

# IN THE HIGH COURT OF SINDH KARACHI

C.P No. S-835 of 2023

C.P No. S-836 of 2023

Zaidi Tufail Sheikh, Petitioner : through Ms. Saira Shaikh,  
in both CPs. Advocate.

Salman Ahmed Qureshi, : through M/s Khalid Mehmood  
Respondent No. 1 in both CPs Siddiqui & Ghulam Rasool Korai,  
Advocates.

State : None Present.

Dates of hearing : 06.09.2023 & 07.09.2023

Date of announcement : 20.09.2023

## JUDGMENT

**Muhammad Saleem Jessar, J.-** By this single judgment, I propose to dispose of above-noted two Constitutional Petitions as in both the petitions the parties as well as rented premises are the same.

2. CP No.S-835 of 2023 has been filed by petitioner Zaidi Tufail Sheikh, whereby he has challenged Judgment dated 09.08.2023 passed by learned VIth Additional District Judge Karachi Central in First Rent Appeal No. 42 of 2023, whereby he has upheld the eviction order dated 06.02.2023 passed by Vth Rent Controller, Karachi Central in Rent Case No. 172 of 2022. Through CP No.S-836 of 2023 the same petitioner has assailed Order dated 06.02.2023 passed by Vth Rent Controller Karachi Central in Rent Application No. 171 of 2022, whereby learned Rent Controller has fixed the fair rent amount of the rented premises in question at the rate of Rs.4,00,000/- (Rupees Four Lac only) per month from the date of institution of rent case, as well as the Judgment dated 09.08.2023 passed by learned VIth Additional District Judge Karachi Central in First Rent Appeal No. 43 of 2023 whereby he has upheld the aforesaid order of the Rent Controller.

3. Brief facts of the case in CP No. S-835 of 2023 are that respondent No.1 filed Rent Case No.172/2022 for ejection of the petitioner / opponent stating

therein that he is landlord and the petitioner is tenant of H.No.C-69, Block-H, Allama Rasheed Turabi Road, North Nazimabad, measuring 685 Sq. Yards, Karachi by virtue of Agreement of Tenancy dated 07.06.2012 commencing from 15.04.2008. It was further stated that respondent No.1 had given the premises for setting up a school for weak and poor children; therefore, he charged a nominal initial monthly rent of Rs.8000/- which was to be enhanced by 10% each year. The grievance of the applicant / respondent No.1 was that the petitioner failed to pay any rent in respect of rented premises to the respondent/applicant since 15.04.2008 when he had taken over the possession of rented premises. According to the respondent, due to default in payment of the agreed rent an amount of Rs.28,86,232/- became due and outstanding being monthly rent from 15-04-2008 upto 14-04-2022. The respondent / applicant further asserted that the petitioner/opponent had also carried out illegal construction over the rented premises without any consent and / or permission of the respondent which is violative of Clause-7 of the tenancy agreement. The respondent/applicant further stated that he required the premises in good faith for his own occupation and personal use. It was further averred that the petitioner had also filed Civil Suit No.415/2022 in the Court of XVIIIth Civil Judge Karachi Central for permanent injunction etc. leveling false allegations against the respondent/applicant. However, in said suit the petitioner made certain admissions to the effect that respondent/applicant had given the premises for setting up a school at monthly rent of Rs.8000/- as well as in respect of illegal construction carried out by him. The respondent / applicant prayed for directing the opponent to pay upto date outstanding monthly rent including arrears, as well as to vacate the premises in question and handover its vacant and peaceful physical possession to the applicant/landlord.

4. Upon service of notice, the petitioner / tenant filed written statement wherein he raised preliminary legal objections that respondent/applicant has not come to the Court with clean hands, that the rent application was not maintainable and that real facts have been concealed from the Court, therefore no cause of action had accrued to the respondent/applicant. While submitting para-wise reply to the contents of the rent application, the petitioner stated that he is running the School in premises in question on the basis of *no profit and no loss*. According to him, when the respondent / applicant shifted from North Nazimabad to DHA, while his house was vacant, the respondent and the petitioner mutually decided to open a school for **weak and poor children** of the locality. He further stated that even presently in the year 2023 only Rs.5000/-

