

IN THE HIGH COURT OF SINDH, KARACHI

C.P. NO. S- 395 OF 2006

PRESENT:

MR. JUSTICE ARSHAD HUSSAIN KHAN

Petitioners: Israrul Haq & others
through Mr. Abdullah Chandio, Advocate

Respondent No.1: Mst. Zohra Jabeen
Through M/s. Qaisar Hassan Khan & Altaf Hussain,
Advocates

Date of Hearing: 28.11.2016

JUDGMENT

ARSHAD HUSSAIN KHAN, J. The petitioners through instant constitutional petition have challenged the concurrent finding of facts by the learned courts below and sought relief as follow:-

“Under the circumstances it is prayed that this Honourable Court may be pleased to set aside the order of the Respondent No.2, dated 05.04.2006, alongwith order of the respondent No.3, dated 21.10.2000, besides granting any other appropriate relief/reliefs which this Hon’ble Court may deem fit and proper under the circumstances of the case.”

2. Brief facts arising out of the present petition are that one Nooruddin son of Haji Salahuddin being the co-owner and landlord in respect of building known as Al-Noor Chambers constructed on Plot No.PR-2/32, Preedy Quarter, Preedy Street, Saddar Karachi, wherein the petitioners are the tenants in respect of premises bearing office Nos.146/147 (Offices), admeasuring 1000 Sq.fts., situated on 1st floor of the said Al-Noor Chambers, hereinafter referred to as the ‘**demised premises**’, filed a rent case bearing 397 of 1999 before the learned court of IIIth Senior Civil Judge and Rent Controller Karachi (South) against the present petitioners under Section 8 of Sindh Rented Premises Ordinance 1979 (SRPO), for fixation of fair rent in respect of demised premises. The said rent case was filed on the ground that monthly rentals of the demised premises was Rs.990/- since 1976 and there was no increase in the monthly rentals despite various requests whereas

during the said tenure of tenancy following taxes have been increased considerably as property tax increased 100%, municipal taxes and water and conservancy charges increased seventeen times, cost of land increased 1000 times, cost of constructions, repairing maintenance and labour charges have been increased 200 time from the date when demised premises was let out. The applicant/landlord prayed for fixation of fair at Rs.20/- per Sq.Ft. The petitioners resisted the said rent case and in their written statements before the Rent Controller, while disputing the proposed fixation of fair rent also disputed the prevailing rate of rent, which according to them monthly rent of the demised premises was Rs.325/- and not Rs.990/-. Learned Rent Controller Karachi South framed the following issues:-

1. *Whether the applicant is entitled for fixation of fair rent of the case premises at the rate as prayed?*
2. *What should the order be?*

After recording the evidence learned Rent Controller by order dated 21.10.2000 allowed the rent case while increasing the fair rent at rate of at Rs.18/- per Sq.ft per month from the date of filing of rent case. The present petitioners challenged the said order of the learned Rent Controller in appeal under Section 21 of the Sindh Rented Premises Ordinance, 1979, on 04.12.2000 before this Court, which appeal was subsequently transferred in the Court of 1st Additional District & Sessions Judge, Karachi (South) who after hearing the counsel for the parties by his order dated 05.04.2006, dismissed the appeal of the petitioners. The above said orders of learned Rent Controller as well as learned ADJ have been challenged in the present petition.

3. From perusal of the record it appears that upon notice of the present petition counsel for the respondent/applicant filed vakalatnama and contested the matter on behalf of the respondent. The record also transpires that written arguments/synopsis filed on behalf of the petitioners and respondent No.1 are available on court file. Record further reveals that after 22.09.2015, when this court passed the orders, inter alia, that this matter will be heard and decided at katcha peshi stage, learned counsel for both the parties failed to put appearance in the case. On 28.11.2016 when this matter came up for hearing, the learned

counsel for the parties were again called absent. Since this was an old matter pending since 2006 and further when the written arguments are already on record therefore, I intend to dispose of the present matter on the basis of material available on record.

