

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT:

MR. JUSTICE MIAN SAQIB NISAR

MR. JUSTICE MANZOOR AHMAD MALIK

CIVIL APPEAL NO.222-L OF 2016

*(Against the judgment dated 10.6.2015 of
the Lahore High Court, Lahore passed in
W.P.No.3925/2015)*

Mian Umar Ikram-ul-Haque

...Appellant(s)

VERSUS

Dr. Shahida Hasnain and another

...Respondent(s)

For the appellant(s): Mr. Qamar Zaman Qureshi, ASC

For respondent No.1: Mr. Riasat Ali Chaudhry, ASC

Date of hearing: 15.09.2016

...

JUDGMENT

MIAN SAQIB NISAR, J.- This appeal with the leave of the court dated 6.9.2016 involves a simple yet important question of law i.e. whether an order under Section 24 of the Punjab Rented Premises Act, 2009 (*the Act*) can be passed against a respondent of an eviction application when he has denied the relationship of tenancy, leave to contest has been granted pursuant to a leave application and an issue to that effect has also been framed by the learned Rent Tribunal.

2. The brief facts in the context of the aforesaid question are that respondent No.1 (*respondent*) filed an eviction application against the appellant under the Act asserting that the latter is a tenant who failed to pay rent to the former according to the terms and conditions of the lease agreement dated 1.1.2012 entered into between the two parties. The application also states that such lease

agreement was not registered with the Rent Registrar therefore the amount of 10% rent is being deposited as fine. The rate of rent was claimed as Rs.40,000/- per month. The appellant filed an application for leave to contest in which he specifically and unequivocally denied the relationship of tenancy and clearly set out a defence that he was in occupation of the property pursuant to an agreement to sell dated 1.2.2012 between the parties in terms whereof the appellant paid an amount of Rs.41,00,000/- at the time of execution [out of the total consideration of Rs.61,00,000/-] and took possession; the balance amount was/is payable at the time of the execution of the sale deed. It was further averred that the appellant had already filed a suit on 3.10.2012 for the performance of the agreement to sell whereas the eviction application had been moved on 3.12.2014. It was categorically stated that the lease agreement dated 1.1.2012 was/is a fake and forged document. The learned Rent Tribunal *vide* order dated 3.12.2014 granted leave to the appellant and in view of the defence taken, framed a sole issue i.e. whether the relationship of landlord and tenant exists between the parties, if so its effect. However the learned Rent Tribunal observed that since the relationship of landlord and tenant was yet to be determined, therefore no order as to interim rent could be made. The respondent did not challenge this order of the learned Rent Tribunal but instead moved an application under Section 24 of the Act with the prayer that an order for the deposit of past and future rent due be passed by the Tribunal in terms of the section *ibid*. The application was dismissed by the learned Rent Tribunal *vide* order dated 2.1.2015 on the ground that since the respondent had denied the relationship of landlord and tenant, the order for the deposit of rent under Section

24 *ibid* cannot be made till such relationship is established. Aggrieved, the respondent challenged both the orders dated 3.12.2014 and 2.1.2015 by filing a constitutional petition before the learned High Court (*in which the appellant was proceeded against ex-parte and the impugned order is ex-parte order*) to the extent that no direction was given for deposit of rent.. The learned High Court, while allowing this petition, held as under:-

“The tenor of section 24 of the Act does not make a distinction between the cases where the relationship of landlord and tenant is admitted and in those cases where the said relationship is denied. The mandate of section 24 is clear. When an application for leave to contest is granted, it falls upon the Rent Controller to make an order for the deposit of rent due from the tenant and continue to deposit the same in accordance with the tenancy agreement. This proposition is bolstered by the terms of subsection (2) of section 24 of the Act which lays down that if there is no dispute as to the amount of rent due, then the Rent Tribunal shall tentatively determine the dispute and pass the order for the deposit of rent in terms of subsection (1) of section 24 of the Act. The term “rent due” has a wide sweep and would include a dispute of the nature where the relationship of landlord and tenant is denied...”