per month, per student are being charged; and due to humble background the average monthly fees being received from each student is about Rs.2900/-. It was further asserted that the school is usually facing loss and is being run on the basis of donations of prosperous people of the locality. The petitioner admitted that he had never paid the rent to applicant. According to him, in fact, the respondent/applicant used to adjust the monthly rent against the donations agreed by him to be paid and by sending poor students for admission and study in the school. According to the petitioner, he used to pay the rent to the respondent / applicant by adjusting the monthly fees of the poor students sent by respondent and the respondent / applicant never issued any rent receipt in order to avoid payment of income tax. There was also an understanding between the parties that the rent will also be adjusted against the property tax and building maintenance expenses which was being paid by the petitioner / opponent. He further submitted that no illegal construction was carried out by him and that each and everything was done with the consent of both the parties. He asserted that the premises is not being used for commercial purpose and in fact, it is being used for the welfare of poor students of locality with consent of both the parties. He lastly prayed for dismissal of rent case.

5. Upon pleadings of the parties, learned Rent Controller framed following issues:-

- i) Whether the rented premise is required to applicant for personal need?
- ii) Whether the opponent committed default in respect of monthly rent since taking over of possession of the rented premises on 15.04.2008?
- iii) Whether the opponent impaired material value of rented premises by illegal construction?
- iv) What should the judgment be?

6. In support of their respective claims, both the parties led their evidence before the trial Court and also produced certain documents. They were cross-examined and thereafter their side of evidence were closed. The learned Rent Controller after evaluating the evidence adduced by the parties and hearing the advocates for the respective parties, allowed the ejection application as aforesaid vide order dated 06.02.2023.

7. The petitioner / tenant challenged the aforesaid order by preferring First Rent Appeal which was dismissed by the Appellate Court vide impugned

judgment dated 09.08.2023 which has been assailed by the petitioner through C.P. No. S-835 of 2023.

8. The facts pertaining to C.P. No. S-836 of 2023 are that respondent No.1 Salman Ahmed Qureshi had also filed Rent Case No.171/2022 with the prayer to determine the fair rent of the premises in question at the rate of Rs.8,00,000/- per month from the date of institution of the said rent application and to direct the respondent / opponent to pay said fair rent to the applicant. In said rent case the respondent/applicant stated that since 15.04.2008 the rent of similar premises situated in the similar circumstances and in the same and adjoining locality, the rise in construction cost and repair charges, the imposition of new taxes, after commencement of the tenancy and the annual value of the premises, on which property tax is levied, has risen many folds about 300% to 400%. It is further averred in the rent application that another school which was being run in same locality situated in a 60 feet wide lane, in which rent of Rs.4,00,000/- per month was being paid. It was further averred in the rent application that the current rent of the premises in question owned by the respondent / applicant should be at least 100% more than the current rent of the vicinity premises as rented premises in question has prime location with corner plot on two way wide main road 150 feet with 80 feet service lanes, schools and hospitals on both sides with parking facility. It was further averred in the rent case that the prevailing rent of the similar premises situated in the similar circumstances in the same and adjoining locality is up to Rs.8,00,000/- per month and if the premises in question is let out to anyone else, it is likely to fetch rent at the rate of Rs.8,00,000/- per month excluding electricity and other utility charges.

9. In the written statement filed by respondent / opponent (the petitioner) raised same legal objections as raised in the connected rent case. In the parawise reply too, he stated almost same facts as stated in his written statement filed in the connected rent application. He; however, added that the premises is not being used for **commercial purpose and**, in fact, it is being used for the welfare of poor students of locality with consent of both the parties and the same cannot be compared with other schools which are being run for commercial purposes for gaining profits. He prayed for dismissal of rent case.

10. Upon pleadings of the parties, learned Rent Controller after formulating the points for determination, recording evidence of the parties and hearing their advocates, allowed rent application thereby fixing the fair rent amount of

the rented premises in question at the rate of Rs.4,00,000/- (Rupees Four Lac only) per month from the date of institution of rent case, the respondent / opponent preferred First Rent Appeal No.43 of 2023 which was dismissed vide order dated 09.08.2023, which has been assailed by filing this constitutional petition.

