

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
C.P. No. S- 1863 of 2018

Date	Order with signature of Judge
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1. For orders on Office Objection
2. For hearing of CMA No. 7674 of 2018
3. For hearing of main case

Date of Hearing : 26 May 2023 and 2 June 2023

Petitioner : **Province of Sindh** through **Mr. Imran Ahmed Abro, Assistant Advocate General Sindh**

Respondent No. 1: : **Ehtasham ul Haq** through **Ch. Abdul Rasheed, Advocate** along with **Shahida Nasreen, Advocate**

Respondent No. 2 : Nemo

Respondent No. 3 : Nemo

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
C.P. No. S- 1864 of 2018

Date	Order with signature of Judge
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1. For orders on Office Objection
2. For hearing of CMA No. 7677 of 2018
3. For hearing of main case

Date of Hearing : 26 May 2023 and 2 June 2023

Petitioner : **Province of Sindh** through **Mr. Imran Ahmed Abro, Assistant Advocate General Sindh**

Respondent No. 1: : **Ehtasham ul Haq** through **Ch. Abdul Rasheed, Advocate** along with **Shahida Nasreen, Advocate**

Respondent No. 2 : Nemo

Respondent No. 3 : Nemo

ORDER

MOHAMMAD ABDUR RAHMAN J. The Province of Sindh maintains these two Petitions under Article 199 of the Constitution of the Islamic Republic of Pakistan, each as against Judgements dated 25 August 2018

passed by the Illrd Additional District Judge Karachi (Central) in FRA No. 107 of 2018 and FRA No. 108 of 2018 upholding orders each dated 19 February 2018 passed by the IXth Rent Controller Karachi (Central) on Applications under Sub-Section (2) of Section 16 of the Sindh Rented Premises Ordinance, 1979 maintained by the Respondent No. 1 in Rent Case No. 397 of 2016 and Rent Case No. 399 of 2016.

2. The Respondent No. 1 maintained an Application under Section 15 of the Sindh Rented Premises Ordinance, 1979 before the IXth Rent Controller Karachi (Central) bearing Rent Case No. 399 of 2016 and Rent Case No. 397 of 2016 respectively seeking the eviction of the Petitioner from the following two tenements namely:

- (i) Plot No. B-494, Block 13, Federal B Area, Karachi, and
- (ii) Plot No. B-496, Block 13, Federal B Area, Karachi.

3. It seems that each of the tenements were at some time subject to a Marital Law Order No. 118 of 1972 entitled the Privately Managed Schools and Colleges (Taking Over) Regulation, 1972 dated 1 April 1972. The buildings on the tenements being in the nature of schools were taken over by the Province of Sindh and where after on 29 July 1980 a notification was issued under Sub- Section (2) of Section 3 of the Sindh Rented Premises Ordinance, 1979 and which published in Part I of the Sindh Government Gazette dated 26 March 1981 at pg. 202 in the following terms:

“ ... No. VIII(3) SOJ. 75.- *In exercise of the 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 the Government of Sindh”*

4. On the basis of the notification issued under Sub-Section (2) of Section 3 of the Sindh Rented Premises Ordinance, 1979 dated 26 March 1981, the Province of Sindh maintained applications under Sub-Section (2) of Section 3 of the Sindh Rented Premises Ordinance, 1979 in both Rent Case No. 397 of 2016 and Rent Case No. 399 of 2016 before the IXth Rent Controller Karachi (Central) and each of which were dismissed on 3 May 2017 by that Court and against which apparently no appeal was filed.

