

***Stereo.HCJDA 38.***  
**JUDGMENT SHEET.**

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

**F.A.O.No.21 OF 2020**

**MUHAMMAD AMIN.**

**Versus.**

**MUHAMMAD ASIF ASKARI, ETC.**

**JUDGMENT.**

*Date of hearing:*      **17.10.2023.**

*Appellant by:*      **M/s Muhammad Taimur Malik and Wasif Ali Ch., Advocates.**

*Respondents by:*      **Khawaja Hassan Riaz, Advocate.**

**Mirza Viqas Rauf, J.** This appeal under section 24 of the Cantonments Rent Restriction Act, 1963 (hereinafter referred to as "Act, 1963") arises out of order dated 15<sup>th</sup> January, 2020, whereby the Rent Controller, Wah Cantonment proceeded to allow the ejectment petition filed by the respondents seeking eviction of the appellant from shop No.2 forming part of property No.B-80, Lalarukh Wah Cantt (hereinafter referred to as "rented premises").

2. The facts forming background of this appeal are that the respondents, claiming themselves to be landlords of the "rented premises", filed an ejectment petition under section 17 of the "Act, 1963" seeking eviction of the appellant on the grounds of personal bonafide need and damage to the "rented premises". The ejectment petition was resisted by the appellant on multiple grounds, including denial of relationship of landlord and tenant. From the divergent pleadings of the parties, the Rent Controller framed multiple issues and then proceeded to record evidence of both the sides. On completion of evidence, ejectment petition was accepted conditionally by way of order dated 15<sup>th</sup> January, 2020, which is now impugned in this appeal.

3. Learned counsel for the appellant contended that no cogent evidence was though produced by the respondents to show that the "rented

*premises” are required for their personal use but the ejectment petition has been accepted in an illegal and unlawful manner. It is added that the Rent Controller did not properly appreciate the evidence of the parties while allowing the ejectment petition. Learned counsel emphasized that the impugned order is not tenable under the law.*

**4.** *Conversely, learned counsel for the respondents seriously resisted this appeal and defended the eviction order.*

**5.** *Heard. Record perused.*

**6.** *It appears from the record that initially ejectment petition was filed by Muhammad Asif Askari (respondent No.1). The appellant, while resisting the ejectment petition, submitted his reply wherein he asserted that the “rented premises” were obtained by him from Muhammad Tariq Anwar. During the proceedings, an application for impleading of Muhammad Tariq Anwar, Najam-ul-Hassan, Mst. Pakar-e-Anwaar and Mst. Huma Anwaar was, however, moved on the ground that they are also co-owners/landlords of the “rented premises”. The application was allowed and they were arrayed as petitioners in the ejectment petition. The ejectment petition was, thus, accordingly amended. In the light of respective pleadings of the parties, necessary issues were framed by the Rent Controller. In support of averments of the petition, respondent No.1 appeared as AW-1. He reiterated the contents of the ejectment petition and stated that he is co-landlord of the “rented premises” and also general attorney of his brothers and sisters. It is also stated that the “rented premises” are required bona fide for the personal use of the respondents as they have retired from their service.*

**7.** *On the contrary, the appellant submitted his affidavit in evidence as Exh.R1 and controverted the claim of the respondents. From the analysis of the evidence produced by both the sides, there remains no cavil to the fact that the respondents have duly established their personal bonafide need. The ejectment petition was ultimately allowed by way of impugned order.*

**8.** Section 17 of the “Act, 1963” lays down the grounds for eviction of a tenant from the rented premises. Personal bonafide need is one of the recognized grounds for eviction. Sub-section 4 (b) of section 17 of the “Act, 1963” deals with the ground of personal bonafide need in case of commercial building, which reads as under: -

**17. Eviction of tenant.- (1)....**

(2)....

(3)....

(4) A landlord may apply to the Controller for an order directing the tenant to put the landlord in possession,--

**(a) in the case of a residential building, if—**

(i) he requires it in good faith for his own occupation or for the occupation of any member of his family; and

(ii) he or the member of his family, as the case may be, is not occupying any other residential building suitable for his needs at the time, in the Cantonment Area concerned or in any local area in the vicinity thereof; and

(iii) he or the said member has not vacated such a building in the said area or vicinity without sufficient cause after the commencement of this Act; and

**(b) in the case of a commercial building, if--**

(i) he requires it in good faith for his own use; and

(ii) he is not occupying in the Cantonment Area concerned or in any local area in the vicinity thereof in which such building is situate for the purposes of his business any other such building suitable for his needs at the time; and

(iii) he has not vacated such a building in the said area or vicinity without sufficient cause after the commencement of this Act:

Provided that where the tenancy is for a specified period agreed upon between the landlord and the tenant, the landlord shall not be entitled to apply under this sub-section before the expiry of such period:

Provided further that when the landlord has obtained possession of a residential or a Commercial building under the provisions of sub-clause (a) or sub-clause (b) he shall not be entitled to apply again for the possession of any other building under that sub-clause, unless the building of which he had previously taken possession has become unsuitable for his needs:

Provided also that this sub-section shall not apply to serais, hotels, dak-bungalows, lodging-houses, boarding houses, residential clubs, restaurants, eating houses, cafes, refreshment rooms and places of public recreation or resort or premises dealing in sales or production of materials of books of educational and cultural values except where the landlord requires any such building to carry on any such business of his own, in which case he may make an application under this sub-section after having served two years notice on the tenant; but no building which is not on the commencement of this Act, being used for any of the aforesaid purposes, or has not after such commencement been let out expressly for any such purpose, shall be converted to any such purpose except with the consent in writing of the landlord.

