

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA

**(1) C. P. No.S-595 of 2010**

Petitioners : Muneer Ahmed Baluch & others,  
Through Messrs Habibullah G. Ghouri  
and Rafique Ahmed K. Abro, Advocates.

Respondents : Khuda Bux Lashari & others,  
Through Mr. Ghulam Dastagir A. Shahani,  
Advocate.

**(2) C. P. No.S-388 of 2017**

Petitioners : Muneer Ahmed & others,  
Through Mr. Rafique Ahmed K. Abro,  
Advocate.

Respondents : Abdul Paind Pathan & others,  
Through Mr. Raja Riaz Akhtar, Advocate.

Mr. Munawar Ali Abbasi, Asst. A.G. Sindh.

Dates of Hearing : 14.04.2022 & 15.04.2022.

Date of Judgment : 15.04.2022.

**J U D G M E N T.**

**MUHAMMAD SALEEM JESSAR, J.-** Petitioners filed rent cases against the respondents, seeking their ejection on the ground of reconstruction of the building; which were dismissed vide Order dated 24.11.2009 by the Rent Controller. Such order of Rent Controller was

assailed by the petitioners by filing Rent Appeal No. 01/2010, which also was dismissed by District Judge, Jacobabad vide his Order dated 16.03.2010. Apart from this, the petitioners also filed a rent application against two tenants on the ground of sub-letting and impairing the value of the demised premises, which was dismissed by the Rent Controller vide Order dated 29.11.2014 and the Rent Appeal No. 01/2015 filed to assail the order dated 29.11.2014 was also dismissed by District Judge Jacobabad vide Order dated 27.3.2017. The petitioners have filed these two petitions to assail the above two sets of impugned Orders. Since the facts of the case and the parties are same, therefore, I propose to dispose of the above petitions by this common judgment.

2. Although, facts of the case have been narrated in the impugned Orders in detail, but for the purpose of these petitions, it would suffice to note that the petitioners being owners of property bearing Plot No.314/2, Ward No. 2, Tower Road, Jacobabad, let-out the shops constructed on the said Plot to the respondents. The petitioners filed the above rent cases for eviction of the tenants, on the ground of reconstruction of building against all the tenants, while against two tenants they also filed rent case on the ground of subletting and impairing the value of the demised premises, which were dismissed, as stated above. Hence, the petitioners have filed these petitions to assail the above orders of dismissal of their rent cases / rent appeals.

3. M/s Habibullah G. Ghouri and Rafique Ahmed K. Abro, learned Counsel for the petitioners, submit that the Courts below have erred in dismissing the rent cases by holding that the landlords have refused to give undertaking regarding re-letting the rented premises to the tenants/ respondents after reconstruction of the building, as under the SRPO there is no such provision which may bind the landlord to give such an undertaking. They; however, submit that after reconstruction of the building, if the tenant/respondent may approach the landlord for re-letting the shop on rent and in case of refusal by the landlord the remedy for tenant provided by the law, as is embodied under Section 15(3) & (4) of the SRPO. They further submit that proper plan was got approved by the petitioner, which is available at page-42 of the Court file in C.P. No.S-595/2010, which was also produced in evidence before the rent

controller and it is not the requirement of law that once the plan for reconstruction of the building is approved, it needs renewal every year by the authority concerned, hence the rent controller was not justified in dismissing the rent cases on the ground that the approval plan was not renewed.

