

JUDGMENT SHEET
**IN THE HIGH COURT OF SINDH,
CIRCUIT COURT HYDERABAD**

CP No. S- 938 of 2022
Mir Behraam Talpur through Attorney VS Baccha Party & Others

CP No. S- 943 of 2022
Abdul Samad VS Junaid Jamshed (J.) & Others

CP No. S- 944 of 2022
Faisal Kareem VS Body Shop & Others

CP No. S- 945 of 2022
Agha Shahi VS The Baccha Party & Others

CP No. S- 951 of 2022
Amad Ahmed VS Outfitters & Others

CP No. S- 952 of 2022
Muhammad Dawar VS Pizza Hut & Others

CP No. S- 953 of 2022
Ambreen Zahid VS Khaadi & Others

CP No. S- 954 of 2022
Azhar Ali VS Grocers & Others

CP No. S- 955 of 2022
Manzoor Ahmed VS Al-Mirah & Others

CP No. S- 963 of 2022
Aftab Ahmed VS Junaid Jamshed (J.) & Others

CP No. S- 964 of 2022
Sohail Ahmed VS Baccha Party & Others

CP No. S- 965 of 2022
Sumaira Umair VS Eden Robe & Others

CP No. S- 966 of 2022
Rukhsana Ahsan Talpur VS Khaadi & Others

CP No. S- 967 of 2022
Waqas Memon VS Stylo & Others

CP No. S- 968 of 2022
Ishaque Khan VS NIKE & Others

CP No. S- 969 of 2022
Naeem Dhoraji VS Rang Ja & Others

CP No. S- 970 of 2022
Muhammad Naseem VS Furor Jeans & Others

CP No. S- 971 of 2022
Muhammad Dawar VS V-China & others

CP No. S- 972 of 2022
Erum Shaheen VS Bonanza & others

CP No. S- 973 of 2022
Muhammad Umair VS Eden Robe & others

CP No. S- 974 of 2022
Abdul Samad VS Junaid Jamshed (J.) & others

CP No. S- 975 of 2022
Muhammad Umair VS Breakout & others

CP No. S- 976 of 2022
Mukhtar Ahmed VS Stylo & others

CP No. S- 977 of 2022
Farina Shahab VS 1st Step Shoes & others

CP No. S- 978 of 2022
Noman Parekh VS Bacha Party & others

CP No. S- 979 of 2022
Farah Safdar VS OPTP & others

CP No. S- 980 of 2022
Athar Ali VS Outfitters & others

CP No. S- 998 of 2022
Ruksana Ahsan Talpur VS Khaadi and others

CP No. S- 999 of 2022
Ruksana Ahsan Talpur VS Khaadi and others

CP No. S- 1000 of 2022
Muhammad Naeem VS The Body Shop and others

CP No. S- 1001 of 2022
Rafeeqe Ahmed VS Breakout and others

CP No. S- 1002 of 2022
Syed Atif Hussain Zaidi VS Bacha Party and others

CP No. S- 1003 of 2022
Waseem Ahmed VS Super Space and others

CP No. S- 1004 of 2022
Faraz Hussain VS Breakout and others

CP No. S- 1005 of 2022
Wasiullah Khan VS Bacha Party and others

CP No. S- 1006 of 2022
Altaf Hussain VS Bacha Party and others

CP No. S- 1007 of 2022
Amad Ahmed VS Outfitters and others

CP No. S- 1008 of 2022
Faraz Hussain VS Breakout and others

CP No. S- 1009 of 2022
Mst. Rifat Wajid VS Gul Ahmed and others

CP No. S- 1010 of 2022
Ishaque khan VS NIKE and others

CP No. S- 1011 of 2022
Mohammad Azam VS Outfitters and others

CP No. S- 1012 of 2022
Mujahid Ahmed VS J. Brand and others

CP No. S- 1013 of 2022
Farrukh Pasha VS 1st Step Shoes and others

CP No. S- 1014 of 2022
Sumaira Sohail VS Junaid Jamshed (J.) and others

CP No. S- 1015 of 2022
Munir Ahmed VS Junaid Jamshed (J.) and others

CP No. S- 1016 of 2022
Shehroze Qazi VS Furor Jeans and others

CP No. S- 1017 of 2022
Khawaja Awais Mehmood VS Al Karam Studio and others

CP No. S- 1018 of 2022
Shagufta Parveen VS Kayseria and others

CP No. S- 1024 of 2022
