

**HIGH COURT OF SINDH, CIRCUIT COURT
AT HYDERABAD**

C.P No.S-403 of 2023

[Pakistan Kaim Khani Education Trust vs. Muhammad Jahangir & Ors.]

C.P No.S-404 of 2023

[Pakistan Kaim Khani Education Trust vs. Mirza Nadeem Baig & another]

C.P No.S-405 of 2023

[Pakistan Kaim Khani Education Trust vs. Attaullah & Ors.]

C.P No.S-406 of 2023

[Pakistan Kaim Khani Education Trust vs. M. Khubaib Siddiqui & another]

Date

Order with signature of Judge

M/s Umer Ilyas Khan and Muhammad Kaleemullah Memon, advocates for petitioner(s)

Mr. Ghulam Sarwar Qureshi, advocate for private respondents in C.Ps No.S-403 and 405 of 2023

Mr. Sunder Das, advocate for private respondents in C.Ps No.S-404 and 406 of 2023

Mr. Allah Bachayo Soomro, Additional A.G Sindh

Date of hearing: 15.01.2024

Date of decision: 08.03.2024

ORDER

KAUSAR SULTANA HUSSAIN J.- In the captioned petitions a common question of law and facts is involved, therefore, all are being taken up together and disposed of by this common Order.

2. Facts of the matter in nutshell are that the petitioner -Pakistan Kaimkhani Education Trust/landlord filed Rent Applications under Section 17(2) of Cantonment Rent Restriction Act, 1963 (**Act 1963**) for eviction against the respondents /tenants in respect of different Shops situated in Kaimkhani Shopping Centre, Qazi Abdul Qayoom Road/Makki Shah Road Hyderabad (**rented premises**) and during pendency of above eviction applications, petitioner /landlord preferred applications under Section 7 of the Act 1963 for fixing of fair rent; the said applications have been disposed of vide interlocutory impugned Orders dated 23.08.2023 directing the respondents/tenants to pay tentative rent @ Rs.1,836/-, 2,063/-, 2,125/- and 2,175/- respectively per month with enhancement of 25% in existing rent with further directions to deposit monthly rent at

above rate per month from August 2022 and future monthly rent at 25% enhancement after every three (03) years till disposal of main Rent Applications on or before 5th day of every calendar month. Petitioner/landlord being aggrieved and dissatisfied with the aforesaid interlocutory impugned rent Orders has preferred these petitions.

3. Learned counsel for the petitioner/landlord, inter-alia, contended that earlier vide Order dated 10.8.2022 the applications dated 26.08.2020 preferred by petitioner/landlord under Section 7 of the Act 1963 in main Rent Applications were allowed, whereby respondents/tenants were directed to pay rent amount at the rate of Rs.15,000/- per month from the month of February 2022 onwards within fifteen days from the date of said Order; that the said Order was impugned by the respondents/tenants before this Court by way of constitutional petitions bearing No.S-667 of 2022 and others and this Court vide common Order dated 10.10.2022 had dismissed the said petitions being misconceived and not maintainable; that the Order of this Court was challenged by some of the respondents/tenants before Supreme Court through C.Ps No.4267 to 4274 of 2022 but vide Order dated 20.02.2023 the same were dismissed as not pressed with directions to learned Rent Controller to decide the main Rent Applications in accordance with law, hence the Order dated 10.08.2022, whereby rent was fixed at Rs.15,000/- per month, attained finality; that thereafter since the respondents/tenants had failed to comply with the tentative rent Order dated 10.08.2022, petitioner/landlord moved applications under Section 17(9) of the Act *ibid* for striking off the defense of respondents/tenants and vide Orders dated 07.12.2022, 02.02.2022, 11.01.2023 and 01.02.2023 respectively the said applications were allowed; that the respondents/tenants challenged the said Orders before this Court through F.R.As No.1 to 9 of 2023 and this Court vide Order dated 25.05.2023 had set aside the Orders whereby defense of respondents/tenants was struck off and remanded the matters back to learned Rent Controller for deciding the main Rent Applications within three months; that though the said Order was impugned by the petitioner/landlord before the Supreme Court through Civil Petitions No.1004-K to 1009-K, 1064-K and 1065-K of 2023 but the same were disposed of as not pressed vide Order dated 24.08.2023 with certain directions to learned Rent Controller which include the directions for deciding the main Rent Applications within three months as directed by this Court, however, surprisingly the learned Rent Controller reopened the application dated 26.08.2020 under Section 7 of the Act *ibid*, which was already disposed of through Order dated 10.08.2022, and vide impugned Orders dated 23.08.2023 re-fixed the fair rent at the rate of Rs.1,836/-, 2,063/-, 2,125/- and 2,175/- respectively per month though the Order dated 10.08.2022 whereby the fair rent was fixed at Rs.15,000/- had already attained finality, hence the impugned Orders besides being illegal and having been passed without applying judicious mind are

liable to be set aside. In support of his arguments learned counsel for the petitioner has relied upon the case laws reported in (i) 2009 YLR 204, (ii) 2010 SCMR 737, (iii) 2016 MLD 780, (iv) 2019 SCMR 627, (v) 2023 SCMR 1147 and (vi) SRPO 1979.