4. Mr. Ghulam Dastagir A. Shahani, learned counsel for the respondents in C. P. No.S-595/2010, submits that applications filed by the petitioners/landlords under Section 15(2), Sindh Rented Premises Ordinance, 1979 (SRPO) were on two grounds i.e. (1) personal bona fide use and (2) re-construction of the building. He has referred to the impugned Order dated 24.11.2009 passed by the Rent Controller/trial Court, available at page-799, and argued that the landlord failed to give undertaking before the Courts below regarding re-letting out of the shops in question on rent to the respondents/tenants, therefore, Courts below have committed no illegality or error of law while deciding the rent applications of the landlords in favour of the respondents/tenants. He further submits that the landlord is bound by law to undertake before the rent controller or the first appellate forum regarding re-letting the shops to respondents/ tenants, and since the petitioners failed to do so, therefore, the petition filed by the landlords before this Court is not maintainable. He also goes on to submit that scope of the writ jurisdiction vested in this Court under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 is also limited one, in which controversial issues like those involved in this case cannot be decided. He further submits that Constitutional Petition is also not maintainable, as the appellate Court was the final forum, therefore, findings of Courts below cannot be agitated before this Court under its writ jurisdiction. In support of such contention, he places reliance upon the cases reported as *Shakeel Ahmed v. Muhammad Tariq Farogh* (2010 SCMR 1925), *Dr. Muhammad Rafiq v. District Judge, Lahore* (1983 CLC 2547), *Sheikh Muhammad Amin v. Muhammad Sharif* (1985 SCMR 131) and *Zahoor V. Election Tribunal, Vehari and others*(2008 SCMR 322). He finally submits that the site inspection conducted at this stage through Mukhtiarkar was also not warranted by law, as it was the domain of the Tribunal. In support of his contention, he places reliance on the case reported as *Parvez Impex v. Mst. Nazir Begum* (1989 CLC 374). He

further raises objection with regard to the Power of Attorney being executed by the landlord in favour of the attorney, available at page-851, on the ground that said power of attorney was not specifically handed down regarding nomenclature of the property in dispute/demised premises as well as the cases/applications filed by them before the Courts below as well as before this Court. In support of his contentions, he places reliance upon the cases reported as *Muhammad Mehrban v. Sadrud Din* (1995 CLC 1541), *Gulf Air v. Shakil Air Express* (PLD 2003 Karachi 156), *Mehboob Elahi V. Mst. Iqbal Jan* (1986 SCMR 214) and an unreported order passed by the single Bench of this Court in Civil Revision Application No.25/2009 dated 18.01.2010. He, therefore, submits that by considering his submissions the petitions may be dismissed.

5. Mr. Raja Riaz Akhtar advocate appearing for the respondents in C.P. No.S-388/2017, opposes the petition on the grounds that the landlords have filed fresh application before the rent controller regarding the sub-letting of the demised premises against the respondents and as far as removal of intervening wall is concerned, according to him, it was removed prior to filing of these cases, therefore, submits that Courts below have rightly rejected the application filed by the landlords and prays for dismissal of the petition. In support of his submissions, he relies upon the case reported as *Intezar Ahmed Khan v. Mst. Khatoon Hadi* (1995 SCMR 194).

6. I have heard learned counsel for the parties and have gone through the record with their able assistance.

7. Learned counsel for the respondents has raised a preliminary objection with regard to veracity of the power of attorney executed by other petitioners in favour of petitioner No.1. A perusal of the power of attorney, available at page-851 of the file, shows that all the other petitioners have given power of attorney in favour of the petitioner No.1 in respect of rent cases pending in respect of "Property bearing No.314/2, Ward No.2, situated at Tower Road, Jacobabad", which is the demised premises. Although, there may be room for improvement of the drafting of the power of attorney, but it cannot be termed as defective so as to call for dismissal of the rent cases / appeal. Learned Counsel for

the petitioners submit that it was not raised before the Courts below and even before this Court throughout the proceedings, which are pending since 2010 and at this belated stage, particularly when none of the executants has raised any objection to the power of attorney or denied its execution, the objection raised by learned Counsel for the respondents carries no weight. They further submit that rent applications were filed by the landlords in person in the year 2008, then power of attorney was executed in favour of petitioner No.1 in the year 2009. In support of such contentions, they rely upon the case reported as *Muhammad Waheeduddin v. Samina Begum* (1991 MLD 1898).

8. It is not denied that the rent cases were filed by the petitioners in person in the year 2008 and, thereafter, the power of attorney was executed in favour of petitioner No.1 in the year 2009. Thus, there is no dispute with regard to the fact that the petitions were filed properly. So far as the contention of the learned counsel for the petitioners that this objection has been raised for the first time and, therefore, cannot be entertained at this stage, I agree with the learned counsel for the petitioners in view of the law laid down in the case of *MUHAMMAD AKBAR KHAN and another Versus MUHAMMAD NAEEM KHAN and 6 others* (2014 C L C 185), wherein a Division Bench of the Peshawar High Court has held as under:

“The other contention of petitioners, that the trial Court did not frame the issues, therefore, judgments of all the Courts are not sustainable. This objection carries no weight, as the objection has been raised by the petitioners for the first time before this constitutional forum. They never questioned or raised objection before the appellate, revisional or review forum.”

