

IN THE HIGH COURT OF SINDH AT KARACHI

PRESENT: MR. JUSTICE SALAHUDDIN PANHWAR

C.P. NO.S-1114/2022

Petitioner : Province of Sindh and another,
through Mr. Pervez Ahmed Mastoi,
Assistant Advocate General Sindh.

Respondents : Mst. Rasheeda Begum and others,
through Mr. Muhammad Ramzan Tabassum
advocate.

Date of hearing : 9th & 16th October and 6th November, 2023.

Date of announcement : 5th December, 2023.

J U D G M E N T

Petitioners have impugned consolidated judgment dated 24.11.2022 of Appellate Court in FRA Nos.91/2021 and 97/2022 upholding the order dated 29.07.2021 of Rent Controller passed in Rent Case No.442/2020 whereby application under section 3 of SRPO 1979 filed by petitioners for dismissal of eviction application was dismissed, and agreeing with the order dated 29.03.2022 whereby Application under section 16(ii) SRPO 1979 was allowed.

2. Respondent No.1 claiming to be landlady filed Rent Case No.442/2020 for ejection of petitioners from subject premises viz. building on Plot No.4/3, Survey No.98/101, measuring 1000 square yards, Green Town, Deh Drig, Tapo Drig Road, Karachi, where they are running a school namely Asif Government Girls & Boys Secondary School. It was contended by respondent No.1 that she had purchased the premises from its previous owner Mst. Bushra Rahat while it was already under the

occupation of Education Department of Government of Sindh as its tenant vide tenancy agreement dated 01.12.2007 with previous owner Muhammad Khalil-ur-Rehman Bajwa. It was explained that said Mst. Bushra had earlier received that property by way of a registered gift dated 22.04.2009 from her husband Khalil-ur-Rehman Bajwa who had acquired that plot by virtue of Deh Form-II vide entry No.6239 of Mukhtiarkar Shah Faisal Colony and had bifurcated the plot and constructed school with name of Asif Boys and Girls School, that school was later nationalized under MLR-118 of 1972 and said Khalil-ur-Rehman had entered into tenancy agreement as referred above. It is the case of respondent No.1 that she served a notice under section 18 of SRPO 1979 asking for monthly rent; petitioner department held several meetings with her and her matter was taken up time and again for payment of future rent but could not be resolved; that said premises is also required by her for use of her son namely Saleem Anwar for own personal use; therefore she sought ejectment of petitioners on the ground of default and personal bonafide need.

3. Petitioners (respondents before rent controller) objected maintainability of rent case being hit by provisions of section 42 of the Specific Relief Act 1877 and section 54 of the Transfer of Property Act, 1882; that besides it was without any cause of action; they denied the ownership of respondent No.1 to the demised premises as it is case of respondent No.1 that she had allegedly purchased the property on 09.02.2011 from its previous alleged owner Mst. Bushra by virtue of sale deed; that in fact owner was one Muhammad Hussain and respondent

No.1 failed to provide transfer of ownership title from said owner to Muhammad Khalil-ur-Rehman Bajwa who later on allegedly gifted the property to his wife Mst. Bushra Rahat from whom respondent No.1 claims title; moreover the property situated at plot No.256/A Green Town Karachi is mentioned in the tenancy agreement dated 01.01.1981 but in the alleged sale deed dated 09.02.2011 the address of the property is mentioned as Plot No.4/3, Survey No.98/101, measuring 790 square yards, Deh Drig Tapo Drig Road, Karachi, hence different from the tenancy agreement; that according to the verification report dated 19.09.2014 issued by Mukhtiarkar Shah Faisal, District Korangi, the property was transferred to M.K. Rehman through Settlement Commissioner Karachi vide letter No.190 dated 18.02.2014 and No.DSC/132 dated 14.02.1974 vide entry No.6239 dated 26.04.2006 and entry No.7625 dated 05.10.2009 which show that the said property actually belongs to Government; that entire documents regarding the property are managed and fictitious ones and do not constitute right of title in favor of respondent No.1; that Asif GG&B School is running in the building known as Plot No.256/A, Green Town, Karachi since 01.11.1971 which was later on nationalized by Government under MLR-118 of 1972 and petitioners are running government school in said building; that respondent No.1 is neither owner of the subject matter property nor petitioners are tenants and there is no relationship of landlord and tenant between the parties; that respondent No.1 is a land grabber and attempting to usurp and encroach upon the school premises and cause damages to the building. It is further the case of petitioners that the arrears of rent from January, 2019 to December, 2021 i.e. Rs.12,74,449.166/- and further monthly rent at the rate of @ 10% per