5. Thereafter in both Rent Case No. 397 of 2016 and Rent Case No. 399 of 2016 the Respondent No. 1 maintained applications under Sub-Section (1) of Section 16 of the Sindh Rented Premises Ordinance before the IXth Rent Controller Karachi (Central) seeking a tentative rent order to be passed as against the Petitioner and which were granted on 1 July 2017. On account of the non-compliance of the order dated 1 July 2017 on the applications under Sub-Section (1) of Section 16 of the Sindh Rented Premises Ordinance, 1979 passed by the IXth Rent Controller Karachi (Central) in both Rent Case No. 397 of 2016 and Rent Case No. 399 of 2016, the Respondent No. 1 maintained applications under Sub-Section (2) of Section 16 of the Sindh Rented Premises Ordinance, 1979 seeking to strike off the defence of the Petitioners for failing to comply with the order dated 1 July 2017 on the applications under Sub-Section (1) of Section 16 of the Sindh Rented Premises Ordinance, 1979 passed by the IXth Rent Controller Karachi (Central) in both Rent Case No. 397 of 2016 and Rent Case No. 399 of 2016. Each of the Applications were on 19 February 2018 granted by the IXth Rent Controller Karachi (Central) in Rent Case No. 397 of 2016 and Rent Case No. 399 of 2016 and the Petitioners were directed to handover the possession of each of the tenements to the Respondent No. 1 within a specified period.

6. The Petitioner thereafter maintained two appeals bearing FRA No. 107 of 2018 and FRA No. 108 of 2018 before the IIIrd Additional District

Judge Karachi (Central) and which were by Judgements each dated 25 August 2018 passed by the Illrd Additional District Judge Karachi (Central) also dismissed stating that the Petitioner was liable to being evicted from the Said Tenement as:

- (i) The Petitioner had not assailed the order dated 3 May 2017 passed on the application under Sub-Section (2) of Section 3 of the Sindh Rented Premises Ordinance, 1979 in both Rent Case No. 397 of 2016 and Rent Case No. 399 of 2016 by the IXth Rent Controller Karachi (Central) before this Court; and
- (ii) the Petitioner having not complied with the order dated 1 July 2017 passed on the application under Sub-Section (1) of Section 16 of the Sindh Rented Premises Ordinance, 1979 by the IXth Rent Controller Karachi (Central) in both Rent Case No. 397 of 2016 and Rent Case No. 399 of 2016 was liable to have his defence struck off under Sub-Section (2) of Section 16 of the Sindh Rented Premises Ordinance, 1979.

7. The Petitioner has thereafter maintained C.P. No. S-1863 of 2018 and C.P. No. S- 1864 of 2018 before this Court. It seems that in the interim execution proceedings were maintained by the Respondent No. 1 and which were granted and possession of each of the tenements was handed over to the Respondent No. 1. Thereafter this Court was on 7 November 2018 pleased to dismiss these Petitions holding that on account of the tenements having been handed over, these petitions had become infructuous.

8. The Petitioner assailed the order dated 7 November 2018 passed by this Court in each of these Petitions before the Supreme Court of Pakistan in Civil Appeal No. 16-K of 2020 and Civil Appeal No. 17-K of 2020 and

where, by an order dated 19 January 2022, the Supreme Court of Pakistan was pleased to remand these two Petitions to this Court for re-adjudication holding that:

“ ... *in our opinion handing over possession would not render the pending writ petition as infructuous. Consequentially, with the consent of the learned counsel as well as learned Additional Advocate General Sindh while recalling the leave granting order, we allow these appeals, set aside the impugned order and remand the cases to the High Court to decide the same on merits...*”

9. Mr. Imran Ahmed Abro, Assistant Advocate General Sindh represented the Petitioner and assailed the Judgements dated 25 August 2018 passed by the Illrd Additional District Judge Karachi (Central) in FRA No. 107 of 2018 and FRA No. 108 of 2018 upholding orders each dated 19 February 2018 passed by the IXth Rent Controller Karachi (Central) on Applications under Sub-Section (2) of Section 16 of the Sindh Rented Premises Ordinance, 1979 maintained by the Respondent No. 1 in Rent Case No. 397 of 2016 and Rent Case No. 399 of 2016. He contended that on account of the notification dated 26 March 1981 that had been issued under Sub-Section (2) of Section 3 of the Sindh Rented Premises Ordinance, 1979, the IXth Rent Controller Karachi (Central) lacked the jurisdiction to entertain Rent Case No. 397 of 2016 and Rent Case No. 399 of 2016 let alone the Applications under Sub-Section (2) of Section 16 of the Sindh Rented Premises Ordinance, 1979 maintained by the Respondent No. 1. He relied on a judgment of the Supreme Court of Pakistan reported as **Director of Schools and others vs. Zaheeruddin and others**¹ wherein while considering the application of the notification dated 26 March 1981 that had been issued under Sub-Section (2) of Section 3 of the Sindh Rented Premises Ordinance, 1979, it was held that:

“ ... 8. *As regards the above second submission of Mr. Ali Akber, it may be pointed out that the case relied upon by him does not touch upon the point in issue, namely, as to whether in view of the above notification issued under subsection (2) of Section 3 of the Ordinance, the rent Controller could entertain the rent applications in respect of the premises*

¹ 1996 SCMR 1767

which are occupied by colleges and schools. The above case has decided the question of ownership of the buildings wherein privately owned colleges and schools were run as pointed out hereinabove and, therefore, has no relevance.

9. *We are therefore, of the view that in view of the above notification, the Rent Controller had no jurisdiction to entertain the above rent applications and the remedy of the respondents for any alleged cause of action was by way of a suit."*

He contended that the Supreme Court of Pakistan having held that a Rent Controller would not have jurisdiction over premises of the Colleges and Schools, taken over under Martial Law Regulation 118 of 1972 as such the IXth Rent Controller Karachi (Central) had no jurisdiction to entertain Rent Case No. 397 of 2016 and Rent Case No. 399 of 2016. He pleaded that in the facts and circumstances both the Judgements dated 25 August 2018 passed by the Illrd Additional District Judge Karachi (Central) in FRA No. 107 of 2018 and FRA No. 108 of 2018 and the orders each dated 19 February 2018 passed by the IXth Rent Controller Karachi (Central) on Applications under Sub-Section (2) of Section 16 of the Sindh Rented Premises Ordinance, 1979 maintained by the Respondent No. 1 in Rent Case No. 397 of 2016 and Rent Case No. 399 of 2016 should be set aside, Rent Case No. 397 of 2016 and Rent Case No. 399 of 2016 should be dismissed and the Petitioner should be restituted into each of the tenements from which they have been dispossessed.

10. Mr. Chaudary Abdul Rasheed, entered appearance on behalf of the Respondent No. 1. He contended that the Respondent had acquired title to the two tenements and has served a notice under Section 18 of the Sindh Rented Premises Ordinance, 1979 on the Petitioners. He stated that thereafter the Petitioner could not deny the relationship of landlord and tenant and if they wished to do so they would have to file a suit. In this regard he relied on the decisions reported as **Parvaiz Akhtar vs. Dr. Muhammad Ahsan**² and **Dr. Quraishul Mujtaba Qarni vs. S. Usman Ali Kazmi**³ to reaffirm his contentions. He thereafter contended that the

² PLD 1988 SC 734

³ 1992 CLC 2114

Respondent No. 1 had issued a notice under Section 18 of the Sindh Rented Premises Ordinance, 1979 to the Petitioner and thereafter there was an obligation on the part of the Petitioner to pay rent to the Respondent No. 1 and relied on the decision reported as **Messrs Mukhtar Brothers vs. Mst. Hawa Bai Admani**⁴ in support of his contentions.

11. Regarding the Privately Managed Schools and Colleges (Taking Over) Regulation, 1972 he contended that these were issued on 1 April 1972. He stated that in the Constitution of Pakistan, 1973 Article 270 states as under:

“ ... **270. (1) Majlis-e-Shoora (Parliament) may by law made in the manner prescribed for legislation for a matter in Part I of the Federal Legislative List validate all Proclamations, President's Orders, Martial Law Regulations, Martial Law Orders and other laws made between the twenty-fifth day of March, one thousand nine hundred and sixty-nine, and the nineteenth day of December, one thousand nine hundred and seventy-one (both days inclusive).**

(2) Notwithstanding a judgment of any court, a law made by Majlis-e-Shoora (Parliament) under clause (1) shall not be questioned in any court on any ground, whatsoever.

(3) Notwithstanding the provisions of clause (1), and a judgment of any court to the contrary, for a period of two years from the commencing day, the validity of all such instruments as are referred to in clause (1) shall not be called in question before any court on any ground whatsoever.