9. Next, the learned counsel for the respondents raised objection with regard to the maintainability of instant petition on the ground that disputed questions of fact cannot be decided by this Court while exercising writ jurisdiction under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973. There is no cavil with the proposition advanced by the learned counsel for the respondents. However, the jurisdiction conferred on High Court under Article 199 is of extraordinary nature, which has to be exercised sparingly and not to interfere with matters pertaining to the exclusive domain of tribunal or statutory forum

unless it is shown that the order, action or inaction is in violation of any provision of law or without lawful authority or jurisdiction.

10. In these petitions, I am not faced with a disputed question of fact, as the relationship of landlord and tenant between the parties is admitted by all the parties. The moot question is whether any jurisdictional error, illegality or irregularity is found in the impugned orders, as the main contention of the learned counsel for the petitioners is that the two Courts below have erred in dismissing the rent cases / appeal of the petitioners on the ground that no undertaking was given by the petitioners / landlords to the effect that on completion of the construction, they would put the respondents / tenants in possession of the premises under their tenancy.

11. The last technical objection raised by learned counsel for the respondents was that the site inspection conducted through Mukhtiarkar was not warranted by law, as it was the domain of the Tribunal.

12. For deciding the question under consideration, that whether the Rent Controller has the power to issue commission for an inspection of the site keeping in view the provisions of the Ordinance and the other relevant enactment, reference may be made to section 20 of the Sindh Rented Premises Ordinance, 1979, which provides as follows:-

**“Sec. 20 Power of Civil Court. (1)** Subject to this Ordinance, the Controller and the appellate authority shall, for the purpose of any case under this Ordinance, have powers of a Civil Court under the Code of Civil Procedure, 1908 (Act V of 1908), in respect of only the matters, namely:-

- (a) summoning and enforcing the attendance of any person and examining him on oath:-
- (b) compelling production or discovery of documents;
- (c) inspecting the site; and
- (d) issuing commission for examination of witness or documents.

13. A plain reading of the above section indicates that the Controller and the appellate authority for the purpose of any case under the Ordinance have been conferred powers of a Civil Court under the Code of Civil Procedure, 1908 in respect of only the matters mentioned in sub-clauses (a) to (d) namely, summoning and enforcing the attendance

of any person and examining him on oath; compelling production or discovery of documents; inspecting the site; and issuing commission for examination of witnesses or documents. Thus, the contention of learned counsel for the respondents, that the Rent Controller has no power to issue a commission for the inspection of the site seems to be correct. The power is given to the Rent Controller and the appellate authority to inspect the site. Reference may also be made to Rule 18 of Order XVIII of the Code of Civil Procedure, 1908, which empowers a Court to inspect any property or thing concerning with any question which may arise at any stage of a suit. The above provision seems to be parallel to clause (c) of section 20 of the Ordinance, which empowers the Rent Controller and the Appellate Court to inspect the site. The language used in section 20 of the Ordinance clearly indicates that the Rent Controller and the appellate authority have been conferred powers of a Civil Court only in respect of the matters mentioned in clauses (a) to (d) of section 20 of the Ordinance and not in respect of any other matter. The power to issue a commission is confined to the issuance of commission for examination of the witness under clause (d) of section 20 of the Ordinance, which powers will not include the power to issue a commission for the inspection of the site, which is to be done by the Rent Controller or by the appellate authority itself. The use of word 'only' in section 20 of the Ordinance is indicative of the fact that the law-makers did not wish to vest in or confer the powers of the Civil Court to the Rent Controller and the appellate authority in respect of all the matters, which are provided for in the Code of Civil Procedure, 1908, but the powers were given only for limited purposes specified therein.