annum Rs.42,706.849/- year, which cannot be given consideration according to Section 9 of SRPO, 1979. It is further contended that so-called rent agreement dated 01.12.2007 is null and void; there exists no relationship between the parties as landlady and tenant. It was further contended that no rent receipt or rent acknowledgment or any other documents / evidence in respect of rent payment if any has been filed by respondent No.1 to prove that petitioners being tenant were paying the rent to her predecessors/so-called owner. The verification report dated 19.02.2014 of the property issued by the Mukhtiarkar Shah Faisal, District Korangi, Karachi, produced in the pleadings by respondent No.1 herself reflects that said property was transferred to Mr. M.K. Rehman through Settlement Commissioner Karachi on 14.02.1974 hence demised property belongs to the Government.

4. Earlier first round of litigation initiated when Applicant/Respondent No.1 filed Rent Case No.34/2015 against Director, School Education Department (petitioner No.2 herein) which was allowed vide *ex-parte* order dated 15.05.2015 with direction to petitioner No.2 to deliver vacant and peaceful possession of subject matter premises to respondent No.1; petitioners filed FRA No.69/2015 which was allowed vide order dated 30.11.2015 and order dated 15.05.2015 was set aside and Rent Case No.34/2015 was dismissed; thereafter respondent No.1 filed CP No.S-2070/2013 and this Court vide order dated 14.02.2018 set aside the order dated 30.11.2015 and remanded the case back to Appellate Court for deciding the matter afresh; the Appellate Court vide judgment dated 24.03.2018 set aside the order of Rent Controller dated 30.05.2015 and

remanded the case with direction to decide the matter on merits after leading evidence of both parties. The Rent Controller vide order dated 09.08.2019 allowed Rent Case No.34/2015 and directed the Director, School Education Department (petitioner No.2 herein) to deliver vacant and peaceful possession of subject premises i.e. N/GRT/MR-256/A (Plot No.4/3, Survey No.98/101, measuring 1000 square yards, Green Town, Deh Drig, Tapo Drig Road, Karachi), to Applicant (Respondent No.1 herein) within 60 days. Petitioners filed FRA No.139/2019 which was dismissed vide judgment dated 11.02.2020 which was assailed by petitioners before this Court in CP No.S-465/2020 which was allowed vide judgment dated 08.12.2020 with following observations:-

“The respondent / applicant was claiming to have stepped into shoes of previous owner, therefore, she, *legally*, was not justified to file ejectment against the ‘**Director Schools**’ without impleading the ‘**Govt. of Sindh**’ as **tenant**. Therefore, application of the respondent / applicant even was not competent as the same has never been filed against the actual ‘**tenant**’. I would also add that the present respondent / applicant, *even*, did not bother to rectify such mistake on remand of her ejectment application back to the Rent Controller hence she has to face consequence of not-making compliance of requirement of law; fair-play and *equity* which always demanded filing of **ejectment application** against the **tenant** of premises and not **occupant** thereof.

20. In consequence to what has been discussed above, the instant petition is allowed; orders of both the courts below are set-aside and ejectment application, being incompetent, is dismissed. However, this would not prejudice the right of the respondent / applicant to file proper ejectment application against the **actual** tenant.”

