town Committee Nasarpur. Accordingly, Chairman Town Committee, Nasarpur District Tando Allahyar submitted his report stating that the area in question falls within the jurisdiction of Town Committee, Nasarpur, whereupon a site inspection reveals the existence

of several shops, including five shops situated at the frontage (Mohaga), out of which two are admittedly owned by Town Committee, Nasarpur and are yielding regular monthly rent. It is further revealed that no official record pertaining to the said shops has been transferred from the defunct Taluka Municipal Administration, Matiari, of which Town Committee, Nasarpur is the successor council, following the reorganization of districts. Consequently, the absence of transferred record has led to ambiguity regarding boundaries and ownership, giving rise to concealment of material facts by the contesting parties. In the interest of justice and public interest, he prayed that the City Survey Officer, Tando Allahyar, be directed to ascertain and demarcate the actual boundaries and measurements of the private city survey numbers vis-à-vis government land and to order eviction of any illegal occupation of government property, if so found.

5. Learned counsel for the petitioner contends that the impugned judgment is contrary to law and the evidence on record and has resulted in grave miscarriage of justice. He contends that the learned appellate court erred in holding that the petitioner failed to establish ownership, despite documentary evidence including FRC and mutation (Foti Khata Badal) showing devolution of property upon legal heirs. Counsel submits that in rent proceedings, ownership is not the sole criterion and the relationship of landlord and tenant stood duly established, which respondent No.1 failed to rebut by any cogent evidence. He contends that respondent No.1 has failed to produce any rent agreement with the Town Committee nor led evidence in support of his plea. The petitioner's evidence regarding default and bona fide personal requirement remained unshaken. He also contends that the appellate court misread and non-read the evidence, ignored settled legal principles and exercised jurisdiction illegally, rendering the impugned judgment unsustainable and liable to be set aside. In support of his contentions, learned counsel has relied upon the cases reported as 2000 CLC 1841, 2014 YLR 2727 and 2018 MLD 298.

6. Learned counsel for Respondent No.1 contends that the learned Rent Controller failed to properly appreciate the factual controversy regarding the ownership and identity of the demised premises. He contends that the property in question falls within the jurisdiction of Town Committee, Nasarpur and parts thereof constitute government land, which aspect was completely ignored by the Rent

Controller. Learned counsel also contends that without ascertaining and demarcating the actual boundaries and measurements of the private city survey numbers vis-à-vis government land, no lawful ejectment order could have been passed. He contends that the relationship of landlord and tenant itself was disputed and could not be conclusively determined without resolving the question of title and location of the premises through proper demarcation by the competent authority.

7. Learned Additional Advocate General, Sindh contends that the controversy involved government land falling under Town Committee, Nasarpur. He contends that record pertaining to the subject area was never transferred from the defunct TMA Matiari to the successor council. He also contends that in the absence of proper demarcation and verification by the City Survey Officer, it could not be conclusively determined whether the premises in dispute fall within private city survey numbers or government land. Learned A.A.G. contends that for the ends of justice and protection of public property, the subject property may be measured and demarcated through the City Surveyor concerned before any final adjudication.

8. Heard and perused the record.

9. It is settled law that jurisdiction under Article 199 of the Constitution is supervisory; however, where findings of the appellate Court suffer from patent illegality, misreading or non-reading of material evidence, interference is warranted. In the present case, the learned Rent Controller framed proper points for determination, recorded evidence of both parties and gave detailed findings. The petitioner appeared in evidence and produced extract forms, revenue documents, death certificate and family tree showing devolution of property. He consistently deposed about oral tenancy created in 2004, enhancement of rent and subsequent default. The respondent, although led evidence, took inconsistent pleas. In written objections he claimed tenancy under Town Committee; however, in cross-examination he admitted that possession was received through family members decades ago and that Town Committee raised objection much later. Such contradictory stance weakens his defence. Significantly, no rent agreement, allotment letter or examined official from Town Committee was produced to substantiate plea of government tenancy. Mere

production of some receipts without connecting evidence is insufficient to displace otherwise established relationship.

10. It is a settled principle that in rent proceedings the Controller is not required to adjudicate complicated questions of title as a civil Court. The primary question is existence of relationship of the landlord–tenant. The appellate Court appears to have been swayed by question of title and alleged ownership of Town Committee, without appreciating that respondent failed to discharge burden of proof. Absence of complete municipal record, as stated in report, does not *ipso facto* establish government ownership nor negate petitioner’s evidence. The learned Rent Controller rightly drew inference from contradictory statements of respondent and his failure to substantiate defence through cogent evidence. The appellate Court reversed these well-reasoned findings without proper reappraisal of material evidence, which amounts to misreading and non-reading.

11. In this context, the Order dated 29.01.2026 passed by the Honourable Supreme Court of Pakistan in the case of Nawab Khan and another v. Muhammad Yousaf and others [C.P.L.A. No.806-P/2018 & CMA No.1877-P of 2018] authoritatively settles the controversy. In paragraph-7 thereof, the august Court summarized the legal position in unequivocal terms that:

- (i) A tenant who subsequently asserts acquisition of ownership rights is bound by estoppel under Article 115 of the Qanun-e-Shahadat Order, 1984, and cannot deny the landlord’s title while continuing in possession as tenant. If he intends to contest proprietary title, he must first surrender possession and thereafter seek adjudication of his claim.
- (ii) An ejectment petition against such tenant remains maintainable, since the mere assertion or alleged acquisition of ownership rights does not terminate the tenancy nor does it oust the jurisdiction of the Rent Controller.
- (iii) Where the tenant claims to have purchased a share or acquired co-ownership, the proper remedy is not to

resist ejectment proceedings but to seek recourse through a civil suit for partition.

The ratio decidendi of the aforesaid pronouncement squarely applies to the present case. Even if, for the sake of argument, the claim of ownership of the subject premises by the Town Committee, Nasarpur is taken at its highest, it could not, in law, retain possession through a tenant and simultaneously dispute the petitioner's title. Until such time as proprietary rights are established before a competent forum, the relationship between the parties remains governed by tenancy law. The learned 2nd Additional District Judge, Tando Allahyar failed to apply this binding principle and thereby exercised jurisdiction in a manner not sanctioned by law.

12. In view of the above facts and circumstances, I hold that the record clarifies that the oral tenancy was created in 2004 and respondent remained in possession as tenant; enhancement of rent and subsequent default were proved; respondent failed to prove lawful tenancy under Town Committee and the findings of the appellate Court suffer from legal infirmity and jurisdictional error. Consequently, this constitutional petition is **allowed** with no order as to costs. The impugned judgment dated 20.03.2025 passed by the learned 2nd Additional District Judge, Tando Allahyar, in First Rent Appeal No.01/2025 is hereby **set aside** while the judgment dated 15.01.2025 passed by the learned Rent Controller/1st Senior Civil Judge, Tando Allahyar, in Rent Application No.13/2024 is **maintained**. Respondent No.1 shall comply with the ejectment order within the period prescribed therein.

JUDGE

Abdullah Channa/PS