**(Underlining supplied for emphasis)**

**9.** *It is an oft repeated principle of law that whenever a landlord pleads that the “rented premises” are required to him for his personal need bona fide, assertion on oath by the landlord that he requires the property in good faith for his personal use shall be sufficient to accept his bona fides if such assertions are consistent and in conformity with the averments of the ejectment petition. Such statement cannot be discarded in vacuum. Even otherwise, it is always the landlord, who is vested with the prerogative to exercise his choice for the “rented premises” and if he needs it bona fide for his personal use, his claim cannot be rejected outrightly.*

**10.** *It would not be out of place to mention here that in terms of sub-section (5) of section 17 of the “Act, 1963”, the Controller shall, if he is satisfied that the claim of the landlord under sub-section (4) is bona fide make an order directing the tenant to put the landlord in possession of the building on such date as may be specified by the Controller and if the Controller is not satisfied, he shall make an order rejecting the application provided that the Controller may give the tenant a reasonable time for putting the landlord in possession of the building and may extend such time so as not to exceed three months in aggregate. To this effect, sub-section 6 of section 17 of the “Act, 1963” cannot be ignored, which ordains that where the landlord who has obtained possession of a building in pursuance of an order made under sub-section (5) does not himself, or where*

*possession of the building has been obtained for any member of his family, such member does not occupy the building within one month of the date of obtaining its possession, the tenant who had been evicted may apply to the Controller for an order directing that the possession of such building be restored to him and the Controller may thereon make an order accordingly. The above provision clearly safeguards the rights of the tenant. Guidance in this regard can be sought from PAKISTAN INSTITUTE OF INTERNATIONAL AFFAIRS versus NAVEED MERCHANT and others (2012 SCMR 1498).*

**11.** *It is also well entrenched principle that if landlord canvasses multiple grounds for the eviction of the tenant it is not necessary for him to establish and prove all these grounds. If the landlord is able to prove one of the grounds asserted in the ejectment petition, the tenant can be evicted by the Rent Tribunal. Reliance in this respect can be placed on Major (Retd.) AHSAN-UL-HAQUE versus MUHAMMAD EJAZ (2011 SCMR 487). The relevant extract from the said judgment is reproduce below:-*

“11. It is on record, having been claimed and declared by the petitioner that he was employed with the Canadian Embassy as the Trade Commissioner for the last twenty years and that he was to retire on 18-8-2006. The exception taken by the two Courts that he had not alleged in the ejectment petition that the petitioner was in service and was about to retire and that it was only while under cross-examination that he had given the details of the kind of employment in which he was engaged and the time on which he was likely to retire, was misplaced. There is no legal requirement that a party must offer all the details through the pleadings as long as the relevant and necessary jurisdictional fact had been stated and asserted through such pleadings. The petitioner had submitted through his ejectment petition that he required the premises in question in good faith for his personal need and if the details thereof had come on record only through the courtesy of the cross-examiner then the opposite party deserved to thank their own counsel for it and the petitioner could not be punished for the same. As far as the record before the Court is concerned it did stand asserted on record that petitioner had been working as the Trade Commissioner in the Canadian Embassy for the last twenty years; that he was to retire on 18-8-2006 i.e. within about a year of the filing of the ejectment petition and that he intended to establish a Trading House in the premises in question. Through whose courtesy the said material had come on record was not relevant as long as the said material was available on

record. It may be added that the claim of the petitioner that he wanted to set up a Trading House was perfectly reasonable and acceptable as he had had the experience in the field having worked with a foreign mission as its Trade Commissioner for twenty long years.

12. Both the learned Courts including the High Court failed to appreciate that having so claimed about his service and about the date of retirement, the onus placed on petitioner stood more than sufficiently discharged and it was then for the respondent to show that such a claim made by the petitioner about his retirement was false. No such attempt had been made by the respondent. The impression with the High Court that once the petitioner had declared that he was to retire on 18-8-2006 and since the proceedings had remained pending in the trial Court till April, 2009, the fact that no attempt was made by the petitioner to produce any document to establish that the petitioner did in fact retire on 18-8-2006 was an extraneous consideration especially when not even a suggestion had been made to him during the cross-examination that his said claim of his date of retirement was false.”

**12.** *It is noticed that while moving the ejectment petition, the respondents canvassed that the “rented premises” were in fact meant for the residential purpose and on account of its conversion into commercial activity, a notice was served by the Cantonment Board Wah Cantt for unauthorized commercial use. In this backdrop, the Rent Controller while allowing the ejectment petition, imposed a condition that the respondents shall never use the “rented premises” un-authorisedly for commercial purpose until it is converted into commercial status after due process of law. It was also observed that in case the “rented premises” is again put to un-authorised commercial use, the Cantt Board Wah shall take legal action against the respondents in the light of order dated 24<sup>th</sup> October, 2017 passed by the Supreme Court of Pakistan and if the respondents get the “rented premises” commercialized in future, they will be bound to make their first offer to the appellant. The condition imposed by the Rent Controller is thus quite logical and in the interest of appellant.*

**13.** *In the wake of above discussion, I am of the considered view that the appellant has failed to point out any illegality or material irregularity in the impugned order. Resultantly, this appeal fails and is*

*dismissed with no order as to costs. Office to remit the record of Rent Controller, Wah Cantt accordingly.*

**(MIRZA VIQAS RAUF)**  
**JUDGE**

Approved for reporting

**JUDGE**

Zeeshan