

**PLJ 2019 Lahore 725***Present: ABID AZIZ SHEIKH, J.*

MUHAMMAD ISMAIL--Petitioner

versus

MUHAMMAD ASLAM and another--Respondents

W.P. No. 182544 of 2018, heard on 12.9.2019

**Constitution of Pakistan, 1973--**

----Art. 199--Ejectment petition--Allowed--Appeal--Dismissed--Filing of writ petition--Allowed--Case was remanded back--Question of--Whether petitioner is bound to return actual amount of pagri or 50% of market value of shops--Oral tenancy--Challenge to--Pagri is neither a security deposit nor it could be adjusted against rent, hence landlord could not be debarred from institution of eviction proceedings merely because pagri was paid--In absence of any agreement to contrary, law including Act of 2009 does not recognize any automatic increase in amount of pagri or its return at prevailing market value of rented property when eviction orders is passed--In present cases, as there was no written agreement for return of pagri amount at 50% of prevailing market value of shops and further exact amount of pagri paid at time of tenancy in year 1982 and 1990, has been established, therefore, respondent is only entitled to receive back actual Pagri amount paid and not 50% of present market value of shops or any additional amount over and above pagri amount paid--Learned Appellate Court in impugned order instead of awarding exact amount of pagri paid i.e. Rs.250,000/- for shop No.8 and Rs.75000/- for shop No.9, awarded 250,000/- each for two shops (total pagri amount of Rs.500,000/-), which is neither supported by record nor based on law--Petition was dismissed. [Pp. 730] A, B, C & D

*Hafiz Asif Mehmood Butt, Advocate for Petitioner.**Ch. Abdul Majeed, Advocate for Respondents.*

Date of hearing : 12.9.2019

**JUDGMENT**

**Abid Aziz Sheikh, J.**--This judgment will also decide Writ Petition No. 176923/2018, as both these petitions are filed against the same impugned order dated 08.2.2018 passed by learned Appellate Court.

2. Brief facts are that one Muhammad Ismail (herein after referred to as petitioner) filed ejectment petition against Muhammad Aslam (herein after referred to as respondent). The ejectment petition was contested and after framing of issues and recording of evidence, ejectment petition was finally allowed on 28.3.2017. The respondent appeal was dismissed on 19.8.2017. The respondent being aggrieved filed Writ Petition No. 65834/2017, which was allowed and matter was remitted back to learned Appellate Court to re-adjudicate upon the issue of "**Pagri**" through reasoned order. Learned Appellate Court in pursuance to direction of this Court decided the question of pagri through impugned judgment dated 08.2.2018 and held that petitioner/landlord is liable to return the lump sum pagri amount of Rs. 500000/- (Rs. 250,000/- for each shop) to respondent/tenant. Both the petitioner/landlord and respondent/tenant being aggrieved of the impugned order dated 08.2.2018 have filed these constitutional petitions.

3. Learned counsel for the petitioner submits that two shops were rented out through oral rent agreement in year 1994 to respondent and there was no pagri paid by the respondent, hence there is no question of return any pagri amount.

4. Learned counsel for the respondent on the other hand submits that two shops were taken on rent and half of the market value of said shops were paid as pagri in years 1982 and 1990 respectively, therefore, the petitioner is liable to return the pagri amount @ 50% of current market value of the shops.

5. Arguments heard, record perused. In this case, the first and paramount question require determination is whether pagri amount was paid at the time of tenancy and if first question is answered in affirmative, then the second question is that what was the pagri amount paid and finally, whether said amount is returnable on actual basis or at present market value of the shops.

6. Regarding first question, the respondent in his leave to contest application specifically stated that in year 1982-1983, Shop No. 9 and in year 1990, Shop No.8 were taken on rent and further 50% of value of shops was paid as pagri amount. Subsequently both these shops were exchanged with Shops No.4 and 5 with consent of parties and one Muhammad Munir. To prove that pagri practice is prevailing in the Fazal Cloth Market, the respondent also produced written agreements of adjacent shops through EX-R1 and EX-R1/1. The above claim of respondent is also supported by his own oral evidence as RW-2 as well as of his witness who appeared as RW-1. Further RW-3 is the statement of Muhammad Ibrahim, who deposed that the rent of shop No.9 started in year 1982-1983 and in year 1990, Shop No.8 was taken on pagri. The petitioner/landlord claimed that there was oral tenancy in year 1994 but the above oral and documentary evidence of respondent remained rebutted. However, the above evidence shows that only half of the market value of shops No.9 and 8 was paid as pagri in years 1982 and 1990 respectively.

