# IN THE HIGH COURT OF SINDH AT KARACHI

**CONSTITUTION PETITION NO.S-465/2020**

**PRESENT: MR. JUSTICE SALAHUDDIN PANHWAR**

Petitioner : The Province of Sindh and another.
through M/s Salman Talibuddin A. G. Sindh, Aley Maqbool Rizvi, Additional A.G. Sindh and Pervez Ahmed Mastoi, Assistant A.G. Sindh.

Respondent : Mst. Rasheeda Begum,
through Mr. Muhammad Ramzan Tabassum advocate.

Date of hearing : 17th and 21st September 2020.

Date of announcement: 8th December, 2020.

## J U D G M E N T

**SALAHUDDIN PANHWAR, J.** This petition is against judgment dated 11.02.2020 delivered by IXth A.D.J. Karachi East in FRA No.139/2019 whereby order dated 09.08.2019 passed by Xth Rent Controller Karachi East on application under section 15 of the SRPO 1979 was maintained and appeal was dismissed.

2. Brief facts of the case are that respondent had filed Rent Case No.34/2015 against the appellants in respect of residential (single story) building constructed on Plot No. 4/3, Survey No. 98/101, measuring 1000 square yards (area 500 square yards and open land 290 square yards), Deh Drig, Tappo Drig Road, Karachi; that respondent claims to be landlady of demised premises purchased by her from its previous owner on 09.02.2011 by virtue of sale agreement; that previously appellant No.2 was running Asif Govt. Girls and Boys School at the rented premises of respondent on the basis of rent/tenancy agreement dated 01.07.2007 between previous owner

and appellant No.2 which continued after purchasing the rented premises by the respondent by virtue of agreement dated 01.07.2007 and the appellant No.2 was liable to pay rent @ of Rs.15000/- per month with enhancement of rent at the rate of 10% per month, whereas, the prevailing rent in the locality of similar type of property is Rs.150,000/-; that it is the case of respondent that after purchasing the demised premises by the respondent, she had informed appellant No.2 regarding change of ownership and served appellant No. 2 with a letter under Section 18 of the SRPO, 1979 and also sent another letter dated 22.06.2011 requesting the official of appellant No.2 to pay the rent from October, 2010 as no rent was paid from that date; that respondent many times personally visited the headmistress of School at the rented premises and informed her about non-payment of rent form October, 2010 as well respondent from time to time sent different letters/reminders to the high ups but no arrears of rent were paid to her, instead the officials of appellant No.2 used delaying tactics malafidely; that respondent submitted a complaint before the Provincial Ombudsman Sindh with a request for direction to appellant No.2 to pay arrears of rent from October, 2010 which was pending adjudication. It is further the case of respondent that the appellant No.2 has also sub-let and wrongfully handed over and parted with possession of the rented premises by shifting another Akhtar Boys and Girls School into rented premises without consent and permission of respondent by merging both schools into one, that rented premises is required by respondent's son namely Saleem Anwer for his own personal bonafide use and occupation to do his own business therefore, respondent filed rent case before trial court against the appellant No. 2 to deposit the arrears of rent from October 2010 to February 2014 for 52 months at the rate of Rs.15,000/- per month with the enhancement of rent @ of Rs.10% per month as well future monthly rent at same rate and further for direction to

appellant No.2 to hand over the vacant and peaceful possession of demised premises to the respondent or her authorized attorney.

