

HCJDA-38

JUDGMENT SHEET

IN THE LAHORE HIGH COURT, LAHORE

JUDICIAL DEPARTMENT

Writ Petition No.47196 of 2022

Waheed Younas

versus

Addl. District Judge & 3 others

J U D G M E N T

Date of hearing	07-06-2024
Petitioner by:	Syed Zulfiqar Ali Shah, learned Advocate.
Respondent No. 3 by:	Syed Muhammad Shah, learned Advocate.
Respondent No. 4 by:	Rana Zahid Nasim Shahid, learned Advocate.

Sultan Tanvir Ahmad, J:– Through present petition, filed under Article 199 of the Constitution of Islamic Republic of Pakistan-1973, final order dated 11.04.2022 passed by the learned Special Judge Rent, Gujranwala (the ‘**Rent Tribunal**’) as well as judgment dated 04.07.2022 passed by the learned Additional District Judge, Gujranwala have been challenged.

2. The facts, necessary for decision of the present petition, are that respondent No. 3 / *Jamia Masjid Insar-ul-Islam* instituted ejectment-petition

against present petitioner with respect to two shops measuring 15 x 10 sq. ft. bearing No. BII-16S-13 and BII-8S-33 (the '*premises*') on the ground of default. Leave to appear and defend the ejectment-petition was allowed on 23.06.2016. The relevant issues were framed and the parties led their respective evidence. Through final order dated 11.04.2022 the learned *Rent Tribunal* allowed the ejectment-petition and granted following relief:-

a) *The respondent is directed to hand over the vacant possession of rented shops, to the petitioner within the period of thirty days failing which the right of petitioner to prefer execution petition is intact.*

b) *It is also admitted fact that the respondent has not paid rent to mosque since July 2015. The petitioner has stated that the respondent agreed in June 2015, to pay monthly rent Rs.50000/- but the petitioner remained failed to establish this fact through sound and cogent evidence. Therefore, the petitioner is entitled to receive monthly rent as per receipts of year 2014 Mark-H, Mark-G with ten year percent annual increase starting from July 2015 till the eviction of respondent.*

3. Aggrieved from the same, rent appeal No. 08 of 2022 was instituted by the petitioner, which was dismissed vide judgment dated 04.07.2022; hence present petition.

4. Syed Zulfiqar Ali Shah, learned counsel for the petitioner has pressed this petition, *inter alia*, on the ground that the *premises* belongs to respondent No. 4 / Evacuee Trust Property Board. He submitted that under section 8 of the Evacuee Trust Properties (Management and Disposal) Act, 1975 (the '*Act of 1975*') declaration is to be made by the Chairman with respect to the

premises and in this respect the proceedings have been initiated in which evidence is being recorded. He also submitted that the learned *Rent Tribunal* has no jurisdiction to entertain ejectment-petition under section 19 of Punjab Rented Premises Act, 2009 (the '*Act*'). In course of arguments, learned counsel also relied upon section 2(a) and 2(f) of the *Act* and stated that the ejectment against place of religious worship is not maintainable. He has added that the property since is owned by the Evacuee Trust, therefore, no Court within the Province has any authority to adjudicate upon such disputes. Learned counsel for the petitioner has relied upon some documents in order to convince that learned two Courts below have misread the evidence.

5. Syed Muhammad Shah, learned counsel for respondent No. 3 / *Jamia Masjid Insar-ul-Islam*, invited the attention of this Court towards various parts of the evidence and supported the judgment as well as the final order passed by the learned two Courts below.

6. I have heard the arguments and record has been perused with the able assistance of learned counsel for the parties.

7. The tenancy agreement dated 03.05.1981 is on the record as Exh.A-8, which is executed by Muhammad Younas (father of the petitioner) in favour of ejectment-petitioner. In course of cross-examination, the petitioner / RW-1 admitted that prior to petitioner, his father namely Muhammad Younas was tenant in the *premises*. In response to another question he stated that he has no knowledge about the fact that his father has obtained the *premises* from the ejectment-petitioner. He further denied, for want of knowledge, that the rent of

the *premises* was used to be paid to the ejectment-petitioner since 2015.

8. Learned counsel for the petitioner made reference to Ex.R-2 and claimed that the petitioner is tenant of respondent No. 4, however, it is observed that the said document is prepared on 05.05.2016 i.e. after the ejectment-petition was filed. The petitioner, in his evidence, has even denied having any knowledge as to amount paid to respondent No. 4 at the time of alleged execution of Ex.R-2. He also admitted that one Haji Muhammad Yaqoob (real uncle of the petitioner) was President of the mosque committee but then again denied for want of knowledge that the said Haji Muhammad Yaqoob gave the *premises* to the predecessor of the petitioner, on rent. Reading of evidence has left no doubt in my mind that the predecessor of the petitioner entered into rent agreement (Ex.A-8) with the ejectment-petitioner.

9. The petitioner asserted that instead of ejectment-petitioner, respondent No. 4 is the actual owner. In this respect Constitution petition No. 15127 of 2016 has already been decided, which was contested by respondent No. 4 as well. After hearing the parties, on 02.05.2018 this Court reached to the conclusion that factual controversy is involved *vis-à-vis* the ownership dispute which cannot be resolved without recording of evidence. The relevant part of order dated 02.05.2018 passed in petition No. 15127 of 2016 reads as under:-

“...meaning thereby some factual controversy is involved in the matter in hand, which cannot be considered and dilated upon in exercise of writ jurisdiction, because it needs thorough scrutiny and recording of evidence...”

