

IN THE HIGH COURT OF SINDH AT HYDERABAD

CP S 52 of 2020 : Muhammad Yameenvs.
Noor Ali Shah&Others.

For the Petitioner/s : Mr. Aqeel Ahmed Siddiqui, Advocate

For the Respondent/s : Mr. Wali Muhammad Jamari
Assistant Advocate General

Date/s of hearing : 18.10.2023

Date of announcement : 18.10.2023

ORDER

Agha Faisal, J. The present writ petition arises from a rent matter, which was dismissed on account of the absence of any demonstrable landlord tenant relationship between the contesting parties.

2. The admitted facts herein are that the underlying property is represented to be in the name of Mr. Allauddin¹, as demonstrated from the barely legible copy of the intimation instrument stated to have been issued by the office of Deputy Settlement Commissioner, Tando Allahyar dated 19th October, 1959. The present petitioner, claiming to be a grandson and legal heir of the aforesaid person, filed a Rent Application before the learned Senior Civil Judge / Rent Controller Matli and the same was allowed vide judgment dated 25.02.2019. In appeal, the learned District Judge, Badin / Model Civil Appellate Court set-aside the judgment and held that since there was no relationship of landlord and tenant between the parties, therefore, the judgment impugned there before was unsustainable. The present petition challenges the order of the learned appellate Court.

3. At the very outset learned counsel for petitioner was called upon to demonstrate whether he had the capacity to file the rent application within the meaning of Section 2(f) of the Sindh Rented Premises Ordinance, 1979². Learned counsel remained unable to demonstrate any authorization or entitlement from the record. It was stated that the property remained in the name of Mr. Allauddin and that no transference of the same has ever taken place till date. The learned counsel also admitted that there was nothing on the record to corroborate the petitioner being a legal heir of Mr. Allauddin and

¹Copy of instrument available at page 107 of the file.

²“landlord” means the owner of the premises and includes a person who is for the time being authorized or entitled to receive rent in respect of such premises;

that there was no judicial / revenue pronouncement recognizing the petitioner as having any rights in the property.

4. Heard and perused. The impugned judgment has been rendered on the premise that there is no demonstrable relationship of tenant and landlord between the parties. Therefore, the ambit hereof is confined to consider whether said premise is borne from the law and record.

5. Petitioner's counsel has unequivocally admitted that the property remains in the name of Mr. Allauddin³; no transference of the same has ever taken place till date; there was nothing on the record to corroborate the petitioner being a legal heir of Mr. Allauddin; and that there was no pronouncement recognizing the petitioner as having any rights in the property.

6. The relationship of landlord and tenant is defined in the Sindh Rented Premises Ordinance 1979 and unless the precepts thereof are qualified the Rent Controller may not entertain proceedings in such regard. Learned Appellate Court has observed that no relationship of tenant and landlord was demonstrated, hence, the assumption of jurisdiction by the Rent Controller was not in accordance with law. This Court finds no infirmity with the conclusion of the learned Appellate Court that relationship of landlord and tenant could not be demonstrated⁴. While the petitioner remained at liberty to agitate any proprietary and / or possessory rights with respect to the relevant property before the Court of competent jurisdiction, however, this Court concurs with the learned appellate court that no case was ever made to agitate the *lis* before the learned Rent Controller.

7. It is settled law that the ambit of a writ petition is not that of a forum of appeal, nor does it automatically become such a forum in instances where no further appeal is provided⁵, and is restricted *inter alia* to appreciate whether any manifest illegality is apparent from the order impugned. It is trite law⁶ that where the fora of subordinate jurisdiction had exercised its discretion in one way and that discretion had been judicially exercised on sound principles the supervisory forum would not interfere with that discretion, unless same was contrary to law or usage having the force of law. The impugned judgment is well reasoned and the learned counsel has been unable to demonstrate any

³ Said to be deceased, however, no corroboration provided in such regard.

⁴ *Afzal Ahmad Qureshi vs. Mursaleen* reported as 2001 SCMR 1434; *Nairoz Khan vs. Zulakha* reported as 1992 CLC 1930.

⁵ Per *Ijaz ul Ahsan J* in *Gul Taiz Khan Marwat vs. Registrar Peshawar High Court* reported as PLD 2021 Supreme Court 391.

⁶ Per *Faqir Muhammad Khokhar J.* in *Naheed Nusrat Hashmi vs. Secretary Education (Elementary) Punjab* reported as PLD 2006 Supreme Court 1124; *Naseer Ahmed Siddiqui vs. Aftab Alam* reported as PLD 2013 Supreme Court 323.

manifest infirmity therein or that it could not have been rested upon the rationale relied upon.

8. Article 199 of the Constitution contemplates the discretionary⁷ writ jurisdiction of this Court and no case has been set forth before this Court for favorable exercise of such discretion, therefore, this petition is hereby dismissed.

JUDGE

Ahmed/Pa,

⁷ Per Ijaz Ul Ahsan J. in *Syed Iqbal Hussain Shah Gillani vs. PBC & Others* reported as 2021 SCMR 425; *Muhammad Fiaz Khan vs. Ajmer Khan & Another* reported as 2010 SCMR 105.