

Stereo.HCJDA 38.
JUDGMENT SHEET.

**LAHORE HIGH COURT
RAWALPINDI BENCH, RAWALPINDI.
JUDICIAL DEPARTMENT**

W.P.No.3843 of 2021

MUHAMMAD NAZEER

Versus.

CH. GHULAM HUSSAIN, ETC.

JUDGMENT.

Date of hearing: **19.01.2023**

Petitioner by: Khawaja Hassan Riaz, Advocate.

Respondent No.1 Syed Abbas Hussain Shah, Advocate.
by:

Mirza Vigas Rauf, J. This petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 arises out of an order dated 18th October, 2021, whereby the Additional Rent Controller, Chaklala Cantonment Board, Rawalpindi proceeded to pass the tentative rent order in a pending ejectment petition.

2. Facts in brevity necessary for adjudication of instant petition are that respondent No.1 (hereinafter referred to as “respondent”) claiming himself to be the owner/landlord of property bearing Khewat No.174/170 situated near filtration plant (front side) Ch. Niaz Ali Road Tulsa Road Lalazar, Rawalpindi moved a petition under section 17 of the Cantonments Rent Restriction Act, 1963 (hereinafter referred to as “Act, 1963”) seeking eviction of the petitioner on multiple grounds. While resisting the ejectment proceedings, the petitioner submitted his reply wherein he categorically denied the relationship of landlord and tenant. During the proceedings, the Additional Rent Controller proceeded to pass the tentative rent order in terms of section 17 (8) of the “Act, 1963” on 18th October, 2021 directing the petitioner to deposit the rent @ Rs.20,000/- per month w.e.f October, 2020 to October, 2021 amounting to Rs.2,60,000/- before 30th November, 2021 and also to

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deposit regular future rent before 5th of each month which is now impugned herein.

3. Learned counsel for the petitioner contended that there exists no relationship of landlord and tenant between the petitioner and “respondent”. He added that when once the relationship was denied, it was incumbent upon the Additional Rent Controller to frame an issue to that effect. Learned counsel emphasized that in case of denial of relationship, the Additional Rent Controller could not pass the tentative rent order and the impugned order is illegal and unlawful.

4. Conversely, learned counsel representing the “respondent” submitted that the impugned order is interlocutory order and as such writ petition is not maintainable. He added that tentative rent order was rightly passed by the learned Additional Rent Controller.

5. Heard. Record perused.

6. The precise and foremost question before this Court is as to whether in case of denial of relationship of landlord and tenant, the Additional Rent Controller was vested with the power to pass tentative rent order under section 17 (8) of the “Act, 1963”. There is no denial to the fact that the petitioner, while submitting his reply, denied the relationship of landlord and tenant. The term “landlord” is defined in section 2(g) of the “Act, 1963”, which reads as under: -

2 (g) “Landlord” means any person for the time being entitled to receive rent in respect of any building whether on his own account or on behalf or for the benefit of any other persons, or as a trustee, guardian or receiver and includes a tenant who, being authorised under the terms of his lease so to do, sublets the building and every other person for the time being deriving title from the landlord;

Section 2 (j) provides the definition of “tenant” in the following manner: -

2 (j) “tenant” means any person who undertakes or is bound to pay rent as consideration for the possession or occupation of a building by him or by any other person on his behalf, and includes:

(i) any person who continues to be in possession or occupation of the building after the termination of his tenancy; and

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- (ii) in the event of the death of the tenant, his heirs and successors and after the termination of the tenancy, his heirs and successors who continue to be in possession or occupation of the building.

7. A landlord can seek eviction of tenant by moving a petition under section 17 of the “Act 1963” on the grounds mentioned therein. Subsection 8 of section 17 empowers the Rent Controller to direct the tenant to deposit in his office before a specified date all the rent due from him and also to deposit regularly till the final decision of the case, before the 5th day of each month, the monthly rent which subsequently becomes due either on the first hearing of proceeding or as soon thereafter as may be but before issues are framed. In case of any dispute as to the amount of rent due, the Rent Controller shall determine such amount approximately. From the bare reading of subsection 8, it is manifestly clear that a direction thereunder can only be given to the tenant. Since at the very outset, the petitioner denied the existence of relationship of landlord and tenant, so it was incumbent for the Rent Controller to first frame preliminary issue to this effect in order to determine the existence of relationship of landlord and tenant between the petitioner and “respondent” or otherwise.