Jan-E- Alam VS Outfitters & Others

CP No. S- 1025 of 2022
Muhammad Afzal VS Outfitters & Others

CP No. S- 1026 of 2022
Izhar- ul- Haq VS Outfitters & Others

CP No. S- 1027 of 2022
Tarique Shaikh VS Bonanza & Others

CP No. S- 1028 of 2022
Farhan Shaikh VS Bonanza & Others

CP No. S- 1029 of 2022
Sadia Khan VS Bacha Party & Others

CP No. S- 1030 of 2022
Agha Shahi VS The Baccha Party & others

CP No. S- 1031 of 2022
Afsar Sultana Chandio VS Super Space & others

CP No. S- 1032 of 2022
Afsar Sultana Chandio VS Super Space & others

CP No. S- 1033 of 2022
Afsar Sultana Chandio VS Super Space & others

CP No. S- 1034 of 2022
Farah Safdar VS OPTP & others

CP No. S- 1035 of 2022
Riaz Ahmed Rajpoot VS Body Shop & others

CP No. S- 1036 of 2022
Rashid Aman Khan VS Nishaat & others

CP No. S- 1037 of 2022
Mohammad Azam VS NIKE & others

CP No. S- 1038 of 2022
Agha Shahi VS Mini So & others

CP No. S- 1039 of 2022
Jan-E-Alam VS Al-Karam & others

CP No. S- 1040 of 2022
Mohammad Azam VS Khaadi & others

CP No. S- 1041 of 2022
Manzoor Ahmed VS Al-Mirah & others

CP No. S- 1042 of 2022
Mujahid Ahmed VS J. Brand & others

CP No. S- 1043 of 2022
Aftab Ahmed VS Junaid Jamshed (J.) & others

CP No. S- 1044 of 2022
Sumaira Sohail VS Junaid Jamshed (J.) & others

CP No. S- 1045 of 2022
Asma Naz VS Super Space & others

CP No. S- 159 of 2022
(The Boulevard Limited v. Fawad Fateh Qureshi & others

CP No. S- 1046 of 2022
Kashif Fatah Qureshi VS Super Space & others

CP No. S- 1047 of 2022
Fawad Fatah Qureshi VS Super Space & others

CP No. S- 1048 of 2022
Fahad Fatah Qureshi VS Super Space & others

CP No. S- 27 of 2023
Mst. Rifat Wajid VS Gul Ahmed & Others

CP No. S- 30 of 2023
Rafsan Jani VS M/S Boulevard Ltd. & Others

CP No. S- 64 of 2023
Sagar Ladhani VS M/S Boulevard Ltd & another

CP No. S- 65 of 2023
Sahil Ladhani VS M/S Boulevard Ltd & another

Date of Hearing : 25.11.2024, 02.12.2024 and 23.12.2024

Date of Announcement: 24.12.2024

M/s. Imdad Ali R. Unar and Ravi Kumar, Advocates for Petitioners.

Mr. Ayatullah Khuwaja, Advocate for Respondent Boulevard Mall.

Ms. Sarwat Jawahir, Advocate for Respondent No.1 in C.P.Nos.S-943, 955, 963, 974, 1042, 1043 and 1044 of 2022.

Mr. Shahnawaz Bhutto, Advocate for Respondent No.1 in C.P.No.S-1003, 1031, 1032, 1033, 1045, 1046, 1047 and 1048 of 2022.

Mr. Allah Bachayo Soomro, Additional A.G.

Petitioners' Legal Team has cited the following case law and Book reference.

- (i) **2020 CLC 254** [*Nizar Noor and others v. Ameer Ali and others*].
- (ii) **1998 SCMR 2092** [*Khaliq Raza Khan v. Messrs Pakistan State Oil Company Limited*].
- (iii) **SBLR 2001 Sukkur 614** [*Khurshid Ahmed s/o Ghulam Qadir v. Himandas s/o Shero Mal and others*].
- (iv) **2007 SCMR 128** [*Saifuddin and another v. Senior Civil Judge/Rent Controller-VIII, Karachi (South) and 7 others*].
- (v) **2021 CLC 1780** [*Aqsa Jawed through Attorney v. Muhammad Hassan and others*].
- (vi) **PLD 1994 Karachi 227** [*Muhammad Iqbal v. Mrs. Syed Habiba Rizvi*].
- (vii) **2004 CLC 289** [*Sardar Muhammad v. Khawaja Muhammad Nazar*].

