

**IN THE SUPREME COURT OF PAKISTAN**  
**(APPELLATE JURISDICTION)**

**PRESENT:** MR. JUSTICE MIAN SAQIB NISAR, HCJ  
MR. JUSTICE UMAR ATA BANDIAL  
MR. JUSTICE FAISAL ARAB

**CIVIL APPEALS NO.300, 346, 812 AND 851 TO 854 OF 2017**

(Against the judgments dated 03.08.2016, 16.01.2017, 14.04.2017, 22.01.2016, 19.04.2017 and 05.05.2017 of the Islamabad High Court, Islamabad passed in Writ Petitions No. 2448, 2612, 4319/2016, 853-854/2015, 636 and 3046/2016)

|    |  |                        |
|----|--|------------------------|
| 1. | Waqar Zafar Bakhtawari                 | In C.A.300/2017        |
| 2. | M/s Superior Security Guards Pvt. Ltd. | In C.A.346/2017        |
| 3. | Muhammad Nadeem                        | In C.A.812/2017        |
| 4. | Muhammad Ashiq                         | In C.A.851/2017        |
| 5. | Muhammad Mushtaq                       | In C.A.852/2017        |
| 6. | Muhammad Umer Farooq                   | In C.A.853/2017        |
| 7. | Asad Hussain                           | In C.A.854/2017        |
|    |  | <b>...Appellant(s)</b> |

**VERSUS**

|    |  |                         |
|----|--|-------------------------|
| 1. | Haji Mazhar Hussain Shah etc.              | In C.A.300/2017         |
| 2. | Sher Muhammad                              | In C.A.346/2017         |
| 3. | Malik Ejaz Amjad etc.                      | In C.A.812/2017         |
| 4. | Muhammad Zubair etc.                       | In C.A.851/2017         |
| 5. | Muhammad Zubair etc.                       | In C.A.852/2017         |
| 6. | Muhammad Ameen Chughtai etc.               | In C.A.853/2017         |
| 7. | Sheikh Abdul Saboor (decd.) thr. Ltd. etc. | In C.A.854/2017         |
|    |  | <b>...Respondent(s)</b> |

For the appellant(s): Mr. Muhammad Ilyas Sheikh, ASC  
Ch. Akhtar Ali, AOR  
(In C.A.300/2017)

Mr. Naveed Malik, ASC  
(In C.A.346/2017)

Mr. Junaid Akhtar, ASC  
(In C.A.812/2017)

Mr. Fiaz Ahmed Jandran, ASC  
Syed Rifaqat Hussain Shah, AOR  
(In C.A.851 & 852/2017)

Raja M. Aleem Khan Abbasi, ASC  
(In C.As.853 & 854/2017)

For the respondent(s): Mr. Mir Afzal Malik, ASC  
(In C.As.300 & 853/2017)

Mr. Waseem Ahmed Qureshi, ASC  
(In C.A.346/2017)

Mr. Tariq Khushnood Qureshi, ASC  
(In C.A.812/2017)

Syed Masood Hussain, ASC  
Syed Rifaqat Hussain Shah, AOR  
(In C.As.851 & 852/2017)

Mr. Sajid Ilyas Bhatti, ASC  
(In C.A.854/2017)

Amicus curiae: Syed Najmul Hassan Kazmi, Sr. ASC  
Sardar Muhammad Aslam, ASC

Date of hearing: 20.9.2017

...

**ORDER**

**MIAN SAQIB NISAR, C.J.-** All these appeals with the leave of the Court primarily involve the same proposition of law, therefore, are being disposed of together.

2. In all these cases, the appellants are the tenants of the respondents/landlords and the premises in question are situated in the Islamabad Capital Territory (*ICT*). Thus, in order to seek eviction of the appellants, the respondents filed applications under the provisions of Section 17 of the Islamabad Rent Restriction Ordinance, 2001 (*the Ordinance, 2001*) on the ground, *inter alia*, that the period of tenancy has expired. Resultantly, the forums below passed the eviction orders on the basis of expiry of the term of tenancy.

3. Leave in these cases was granted to consider whether the expiry of the term of tenancy is one of the grounds as envisaged by Section 17 of the Ordinance, 2001 for the eviction of the tenant.