It was further held that:-

“A common thread which runs through the Act is to discourage and ward off unscrupulous and

irrational defenses on the part of tenants. If the deposit of payment of interim rent was made dependent upon the denial or acceptance of the relationship of landlord and tenant then the spirit which permeates the Act would be rendered nugatory...A combined reading of sections 5, 6, 7, 8 and 9 of the Act, 2009 brings forth ineluctably the sea-change which runs through the length and breadth of the Act, 2009...The jurisdiction of Rent Tribunal is only triggered when the conditions laid down in the Act, 2009 are found to exist...It is clear from a reading of the provisions of section 10 reproduced above that an agreement to sell or any other agreement entered into between the landlord and tenant shall not affect the relationship of landlord and tenant.

In reaching its decision, the learned High Court relied heavily upon a judgment of this Court reported as **Rana Abdul Hameed Talib Vs. Additional District Judge, Lahore and others** (PLD 2013 SC 775).

3. Leave has been granted to consider whether an order under Section 24 of the Act can be passed where the relationship of tenancy has been denied and the effect of Section 10 of the Act upon such denial. Although the legislative history of rent laws in Pakistan has been discussed in detail in **Rana Abdul Hameed Talib**'s case (*supra*), nevertheless we find it expedient to briefly reiterate the same for the sake of completeness before deciding the proposition in hand. Initially disputes *inter se* landlords and tenants relating to leases and tenancies were dealt with under the general law of the land i.e. Transfer of Property Act, 1872 (*excluding leases of agricultural properties, dealt with by the revenue courts*) and the same were adjudicated by the courts of general jurisdiction (*see Section 9 CPC*). The West Pakistan Rent

Restriction Ordinance, 1959 (*Ordinance*) a special law was enacted for the purposes of resolution of such disputes between landlords and tenants within the purview of the provisions mentioned therein, particularly Section 13 of the Ordinance which provided the grounds upon which a tenant may be evicted by the landlord. The definitions of landlord and tenant were specifically provided and it is clear that jurisdiction under this special law was endowed in three ways. The first was jurisdiction upon the subject matter i.e. the property was to be urban immovable property – residential or non-residential, or rented land etc. The second was jurisdiction upon the parties i.e. there was to be a relationship of tenancy, in other words the dispute must be between the landlord and tenant as defined in the law. The third was territorial jurisdiction. Therefore if any of the aforementioned requirements were not met, the Rent Controller would have no jurisdiction over the matter before him. With respect to the second type of jurisdiction: if the respondent in a rent matter denied the relationship of tenancy, a question of jurisdictional fact would arise. The doctrine of jurisdictional fact connotes that the jurisdiction of an adjudication forum is dependent upon the ascertainment and determination of certain facts. In this behalf, N.S. Bindra in the Interpretation of Statutes Seventh Edition, 1984, p.229, has defined "Court's jurisdiction to determine the jurisdictional fact", as follows:-

“Court's jurisdiction to determine jurisdictional facts. It is well settled that a Tribunal can investigate into the facts relating to the exercise of its jurisdiction when that jurisdictional fact itself is in dispute. Where a Tribunal is invested with jurisdiction to determine a particular question, it is competent to determine the existence of the facts

collateral to the actual matter which the Tribunal has to try. This power to decide collateral facts is the foundation for the exercise of its jurisdiction.”

In Halsbury's Laws of England, it has been stated;

“Where the jurisdiction of a tribunal is dependent on the existence of a particular state of affairs, that state of affairs may be described as preliminary to, or collateral to the merits of, the issue. If, at the inception of an inquiry by an inferior tribunal, a challenge is made to its jurisdiction, the tribunal has to make up its mind whether to act or not and can give a ruling on the preliminary or collateral issue; but that ruling is not conclusive”.

The jurisdictional fact in this context would be whether the relationship of landlord and tenant existed between the parties. If the Rent Controller positively ascertained such a relationship through factual enquiry, he would assume jurisdiction, otherwise the petition had to fail because the Rent Controller in that situation would not have any jurisdiction over the parties and consequently the matter before him. Section 13(6) of the erstwhile Ordinance was similar to Section 24 of the Act, where the Rent Controller was obliged to make an order directing the tenant to pay all the past rent due and the future rent that would become due: however this direction could only be to a **tenant** and not a **respondent** of an eviction petition. There is a conspicuous distinction between the two which needs to be appreciated. The expression of law is that such direction be made to a tenant, which expression (*i.e. tenant*) cannot be read or substituted for the respondent of an eviction petition. 'Tenant' was defined in Section 2(i) of the Ordinance, therefore an order under Section 13(6)

could only be passed against a person who fell within the definition of 'tenant' as provided in the Ordinance.