(viii) Black's Law Dictionary 5th Edition Page-1314.

Legal Team of Respondent-Boulevard Company has placed reliance on the following case law;

- (i) **PLD 2021 Supreme Court 391** [*Gul Taiz Khan Marwat v. The Registrar, Peshawar High Court, Peshawar and others*].
- (ii) **PLJ 2003 Karachi 134** [*Hafeezuddin and 2 others v. Badaruddin and 2 others*].
- (iii) **2015 MLD 1642 Peshawar** [*Abdul Samad Khan and 5 others v. Jamshed and 7 others*].
- (iv) **1993 CLC 2385 Karachi** [*Qassim through Legal Heirs v. Aziz Baig*].

J U D G M E N T

MUHAMMAD FAISAL KAMAL ALAM, J.- All these Constitutional Petitions are decided by this common Decision.

2. Through these Constitutional Petitions the Judgment of the Appellate Court has been challenged which has set-aside the Eviction Order of learned Rent Controller.

Mr. Imdad Ali R. Unar Advocate along with Mr. Shahzad Daudpoto Advocate in number of Petitions have argued that Petitioners are the Allottees and Sub-lessees of different Spaces / Units in Boulevard Mall, constructed by Respondent – Boulevard Limited (The Company). Contended that after payment of full price, Transfer Letters were issued in most of the Cases and in few Cases even subleases have been executed, the List whereof has been provided under his Statement dated 14.11.2024, which is part of the present record.

3. The Case in nutshell is that the Petitioner(s) and Respondent – Company entered into a separate Agreement (undisputed and available in Record) by virtue of which, *inter alia*, Respondent – Company was authorized to let out different Units/ spaces belonging to the Petitioners (Allottees / Sub-Lesses) to Tenants who are also Respondents in the present Constitutional Petitions; the Respondent – Company was authorized to collect Rentals and pay the same to Petitioners. Contended that when the Petitioners did not receive monthly Rents (from 2019 onwards), they filed separate Rent Cases

under Section 15 of the Sindh Rented Premises Ordinance, 1979 (**SRPO**) impleading different Tenants of respective Units of Respondent – Company; in most of the Rent Cases the eviction Order was passed after a full dressed trial but in few of the Cases (listed below wherein Mr. Ravi Kumar, Advocate is representing), only tentative Rent Order was passed which was not complied with and had resulted in consequences provided under Section 16(2) SRPO, thus the defence was struck off, which was also challenged in the following Constitutional Petitions. Has referred to the Pleadings of the parties, that is, Petitioner and Respondent Company, as Tenants (Brands) opted to remain absent despite service of Notice, which fact is highlighted in the Orders passed by the learned Rent Controller. Contended that crucial fact about the tripartite relationship between the Petitioner as allottee / sublessee, Respondent – Company as Developer of the Mall and Respondent – Tenants are not disputed by the Respondent – Company in their Written Reply, in particular he has referred to sub-paragraph of the Written Reply of the Respondent – Company at Page 105 of the *Lis* File, that the Rentals were collected by the Respondent – Company on the basis of mandate given by the Petitioners, but when after Audit it was found that excess payments are made to Petitioners, the Respondent – Company stopped the Payment. Contended that the Appellate Court’s Order has been given on the incorrect premise that Respondent – Company can file Appeals under Section 21 of Sindh Rented Premises Ordinance, being aggrieved persons, which in fact they are not, because the Eviction Orders are passed against the Respondents / Tenants as they failed to deposit and pay Rentals within time. Has referred to the earlier Order dated 18.4.2022 (of this Court passed in number of Constitutional Petitions) to point out that the Respondent – Company withdrew the Constitutional Petitions on the undertaking that it will comply with the directions earlier given in the Impugned Orders dated 12.2.2022, *inter alia*, and will clear all the utility bills. Has referred to ownership documents viz. Booking Form (Page 81), Transfer Letter (Page 121) and sub-leases in Constitutional Petition Nos. 943, 967, 969, 970, 976, 1000, 1017 & 1027 of 2022; argued that the Impugned Appellate Order is a result of non-reading of evidence and therefore, in this proceeding, that portion of the evidence be seen which was never considered by the Appellate Court while overturning the Eviction Order of learned Rent Controller.

