

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:
MR. JUSTICE EJAZ AFZAL KHAN
MR. JUSTICE QAZI FAEZ ISA

CIVIL PETITION NO. 892 OF 2015

*(On appeal from the order dated
30.03.2015 in C.P. No. 59/2010 passed
by the High Court of Balochistan,
Quetta)*

AND

Civil Misc. Application No. 2087 of 2016

*(Application for seeking time in materialization
of Project with reference to Order dated
17.2.2016)*

Nadeem Ahmad Khan and others.

.... Petitioners

Versus

*Government of Balochistan through Secretary Local
Government, Quetta and another.*

.... Respondents

For the Petitioners	:	Mr. Tariq Mehmood, Senior Advocate Supreme Court Syed Rifaqat Hussain Shah, Advocate-on-Record
For the Respondents	:	Mr. Hadi Shakeel Ahmed, Advocate Supreme Court Mr. Gohar Yaqoob Yousafzai, Advocate-on-Record (absent)
Date of Hearing	:	24 th May 2016.

ORDER

QAZI FAEZ ISA, J.-

Civil Misc. Application No. 2087 of 2016

Through this miscellaneous application two months extension in time is sought to effect compromise which has now been purportedly effected therefore the application has become infructuous and is accordingly dismissed.

Civil Petition No. 892/2015

1. Through this petition the petitioners assail the order dated 30th March 2015 of the Balochistan High Court, Quetta to the extent that the rent payable by the petitioners was increased, which has been attended to in paragraph 1 of the said order reproduced hereunder:

“In pursuance of order dated 23.03.2015, lessee Muhammad Nadeem of Café-e-Baldia is in attendance. With consent of the Deputy Mayor, MCQ, the rent of the café in question is increased from Rs.6500/- (Rupees six thousand and five hundred only) to Rs.50,000/- (Rupees fifty thousand only) per month. It was further agreed between the parties that since most of the hotels/restaurants in Quetta city i.e. Stanley Restaurant, Dawn, Farah, Regal hotels etc. have been closed and converted into plazas, whereas it is the sole café used by the inhabitants of Quetta city as well as the members of legal fraternity, as such, the lessee shall improve the standard of plantation, food, crockery, fixtures and furniture etc., without structural change and further construction. It is made clear that, being a National Asset, neither will be the café in question converted into commercial plaza, nor will be the open space reduced by further construction.”

2. At the outset Messrs Tariq Mehmood and Hadi Shakeel Ahmed, the learned counsel for the petitioners and the respondent No.2 respectively, stated that the petitioners had entered into an *agreement* (copy whereof was produced without proper filing) with the Mayor of the Metropolitan Corporation Quetta and this petition should be disposed of in terms thereof. The copy of the said unstamped, undated and unregistered *agreement* comprising of three pages refers to this petition and envisages an altogether different scenario, whereby Café Baldia will be demolished and replaced by a multistoried building having a bakery, hotel, showrooms, halls and offices and the monthly rent payable to the Metropolitan Corporation Quetta would be fifty thousand rupees only. We were quite surprised to have been confronted with the *agreement* as it was completely beyond the purview

of the existing litigation, which was the determination of rent. The parties however entered into the said *agreement* encompassing matters that were neither before the High Court nor have been raised before us. The said *agreement* also is in violation of the order of the Hon'ble High Court which had stipulated that, Baldia Café will not be replaced by a “*commercial plaza*” nor will the open space be “*reduced by further construction*.” The petitioners did not assail this part of the High Court's order. And, the respondents have not even challenged the said order. The Hon'ble High Court had also observed that, with the closure of a number of cafés and restaurants in Quetta, Café Baldia was, “*the sole café used by the inhabitants of Quetta city as well as the members of legal fraternity*”, situated as it is in front of the *Katchery* (City Courts) in a very congested part of the City. The only grievance brought by the petitioners before this Court was the enhancement in monthly rent from six thousand and five hundred rupees to fifty thousand rupees. Unfortunately, the petitioners and the respondent No. 1 have used the pretext of the present petition to embark upon a venture for individual personal benefit.

