

Judgment sheet

IN THE HIGH COURT OF SINDH AT KARACHI

Constitution Petition No. S – 476 of 2021

Present

Mr. Justice Muhammad Jaffer Raza

M/s Crescent Star Insurance LimitedPetitioner.

Versus

Eduljee Dinshaw (Private) Limited Respondent.

Mr. Muhammad Mohsen Khan, Advocate for the Petitioner.

Mr. Shan-ur-Rehman, Advocate for the Respondent.

Date of Hearing: 12.03.2025

Date of announcement: 20.03.2025

J U D G M E N T

MUHAMMAD JAFFER RAZA – J: The instant petition has impugned the order dated 16.03.2020 passed in First Rent Appeal No.109/2020.

2. Facts of the case are summarised in the succeeding paragraphs.

- a) The Respondent filed Rent Application bearing No.1187/2018 under Section 8 of the Sindh Rented Premises Ordinance, 1979 (**‘SRPO’**) for fixation of fair rent. At the time of filing of the application, rent for the tenement was fixed at the rate of Rs.6.5 per square feet and enhancement was sought by the Respondent at the rate of Rs.201.31 per square feet. The Respondent in the rent application placed reliance on a “compromise agreement” of another building i.e. Adamjee House (in the same vicinity) as the same was rented out for Rs.201.31 per square feet. Further, the Respondent claimed increase in existing taxation and imposition of new taxes alongwith rise in cost of construction. It is pertinent to mention here that tenement in question is situated on the commercial hub of Karachi i.e. I. I. Chundrigar Road.

- b) The Petitioner filed his written statement and denied the averments in the rent application. It is further contended in the written statement filed on behalf of the Petitioner that the building is in dilapidated condition and is maintained entirely by the Petitioner. The structure is disintegrating and almost at a risk of collapse and therefore it was prayed that the rent application under Section 8 of SRPO filed by the Respondent is liable to be dismissed.
- c) After hearing the parties, the learned Rent Controller vide order dated 25.08.2020 allowed the rent application. The learned trial Court directed the Opponent to pay the rent at the rate of Rs.40/- per square feet per month excluding water and conservancy charges to the Applicant from the date of institution of the rent application and also future enhancement as per the provision of Section 9 of SRPO. At this point it is pertinent to mention that the area of the premises in question is 5,746 square feet and therefore the total rent payable by the Petitioner at the rate of Rs.40/- per square feet would be equivalent to Rs.229,840/- per month. Thereafter the Petitioner filed First Rent Appeal No.109/2020 and the same was dismissed vide Impugned Order dated 16.03.2020.

3. Learned counsel for the Petitioner has argued that the rent application filed by the Respondent was not maintainable and the same ought to have been dismissed by the Rent Controller. He has further argued that the amount of enhanced rent is excessive considering the condition of the tenement in question. He has further argued that the Respondent had not placed any evidence on record to show that the rate of rent in a similar premises in the same vicinity was/is Rs.40/- per square feet. The building, as has been stated by the learned counsel, is in a dilapidated state and therefore the Respondent is not entitled for receiving enhanced rent. Lastly learned counsel for the Petitioner contended that fixation of fair rent ought to have been done from the date of allowing the rent application and not from the date when the rent application was filed.

4. Learned counsel for the Respondent has argued that the rent application was filed seeking enhancement of rent from Rs.6.5 per square feet to Rs.201.31 per square feet. However, the learned Rent Controller has only allowed the fixation of fair rent to the extent of Rs.40/- and even that given the circumstances of the case, does not reflect the true rental value of the tenement. It has further been argued that the tenement in question is tenanted by the Petitioner and the rent paid is not commensurate the rental value in the city of Karachi. The learned counsel argued that the Respondent was successful in establishing an increase of 500% in government taxes and exhibited various challans in that respect.

