

IN THE HIGH COURT OF SINDH AT KARACHI

Constitution Petition No. S – 239of 2025

Present

Mr. Justice Muhammad Jaffer Raza

Abdul Karim Khan Petitioner.

Versus

M/s. Chevron Pakistan Limited & others Respondents.

Mr. Abbas Rasheed Rizvi, Advocate for the Petitioner a/w
Mr. Shoaib Ali Khatian Advocate.

Mr. Abdul Moiz Jaffri, Advocate for the Respondent.

Mr. Ahmed Khan Khaskheli, A.A.G.

Dates of Hearing: 29.04.2025 & 19.05.2025.

Date of announcement: 14.07.2025.

J U D G M E N T

MUHAMMAD JAFFER RAZA – J: Through the instant petition the Petitioner has impugned the judgment dated 27.02.2025 passed in First Rent Appeal No.36/2024. The said First Rent Appeal emanated from the judgment dated 26.10.2024 passed in Rent Case No.09/202.

2. Brief facts of the case are that the Petitioner filed the above noted Rent Case before the learned Rent Controller seeking eviction of Respondent No.1 primarily on the ground of default. Thereafter, vide judgment dated 26.10.2024, the learned Rent Controller refused to assume the jurisdiction in the matter and opined that the matter falls within the Cantonments Rent Restriction Act, 1963 (**“the Act”**) and not under the Sindh Rented Premises Ordinance, 1979 (**“the Ordinance”**). After dismissal of the above noted rent application, the Petitioner preferred First Rent Appeal No.36/2024 in which the findings of the learned Rent Controller were upheld and the noted appeal was dismissed. The Petitioner before this Court has impugned the concurrent findings of the learned Courts below.

3. Learned counsel for the Petitioner has argued that the Rent Case filed by him under Section 15 of the Ordinance was maintainable and the learned Courts below have incorrectly refused jurisdiction to entertain the rent application preferred by the Petitioner. He has further averred that the Act does not apply to the case at hand and the provisions of the Ordinance are fully applicable. In that respect learned counsel has invited my attention to the letter dated 27.03.2024. The said letter, according to the learned counsel, was furnished by Cantonment Board Faisal (who has not been made party to the instant petition) as a reply to the show cause notice issued to the said cantonment board by the learned Rent Controller. According to the learned counsel, the said letter is categorical and corroborates his stance as noted above. He has invited my attention to order dated 06.06.2024 passed in Constitution Petition No. S-422/2024. According to the learned counsel, in the earlier round of litigation between the same parties in the above noted petition, the learned Rent Controller was directed to decide the matter “*denovo*” in accordance with law. Learned counsel has submitted that the learned Rent Controller as well as the learned Appellate Court failed to appreciate the order mentioned above and passed the impugned judgments in a mechanical manner without applying their judicial mind. He has lastly contended that he is the owner of the tenement in question and the impugned orders/judgments ought to be set aside and Respondent No.1 may be directed to vacate the tenement in question.

4. Conversely, learned counsel for the Respondent No.1 has argued that there is a complicated dispute about the ownership of the subject property/tenement between several parties and prior to adjudication the point of ownership, the rent case filed by the Petitioner cannot be entertained. He in that respect, has invited my attention to various other litigations pending between various parties in respect of the ownership of the tenement in question. In this regard he has invited my attention to Civil Suit No.379/2008 preferred by the present Petitioner which according to him was subsequently withdrawn. He has further contended that other Civil Suits bearing Nos.69/2025 and 87/2025 are also pending adjudication

and the present Petitioner has failed to make out a case of ownership of the subject tenement.

5. In respect of the jurisdiction of the learned Rent Controller to entertain the rent application preferred by the Petitioner, learned counsel for Respondent No.1 has argued that without prejudice to his contention regarding ownership as mentioned above, the tenement falls within the jurisdiction of Cantonment Board Faisal and the provisions of the Act are applicable thereto. He has further clarified that under the Act the Cantonment Board is not a land owning agency and is only mandated to carry out municipal functions.