14. In view of the above discussion, I am of opinion that the site inspection conducted through Mukhtiarkar was not warranted by law, as it was the domain of the Tribunal or the appellate Court only. Therefore, while deciding these petitions, I will not take into consideration the report of the Mukhtiarkar.

15. After dealing with technical objections, now I will advert to the merits of the case. The Rent Controller while dismissing the rent cases filed by the petitioners has held as under:

“It is settled principle of law that the landlord could not succeed in ejection case of reconstruction unless he would undertake to put tenant in possession of such area in new building which would correspond with the area in possession of tenant in old building. But in the present matter the applicant has deposed in his evidence that he does not know that after getting the entire property reconstructed he will have to re-let the shops to its present tenants as provided by law and order of the Court.”

16. The appellate Court, while dismissing the appeal(s) of the petitioners, held as under:

“The tenant off course could be ejected of the premises in his possession on rent by his landlord on point of reconstruction but for doing that, there should be undertaking on his part to the effect that after reconstruction he would put the tenant into possession of the premises under his tenancy again, as has been held in law, which is relied upon on behalf of the respondents. In the instant case there is no such undertaking on the part of the appellants, on the contrary one amongst them namely Munir Ahmed during course of his examination before learned 2<sup>nd</sup> Rent Controller Jacobabad, on asking in end of his examination in chief in clear terms stated that; after getting the property demolished and completion of its construction he will not let out the shops to the tenants. In these circumstances, it could be concluded safely that; the ejection of the tenants in the instant case, on the part of the appellants was/is not bona fide.”

17. The petitioners filed rent case under section 15(2)(vi) of the Sindh Rented Premises Ordinance, 1979 on the ground that the premises is needed for the purpose of reconstruction. Before examining the above findings of the two Courts below, it would be proper if the relevant provision of law is reproduced. Section 15(2)(vi) of the Sindh Rented Premises Ordinance, 1979 reads as under:

“15. (1) Where a landlord seeks to evict the tenant otherwise than in accordance with section 14, he shall make such application to the Controller.

(2) The Controller shall, make as an order directing the tenant to put the landlord in possession of the premises within such period as may be specified in the order, if he is satisfied that –

2[(i) \*\*\*\*]

(ii) ..... Not relevant .....

(iii) ..... Not relevant .....

(iv) ..... Not relevant .....



(v) ..... Not relevant .....

(vi) the premises is required by the landlord for reconstruction or erection of a new building at the site and the landlord has obtained necessary sanction for such reconstruction or erection from the authority competent under any law for the time being in force to give such sanction;

(vii) ..... Not relevant .....

(3) Where the landlord who has obtained the possession of the premises for the purpose of reconstruction of the building or erection of a new building, shall demolish the existing building within six months of the taking over of the possession of the premises or, as the case may be, commence the erection of the new building within two years of the taking over of the possession of the premises, and in case the landlord fails to demolish the building as aforesaid, the tenant shall be entitled to be put into possession of the premises and for that purpose he may apply to the Controller for an order in that behalf

("4") Where the land-lord constructs the building as aforesaid the tenant who was evicted from the old building may, before the completion of new building and its occupation and the Controller shall make an order accordingly in respect of the area applied for or such smaller area, as considering the location and type of the new building and the needs of the tenant, he deems just and on payment of rent to be determined by him on the basis of rent of similar accommodation in the locality."

18. A perusal of the above-quoted section 15(2)(vi) of the Sindh Rented Premises Ordinance, 1979 clearly defines the rights and liabilities of the landlord and tenant in respect of a matter where eviction is sought on the ground of reconstruction or erection of a new building at the site. Firstly, from provisions of clause (vi) of sub-section (2) of section 15 of the Sindh Rented Premises Ordinance, 1979 it is clear that a landlord can seek ejection of his tenant on the ground of reconstruction of the premises. In this regard, the only duty cast upon the landlord is that he should obtain "*necessary sanction for such reconstruction or erection from the authority competent under any law for the time being in force to give such sanction.*"

19. The Rent Controller in his impugned Order dated 24.11.2009 (page 13 of the Order) with regard to approved building plan has observed as under:

“It is observed that during the course of cross examination of the applicants, he has deposed that the plan and sanction order produced by him in evidence is about four years. He further admitted that after decision of Honourable High Court the plan and sanction order was not got renewed or revalidated by him. The applicants have not given any plausible explanation regarding not renewal of approval plan.”