4. From this examination of the erstwhile Ordinance it is clear that where the relationship of tenancy was denied by the respondent of the eviction petition the Rent Controller would be exceeding his jurisdiction and acting in violation of the clear provisions of law in directing such respondent to deposit the rent due. This question pertaining to the earlier law came before the superior courts in a number of cases and it has been categorically held that in a situation where the relationship of tenancy was denied, the Rent Controller could not pass an order for payment of rent due under Section 13(6) of the Ordinance. In this respect the judgments which are germane are Muhammad Ismail Vs. Israr Ahmad [PLD 1961 (W.P.) Lahore 601], Mst. Karam Bibi Vs. Mir Muhammad Hassan and others [PLD 1962 (W.P.) Quetta 67], Akhtar Ali Pervez Vs. Altaf ur Rehman [PLD 1963 (W.P.) Lahore 390], Habibullah Vs. Bawa Vasdevgir Chelo Shambhugir (PLD 1968 Kar 869), Mst. Khurshid Vs. Haji Abdul Hadi and 4 others (PLD 1979 Quetta 39), Mst. Rashida Begum Vs. Mazhar Iqbal (1983 CLC 380), Abdul Wahid Vs. Bashir Ahmad and others (1986 CLC 829), Muhammad Siddique Vs. Fazal Hussain Qureshi and 2 others (PLD 1996 Lah 252), Mst. ah Razia Begum and another Vs. Senior Civil Judge (Rent Controller), Charsadda and 2 others (PLD 1996 Pesh 8), Tariq Ali Sheikh Vs. Rent Controller (Khalid Nawaz), Lahore and another (1998 CLC 460), Sh. Muhammad Siddiq Vs. Khurram Gulraiz and 2 others (1998 MLD 624), Ghulam Rasool Vs. Mian Khurshid Ahmed (2000 SCMR 632), Khalid Saeed and others Vs. Nadeem Ahmad Khan (2003 CLC 1614), Irfanullah Shah Vs.

Wahabullah and another (2003 YLR 1195), Qazi Muhammad Hayat and others Vs. Dad Muhammad and others (PLD 2003 SC 231), Babu Din Vs. Civil Judge/Rent Controller, Multan and 6 others (2006 CLC 926), Aziz Ahmed Mughal Vs. Rent Controller and others (2006 CLC 1381), Irshad Ahmad Khan Vs. Rent Controller and 2 others (2006 CLC 1860), Ashiq Hussain and another Vs. Jamia Masjid Hanfia Ghausia through President (PLD 2007 Lah 283) and Muhammad Wakil Khan Vs. Additional District Judge, Lahore and 3 others (2007 CLC 1151).

5. The Ordinance was repealed by the Punjab Rented Premises Ordinance, 2007 which finally culminated into the Act. Again, in this special law (*the Act*) the jurisdiction of the Rent Tribunal is restricted to disputes which are covered by the Act in terms of subject matter, parties and territorial jurisdiction. Subject matter jurisdiction includes non-agricultural residential or non-residential buildings or rented land whereas in terms of territorial jurisdiction it is the same as the extent of the jurisdiction of the Rent Tribunal under the previous law. With respect to parties, as was the case under the earlier law, the Rent Tribunal would only assume jurisdiction over a matter once the jurisdictional threshold is crossed by establishing that the matter involves a landlord and tenant. 'Tenant' has been defined

- termination of his tenancy for the purpose of a proceeding under this Act;*
- (ii) Legal heirs of a tenant in the event of death of the tenant who continue to be in occupation of the premises; and*
 - (iii) A sub-tenant who is in possession of the premises or part thereof with the written consent of the landlord...”*

Section 24 of the Act reads as under:

“24. Payment of rent and other dues for pending proceedings.—(1) If an eviction application is filed, the Rent Tribunal, while granting leave to contest, shall direct the tenant to deposit the rent due from him within a specified time, and continue to deposit the same in accordance with the tenancy agreement or as may be directed by the Rent Tribunal till the final order.

