

JUDGMENT SHEET
LAHORE HIGH COURT,
RAWALPINDI BENCH, RAWALPINDI
JUDICIAL DEPARTMENT

Writ Petition No.1479 of 2023

Mehmood Ali

V/S

*Chairman Evacuee Trust
Property Board and others*

JUDGMENT

Date of hearing	14.02.2024 and 26.02.2024
Petitioner(s) by	Raja Israr Ahmad Abbasi, ASC with Mohammad Masood Mahmood and Raja Anwaar-ul-Hassan, Advocates.
Respondent(s) by	Syed Najam-ul-Hassan Hashmi, Advocate for Respondents No.1 to 4. Hafiz Ahsan Khokhar, ASC for ETPB with Asif Khan, Deputy Administrator ETPB. Mr. Wisal Khan, Advocate with Tanzeela Nazar, Sarah Khan, Afaq Masood and Ahmad Hasan, Advocates for Respondent No.5. Mr. Zeeshan Riaz Cheema, ASC.

JAWAD HASSAN, J. The Petitioner has sought interpretation of Clause 3 of the Scheme for the Management and Disposal of Urban Evacuee Trust Properties, 1977 (the “*Scheme*”) from the Court by applying Doctrine of Textualism as developed by this Court in “*SERVICE GLOBAL FOOT WEAR LIMITED versus FEDERATION OF PAKISTAN and others*” (**PLD 2023 Lahore 471**) whereby the Court held that statute should be interpreted according to its plain meaning and not according to the intent of legislature.

I. CONTEXT

2. By invoking the constitutional jurisdiction of this Court under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 (the “*Constitution*”), the Petitioner has challenged order dated 05.04.2023 passed by the Respondent No.4/Additional Secretary

Incharge, Ministry of Religious Affairs and Interfaith Harmony, Islamabad, whereby revision petition filed by him against the order dated 13.03.2023 was dismissed. The Petitioner has also prayed to *set aside* orders dated 13.03.2023, 16.02.2023 passed by the Respondent No.3.

II. BRIEF BACKGROUND

3. Facts as narrated in this petition are that the Petitioner and his deceased brother Muhammad Ali (husband of the Respondent No.5) (*the “deceased tenant”*) had been jointly dealing with their business as tenants in Shop No.49 of Building No.U/1442 vide Demand No.1-1711-1-1997-O, situated at Macca Cloth Market, Raja Bazar, Rawalpindi (the “*Rented Shop*”). After the demise of the “*deceased tenant*” in year 2005, two applications for change of tenancy were moved respectively by the Petitioner and the Respondent No.5 before the Respondent No.3, which were dismissed vide order dated 03.11.2022, against which appeals were preferred before the Respondent No.2 by the Petitioner and the Respondent No.5. These appeals were accepted vide order dated 30.12.2022 with a direction to the Respondent No.3 to process the case for change of tenancy as per law and whilst passing fresh order. On submission of applications by the parties for change of tenancy, the Respondent No.3 vide order dated 16.02.2023 changed the tenancy in favour of the Respondent No.5. Before the above said order was challenged, the said Respondent passed another order dated 13.03.2023 against which revision petition of the Petitioner was dismissed vide order dated 05.04.2023, hence this petition.

III. PETITIONER’S SUBMISSIONS

4. Learned counsel for the Petitioner Raja Israr Ahmad Abbasi ASC *inter alia* argued that the Petitioner, being real brother, was sharing the business with the “*deceased tenant*” and, after his demise, he is entitled to the tenancy rights being one of the legal heirs; that the impugned orders have been passed in oblivious of the “*Scheme*”; that the “*deceased tenant*” died issueless and after his demise, the Petitioner, being co-sharer in the “*Rented Shop*” is in possession and

running the business therein, as such, he is entitled to tenancy rights in terms of Clause 3(III)(B)(b) of the “*Scheme*”; that just to oust the Petitioner from the “*Rented Shop*”, its rent has been increased by the Respondents by misconstruing Clause 3(III)(A)(a) of the “*Scheme*”; that the impugned orders have been passed by the Respondents with connivance of the Respondent No.5, as such, they are liable to be *set aside*.

IV. SUBMISSIONS OF RESPONDENTS NO.1 TO 4.

5. Learned law officer filed report and parawise comments on behalf of the Respondents No.1 to 4 according to which the Petitioner is an illegal occupant on the “*Rented Shop*” and he has not produced any document of his joint business with the deceased before the competent authority and the Respondent/ETPB in compliance of direction of Secretary/Revisional Authority, Ministry of Religious Affairs, Islamabad contained in order dated 05.04.2023 sealed the “*Rented Shop*” on 14.04.2023. It has further been stated that the impugned orders have been passed by the competent authorities as per law.