8. It is trite law that in case of denial of relationship in the ejection petition, if it is determined by the Rent Controller that there exists relationship of landlord and tenant between the petitioner and “respondent”, the latter should have been evicted straight away on determination of relationship. The Rent Controller cannot proceed mechanically with the proceedings and pass an order under section 17 (8) of the “Act, 1963” without being satisfied that there exists relationship of landlord and tenant between the parties before it. As per preamble, the provisions of “Act, 1963” can only be invoked for the control of rents of certain class of buildings within the limits of cantonment areas, eviction of tenants therefrom and for matters connected therewith. The purpose and object of the “Act, 1963” is to control and regulate the matters interse tenant and landlord. The Rent Controller, thus, cannot travel beyond the ambit of “Act, 1963”. In order to exercise the jurisdiction under the “Act, 1963”, the existence of relationship of landlord and tenant interse parties is *sine qua non*. To this effect, guidance can be sought from Mian UMAR

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IKRAM-UL-HAQE v. Dr. SHAHIDA HASNAIN and another (2016 SCMR 2186). The relevant extract from the same is reproduced below:-

5. The Ordinance was repealed by the Punjab Rented Premises Ordinance, 2007 which finally culminated into the Act. Again, in this special law (the Act) the jurisdiction of the Rent Tribunal is restricted to disputes which are covered by the Act in terms of subject matter, parties and territorial jurisdiction. Subject matter jurisdiction includes non-agricultural residential or non-residential buildings or rented land whereas in terms of territorial jurisdiction it is the same as the extent of the jurisdiction of the Rent Tribunal under the previous law. With respect to parties, as was the case under the earlier law, the Rent Tribunal would only assume jurisdiction over a matter once the jurisdictional threshold is crossed by establishing that the matter involves a landlord and tenant. 'Tenant' has been defined in section 2(l) to mean as under:-

"...a person who undertakes or is bound to pay rent as consideration for the occupation of a premises by him or by any other person on his behalf and includes;

- (i) a person who continues to be in occupation of the premises after the termination of his tenancy for the purpose of a proceeding under this Act;
- (ii) Legal heirs of a tenant in the event of death of the tenant who continue to be in occupation of the premises; and
- (iii) A sub-tenant who is in possession of the premises or part thereof with the written consent of the landlord..."

Section 24 of the Act reads as under:-

"24. Payment of rent and other dues for pending proceedings.-
--(1) If an eviction application is filed, the Rent Tribunal, while granting leave to contest, shall direct the tenant to deposit the rent due from him within a specified time, and continue to deposit the same in accordance with the tenancy agreement or as may be directed by the Rent Tribunal till the final order.

(Emphasis supplied)

- (2) If there is a dispute as to the amount of rent due or rate of rent, the Rent Tribunal shall tentatively determine the dispute and pass the order for deposit of the rent in terms of subsection (1).
- (3) In case the tenant has not paid a utility bill, the Rent Tribunal shall direct the tenant to pay the utility bill.
- (4) If a tenant fails to comply with a direction or order of the Rent Tribunal, the Rent Tribunal shall forthwith pass the final order."