Hence respondent No.1 filed fresh Rent Case No.442/2020 impleading Province of Sindh, Director School Education, EDO Education, DEO, Secondary and Principal of GG&BSC, wherein order dated 29.07.2021 was passed impugned in FRA No.91/2021 and tentative rent order dated 10.12.2021 followed by final order dated 29.03.2022 were passed challenged in FRA No.97/2022; both FRAs were dismissed vide consolidated judgment dated 24.11.2022 impugned herein.

5. At the outset learned Assistant Advocate General Sindh has emphasized against applicability of section 3 of the Sindh Rented Premises Ordinance, 1979 with the plea that rent jurisdiction was not applicable in this case as section 3 of the Ordinance 1979 excludes that jurisdiction; he has relied upon 1996 SCMR page 1767 and 2009 SCMR page 315 on same point. It is further contended by learned A.A.G. that addresses of demised premises as noted in tenancy agreement and eviction application are entirely different; that in third round of litigation it surfaced through correspondence that alleged previous landlord Khalil-ur-Rehman had no title as claim of title is based on forged and fabricated documents manipulated with the connivance of Revenue officials and Education Department hence respondent No.1 claiming under him is also title-less; that alleged gift deed and subsequent sale deed are bogus, the Deh Form II in favour of respondent No.1 based on alleged auction order dated 10.11.1969 in respect of property i.e. Plot No.4/3 Survey No.101, Deh Drig, Tapo Malir, Taluka and District Karachi but same was cancelled vide the then Deputy Settlement Commissioner (L) Karachi vide letter dated 02.01.1976 therefore any auction order/FTO/PTO issued are fake and

fabricated, it was found that Plot No.4/3 was auctioned on 10.11.1969 but said auction was cancelled on 22.12.1973 on account of failure to pay auction price therefore there is no question of issuance of order by Settlement Commissioner; that an enquiry was initiated by ACE against Khalil-ur-Rehman and officials of the two departments and FIR No.28/2019 was registered with the ACE; that District Attorney East wrote letter through Director Education for cancellation of entries of demised premises before the Secretary Board of Revenue under relevant law which is still pending, to frustrate this move respondent No.1 malafidely filed suit No.2191/2018 for declaration, mandatory injunction and damages before this Court without impleading the petitioners as party as well concealing this fact from learned Rent Controller, Appellate Court and this Court; earlier to this another suit No.301/2015 was malafidely filed for declaration, permanent injunction on the basis of forged documents; that filing of new rent Case No.442/2020 by respondent No.1 was bared under the principle of *resjudicata* as she could have continued with earlier Rent Case No.34/2015 by impleading the Province and other necessary parties as respondents; proceedings filed or contested at lower fora were not filed/contested by respondent No.1 herself but her son who had no power of attorney from her in Rent Case No.442/2020; Courts below failed to appreciate the combined effect of MLR 118/1979 and Notification dated 29.07.1980 of Home Department; that both Courts below failed to appreciate above facts and also assumed jurisdiction wrongly in violation of the provisions of section 3 of the SRPO 1979. He has relied upon 1995 CLC 564, 1993 MLD 1298, PLD 1978 Lahore 258, 1990 CLC Karachi 1116, 1986 CLC Karachi 1935, 1986 CLC Karachi 1951.

