

HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

Before:

Justice Arbab Ali Hakro
Justice Riazat Ali Sahar

C.P No.D-862 of 2024

[Kashif and another v. Province of Sindh and 07 others]

C.P No.D-863 of 2024

[Muhammad Aslam Arain v. Province of Sindh and 07 others]

Petitioners by : Mr.Muhammad Arshad S. Pathan, Advocate

Respondents No.3 to 5 by : Mr.Niaz Hussain Abro, Advocate

Respondent No.6 by : Mr.Kandhar Ali, Advocate

Mr.Muhammad Ismail Bhutto, Additional Advocate General, Sindh

Dates of Hearing : **29.01.2026**

Date of Decision : **29.01.2026**

O R D E R

ARBAB ALI HAKRO J:- These two Constitution Petitions are being taken up together as they arise out of an identical factual matrix, involve the same set of official respondents and raise substantially similar questions of law touching upon alleged illegal dispossession, cancellation of long-standing tenancy rights, and purported manipulation of municipal processes by certain officers of the Hyderabad Municipal Corporation.

2. In C.P No.D-862 of 2024, the petitioners, Kashif and Muhammad Irfan, assert that their elders were allotted Shop No.2 at Naval Rai/Tower Market, Hyderabad, by the then Hyderabad Municipal Corporation in the year 1982, pursuant to a written tenancy arrangement which, according to them, was periodically renewed until 2003. They maintain that they continued in peaceful possession, regularly paid rent and municipal dues and never committed any breach of the tenancy terms. They allege that certain push-cart vendors, initially permitted to operate outside their shop, unlawfully intruded into the premises and that respondent No.5, a Tax Assistant of

HMC, deceptively induced them to sign an application purportedly for restoration of possession, only to later orchestrate the sealing of the shop and its illegal allotment to respondent No.6 after receiving heavy bribes.

3. In C.P No.D-863 of 2024, the petitioner Muhammad Aslam Arain narrates an almost identical sequence of events in respect of Shop No.3 of the same market. He avers that his elders had registered their business decades ago, obtained the shop on rent in 1982, and have continued to pay rent without default. He, too, alleges that push-cart holders, in connivance with certain association members, unlawfully entered the shop, and that respondent No.5 similarly induced him to sign an application for the restoration of possession. He contends that respondent No.5, in collusion with respondents No.2 to 4, sealed the shop, fabricated documents and subsequently allotted the premises to respondent No.6 after receiving substantial illegal gratification.

4. Respondent No.4 (Director Taxes, HMC) has filed detailed para-wise comments in both petitions, wherein the official stance is that although the original tenancy agreements of 1982 are admitted, the alleged renewals of 2003 are categorically denied as forged and fabricated. It is asserted that both sets of petitioners unlawfully sublet the shops to third parties, namely, Shahid in respect of Shop No.2 and Muhammad Aamir in respect of Shop No.3, thereby violating the terms of the tenancy and the Local Government Rules. Respondent No.4 maintains that repeated notices were issued to the petitioners to produce the original tenancy files and relevant documents, but they failed to appear or produce any records. Consequently, the tenancy rights were cancelled by formal orders dated 10.01.2024 (Shop No.2) and 17.01.2024 (Shop No.3), followed by the publication of public notices in newspapers and the initiation of open auction proceedings. It is further stated that after completion of the auction process, the shops were lawfully rented out to the highest bidders, who executed fresh tenancy agreements and were handed over possession.

5. Respondent No.6 in each petition has filed separate and independent comments. In C.P No.D -862 of 2024, respondent No.6, Jahanzaib @ Jazib Majeed, asserts that he was lawfully inducted as the tenant of Shop No.2 through an open auction conducted by the Hyderabad Municipal Corporation, having emerged as the highest bidder and having fulfilled all codal and

statutory requirements. In C.P No.D -863 of 2024, respondent No.6, Muhammad Adnan Arain, advances an identical defence in relation to Shop No.3, maintaining that he too participated in a duly advertised auction, offered the highest bid, executed a formal tenancy agreement and was handed over possession in accordance with law. Both respondents, No. 6, emphatically deny any collusion, illegality, or payment of bribes, and contend that the petitioners have approached this Court with mala fide intent after having lost their tenancy rights through due process.