4. The stance of the petitioners in the case is that the learned courts below have gravely erred in not appreciating the material documentary evidence, which was available on record and ignored the same while allowing the rent case, passing the order of fair rent and dismissing the rent appeal, hence have failed to exercise jurisdiction vested in them. It is also the case of the petitioners that the learned courts below have failed to appreciate that the terms and condition printed on the overleaf of the rent receipt are not binding unless they are within the four corner of the relevant law, but in the present case the rent receipts were taken into consideration by the trial Court while considering the payment of taxes and repair etc. It is also the case of the petitioners that the learned courts below have also failed to take into consideration the fact that the petitioners have become tenant after the 1985, i.e. after the death of their father, who was the original tenant and was paying rent at the rate of Rs.325/- per month. Further, alleged that the learned courts below have failed to appreciate that nothing has come on record, which could show that any repair or additional construction etc. had been carried out by the landlord at any time after the occupation of the premises by the petitioners. Further alleged that learned Rent Controller while fixing the fair rent wrongly based his analyses and comparison on entirely the different premises, which was neither similar nor contains the same area as that of demised premises, occupied by the petitioners. The learned Rent Controller has also failed to take into account that premises No.230/1 is neither an office nor situated on 2nd floor of the building, whereas the actual fact is that premises No.230/1, is a Cabin measuring 3` by 7` only. Further alleged that the learned courts below have failed to appreciate that no documentary evidence has been produced relating to Excise and Taxation Department, which could reflect the latest assessment of rented value of all the rented premises situated within the jurisdiction of Karachi.

5. It is also alleged that the learned 1st Additional District & Sessions Judge, Karachi (South) has erred in allowing the application under Order I Rule 10 read with Section 151, CPC filed by Zohara Jabeen where by the name of Zohra jabeen was substituted in place of Nooruddin son of Haji Salahuddin, the original applicant/landlord at the stage of Appeal. Further alleged that the learned courts below have also failed to appreciate the fact that said Nooruddin s/o Salahuddin who had filed the rent case being owner of the demised premises in fact had approached the court with unclean hands by suppressing material facts that Mst. Zohra Jabeen, wife of Muhammad Imran was the actual owner of the demised premises and not the applicant himself and this malafide act of said Nooruddin s/o Haji Salahuddin by itself is a ground for rejection of the application filed for fixation of fair rent. Further alleged that the learned courts below while passing the impugned orders have failed to take into accounts that no documentary evidence had been produced, which could show that any new taxes have been imposed on the demised premises. It is also alleged that the learned courts below have failed to take into account that there is no water connection provided to the demised premises and this fact has been admitted in the cross-examination by the attorney of landlord as well. It is also alleged that the learned court below while passing the impugned orders have failed to consider all the four grounds laid down in the Sindh Rented Premises Ordinance, 1979, for fixation of fair rent in its true perspective. Further the learned courts below have also failed to consider that interpretation of the word 'Similar premises' is of vital importance and the burden lies on the landlord to establish the same, but in the present case the same has not been discharged by the landlord. It is also the case of the petitioners that only 30% rent can be increased after every 3 years under the excise and taxation laws, which factor has totally been overlooked by the learned courts below while passing the impugned orders.

6. Conversely, the respondent/ landlord through his written synopsis filed in the case while supporting the impugned orders has denied allegations levelled in the petition. It is also stated that the impugned orders are based on evidence and the law. Furthermore, the petitioners have failed to point out any illegality and/or irregularity in the concurrent

finding of facts by the learned courts below, which could warrant interference by this Court in the constitutional jurisdiction hence the petition is liable to be dismissed. The respondent No.1 in support of his stance in the case has relied upon following case law:

- (1) NLR 1993 AC 56.
- (2) PLD 1983 Karachi 9
- (3) 1993 CLC 1726
- (4) 1995 MLD 181