(Emphasis supplied)

(2) If there is a dispute as to the amount of rent due or rate of rent, the Rent Tribunal shall tentatively determine the dispute and pass the order for deposit of the rent in terms of Sub-section (1).

(3) In case the tenant has not paid a utility bill, the Rent Tribunal shall direct the tenant to pay the utility bill.

(4) If a tenant fails to comply with a direction or order of the Rent Tribunal, the Rent Tribunal shall forthwith pass the final order.”

Through the impugned judgment the learned High Court has tried to resolve the question at hand by dwelling upon the larger scheme of the new rent laws by trying to decipher the latent intent of the legislature, which in our view was completely unnecessary because the answer to the question is quite patent. A plain reading of Section 24 of the Act reproduced hereinabove makes it clear that a direction is **not** to be issued to the respondent of an eviction application but to a tenant. The use of the word 'tenant' as opposed to 'respondent' speaks to the legislative intent. This usage appears to be conscious and deliberate, because elsewhere in the Act where the parties to a *lis* are meant to be referred to without identifying their legal characters, the words 'applicant' and 'respondent' are used instead of 'landlord' and 'tenant' (*see Sections 19, 21 and 22 etc.*). Where there is a specific intention to do so and the attending context requires that the parties be referred to by their legal status, the legislature has used the words 'landlord' and 'tenant' (*see Sections 5, 7, 9, 10, 11, 12, 13, 14, 15, 20, 24 etc.*). It is a settled canon of statutory interpretation that where a statute uses a particular word(s), the presumption is that such word(s) is illustrative of the legislative intent unless there are very cogent reasons to displace the same and in our view, there are no such reasons that justify interpreting Section 24 of the Act in a way that defeats its express meaning. Therefore, it follows that where the relationship of landlord and tenant is denied, the Rent Tribunal would lack jurisdiction, on account of the doctrine of jurisdictional fact, to pass an order for payment of rent due under Section 24 of the Act until and unless the Tribunal positively ascertains the relationship of tenancy and establishes that the respondent to the eviction application is in fact a 'tenant' in terms of Section 2(l) of the Act. As

regards the argument of the learned counsel for the respondent that where there is a contumacious denial by the respondent of an eviction application the Rent Tribunal should pass an order for payment of rent due, suffice it to say that contumacious denial of the relationship of tenancy would form the basis for declining relief to the respondent. Where the denial, *prima facie*, appears to be tainted and contumacious, the Rent Controller would refrain from granting leave to the respondent as a matter of right and course, in a perfunctory manner. Instead, when the Rent Tribunal, without framing an issue, concludes that the denial is contumacious in nature, it may refuse to grant leave and allow the eviction application. Whilst so doing, the Tribunal can simultaneously pass an order under Section 24 of the Act finally determining the rent due from the tenant and direct that the same be deposited/paid. However, where once leave has been granted and the Tribunal has first to decide the question of its own jurisdiction, then in that eventuality, on account of the clear provisions of Section 24 *ibid* read with the definition of the word 'tenant' appearing in the Act, the Rent Tribunal is precluded from passing an order without first determining the jurisdictional fact. Once the relationship of tenancy has been denied the jurisdiction of the Rent Tribunal has essentially been called into question and needs to be resolved before the Tribunal can proceed to pass an order for payment of rent due. It needs to be appreciated that there is a distinction between an issue as to the very authority to adjudicate and those issues which may arise as between the parties. The Rent Controller must first establish relationship of landlord and tenant. Objections "to" proceedings must be distinguished from objections "in" the proceedings. Issue of jurisdiction may be raised by a party