6. In contra, learned counsel for respondent No.1 contended that present petition is filed by an incompetent and unauthorized person having no authority; that plea of petitioners relating to applicability of section 3 of SRPO 1979 is untenable as this aspect has already been decided by this court in earlier rounds of litigations which remained unchallenged hence attained finality; that in earlier rounds petitioners admitted tenancy with previous landlord as well as rate of rent hence learned Rent Controller issued direction to tenant to deposit arrears and current rent, petitioners sought time for compliance but ultimately failed to comply with that order hence final order was passed; that it is settled law that once tenant admits relationship he cannot deny it later on; that commissioner report falsifies the plea of petitioners that more than 100 students are getting education in said school; that certain pleas that are being raised now were not raised in earlier rent jurisdiction, for instance tenancy, change of ownership and payment of rent were not disputed by the petitioners hence they cannot raise these points now; he has relied upon sections 113 and 115 of Qanoon-e-Shahadat Order 1984. He has also referred evidence of petitioner's witness. It is further contended that earlier this court in such litigations in CP Nos.S-598 and 999 of 2013 adjudicated the issue of applicability of section 3 of the Ordinance 1979 and thus that order is in field and admittedly same was not assailed by the petitioner; since tenant failed to comply with tentative rent order hence they were rightly ejected from demised premises. He has relied upon SBLR 2016 Sindh 2008, 2000 SCMR 893, 2009 SCMR 315, 2015 YLR 647, 2007 SCMR 128, 1987 CLC 352, 2009 SCMR 453, 2009 SCMR 45, 2010 SCMR 143, 2007

YLR 420, 2010, CLC 561, 2006 CLC 1416, 2015 YLR 2543, 2017 YLR Note 68, 2017 YLR Note 139, 1992 MLD 1045, 2000 SCMR 1960 and 2001 CLC 251.

7. I have considered the arguments advanced by learned Assistant Advocate General Sindh representing the Petitioners as well as the learned counsel for Respondent No.1. I have also examined the entire material available on record.

8. Perusal of record shows that respondent No.1 filed Rent Case No.34 of 2015, which was allowed. Petitioners preferred First Rent Appeal No.69 of 2015, which was allowed and the Rent Case was dismissed vide order dated 15.05.2015. The Respondent No.1 challenged the said Order in C.P. No.S-2070 of 2015 which was allowed vide Order dated 14.02.2018 whereby case was remanded back for decision afresh. The matter was decided afresh and allowed. The Petitioners preferred FRA No.139 of 2019, which dismissed vide Order dated 11.02.2020. The Petitioners filed C.P. No.S-465 of 2020, which was also allowed and Government of Sindh was impleaded party to the ejectment application. It was observed in the previously filed C.P. No.S-465/2020 that the office or designation of "Director" legally cannot be termed as "Government of Sindh" in view of the definition contained under Section 2(d) of the Ordinance, 1979. This court further observed that the respondent/applicant was claiming to have stepped into shoes of previous owner, therefore, she, *legally*, was not justified to file ejectment application against the '**Director Schools**' without impleading the '**Govt. of Sindh**' as **tenant**; therefore, application of the respondent / applicant even was not competent as the same was never filed against the actual '**tenant**' and that the respondent / applicant, *even*, did not bother to rectify such mistake on remand of her ejectment

application back to the Rent Controller hence she had to face consequence of not-making compliance of requirement of law; fair-play and *equity* which always demanded filing of **ejectment application** against the **tenant** of premises and not **occupant** thereof. On remand of the matter, once again the Rent Case was allowed; the learned Rent Controller also passed tentative rent Order dated 10.12.2021 whereby directed the Petitioner to deposit arrears of rent. Further, vide Order dated 29.03.2022, the defence of the Petitioners was struck off and Application u/s 16(ii) SRPO 1979 was allowed; Petitioners filed FRA No.91 of 2022 & 97 of 2022, which were dismissed.