4. Mr. Muhammad Ilyas Sheikh, ASC, learned counsel for the appellant in Civil Appeal No.300 of 2017 has led the arguments on behalf of the appellants' side against eviction orders and submitted that in view of the unambiguous and clear language of Section 17 of the Ordinance, 2001 "a tenant in possession of a building or a rented land shall not be evicted therefrom except in accordance with the

provisions of this Section" (*emphasis supplied*); thus, the Rent Controller would only have the jurisdiction to pass an eviction order if the case squarely falls within the purview of the said Section; therefore, as there is no specific ground mentioned in the noted section, which enables the landlord to seek eviction of the tenant on expiry of period of tenancy, the impugned orders are not only against the law but passed without jurisdiction. He has also submitted that despite the expiry of the period of tenancy, a person who was holding the property as a tenant shall continue to be a tenant and reference in this behalf has been made to the definition of term "tenant" given in Section 2(j) of the Ordinance, 2001. He, thus, urged that on account of the expiry of the tenancy period, the status of tenant neither extinguishes nor changes and he (*the tenant*) continues to be entitled to occupy the property, and shall only be liable to be evicted if the strict grounds set out in Section 17 of the Ordinance, 2001 are met with specifically. With regard to the effect and implication of Section 6 of the Ordinance, it is argued that such provision is subject to the provisions of Section 17 of the Ordinance, 2001; meaning thereby that it is subservient and subordinate to the said section, but in any case Section 6 of the Ordinance, 2001 by itself does not provide any ground for eviction of the tenant on expiry of the tenancy period. The learned counsel has also submitted that the forums below, for justifying the eviction order, have relied upon the provisions of Section 17(2)(ii)(b) of the Ordinance, 2001, which provides that a tenant can be evicted if he "*has infringed any condition on which the building or rented land is held*". This provision, according to the learned counsel, relates to the terms and conditions specified in the tenancy agreement under which certain obligations have been imposed upon the tenant,

but it has nothing to do with the expiry of the period of tenancy and eviction on that account. It is also argued that Section 17 of the Ordinance, 2001 opens with the negative expression that "*a tenant in possession of a building or a rented land shall not be evicted therefrom except in accordance with the provisions of this Section*" (*emphasis supplied*), thus, the mandate of the law for the purposes of eviction of the tenant is only restricted to the said section and no other provision of the Ordinance in this context can be resorted to, specifically Section 6 of the Ordinance, 2001, for the reason that (i) it does not provide the ground for eviction and (ii) it is subject to the provisions of Section 17 *ibid*. It is further submitted that Section 4 of the Ordinance, 2001 is an overriding provision and excludes the application of any other law to the issues covered by the Ordinance, 2001, therefore, the general law i.e. the Transfer of Property Act, 1882 (*the Act, 1882*) regarding the determination of tenancy, the right of holding over and entitlement of the landlord to get back the possession of the rented premises on the expiry of tenancy term, shall not be attracted. In support of his arguments, he has relied upon the judgments of this Court reported as Chairman, Federal Board of Revenue Islamabad Vs. Messrs Al-Technique Corporation of Pakistan Ltd. and others (PLD 2017 SC 99), Mst. Zarina Khan Vs. Mst. Farzana Shaib (2017 SCMR 330), Lucky Cement Ltd. Vs. Commissioner Income Tax, Zone Companies, Circle-5 Peshawar (2015 SCMR 1494) and Rana Abdul Hameed Talib Vs. Additional District Judge Lahore and others (PLD 2013 SC 775) and the judgment of the learned Lahore High Court reported as Mst. Munawar Sultana Vs. Additional District Judge, Islamabad and 2 others (2005 CLC 1119 at Page 1123).

5. In Civil Appeals No.853 and 854/2017, Raja Muhammad Aleem Abassi, learned ASC for the appellants, has argued that on account of the expression '*subject to*' used in Section 6 of the Ordinance, 2001, such Section in its application is only restricted to the case covered by Section 17(4)(b) of the Ordinance, 2001 and the proviso there to, which provides that if "*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.*" The learned counsel for the appellants in other cases more or less have made the same submissions.

6. The learned counsel for the respondents, however, argued that Section 6 of the Ordinance, 2001 in law extinguishes and puts an end to a tenancy on expiry of the tenancy period either fixed between the parties or that envisaged by the said Section itself, and thereafter, renders such tenancy invalid. Resultantly, if the tenant continues to occupy the property after the expiry of that period, it shall be an infringement of the terms and conditions of tenancy in terms of Section 17(2)(ii)(b) of the Ordinance, 2001 and such a tenant shall be liable to be evicted. Reliance by the respondents' side has been placed upon the judgments reported as **Qaiser Javed Malik Vs. Pervaiz Hameed** (2009 SCMR 846), **Ghulam Abbas Vs. Additional Sessions Judge (West) Islamabad and 2 others** (2015 MLD 1740), **Nadeem Raza Abbasi Vs. Sardar Abu Bakar and 2 others** (2016 CLC 1051) , **Pakistan State Oil Company (Pvt.) Vs. Zulekha Khanum and 6 others** (2016 CLC 1850) and, **Sh. Amir Farooq Vs. Sh. Usman and others** (2016 MLD 103).