3. If the said *agreement* was to be implemented it would undoubtedly further degrade Quetta City's environment, add to congestion, increase pollution and deprive the people of the use and enjoyment of the only remaining café in the City. We thus deprecate the attempt made by the parties to use the pretext of the pending petition to enter into the purported *agreement*. The public interest and that of the citizens of Quetta, which ought to be the foremost concern of the Metropolitan Corporation Quetta was unfortunately eclipsed by it.

4. The *agreement* also contravenes the provisions of the Balochistan Local Government Act, 2010 (“**the Act**”), particularly section 110, reproduced hereunder:

“110. Use and disposal of properties of local council.

(1) Properties of local council shall be used only for public purposes.

(2) Immovable properties of local council shall not be sold or permanently alienated:

Provided that such properties may be given on lease through competitive bidding in public auction with the prior approval of the Government.

Provided further that no such property under or near a fly-over bridge shall be leased or otherwise given to any person for private, commercial or non-commercial use, and any order, licence, permission, handcart passes or certificate issued by any authority at any time in this respect shall stand withdrawn and shall be deemed cancelled.

(3) The movable property of a local council which, by the order of the Government is required to be disposed of and all articles declared unserviceable shall subject to approval by the Government, or any authority specially empowered by the Government in this regard, be sold through a transparent competitive bidding in public auction.”

Section 111 of the Act mandates that, “*Every Mayor / Chairman, official or servant of a Local Council, every member of a Local Council, and every person charged with the administration and management of the property of a Local Council shall be personally responsible for any loss or waste, financial or otherwise, of any property belonging to a Local Council which is a direct consequence of decision made by him personally or under his directions in violation of any provision of this Act...*”. It is disconcerting to note that those in charge of the administration / management of the affairs of Metropolitan Corporation Quetta and its properties are themselves disregarding the provisions of the Act. We were however informed by the learned counsel for Metropolitan Corporation Quetta that the said *agreement* is subject to the approval of this Court and nothing has been done pursuant to the said *agreement* as yet. Needless to state it is not within the domain of this Court to accord approval as sought. Be that as it may, for the removal of any and all doubt, we categorically state that no consent, permission or approval has been accorded to the *agreement*. In any event the said *agreement*, as stated above, is against the provisions of the Act, contravenes the order of the High Court and is against the public interest.

5. That having disposed of the matter of the purported *agreement* we proceeded to hear the case. Mr. Tariq Mehmood, the learned counsel for the petitioners, stated that the subject matter of the Constitutional Petition No. 59 of 2010, wherein the said impugned order was passed, was altogether different and had nothing to do with the petitioners or the café they run under the name and style of “Café Baldia”. The learned counsel gave the background of Café Baldia which had been rented out to Muhammad Akbar (the father of petitioner No.3) in the year 1959 by the Quetta Municipality, the predecessor-in-interest of the Municipal Corporation Quetta and then the Metropolitan Corporation Quetta, at a monthly rent of three hundred rupees. Subsequently, a ‘Lease Deed’ dated 2nd March 1978 was executed in favour of Muhammad Akbar’s son the petitioner No. 3, Naseem Ahmad Khan and Hussain Falah by the Administrator Quetta Municipality for a period of three years commencing from 1st December 1978. Thereafter, an ‘Agreement’ was entered into by the Municipal Corporation, Quetta with petitioner No. 3 and Nasim Ahmad Khan in December 1981 extending the lease for three years commencing from 1st January 1981; the lease was further extended for a period of another three years commencing from 1st January 1984 by ‘Agreement’ dated 9th October 1983 between the same parties and again extended for a period of thirty years commencing from 1st December 1977 by ‘Agreement’ dated 22nd April 1985. However, before the expiry of the Agreement dated 22nd April 1985 an ‘Agreement / Lease Deed’ dated 27th October 1988 was executed by the Municipal Corporation, Quetta in favour of Nasim Ahmad Khan, petitioner No. 3 and Husain Falah, which was also for thirty years, commencing from 1st January 1987.