7. In the present case the controversy is related to fixation of fair rent Under Section 8(1) of the Sindh Rented Premises Ordinance, 1979, in respect of demised premises. Before going into any further discussion, it would be appropriate to reproduce hereunder the provisions of Sections 8 of the Sindh Rented Premises Ordinance, 1979, to comprehend the controversy involved in the instant matter:-

“Section.8 Fair Rent.---(1) The Controller shall, on application by the tenant or landlord determine fair rent of the premises after taking into consideration the following factors:-

- (a) the rent of similar premises situated in the similar circumstances, in the same adjoining locality.
- (b) the rise in cost of construction and repair charges.
- (c) the imposition of new taxes, if any, after commencement of the tenancy; and
- (d) the annual value of the premises, if any, on which property tax is levied.

(2) Where any addition to or, improvement in any premises has been made or any tax, or other public charges has been levied, enhanced, reduced or withdrawn in respect thereof, or any fixtures such as lifts or electric or other fittings have been provided thereon subsequent to the determination of the fair rent of such premises, the fair rent shall, notwithstanding the provisions of section 9 to be determined or, as the case may be, revised after taking such changes into consideration.”

8. Perusal of the above provisions show that, prima facie, there is no restriction provided for filing of an application for the first time under Section 8(1) of the Sindh Rented Premises Ordinance, 1979, either to a landlord or tenant for fixation of fair rent of the premises by the Rent Controller having jurisdiction thereon. However, law requires that while deciding such application the Rent Controller shall take into consideration the four factors as stated in clause (a) to (d) of subsection (1) of Section 8: of the Sindh Rented Premises Ordinance, 1979,

including ‘the rent of similar premises situated in the similar circumstances, in the same adjoining locality’, ‘the rise in cost of construction and repair charges’, ‘the imposition of new taxes, if any, after commencement of the tenancy’ and ‘the annual value of the premises, if any, on which property tax is levied’. If a party succeeds in establishing through evidence the aforesaid factors, the Rent Controller is required to examine cumulative effect of all four factors as enumerated in section 8(1) for fixation of fair rent. However, while determining the rate of fair rent in respect of any tenement the Rent Controller has to carefully examine all the four factors as referred to hereinabove and to keep in mind all the mitigating circumstances of each case by ensuring that no injustice is done to either party to the proceedings.

9. From perusal of the contents of application under Section 8(1) of the Sindh Rented Premises Ordinance, 1979, filed by the respondent/landlord before the Rent Controller, it appears that almost all the factors, required to be taken into consideration for fixing of fair rent, have been referred to whereas supporting material and evidence was also placed before the learned Rent Controller by the respondent. Both the parties led their evidence, whereas their witnesses were duly cross-examined, where after the learned Rent Controller, after examining the evidence and the case-law relied upon by both the parties in detail, allowed the application of the respondent and determined the fair rent of the premises at the rate of Rs.18/- per Sq.ft per month from the date of institution of the application. Relevant portion of the order passed by the learned Rent Controller, for the sake ready reference is reproduced as under:

“The learned advocate of the applicant argued the different material contradiction of the opponent as well as admission on his part. He also referred different exhibits as filed by the applicant along with affidavit in evidence as well as written statement. On the other hand learned advocate for the opponent argued that applicant is getting additional amount along with rent in respect of taxes etc. Applicant also not mentioned in his case as to what taxes the applicant is paying in respect of the tenement in question. It is also admitted by the opponent in the cross examination that the rent receipts have been issued by the applicant whenever rent has been paid to him by the opponent. It is also admitted that the contents and conditions as printed on the back of the rent receipt by the applicant are correct, which means that conditions are binding to both the parties in this case. The question is whether the taxes have been increased or not is to be seen accordingly. It is admitted by the opponent in his cross that the taxes have been increased