Whereas, Mr. Ravi Kumar stated that he represents Petitioners in CP Nos. S-30, 64 and 65 of 2023, although related to Boulevard Mall, but in these Cases

defence was struck off under Section 16(2) of SRPO, but the Appellate Court instead of discussing the facts of the case has reproduced its earlier findings given in respect of those Rent Cases in which entire evidence was led; argues that this ground alone is sufficient to set-aside the Impugned Appellate Orders, as it is contrary to record.

4. Ms. Sarwat Jawahir appearing on behalf of Respondent – Tenants **J. and Almirah** stated that they have complied with the Court Order of depositing the Rent faithfully before the learned Rent Controller; also filed her Written Arguments at the conclusion of hearing, reiterating her stance, in particular, that the said Respondents have not committed any default as they are regularly making payments as per Court Order. Whereas Mr. Shahnawaz Ali Bhutto, appearing for Respondent – Tenant [Super Space] in CP No. D-1003, 1031, 1032, 1033, 1045, 1046, 1047 & 1048 of 2022 has also made submissions. Both the learned Advocates for Respondents – Tenants state that the Petitions should be dismissed as they were kept in dark about relationship / arrangement between the Petitioners and Respondent Company; if the Respondent Company has not transferred the Rents / Funds to the Petitioners, it is a dispute between them for which Tenants (Brands) cannot be punished.

5. Mr. Ayatullah Khowaja, Advocate, appearing for Respondent Company has argued the matter at length. Stated that the Rentals were not paid to the Petitioners after 2019, because already over payments were made to the Petitioners and instead of doing reconciliation of account, Petitioners filed the Rent Cases with malafide motive; that the Petitioners are trying to achieve something indirectly which they cannot achieve directly; in the same context he has also invoked the principle of estoppel, which is, that they [Petitioners] want to evict the Respondent – Tenants from their respective portions / spaces in the Mall on the false ground of default, although no default is committed. There are around 800 space holders / Allottees in the Boulevard Mall, but only 79 have come before this Court with their complaint of non-payment of Rentals which show their ulterior motives. Earlier Petitioners filed First Class Suit, inter alia, for Specific Performance of Agreement between the Petitioners and Respondent Boulevard Mall for managing and letting out the Spaces / Premises to various tenants, but plaint whereof was rejected, which Order has attained finality as no Appeal is preferred against it. Order dated 27.8.2020 is at page 403 (CP No. S- 938 of 2022); that Notice of Recession and Legal Notice sent by the Allottees are also illegal (at Page 215 and 221 of the *Lis Record*). That the Rent Cases filed

by the Petitioners cannot be treated as Notice under Section 18 of Sindh Rented Premises Ordinance, 1979 (SRPO), because the tenor of the Rent Cases is different than what it is envisaged in Section 18- SRPO. Has referred to Section 203 and 204 of the Contract Act, to show that the above Recession Notice is illegal, because the Authority / Mandate was already exercised lawfully by the Respondent – Company, while letting out the Spaces to various Respondents – Tenants and the same is irrevocable. Attempted to point out contradictions in the stance of Petitioners by arguing, that the Petitioners have rescinded the above Agreement / Mandate given to Respondent – Company, but claiming the rent amount under the same Agreement, that those Rentals should be transmitted to the Petitioners. The Counsel has argued that the Impugned Judgment of the learned Trial Court was erroneous as it has not framed any Issue of relationship between the Parties hereto. Secondly, in terms of Section 2{f} of the SRPO, the present Respondent Company is also a Landlord for all legal and practical purposes, thus the rent case cannot be filed by the landlord against a landlord; viz. the Petitioners as allottees/ investors against Respondent Company as authorized Person to let out and collect rentals. If there exists no direct relationship between the Petitioner and Respondent Tenants, then the Petitioners cannot claim any default, because the Rentals have been collected by the Respondent Company from the Respondents – Tenants. Further argued that the Spaces in question do not fall within the definition of either building or premises as mentioned under Section 2 {a} and {h} of the SRPO. The Legal Team of the Respondent Company also attempted to equate the present relationship with the concept of Real Estate investment Trust – REIT. Contended that Petitioners are merely investors and the management of the entire Mall is operated by the Respondent – Company, being its Owner and Builder of the Mall; put-forth the factual aspect of the case, that various Brands are in occupation of large spaces in the Boulevard Mall, which is collectively allotted to various Allottees and it is not possible to evict any of the Brand from one space – Unit while the other spaces / units / areas remained intact regarding which no eviction proceeding is filed by the Allottee / Investor.