7. Syed Najmul Hassan Kazmi, learned Sr. ASC, and Sardar Muhammad Aslam, learned ASC, were appointed as *amici curiae* in

these matters. Syed Najmul Hassan Kazmi, learned Sr. ASC has submitted that there are three laws on the subject, which are relevant; (i) West Pakistan Urban Rent Restriction Ordinance, 1959 (*Ordinance, 1959*); (ii) an amendment made therein in the year 1965, i.e. West Pakistan Urban Rent Restriction (Amendment) Ordinance, 1965 (*Amendment Ordinance, 1965*) and (iii) Punjab Rented Premises Act 2009 (*Act, 2009*). According to him, the object and purpose of the Ordinance, 1959 was to restrict the undue increase of rent and also to bar the eviction of a tenant which otherwise was done by virtue of the general law of the land, namely the Act, 1882. He also mentioned Section 13(2)(ii)(b) of the Ordinance, 1959 and made reference to the amendment brought in the said Ordinance *vide* the Amendment Ordinance, 1965 to contend that the Ordinance, 1959 was made applicable to all the tenancies, which were prevalent at the time of the enforcement of the Ordinance, 1965 and to those created thereafter. It is also submitted that even if the special law has an overriding effect on the other laws, including the general law, the terms and conditions settled between a landlord and the tenant, which were inconsistent with the special law could not be given effect to and the special law shall prevail; but where there is no conflict, as mentioned above the general law shall be applicable. In this respect he has placed reliance on the judgment of this Court reported as **Mrs. Zarina Khawaja Vs. Agha Mahboob Shah** (PLD 1988 SC 190 at 199 to 201) to argue that while considering the analogous provisions of Sindh Rented Premises Ordinance, 1979 (*the Ordinance, 1979*), this Court has come to the conclusion that where the provisions of aforesaid law or the lease agreement are not violated, the general law of the land shall be attracted. It has also been mentioned that in this context the general

law which shall apply is the Act, 1882 . Section 108(q) of the Act of 1882 clearly postulates that after the determination (*expiry*) of the tenancy period, the tenant is bound to put the landlord back to the possession of the lease property. He has also mentioned the preamble of the Ordinance, 2001 to submit that the said Ordinance has been enforced "*to regulate the relations between the landlords and tenants of rented premises in the Islamabad Capital Territory and to provide matters ancillary thereto or connected therewith*". This is unlike the preamble of Ordinance, 1959, which was meant to resist the increase in the rent and the eviction of the tenants. It is therefore argued that Section 6 of the Ordinance, 2001 has been deliberately made part of the Ordinance which provides that "*Subject to the provisions of section 17, no tenancy shall be valid beyond such period as the landlord and tenant may, by mutual agreement, fix before or after the commencement of the tenancy*". The pith and substance of his arguments is that Section 6 *ibid* should be read in conjunction with Section 17 *ibid* and not in a manner that it shall be held nugatory and redundant, as no provision of a statute should be rendered redundant or made nugatory. Thus, according to the learned counsel, the provisions of Section 17(2)(ii)(b) shall be read with Section 6 of the Ordinance, 2001 so that both the sections could be saved and harmoniously interpreted. In connection with Section 2(j) of the Ordinance, 2001, it is argued that this is only meant for the purposes of enabling the landlord to seek eviction of his tenant under the provisions of the Ordinance, 2001 even after expiry of the term of tenancy, in that a person who holds over the property after the expiry of tenancy, should be evicted under the provisions of the Ordinance, 2001 rather approaching the civil court in its pecuniary jurisdiction; thus, Section

2(j) *ibid* cannot be given any enlarged meaning so as to hold that a person who is in occupation of a property beyond the tenure of tenancy, shall remain to be a tenant for an unlimited and unrestricted period and that the landlord shall have to seek his eviction only on the ground of default in payment of rent, subletting or personal bona fide need, etc. He elaborated that this provision can only be construed as a reference for bringing an action against such tenant under the provisions of Section 17 of the Ordinance, 2001.