11. I have heard learned counsel for the parties and perused the material available on the record.

12. Learned counsel for the petitioner submitted that basically the petitioner and respondent/landlord had initiated a joint venture in shape of "Wisdom House School" for needy and poor children and the landlord by showing generosity had provided the building / premises to the petitioner with free of cost; however, the Directorate of School Education, Sindh had raised an objection while registering the school, therefore, upon their directions, a rent agreement was signed with a monthly rent of Rs.8,000/- which was executed in the year 2012 (available at page-191 of the Court file of C.P No. S-835 of 2023) and in order to meet the requirements of the Directorate of School Education Department for renewal of agreement after three years, second agreement was executed in the year 2015 at monthly rent of Rs.10,000/- (available at page-185 of the Court file of C.P No. S-835 of 2023) and third agreement was also executed in the year 2019 on same terms and conditions at the rent of Rs.10,000/- per month (available at page-197 of the Court file of C.P No. S-835 of 2023). Learned counsel for the petitioner further submitted that since there was no rent issue between the parties but the owner of the building had orally agreed not to pay the rent amount; however, annual property tax was agreed to be deposited by the petitioner which he had been depositing with the concerned departments, copies of said challans were exhibited before the Rent Controller and same have also been annexed with the Court file (available at page-205 & onwards in C.P No. S-835 of 2023). She further submitted that in case there had been any annual rent agreement between the parties, then owner must had enhanced the rent amount in terms of section 10 of SRPO, 1979 and since there was no such bond and the mutual consent with regard to the welfare of the poor children of the area, rent was not enhanced. She, therefore, added that in view of oral agreement between the parties, though it had not been specifically brought on record before the Rent Controller, yet the fact has been admitted by the owner, as is evident from the application under Section 15 of SRPO, 1979 (available at page-65 of the of the Court file of C.P No. 5-835 of 2023 in its para-2). She further submitted that enhancement of the rent

amount right from March, 2022 i.e. the date of institution of rent application, in view of above, is illegal and cannot be sustained. She further added that basic elements/ingredients for establishing the fair rent, have not been fulfilled. She next added that photocopies of the rent agreements of surrounding areas were exhibited in evidence, which as per settled law, are not admissible in evidence. In support of her contention, she placed reliance upon the cases of Mst. ADEEBA BAGUM through Authorized Attorney Versus TRAVEL CORPORATION (PVT.) LTD. Through MD and Chief Executive and another (2019 YLR Sindh 2765 at its para 9) and case of ABDUL REHMAN and another Versus ZIA-UL-HAQUE MAKHDOOM and others (2012 SCMR 954). She further added that documents / Photostat copies of rent agreements adduced in evidence, does not show the area of the property nor this aspect was discussed in detail by the Courts below. She also placed reliance upon the case of Syed MEHBOOOB HUSSAIN Versus RAZA SHAH and 2 others (2006 CLC 629). She, therefore, submitted that as far as case of enhancement of rent as claimed by the landlord, is concerned, that has not been proved, therefore, findings given by the Courts below, may be discarded as if there had been any involvement of rent between the parties then they should had enhanced it in every year right from the date of establishment of the institution. She further pointed out that the chart of enhancement of rent as given by the landlord in his evidence (available at page-148 of the Court file of C.P No. S-836 of 2023), was denied by himself in his evidence (available at page-165 of the Court file of C.P No. S-836 of 2023). She; however, after consulting with her client, who was also present before the Court, submitted that since it is a school, therefore, by modifying the impugned orders, minimize/decrease the rent amount of the demise premises and sufficient time may be given to them so that they may be able to arrange an alternate building for the purpose of running a school.

13. Conversely, Learned counsel for the respondent submitted that the relationship between petitioner and the landlord is admitted, therefore, the landlord being bonafide owner of the property / demise premises, had rightly claimed ejection under Section 15 of SRPO on three valid grounds i.e. i. personal bonafide use, ii. Default & iii. Illegal construction over the demise premises. He further submitted that as per affidavit-in-evidence of respondent No.1 (available at page-151 para-8 of the same in CP No. S-835 of 2023), the demise premises were given to the petitioner for commercial purpose. He further submitted that petitioner had remained in default by not depositing the rent amount directly to the landlord or through MRC, therefore, grounds for