6. In respect of the reply to the show cause notice furnished by Cantonment Board Faisal, it is submitted by the learned counsel that the same does not oust the jurisdiction under the Act. The same, according to the learned counsel, endorses that the tenement is situated within the jurisdiction of the above-noted cantonment. He has further contended that no harm will be caused to the present Petitioner to prefer rent application under the Act which may be decided on its own merits. Insistence of the Petitioner to proceed under the Ordinance, according to him, is inexplicable. He has lastly contended that the instant petition has been preferred against the concurrent findings of the learned Courts below and thus requires no interference by this Court in its constitutional jurisdiction.

7. I have heard both the learned counsels and have perused the record. The instant adjudication will purposely be restricted to the finding of the courts below in respect of jurisdiction. The judgment will not dilate upon the dispute pertaining to ownership as the same is sub judice before the courts of competent jurisdiction. References will only be made to the said dispute where necessary, only for the purposes of illustrating the history of litigation between the respective parties.

8. In order to effectively adjudicate the issue pertaining to jurisdiction it will be relevant to first reproduce Section 17 of the Act:-

“17. Eviction of tenant:-- (1) After the commencement of this Act, no tenant whether before or after termination of his tenancy, shall be evicted from the building to his possession or occupation in execution of a decree passed

after such commencement, except in accordance with the provisions of this section.

(2) A landlord who seeks to evict his tenant shall apply to the Controller for an order in that behalf, and the Controller may, after giving the tenant a reasonable opportunity of showing cause against the application, make an order directing the tenant to put the landlord in possession, if he is satisfied that:

(i) the tenant has not paid or tendered the rent to the landlord within fifteen days of the expiry of the time fixed in the agreement of tenancy for payment of rent, or in the absence of such agreement within sixty days following the period for which the rent is due.”

9. The above-noted provision deals with the mode and method to be adopted in cases where the landlord is seeking eviction of the tenant. To further gauge the tenements on which the Act will be applicable, it will be imperative to examine the preamble and Section 1 of the Act. The same is reproduced as under:-

“An Act to make provision for the control of rents of certain class of buildings within the limits of the Cantonment areas and for the eviction of tenants therefrom.

WHEREAS it is expedient to make provision for the control of rents of certain class of buildings within the limits of the cantonment areas, for the eviction of tenants therefrom and for matters connected therewith;
Short title, extent and commencement

1. (1) This Act may be called the Cantonments Rent Restriction Act, 1963.

(2) It extends to all the cantonments in Pakistan.

(3) It shall come into force at once.” (Emphasis added)

10. Bare perusal of the above-noted Section and preamble of the said Act indicates that the same is applicable to certain classes of buildings and tenements “*within the limits of the cantonment areas*”. Moreover, Section 5 of the Act specifically ousts the jurisdiction of any other court, other than the one established under the Act. The said section is reproduced below:-

“5. The provisions of this Act and any rule or order made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force, or in any instrument or document”

11. It will now be expedient to examine the contents of the reply to the show cause notice furnished by the Cantonment Board Faisal in light of the provisions cited above. It is evident from the said reply that the tenement is located within

the limits of the said cantonment. The reply makes it abundantly clear that the tenement lies within the territorial limits of the said cantonment and therefore the provisions of the Act shall be applicable thereto. Relevant part of the reply is reproduced below:-

“It is pertinent to mention here that the subject property falls within the limit of C.B Faisal for taxation purpose/ municipal point of view only being not land owning agency”

12. I agree with the contention of learned counsel for the Respondent No.1 and hold that the learned Courts below have correctly refused to assume jurisdiction in the matter. I further agree with the contention of learned counsel for the Respondent No.1 that no harm will be caused if the Petitioner approaches the relevant Court under the Act and seeks eviction in accordance with law.