(4) All orders, made, proceedings taken, and acts done by any authority, or any person, which were made, taken or done, or purported to have been made, taken or done, **between the twenty-fifth day of March, one thousand nine hundred and sixty-nine and nineteenth day of December, one thousand nine hundred and seventy-one** (both days inclusive), in exercise of powers derived from any President's Orders, **Martial Law Regulations**, Martial Law Orders, enactments, notifications, rules, orders or bye-laws, or in execution of any order made or sentence passed by any authority in the exercise or purported exercise of power as aforesaid shall, notwithstanding any judgment of any court, be deemed to be and always to have been validly made, taken or done, so however that any such order, proceeding or act may be declared invalid by Majlis-e-Shoora (Parliament) at any time within a period of two years from the commencing day by resolution of both Houses, or in case of disagreement between the two Houses, by such resolution passed at a joint sitting and shall not be called in question before any court on any ground, whatsoever.”

The Privately Managed Schools and Colleges (Taking Over) Regulation, 1972 having been promulgated after the period prescribed in both Sub-Article (1) and Sub-Article (4) of Article 270 of the Constitution of the Islamic

⁴ 1992 MLD 1045

Republic of Pakistan, 1973 he contends were neither validated nor could be deemed to have been valid under those provisions. He next contended that under Sub-Article (1) of Article 270 of the Constitution of the Islamic Republic of Pakistan, 1973 the Validation of Laws Act, 1975 was promulgated on 24 July 1975 but did not and being outside of the periods prescribed actually could not have validated The Privately Managed Schools and Colleges (Taking Over) Regulation, 1972. He finally contended that the Privately Managed Schools and Colleges (Taking Over) Regulation, 1972 were, under Sub-Article (2) of Article 268 of the Constitution of the Islamic Republic of Pakistan, 1973, listed at item 16 to the Sixth Schedule of the Constitution of the Islamic Republic of Pakistan, 1973 and which was repealed by the 18th Amendment to the Constitution of the Pakistan, 1973 on 8 April 2010 and which having not been saved, the notification dated 26 March 1981 that had been issued under Sub-Section (2) of Section 3 of the Sindh Rented Premises Ordinance, 1979 can now no longer have any legal effect. In this regard he relied on the decision reported as **Jannat ul Haq and 2 others vs. Abbas Khan and 8 others**⁵ to state that once a law had been repealed it no longer had any legal effect and as such the the notification dated 26 March 1981 that had been issued under Sub-Section (2) of Section 3 of the Sindh Rented Premises Ordinance, 1979 having made specific reference to the Privately Managed Schools and Colleges (Taking Over) Regulation, 1972 which now have been repealed must also be treated as redundant. He further relied on a decision of the Supreme Court of Pakistan reported as **Pakistan vs Muhammad Umar Khan**⁶ to state that any law that was not validated under the provisions of the Constitution of the Islamic Republic of Pakistan, 1973 did not have the status of a law. He contended that the Supreme Court of Pakistan in the decision reported as **Province of Punjab vs. Ch. Khan Muhammad**⁷ while refusing leave to appeal had held that the status of the

⁵ 2001 SCMR 1073

⁶ 1992 SCMR 2450

⁷ 1989 SCMR 558

Province of Sindh while occupying a property under the provisions of the Privately Managed Schools and Colleges (Taking Over) Regulation, 1972 would be that of tenants and not as owners of the property. He finally relied on a decision reported as **Deputy Director (Nationalisation), Hyderabad vs. Syed Zahoorul Hassan**⁸ wherein it was held that under the Privately Managed Schools and Colleges (Taking Over) Regulation, 1972 only the corpus of the building of the school would have been transferred to the Province of Sindh and not the ownership of the land and which being the case no objection could be raised as to the title of the landlord to the property on that basis. He prayed that as the Privately Managed Schools and Colleges (Taking Over) Regulation, 1972 had been repealed and no longer existed no rights could be claimed by the Province of Sindh under the notification dated 26 March 1981 that had been issued under Sub-Section (2) of Section 3 of the Sindh Rented Premises Ordinance, 1979 and prayed for the dismissal of the Petition.