20. Thus, the factum that the petitioners have obtained the approved building plan in respect of the demised premises stands proved. However, the Rent Controller misdirected himself when he observed that “*The applicants have not given any plausible explanation regarding not renewal of approval plan.*” There is no requirement of law that in case a matter is pending for prolonged period before a competent court of law, the landlord is required to renew the building plan every year. In respect of renewal of sanction of reconstruction, suffice it to observe that this being just a formality, it was not necessary for the landlord to get approval plan or the sanction renewed every year during pendency of the ejectment proceedings.

21. Coming to the finding of the courts below that the landlord could not succeed in ejectment case of reconstruction unless he would undertake to put tenant in possession of such area in new building which would correspond with the area in possession of tenant in old building. In this regard, reliance was placed on the case of *ABBAS ALI Versus GHULAM UMAR and others (1995 MLD 1971)*, relied upon by learned counsel for the respondents, a learned single Bench of this Court held as under:

“13. On the issue relating to reconstruction of the house for self occupation, learned counsel for the appellant rightly pointed out that section 15(2)(vi) providing a ground for ejectment of a tenant shall be read in conjunction with subsection (4) of the 1979 Ordinance which guarantees re occupation of the building by the old tenant after reconstruction. Learned counsel urged that the landlord having not undertaken to put the appellant in possession of the premises after reconstruction cannot seek eviction of the tenant in law on this ground.”

22. When a landlord obtains demised premises on the ground of reconstruction or erection of a new building, as envisaged under clause (vi) of sub-section (2) of Section 15 of the Sindh Rented Premises

Ordinance, 1979, a duty is cast upon him by sub-section (3) of Section 15 of the Sindh Rented Premises Ordinance, 1979, to demolish the existing building within six months of the taking over of the possession of the premises and to commence the erection of new building within two years. In case the landlord fails to demolish the existing building within six months of the taking over of the possession of the premises, the tenant shall be entitled to be put into possession of the premises and for that purpose the tenant may apply to the Controller for an order in that behalf. There is not a single word mentioned about any undertaking being required to be given by the landlord to put tenant in possession of such area in new building which would correspond with the area in possession of tenant in old building.

23. Once a landlord obtains possession of a demised premises on the ground of reconstruction or erection of a new building, and demolishes the existing building within six months of the taking over of the possession of the premises and also commences the erection of new building within two years and also completes the new building as per the approved plan, the provisions of sub-section (4) of section 15, Sindh Rented Premises Ordinance, 1979 would come into play. Sub-section (4) (*ibid*) states that where the land-lord constructs the building as aforesaid the tenant who was evicted from the old building may, before the completion of new building and its occupation by any other person, apply to the Controller for an order directing that he be put in possession of such area in the new building as does not exceed the area of the old building which he was in occupation and the Controller shall make an order accordingly in respect of the area applied for or such smaller area, as considering the location and type of the new building and the needs of the tenant, he deems just and on payment of rent to be determined by him on the basis of rent of similar accommodation in the locality.

24. Thus, it would be seen that neither under sub-section (3) nor under sub-section (4) of the section 15 (*ibid*), there is any duty cast upon the landlord to give any undertaking either to the tenant or to the rent controller / appellate court that he will put the tenant in possession of such area in new building which would correspond with the area in possession of tenant in old building.

25. I have carefully perused the entire section 15(2)(vi) of the Sindh Rented Premises Ordinance, 1979 as well as sub-sections (3) and (4) thereof, but have not been able to find word “undertaking” appearing anywhere therein. It is a settled law that nothing can be read in a statute. Therefore, there is no justification in directing the landlord to give an undertaking to the above effect. Once the reconstruction / erection of new building is near completion, and before its occupation by other person, the tenants may apply to the Rent Controller as envisaged under sub-section (4) of section 15 of the Sindh Rented Premises Ordinance, 1979.