5. I have heard the learned counsel for the parties and perused the record. It is a well settled principle of Section 8 of SRPO that Rent Controller shall, on application by the tenant or landlord determine fair rent of the premises after taking into consideration the following factors: -

- a) The rent of similar premises situated in the similar circumstances, in the same adjoining locality.
- b) The rise in cost of construction and repair charges.
- c) The imposition of new taxes, if any, after commencement of the tenancy, and
- d) The annual value of the premises, if any, on which property tax is levied.

6. The said exercise was carried out by the learned Rent Controller and the rent application was not allowed as prayed. The learned Rent Controller in this regard has relied upon the fact that the tenant has failed to prove that the condition of the building was dilapidated and the rent paid by the Petitioner is commensurate the rental value of the property. However, the learned Rent Controller has correctly observed that since the commencement of the tenancy till now there is increase in property tax, utility charges and rental value. The same are valid considerations for fixation of fair rent and after application of mind the learned Rent Controller has fixed the quantum of fair rent at the rate of Rs.40/- per square feet. It has also been correctly noted by the learned Rent Controller that

the factors required for consideration of Section 8 of SRPO did not need to co-exist for enhancement or fixation of monthly rent.

7. Learned counsel for the Petitioner was specifically asked regarding the condition of the building and whether any evidence was led in this respect. Learned counsel has frankly conceded that no evidence has been brought on record during pendency of the rent application regarding the condition of the building. It was further enquired from the learned counsel whether the Petitioner filed an application under Section 8 SRPO considering that the application can be filed either by the landlord or the tenant. The learned counsel conceded that no such application was presented by the Petitioner before the Rent Controller. At this stage the learned counsel also conceded that maintenance of the building was the obligation of the Petitioner.

8. The law on Section 8 SRPO is well developed. It is a settled proposition that even if the landlord is able to establish a single ground mentioned in paragraph number 5 above, he will be entitled to fixation of fair rent. Reliance can be placed on the following judgements.

I. **Alay Javed Zaidi versus Habibullah And Others**¹

“17. It is a settled principle of law that it is not necessary that all these four factors must co-exist, rather one or two grounds are sufficient. In the case reported as State Life Insurance Corporation of Pakistan and another v. Messers British Head and Footwear Store and others, this Court while dealing with the proposition of fair rent observed as under:-

"In the instant case the appellant out of four factors, as provided under section 8 of the Ordinance, 1979, according to record have proved the last three. As to the fourth factor, as provided in clause (a), we find sufficient evidence produced by the landlord to prove the rent of similar premises situated in the similar circumstances, in the same or adjoining locality which was not accepted by the Courts below and in our opinion this is the only controversy where the evidence adduced by the respective parties in terms of the leave granting order need to be re-examined. At this juncture we would like to reiterate that by now it has been settled by this Court that it is not necessary for a landlord to prove hike in respect of all four factors as detailed in section 8 of the Ordinance, 1979, or

¹ 2024 SCMR 781

that all four factors must co-exist in each and every case seeking fixation of fair rent."

II. **Messrs Haque Traders and others versus Sheikh Abid & Co. Pvt. Ltd. And others**²

"7. In order to achieve the payment of fair rent of the premises by the landlord or even by the tenant of the rented premises, a rent case can be filed by both under Section 8 of the Ordinance before the concerned Rent Controller, who has the statutory duty to fix the fair rent of the rented premises after taking into consideration (a) the rent of similar premises situated in the similar circumstances, in the same or adjoining locality; (b) the rise in cost of construction and repair charges; (c) the imposition of new taxes, if any, after commencement of the tenancy; and (d) the annual value of the premises, if any, on which property tax is levied. A further rider is provided under subsection (2) that where any addition to, or improvement in, any premises has been made or any tax or other public charge has been levied, enhanced, reduced or withdrawn in respect thereof, or any fixtures such as lifts or electric or other fittings have been provided thereon subsequent to the determination of the fair rent of such premises, the fair rent shall, notwithstanding the provisions of Section 9 be determined or, as the case may be, revised after taking such changes into consideration. It is somewhat noticeable that the legislature has allowed a remedy under Section 8 of the Ordinance for making an application not only by the landlord for determination of fair rent of the premises but also by the tenant to safeguard the interest of the tenant against the exorbitant or unrealistic demand of rent by the landlord. Sanguine to the fulfillment of consideration required to be fulfilled before fixation of fair rent by the Rent Controller, it is clearly provided under Section 9 of the Ordinance that where the fair rent of any premises has been fixed, no further increase thereof shall be effected unless a period of three years has elapsed from the date of such fixation or commencement of this Ordinance, whichever is later. While sub-section (2) of Section 9 accentuates that the increase in rent shall not, in any case, exceed ten percent per annum on the existing rent.

