

**IN THE HIGH COURT OF SINDH, AT  
KARACHI.**

Constitutional Petition No. S-303/2010

Petitioner : Muhammad Iqbal Haider, through Mr. Shahenshah Hussain, Advocate.

Respondent No.3 : Mst. Aijaz Fatima, in person.

Date of hearing : 01.06.2017

Date of Judgment :

**JUDGMENT**

**YOUSUF ALI SAYEED, J.** The instant Petition pertains to immovable property bearing No. C-333, Block-6, F.B. Area, Karachi (the “**Subject Premises**”), and calls into question the propriety of the Order made on 27.03.2010 by the learned 1<sup>st</sup> Additional District Judge, Karachi (Central) in FRA No.237/2009 (the “**Impugned Order**”), emanating from Rent Case Number 139/2008 disposed of by the learned IInd Senior Civil Judge/Rent Controller, Karachi, Central vide Order dated 03.12.2009.

2. Briefly, the salient facts as to the course of litigation inter se the parties in relation to the Subject Premises, culminating in the Impugned Order, are as follows:

- (a) The Rent Case was instituted under Section 15(2) of the Sindh Rented Premises Ordinance, 1979 (the “**SRPO**”) by the Respondent No.3 in her professed capacity as owner of the Subject Premises, seeking the eviction of the Petitioner on grounds of default in rent as well as unauthorized commercial use.

- (b) On 17.07.2008, the learned Rent Controller made an Order on the Application of the Respondent No.3 under Section 16(1) of the SRPO (the “**Tentative Rent Order**”, directing the Petitioner to deposit arrears of rent for the past three years, amounting to Rs.450,500/-, within a period of 25 days of the date thereof, and to also deposit future rent. The right of withdrawal of these amounts was held in abeyance pending decision of the case.
- (c) The Tentative Rent Order was assailed by the Petitioner before this Court vide Constitutional Petition Number 346/2008, wherein the operation thereof was suspended in terms of an Order made on 11.08.2008. However, the Petition was then dismissed on 29.08.2008 with a direction to the learned Rent Controller to dispose of the Rent Case within two months of receipt of that order.
- (d) The Petitioner went on to agitate the matter before the Honourable Supreme Court of Pakistan in CPLA Number 1193/2008, and whilst the operation of the Judgment of this Court made on 29.8.2008 as well as the Tentative Rent Order were initially suspended by the Apex Court in terms of an Order made on 22.09.2008, on more detailed examination of the matter the CPLA was subsequently dismissed in terms of a detailed Judgment dated 09.06.2009.
- (e) The Petitioner then preferred Civil Review Petition Number 33-K of 2009, which was withdrawn on 02.02.2010.

- (f) In the absence of any restraining order, the learned Rent Controller proceeded to make the Order dated 03.12.2009 on an Application that had been filed in the Rent Case by the Respondent No.3 under S.16(2) of the SRPO, whereby the defence of the Petitioner was struck off and he was directed to peaceably hand over vacant possession of the Subject Premises to the Respondent No.3 within a period of 45 days from the date thereof.
  
- (g) The Petitioner assailed the Order dated 03.12.2009 vide the aforementioned FRA, which culminated in dismissal in terms of the Impugned Order, hence this Petition.

3. Learned counsel for the Petitioner stated that the Petitioner had been inducted as a tenant of the Subject Premises in the year 2003 by one Mst. Nasreen Jehah Ghori, who was the owner thereof at the time. He further stated that the Petitioner's late mother had previously entered into an Agreement with the then owner for acquiring ownership of the Subject Premises. He pointed out that the matter of this arrangement as well as that of the sale of the Subject Premises by the then owner to the Respondent No.3 was pending adjudication in two civil suits; one for specific performance of the agreement of sale in favour of the Petitioner's mother and the other for cancellation of the Sale Deed dated 22.08.2008 executed in favour of the Respondent No.3.

4. On this basis, he sought to deny that there existed any relationship of landlord and tenant inter se the Respondent No.3 and the Petitioner, and contended that in the face of this pending litigation before the Civil Courts as to the ownership of the Subject Premises, the learned Rent Controller had not been justified in making the Tentative Rent Order. He further submitted that the learned Rent Controller had failed to consider that there had been no default on the part of the Petitioner as regards the Tentative Rent Order in as much as the same had remained suspended from time to time. He contended that upon such suspension eventually being lifted upon dismissal of CPLA Number 1193/2008 on 09.06.2009, he had proceeded to promptly comply therewith and make the requisite deposit in full and then continued to remain compliant thereafter. He submitted that the Impugned Order thus ought to be set aside as prayed.
  
5. Having examined the Impugned Order and considered the submissions made by learned counsel in light of the record, it is apparent that the principal ground raised in the Memo of Petition and the main thrust of the Petitioner's case during the course of arguments gravitate around the aspect of the ownership of the Subject Premises being in dispute and under litigation. However, this very aspect has already been fully addressed in terms of the Judgment of the Honourable Supreme Court made on 09.06.2009 in CPLA Number 1193/2008, whereby it was held that such pending dispute did not constitute grounds for refusal of compliance of an order made under S.16(1) of the SRPO.

6. Furthermore, it was also unequivocally observed in the aforesaid Judgment of the Apex Court that “The petitioner was not absolved of his responsibility of compliance of order passed by the Rent Controller under the provisions of section 16 of the Ordinance for making of payment of arrears and future rent”.
  
7. From a perusal of the Order made on 03.12.2009 by the learned Rent Controller, it is evident that the various aspects of the arguments advanced on behalf of the Petitioner, which were the same as have been raised in terms of these proceedings, were considered in the context of the Judgment of the Apex Court, and were dispelled as such. In the ensuing FRA, the learned ADJ, duly considered this observation and the fact that the Petitioner based his stance of maintaining possession of the Subject Premises without paying rent on the plea that his mother was a bona fide purchaser, when it stood well settled as a matter of law that the existence of a sale agreement does not of itself absolve a party of his obligations as a tenant. As such, the learned ADJ was pleased to maintain the Order of the Rent Controller.
  
8. When the cause of the Petitioner is examined in this context, it is apparent that the entire case mounted by the Petitioner in opposition to the claim of the Respondent No.3 is ill founded, being bereft of any basis in law, and the entire semblance of a defence was completely shorn away by the Apex Court in the Judgment of 09.06.2009.

9. Furthermore, it is apparent that the Petitioner delayed compliance with the Tentative Rent Order by design, on the pretext of such proceedings, and having failed in this endeavor cannot now absolve himself of the repercussions of electing to adopt this process instead of ensuring compliance with the Tentative Rent Order within the given timeframe. The condonation of such an act would serve to place a premium on non-compliance.
  
10. In the given circumstances, I find no illegality or irregularity in the approach of the Courts below that warrants correction in exercise of the writ jurisdiction of this Court, which is to be exercised so to subserve and foster the cause of justice, and not to perpetuate an action that undermines or defeats such ends.
  
11. In view of the foregoing this Petition is dismissed with no order as to costs.

JUDGE

Karachi.

Dated: \_\_\_\_\_