6. The learned counsel for the petitioners referred to the opening words of the impugned order which shows that it was passed pursuant to an earlier order dated 23rd March 2015, however, the said earlier order did not pertain to Café Baldia or the petitioners, but was in respect of the properties of the Metropolitan Corporation Quetta which were either in illegal occupation or in possession of tenants who had

stopped paying rent or were paying a mere pittance. The learned counsel contended that the case of such parties could not be equated with that of the petitioners who were running Café Baldia since 1959 in accordance with law and held valid leases. In such circumstances, it was stated, that there was no reason for the petitioner No.1 to voluntarily agree for a manifold increase in the monthly rent on 30th March 2015 when the lease in the petitioners' favour subsisted till 31st December 2016.

7. Mr. Tariq Mehmood's contentions with regard to the increase in rent made on the basis of the purported statement of the petitioner No.1 is a purely factual controversy which can at best be attended to by the Hon'ble High Court itself. Consequently, with regard to the enhancement of rent recorded in the order dated 30th March 2015 we transmit this petition to the High Court, which will be treated as a review application or one under section 12 (2) of the Code of Civil Procedure, for decision in accordance with law. The Office is directed to retain a copy of the petition for its record.

Judge

Judge

Announced in open Court at Islamabad

On 1st June 2016

By Justice Qazi Faez Isa

APPROVED FOR REPORTING
(Zulfiqar)

IN THE SUPREME COURT OF PAKISTAN

(Review / Appellate Jurisdiction)

PRESENT:

MR. JUSTICE EJAZ AFZAL KHAN

MR. JUSTICE QAZI FAEZ ISA

Civil Review Petition No. 559 of 2015

*(On review from the order dated 1.7.2015
passed by this Court in CP No.
1260/2015)*

IN/AND

Civil Petition No. 1260 of 2015

*(On appeal from the judgment
dated 27th May 2015 in Civil
Revision No. 42/2012 passed by the
High Court of Balochistan Quetta)*

Hasam ud Din and others.

.... Petitioners

Versus

*Quetta Metropolitan Corporation through its Administrator
(Now Mayor), Quetta and others.*

.... Respondents

For the Petitioners : Mr. Tariq Mehmood, Senior Advocate Supreme Court
(In both cases) Syed Rifaqat Hussain Shah, Advocate-on-Record

For the Respondents : Mr. Hadi Shakeel Ahmed, Advocate Supreme Court
(in both cases) Mr. Gohar Yaqoob Yousafzai, Advocate-on-Record
(absent)

Date of Hearing : 24th May 2016.

JUDGMENT

QAZI FAEZ ISA, J.-

Civil Petition No. 1260/2015

1. This petition assails the judgment dated 27th May 2015 of a learned Single Judge of the High Court of Balochistan, Quetta, passed in Civil Revision No. 42 of 2012 whereby the judgments of the courts below were set-aside and the petitioners were directed to pay the monthly rent as had been determined by the Rent

Committee of the Quetta Municipal Corporation approved in the General Body meeting of 4th December 1999 of the Municipal Corporation Quetta, the predecessor-in-interest of the Quetta Metropolitan Corporation (“**the Corporation**”), failing which h the Corporation “*would be at liberty to initiate proceedings for ejectment of the respondents from the shops in question in accordance with the provisions of Ordinance of 1965*”, that is, the Balochistan Autonomous Bodies Immovable Property (Ejectment of Unauthorized Occupants) Ordinance, 1965 (“**the 1965 Ordinance**”).

2. At the outset both Mr. Tariq Mehmood and the Mr. Hadi Shakeel Ahmed, the learned counsel for the petitioners and the respondents respectively, stated that the parties had compromised their dispute in terms of an unstamped *agreement* dated 23rd May 2016 (copy whereof was produced without proper filing) and sought the disposal of this petition in terms thereof. We have gone through the said *agreement* whereby the premises are *agreed* to be demolished and to be replaced by a “Mall Structure”. To better understand the purported compromise clauses 1 and 5 of the *agreement* are reproduced hereunder:

- “1. The Metropolitan Corporation Quetta will construct the shops through the investors of second Party (Subject to Approval by Government of Balochistan) on priority and handover the complete shops to the Legal Tenants within 12 months from the date of vacating / handing over of the shops. For alternative the Tenants will be entitled of Rs.25,000/- per month by the investor w.e.f. from the date of Vacation of the Shops.”
- “5. The Outstanding arrears will also be charged at the rate of Rs 4000/- per month w.e.f. the date of decision arrived at by the Provincial Minister Government of Balochistan Local Government & Rural Development department Quetta against the tenants and will be adjusted / recovered in 24 installments.”