6. In Rebuttal Mr. Imdad Ali R. Unar argues that ample opportunity was given to all the Respondents - Tenants but they did not contest the Rent Cases; even there is a defect in a title, same is irrelevant for deciding the rent case in which it is to be seen that a tenant is faithfully paying rent to a landlord or rent collector, but in the present case, the Tenants [Respondents] have

defaulted. Has referred to the Order dated 30.9.2024, passed by this Court, wherein Respondents – Tenants were asked to make compliance but they again failed to do so.

7. Mr. Ravi Kumar has stated that cases of his clients / Petitioners are different, because the non-compliance of tentative Rent Order is proven resulting in their eviction and hence the argument of Respondents Advocates do not apply to his Constitutional Petitions (Supra).

8. Arguments heard, record perused.

9. It is necessary to reproduce the Order dated 30.9.2024 of this Court.

“ Despite this being a part-heard, time-fixed matter, a brief is held on behalf of Mr. Ayatullah Khowaja, Advocate for Boulevard Mall (Respondent No.2), seeking an adjournment on the grounds that he was present in Court in the morning but has subsequently left to attend a case before the Principal Seat at Karachi.

Counsel for the Petitioner(s) strongly opposes the adjournment request. arguing that today's fixed date and time were set in the presence and with the consent of Respondents Counsel. He further contends that the Respondent No.2 are intentionally delaying the proceedings. On one hand, they are receiving substantial rent payments from the occupants without any accountability, while on the other hand, they continue to violate this Court's orders dated 21.12.2022 and 6.2.2023 concerning the deposit of rent. According to Counsel, paltry, whimsical amounts, if any, are being deposited with the Rent Controller under the guise of rent as and when it pleases the Respondents as patent from the Rent Controllers report(s) dated 1.6.2023 and 20.9.2024.

In the circumstances, Boulevard Limited is directed to submit an affidavit before the next date, which shall include the following details:

i) The unit/shop/premises number and corresponding area allotted to each Petitioner, along with a breakdown of the total payments or rent paid to each Petitioner and/or deposited with the Rent Controller on a monthly basis from 1.9.2019 till to-date. Additionally, the affidavit must specify the rate or basis for the payments made to each Petitioner and/or deposited with the Rent Controller.

ii) The names of all occupants of the Mall, the specific area occupied by each occupant, and a breakdown of all payments or rent received from each occupant on a monthly basis from 1.9.2019 till to-date.

Similarly, all occupants/brand-owners, who are parties to the present Petition(s) (including but not limited to J.Dot, Almirah and Super Space) are directed to file an affidavit before the next date, providing the following details:

i) The unit/shop/premises number and specific area occupied by each.

- ii) *The duration of the occupancy, including the start date along with copy of the occupancy agreement.*
- iii) *A detailed breakdown of the payments or rent made by each of them to Boulevard Limited on a monthly basis from the date they began occupying the premises up to the present.*
- iv) *Any additional charges or payments (such as maintenance, utilities, or service charges etc) paid to Boulevard Limited.*

The Respondents' Counsel have yet to begin their submissions. Given that the current roster concludes next week, during which I am scheduled to sit for three (3) days in a Division Bench, it is unlikely that the hearing will be completed within this period. Consequently, the instant Petition(s) are not be treated as part-heard and shall be listed according to the next available roster.

By consent adjourned to 14.10.2024. Interim orders passed earlier to continue till the next date of hearing.

Office to place copy of this order in CP No.S-30/2023, which is to be fixed with the present bunch of Petitions, with CP No.S-938/2022 being the lead case.”

10. In the earlier round of litigation, this Court has passed an Order dated **18.4.2022** in number of Constitutional Petitions, CP. No. S- 159 of 2022 being the leading one, preferred by the Respondent Company as Petitioners, directing the latter (Respondent Company) to clear all the utility bills forthwith which was accepted by them and they sought thirty days time to clear the dues. Consequently, the Respondent Company withdrew the Petitions on the terms mentioned in the above Order.