V. SUBMISSIONS OF RESPONDENT NO.5

6. Reply of this petition was also filed on behalf of the Respondent No.5. Ms. Tanzeela Nazar, Advocate controverted the stance of the Petitioner and *inter alia* argues that the “*deceased tenant*” was carrying on business in the “*Rented Shop*” in his sole capacity and, after his demise, the Petitioner took over possession at spot and the tenancy was terminated by the Respondents No.1 to 4 due to default in payment of rent and illegal occupation; that Clause 3(III)(B)(b) of the “*Scheme*” is not applicable to the case of the Petitioner as he remained fail to prove sharing of business with the “*deceased tenant*” in the “*Rented Shop*”; that the impugned orders are well reasoned, legal and have lawfully been passed by the Respondents No.1 to 4.

7. I have heard learned counsel for the parties and gone through the available record.

VI. DETERMINATION

8. It is not a disputed fact by the parties that the “*deceased tenant*” died issueless in year 2005. It had all started in year 2022, when the Petitioner and the Respondent No.5 first time respectively moved applications before the Respondent No.3/Deputy Administrator for transfer of tenancy rights in their favour being legal heirs of the “*deceased tenant*”. The said Respondent vide order dated 03.11.2022 cancelled the tenancy rights of sub-unit reflected in the name of the “*deceased tenant*” on the ground of illegal occupation by the Petitioner and default in payment of rent thereof. The said order was assailed through appeals by the parties before the Zonal Administrator, which were dismissed vide order dated 30.12.2022 and the matter was remanded to the Respondent No.3 with direction to process the case for change of tenancy rights as per law. Pursuant to aforesaid, the Respondent No.5 filed application on 16.01.2023 for transfer of tenancy on the ground of being legal heir of the “*deceased tenant*” while the Petitioner filed application on 18.01.2023 for change of tenancy rights in his favour being a sharer in business with the “*deceased tenant*”. Both afore-stated applications were decided by the Respondent No.3 vide order dated 16.02.2023 by dismissing the application of the Petitioner due to non-production of partnership deed and allowing that of the Respondent No.5 by ordering for transfer of tenancy rights in her favour, which were transferred under Clause 3(iii)B of the “*Scheme*” vide order dated 13.03.2023. Being aggrieved thereof, the Petitioner filed revision petition before the Respondent No.2, who upheld the order of the Respondent No.3 vide his order dated 05.04.2023, relevant portion of the same is reproduced hereunder:

“The impugned property was under the tenancy of Muhammad Ali S/o Abdul Shakoor, who died on 30.03.2005. The petitioner and respondent No.4 on 03.11.2022, submitted applications for change of tenancy in their favour. The main stance of the petitioner is that he is in possession of impugned property and running his business alongwith recorded tenant, therefore, tenancy

should be transferred in his name alongwith respondent No.4 being legal heirs of deceased tenant. During the arguments it transpires that the petitioner has no partnership deed and is in illegal occupation of the impugned property. The department after fulfilling all legal aspect transferred the tenancy right in favour of Mst. Zareen Ali wd/o Muhammad Ali as per clause 3(iii)B of the Scheme, 1977".

9. Pertinently, Chapter III (Residential/Commercial Buildings and Plots) of the "Scheme" deals with the tenancy, while sub-clause III deals with change of tenancy. The said clause reads as under:

(iii) *Change of tenancy may be allowed by a District Officer, an Administrator or the Chairman in respect of a unit / sub-unit carrying rent upto rupees one thousand per month, from rupees one thousand and one to rupees three thousand per month and exceeding rupees three thousand per month, respectively, in the following cases:-*

(A) *On the express consent, in writing of the previous tenant, the change of tenancy may be allowed by a District Officer, an Administrator or the Chairman, as the case may be, on the following terms and conditions:-*

- (a) *30% increase in the existing rent;*
- (b) *Payment of transfer fee equal to two years rent at the newly fixed rate in the case of residential unit / sub-unit and equal to four years rent in the case of commercial unit / sub-unit provided that a residential-cum-commercial unit / sub-unit shall be treated as a commercial unit sub-unit for the purposes of levy of transfer fee;*
- (c) *Payment of outstanding arrears of rent or any other dues out standing; and*
- (d) *execution of tenancy agreement by the new tenant;*

(B) *On the demise of a tenant the tenancy of a unit / sub-unit shall be alienable in favour of the legal heir(s), indicated in the schedule of tenancy deed; Provided that:-*

