

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

C.P No.5-694 of 2022

[Gul Muhammad Vs. Mst. Rizwana and another]

C.P No.5-695 of 2022

[Ghulam Rasool Vs. Mst. Rizwana and another]

Mr. Sajid Ali Gorar, Advocate for petitioners.

Mr. Muhammad Arshad S. Pathan, Advocate for respondent No.1.
Mr. Allah Bachayo Soomro, Additional Advocate General, Sindh.

Date of hearing& order: 31.10.2022.

ORDER

ADNAN-UL-KARIM MEMON, J. - Both these Constitutional Petitions have been filed by the petitioner under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 challenging the legality of orders dated 17.08.2022 passed by learned Rent Controller in Rent Case Nos. 4 & 5 of 2022, whereby he was pleased to allow the application filed by respondent No.1 under Section 16(1) Sindh Rented Premises Ordinance, 1979 and directed the petitioner/ opponent to deposit arrears of rent @ Rs.30,000/- per month from May 2021 to April 2022 with further directions to deposit future rent at the same rate and also to pay all the utility bills in respect of rented premises. Since both these petitions involve common questions of law and fact, they were heard together and are being disposed of by means of this common order.

2. On being confronted about maintainability of instant petitions in terms of interlocutory orders passed by learned rent controller, it is contended by learned counsel for petitioners that the petitions are very much maintainable in terms of tentative order passed by Rent Controller under Section 16(1) of SRPO. Learned counsel referred to relevant portion of SRPO and submitted that the impugned Order is of final nature and could be assailed in constitutional petition on the premise that the same is without jurisdiction; therefore, the petitions could be heard and decided on merits.

3. I have been informed that respondent No.1 Mst. Rizwana filed Rent Application Nos. 4 and 5 of 2022, asserting that two Shops on Plots No. 3 & 4 total admeasuring 256.5 sq. feet out of Survey No.45 situated near Old Bus Stop, College Road, Deh, Tapo and Taluka Tando Muhammad Khan near **(subject Shops)** were rented out to petitioner(s) by the previous owner /

respondent No.2 Manzoor Ahmed and petitioners are not her tenant; however, by lapse of time same were sold out to respondent No.1 through registered Sale Deed dated 20.05.2021, who sent notice to the petitioner under Section 18 of SRPO about change of ownership and also requested for payment of rent @ Rs.30,000/- per month of both shops from May 2021, on failure thereof respondent No.1 filed Rent Application, as mentioned above, along with an application under Section 16(1) of SRPO wherein impugned interim order was passed with the aforesaid directions.

4. Learned counsel submits that the petitioner(s) was tenant of previous owner; however, during that period the said shops were sold out to petitioner through Sale Agreement dated 03.12.2018 against total sale consideration of Rs.15,25,000/-, out of which petitioner paid Rs.11,25,000/- at the time of Sale Agreement and it was agreed that balance amount will be paid at the time of registration of Sale Deed; that despite offering balance amount respondent No.2 failed to execute registered Sale Deed and accordingly legal notice was issued to him and finally on 10.04.2021 petitioner filed F.C Suit No. 24 of 2021 for Specific Performance of Contract and Permanent Injunction against respondent No.2; on receiving notice of said Suits, respondent No.2 filed Written Statements denying the execution of Sale Deeds with petitioner(s) and further stated that he is no more owner of subject shops and the same had been sold to someone else, without even disclosing the name of said purchaser; that upon such disclosure petitioner filed an application under Order 11 Rule 12 CPC for production of Sale Deed, if any, and in response, thereof respondent No.2 submitted wrong name and parentage of alleged owner; however, thereafter petitioner came to know about respondent No.1 that respondent No.2 had allegedly sold out the subject shops to her, where-after petitioner filed application under Order 1 Rule 10 CPC for impleading her as defendant; that thereafter petitioner received legal notice under Section 18 of SRPO issued on behalf of respondent No.1, which was duly replied with the assertion that neither respondent No.1 was owner of the subject shops nor the petitioner was her tenant, as the petitioner had already purchased the subject shops through Sale Agreements, yet respondent No.1 filed Rent case, wherein impugned order about deposit of arrears and future rent has been passed, which is illegal and unlawful, as the petitioner has purchased the subject shops from its original owner and civil Suit to that effect is also pending; however, learned Rent Controller without waiting for the decision on said Suit hurriedly passed the impugned interim order. During arguments learned counsel referred to each document attached with the memo of petitions to substantiate his point of view that learned trial court erred in granting the application of private respondent filed under Section 16(1) of SRPO as the respondent was / is no more

landlord in terms of change of ownership at the hands of petitioner because of Sale Agreement / Deed executed by and between the petitioner and previous owner of the subject premises; therefore, his case has been highly prejudiced. He prayed for setting aside the impugned order.