8. In order to appreciate the submissions made by the learned counsel for the parties, we find it expedient to reproduce the relevant provisions of law in a sequence. Section 2(j) of the Ordinance, 2001 defines a tenant and reads:

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

- (i) any person who continues to be in possession or occupation after the termination of his tenancy; and*
- (ii) in the event of the death of the tenant, the members of his family who continue to be in possession or occupation of the building or rented land.*

Section 6 of the Ordinance:

**6. Tenure of tenancy.** *Subject to the provisions of section 17, no tenancy shall be valid beyond such period as the landlord and tenant may, by mutual agreement, fix before or after the commencement of the tenancy:*

*Provided that a tenancy in force before the commencement of this Ordinance for which no period is fixed shall cease to be*



*valid on the expiration of a period of two years from such commencement:*

*Provided further that a tenancy which comes into force after the commencement of this Ordinance and for which no period is fixed shall not be valid after expiration of period of six months from the date of the receipt by the tenant of a notice in writing given by the landlord terminating the tenancy.*

While the relevant part of Section 17 of the Ordinance envisages as follow:

**17. Eviction of tenant.** *(1) A tenant in possession of a building or rented land shall not be evicted therefrom except in accordance with provisions of this section.*

*(2) A landlord who seeks to evict his tenant shall apply to the Controller for a direction in that behalf. If the Controller, after giving the tenant a reasonable opportunity of showing cause against the application, is satisfied that:-*

- (i) .....
- (ii) the tenant has without the written consent of the landlord:-

(a) .....  
(b) used the building or rented land for purpose other than that for which it was leased or has infringed any conditions on which the building or rented land is held; **(emphasis supplied)**
- (iii) .....
- (iv) .....
- (v) .....

**Explanation.** *For the purpose of clause:-*

- (i) .....  
(ii) .....  
(3) .....
- (4) A landlord may apply to the Controller for an order directing the tenant to put the landlord in possession:-

(a) .....

(b) *in the case of a commercial building or rented land, if he requires it in good faith for his own use or for the use of any member of his family:*

*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 subsection before the expiry of such period:*  
.....”

9. Heard. It may be necessary to mention here that the portions of Section 17 *ibid* which have been omitted from reproduction are the grounds for eviction of tenant, such as, default in the payment of rent, reconstruction, causing damage to the rented property, nuisance, personal requirement, etc. It is settled that while interpreting the law, a specific provision of any statute, which is independent in nature, cannot and should not ordinarily be held to be redundant, especially on the touchstone of another independent provision of the same statute; rather all possible efforts should be made to apply and adhere to the rules of purposive and harmonious construction, so that the allegedly conflicting provisions should be reconciled and saved. If some precedent law is required in this behalf, reference can be made to the judgments reported as **Combind Investment (Pvt.) Ltd. Vs. Wali Bhai** (PLD 2016 SC 730), **Lucky Cement Ltd. Vs. Commissioner Income Tax, Zone Companies, Circle-5, Peshawar** (2015 SCMR 1494), **Aftab Shahban Mirani Vs. Muhammad Ibrahim** (PLD 2008 SC 779), **Collector of Sales Tax and Central Excise (Enforcement) and another Vs. Messrs Mega Tech (Pvt.) Ltd.** (2005 SCMR 1166), **Mirza Shaukat Baig Vs. Shahid Jamil** (PLD 2005 SC 530) and **D.G. Khan Cement Company Ltd. Vs. Federation of Pakistan and others** (2004 SCMR 456).

10. Now applying the above principle, Section 6 of the Ordinance, 2001 has to be given some meaning to determine its role in the Ordinance. The language of the Section 6 *ibid* as reproduced above is very clear and it mandates that after the expiry of the tenancy period, or beyond the tenancy period, no tenancy shall be valid. The word '*valid*' has to be given its ordinary dictionary meaning as it has not been defined in the Ordinance. According to the Oxford dictionary '*valid*' means "*legally binding due to having been executed in compliance with the law; legally or official acceptable*". According to Black's Law Dictionary Fifth Edition, '*valid*' means "*Having legal strength or force, executed with proper formalities, incapable of being rightfully overthrown or set aside. legally sufficient; binding. Of binding force; legally sufficient or efficacious; authorized by law.*" According to Words and Phrases (Permanent Edition) Vol-44 the terms "*valid*" means "*in law having legal strength, force, and effect, or incapable of being rightfully overthrown or set aside; "valid" means efficient, effective; accomplishing what is claimed or intended.*". The word "*no*" appearing in Section 6 of the Ordinance, 2001 renders a tenancy beyond the expiry or tenure "*invalid*". The term "*invalid*" has been defined in Oxford dictionary as "*not valid, not legally recognized because it contravenes a regulation of law*". In Black's law Dictionary "*invalid*" means "*not legally binding; without basis in fact*". In Words and Phrases Permanent Edition Vol-22A "*invalid*" means "*of no force; weight; cogency; not valid; weak. Law having no force or effect; void, null; as an invalid contract*".