11. It is also necessary to mention that earlier numerous petitions were filed by the Petitioners / Allottees complaining that Rent Controller has refused to exercise jurisdiction for passing the tentative Rent Orders. It was argued on behalf of the Respondents that Applications under Section 16(1) of SRPO cannot be decided until the relationship of landlord and tenant is established. No specific finding was given on the above plea; however, this Court disposed of the Petitions vide Order dated 17.12.2021 (at Page 423 of the Record of CP No. S- 938 of 2022), by directing the Rent Controller to decide Applications filed under Section 16(1) of SRPO within fifteen (15) days.

12. Undisputed facts should be considered first.

The Agreement between Petitioners and Respondent Company is not disputed. A fair copy of one such **Agreement** dated 21.5.2016 [the Subject **Agreement/ Arrangement or Mandate**] has been produced by the learned

Counsel for Respondent Company during proceeding, whereunder, *inter alia*, the Petitioner(s) authorized the Respondent Company to let out respective allotted Spaces/ Units/ Shops to prospective well-known **brands** [Respondent Tenants] and collect rents from them. The Impugned Appellate Court Judgment revolves around this Agreement.

The Second undisputed fact is that all these Petitioners are Allottees of different Spaces at different floors / levels of the Boulevard Mall and many of these Petitioners have been issued Transfer Letter (available in the record of present proceedings) on behalf of Respondent Company so also Subleases, although Mr. Ayatullah Khowaja has stated that litigation is pending with regard to cancellation of Subleases, but fact of the matter is that all these Subleases still exist and have not been cancelled by a Court Decree.

Notwithstanding the above fact about registered Subleases, the above Agreement / arrangement has been acknowledged / admitted by the Respondent Company in its Written Reply (Page 97) of CP No. S- 938 of 2022, *inter alia*, in paragraph 2 in the following words :-

It is further added that within given mandate and authorization, the answering opponent (company) decided to collect the rent from prospective tenants and then to give the aggregated amount to each allottee (s) so as to ensure equity, fair play and balance. During audit it was found the company already paid excess amount to the applicant and other allottee (s) therefore it was advised to all allottee (s) to come in contact; settle the account and to take their dues, therefore, it is denied that there had ever been paid any less amount or that the answering opponent avoided to discharge his liabilities i.e. to pay rent by joint reading of agreement with prospective tenant. In consequence to audit, the applicant was found to have received excessive amount so he was served with a notice whereby explaining all things as well his liabilities to return the excessive amount.)

13. From the above discussion it is quite clear that Respondent Company was collecting the Rentals / Receiving the Rentals from various Tenants / Brands (Respondents) on behalf of Petitioners in term of the subject Agreement / Arrangement, Clause 4 whereof further elaborates the entire arrangement between the Parties hereto, which is reproduced for a ready reference herein below_

“4. An amount Rs.100/= (Rupees One Hundred Only) per square feet per month inclusive all applicable taxes except properly tax hereinafter called as said Amount is fixed from the rent and after deducting all applicable taxes, the balance from the said Amount shall be paid to the First Party.”

It is necessary to clarify that in the above Clause, First Party means Petitioners and Second Party is the Respondent Company.

14. In Paragraph 14 and 15, the Appellate Court has ruled that the present Petitioners are Owners and their premises are occupied by Respondents – Tenants under the Subject Agreements/ Mandate [*ibid*] between the Respondent Company and Petitioners, but, in Paragraph 20, it is held that no relationship between the Petitioners and Respondents – Tenants exists, thus Rent Controller had no jurisdiction to decide the matter, *inter alia*, as there cannot be a deemed tenancy, because, there is no direct Tenancy Agreement between the Petitioners and Respondents/ Tenants [Brands]. The conclusive finding of the Impugned Judgment is based on Section 202 [of the Contract Act], that an agency is irrevocable if the agent has interest in the subject matter of the agency, like the Respondent Company has the interest in the Tenancy. The above undisputed Documents show that the Respondent Company has no interest in the Tenancy, *inter alia*, as it is bound to defeat the whole purpose of buying Spaces in the Mall by the Petitioners; **secondly**, it is violative of the undisputed Ownership right and interest of the Petitioners. **Thirdly**, if the conclusion drawn in the impugned Judgment is accepted, then, it means that the Petitioners would be permanently dependent on the whims of Respondent Company, which is illogical, besides, an act expropriatory in nature, violative of the fundamental rights of Petitioners to hold and enjoy property as envisaged in Article 24 of the Constitution of Pakistan. Thus, the above Subject Agreement /Arrangement- Mandate is revocable and Section 202 is mis-applied by the Appellate Court. What the impugned Judgment has not evaluated is, that whether the above Mandate/ authority was revoked lawfully. It is specifically asserted in the deposition of the Petitioner, that the above Agreement/ Arrangement – Mandate was revoked, then the Appellate Court being a Court of ultimate facts should have considered that whether this crucial aspect was proven or not; if it is proved, then, the Petitioners are entitled to receive the rents, because, the actual Owners are the Petitioners, and Respondent Company was mandated / authorized to collect rents, which does not put the Respondent Company on a higher status than that of Petitioners, as far as tenancy and benefits there from are concerned.