6. Learned counsel for the petitioners in both petitions contends that the petitioners were long-standing tenants of HMC for more than four decades and their tenancy rights could not have been extinguished without due process. It is argued that no notice, hearing, or opportunity to defend was ever afforded to them and the alleged notices relied upon by HMC are fabricated, back-dated, and never served. Counsel submits that respondent No.5, in connivance with respondents No.2 to 4, devised a fraudulent scheme to usurp the shops by first inducing the petitioners to sign applications under false pretences, then sealing the shops and thereafter allotting them to respondent No.6 in exchange for heavy bribes. It is further argued that the entire exercise is tainted with malice, arbitrariness, and a colourable exercise of authority, attracting constitutional jurisdiction under Article 199. Counsel prays for the restoration of possession, the sealing of the shops through the Court, and the initiation of criminal and departmental proceedings against the delinquent officials.

7. Learned counsel representing respondents No.3 to 5 submits that the petitioners have no subsisting tenancy rights, as they themselves violated the terms of the original tenancy by unlawfully subletting the premises to third parties. It is argued that repeated notices were issued to the petitioners, calling upon them to produce original tenancy documents, but they failed to comply. Counsel maintains that the cancellation orders were passed strictly in accordance with law, followed by public notices and open auction proceedings. It is contended that the petitioners, having lost their tenancy rights through their own conduct, cannot invoke constitutional jurisdiction to challenge administrative actions taken in the absence of due process. Allegations of bribery, collusion and fabrication are denied as baseless and concocted.

8. Learned counsel for respondent No.6 submits that Respondent No.6 in both the Petitions is a bona fide tenant inducted strictly through open auction proceedings conducted by the Hyderabad Municipal Corporation after cancellation of the previous tenancies. It is argued that respondent No.6 in each petition participated in duly advertised public auctions, offered the highest bids, fulfilled all codal and statutory requirements, executed formal tenancy agreements and thereafter took lawful possession of the respective shops. Learned counsel contends that respondent No.6 has no nexus whatsoever with the allegations of collusion, bribery, manipulation or fabrication levelled by the petitioners, which are described as afterthoughts designed to cloud the petitioners' own violations of tenancy terms. It is further submitted that respondent No.6 has invested substantial amounts in the premises and is carrying on his livelihood therein, and any interference by this Court would cause irreparable loss to a lawful tenant who has acquired rights through due process.

9. Learned Additional Advocate General adopts the stance of the official respondents and submits that disputed questions of fact, particularly allegations of bribery and forgery, cannot be adjudicated in constitutional jurisdiction and require evidence, which can only be led before the competent forum.

10. We have heard the learned counsel for the parties at considerable length and have meticulously examined the material placed before us.

11. The factual canvas, though narrated separately in both petitions, is materially identical in substance, and the allegations levelled by the petitioners revolve around the same municipal functionaries, the same market and the same pattern of alleged manipulation. The petitions, therefore, invite a consolidated determination.

12. The foundational claim of the petitioners is that they or their elders were inducted as tenants of Shops No.2 and 3 in Naval Rai/Tower Market, Hyderabad, in the year 1982 and that such tenancy continued uninterrupted for decades, with rent being paid regularly and without default. The petitioners further assert that the tenancy agreements were renewed from time to time, including in 2003 and that they remained in lawful possession until the alleged unlawful intrusion by push-cart vendors and the subsequent sealing of the shops by municipal authorities.

13. The official respondents, however, have taken a categorical stance that although the original tenancy agreements of 1982 are admitted, the alleged renewals of 2003 are fabricated and that both sets of petitioners had unlawfully sublet the premises to third parties, thereby violating the terms of tenancy and the Local Government Rules. It is further asserted that repeated notices were issued to the petitioners to produce the original tenancy files, but they failed to appear or produce any record, compelling the authorities to cancel the tenancy rights and proceed with an open auction.