Through the impugned judgment the learned High Court has tried to resolve the question at hand by dwelling upon the larger scheme of the new rent laws by trying to decipher the latent intent of the legislature, which in our view was completely unnecessary because the answer to the question is

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quite patent. A plain reading of section 24 of the Act reproduced hereinabove makes it clear that a direction is not to be issued to the respondent of an eviction application but to a tenant. The use of the word 'tenant' as opposed to 'respondent' speaks to the legislative intent. This usage appears to be conscious and deliberate, because elsewhere in the Act where the parties to a lis are meant to be referred to without identifying their legal characters, the words 'applicant' and 'respondent' are used instead of 'landlord' and 'tenant' (see Sections 19, 21 and 22 etc.). Where there is a specific intention to do so and the attending context requires that the parties be referred to by their legal status, the legislature has used the words 'landlord' and 'tenant' (see sections 5, 7, 9, 10, 11, 12, 13, 14, 15, 20, 24 etc.). It is a settled canon of statutory interpretation that where a statute uses a particular word(s), the presumption is that such word(s) is illustrative of the legislative intent unless there are very cogent reasons to displace the same and in our view, there are no such reasons that justify interpreting section 24 of the Act in a way that defeats its express meaning. Therefore, it follows that where the relationship of landlord and tenant is denied, the Rent Tribunal would lack jurisdiction, on account of the doctrine of jurisdictional fact, to pass an order for payment of rent due under section 24 of the Act until and unless the Tribunal positively ascertains the relationship of tenancy and establishes that the respondent to the eviction application is in fact a 'tenant' in terms of section 2(l) of the Act. As regards the argument of the learned counsel for the respondent that where there is a contumacious denial by the respondent of an eviction application the Rent Tribunal should pass an order for payment of rent due, suffice it to say that contumacious denial of the relationship of tenancy would form the basis for declining relief to the respondent. Where the denial, *prima facie*, appears to be tainted and contumacious, the Rent Controller would refrain from granting leave to the respondent as a matter of right and course, in a perfunctory manner. Instead, when the Rent Tribunal, without framing an issue, concludes that the denial is contumacious in nature, it may refuse to grant leave and allow the eviction application. Whilst so doing, the Tribunal can simultaneously pass an order under section 24 of the Act finally determining the rent due from the tenant and direct that the same be deposited/paid. However, where once leave has been granted and the Tribunal has first to decide the question of its own jurisdiction, then in that eventuality, on account of the clear provisions of section 24 *ibid* read with the definition of the word 'tenant' appearing in the Act, the Rent Tribunal is precluded from passing an order without first determining the jurisdictional fact. Once the relationship of tenancy has been denied the jurisdiction of the Rent Tribunal has essentially been called into question and needs to be resolved before the Tribunal can proceed to pass an order for payment of rent due. It needs to be appreciated that there is a distinction between an issue as to the very authority to adjudicate and those issues which may arise as between the parties. The Rent Controller must first establish relationship of landlord and tenant. Objections "to" proceedings must be distinguished from objections "in" the proceedings. Issue of jurisdiction may be raised by a party but it only concerns the court and the party over whom it is asked to assume jurisdiction. To hold otherwise would be to defeat the express intention of the statute, which is that an order for payment of rent due should only be passed against a tenant, and not merely a respondent of an eviction application. The relationship of landlord and tenant is an essential question which has a direct effect upon the assumption and exercise of the jurisdiction of the Rent Tribunal, which (question) must necessarily be positively ascertained before passing an order for payment of rent due

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under section 24 of the Act. The judgment of the High Court reported as *Farrukh Nadeem v. Muhammad Ahmad Khan and another* (2009 MLD 955) relied upon by the learned counsel for the respondent to the effect that where there is a contumacious denial an order under section 13(6) of the Ordinance can be passed is bad law which cannot be sustained, thus this judgment is set aside. It may however be mentioned here that where default in the payment of rent is set out as a ground in the eviction application, the relationship of tenancy is denied by the respondent, leave is granted to the respondent of the case, an issue in this context is framed, evidence is led by the parties, and the Rent Tribunal comes to the conclusion that such relationship exists, the Tribunal by applying the principles of estoppel and the rule of forfeiture of tenancy shall straightaway pass an order of eviction against the respondent/tenant and shall also pass the final order regarding the amount of rent due to the landlord which the respondent (adjudged as a tenant) is obliged to pay, and such order shall be executable against the tenant, besides the execution of the eviction. However where grounds envisaged by section 15 of the Act other than default are raised in an eviction application, obviously the Rent Tribunal after deciding the issue of relationship of tenancy and finding in favour of the landlord may frame further issues on merits and at that point of time pass an order under section 24 ibid.