many folds within span of tenancy. On the face of it the amounts may be disputed or the ratio increased towards taxes may be disputed but there is consensus on the point that the government has imposed increased in taxes till today. The other aspect of the issue is the similar premises situated in the similar circumstances in the adjoining area is taken into consideration, for which the applicant stated in cross examination as well as filed exhibits of the different premises rented out to different tenants in the same building or different premises rented out to different tenants in the same building or different floors and also filed the court order in respect of fixation of fair rent of the same building. Whereas opponent has not filed any document which shows that the contents of applicant are not fair enough or false. It is also admitted by the opponent that the building in question in which the opponent is a tenant of the premises in dispute is situated in the commercial vicinity where Japan plaza, Gul plaza, Rubi center, Tibet Center, are situated. At this juncture, it is clear that the building in question is situated in such an area where the adjoining building are well known and the facilities have been provided therein. There is no hard and fast rule but it can be determined carefully that what amenities are available in the disputed premises. It is admitted position that the building is consist of ground plus three floors and has been constructed on or about in the yearly 1972. There is no lift. Whereas there is a mosque on the ground along with ablution and the water supplies has been provided in the mosque through over head tank to the tenant and other who wishes to perform their prayers, light is provided there and bills are paid by the applicant and same statement also disputed by the opponent but failed to produce any evidence as well as any document which proof that tenants organization are paying the bills and maintaining the same. It is also admitted position that there is a well in the building from where water supply is made through electric pumping machine and the water is pumped to the over head tank. It is also admitted that there is a latrine, bath room and wash basin are fixed and water supply is also available therein. Further it is submitted by the applicant that the repairing works are always made by them of the building in question at their own expenses applicant filed few bills of it. Whereas opponent failed to file any documentary evidence in this regard. It is clear that maintenance of the building is made by the applicant and naturally the staff to do so is to be employed. However, the area where the building is situated is commercial and the adjoining building is also as stated above. The comparison of the building in question to the other building in the same area is to be taken into consideration, for which applicant filed different exhibits, which shows that different rate of rent of different premises of different floors of the adjoining buildings. It is admitted position in this case that the costs of the construction and the repair charges have been increased many folds since 1972 till today. The learned advocate for the applicant also submitted that the property taxes have been increased on which the learned advocate for the opponent objected that no PTI form has been filed by the applicant in their defence, which is also admitted by the applicant in his cross-examination. It is also pointed out that the applicant failed to file breakups of the taxes paid by him of the tenement in dispute to the concern authority.

Keeping in mind all the four factors of section 8 of the S.R.P.O. 1979, I come to the conclusion that there is substance in the evidence of both the parties, as well as I have considered the exhibits as filed by the applicant in order to establish his contention, while the opponent has failed to file such documentary proof which can be rebutted the same, therefore I am of the opinion that the applicant is entitled to increase the rate of rent at the rate of R.18/- per sq. ft. per month of the tenement

in question since filing of this application. Hence this issue is decided accordingly.”

[Underlining is to add emphasis]

10. The aforesaid order passed by the learned Rent Controller on application under section 8(1) of the Sindh Rented Premises Ordinance, 1979 was assailed by the petitioner through First Rent Appeal No.35/2001 in this Court, which was subsequently, in the light of the amendments, which was made in the Sindh Rented Premises Ordinance, 1979, transferred to the Court of 1st Additional District and Sessions Judge Karachi (South) through the District Judge Karachi South, which was re-numbered as FRA No.1218/2001, wherein, similar objections were raised by the petitioner with regard to maintainability as well as fixation of rate of fair rent determined by the Rent Controller in respect of subject tenement. Learned Appellate Court after having examined the evidence produced by the parties and keeping in view the cumulative effect of the factors, which are required to be taken into consideration while upholding order of the learned Rent Controller dismissed the FRA on 05.4.2006. Relevant portion of the order passed by the learned 1st Additional District and Sessions Judge Karachi (South) in FRA No. 1218 of 2001, for the sake of ready reference is reproduced as under:

“In written arguments it is argued that applicant himself claimed that highest rate of rent of similar premises under similar circumstances bearing Rs.662/- p.m. but from the perusal of record no where applicant has put up such claim & such argument is based on surmises. Thus this single piece of evidence in the shape of Annexure-29, it is sufficient to prove that on 20.10.1998 the rate of similar premises, rather situated at 2nd floor whereas demise office is situated at 1st floor, was about Rs.20.40 p.m. sq. ft. Thus case law relied upon on behalf of appellant / opponent / tenant reported in PLD 1996 Karachi 494 is not relevant & applicable in present case.