3. Case of appellants is that rent case was not maintainable as hit by provisions of section 42 of the Specific Relief Act 1876 and section 54 of the Transfer of Property Act; that besides it was without any cause of action; appellants denied the ownership of respondent to the demised premises as respondent had allegedly purchased the property on 09.02.2011 from its previous alleged owner by virtue of sale deed but in fact owner was one Muhammad Hussain but respondent failed to provide transfer of ownership title from said owner to Muhammad Khalil-ur-Rehman Bajwa who later on gifted the same to his wife Mst. Bushra Rahat, moreover the property situated at plot No.256/A Green Town Karachi is mentioned in the tenancy agreement dated 01.01.1981 but in the sale deed dated 09.02.2011 the address of the property mentioned in the schedule is Plot No.4/3, Survey No.98/101, which are clearly different with the tenancy agreement; that according to the verification report dated 19.09.2014 issued by Mukhtiarkar Shah Faisal District Korangi, the property was transferred to M.K. Rehman through settlement commissioner Karachi vide letter No.190 dated 18.02.2014 and No.DSC/132 dated 14.02.1974 vide entry No.6239 dated 26.04.2006 and entry No.0510 which shows that the said property actually belongs to government and entire documents regarding the property are managed and fictitious ones and do not constitute right of title for the respondent; that Asif GG&B school is running in the building known as Plot No.256/A, Green Town, Karachi since 01.11.1971 which was later on nationalized by government under MLR-118 of 1972 and appellant No.2 is running government school in said building; that respondent is neither owner of the subject matter property nor appellant No.2 is a tenant and there is no relationship of landlord and tenant between the parties; that respondent is a land grabber and attempting

to usurp and encroach upon the school premises and cause damages to the building.

4. Record reflects that Rent Case No.34/2015 was allowed vide *ex-parte* order dated 15.05.2015 with direction to opponent therein (appellant No.2) to deliver vacant and peaceful possession of subject matter premises to applicant (respondent); appellants filed FRA No.69/2015 which was allowed vide order dated 30.11.2015 whereafter respondent filed CP No.S-2070/2013 and this Court vide order dated 14.02.2018 set aside the order dated 30.11.2015 and remanded the case back to appellate court for deciding the same afresh; the appellate court vide judgment dated 24.03.2018 set aside the order of Rent Controller dated 30.05.2015 and remanded the case with direction to decide the matter on merits after leading evidence of both parties. The Rent Controller vide order dated 09.08.2019 allowed rent case No.34/2015 and directed the appellants to deliver vacant and peaceful possession of subject premises i.e. N/GRT/MR-256/A (Plot No.4/3, Survey No.98/101, measuring 1000 square yards, Green Town, Deh Drig, Tapo Drig Road, Karachi), to applicant (respondent) within 60 days. Appellants filed first rent appeal which was dismissed vide judgment dated 11.02.2020.

5. Heard learned A.G. Sindh and learned counsel for respondent; perused the record.

6. At the outset learned A.G. Sindh has emphasized against applicability of section 3 of the Sindh Rented Premises Ordinance, 1979 with the plea that rent jurisdiction was not applicable in this case as section 3 of the Ordinance 1979 excludes that jurisdiction; he has relied upon 1996 SCMR page 1767 and 2009 SCMR page 315 on same point. It is further contended by learned A.G. Sindh that addresses of demised premises as noted in tenancy agreement and eviction application are entirely different.

7. In contra, learned counsel for respondent while relying upon SBLR 2016 Sindh 2008, 2000 SCMR 893, 1987 CLC 352, 2010 CLC 561, 2006 CLC 1416, 2015 YLR 2543, 2017 YLR Note 68, 2017 YLR NOTE 138, 1992 MLD 1045, 2000 SCMR 1960, 2001 CLC 251, 2010 SCMR 1433, PLD 2009 SC 45, 2010 SCMR 1925, unreported judgments of apex court dated 14.11.2001 in CPLA No.869-K/2001, order dated 18.12.2019 in Civil Petitions No.709-K of 2017 and others and order dated 28.06.2018 in Civil Appeal No.61-K/2017, judgment passed by this court on 09.11.2017 in CP No.S-598 and 999 of 2013 (Government of Sindh vs. the Islamic Education Trust and others), order dated 07.09.2001 in CP No.D-96/2001 and judgment dated 26.01.2016 in CP No.S-173/2015, contends that in earlier rent jurisdiction plea was not raised; tenancy is not disputed; change of ownership is not disputed; payment of rent by the petitioner is not disputed hence petitioners are not competent to raise same point. He has relied upon sections 113 and 115 of Qanoon-e-Shahadat Order 1984. He has also referred evidence of petitioner's witness. It is further contended that earlier this court in same litigation in CP Nos.S-598 and 999 of 2013 adjudicated the issue of applicability of section 3 of the Ordinance 1979 and thus that order is in field and admittedly same was not assailed by the petitioner.