ejection in default, stand established. As far as, claim of the petitioner that he had deposited property tax of the demise premises on oral instructions of the landlord, is concerned, learned counsel for respondent submitted that same cannot be acceded to as such practice has already been deprecated by the Apex Court. In support of his contention, learned counsel placed reliance upon the case of Mrs. HAZARBAI MERCHANT AND ANOTHER Versus MUHAMMAD ISMAIL (1984 SCMR 406) and referred para-7 of the said judgment. He further submitted that as far as, claim of the petitioner to the extent that because of alleged construction over the demise premises, value of the property has been increased, carries no weight as it had already been discussed by the Hon'ble Supreme Court of Pakistan in case of Agha GOHAR Versus HASSANN MASOOD BAIG and another (PLD 2003 Supreme Court 470). He, therefore, submitted that by dismissing C.P No. S-835 of 2023, order as well as judgment passed by the Courts below may be maintained and the petitioner may be directed to vacate and hand over the safe possession of the demise property to landlord by depositing the arrears of rent amount as per verdict given by the Rent Controller as well as by first appellate Court. In support of his contention, learned counsel placed reliance upon the cases (1) NASEER UDDIN JATOI Versus Miss REHAM ASAD through Attorney and 2 others (2022 YLR 2243), (i) MOOSA JUMANI Versus VIITH ADDITIONAL DISTRICT JUDGE (MCAC), KARACHI SOUTH and 2 others (2022 YLR 1493), (ii) Messrs HILAL TRADING COMPANY through Managing Director Versus SWAMI NARAIN TEMPLE ESTATE TRUST BUILDING and 2 others (2013 CLC 1727), (iv) Mst. FAZEELAT JAN and others Versus SIKANDAR through his Legal Heirs and others (PLD 2003 Supreme Court 475), (v) Messrs OLYMPIA SHIPPING AND WEAVING MILLS LTD. And another Versus STATE LIFE INSURANCE CORPORATION OF PAKISTAN (2001 SCMR 1103), (vt) ASSOCIATED AGENCIES LIMITED and others Versus The DISTRICT JUDGE KARACHI (SOUTH) and others (2021 CLC 196), (n) HABIB BANK LIMITED Versus RAIS AHMED KHAN and 6 others (PLD 2017 Sindh 542), (viii) MUHAMMAD AFAQ Versus STATE LIFE INSURANCE CORPORATION OF PAKISTAN, KARACHI and 2 others (PLD 2008 Karachi 100), (ix) Messrs HABIB INSURANCE CO. LTD. Versus Messrs STATE LIFE INSURANCE CORPORATION OF PAKISTAN LTD. And another (PLD 2006 Karachu 294), (x) Major (Retd.) AHSAN-UL-HAQUE Versus MUHAMMAD EJAZ (2011 SCMR 487).

14. While reverting towards C.P No. S-836 of 2023 whereby, the case for fair rent was filed by the landlord and has been allowed by the Rent Controller as well as by first appellate Court, Learned counsel for the respondent submitted that by virtue of Section 8 of the SRPO, the Rent Controller has rightly allowed the application filed by the landlord (available at page-61 relevant para-6 is at

page-65); hence, the petitioner was required to deposit fair rent amount instead he filed these petitions and has not made compliance of the judgments passed by the Courts below. He further submitted that fair rent has been decided after making comparison with the adjoining area premises and in this regard, landlord had examined one Rashid Hassan, who is administrator of one adjoining school, and his affidavit-in-evidence is available at page-161 and deposition is at page-181 of CP NoS-836 of 2023. He, therefore, submitted that Courts below have rightly admitted the claim of landlord, therefore, petition filed by the petitioner is not maintainable; hence, by dismissing the same, the petitioner may be directed to pay the arrears of fair rent amount so also current rent amount directly to the landlord or deposit the same before Nazir of this Court.