Now I will take up second ground where it is argued on behalf of appellant / opponent / tenant, that landlord has not been adversely effected and no repairs were proved by respondent/ landlord / applicant. Now it is well settled law that once a opponent/ tenant admits increase in cost of construction the said issue shall be deemed as proved. Reliance is placed on case law reported in 1993 CLC 1726 wherein held as under:

1993 CLC 1726.

---S. 8---Fair rent---Determination of---Rent Controller while determining fair rent of premises, has to take into consideration, the rate of rent in adjoining rented premises, if such rate was equitable and just---Rates at which tenants paid rent ten years ago, could not be a guideline for Rent Controller charged with

the fixing of fair rent of premises in litigation---Rent Controller is also required to consider overall inflation which is reducing value of money with each passing month---Tenant's own witness having conceded that during last ten years cost of construction had increased ten times, that fact could not be ignored while determining fair rent---Fair rent was rightly determined by Rent Controller taking into consideration imposition of betterment tax, increase in water charges, cost of maintenance increased due to inflation and rent paid by other tenants of building in dispute.

As far as the case law reported in 1997 CLC 205 (211), relied upon on behalf of appellant is not applicable in the present case and stands distinguished on fact.

The third ground of imposition of taxes has not been contested and only it is stated that arrears of property taxes for 1997 & 1998 are not new taxes. This ground is no defence. The respondent/applicant/landlord has put up sufficient evidence on record in this regard.

As regard the further grounds taken in the written arguments it has been contended that annual value has not been increased. There is no denial of fact that demise premises was rented out in the year 1972 and original rent case was filed in the year 1999 thus in 27 years there was no increase in annual rental value and same is not produced clearly manifest that learned counsel for the appellant did not peruse the record properly. The increase in property taxes in city of Karachi is in manifold. Further on the basis of property tax the water conservancy taxes are also increased. When the applicant / respondent / landlord has proved increase in water and conservancy tax through Annexure-A3 to A-6, which were not objected by the appellant / opponent / tenant the increase in property tax is automatically stands proved as all taxes are integrately increased. In this regard Annexure-7 is a table which shows increase of all categories of premises in Karachi along with percentage.

The learned counsel for the appellant has attacked the impugned order arguing that learned Rent Controller in the impugned order discussed certain matters which were not part of record such objection is with regards to 23 lines at page-8 and 9 starting from the sentence that "there is no lift. Whereas there is a mosque on the ground floor along with ablution and the water supplies has been provided in the mosque through overhead tank to the tenant and other who wishes to perform their prayers, light is provided there and bills are paid by the applicant and same statement also disputed by the opponent but failed to produce any evidence as well as any documents which proof that tenants organization are paying the bills and maintaining the same. It is also admitted position that there is a well in the building from where water supply is made through electric pumping machine and the water is pumped to the over head tank. It is also admitted that there is a latrine, bath room and wash basin are fixed and water supply is also available therein. Further it is submitted by the applicant that the repairing works are always made by them of the building in question of their own expenses application filed few bills of it. Whereas opponent failed to file any documentary evidence in this regard. It is clear that maintenance of the building is made by the applicant and naturally the staff to do so is to be employees". It is argued that learned Rent Controller had taken up these matter of his own and his mind was greatly influenced. It appears that such points may have been argued by learned advocate for the applicant / landlord which learned Rent

Controller erroneously brought in record. However, the learned advocate for the appellant did not deny the existence of mosque on ground floor along with “ablution with facility of light & water, as well, water pump, overhead tank”, but all such factors cannot be considered at the time of fixing fair rent.