8. During pendency learned A.G. Sindh filed statement alongwith letter dated 14.09.2020 containing therein that :-

> "The Advocate General Sindh,
> Karachi.
>
> SUBJECT: <u>CP NO.S-465 OF 2020 FILED BY SECRETARY SCHOOLS VERSUS RASHEED BEGUM.</u>
>
> I am directed to refer to enclose herewith a copy of notification No.VIII(3)/01/75 dated 29.07.1980 issued in excessive of powers conferred by sub-section (2) of 8 of the Sindh Rented Premises Ordinance 1979 (copy enclosed).

It is inform that the above said notification is still in the field (not withdrawn) and as per record no subsequent notification has been issued till date.

Section Officer (Judicial-I),
Home Department."

As well notification dated 29.07.1980 which is that :-

"HOME DEPARTMENT
Karachi, the 29th July 1980.

In exercise of powers conferred by sub section (2) of section 3, of the Sindh Rented Premises Ordinance 1979 and in supersession of all orders issued previously the Government of Sindh are pleased to exempt the premises belonging to the councils constituted under the Sindh Local Government Ordinance 1979 and the premises of the colleges and schools, taken over under Martial Law Regulation 118 of 1972 from the application of the said Ordinance.

Mazhar Rafi,
Secretary to Government of Sind."

9. At the outset learned A.G. Sindh has emphasized over the notification pursuant to section 3 of the Ordinance 1979 and has contended that notification is in field, appellate order whereby case was remanded back by holding that landlord is competent to file eviction application was per *in-curium* and no proper assistance was furnished though that order was not challenged by them in the apex court, however legal statutory position cannot be taken away by any order which can be examined by this court. He has relied upon 2017 PTD 795.

10. In the instant matter, the question with regard to *maintainability* of the *lis* is raised with reference to sub-section (2) of section 3 of the Sindh Rented Premises Ordinance, 1979 whereby the premises of the colleges and schools, taken over under Martial Law Regulation 118 of 1972, are exempted from the application of the said Ordinance. I don't find much force in such contention for two reasons. *First* one is that in the instant *lis* such question was *earlier* specifically raised; discussed and was answered in

*negation* vide judgment dated **09.11.2017** (CP Nos.S-598 and 999 of 2013) which judgment, having not been challenged, legally has attained the status of *finality* hence any *contrary* view in same *lis* would amount sitting over such *final judgment* by this Court which, needless to add, is not legally permissible.

11. The other reason *legal* reason is the referral to case of *Sindh v. Khalil-ur-Rehman* in Civil Appeal No.1544 of 2000 in referred order wherein Honourable Supreme Court held in that context of the facts of the case as:-

> *"***Even when such exemption was intact** *forfeiture of tenancy clause was available to the owners of the properties* **in terms of section 112 of Transfer of Property Act and could be availed of in appropriate cases"**

Thus, regardless of the *plea* of continuity of the said provision, the objection, so raised, can't be a reason to hold the jurisdiction of the Rent Controller, taken onto this *particular* lis, as *void ab initio*.

12. It is needless to add that question of maintainability of rent application and jurisdiction of the Rent Controller was only with reference to Section 3 of the Ordinance, therefore, proving other ingredients for succeeding in an ***ejectment application*** however are upon the respondent / landlady, therefore, referral to earlier order of this Court to prove existence of relationship of landlord and tenant is *entirely* misconceived.