15. While rebutting the above arguments advanced by learned counsel for the respondent/landlord, learned counsel for the petitioner referred to para 22 of affidavit-in-evidence of the petitioner, available at page 195 of the Court file, to the effect that said witness Rashid Hassan got exhibited the agreements which neither were registered nor were attested by any commissioner / notary public or Justice of Peace, therefore, same being simply Photostat copies, are not admissible in evidence. In support of her contention, she placed reliance upon the case reported as ABDUL REHMAN and another Versus ZIA-UL-HAQUE MAKHDOOM and others (2012 SCMR 954). She further submitted that in case witness had exhibited Photostat copy of any document, which has been accepted and admitted by the trial Court, then it should have been proved by the party producing it to be the genuine and such legal requirement has not been fulfilled, nor the witness or the landlord had adduced any cogent or concrete material / evidence to believe that agreement exhibited was genuine. She further submitted that landlord had given a chart for enhancement of the rent as is evident from page-147 that the premises in question is only ground plus one and the second floor was constructed by the petitioner and the landlord had also claimed enhancement of the rent to the extent of 40 percent over the said alleged illegal construction. As far as previous rent is concerned, she referred to Section 7 of the SRPO and submitted that landlord cannot claim higher rent amount during existing tenancy. She, therefore, submitted that by granting petition in hand, impugned order as well as judgment passed by the Courts below may be set-aside.

16. It seems that learned Rent Controller answered two issues i.e. personal bonafide need and default in payment of monthly rent in favour of the



respondent / landlord, whereas the issue regarding raising of alleged illegal construction by the petitioner / tenant was decided in favour of the petitioner.

17. So far as issue of personal *bonafide* need of respondent No.1 / landlord is concerned, in his evidence he has deposed in categorical terms that he requires the rented premises for his own personal need. He also deposed that he several times approached the petitioner / opponent for vacating the rented premises; however, the petitioner refused to do so. Not only this, but even the petitioner / opponent also instituted a false civil suit bearing No.415/2022 against the respondent / applicant in the Court of 17<sup>th</sup> Civil Judge & Judicial Magistrate, Karachi Central in order to pressurize the respondent. However, the plaint in said suit was rejected under Order VII Rule 11 CPC. The petitioner / opponent in his written statement as well as deposition has admitted relationship of landlord and tenant between the parties. Although the opponent in his written statement submitted that the applicant does not require the rented premises in question for his personal *bonafide* use and that the applicant has filed this rent case against the petitioner due to pressure of his family members. He asserted that a number of students are getting education in this school and the future of the poor children is at risk due to the *malafide* hindrance created by the respondent / applicant.

18. From perusal of the record, it is apparent that the petitioner has not been able to place any tangible material on the record to establish that the respondent does not require the rented premises for his own personal use. The legal position is clear that the respondent, being owner of rented premises, cannot be deprived of his legitimate right to occupy the rented premises. It is also a settled principle of law that even an owner / landlord is not bound to show as to for what purpose the tenement owned by him is required. Once he has stepped into the witness box and has said on oath that he requires the rented premises owned by him for his own personal *bonafide* use / need and unless and until such statement is shaken / shattered by the other side during his cross-examination and proved to be inconsistent with the averments by him in the rent application, he cannot be deprived to occupy the premises. In this connection, reliance may be placed on a judgment pronounced by Honourable Supreme Court in the case reported as *Iqbal Book Depot Vs. Khatib Ahmed* (2001 S.C.M.R. 1197), wherein it was held as under:

*“Sole testimony of landlord is sufficient to establish his personal bonafide need of premises. Where statement of landlord on oath was quite consistent with his averments made in the ejectment application and neither his statement was shaking nor any thing was brought on*

*record in evidence to contradict the same, such statement on oath would be considered sufficient for acceptance of the ejectment application."*

19. In this view of the matter, finding on the issue of personal *bonafide* need given by learned Rent Controller was rightly affirmed by the Appellate Court.

20. Now advertng to the issue of default in payment of monthly rent, it seems that respondent / landlord in his evidence has deposed that by virtue of tenancy agreement dated 07.06.2012, the tenant was bound to pay monthly rent to the owner by 5<sup>th</sup> of each English calendar month in advance. The tenant was also bound to pay amount of utility bills to the concerned department. The respondent / applicant further submitted that the petitioner / opponent failed to pay monthly rent from 15.04.2008 till date, thus he has committed willful default in respect of payment of monthly rent and total rent amounting to Rs.31,30,158/- is due and outstanding against the petitioner / opponent. He further stated that he several times approached the petitioner and requested him time and again for vacation of rented premises as well as payment of monthly rent but no heed was paid by the opponent.