- (a) *the condition (a) and (b) mentioned in clause (A) above shall not be applicable to the case of change of tenancy in favour of legal heir(s) of deceased tenant;*
- (b) *if the real brother(s) of father of the deceased tenant were / was sharing the business in a commercial unit / sub-unit with the deceased tenant, they / he shall also be eligible for the change of tenancy alongwith other; legal heir(s); and in case of change of tenancy in favour or legal heirs on the demise of tenant a representative shall be nominated by the legal heirs from amongst themselves who shall be responsible to pay the rent and to abide by all the terms and conditions of the tenancy, individually and severely.*

Underlying for emphases

Bare reading of Clause III of the “*Scheme*” reveals that District Officer, an Administrator or the Chairman are empowered to change the tenancy with the conditions mentioned under the above referred clause. While Clause (III)(B) of the “*Scheme*” demonstrates that the tenancy of unit/sub-unit shall be alienable in favour of the legal heirs indicated in the schedule of tenancy deed subject to conditions incorporated under Clause (III)(B)(a) and (b) of the “*Scheme*”. Notably, two semicolons are used in aforesaid clause, first after the words “*change of tenancy alongwith other*” and the second after the words “*legal heir(s)*”. Generally, the semicolon is an indication of the legislature’s intention to deal with different issues within the single section of a statute or a clause of the scheme. The semicolon makes the division between the two parts of the sentence a little more prolonged than a comma. The first semicolon used after the expression “*change of tenancy alongwith other*” means any other claimant beside brother/father sharing business at the spot, whereas aforementioned second semicolon after the word “*legal heir(s)*” is intended for scope of change of tenancy at spot in favour of above-mentioned claimants and legal heirs indicated in the schedule of tenancy deed. In the case in hand, two persons are claiming tenancy rights under the “*Scheme*”; one is the Petitioner (brother of the “*deceased tenant*”) who is claiming tenancy rights being co-sharer and legal heir of the “*deceased tenant*” in the “*Rented Shop*” while the second is the Respondent No.5, who is claiming such right being exclusive legal heir of her deceased husband. During the course of hearing, the Court confronted to counsel for the parties to place on record the schedule of tenancy deed as mentioned under Clause 3(III)(B) of the “*Scheme*”, however, it has not been placed on record by either of the party.

10. The Petitioner in order to establish his right of tenancy in the “*Rented Shop*” has annexed with the petition copy of Income Tax Return for the period ending on 30.06.2004, copy of notice of ejectment dated 18.11.2022, copy of letter dated 17.04.2023 and copy of rent Bill relating to month March-April 2023. Additionally, C.M.No.1824 of 2023 to place on record certain documents had also been filed, which

include application for verification of legal heirship of the “*deceased tenant*” submitted before the Tehsildar, Rawalpindi by Mst. Kishwar Jahan (sister of the deceased), according to which the deceased left behind Mst. Zareen Akhtar (widow), Mehmood Ali and Yaqoob Ali (brothers) and Mst. Noor Jahan, Mst. Kishwar Jahan, Mst. Shahnaz Akhtar, Mst. Zakira, Mst. Yasmeen and Mst. Ghazala (sisters). He has also annexed photocopies of payment receipts regarding payment of rent in connection with the “*Rented Shop*” in favour of the Evacuee Trust Property Board from the year 2000 to 2022 alongwith copy of FIR dated 25.08.2023 and some approval bills issued by Shakoor Cloth Store. Likewise, the counsel for the Respondent No.5 also filed C.M.No.2404 of 2023 and placed on record list of sub-unit master file issued by the Deputy Administrator, Evacuee Trust Property Board, Rawalpindi. Whereas the counsel for the Respondents No.1 to 4, though filed report and parawise comments yet attached only copy of FIR dated 25.08.2023, notice to SHO, PS, Ganj Mandi, Rawalpindi regarding sealing of the “*Rented Shop*”, notice to the Petitioner for vacation of the “*Rented Shop*” dated 17.04.2023 and copy letter dated 18.04.2023 addressed to C.P.O, Rawalpindi.