7. The next question is that what exactly was the amount of pagri paid by respondent to petitioner. The respondent in para 2 of his leave to contest application specifically claimed that in year 1982-1983, for Shop No. 9 and in year 1990, for Shop No. 8, pagri was paid at 50% of the market value of the shop. The respondent himself appeared as RW-2 and during cross-examination, stated that market value of Shop No. 9 in 1982 was 150000/- and pagri of Rs.75000/- was paid, whereas market value of shop No. 8 in year 1990

was Rs.500000/- and pagri of Rs.250000/- was paid for the said shop and rent was determined at Rs.150/-. One of witness of respondent (Munir Ahmad Norani), while appearing as RW-1 also stated the same facts. The above evidence produced by respondent himself proves beyond doubt that pagri amount paid in year 1982-1983 for Shop No. 9 was Rs.75000/- whereas pagri amount paid for Shop No. 8 in year 1990 was Rs.250000/-

8. Now the third and final question is that whether petitioner is bound to return actual pagri amount received or 50% of the present market value of the shops. Before answering this question, it is necessary to discuss and examine the concept of pagri and case law on the subject as under:--

i) The august Supreme Court in case titled as *Mirza Book Agency v Additional District Judge, Lahore* (2013 SCMR 1520), held that:--

*“if the alleged tenancy has been created under some registered instrument in which there is any such stipulation only for the reason that some pagri allegedly has been paid to the respondent or his predecessor-in-interest or to a person from whom the title has devolved upon the respondent, would by itself not make the tenancy in perpetuity. But this shall not foreclose the right and remedy if any available to the appellants for the recovery of the said amount of pagri from the person who is liable to return if permissible under the law, for which the appellant may bring an independent action, subject to the law (including the law of Limitation) before the appropriate forum”.*

ii) It is held in case titled as *Muhammad Aslam v Hanif Abdullah & Brothers* (2003 SCMR 1667) by the Apex Court that:--

*“The practice prevalently in old areas of Karachi City is that shops and apartments change the hands from one tenant to another on payment of Pagri subject to change of receipt by the landlord in the name of incoming tenant and the landlord only gets fixed percentage of commission on the Pagri amount for the change of receipt but in case no change in receipt is made by the landlord, the incoming tenant in respect of the premises would not pay Pagri amount to the original tenant who in return would not hand over possession to the proposed incoming tenant”.*

iii) In another case titled as *Mrs. Shamim Bang v. Mrs. Nazir Fatima* (2001 SCMR 1552), the Apex Court held that:--

*“even if the said amount is treated as 'Pagree' being mutual arrangement between the parties, having no legal sanctity behind it could not be adjusted against rent which has to be paid in accordance with the terms and conditions as stipulated in the tenancy agreement and amount of 'Pagree' would not figure in being alien to the tenancy agreement and would also amount to an introduction of a new concept for payment of rent for which an agreed specific mechanism has been evolved in the tenancy agreement.. If the said amount is treated as "security deposit" even then it could not be adjusted towards rent which is to be paid as per the terms and conditions mentioned in C the tenancy agreement which is admittedly silent that in case of default the amount of security deposit could have been adjusted against due rent”.*

iv) The Hon'ble Supreme Court in case titled as *Mrs. Nargis Latif v. Mrs. Feroz Afaq* (2001 SCMR 99) held that:--

*“For the sake of argument even if it is admitted that an amount of Rs.50,000 was given to petitioner by way of 'Pagri' it could not have been adjusted against rent which is an admitted legal position”.*

v) In the case titled as *Muhammad Ashraf v. Ismail* (2000 SCMR 498), the Apex Court held that:--