We are astounded with the said *agreement* which on the face of it contravenes the provisions of the Balochistan Local Government Act, 2010 (“**the Act**”), including its section 110, reproduced hereunder:

“110. Use and disposal of properties of local council.

(1) Properties of local council shall be used only for public purposes.

(2) Immovable properties of local council shall not be sold or permanently alienated:

Provided that such properties may be given on lease through competitive bidding in public auction with the prior approval of the Government.

Provided further that no such property under or near a fly-over bridge shall be leased or otherwise given to any person for private, commercial or non-commercial use, and any order, licence, permission, handcart passes or certificate issued by any authority at any time in this respect shall stand withdrawn and shall be deemed cancelled.

(3) The movable property of a local council which, by the order of the Government is required to be disposed of and all articles declared unserviceable shall subject to approval by the Government, or any authority specially empowered by the Government in this regard, be sold through a transparent competitive bidding in public auction.”

Section 111 of the Act mandates that, *“Every Mayor / Chairman, official or servant of a Local Council, every member of a Local Council, and every person charged with the administration and management of the property of a Local Council shall be personally responsible for any loss or waste, financial or otherwise, of any property belonging to a Local Council which is a direct consequence of decision made by him personally or under his directions in violation of any provision of this Act...”*. It is disconcerting to note that those in charge of the administration / management of the affairs of Metropolitan Corporation Quetta and its properties are themselves disregarding the provisions of the Act. The public interest and that of the citizens of Quetta, must be the foremost concern of the Metropolitan Corporation Quetta. We deprecate the attempt made by the parties to use the pretext of the pending petition to enter into the purported *agreement*.

3. We were however informed by the learned counsel for Metropolitan Corporation Quetta that the said *agreement* is subject to the approval of this Court

and nothing has been done pursuant to the said *agreement* as yet. Needless to state it is not within the domain of this Court to accord approval as sought. Be that as it may, for the removal of any and all doubt, we categorically state that no consent, permission or approval has been accorded to the *agreement*.

4. That having disposed of the matter of the purported *agreement* we proceeded to hear the case. Mr. Tariq Mehmood, the learned counsel for the petitioners, stated that the petitioners are statutory tenants of shops owned by the Corporation situated in the Beef Market on Kasi Road and Jinnah Cloth Market on Jinnah Road, Quetta and after the expiry of their leases they could only be evicted in terms of the Balochistan Rent Restriction Ordinance, 1959, and not pursuant to the 1965 Ordinance because the petitioners are not *unauthorized occupants* in terms thereof. The learned counsel further stated, that the Senior Civil Judge had rightly held that, “*the rent can be enhanced with the consultation of the tenants after observing rules, justly and fairly*”, which decision was upheld by the learned Additional District Judge and there was no reason for the High Court to take a different view. It was next contended that both for the fixation of fair rent and ejectment of the petitioners the Corporation had to seek recourse to the Balochistan Urban Rent Restriction Ordinance, 1959.

5. Mr. Hadi Shakeel Ahmed, the learned counsel for the respondents, stated that the decision of the Rent Committee unanimously approved by the Governing Body of the Corporation had to be given effect to, all the more when no *mala fide* or ulterior motive was alleged let alone established. He next contended that the petitioners were paying a meager rent for valuable properties that are situated within the heart of Quetta City and that the said rent increase was still well below the market rates. It was next urged that the stance of the petitioners is contradictory as on the one hand they allege that the Corporation could approach the Rent Controller