5. While refuting to above contentions, learned counsel for respondents submits that respondent No.1 derived the title from respondent No.2, hence learned Trial Court rightly passed the impugned orders which are well reasoned and speaking one and requires no interference of this Court in writ jurisdiction; that the fact with regard to purported sale agreement alleged to have been executed between petitioner and previous owner will be determined after recording evidence in Suit No.25/2021 which is sub-judice before the Trial Court; even then agreement to sale does not confer any right, title or interest concerning the demised rented premises; therefore, he prayed for dismissal of instant petitions, being not maintainable under the law.

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

7. It is also settled law that relationship of landlord and tenant is not severed even if the execution of sale agreement is admitted, and even in such a situation the tenant is not absolved of his responsibility of compliance of order passed by Rent Controller under Section 16(1) of SRPO and such an order for his eviction can be passed by the Rent Controller even if a Suit filed by the tenant for specific performance of sale agreement is pending; under Article 115 of the Qanun-e-Shahadat Order, 1984, ('Qanun-e-Shahadat') during continuance of tenancy, the tenant of an immovable property or any person claiming through him cannot be permitted to deny the title of landlord in respect of such immovable property which the landlord had at the beginning of tenancy; in view of the above legal position, the petitioners / tenants were estopped from disputing the title of respondent based on the claim that agreement to sale in his favour. Per settled law, in such circumstances when the tenant puts up a plea in an ejectment application that he had purchased the property then he has to file a suit for his remedies which has already been done and there is no any restraining order in the proceedings and vacate the premises and thereafter if he succeeds in that proceedings he would be entitled to take possession of the premises again based on Decree of the court.

8. Adverting to the contentions of petitioners on the analogy put forward by them, I am not in agreement with them for the simple reason that if the petitioner has a case at all, as alleged by him in the petitions, even then he is required to pay entire amount as directed by the rent controller on account of

rent to the landlord or may deposit the same before the rent controller and question of title in terms of alleged sale agreements for specific performance of contract, he has to resort the same separately without putting up such plea as discussed in the preceding paragraph. This proposition has already been set at naught by the Honorable Supreme Court of Pakistan in case of *Muhammad Nisar Vs. Izhar Ahmed Shaikh & others reported as* **PLD 2014 SC 347**.

9. Primarily the tenant is liable to establish his claim for specific performance on the basis of alleged sale agreement, and the landlord would continue to enjoy the status of being owner and landlord of the premises, and till such time the relationship between the parties would be regulated by the terms of tenancy ; genuineness or otherwise of alleged sale agreement and its consequential effect will be independently determined by the Civil Court ; and, ejection proceedings could not be resisted by taking shelter based on sale agreement. Additionally, till such time the Civil Court passes a decree against the landlord in a Suit for specific performance; landlord was / is entitled to recover rent through the application under SRPO. It is well settled law that Article 115 of the Qanun-e-Shahadat lays down that during continuance of tenancy, no tenant of immovable property shall be permitted to deny the title of his landlord ; once a person was prima facie shown to be inducted as tenant of the demised premises, he could not claim any exemption from payment of rent on account of institution of Suits for Specific Performance and even for cancellation of sale deed if any; the relationship of landlord and tenant is not severed even if the execution of an agreement to sell is admitted ; and, institution of Civil Suit by the tenant one for Specific Performance of agreement, per se would not be sufficient to refuse compliance of an order passed by the Rent Controller under Section 16(1) of SRPO pending final determination, by the learned Rent Controller.

10. I shall now deal with the objection regarding maintainability of this petitions against interlocutory order passed by the Rent Controller. It is settled law on the point of invoking Constitutional jurisdiction of this Court under Article 199 of the Constitution against interlocutory orders, I am of the considered view that any order passed by the Tribunal / Rent Controller in excess of its jurisdiction or by not exercising the jurisdiction vested in it by law, can be challenged in Constitutional jurisdiction of this Court; and, in such an event the mere fact that the impugned order is interlocutory shall not prevent the High Court from exercising Constitutional jurisdiction. It has been held time and again by Hon'ble Supreme Court this Court that the Superior Courts have inherent and Constitutional powers to remedy and correct the wrongs committed by subordinate courts.

11. In view of the above, both the impugned orders are maintained and these petitions are dismissed with no order as to costs.

JUDGE

Karar_Hussain/PS*