9. This Court passed Judgment dated 08.12.2020 wherein discussed the applicability of Section 3 of the Sindh Rented Premises Ordinance, 1979 but at that time the Government of Sindh was not party to the Rent Case. However, it was directed in Judgment dated 08.12.2020 that the Government of Sindh should be impleaded as a party to the rent proceedings. In such circumstances, the Rent Controller as well as Appellate Authority were under obligation to determine the question relating to the relationship of the landlady and tenant between the parties, so also applicability of Section 3 of the Sindh Rented Premises Ordinance, 1979 but the learned Rent Controller and Appellate Authority did not consider such aspects of the case in the context of Tenancy Agreement executed between the Petitioners and one Muhammad Hussain in its true perspective. The Tenancy Agreement shows that Government of Sindh, Education Department through its Director of School Education, Karachi is one of the signatories of the Tenancy Agreement. In order to examine whether the provisions of Section 3 of the Sindh Rented Premises

Ordinance, 1979 apply to the present matter or not, it would be expedient to reproduce the same as under:-

*“3.- **Applicability:** (1) Notwithstanding anything contained in any law for the time being in force, all premises other than those owned or requisitioned under any law, by or on behalf of the Federal Government or Provincial Government, situated within an urban area, shall be subject to the provisions of this Ordinance.*

(2) Government may by notification, exclude any class of premises or all premises in any area from operation of all or any of the provisions of the Ordinance”.

Bare reading of the aforesaid provisions of law would show that the premises owned or requisitioned under any law by or on behalf of the Federal or Provincial Government shall not be subject to the provisions of the Ordinance, 1979. The Government may by notification exclude any class of premises or all premises in any area from operation of all or any of the provisions of Ordinance, 1979. The MLR No.118 (Paragraph-5) shows that:-

“Such privately-managed school as the Central Government, in the case of a school situation in the Islamabad Capital Territory, and the Provincial Government in any other case, may, by notification in the official Gazette issued at any time on or after the first day of October, 1972, specify in this behalf shall vest in the Central Government or, as the case may be, in the Provincial Government, together with all property attached to it”.

(Underlining is supplied).

In case of *Khaliq Raza Khan v. Messrs Pakistan State Oil Company Limited* (1998 SCMR 2092), it was held by the Apex Court that:-

“It may further be, pointed out that subsection (1) of section 3 of the Ordinance lays down that notwithstanding anything contained in any law for the time being in force, all premises other than those owned or requisitioned under any law, by or on behalf of the Federal Government or Provincial Government, situated within an urban area, shall be subject to the provisions of the Ordinance. Whereas subsection (2) thereof empowers the Government, by notification, to exclude any class of premises, or all premises in any area from operation of all or any of the provisions of the Ordinance”.

10. It is also matter of record that the Petitioners produced Notification dated 29.07.1980 whereby exempted the premises belonging to the councils constituted under the Sindh Local Government Ordinance 1979 and the premises of the Colleges and Schools taken under Martial Law Regulation No.118 of 1972 from the operation of the said Ordinance, 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 letters issued previously. Letter dated 14.09.2020 issued by the Section Officer (Judicial-I) of the Home Department confirmed that the above referred Notification is still in the field (not withdrawn), as per record no subsequent notification has been issued till that date. It has been emphasized by the Petitioners that the entries as well as the instruments in the name of Respondent No.1 are bogus, which are subject to the "Declaration" in Civil Suit pending before this Court. In such circumstances, tentative rent Order passed by the learned Rent Controller, Order under Section 16(2), of the Sindh Rented Premises Ordinance, 1979 and the Judgment passed by the learned Appellate Authority without properly determining the controversial question of relationship of the landlady and tenant and application of Section 3 of the Sindh Rented Premises Ordinance, 1979 after remand by this Court, are not sustainable under the law. The proper remedy available to the affected party for any alleged cause of action was by way of suit. In Case of *Director of Schools and others v. Zaheeruddin and others (1996 SCMR 1767)*, it was held by the Apex Court as under:-

"8. As regards the above second submissions 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 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.

10. It was also submitted by Mr. Ali Akbar that the appellants have not paid any rent to the respondents in spite of lapse of considerable period. Mr. Qarni, who was appearing for the appellants, submitted that the Government would have no objection to the payment of rent. We would, therefore, allow the above appeals on the above ground and would set aside the orders of the two Courts below. However, we would like to observe that the Government may consider the question of payment of rent of the respondents if they own the buildings. The appeals stand disposed of in the above terms with no order as to costs”.