13. The overriding effect of the Act was adjudicated upon by a learned single judge of this Court in the case of **I.S.G.A. Ltd. Versus Mrs. Rift Fakhir¹**, which I concur with, wherein it was held as under:-

“The ejectment case was filed under the Sind Urban Rent Restriction Ordinance, 1959 (since repleaded and replaced by the Sind Rented Premises Ordinance, 1979) and the order of the ejectment was passed by the Controller appointed under Sind Rented Premises Ordinance, 1979, promulgated by the Government of Sind. But the rent matters arising between landlords and tenants within the limits of Cantonments are dealt with under the Cantonment Rent Restriction Act, 1963 and are adjudicated upon by the Controllers appointed thereunder by the Central Government. It is laid down under section 5 of the Cantonment Rent Restriction Act, 1963, that the provisions thereof and any rule or order made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument or document. It follows that the Cantonment Rent Restriction Act, 1963, overrides other laws. It is specifically provided under section 17(1) of the Act that no tenant shall be evicted from a building except in accordance with the provisions of the Act. Subsection (2) of section 17 of the Act provides that a landlord seeking eviction of a tenant shall have to apply to the Controller and the Controller has to decide the question in accordance with the provisions of the Act. The Controller is defined in clause (d) of section 2 of the Act as a person appointed by the Central Government under subsection (1) of section 6. Evidently, ejectment of the appellant from the bungalow situated within the limits of the Cantonment could

¹ 1985 C L C 364

not be ordered by the Controller other than that appointed by the Central Government under the provisions of the Cantonment Rent Restriction Act, 1963, and the impugned order of ejectment passed by the Controller appointed by the Provincial Government under the Provincial Law viz. the Sind Urban Rent Restriction Ordinance, 195 and its repealing ordinance namely the Sind Rented Premises Ordinance, 1979, is without jurisdiction.” (Emphasis added)

14. I further concur with the judgment authored by a learned single judge of the Lahore High Court in similar circumstances in the case of **Nasir Mehmood Versus Khawar Hussain and 5 others**² wherein it was held as under:-

“6. It is also pointed out that Cantonment Rent Restriction Act, 1963 has been promulgated for the control of rent of certain classes of buildings within the limits of cantonment area and for the eviction of tenant there from and section 17 thereof provides for eviction of a tenant from such premises by applying to the Controller for an order in that behalf The Controller as defined by section 2(d) of the said Act means a Controller of rent, appointed by the Central Government under subsection (1) of section 6 and includes the Additional Controller. This being so, the ejectment petition could be filed in the court of learned Rent Controller, appointed under the provisions of Cantonment Rent Restriction Act, 1963 and not in the court of Special Judge (Rent), appointed under the Punjab Rented Premises Act, 2009. It appears that the learned Special Judge (Rent) has illegally assumed jurisdiction in the matter, though, he had no power to adjudicate upon the ejectment petition.”

15. There is another aspect of the case which I have consciously not adjudicated upon. Prior to filing the rent case mentioned above the Petitioner earlier preferred another rent case bearing number 05/2014. The said rent application between the same parties was dismissed vide order dated 24.04.2017 and the Petitioner was directed to establish his ownership of the tenement prior to initiating an ejectment application under the relevant rent laws. Thereafter, the said proceedings culminated into Constitutional Petition bearing number 422/2024 which was disposed of vide order dated 06.06.2024 wherein the learned Rent Controller was directed to adjudicate the matter “*de novo*”. A deep deliberation into this aspect will inevitably revolve around the dispute pertaining to the title of the

² 2014 C L C 832

tenement, which as noted above, shall not be adjudicated in the instant judgment for reasons already noted.

16. In light of what has been held above, the concurrent findings of the court below require no interference. Consequently, the instant petition is dismissed along-with all pending applications, with no order as to costs.

J U D G E

Nadeem Qureshi "PA"