However, in view of other discussion except on ground 8(a)(1) i.e. the rent of similar premises situated in the similar circumstances, in the same or adjoining locality, no other any substantial argument has been brought up in written arguments. Also the learned Rent Controller has fully discussed the pleadings of the parties, evidence brought on record and has rightly come to the conclusion that fair rent of the demise office shall be Rs.18 for an area of 850sq. ft. in possession of appellants and the same shall be effective from 09.03.1999 when the main application was filed in the court of learned Rent Controller for fixation of fair rent.

I, therefore, dismiss this appeal as it merits no consideration. Parties are directed to bear their own costs.”

[Underlining is to add emphasis]

11. From the perusal of the above order, it appears that the grounds/objections raised by the petitioner in the present petition, more or less, are the same, which were raised before the appellate Court, and the said objections appears to have been dealt exhaustively by the learned 1st Additional District and Sessions Judge Karachi (South) in the impugned judgment.

12. The Hon’ble Supreme Court in the case of Messrs Olympia Shipping and Weaving Mills Ltd. and another v. State Life Insurance Corporation (2001 SCMR 1103), while defining the scope of fixation of fair rent and four factors of Section 8 of SRPO has held as under:

‘16. Viewed in the light of the language employed by the Legislature and the earlier precedents it may be observed that four factors incorporated in law are in the nature of guiding principles for the Rent Controller for determination of fair rent. The cumulative effect of all these factors being quite relevant and helpful in arriving at a just conclusion must be given due weight. Nevertheless, common ground available in most of cases would be the prevalent market rent of the similar premises situated in similar circumstances in the same or adjoining locality. It may thus, be made clear that existence of all the four conditions is not the invariable rule of law and presence of all factors in a case might lead to appreciation in determining rate of rent for the purpose of fair rent. Absence of any of the factors would not, in any case, prejudice the case of the applicant before the Rent Controller.’

13. From perusal of present petition as well as written synopsis filed on behalf of the petitioners, available on record, it appears that the petitioners through the present petition have sought reappraisal of the evidence by this court to arrive at a conclusion other than what have been arrived at, concurrently, by the learned courts below. It is a settled proposition of law that in rent matters, where there are concurrent findings of facts recorded by the Courts below against the petitioner, this Court under its Constitutional jurisdiction cannot reappraise the entire evidence in the matter, as such jurisdiction besides being discretionary in nature is very limited and not plenary in nature. In this regard reliance can be placed on the case Messrs MEHRAJ (PVT.) LTD. v. Miss LAIMA SAEED and others (2003 MLD 1033), wherein, this Court while discussing the scope of constitutional jurisdiction vis a vis rent case, it is observed as follows :-

“In this context it may be observed that by conferring only one right of appeal under section 21 of the Sindh Rented Premises Ordinance, 1979 the legislator in its wisdom seems to have tried to shorten the span of litigation in rent cases. In such circumstances interference by this Court in exercise of its Constitutional jurisdiction under Article 199, in the judicial orders passed by the Tribunals, merely on the ground that another view of the matter is also possible, would not serve any other purpose but would add to the misery of prolonged litigation for the parties and would defeat the spirit and object of the statute. The dictum laid down in the case of **Secretary to the Government of the Punjab (supra)** also postulates similar view and is fully applicable to the facts and circumstances of the present case. No case for interference in the concurrent findings of facts recorded by the two Courts below is thus made out.”

14. The upshot of the above is that in the instant case the two Courts below have given concurrent findings of facts against the petitioners, against which the petitioners have not been able to bring on record any concrete material or evidence, whereby, such finding could be termed as perverse or having a jurisdictional defect or based on misreading of fact. In the circumstances, no case for interference is made out, hence the present constitutional petition stands dismissed.

JUDGE

Karachi
Dated: 27.02.2017