13. Before attending the merits of the case, I find it in all fairness to address the issue which was neither raised nor noticed by two courts below. Such issue is that in instant matter the status of the school, having been ***nationalized*** under MLR, was never disputed but perusal of the record of Rent Controller shows that the '***government***' was not a party in ***ejectment application*** rather ***ejectment application*** has been filed against:

> ***"The Director School Education,***
> ***6th Floor, Civic Centre, Gulshan-e-Iqbal,***
> ***Karachi."***

The office or *designate* of ***'Director'*** *legally* can't be termed as ***'government'*** particularly in view of Section 2(d) of the Ordinance as:-

> **"2(d) "Government"** means the ***Government of Sindh;"***

It is an *undeniable* position that ***'government of Sindh'*** was never sued by the respondent /landlady but she (landlady/respondent) had sued the ***Director Schools*** to be tenant of *premises.* Here, I would acknowledge that manner of suing the ***'government'*** is not defined in the Ordinance but definition of ***'government'*** is given. Here, it is worth to refer settled principle of law that where a Statute lays down certain principles for doing 'some acts' they may be taken as a guidelines for doing something of the same nature which is in the discretion of the court. Guideline is taken from the case of *Mazhar Ahmed v. The State & another* (2012 SCMR 997) wherein it is observed as:-

> "Section 426(1) though has made essential the recording of reasons in case of suspension of sentence but has not prescribed any guideline or the manner in which such a discretion is to be exercised as how and what would be the criteria for the recording of the reasons. Since these provisions, under section 426(1) are analogous to the one contained in section 497 Cr.P.C, as in both the cases the sentence or detention is to be suspended pending hearing of the appeal / trial and the convict or the detenue is to be released on bail with only difference that in the former case the person is a convict one, already found guilty, while in the latter he has been charged only and to face trial and is still to be proved guilty. It would be appropriate , **in the absence of any guideline, to follow ' the one provided under section 497 Cr.P.C. on the principle that where a Statute lays down certain principles for doing 'some acts they may be taken as a guidelines for doing something of the same nature which is in the discretion of the court** as held in the case of Maqsood vs. Ali Muhammad 1971 SCMR 657 and which principle, as later on, was reaffirmed by this Court in the case of Peer Mukaram-u-Haq vs. National Accountability Bureau NAB through Chairman and others 2006 SCMR 1225. In section 497 Cr.P.C. the existence and non-existence of the reasonable grounds for believing that the person is guilty of the offence and the scope of further inquiry are the criteria / hallmarks and for arriving at such conclusion the tentative assessment and not the minute or detailed assessment of the evidence has been made permissible, the principle laid down by this Court and reaffirming repeatedly. Similarly, the same guidelines have been laid down by the

> superior Courts that in case of suspension of sentence, only the tentative assessment of the material available evidence and the judgments has been made permissible and the detailed appraisal of evidence was held to be avoided as held by this Court in the cases of Allah Ditta Khan (supra) and Farhat Azeem (supra). However, the principles laid down by this Court in the aforesaid judgments qua following the guidelines prescribed under section 497 Cr.P.C while deciding application under section 426(1) Cr.P.C but without being controlled by the aforesaid section i.e 497 Cr.P.C as held in the case of The State v. Shah Sawar 1969 SCMR 151 and such powers i.e the suspension of sentences and grant of bail under section 426 Cr.P.C are not wider than the power to release a person on bail under section 497 Cr.P.C as held in the case of Bahar Khan vs. The State 1969 SCMR 81 but rather narrower'

Taking guidelines from said case, I can say that the manner of suing government is provided by Section 79 of the *Code* hence same would be followed for such *purpose.* The Section says:-

> "**79. <u>Suits by or against the Government</u>:** In a suit by or against the Government the authority to be named as plaintiff or defendant, as the case may be, shall be—
>
> (a) in the case of a suit by or against the Federal Government Pakistan;
>
> (b) in the case of a suit by or against a Provincial Government, the Province; "

14. It is worth mentioning that it was never the claim of the respondent / landlady that ***tenancy*** was created by the *designate*, sued as ***tenant*** but plea was that of tenancy with ***education department.*** The education department, *legally,* is not controlled or managed by the ***'Directorate office'*** but by the ***Secretary*** concerned. This legal position was always in notice and knowledge of the respondent / landlady which is evident from referral to a response, made by the respondent's attorney in his cross-examination as:-

> "It is correct to suggest that Secretary Education is not made party in this case to whom I had issued legal notices time and again."