11. Surprisingly, the alleged entry in the name of Mrs. Bushra Rahat in Form-II (in respect of subject property) shows that the area is 210 square yards while No Objection Certificate for Sale dated 12.01.2011 was issued by the Mukhtiarkar (Revenue), Shah Faisal Town, Karachi shows the area 790 square yards. However, the initial entries in the record of rights were in Deh Form-VII. The documents placed on record are totally silent how the agricultural land as per Deh/Village Form-VII was converted into plot and entered into Form-II. The Declaration and Confirmation of Oral Gift executed by Muhammad K. Rehman Bajwa S/o. Ch. Aasif Khan Bajwa in the name of Mrs. Bushra Rahat shows that it was in respect of Survey No.98/101 admeasuring 210 square yards, as per entry in Village Form-VII. On the contrary, the entry in the name of Mrs. Bushra Rahat was effected in Deh Form-II. Said Mrs. Bushra Rahat executed Sale Deed in the name of Respondent No.1 which was executed

in respect of Plot bearing No.4/3, Survey No.98/101 admeasuring 790 square yards. The said Mrs. Bushra Rahat was owner in respect of only 210 square yards as per Declaration and Confirmation of Oral Gift, despite of that said Mrs. Bushra Rahat executed the sale deed in the name of Respondent No.1 in respect of 790 square yards, in excess of the area incorporated in the Declaration and Confirmation of Oral Gift for which the principal was not even owner of the said area in excess. It has also come on record that as per letter dated 08.01.2015 issued by the Secretary (RS & EP) Board of Revenue, Sindh, the Plot No.4/3, Survey No.101 was cancelled vide letter dated 02.01.1974. In such circumstances, the title in the name of Respondent No.1 on the basis of cancelled entry and sale deed showing area in excess, casted clouds over the title and legal character of Respondent No.1. The sale deed in the name of Respondent No.1 on the basis of bogus/cancelled entries coupled with discrepancy in the area of the subject property even if admitted has no value in the eyes of law. In case of *Afzal Ahmad Qureshi v. Mursaleen* (2001 SCMR 1434), it was held by the Apex Court that:-

“In our considered opinion the evidence as led by the petitioner and discussed by the learned appellate Court cannot be considered sufficient to establish title or ownership of the property in dispute. In such view of the matter it has rightly been held that the question of title/ownership be got determined prior to seeking ejectment of the respondent. In absence of relationship of landlord and tenant between the parties the question of disputed title or ownership of the property in dispute is to be determined by a competent Civil Court as such controversies do not fall within the jurisdictional domain of the learned Rent Controller. It is well-settled by now that "the issue whether relationship, of landlord and tenant exists between the parties is one of jurisdiction and should be determined first, in case its answer be in negative the Court loses scission over lis and must stay his hands forthwith". PLD 1961 Lah. 601 (DB). There is no cavil to the proposition that non-establishment of relationship of landlady and tenant as envisaged by the Ordinance will not attract the provisions of the Ordinance. In this regard we are fortified by the dictum laid down in 1971 SCMR 82”.

12. Article 85 (5) of the Qanun-e-Shahadat Order, 1984 provides that: "The registered documents the execution whereof is not disputed" are Public Documents. However, once the execution of a registered document is disputed, it does not remain a "Public Document" and becomes a "Private Document". Whenever the execution or contents of any such document are disputed, the presumption so attached to them loses its significance and it becomes *sine qua non* for the beneficiary thereof to have it proved through mode required to prove a private document. In case of Mst. Akhtar Sultana v. Major Retd. Muzaffar Khan Malik & others (PLD 2021 Supreme Court 715), it has been held by the Honourable Supreme Court of Pakistan that:-