9. What is fair rent? Indeed, the determination of fair market rent is an essential component of any rented premises, not only for the landlord but also for the tenant. A proper determination of fair rent helps in avoiding the occasion of charging the rent too high or too low, therefore multiple parameters and benchmarks have been fixed in the Ordinance for the assistance of the Rent Controller which he must watch out for and mull over at the time of fixing fair rent of any rented premises in his jurisdiction. There is no standardized formula of "one-size-fits-all" or any other orthodox method which can be applied across the board or universally for every rented premises but each rented premises has its own features such as its location, property category and size, parallel rent statistics, and distinctiveness, therefore, the Rent Controller is obligated to follow, with a conscious approach, the yardstick/indicators provided under Section 8 of the Ordinance for determination of fair rent with regard to such particular rented premises for which an application has

² PLD 2024 Supreme Court 918

been made for determination of fair rent before him. It is not the intent of the legislature that at the time of fixing fair rent by the Rent Controller for any premises, the litmus test of all constituents and characteristics provided under Section 8 of the Ordinance should be present in unison or conjointly, but such conditions are provided as a yardstick which are required to be considered by the Rent Controller. The opposing party cannot claim that all conditions should work together or be congregated with strict proof on the touchstone of conditions word by word, but in our view, if one or two grounds are proved satisfactorily and others are not, even in that set of circumstances, the Rent Controller may fix the fair rent proportionately and equitably, being mindful to the proven grounds; but cannot decline the application on the ground that the applicant has failed to prove or substantiate all preconditions as sine qua non for fixation of fair rent as provided under Section 8 of the Ordinance.

10. Indubitably, the purposefulness of exercising jurisdiction Under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, is to foster justice, and if the error is so patent, the High Court can interfere. Even the concurrent findings, recorded erroneously by the fora below, may not be considered so revered or untouchable that it cannot be upset.” (Emphasis added)

III. **Akhtar Kamran (deceased) through legal heirs versus Pervaiz Ahmed and other³**

“8. Moreover, as per time honour principle, while determining the fair rent, the Court is required to take into consideration all ingredients, which are reducing the value of money with each passing month. The premises in question is situated at Block-2, Khayam Chambers, PECHS Society, Karachi, whereas other shops to which the petitioner has made reference are not of the same building, thus cannot be taken into consideration while determining the fair rent.

9. We find that IIIrd Rent Controller, Karachi vide judgment dated 07.09.2018 has rightly determined the fair rent of the premises in question which (decision) was maintained upto the High Court and we are in complete agreement with the same. There are concurrent findings of all the fora below which cannot be interfered with unless those are perverse, arbitrary, capricious or fanciful. No misreading and non-reading has been noticed.” (Emphasis added)

9. It is evident that the instant petition has been filed against concurrent findings of the courts below. The Petitioner has not led any evidence regarding the dilapidated condition of the building and has been enjoying possession since many years at a rate of rent which cannot conceivably be commensurate to the rental

³ 2023 SCMR 1147

value of the tenement. To the contrary the Respondent has succeeded to establish factors which entitle the Respondent to enhancement of rent.

10. In light of what is held above, the Petitioner has not made out a case for exercise of writ jurisdiction of this Court and has been unsuccessful in establishing that the findings below are perverse, arbitrary or capricious. The instant petition is accordingly dismissed with no order as to cost.

Nadeem Qureshi "PA"

J U D G E