

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

**C.P No. S-124 of 2025**

[Ziaul Hussain Qazi v. Ghulam Mustafa & another]

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

Respondent No.1 : Ghulam Mustafa 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 2<sup>nd</sup> Additional District Judge, Tando Allahyar, in First Rent Appeal No.02/2025. The said appeal was filed by respondent No.1 against the judgment dated 15.01.2025 passed by the learned Rent Controller/1<sup>st</sup> Senior Civil Judge, Tando Allahyar, whereby Rent Application No.12/2024 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 facts leading to the instant petition are that the petitioner instituted a rent application under section 15 of the Sindh Rented Premises Ordinance, 1979 against respondent No.1 seeking his ejectment and recovery of arrears of rent. Petitioner stated that his father namely, Ghulam Murtaza Qazi, was the sole and exclusive owner of several 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, upon which shops had been constructed and let out to different tenants. After the demise of Ghulam Murtaza Qazi on 16.08.2022, the said property devolved upon his legal heirs namely the petitioner and his sister, Fouzia. He stated that vide rent agreement dated 11.01.2023, the petitioner let out one shop, formed out of C.S. Nos. 553, 553/A and 554, situated in Ward "B", Nasarpur ("rented premises"), to respondent No.1 at a monthly rent of Rs.7,000/- against a security deposit of Rs.25,000/-, which was subsequently enhanced to Rs.7,500/- per month after five months in terms of the agreement. The petitioner stated that respondent No.1, being his relative, regularly paid rent initially and due to mutual trust no rent receipts were exchanged. However, upon expiry of the rent agreement in December 2023, respondent No.1 neither executed a fresh agreement nor paid rent at the prevailing rate, despite repeated requests. Ultimately, a legal notice dated 20.04.2024 was served upon respondent No.1 requiring him to vacate the rented premises on the grounds of default in payment of rent and personal bona fide requirement, but no reply was received. The petitioner clarified that any inadvertent discrepancies in the legal notice stood cured through the rent application.

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. The petitioner led his evidence, whereas respondent No.1 failed to substantiate his defence or subject himself to cross-examination. 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 2<sup>nd</sup> 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, Matiyari, 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 neither produced 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 SADAQAT ALI and another v. Mst. NASREEN AKHTAR [2025 SCMR 358], MUHAMMAD MANSAB v. MUHAMMAD HANIF [2025 SCMR 60], JEHANGIR RUSTAM KAKALIA through Legal Heirs v. Messrs HASHWANI SALES & SERVICES (PVT.) LIMITED [2002 SCMR 241], MAQSOOD AHMAD v. KHALID HUSSAIN KHAN and others [2022 SMCR 1112] and BASHIR AHMED v. MUHAMMAD YOUSAF through Legal Heir [1993 SCMR 183].

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 Matiyari 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. From a careful appraisal of the record, it appears that the learned Rent Controller, vide judgment dated 15.01.2025, had allowed Rent Application No.12/2024 after framing proper issues, recording evidence of the petitioner and noting that respondent No.1 failed to substantiate his defence or even subject himself to cross-examination. The petitioner produced documentary evidence, including Family Registration Certificate and mutation entries (*Foti Khata Badal*), establishing devolution of the property from his deceased father to the legal heirs. He also placed on record the rent agreement dated 11.01.2023 and proved the rate of rent, enhancement clause, default in payment and issuance of legal notice dated 20.04.2024. The evidence led by the petitioner remained unshaken and un-rebutted. The learned Rent Controller, therefore, rightly concluded that the relationship of landlord and tenant stood established and that respondent No.1 was a defaulter. Conversely, the defence raised by respondent No.1 was premised on a vague and unsubstantiated plea that the property belongs to Town Committee, Nasarpur. Notably, no rent agreement with the Town Committee was produced nor any documentary evidence was brought on record to show allotment, tenancy or payment of rent to any government authority. Even the report submitted by the Chairman, Town Committee, Nasarpur, does not conclusively establish that the demised premises are part of government land. Rather, it candidly admits that no official record was transferred from the defunct TMA Matiari and that ambiguity exists due to absence of record. Such an admission of lack of record cannot, by any stretch of imagination, displace the positive documentary and oral evidence adduced by the petitioner.

10. It is a settled principle of rent law that in proceedings under the Sindh Rented Premises Ordinance, 1979, the Rent Controller is not required to adjudicate complicated questions of title as a civil Court. The primary consideration is the existence of relationship of landlord-tenant. In the present case, respondent No.1 admittedly entered into possession through the petitioner and paid rent to him initially. Such conduct itself constitutes acknowledgment of the petitioner's status as landlord. The subsequent denial of ownership, without supporting evidence, is clearly an afterthought and does not extinguish the established relationship. The learned appellate Court, while reversing the well-reasoned findings of the Rent Controller, failed

to properly appreciate the evidentiary material on record and misapplied itself by exaggerating the question of title and alleged Town Committee ownership, which was neither proved nor substantiated through documentary evidence. The reversal appears to be based upon conjectures and assumptions rather than on a reappraisal of admissible evidence in accordance with law. Such an approach amounts to misreading and non-reading of material evidence and constitutes an error of jurisdiction warranting interference in constitutional jurisdiction.

11. The stance taken by the Town Committee and supported by the learned Additional Advocate General is originated upon absence of record and apprehension of possible encroachment. However, absence of record is not proof of ownership. *Prima facie*, no demarcation report, revenue extract, survey map or official notification was produced to demonstrate that the specific shop in occupation of respondent No.1 forms part of government land whereas, the petitioner has succeeded in substantiating his claim through documentary evidence and oral testimony, which remained un-rebutted. It is a settled rule of evidence that a party who asserts a fact must prove it. The respondents having failed to discharge their burden cannot derive advantage from their own inability to produce record. Furthermore, respondent No.1 having failed to step into the witness box or subject himself to cross-examination, an adverse inference is rightly attracted against him. The learned Rent Controller was justified in relying upon the un-rebutted testimony of the petitioner. The appellate Court, while discarding such findings, did not assign cogent, convincing or legally sustainable reasons. The impugned judgment thus reflects perversity and misapplication of settled principles governing rent jurisprudence.

12. 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 2<sup>nd</sup> Additional District Judge, Tando Allahyar failed to apply this binding principle and thereby exercised jurisdiction in a manner not sanctioned by law.

**13.** In view of the above discussion, it is manifest that the petitioner has established (i) existence of landlord-tenant relationship; (ii) default in payment of rent; and (iii) lawful entitlement to seek ejectment under section 15 of the Sindh Rented Premises Ordinance, 1979. The defence raised by respondent No.1 is unsupported by documentary proof and remains a bald claim. The findings recorded by the learned Rent Controller were based upon valid, cogent, logical and convincing grounds, whereas the impugned appellate judgment suffers from legal infirmity and jurisdictional error. Accordingly, this constitutional petition is **allowed** with no order as to costs. The impugned judgment dated 20.03.2025 passed by the learned 2<sup>nd</sup> Additional District Judge, Tando Allahyar, in First Rent Appeal

No.02/2025 is hereby **set aside**. The judgment dated 15.01.2025 passed by the learned Rent Controller/1<sup>st</sup> Senior Civil Judge, Tando Allahyar, in Rent Application No.12/2024 is **maintained** in its true letter and spirit. Respondent No.1 shall comply with the ejectment order within the period prescribed therein. Any pending application stands disposed of accordingly.

**JUDGE**

\*Abdullah Channa/PS\*