"Indeed, public records kept of private documents, which may include a Power of Attorney registered under the Registration Act, 1908, as in the present case, would come within the purview of "Public Documents" under clause (2) of Article 85 of the Qanun-e-Shahadat. However, in the present case, the execution of the registered Power of Attorney was vehemently disputed, alleging it to be a forged and fraudulent document. The moment the Respondents disputed the execution of the registered Power of Attorney, the same came within the mischief of clause (5) of Article 85, and therefore, did not remain a "Public Document". In such a situation, the Petitioner could not have proved the contents of the disputed Power of Attorney by tendering its certified copy as secondary evidence under Article 88 of the Qanun-e-Shahadat. In fact, the Petitioner was to first produce evidence to account for non-production of the original and establish that the original had in fact been lost, as required under Article 76(c) of the Qanun-e-Shahadat. Once the execution of a registered document is disputed, it does not remain a "Public Document" and becomes a "Private Document"; therefore, any form of its secondary evidence, including its certified copy, cannot be produced in evidence to prove its existence, condition or contents without complying with the requirements of Article 76 of the Qanun-e-Shahadat." (Underlining is supplied).

It is matter of record that the basic entries in the record of rights was alleged to be bogus and the registered instruments on the basis of said entries became "Private Documents" and should have been proved

through mode requires to prove a private document but the same were not proved in accordance with the provisions of Qanun-e-Shahadat Order, 1984. It is matter of record that the entries and documents executed on the basis of the said entries in record of right are subject to Civil Suit, which would be decided on its own merits.

In similar circumstance in case of Rehmatullah v. Ali Muhammad and another (1983 SCMR 1064), it was held by the Apex Court that:-

“It has already been held that when the decision of the issue regarding relationship of landlord and tenant depends solely and not only incidentally on the question of the ownership and title to the property and it will not possible for the Controller to decide the case without deciding the basic question involved regarding title, then in such like cases it would not be appropriate to evaluate the situation by observing that the decision on question of title was only tentative. It has also been observed that the requirement of the relevant law contained in the Rent Restriction Ordinance is that the Rent Controller cannot decide the question of relationship of landlord and tenant against the tenant when the landlord has not been able to establish his position as landlord beyond reasonable doubt. In that situation the proper course for the Rent Controller would be to decide the issue against the landlord and advise him to first get his title established before seeking ejectment. The decision of main issue depends directly on the decision seeking regarding title in the present case. The Learned Rent Controller adopted the right course. But without disturbing the findings of fact rendered by him, the learned first appellate Court notwithstanding expression of doubt regarding the success of the respondent on the issue of title and relationship of landlord and tenant, allowed the eviction application. This with respect, is not in accord with law as discussed above. The High Court also failed to notice it. The appellate and High Courts’ judgments, therefore, are liable to be set aside.”

13. As observed in previously filed C.P. No.S-465/2020 in view of admission of attorney of Respondent No.1/Applicant that “there is no tenancy agreement executed between Education Department and

applicant”, the Respondent No.1/Applicant was under obligation to prove her relationship with petitioners as landlady and tenant, before the Rent Controller, but nothing has come on record to show that there was relationship of landlady and tenant between the parties. In such circumstances, the eviction application ought to have been dismissed on this score alone. In absence of relationship of landlord and tenant between the parties the question of disputed title or ownership of the property in dispute is to be determined by a competent Civil Court as such controversies do not fall within the jurisdictional domain of the learned Rent Controller in view of the dictum laid down by the Apex Court in case of Afzal Ahmad Qureshi v. Mursaleen (2001 SCMR 1434).

14. For the foregoing reasons, the consolidated Judgment dated 24.11.2022 passed by the Court of IXth Additional District Judge (MCAC), Karachi-East and Orders dated 29.07.2021 and 29.03.2022 passed by XIth Rent Controller, Karachi East in Rent Case No.442 of 2020 are hereby set aside. Accordingly, petition is allowed. The parties are at liberty to pursue the Civil Suit pending before this Court in respect of the subject matter.

IK

J U D G E