21. On the other hand, the petitioner / opponent also admitted that he never paid monthly rent to the respondent / landlord as both the parties had jointly started a welfare school in the name of **Wisdom House School for weak and poor children** of the locality. He further stated that even presently in the year 2023 only Rs.5000/- per month, per student are being charged; and due to humble background the average monthly fees being received from each student is about Rs.2900/-. It was further stated that the school is usually facing loss and is being run on the basis of donations from prosperous people of the locality. He further stated that, in fact, the respondent/applicant used to adjust the monthly rent against the donations agreed by him to be paid and by sending poor students for admission and study in the school. He further stated that he used to pay the rent to the respondent / applicant by adjusting the monthly fees of the poor students sent by respondent and the respondent / applicant had never issued any rent receipt in order to avoid payment of income tax. He further statd that there was also an understanding between the parties that the rent would also be adjusted against the property tax and building maintenance expenses which was being paid by the petitioner / opponent. He further stated that the respondent himself used to attend seminars and gift distribution ceremonies of the school. The opponent produced three tenancy agreements dated 07.06.2012, 08.06.2015 and 01.01.2019

as well as property tax receipts during the course of recording of his evidence. He further submitted that he never committed any default in payment of rent as the applicant / landlord never demanded monthly rent from the opponent. Although there seems to be weight in the assertions made by the petitioner / tenant which would be elaborately discussed while dealing the petition in respect of fixation of fair rent; however, the legal position is that it is the tenant who is legally bound to pay monthly rent to the landlord and in case of refusal by the landlord, to send the same to the landlord through money order and then to deposit the same in Court through MRC. The petitioner / tenant has not produced any material to establish that any written consent had been given by the respondent / landlord for adjustment of monthly rent against the donations allegedly agreed to be paid by the respondent or against the property tax or building maintenance charges allegedly being paid by the petitioner / tenant.

22. In view of above, it becomes an admitted fact that the petitioner / opponent has neither paid any rent personally to the respondent, nor sent the same to him by way of money order and nor deposited the same in Court through MRC or even before the trial Court during the pendency of rent case. Superior Courts have not appreciated such conduct on the part of the tenant and there are numerous case-laws on this point.

23. In view of above, the finding given by the Rent Controller that the opponent is willful defaulter in payment of monthly rent which was also affirmed by the Appellate Court, calls for no interference by this Court.

24. So far as the point of raising illegal construction by the petitioner / tenant and thereby materially impairing utility and value of the property in question is concerned, this issue has been decided by the Rent Controller in favour of the petitioner and against the respondent / landlord and such finding has not been assailed by the respondent hence, there seems to be no necessity to discuss said issue any more.

25. The accumulative effect of above discussion is that the impugned order passed by learned Rent Controller as well as the Judgment passed by the Appellate Court do not require any interference by this Court. Even otherwise, it is now well settled that concurrent findings of the Courts below could be interfered with by this Court in exercise of its extra ordinary constitutional jurisdiction **only in exceptional cases.**

Now, I would deal with C.P. No.S-836 of 2023.

26. The respondent / landlord in his pleadings took stand that the rent of similar premises situated in the adjoining locality, due to rise in construction cost and repair charges and imposition of new taxes, after commencement of the tenancy in the premises in question, has risen many folds. The respondent / landlord stated that House No.C-69, Block-H, Allama Rasheed Turrabi Road, North Nazimabad, Karachi measuring 600 Sq. Yards, situated near the premises in question on a 60 feet wide lane, is fetching monthly rent of Rs.4,00,000/-. In said premises too the tenant is running a school.

27. The respondent / applicant estimated the fair rent of the premises owned by him, to be at least twice the rent of the similar premises situated in the vicinity. He also submitted that the prevailing rent of the similar premises situated in the same and adjoining locality is up to Rs.8,00,000/- per month and if the premises in question is let out to anyone else, it is likely to fetch rent at the rate of Rs.8,00,000/- per month excluding electricity and other charges.