In the case of *ASHIQ HUSSAIN and another v. JAMIA MASJID HANFIA GHOUSIA through President* (PLD 2007 Lahore 283), this Court reiterated the above principles in the following words: -

4. I have heard learned counsel for the parties. The Order under section 13(6) could only be passed, where either the relationship of landlord and tenant is admitted or it is established from the record that the denial by the respondent is contumacious, illusionary frivolous, baseless and without substance. In this behalf, cogent reasons should be recorded by the Rent Controller, before discarding the denial and passing the order under section 13(6) of the Rent Restriction Ordinance. But once a tenant has denied such relationship and issue in this behalf is intended to be framed by the Controller, it is not permissible for him to pass an order under section 13(6), directing the tenant to deposit the rent, because in the case, where default in the payment of rent is set out as a ground for the eviction, as in the present case, the respondent of the case, while denying the relationship takes a grave risk, that in case the tenancy is established, the matter shall not be further adjudicated, rather his tenancy shall be forfeited and straightaway an ejection order shall be passed against him. As mentioned above, the ejection application in the case, has been filed inter alia on the ground of default in the payment of monthly rent therefore, the Rent Controller after deciding the issue of tenancy could evict the tenant forthwith, if it is, proved that the relationship inter se the parties exists. Moreover in the case, where the tenancy is denied, the Rent Controller is not supposed to frame any other issue, such as on the ground of personal requirement or wilful default in the payment of the rent. To this extent, also the order framing issues Nos.2 and 3, is not proper and the same is also liable to be set aside, resultantly, by allowing this appeal, the impugned orders are set aside and the matter is remanded to the Rent Controller with the direction that the evidence of the parties be recorded on the issue of relationship and to decide the eviction application on the basis of that issue within three months from the date of

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first appearance of the parties, who are directed to appear before the Rent Controller on 6-11-2006.

9. After having an overview of the principles laid down hereinabove in the cited judgments, there can be no second opinion that when once a respondent in the ejectment petition denies the existence of relationship of landlord and tenant, it becomes obligatory for Rent Controller to frame a preliminary issue to that effect so as to determine the relationship inter se parties in the first instance. Needless to observe that if by virtue of deliberation on such issue, ultimately the tenancy is established, the matter shall not be further adjudicated and the respondent should be confronted straight away with an ejectment order.

10. So far as contention of learned counsel for the petitioner that the impugned order being interlocutory is not amenable to constitutional jurisdiction, it is observed that though in ordinary course, the constitutional jurisdiction should not be exercised against an interlocutory or interim order as a run-of-the-mill case but when such order, at the face of it, is patently perverse and appears to be suffering with illegalities, the jurisdiction of High Court under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 cannot be abdicated or abridged. Needless to observe that though scope of constitutional jurisdiction against an interim order is limited but when once Court reaches at the conclusion that the order/action under challenge is fraught with illegalities as to alter the justice, it cannot sit as a silent spectator to perpetuate a void order. Reference in this regard can be made to MUHAMMAD SUMAK MALIK and another v. MUHAMMAD ASIF KHAN and 3 others (2020 CLC 768) and Mst. ZAHIDA PERVEEN v. IFTIKHAR HUSSAIN and 2 others (2019 YLR 474).

11. For the foregoing reasons, this petition is allowed with no order as to costs. Resultantly, impugned order dated 18th October, 2021 is set aside being illegal and unlawful. As a sequel, the Additional Rent Controller, Chaklala Cantonment Board, Rawalpindi shall first frame a preliminary issue with regard to existence of relationship of landlord and tenant between the petitioner and respondent and after determining the existence of relationship of

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landlord and tenant or otherwise interse parties, shall then proceed in accordance with law, especially keeping in view the observations recorded hereinabove. Parties are directed to appear before learned Additional Rent Controller, Chaklala Cantonment Board, Rawalpindi on 27.02.2023.

**(MIRZA VIQAS RAUF)
JUDGE**

Approved for reporting

(JUDGE)

Zeeshan