From above admission, it is evident that even while submitting ***'amended ejectment application'*** the department was not sued properly, as required by

law, particularly when till such time it stood obvious and clear that the control and management of such *premises* was with ***'government'*** under MLR**.** Thus, it can *safely* be concluded that respondent / landlady has not *properly* sued the *government* through Secretary concerned and legal effect thereof is *fatal.* Reference can safely be made to the case of *Government of Balochistan, CWPP&H Department & Ors v. Nawabzada Mir Tariq Hussain Khan Magsi & Ors* (2010 SCMR 115) wherein while attending such question it is observed as:-

> "4. The above reproduced section has been couched in a simple and plain language and there is hardly any need for its scholarly interpretation and it simply provides that a suit instituted against the Government, the authority to be named as defendant would be the Federal Government of Pakistan or Province concerned as the case may be. No suit can be filed against Provincial Government without impleading the Province as a party and the procedural precondition is mandatory in nature and no relief can be sought without its strict compliance and such suit would not be maintainable. The case titled Province of Punjab v. Muhammad Hussain PLD 1993 SC 147, relevant portion whereof is reproduced hereinbelow for ready reference:--
>
> > "Section 79 of the C.P.C. requires, and so does article 174 of the Constitution, that all suits against the Central Government have to be filed in the name of Pakistan and against a Provincial Government in the name of Province."
>
> 5. A similar proposition was also discussed in case title Abdul Aziz v. Government of Balochistan 1999 SCMR 16 and it was observed as follows:--
>
> > "It, no doubt, follows from the said observations that the learned Judge in Chambers could have taken notice of the fact that the appeal in the present case had been entertained by the Appellate Court in spite of being barred by 55 days, but it appears that the learned Judge found it necessary to address himself to a more important question **as it transpired that the plaintiff had failed to comply with the provisions of section 79, C.P.C., or Article 174 of the Constitution, both of which require that in a suit filed against the Government the authority to be named as a defendant is to be the Province**. Since the suit was filed in the present case against the Provincial Government, **the Province could be sued through the Secretary to the Government**. Obviously, there had been no compliance with he said provisions when the suit was initially filed by the appellant. Unless suit is filed through a proper person,

> any order directing ex parte proceedings against the defendant would be liable to be challenge. Reference in this regard may be made to a judgment of this Court in Province of the Punjab v. Muhammad Hussain PLD 1993 SC 147, our attending to which has been invited by the learned counsel for the appellant himself. In this case, questions raised before this Court for the first time in regard to maintainability of the suit, its valuation or its being within time, which had not received due attention earlier by the Courts below while dealing with the case, were considered by this Curt and the judgments and the decrees passed by the Courts below were set aside and the suit filed by the plaintiffs was dismissed as barred by limitation. Therefore, there is no doubt that the learned Judge in the High Court, while exercising revisional jurisdiction, was empowered to take notice of the defects which were apparent on the face of the record. The failure of the appellant to sue through a proper person was a defect which went to the root of the matter and, but for interference by the High Court, serious prejudice would have been caused to the respondent. Therefore, in our view, the order passed by the learned Judge in Chambers is not open to exception.""

> "7. Due to non-compliance of the mandatory provisions as enumerated in section 79, C.P.C. and Article 174 of the Constitution of Islamic Republic of Pakistan, **a suit against the functionary only is not maintainable as has been done in this case**. In view of what has been discussed hereinabove, the appeal preferred on behalf of Government of Balochistan is hereby allowed and the judgment dated 21.9.2005 passed by learned Single Judge of the High Court of Balochistan in Chambers is set aside and the suit filed by the respondents being non-maintainable is also dismissed."

Such floating legal flaw was never attended by the two courts below, despite fact that petitioner no.1, while challenging the orders of lower courts, did observe the compliance of the Section 79 of the Code. Needless to add that this being the legal requirement is available to be attended at any time even if not raised by parties, so was explained by honourable Apex Court in the case of *Government of Balochistan, CWPP&H Department & Ors* supra. This count, *alone,* was / is sufficient to hold the application of respondent / applicant as not maintainable.