12. I have heard the learned counsel for the Petitioner and the counsel for the Respondent No. 1 and have perused the record. It is accepted by both the Petitioner and the Respondent No. 1 that the Privately Managed Schools and Colleges (Taking Over) Regulation, 1972 was issued on 1 April 1972 and that pursuant to that Regulation 5 thereof the Tenements were occupied by the Petitioner. The Privately Managed Schools and Colleges (Taking Over) Regulation, 1972 not being a statute, it would necessarily need to be saved under the Constitution of the Islamic Republic of Pakistan, 1973 to have any legal effect. However, Article 269 of the Constitution of the Islamic Republic of Pakistan, 1973 states that

“ ... 269. *Validation of law, acts, etc.*

*(1) All Proclamations, President's Orders, **Martial Law Regulations, Martial Law Orders and all other laws made between the twentieth day of December, one thousand nine hundred and seventy-one and the twentieth day of April, one thousand nine hundred and seventy-two (both days inclusive), are hereby declared notwithstanding any judgment of any court, to have been validly made by competent authority and shall not be called in question in any court on any ground whatsoever.***

⁸ 1982 CLC 1640

(2) All orders made, proceedings taken and acts done by any authority, or by any person, which were made, taken or done, or purported to have been made, taken or done, between the twentieth day of December, one thousand nine hundred and seventy-one, and the twentieth day of April, one thousand nine hundred and seventy-two (both days inclusive), in exercise of the powers derived from any President's Orders, Martial Law Regulations, Martial Law Orders, enactments, notifications, rules, orders or bye-laws, or in execution of any orders made or sentences passed by any authority in the exercise or purported exercise of powers as aforesaid, shall, notwithstanding any judgment of any court, be deemed to be and always to have been validly made, taken or done and shall not be called in question in any court on any ground whatsoever.

(3) No suit or other legal proceedings shall lie in any court against any authority or any person for or on account of or in respect of any order made, proceedings taken or act done whether in the exercise or purported exercise of the powers referred to in clause (2) or in execution of or in compliance with orders made."

It would therefore seem that the Privately Managed Schools and Colleges (Taking Over) Regulation, 1972 being martial law regulation and having been issued on 1 April 1972 was in fact saved under Article 269 of the Constitution of the Islamic Republic of Pakistan, 1973 and subsisted as a valid law.

13. Further under Article 268 of the Constitution of the Islamic Republic of Pakistan, 1973, as originally framed, it was proclaimed that:

“ ... **268. Continuance in force, and adaptation of certain laws**

(1) Except as provided by this Article, all existing laws shall, subject to the Constitution, continue in force, so far as applicable and with the necessary adaptations, until altered, repealed or amended by the appropriate Legislature

(2) The laws specified in the Sixth Schedule shall not be altered, repealed or amended without the previous sanction of the President.

(3) For the purpose of bringing the provisions of any existing law into accord with the provisions of the Constitution (other than Part II of the Constitution), the President may by Order, within a period of two years from the commencing day, make such adaptations, whether by way of modification, addition or omission, as he may deem to be necessary or expedient, and any such Order may be made so as to have effect from such day, not being a day earlier than the commencing day, as may be specified in the Order.

(4) The President may authorise the Governor of a Province to exercise, in relation to the Province, the powers conferred on the President by clause (3) in respect of laws relating to matters with respect to which the Provincial Assembly has power to make laws.

(5) The powers exercisable under clauses (3) and (4) shall be subject to the provisions of an Act of the appropriate Legislature.

(6) Any court, tribunal or authority required or empowered to enforce an existing law shall, notwithstanding that no adaptations have been made in such law by an Order made under clause (3) or clause (4), construe the law with all such adaptations as are necessary to bring it into accord with the provisions of the Constitution.

(7) In this Article, "existing laws" means all laws (including Ordinances, Orders-in-Council, Orders, rules, bye-laws, regulations and Letters Patent constituting a High Court, and any notifications and other legal instruments having the force of law) in force in Pakistan or any part thereof, or having extra-territorial validity, immediately before the commencing day.

Explanation.—In this Article, "in force", in relation to any law, means having effect as law whether or not the law has been brought into operation.