11. Surprisingly, the husband of the Respondent No.5 died in year 2005 and none of the party ever tried to approach to the Respondents No.1 to 4 for change of tenancy right under the “*Scheme*”. The parties first time approached the Respondents in year 2022 by submitting their respective applications, consequently, the impugned orders have been passed, perusal of which reveal that at the one hand, the Petitioner has been declared as illegal occupant over the “*Rented Shop*” and ousted him therefrom due to non-production of partnership deed while on the other hand, the Respondents have transferred the tenancy rights in favour of the Respondent No.5 without resolving the issue of legal heirship of the Respondent No.5 and nothing finds discussed or justified as to how the tenancy rights have been transferred solely in her favour under Clause 3(iii)(B) of the “*Scheme*” without first determining rights of other legal heirs of the “*deceased tenant*”, as elaborated above. No effort whatsoever has been set forth by the

Respondents No.1 to 4 for the purpose of verification, ascertainment and determination of legal heirs of the “*deceased tenant*”, particularly when he had passed away issueless. As such, the impugned orders have been passed without affording opportunity of hearing to the other legal heirs of the deceased. Notwithstanding claim of the Petitioner of his holding a joint business with the “*deceased tenant*” over the “*Rented Shop*”, it was legally incumbent upon the Respondents No.1 to 4 to have determined status and entitlement of other legal heirs of the “*deceased tenant*” in the course of proceedings eventuating in orders in question passed by them. Parties are subject of the “*Scheme*” and their rights qua the “*Rented Shop*” are required to be determined in accordance with provisions contained therein. The Supreme Court of Pakistan has reiterated the principle in “Messrs Tri-Star Industries (Pvt.) Limited Vs. TRISA BURSTENFABRIK AG TRIENGEN and another” (**2023 SCMR 1502**) and has held that “*Where the law prescribes a thing to be done in a particular manner following a particular procedure, it shall be done in the same manner following the provisions of law without deviating from the prescribed procedure, and where a power is given to do a certain thing in a certain way the thing must be done in that way or not at all.*” Determination of status and entitlement of legal heirs of the “*deceased tenant*” was an utmost required and added obligation of the Respondents No.1 to 4 in light of repeated guidelines of the Supreme Court of Pakistan stressing hard on the subject, one instance whereof is the case “FAIZ ULLAH and others versus DILAWAR HUSSAIN and others” (**2022 SCMR 1647**), where it has been held that “*It is a settled proposition of law that at the time the inheritance of a deceased Muslim opens, all the entitled legal heirs become owners to the extent of their shares there and then.*” The Respondents No.1 to 4, in course of proceedings in question, have not attended and addressed question of legal heirship of the “*deceased tenant*” and thus have skipped following the law thereby frustrating and defying intent and requirement of law as well as extinguishing rights of legal heirs of the “*deceased tenant*”, which course adopted by

them is otherwise in clear deviation to the principle *audi alteram partem*, in connection whereto the Supreme Court of Pakistan has held in case “Government of Khyber Pakhtunkhwa through Chief Secretary and others Vs. Muhammad Khurshid” (**2021 SCMR 369**) that “*The learned High Court ought to have followed the principle of audi alteram partem and due process, which are basis of administration of justice, specially when any order, if passed, might affect the rights of the entity not party to the proceedings.*” To all extents, the issue raised in this petition pertains to determination of rights of legal heirs, which is a question of fact and cannot be resolved by this Court in constitutional jurisdiction.

12. It is pertinent to mention here that request of the parties to interpret Clause 3 of the “*Scheme*” in the light of doctrine of textualism cannot be dealt with by this Court as Clause 3(III)(B)(b) of the “*Scheme*” cannot be interpreted in absence of schedule of tenancy mentioned under the aforesaid clause. Moreover, the schedule of tenancy has neither been provided by either of the parties before this Court nor before the authorities at the time of passing orders and the parties never approached the concerned authorities for more than seventeen years for determination of their rights of legal heirship.

13. The Court at this stage cannot determine issue of change of tenancy of the parties by interpreting Clause 3 of the “*Scheme*” because the words used in Clause 3(B) state that on demise of the tenant, the unit shall be alienable in favour of his legal heirs. No schedule of legal heirs indicating the legal heirs of demised tenant is available on record and in absence thereof the Court cannot determine onward fate of transfer of tenancy with regard to subject matter.

14. When confronted, parties in attendance admitted that neither they are available with nor the record indicates any legal heirs in schedule of tenancy. Therefore, the request of learned counsel for the Petitioner to interpret Clause 3(III)(B)(b) of the “*Scheme*” cannot be entertained at this stage because both the parties rely upon respective provisions discussed afore necessitate determination regarding status of legal heirs of the “*deceased tenant*” for transfer of tenancy, but

stance of none of the parties may be responded positively until and unless status of legal heirs of the “*deceased tenant*” is determined by authorities concerned.

15. In view of above discussion, the writ petition is allowed and the impugned orders are hereby set aside. The matter is remitted to the Respondent No.3 with a direction to decide it afresh keeping in view Clause 3(iii)(B) of the “*Scheme*”, elaborated above, after hearing all necessary parties and taking into consideration the documents produced by them, if any.

(JAWAD HASSAN)
JUDGE

APPROVED FOR REPORTING

JUDGE

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