11. Thus, as per the clear mandate of Section 6 *ibid*, such a tenancy shall come to an end after the expiry of the term of tenancy and if thereafter the tenant holds such a property without the consent

of the landlord, it shall be a clear violation and the infringement of the condition of the tenancy, on which the property was held by him, because the condition of tenancy is for a particular period of time either by the terms stipulated in the tenancy agreement or by the afflux of time, which is specified in Section 6 (*ibid.*) itself. Thus, the case is squarely covered by Section 17(2)(ii)(b) of the Ordinance, 2001. Much emphasis has been made on the language of Section 17(1) of the Ordinance, 2001 that a tenant shall not be evicted except in accordance with the provisions of the said Section, wherein certain specific grounds have been provided and Section 6 *ibid* has been made subject to Section 17 *ibid* which means that it is subordinate and subservient to the said Section. In this regard it is to be noted that in Black's Law Dictionary, fifth Edition, the term "subject to" has been defined as under:-

*“Liable, subordinate, subservient, inferior, obedient to; governed or affected by; provided that; provided; answerable for.” (emphasis supplied)*

Thus, the expression “*subject to*” cannot always be construed as ‘limited to’, but can also be read as “*provided that*” or “*provided*”, which means that Section 6 *ibid* would be applicable provided that there is a ground available in Section 17 *ibid*. Therefore, applying the above said definition to the expression “*subject to*” a tenant, who holds the property beyond the term of tenancy, under Section 17(2)(ii)(b) of the Ordinance, 2001 shall be evicted from the premises which is held on the condition for holding it for a specific period of time if he continues to occupy the rented property beyond such period without the “*written consent*” of the landlord. Eviction of the tenant thus will be

on the grounds of violation of the term of tenancy which will be seen as a condition of the tenancy agreement. This purposive and harmonious interpretation of Section 6 *ibid*, when it interplays with the provisions of Section 17 *ibid* gives effect to both the allegedly conflicting provisions of the Ordinance, 2001. If some other meaning is given thereto, it shall render Section 6 *ibid* completely redundant, with the consequence that though the tenancy after the expiry of the agreed or statutory period has come to an end and is extinguished as per section 6 *ibid*, yet the landlord cannot seek the eviction of the tenant and may have to seek eviction only on any of the grounds mentioned specifically in Section 17 *ibid*, such as, default in payment of rent, subletting, reconstruction, personal requirement, damage to the property. This would lead to ludicrous legal consequences in that not only shall Section 6 *ibid* be rendered redundant and nugatory; it shall allow a tenant of the property to continue to occupy the property though he has no right to occupy the same, as his tenancy per the command of law is no more valid. This shall be the most illogical and most ineligible interpretation of Section 6 *ibid* when read with Section 17(2)(ii)(b) of the Ordinance, 2001. So far as the argument that in the Act, 2009 a separate ground for eviction, on account of expiry of tenancy, is specifically mentioned is concerned; suffice it to say that in some later laws on the same subject, Provinces have become wiser to make the law more clear. However, it does not mean that the law earlier in force in Islamabad should be interpreted on the basis of a later provincial enactment. As far as the argument about the definition of the 'tenant' provided in Section 2(j) (*supra*) is concerned, we are of the considered view that the definition given therein is for the purpose of conferment of jurisdiction upon the Rent Controller, and provides the

landlord a right to apply for eviction of the tenant occupying the rented property on an invalid tenancy under the provisions of the Ordinance, 2001. It does not affect either the clear provisions of Section 6 and/or the provisions of Section 17(2)(ii)(b) of the Ordinance, 2001.

12. Thus, we conclude that as after expiration of the tenancy period, a tenant, though can continue to hold over the possession of the rented premises, but his tenancy is rendered invalid, in that, it has come to an end and if there is no express consent of the landlord to extend the tenancy period the tenant shall be guilty of having infringed the conditions of tenancy, rendering him liable to be evicted under Section 17(2)(ii)(b) of the Ordinance, 2001 . In the light of the above, we do not find any merit in these appeals, which are hereby dismissed. No orders as to the costs.

CHIEF JUSTICE

JUDGE

JUDGE

**Announced in open Court**

on **21.12.2017** at **Lahore**

Approved For Reporting

Mudassar/★