15. In view of the above discussion, the Appellate Court has also come to the wrong conclusion that the learned Rent Controller had no jurisdiction to entertain and decide the Rent Cases filed by the Petitioners because there exist no relationship of landlord and tenants. Admittedly, ownership of Petitioners as allottees and Investors (as emphasized by the Respondent Company and its Legal Team) in respect of their portion / space, cannot be brushed aside

lightly. Similarly, the relationship between the Petitioners and Respondents – Tenants is also determinable in rent proceedings, where payment of Rentals either to the Rent Collector or actual owner is not disputed, which is not done in the present Cases.

16. In view of the above, the Impugned Judgment of the Appellate Court is set-aside and all Petitions except CP No. S- 30, 64 and 65 of 2023 are remanded for deciding all the Appeals of the Respondent Company afresh in the following terms_

- i. Decision to be given within six (06) weeks, after evaluating the entire evidence including, relating to the alleged default by Brands / Tenants.
- ii. Respondent Company is directed to transfer / deposit all the Rentals / Amounts it has received till date to the learned Nazir of the Rent Controller (which decided the Rent Cases), and shall continue to deposit the same, unless directed otherwise by the Appellate Court.
- iii. Once the Appeals are decided then the learned Appellate Court will also decide the fate of payments of all the Rentals / Amounts deposited by Respondent Company as mentioned in the above paragraph.
- iv. If required, the Appellate Court can order reconciliation of accounts of rents and other payable amounts, to determine whether Respondent Company overpaid the same [as alleged] to Petitioners, by appointing a reputable Chartered Accountant Firm.
- v. If it is proven that Mandate / Authority of Respondent No.2 was properly terminated / rescinded by Petitioners, then all the Rentals deposited so far either in the Court by the Respondent - Tenants (Brands) or directly paid to Respondent Company, shall be paid to Petitioners.
- vi. The Appellate Court will make an attempt to effect the compromise between the Parties by invoking sub-section 1(C) of Section 21 of SRPO.

Since Petitions have been remanded therefore at this stage discussion on the case law is not required and the same can be considered by the learned Appellate Court.

17. Adverting to the Constitution Petition Nos. 30, 64 and 65 of 2023 in which earlier tentative Rent order was passed which was not complied with, resulting in striking of defence by the learned Rent Controller which was challenged in Appeal. The written reply of Respondent Company is available at page 37 of CP No. S-30 of 2023 in which it is admitted that Petitioner

(Rafsan Jani) has an area of 260 sq.ft in the Mall and is numbered as ‘G-67’. The Impugned Appellate Judgment in these Cases have narrated the facts of other Petitions and even attempted to discuss the evidence, which is completely contrary to record and the findings of the Impugned Judgment are perverse, because in these Petitions admittedly no evidence was led. **Secondly**, the Impugned Appellate Court Judgment has set-aside the Decisions of Rent Controller, on the ground that no Issue of relationship between the parties hereto was framed; this finding is contrary to the direction given by this Court in its Order dated 17.12.2021 (*in earlier Constitutional Petitions preferred by the Allottees / Petitioners, discussed in the foregoing Paragraphs*). **Thirdly**, the Impugned Judgments in the above three Petitions has not followed the Judgment of Honourable Supreme Court handed down in the case of **BRITISH TELECOMMUNICATIONS PLC AND ANOTHER V. CARTIER INTERNATIONAL AG AND OTHERS (2018 SCMR 1721)**, holding, that first compliance should be made of the tentative Rent Order and then the issue of relationship can be agitated. Consequently, the Impugned Judgment of the Appellate Court passed in these three Petitions are set-aside and that of the learned Rent Controller are restored. Respondents – Tenants are liable to be evicted. Since the premises in question are commercial, therefore, three months time is granted to handover the vacant, physical possession of Shops in question/ Spaces to the Petitioners of the above three petitions.

JUDGE