4. On the other hand learned counsel for respondents/tenants supported the impugned orders and raised questions over maintainability of these petitions and jointly argued that the petitioner/landlord can only enhance the 10% rent after every three years, but the learned Rent Controller vide impugned Orders has enhanced the rent at 25% which too is in favour of the petitioner-trust; that earlier vide Order dated 10.08.2022 directions were given to respondents/tenants to deposit rate at Rs.15,000/- per month from February 2022; that said Order was challenged by the respondents/tenants before this Court by way of constitutional petitions bearing No.S-667 of 2022 and others and this Court vide Order dated 10.10.2022 did not consider the plea of the respondents/tenants and dismissed the said petitions. They lastly prayed for dismissal of these petitions being not maintainable. In support of their view they relied upon the case reported in PLD 2009 SC 45.

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

6. Perusal of record shows that petitioner -Pakistan Kaimkhani Education Trust/landlord filed Rent Applications under Section 17(2) of Cantonment Rent Restriction Act, 1963 against the respondents / tenants in respect of rented premises and earlier vide Orders dated 03.03.2021 passed by the learned Rent Controller for Cantonment Areas Hyderabad on application under Section 17(9) of the Act 1963 the defense of respondents/tenants was struck off on account of non-compliance rent Order dated 21.10.2020. The said Order was challenged by the present respondents/tenants alongwith other tenants before this Court through F.R.As No.02 to 22 of 2021, which were disposed of by common Order dated 31.01.2022, whereby Orders dated 03.03.2021, as to the striking off the defense of tenants, were set aside on the ground that respondents/tenants were depositing rent in the Court of Rent Controller No.3 Hyderabad and the matters were remanded back to learned Rent Controller for Cantonment Areas Hyderabad.

7. Record further shows that the main Rent Applications are still pending for adjudication before the learned Rent Controller and during pendency of said main Rent Applications, petitioner/landlord filed an application dated 26.08.2020 under Section 7 of the Act 1963 for interim relief and vide interlocutory Orders dated 10.08.2022 the learned Rent Controller directed the opponents i.e present respondents/tenants to pay the rent amount at the rate of Rs.15,000/- per month from the month of February 2022 and onwards within 15 days from the date of

the Order. The said Order was challenged by the present respondents/tenants before this Court through C.Ps No.S-679, 681, 682 and 691 of 2022 as well as some of the other tenants through various petitions.

8. This Court vide common Order dated 10.10.2022 had dismissed the above referred petitions alongwith connected petitions and in consequence whereof maintained the interlocutory Orders dated 10.08.2022, which was challenged by some of the tenants before the Supreme Court of Pakistan through C.Ps No.4267 to 4274 of 2022 but same were dismissed as not pressed vide Order dated 20.02.2023. Resultantly interlocutory Order dated 10.08.2022, whereby directions for payment of rent @ Rs.15,000/- were given by the learned Rent Controller, attained finality. Order passed by the Supreme Court in above petitions is reproduced below for the sake of easiness:-

“ The learned counsel for the petitioners submits that he does not press these petitions filed against an interim order but prays that the learned Rent Controller may decide the pending rent applications by the respondents-landlord in accordance with law on the basis of record of the case. Allowed. Dismissed as not pressed.”

9. On conclusion of the proceedings against interlocutory Orders dated 10.08.2022, as mentioned above, the landlord/petitioner moved an application under Section 17(9) of the Act 1963 in main Rent Applications for striking off the defense of respondents/tenants for non-compliance of interlocutory Order dated 10.08.2022 and learned Rent Controller Cantonment Hyderabad vide Order dated 07.12.2022 had struck off the defense of present respondents/tenants and directed them to vacate the rented premises within 60 days. The present respondents/tenants challenged the said Order before this Court through F.R.As No.01 to 04 of 2023 alongwith some other tenants.

10. This Court after hearing the counsel for the parties vide common Order dated 25.05.2023 had disposed of the F.R.As No.1 to 9 of 2023 with certain directions and in respect of present respondents/tenants this Court had set aside the Orders dated 07.12.2022 whereby their defense was struck off. The observations/conclusion of this Court drawn in respect of present respondents/tenants (i.e in F.R.As No.01 to 04 of 2023) are reproduced below:

“8. Notwithstanding with the above, since the Order dated 10.08.2022 for fixation of fair rent has been upheld in the above Constitutional Petitions vide Judgment of 10.10.2022 by this Court, therefore, I cannot give a finding, except the above observation. In my considered view an authoritative pronouncement is necessary to resolve this controversy, otherwise a complexed situation will continue to occur in the Cantonment Areas where the enhancement of rent will be done at the whims of the learned Rent Controller, rather than following the statutory provisions and prescribed determining criteria (of Statute). In my

considered view a larger Bench may be constituted by the Hon'ble Chief Justice to decide this legal aspect of the case. Copy of this Order be transmitted to the learned Registrar at the Principal Seat through the learned Additional Registrar of this Circuit.