It would seem that any "existing law" as defined in Sub-Article (7) of Article 268 of the Constitution of the Islamic Republic of Pakistan, 1973 would, in accordance with Sub-Article (1) of Article 268 of the Constitution of the Islamic Republic of Pakistan, 1973, subject to the provisions of the Constitution, continue to remain in force until legislated on. Article 268 of the Constitution of the Islamic Republic of Pakistan, 1973, as such, does not validate any law and simply reaffirms that the laws which have been validly passed will continue in force until legislated on by a competent legislature. Sub-Article (2) of Article 268 of the Constitution of the Islamic Republic of Pakistan, 1973, however creates an exception to Sub-Article (1) of Article 268 of the Constitution of the Islamic Republic of Pakistan, 1973 and states that whatever might be the power of the legislature to alter, repeal or amend a statute, any statute that was listed in the Sixth Schedule of the Constitution of the Islamic Republic of Pakistan, 1973 cannot be amended without the "previous sanction of the President." The Privately Managed Schools and Colleges (Taking Over) Regulation, 1972 therefore listed at Item No. 16 of the Sixth Schedule having been saved by Article 269 of the Constitution of the Islamic Republic of Pakistan, 1973 prima continued to remain a valid piece of law and could only have been

amended by the legislature subject to the previous sanction of the President of Pakistan.

14. The provisions and obligations that existed under the Privately Managed Schools and Colleges (Taking Over) Regulation, 1972 were interpreted by the Supreme Court of Pakistan in the decision reported as **The Government of Punjab vs. The Board of Foreign Missions of the Presbyterian Church In the United States of America through Lahore Church Council**,⁹ **Sister Marry John vs. Government of Punjab**¹⁰ and **Province of Punjab vs. Muhammad Ilyas**¹¹ wherein it was held that in respect of those Regulations while the control, management and supervision of the privately-managed colleges and schools had been taken over by the Government, the immovable properties in which such institutions were housed did not vest in the Government. Such a view had also been taken by the Lahore High Court, Lahore in the decision reported as **Roman Catholic Church vs. Government of Punjab**,¹² and **Shahbaz Shah vs. State**¹³ and also by decisions of this Court in the decision reported as **Aided Schools Management Association vs. Government of Sindh**,¹⁴ **Adarah Tamir e Millat vs. Government of Sindh**,¹⁵ and in **Fail E Mobin ahmad vs. Government of Sindh, Deputy Director (Nationalisation), Hyderabad vs. Syed Zahoorul Hassan**.¹⁶ In the decision reported as **Madrassa Zia ul Aloom vs. Government of Punjab**¹⁷ it was held that where the school that had been taken over under the Privately Managed Schools and Colleges (Taking Over) Regulation, 1972 were in fact occupying a premises as a tenant then the immovable property on which the school was housed having not been transferred into the name

⁹ PLD 1988 SC 382

¹⁰ 1999 SCMR 2335

¹¹ 2000 SCMR 893

¹² 1999 CLC 1389

¹³ 1996 MLD 1612

¹⁴ 1989 MLD 3020

¹⁵ 1989 MLD 24

¹⁶ 1982 CLC 1640

¹⁷ 1985 CLC 2963

of the Government of the Province, the relationship as between the Government of the Province and the owner of the immovable property would continue to be one of landlord and tenant.

15. The issue of the relationship as between the Province and the owners of the property having been conclusively settled, the issue that remains to be adjudicated is as to whether such a relationship would be regulated by the Sindh Rented Premises Ordinance, 1979 or in the alternative as to whether the obligations regulating such a relationship would be exempted from the provisions of the Sindh Rented Premises Ordinance, 1979 and be regulated instead by the Transfer of Property Act, 1882. The matter seems to have been considered in an unreported judgement bearing Civil Appeal No.1544 of 2000 titled as **Government of Sindh v. Khalil-ur-Rehman** wherein the Supreme Court of Pakistan has held that:

“ ... suffice it to observe, after enforcement of Martial Law Regulation 118, the premises in which nationalized educational institutions located in privately owned properties were exempted from the operation of the provisions of Ordinance 1979. **The said protection has since been withdrawn and is no longer available in respect of said buildings.** 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.”