10. Learned counsel for the parties have confirmed that the above order was never assailed and instead a reference has been filed by respondent No. 4 with respect to several shops, including the *premises*, which is admittedly pending before the Chairman of the Evacuee Trust Property Board. In this reference, it is prayed to formally declare the *premises* as evacuee property. It has been further apprised that evidence is being led by the relevant parties in the said reference.

11. It is also noticed that the petitioner filed a suit titled "*Waheed Younas versus Excise Department etc.*" in the year 2015 claiming to be the owner of the *premises*. The petitioner cannot be allowed to adopt two different versions in two different cases, which is hit by principle of *approbate* and *reprobate*. In one case he has pleaded himself to be the owner of the *premises* and in the ejectment-petition he has taken the defense quite contrary to the above.

12. Section 2(d) of the *Act* reads as follows:-

"(d)...\"landlord\" means the owner of a premises and includes a person for the time being entitled or authorized to receive rent in respect of the premises;"

The above reflects that the *Act* admits two categories for the present purposes; (i) the actual owner and (ii) a person for the time being entitled or authorized to receive the rent. Ex.A-8 and other evidence on record reflect that ejectment-petitioner was authorized to collect rent of the *premises* and the petitioner defaulted in the payment of rent that he had undertaken in the tenancy agreement. The dispute of ownership, between ejectment-petitioner / *Jamia Masjid Insar-ul-Islam* and respondent No. 4, is being determined by the forum

having authority to record evidence. Hardly any doubt is left that ejectment-petitioner is the one who for the time being was receiving rent with respect to the *premises*. No benefit can be given to petitioner for the dispute of ejectment-petitioner and respondent No. 4. It is also observed that respondent No. 4 has been impleaded in the array of parties despite the fact that his application under Order I, Rule 10 of the Civil Procedure Code, 1908 was dismissed by the learned *Rent Tribunal*. Learned counsel for the petitioner has failed to show from the record if this order (dated 13.03.2017) passed by the learned *Rent Tribunal* was assailed in appeal. It appears that without seeking permission of this Court respondent No. 4 has been impleaded as a party to further confuse the situation.

13. There are certain other submissions made by parties with respect to the dispute of the ownership. I would not like to make any observation in this regard as the same can prejudice the findings of the learned forum resolving the same. Even otherwise, the purpose of the *Act* is to regulate the tenancy disputes and the learned two Courts below have correctly observed that the Rent Tribunals do not have any mandate to resolve the question of ownership.

14. Now I would like to address the last argument of the learned counsel for the petitioner. He has relied upon section 2(a) and 2(f) of the *Act* and stated that the Rent Tribunals do not have jurisdiction to adjudicate upon the matters pertaining to ‘any place of religious worship’. These provisions read as under:-

2. Definitions.-

(a) "building" means a building or part thereof, together with all fixtures and

*fittings therein, if any, and includes any garage, garden, godown, out house and open space attached or appurtenant thereto, let out for residential or non residential purpose, whether actually being used for that purpose or not, **but does not include** a room in a hotel, hostel, boarding house, guest house or **any place of religious worship**;*

(b) xxx

(c) xxx

(d) xxx

(e) xxx

*(f) "premises" **means a building** or rented land not being an agricultural land or land subservient to agriculture;*

(Emphasis supplied)

The *Act* provides that application in respect of rented premises shall be filed in the Rent Tribunal for the settlement of the disputes in an expeditious manner. Section 2(f) of the *Act* defines “premises” as a “building” or rented land not being an agriculture land or subservient to agriculture. The word “building” is defined in section 2(a) of the *Act* as building or part thereof, together with all fixtures and fittings therein, if any, and includes any garage, garden, godown, out house and open space attached or appurtenant thereto, let out for residential or non residential purpose, whether actually being used for that purpose or not. However, room in a hotel, hostel, boarding house, guest house or any place of religious worship are excluded. The words ‘any place of religious worship’ by no means can be stretched to a premises or building that is being used for a commercial purpose. Admittedly, the *premises* in question are shops, being used for commercial purpose. Reading of the reproduced provisions of law, relied by the learned counsel for the petitioner as well as other provisions of the *Act*, clearly

reveal that any property, space or premises let out for the purpose of business or trade are not intended to be excluded from the definition of building or for that matter premises, thus, the objection of the learned counsel for the petitioner as to maintainability of the ejectment-petition, is rejected.

15. In the wake of above discussion, I am of the opinion that no mistake is made by the learned Courts below. Therefore, the present petition is dismissed. No order as to costs. Learned counsel for respondent No. 3, upon instructions, has stated that respondent No. 3 has no objection if the petitioner is allowed to retain the possession of the *premises* for four months from today, therefore, the petitioner if so advised, can retain the possession subject to payment of monthly rent as already determined by the learned Courts below.

16. Observation(s) made above or made by the learned two Courts below are only in order to resolve the dispute of tenancy and the same shall not be considered by the learned forum resolving the dispute as to the ownership between Evacuee Trust Property Board and respondent No. 3.

(Sultan Tanvir Ahmad)
Judge

Announced in open Court on 11.06.2024.
Approved for Reporting.

*Iqbal**

Judge