*“Even assuming, for the sake of argument, that Pugri had been paid to the previous owner, as contended by the learned counsel, then too no adjustment of the arrears of rent against such Pugri can be claimed”., when the property has already been sold to the present respondents; surely these respondents cannot, by any stretch, be made to suffer for the unlawful doings of others. In the result, we find no merit in the petition which is accordingly dismissed and leave is refused.”*

vi) In another case titled as *Pir Muhammad Manjh v. Naveed Iqbal Malik* (2017 MLD 418), this Court held that:--

*“Reverting to the moot point, it is observed that prior to promulgation of "The Act, 2009", for regulating the matters relating to tenancy as well as eviction of tenants in the Province of Punjab, The Punjab Urban Rent Restriction Ordinance (VI of 1959) (hereinafter referred as "The Ordinance, 1959") was in force which provided entirely different grounds for eviction of tenant from the premises, as embodied in Section 13 of "The Ordinance, 1959". The term "pagri" was not recognized by the said law. It was for the first time that by way of "The Act, 2009" the term "pagri" was provided a statutory protection”.*

vii) It is held by this Court in case titled *Zaheer Ahmad Babar v. Additional District Judge*, (2015 YLR 1617) that:--

*“It is an admitted fact, under Section 2(e) of the Punjab Rented Premises Act, 2009, the amount of 'Pagri' is a recognized amount payable to the landlord and the Rent Tribunal while deciding the rent petition is bound to decide the return or confiscation of the amount of 'Pagri'”.*

viii) In Indian jurisdiction, the concept of “Pagri” was discussed by Delhi High Court in *Bawa Shiv Charan Singh vs Commissioner of Income-Tax* (ILR 1984 Delhi 625) and observed that:--

*“Normally, the initial amount paid for the acquisition of the leasehold right is "premium" "pagri", "salami" or by whatever name it may be called. This is in consideration for being let in possession. The consideration for relinquishment of the tenancy rights may again be a lump sum called "pagri". The periodical payments in terms of money for the use and occupation of the premises is called rent or lease money. What distinguishes rent from "premium" is that the latter represents money paid as a*

*price or a consideration for being let in possession. "Pagri" is a consideration for the creation or surrender of the property or the relinquishment of the leasehold rights".*

9. The above case law shows that before promulgation of the Punjab Rented Premises Act, 2009 (**Act of 2009**), the term "Pagri" was not recognized under the provision of the Punjab Urban Rent Restriction Ordinance (VI of 1959) (**Ordinance of 1959**). However, as of practice in certain areas, pagri amount was used to be paid as consideration for being let in possession. However, the pagri is neither a security deposit nor it could be adjusted against rent, hence landlord could not be debarred from institution of eviction proceedings merely because pagri was paid. Further before Act of 2009 as there was no legal recognition of "Pagri", it could not be enforced through process of Court in eviction petition. However, in Act of 2009 for the first time, the term "Pagri" has been provided statutory protection and Section 2(e) define the term "Pagri" includes any amount received by a landlord at the time of grant or renewal of a tenancy except advance rent or security. Therefore, now under Act of 2009, the rent Tribunal while deciding the rent petition is bound to decide the issue of return or confiscation of the amount of Pagri. However, in absence of any agreement to contrary, the law including Act of 2009 does not recognize any automatic increase in the amount of pagri or its return at the prevailing market value of the rented property when eviction order is passed.

10. In present cases, as there was no written agreement for the return of pagri amount at 50% of prevailing market value of shops and further the exact amount of pagri paid at the time of tenancy in years 1982 and 1990, has been established, therefore, the respondent is only entitled to receive back the actual Pagri amount paid and not 50% of present market value of the shops or any additional amount over and above pagri amount paid. The learned Appellate Court in impugned order instead of awarding exact amount of pagri paid i.e. Rs.250,000/- for Shop No. 8 and Rs.75000/- for Shop No.9, awarded 250,000/- each for two shops (total pagri amount of Rs.500,000/-), which is neither supported by record nor based on law.

11. In view of above discussion, Writ Petition No. 176923/2018 filed by respondent/tenant is dismissed whereas Writ Petition No.182544/2018 filed by petitioner/landlord is partly allowed and lump sum pagri amount is reduced to Rs.325000/- (Rs.250000/- for Shop No. 8 and Rs.75000/- for Shop No. 9). The remaining directions issued by learned Appellate Court in impugned order shall remain intact.

(Y.A.) Order accordingly