28. As per pleadings of the petitioner / tenant, both the parties had decided with mutual consent to open a school for **weak and poor children** of the locality. The premises is not being used for **commercial purpose** and, in fact, it is being used for the welfare of poor and weak students of locality with consent of both the parties. According to the petitioner, even at present i.e. in the year 2023, school management uses to charge Rs.5000/- per month from each student and due to poor monetary condition of the students the average fees being charged would be about Rs.2900/- per month per student. It was further averred that the school is usually facing loss and running on donations of prosperous people of the locality. It was further pleaded by the petitioner / tenant that the monthly rent was fixed at the rate of Rs.8000/- per month and in case the fair rent is fixed / enhanced four times, even then the monthly rent of rented premises in question would become Rs.32,000/- but the applicant dishonestly claimed huge amount in order to dispossess the petitioner / tenant, thereby destroying the future of school children / students.

29. It seems that right from the beginning, the stand taken by the petitioner / tenant is that he is running the school in the premises in question on the basis of *no profit and no loss*. His plea has been that both, the respondent and the petitioner, had mutually decided to open a school for the welfare of **weak and poor children** of the locality. He further stated that even presently in the year

2023 only Rs.5000/- per month, per student are being charged; and due to humble background the average monthly fees being received from each student is about Rs.2900/-. He also asserted that the school is usually suffering loss and is being run on the basis of donations being donated by the prosperous people of the locality. He asserted that the premises is not being used for **commercial purpose** and, in fact, it is being used for the welfare of poor and weak students of locality with consent of both the parties. In view of above, the stand taken by him is that premises in question cannot be equated with other schools being run in the rented premises situated in the same and / or adjoining locality and those schools are being run on commercial basis and for gaining profit. The above plea of the petitioner carries weight for the following reasons:

- i) The respondent / landlord in para 2 of Rent Case No.172 has made an admission to the effect, *"That as the Applicant / Landlord had given the Premises for setting up a School for weak and poor children, he had charged a nominal initial monthly rent of only Rs.8000/- which was to be enhanced by 10% each year."*
- ii) That it is very strange and surprising that when, according to the respondent / landlord, the petitioner / tenant did not pay a single penny towards monthly rent right from the commencement of the tenancy in the year 2008, then as to why he remained mum for such a long period of about **seventeen (17) years** and what compelled him all of a sudden to file rent case for fixing fair rent in the year 2022, wherein he claimed exorbitant amount of Rs. 8,00,000/- to be fixed as fair rent ?
- iii) Although the respondent in his Rent Application has filed Tenancy Agreement allegedly executed in the year 2012; however, the petitioner in his evidence has filed three Tenancy Agreements duly executed in the years 2012, 2015 and lastly in 2019. The execution of last agreement of 2019 has also been admitted by the respondent / landlord in his cross-examination to the effect, *"I have signed another agreement relating to the year of 2019."* Perusal of said Tenancy Agreement shows that monthly rent of the rented premises in question mutually agreed by the parties was Rs. 10,000/-. Again, it is astonishing factor that when only three years ago of the filing of the Rent Cases by the respondent/ landlord, he willfully agreed to receive

Rs.10,000/- only as monthly rent for the rented premises in question, then as to how and under what circumstances the respondent / landlord all of a sudden filed Rent Application for fixing fair rent to the tune of such an exorbitant amount of Rs. 8,00,000/- (Rupees Eight Lac only) ?

- iv) That the petitioner / tenant in his evidence has, *inter alia*, produced vouchers of monthly fees being charged from the students studying in the School. The perusal of such vouchers show that even in the year 2023 the School management was charging different monthly fees from the students. Ex.6-B, 6-C and 6-D, produced by the petitioner / tenant in his evidence, are the vouchers of fees received from the students studying in the same Class i.e. IV-B and pertain to the same month i.e. January, 2023, which show that Rs.3000/-, Rs.3,500/- and Rs.2,500/- respectively was charged from the students studying in the same class. It may also be pointed out that during the cross examination of the petitioner / tenant, no suggestion was put to him regarding the truthfulness or otherwise of such statement made by the petitioner and or regarding the authenticity / veracity of such vouchers. The fact of charging different fees from different student studying in the same class also supports the plea of the petitioner that the School is being run only for the **welfare of the weak and poor children** of the locality.
- v) The appellate Court in his judgment impugned herein while dealing with the point of enhancement of monthly rent in respect of rented premises situated in the same or adjoining locality, due to the rise in construction cost, repair charges, imposition of new taxes and annual value of the premises, has observed that from the time when the premises in question was rented out to the petitioner the monthly rent in the Schools situated in the same locality has been enhanced many folds i.e. 300% to 400%. The rent of the premises in question was fixed as Rs. 8000/- in the year 2008 and even in the year 2019 the agreed rent of the premises in question was Rs.10,000/-. Now if the rent fixed even in the year 2019 is enhanced at the rate of 400% even then, the enhanced rent would be Rs.40,000/- (Rupees Forty Thousand