15. Be that as it may, there is another *legal* aspect which, *too,* has not been attended while answering the point of ***existence of relationship.*** It is needless to add that such question is always of *vitality* for continuing proceedings with matter by Rent Controller. An answer in negation would always be sufficient for scission of jurisdiction onto matter by the Rent Controller because mere ownership alone, *legally,* has got nothing to do with status of **'landlord'.** Reference is made to the case of *Afzal Ahmed Qureshi v. Mursaleen* (2001 SCMR 1434) wherein it is held as:-

> "4. …… In absence of relationship of landlord and tenant between the parties the question of disputed title or ownership of the property in dispute is to be determined by a competent Civil Court as such controversies do not fall within the jurisdictional domain of the learned Rent Controller. **It is well-settled by now that "the issue whether relationship of landlord and tenant exits between the parties is one of jurisdiction and should be determined first, in case its answer be in negative the Court loses scission over lis and must stay his hands forthwith"**. PLD 1961 Lah. 60 (DB). There is no cavil to the proposition that non-establishment of relationship of landlady and tenant as envisaged by the ordinance will not attract the provisions of the Ordinance. In this regard we are fortified by the dictum laid down in 1971 SCMR 82. We are conscious of the fact **that 'ownership has nothing to do with the position of landlord** and payment of rent by tenant and receipt thereof by landlord is sufficient to establish relationship of landlord and tenant between the parties".

*Legally,* the term 'tenant' has *itself* been defined by the Ordinance *itself* as:-

> "**Section 2(j)** "tenant" means any person **who undertakes or is bound to pay rent** as consideration for the possession or occupation of any premises by him **or by any other person on his behalf and include**:
>
> (i) …….
>
> (ii) heirs of the tenant in possession or occupation of the premises after the death of the tenant;"

16. Therefore, before claiming or suing one as ***'tenant'*** the applicant shall always be required to establish that there existed such relationship between him (applicant) and the opponent or between previous owner and opponent. In the instant matter, the respondent / landlady to substantiate *tenancy* claimed in affidavit-in-evidence as:-

> "3. I say that previously the opponent was running Asif Govt. Girls and Boys Schools at the rented premises on the basis of monthly rent by virtue of **rent agreement dated 01.12.2007 executed between the previous owner and opponent** available at Page No.133 as annexure A/3, which was continued after purchase of the rented premises."

From above, it *can* safely be concluded that the document of tenancy dated **01.12.2007** was / is being claimed to prove status of **opponent** as tenant with further claim that on purchase from previous owner (landlord) she stood stepped into shoes of previous **landlord.** The perusal of the referred document shows that begins as:

> "This agreement of rent made at Karachi between **the Govt. of Sindh through E.D.O Ed: Karachi**….

Even this *prima facie* establishes that signatory thereof i.e:

> **"Mrs. Fakhar Karim Siddiqui**
> **Executive District Officer (Edu)**
> **City District Govt. Karachi"**

was, in fact, not the ***'tenant'*** but her status, at the most, could be taken as an **authorized person** for executing the document *only*. It was always the **'Govt. of Sindh'** which, legally, was / is to be sued through ***'Secretary concerned'*** hence making the **'Director Education'** as **'opponent / tenant'** was never satisfying the term so was *specifically* made clear in such document *itself.* I would further add that responsibility of payment of the rent was never taken by the ***'Director Education'*** but it was upon the specifically termed ***'tenant/lessee'*** i.e **'Govt. of Sindh'.** The position, being so, also brings the office of **Director Education** out of the scope of **tenant,** as defined in the Ordinance *itself.* Here, it is worth adding that said document (rent agreement dated **01.12.2007** was not produced so as to establish relationship of landlord and tenant between the petitioner/opponent and respondent/applicant but

it was shown to establish status of opponent as **'tenant'** in the premises in question.