for fixation of fair rent under the Balochistan Urban Rent Restriction Ordinance, 1959 whereas the petitioners themselves did not do so and instead filed the suit. He further stated that as per Notification dated 20th June 1962 issued pursuant to section 3 of The Balochistan Urban Rent Restriction Ordinance, 1959 this Ordinance was not applicable, “*to those buildings or lands belonging to Local Body Administering an urban area which are used as shop or are of commercial nature*”, which was followed by another Notification of 6th July 1962 issued under the same provision whereby this Rent Ordinance, “*shall not apply to such buildings or lands belonging to a Local Body administering an urban area which used to be let out in the past by means of auction.*” The Additional District Judge had clearly held that the Balochistan Urban Rent Restriction Ordinance, 1959 was not applicable to the Corporations’ buildings and the occupants thereof were to be evicted, “*by using the provisions of Balochistan Autonomous Bodies Immovable Property (Ejectment of Unauthorized Occupants) Ordinance, 1965*”, which determination was not assailed by the petitioners before the High Court, therefore, as per the learned counsel, they are now estopped from doing so. The learned counsel concluded by stating that the petitioners, despite being called upon by the Corporation to execute agreements at the stipulated enhanced rates elected not to do so, had become *unauthorized occupants* and thus the 1965 Ordinance was fully applicable to them.

6. We have heard the learned counsel and have gone through the record. No ulterior motive has been subscribed to the Corporation in enhancing the rent, but simply that it was considerably more than what the petitioners were paying earlier and that the rent could only be increased by mutual consent of the parties, failing which the Corporation was required to submit an application for determination of fair rent. The petitioners however themselves did not take recourse for determination of *fair rent* under section 4 of the Balochistan Urban Rent Restriction Ordinance, 1959 but instead had filed a suit for declaration and injunction with the prayer that

the Corporation could not unilaterally and arbitrarily increase rent, which was accepted by the learned Senior Civil Judge but without giving any reason. If for arguments' sake it is accepted that rent can only be enhanced by the Corporation in agreement with the tenants then no agreement would materialize because tenants would not be expected to pay more rent if they could get away with by paying less. The properties of the Corporation, as noted above, have also been specifically excluded from the purview of the Balochistan Urban Rent Restriction Ordinance, 1959 and the learned counsel could not rebut the said exclusion. Since the properties of the local bodies, including the Metropolitan Corporation Quetta, have been excluded from the applicability of The Balochistan Urban Rent Restriction Ordinance the Corporation is not required to submit an application for fixation of *fair rent* there under.

7. We lastly attend to the contention of the learned counsel for the petitioners that the learned Judge of the High Court should not have mentioned that upon failure of paying the enhanced rent ejectment proceedings should be initiated pursuant to the Balochistan Autonomous Bodies Immovable Property (Ejectment of Unauthorized Occupants) Ordinance, 1965. However, as noted above, the learned Judge had reiterated what had already been determined by the Appellate Court which finding was not assailed by the petitioners before the High Court. In any event the learned counsel has not been able to persuade us about the non-applicability of the 1965 Ordinance in respect of persons who are in occupation of the Corporation's properties without the same being leased out to them.

8. We can also not be unmindful of the fact that the petitioners have dragged out this matter for a period of over sixteen years and are not paying the increased rents determined in the year 1999. The amount then determined would undoubtedly be much below the prevailing market rates. Be that as it may, in case the petitioners or

any one or more of them want to continue with the tenancy of the premises in their occupation they should proceed in terms of the Corporation's Notice dated 22nd December 1999 whereby they were called upon by the Corporation to submit stamp papers of prescribed value for execution of fresh agreements as per the rent determined by the Rent Committee which was confirmed by the resolution of the Corporation dated 4th December 1999. The petitioners shall however start paying rent on the said rates immediately. As regards the accumulated rent, as per the rates determined by the Rent Committee which were approved by the Corporation on 4th December 1999, the same shall be paid within a period of three months. With such modification in the well reasoned judgment of the High Court this petition is dismissed.

C.R.P. No. 559/2015

This Review Petition seeks the review of an interim order dated 1st July 2015 whereby the petitioners were directed to deposit 50% of the increased rent within one month with the Registrar of this Court. However, since we have disposed of the main petition, the review petition has become infructuous and is accordingly dismissed. In case the petitioners, or any one or more of them, had not complied with the said interim order such default is condoned since all the petitioners have been given the opportunity to start paying the rent as well as to pay the accumulated rent as mentioned in the foregoing paragraph.

Judge

Judge

Announced in open Court
At Islamabad

On 1st June 2016

By Justice Qazi Faez Isa

APPROVED FOR REPORTING
(Zulfiqar)