only) per month, whereas the respondent / landlord is claiming an exorbitant amount of rent at rate of Rs.800,000/- per month.

- vi) That the respondent / landlord in his cross-examination has made admissions to the effect, *“It is correct to suggest that I have permitted to the institution Dars-e-Quran to teach Holy Quran to the children on Sunday with the permission of school management. It is correct to suggest that the opponent used to pay expenses of Dars-e-Quran. It is correct to suggest that I attended the functions of school at the invitation of school management”*.

30. In view of above, it seems that the fair rent fixed by the Rent Controller and affirmed by the Appellate Court is on much higher side. As stated above, the Appellate Court has observed in the impugned judgment that since the time when the premises in question was rented out to the petitioner, the monthly rent in the premises situated in the same locality has been enhanced many folds i.e. 300% to 400%. In this view of the matter, even if the monthly rent of Rs.10,000/- mutually agreed by the parties in the year 2019 is enhanced at the rate of 400%, even then the fair rent of the premises in question should have been fixed at the rate of Rs.40,000/- per month. However, taking into consideration the pleadings of both the parties, I deem it fit to enhance the monthly rent of Rs.10,000/- mutually agreed by the parties in the year 2019 by 1000 % and fix Rs.1,00,000/- (Rupees One Lac only) per month as fair rent in respect of the premises in question.

31. For the foregoing reasons, I would pass following order:

- i) C.P. No.S-835 of 2023 is dismissed. However, keeping in view the fact that future of the students studying in the school situated on the premises in question is involved, the petitioner is directed to vacate the premises in question i.e. H.No.C-69, Block-H, Allama Rasheed Turabi Road, North Nazimabad, measuring 685 Sq. Yards, Karachi, and handover its vacant and peaceful possession to respondent No.1 namely, Salman Ahmed Qureshi, within a period ten (10) months from the date of this Judgment positively, subject to payment of monthly regular rent at the rate of Rs.100,000/- (Rupees One Lac) per month, including arrears from the date of filing of these proceedings till 06<sup>th</sup> June, 2024. Till then, petitioner shall not be evicted. In case, petitioner may fail to

deposit regular rent as well as arrears from the date of institution of these proceedings, landlord/respondent shall be at liberty to approach the Executing Court. Besides, if the petitioner may not vacate the demise/rented premises and does not hand over its possession to the landlord/respondent till 06<sup>th</sup> June, 2024, Executing Court shall issue writ of possession without issuance of notice to the petitioner/tenant.

- ii) So far as the arrears of the monthly rent from the date of commencement of Tenancy in the year 2008 till the institution of rent applications, the rent for said intervening period shall be the same amount as has been determined by the parties and is mentioned under the rent agreements duly executed by the petitioner and the respondent. As far as recovery of said amount in respect whereof no order has been passed either by the Rent Controller or the Appellate Court, is concerned, respondent No.1 / landlord would be at liberty to resort the remedy available to him under the law for the recovery of aforesaid amount. Likewise, the petitioner / tenant would also be at liberty to pursue his remedy available to him under the law for the recovery or adjustment of the amount, if any, due and outstanding against respondent No.1 / landlord.
- iii) Impugned order dated 06.02.2023 passed by Vth Rent Controller Karachi Central is modified to the extent that fair rent in respect of the premises in question is fixed at the rate of Rs.1,00,000/- (Rupees One Lac only) per month to be paid by the petitioner / tenant to respondent No.1/ landlord from the date of institution of rent application for fixing fair rent. Consequently, C.P. No.S-836 of 2023 is disposed of in the terms stated above.

Office to place a copy of this judgment in the connected petition.

J U D G E

Karachi

Dated: 20<sup>th</sup> September, 2023.