17. I am not inclined to accept such *plea* because mere **'ownership'** alone is never sufficient to prove status of occupant of premises as ***'tenant'*** of such **'owner'** else the term of **'tenant'** would, surely, have a different meaning from the one, provided in the Ordinance *itself*. Since, by now it is quite safe to emphasis that the status of **'tenant'** for purpose of this *Ordinance* was with one, so named in the relied **rent agreement,** which was categorically that of **'Govt. of Sindh'** therefore, the respondent / landlady was not only required to serve the **'notice under section 18 of the Ordinance'** upon the **'tenant'** and **'tenant'** but also to sue it (*government)* alone else the respondent / landlady *legally* can't avail the benefit of such provision. The section 18 of the Ordinance reads as:-

> **"18. Change in ownership**. Where the ownership of a premises in possession of the tenant has been transferred by sale, gift, inheritance or by such other mode, the new owner shall send an intimation of such transfer in writing by registered post **to the tenant** and the tenant shall not be deemed to have defaulted in payment of the rent for the purpose of clause (ii) of subsection (2) of section 15, if the rent due is paid within thirty days from the date when the intimation should, in normal course, have reached the tenant."

In the instant matter, the attorney of the respondent / applicant did claim in his para-5 of affidavit-in-evidence as:-

> "5. I say that after purchase of rented premises, the applicant intimated the opponent about change of ownership and served the opponent a letter of atonement under section 18 of the SRPO 1979 **and sent another letter dated 22.06.2011 requesting the officials of the opponent to pay the rent from October, 2010 as no rent was paid from that date."**

The notice under section 18 of Ordinance, on perusal, again shows that it was served upon:-

1. The Secretary,
   Education and Literacy Department,
   Government of Sindh,

Karachi.

2. The Executive District Officer (School)
City District Government, Karachi.

3. The Headmistress,
Asif Government Girls and Boys,
School, Green Town, Karachi.

18. The notice appears to have been served upon proper person (*Government of Sindh).* Not only this but there is admission that ***'Government of Sindh'*** (Secretary Education department) was approached in writing before approaching the Rent Controller with request:-

> "It is therefore requested to kindly direct the Headmistress Asif Girls and Boys schools to shift the students and staff of Asif Girls and Boys Schools in the nearby Government School building and handover the existing school building to me."

therefore, it can safely be concluded that the respondent / applicant always knew as to who the **actual tenant** is but she has filed the ejectment application against a wrong person i.e Director Schools who, legally, can't be termed as **'tenant'** even with reference to rent agreement dated 01.12.2007. I must add here that provision of Section 15 of the Ordinance requires proving grievances against the ***'tenant'*** only because the order of ejectment, *too,* is to be passed against the ***'tenant'.*** There can be no exception to the legal position that a *lis* filed against a wrong person, legally, can't be used / pressed against a **'rightful person'** because it shall take away the guarantee of ***fair-trial*** which, legally, is available to every person whose right or interest are likely to be prejudiced**.** Needless to add that responsibility wholly lies upon the applicant / plaintiff to sue a **proper** person.

19. In the instant matter the status of the **Govt. of Sindh** (Education Department) as **'tenant'** is not disputed; I even will not make any comments on correspondence by the department or its officials towards claimed status of respondent / applicant because in such correspondence the

suggestion of entering into rent agreement with new owner (respondent / applicant) was there which (*suggestion)* can never be termed as an **'agreement'.** The position is even clear from admission made by the attorney of the respondent / applicant during his cross examination as:-

> "It is correct to suggest that **there is no tenancy agreement executed between Education Department and applicant**. "

The respondent / applicant was claiming to have stepped into shoes of previous owner, therefore, she, *legally,* was not justified to file ejectment against the **'Director Schools'** without impleading the **'Govt. of Sindh'** as **tenant.** Therefore, application of the respondent / applicant even was not competent as the same has never been filed against the actual **'tenant'.** I would also add that the present respondent / applicant, *even,* did not bother to rectify such mistake on remand of her ejectment application back to the Rent Controller hence she has to face consequence of not-making compliance of requirement of law; fair-play and *equity* which always demanded filing of **ejectment application** against the **tenant** of premises and not **occupant** thereof.

20. In consequence to what has been discussed above, the instant petition is allowed; orders of both the courts below are set-aside and ejectment application, being incompetent, is dismissed. However, this would not prejudice the right of the respondent / applicant to file proper ejectment application against the **actual** tenant.

**J U D G E**

IK