9. *Adverting to the factual aspect, since Record shows that prima facie the rentals @ Rs.15,000/- are deposited by the Appellants of Rent Appeal Nos.1 to 4, thus, the impugned Order about striking off their defence is set aside so also for the reason that it is in violation of Section 27 of the Law (ibid). Matters are remanded to learned Rent Controller for deciding them afresh in accordance with law, record and considering the above observation. Accordingly, F.R.As No.1 to 4 of 2023 are allowed in the above terms."*

11. While concluding with the aforesaid matters F.R.As No.1 to 9 of 2023 learned Single Judge of this Court had also directed the learned Rent Controller to decide the main case(s) within three months if the parties led their evidence. The Order dated 25.05.2023 passed in above F.R.As was challenged by the present petitioner/landlord before the Supreme Court through C.Ps No.1004-K to 1009-K and 1064-K and 1065-K of 2023 and vide Order dated 24.08.2023 same were disposed of with following directions:

"2. These leave petitions are disposed of with the directions to the Rent Controller to decide these matters positively within a period of four months from the date on which a certified copy of this order is placed before him. The Rent Controller shall decide all the matters entirely on their own merits and without being influenced by any observation in the impugned order by the learned High Court but subject to this qualification that the rights of the landlord in rent proceedings, which are preserved to the landlord by the learned High Court shall continue to subsist and the Rent Controller shall hear and decide the cases strictly in accordance with law.

3. Needless to say the petitioner/landlord shall be entitled to raise all questions of law and fact before the Rent Controller as arise in the facts and circumstances of the case and the Rent Controller is obliged to decide matters before him accordingly.

4. All the above titled petitions are disposed of in the above terms."

12. From the above it is clear that the Order dated 10.08.2022, whereby directions were given to opponents/present respondents/tenants by the learned Rent Controller to deposit the tentative rent @ Rs.15,000/- per month, had already attained finality and learned Single Judge of this Court vide common Order dated 25.05.2023 passed in F.R.As No.1 to 4 of 2023, reproduced above, had only set aside the Order dated 07.12.2022 whereby defense of present respondents/tenants was struck off, as the learned Single Judge of this Court had observed that while striking off the defense of present respondents/tenants the learned Rent Controller

had not followed the provisions of Section 27 of the Act and as such remanded the matters back for deciding the same afresh to that extent only. However, the learned Rent Controller erred in law while interpreting the common Order dated 25.05.2023 passed in F.R.As No.01 to 09 of 2023 and reopened the applications dated 26.08.2020 filed under Section 7 of the Act 1963 and passed the impugned Orders dated 23.08.2023 in respect of present respondents/tenants thereby re-fixing the tentative rent @ Rs.1,836/-, 2,063/-, 2,125/- and 2,175/- respectively per month with enhancement of 25% per annum in old rent, though the applications dated 26.08.2020 were already disposed of vide Order(s) dated 10.08.2022 and the said Orders(s), as mentioned and reproduced above, had already attained finality up to the Supreme Court.

13. Above discussion led me to hold that though these constitutional petitions have been filed against the interlocutory rent orders passed by the learned Rent Controller, however, since the said interlocutory orders are based on misinterpretation of the Order dated 25.05.2023 passed by this Court in F.R.As No.01 to 04 of 2023, therefore, these petitions are maintainable.

14. In view of the above discussion since the learned Rent Controller through impugned Orders dated 23.08.2023 has wrongly reopened the applications dated 26.08.2020 filed under Section 7 of the Act 1963 as the same were already disposed of vide Orders dated 10.08.2022 and the said Orders had attained finality up to the Supreme Court vide Order dated 20.02.2023 passed in C.Ps No.4267 to 4274 of 2022, therefore, these petitions are allowed and in result whereof impugned Orders dated 23.08.2023 passed by the learned Rent Controller are set aside.

15. Before parting with the order, it is observed that despite time and again clear directions of the Supreme Court, reproduced above, the learned Rent Controller preferring to pass the interlocutory rent orders instead of deciding the main Rent Applications. Accordingly learned Rent Controller is directed to decide the main Rent Applications, as directed by the Supreme Court. I have perused the case law(s) relied upon by the learned counsel for the respondents/tenants, however, same are distinguishable from the facts and circumstances of present case.

16. Captioned petitions stand disposed of accordingly.

JUDGE

Sajjad Ali Jessar