26. In my humble opinion, the above finding given by the Courts below to the petitioners was unjustified and uncalled for; firstly, as the petitioner was legally bound to construct the new building strictly in accordance with the building plan approved by the competent authority and not according to the need or requirement of respondents and as such the petitioners could not be compelled to construct a building as per the needs and requirements of the existing tenants; secondly, in case of failure on the part of the petitioner to demolish the old building within the time prescribed by the Ordinance, respondents would become entitled to seek their remedy under subsection (3) of Section 15 of the Ordinance, and in such an event the law would take its own course. Lastly, once the building is near completion, and before its occupation by any other person, the respondents, in view of the provisions of sub-section (4) of section 15 of the Sindh Rented Premises Ordinance, 1979, may apply to the Controller for an order directing that they be put in possession of such area in the new building and does not exceed the area of the old building which they were in occupation; and the Controller shall make an order accordingly in respect of the area applied for or such smaller area, considering the location and type of the new building and the needs of the tenant, he deems just and on payment of rent to be determined by him on the basis of rent of similar accommodation in the locality.

27. The learned counsel for the respondents was confronted with the question that whether there is any provision in the Sindh Rented Premises Ordinance, 1979, which binds the landlord of a premises, who

intends to obtain the demised premises on the ground of reconstruction, to give an undertaking as above; however, he was unable to point out any such provision in the Sindh Rented Premises Ordinance, 1979 which may bind the landlord to re-let the shop to the tenant after reconstruction of the building.

28. Thus, the correct position which emerges is that once a landlord obtains possession of a demised premises on the ground of reconstruction or erection of a new building, and constructs the new building and the tenant who was evicted from the old building may, before the completion of new building and its occupation by any other person, apply to the Controller for an order directing that he be put in possession of such area in the new building and does not exceed the area of the old building which he was in occupation and the Controller shall make an order accordingly in respect of the area applied for or such smaller area, considering the location and type of the new building and the needs of the tenant, he deems just and on payment of rent to be determined by him on the basis of rent of similar accommodation in the locality. There is no duty cast on the landlord to give any undertaking in this behalf. Therefore, although concurrent findings have been given by the courts below; however, the same are in violation of the law and hence not sustainable.

29. The Rent controller, in the impugned Order dated 24.11.2009, has also observed that the landlord has not claimed that the demised premises is in dilapidated condition. Suffice it to observe, that such observation is devoid of any merits, as section 15(2)(vi) of the Sindh Rented Premises Ordinance, 1979 does not stipulate that only a premises in dilapidated condition can be vacated on the ground of reconstruction. It is for the landlord to decide whether he wants to reconstruct the building. However, if the landlords seeks the eviction of the tenant on the ground that he intends to erect a new building or wants to reconstruct the existing structure due to its dilapidated condition, then it would be necessary for him to prove that the existing structure is in a dilapidated condition.

30. Learned counsel for the respondents relied on a number of cases in support of his arguments / contentions; however, the same are

distinguishable on facts and, therefore, it would be an exercise in futility if all those cases are discussed in this judgment.

31. These petitions were heard on 15.04.2022 and the following short order was passed:

“Heard arguments and perused the record. For the reasons to follow, C.P. No.S-595/2010 is hereby allowed. Consequently, the impugned order dated 24.11.2009 passed by the Rent Controller, Jacobabad in Rent Application No.01/2008(old) and (new) R.A No.01/2009 along with 14 other applications (re-Munir Ahmed & others v. Khuda Bux & others) and order dated 16.03.2010 passed by the learned District Judge, Jacobabad (appellate Court) in Rent Appeal No.01/2010 (vide page-845), are hereby set aside. Resultantly, Rent Applications filed by the petitioners in terms of Section 15(2) of SRPO, 1979 before the Rent Controller, are allowed. Accordingly, the respondents/tenants are directed to vacate the demised premises and surrender its safe and vacant possession in favour of the petitioners within six months’ time. In case of failure, the trial Court/rent controller/ executing Court shall issue writ of possession through police aid/force, without issuing notice to the respondents/tenants.”

Consequently, C.P. No.S-388/2017, having become infructuous, is disposed of accordingly, along with pending applications, if any.”

32. These are the reasons for the above short order dated 15.04.2022.

JUDGE

Larkana, the 15<sup>th</sup> April, 2022.