14. The petitioners have vehemently denied the issuance or service of any such notices and have alleged that the entire process of cancellation, sealing and subsequent auction was engineered by respondent No.5, a Tax Assistant, in collusion with respondents No.2 to 4, for the purpose of illegally allotting the shops to respondent No.6 in each petition in exchange for heavy bribes. These allegations, though serious in nature, are unsupported by any contemporaneous documentary material. The petitioners have not placed on record any proof of payment of rent beyond the challans already acknowledged by the respondents, nor have they produced any original tenancy documents or renewal agreements to substantiate their claim of continued lawful tenancy.

15. The record produced by the official respondents includes copies of notices dated November and December 2023, cancellation orders dated January 2024 and newspaper publications announcing the intended cancellation and subsequent auction. Whether these notices were actually served upon the petitioners is a disputed question of fact that cannot be conclusively determined in constitutional jurisdiction without the recording of evidence. The petitioners' bare denial, unsupported by any counter-material, cannot by itself dislodge the presumption of regularity attached to official acts, particularly when the respondents have produced documentary proof of issuance and publication.

16. The petitioners' allegations of bribery, collusion and fabrication of documents against respondent No.5 and other municipal officers also fall within the realm of disputed factual controversies requiring evidence, cross-examination, and forensic scrutiny. Such matters cannot be adjudicated under Article 199, which is neither designed nor equipped to

conduct a full-fledged factual inquiry. The constitutional jurisdiction is supervisory in nature and is invoked to correct jurisdictional errors, violations of law or breaches of fundamental rights that are demonstrable on the face of the record. Where the very foundation of the claim is contested and requires evidentiary determination, the petitioners must seek recourse before the appropriate forum.

17. The petitioners have also sought restoration of possession of the shops and sealing of the premises through this Court. Such relief is in the nature of recovery of possession and enforcement of alleged tenancy rights, which are matters falling squarely within the domain of the civil fora. The constitutional jurisdiction cannot be converted into a substitute for statutory remedies, nor can it be invoked to bypass the procedural framework established under the relevant municipal and rent laws.

18. The petitioners' grievance that the cancellation of tenancy was carried out without due process is not borne out from the record in a manner that would justify interference under Article 199. The respondents have produced notices, cancellation orders and newspaper publications, all of which *prima facie* demonstrate that the authorities acted within their administrative domain. Whether the petitioners actually received such notices or whether the cancellation was justified on merits are matters requiring factual adjudication, which this Court cannot undertake in writ jurisdiction.

19. As regards respondent No.6 in each petition, the record reflects that both were inducted through auction proceedings conducted after cancellation of the previous tenancies. The petitioners have not placed any material to show that the auction process was a mere façade or that respondent No.6 was illegally favoured. The allegations of bribery, though grave, remain unsubstantiated and cannot be accepted without evidence. The rights of a third-party bona fide tenant inducted through a public auction cannot be unsettled in writ jurisdiction on the basis of unverified allegations.

20. The petitioners have also sought initiation of criminal and departmental proceedings against respondents No.2 to 5. This Court cannot, in constitutional jurisdiction, direct initiation of criminal proceedings unless the material on record unmistakably discloses the commission of a cognizable offence.

21. The cumulative effect of the above discussion is that the petitions raise highly contentious factual issues, involve disputed questions regarding service of notices, validity of cancellation, alleged subletting and allegations of corruption, all of which require evidence and cannot be resolved in writ jurisdiction.

22. For the reasons recorded hereinabove, both Constitution Petitions, being devoid of merit within the limited scope of Article 199 of the Constitution are **dismissed**, leaving the petitioners at liberty to avail their appropriate remedies before the competent fora in accordance with law.

JUDGE

JUDGE

AHSAN K. ABRO