but it only concerns the court and the party over whom it is asked to assume jurisdiction.¹To hold otherwise would be to defeat the express intention of the statute, which is that an order for payment of rent due should only be passed against a tenant, and not merely a respondent of an eviction application. The relationship of landlord and tenant is an essential question which has a direct effect upon the assumption and exercise of the jurisdiction of the Rent Tribunal, which (*question*) must necessarily be positively ascertained before passing an order for payment of rent due under Section 24 of the Act. The judgment of the High Court reported as **Farrukh Nadeem Vs. Muhammad Ahmad Khan and another** (2009 MLD 955) relied upon by the learned counsel for the respondent to the effect that where there is a contumacious denial an order under Section 13(6) of the Ordinance can be passed is bad law which cannot be sustained, thus this judgment is set aside. It may however be mentioned here that where default in the payment of rent is set out as a ground in the eviction application, the relationship of tenancy is denied by the respondent, leave is granted to the respondent of the case, an issue in this context is framed, evidence is led by the parties, and the Rent Tribunal comes to the conclusion that such relationship exists, the Tribunal by applying the principles of estoppel and the rule of forfeiture of tenancy shall straightaway pass an order of eviction against the respondent/tenant and shall also pass the final order regarding the amount of rent due to the landlord which the respondent (*adjudged as a tenant*) is obliged to pay, and such order shall be executable against the tenant, besides the execution of the

¹**Akhtar Ali Pervez Vs. Altafur Rehman** (PLD 1963 (WP) Lah 390), Full Bench, J Manzur Qadir.

eviction. However where grounds envisaged by Section 15 of the Act other than default are raised in an eviction application, obviously the Rent Tribunal after deciding the issue of relationship of tenancy and finding in favour of the landlord may frame further issues on merits and at that point of time pass an order under Section 24 *ibid*.

6. We now advert to the question regarding the validity of the agreement to sell in terms of Section 10 of the Act which (*section*) reads as follows:-

“Effect of other agreement.—An agreement to sell or any other agreement entered into between the landlord and the tenant, after the execution of a tenancy agreement, in respect of premises and for a matter other than a matter provided under the tenancy agreement, shall not affect the relationship or landlord and tenant, unless the tenancy is revoked through a written agreement entered before the Rent Registrar in accordance with the provisions of section 5.”

Section 10 of the Act provides that an agreement to sell entered into between a landlord and tenant, after the execution of a tenancy agreement, shall not affect the relationship of landlord and tenant unless the tenancy is revoked in accordance with the Act. In the instant matter the case of the appellant (*respondent in the eviction petition*) is that he was in occupation of the premises by virtue of an agreement to sell entered into with the respondent, and not because he was a tenant who subsequently entered into an agreement to sell with the respondent. It is his stance that the agreement to sell had nothing to do with any tenancy whatsoever, and therefore Section 10 had no

bearing on his case. We are inclined to agree with this argument. Again, the use of the words 'landlord' and 'tenant' in Section 10 *ibid* presupposes the existence of the relationship of tenancy between the parties. Therefore the agreements to sell that Section 10 refers to are, by ineluctable conclusion, the ones entered into between existing landlords and tenants subsequent to their tenancy agreement and during the subsistence thereof. This is entirely different from those cases where there is/was no relationship of landlord and tenant from the very beginning, as is allegedly the case in the instant matter. Therefore, the judgment reported as **Haji Muhammad Saeed Vs. Additional District Judge (2012 MLD 108)** relied upon by the learned counsel for the respondent is distinguishable, pertaining to the former category of cases where existing landlord and tenant subsequently enter into an agreement to sell. This vital distinction has eluded the attention of the learned High Court while passing the impugned judgment.

7. In light of the above, we answer the question identified in the first paragraph of the opinion in the negative, in that an order under Section 24 of the Act cannot be passed against a respondent of an eviction application where the relationship of landlord and tenant has been denied. The learned High Court has clearly erred in holding that the Rent Tribunal is obliged to pass an order for payment of rent due under Section 24 *ibid* notwithstanding the fact that the relationship of tenancy had been denied. Therefore, this appeal is accepted and the impugned judgment of the learned High Court is set aside. Before parting it may be observed that the counsel for the respondent has apprised us that in compliance with the impugned judgment the appellant has deposited a certain amount with the Rent

Tribunal in response the appellant's counsel states that his client shall not withdraw such amount, which shall be subject to the final decision of the case. We also direct that the suit for specific performance filed by the respondent against the appellant and the eviction petition be tried by the same court, therefore, either of the parties may apply to the District Judge Lahore for the transfer of either of the cases to one court. Such court should decide both the matters within four months of the transfer of the case under intimation to the Assistant Registrar (Lahore) of this Court.

JUDGE

JUDGE

Announced in open Court

on **10.10.2016** at **Lahore**

Approved For Reporting

Waqas Naseer/*

JUDGE