The finding of the withdrawal of the notification dated 26 March 1981 that had been issued under Sub-Section (2) of Section 3 of the Sindh Rented Premises Ordinance, 1979 was also confirmed in the decision reported as **Government of Sindh vs. Delhi Anglo Arabic College and Schools**¹⁸ wherein it was again noted that the exemption granted in the notification dated 26 March 1981 that had been issued under Sub-Section (2) of Section 3 of the Sindh Rented Premises Ordinance, 1979, had been withdrawn and wherein it was held that:

“ ... With regard to the contention that the relationship between the parties was that of landlord and tenant and in case of failure of the petitioner to

¹⁸ 2009 SCMR 315

pay the monthly rent for the premises in question, the respondents ought to have resorted to the provisions of the Ordinance for ejection of the petitioners, it is noted that according to Martial Law Regulation 118 privately owned premises in which Nationalized Educational Institutions are housed/functioning were exempted from application of the Ordinance. Though such exemption was subsequently withdrawn and no longer available in respect of such buildings yet in view of the stipulation contained in clause (6) of the agreement that the breach of any of the terms set out in sub-clauses (a) to (n) of clause (6) would be sufficient ground for the respondents to terminate this agreement as well as clause (8) of the lease agreement empowering the respondent to terminate the agreement on commission of breach of any of the terms of the agreement, the tenancy was liable to termination/forfeiture in terms of section 111 of the Transfer of Property Act. Irrespective of the above circumstances, the fact remains that neither in the suit nor in the High Court Appeal this objection has ever taken or raised by the petitioners."

16. The same issue was also considered by my learned brother Muhammad Shafi Siddiqui, J. in the decision reported as **The Province of Sindh vs. The Islamic Education Trust**¹⁹ wherein my learned brother had on the basis of the findings of the Supreme Court of Pakistan, opined that as the notification dated 26 March 1981 that had been issued under Sub-Section (2) of Section 3 of the Sindh Rented Premises Ordinance, 1979 had been withdrawn, jurisdiction clearly vested in the Rent Controller under the Sindh Rented Premises Ordinance, 1979 to regulate the obligations as between the Province of Sindh and the owner of land on which schools which had been nationalised under the Privately Managed Schools and Colleges (Taking Over) Regulation, 1972 dated 1 April 1972 had been operating. Needless to say, the findings of the Supreme Court of Pakistan are binding on me just as much as they are binding on the Province of Sindh and which has apparently, unabashedly been reiterating the same issue over and over again since the year 2000 despite the issue having been resolved by the Supreme Court of Pakistan in at least two separate judgements of that Court and one judgement of this Court. The exemption as notified on 26 March 1981 under Sub-Section (2) of Section 3 of the Sindh Rented Premises Ordinance, 1979 having been withdrawn, each of the Judgements dated 25 August 2018 passed by the IIIrd Additional District Judge Karachi (Central) in FRA No. 107 of 2018 and FRA No. 108 of 2018

¹⁹ PLD 2021 Sindh 13

upholding orders each dated 19 February 2018 passed by the IXth Rent Controller Karachi (Central) on Applications under Sub-Section (2) of Section 16 of the Sindh Rented Premises Ordinance, 1979 maintained by the Respondent No. 1 in Rent Case No. 397 of 2016 and Rent Case No. 399 of 2016 were clearly within the jurisdiction of each of those Courts and were correctly passed and the objections as to the jurisdiction of those Courts as maintained by the Petitioner cannot be sustained.

17. For the foregoing reasons, I am of the opinion that there is no illegality or infirmity in either the Judgements dated 25 August 2018 passed by the IIIrd Additional District Judge Karachi (Central) in FRA No. 107 of 2018 and FRA No. 108 of 2018 or in the orders each dated 19 February 2018 passed by the IXth Rent Controller Karachi (Central) on Applications under Sub-Section (2) of Section 16 of the Sindh Rented Premises Ordinance, 1979 maintained by the Respondent No. 1 in Rent Case No. 397 of 2016 and Rent Case No. 399 of 2016. Both C.P. No. S-1863 of 2018 and C.P. No. S-1864 of 2018 are therefore misconceived and are dismissed along with all listed application with no order as to costs.

JUDGE

Karachi dated 1 September 2023