

**JUDGMENT SHEET**  
**ISLAMABAD HIGH COURT, ISLAMABAD,**  
**JUDICIAL DEPARTMENT**

**W.P. No.357/2019**

Muhammad Yar

*versus*

Additional District Judge, Islamabad & another

Petitioner by: Syed Wusat-ul-Hassan Shah, Advocate.

Respondent No.2 by: Mr. Muhammad Sadiq Khan, Advocate.

**Date of Hearing: 11.11.2019.**

**MOHSIN AKHTAR KAYANI, J:** Through this writ petition, the petitioner has assailed concurrent findings of learned Rent Controller (West), Islamabad and learned Additional District Judge-X (West), Islamabad, passed vide impugned order dated 20.07.2018 and impugned judgment dated 26.10.2018, respectively.

2. Brief facts referred in the instant writ petition are that Ghulam Murtaza/Respondent No.2 filed eviction petition against the petitioner regarding Shops No.1, 2, 3, 4, 7 & 8, situated at Plot No.119, I&T Centre, Sector G-9/1, Islamabad on the grounds of personal bonafide need, expiry of lease and for the purpose of reconstruction, which was allowed by the learned Rent Controller (West), Islamabad on 21.01.2013. The petitioner feeling aggrieved thereof preferred an appeal, which was dismissed by the learned Additional District Judge (West), Islamabad vide judgment dated 02.12.2013 with the observations that respondent No.2 will demolish the demised premises within four (04) months. However, respondent No.2 failed to comply with such directions, which constrained the petitioner to file application under Section 17(7) of the Islamabad Rent Restriction Ordinance, 2001 (*hereinafter referred to as "IRRO, 2001"*), which was adjudicated upon by learned Rent Controller and pursuant to proper trial respondent No.2 was burdened with fine of Rs.10,000/-

as punishment vide order dated 21.11.2016. Subsequently, the petitioner filed petition under Section 17(6) of the IRRO, 2001 for re-possession of the suit shops, which was dismissed by the learned Rent Controller, Islamabad vide order dated 19.09.2017. Feeling aggrieved thereof, the petitioner preferred an appeal under Section 21 of the IRRO, 2001, whereby the order of 19.09.2017 was set-aside by learned Additional District Judge (West), Islamabad vide judgment dated 21.11.2017 and the case was remanded to the learned Rent Controller for decision afresh, whereafter the matter was dismissed vide impugned order dated 20.07.2018. On passing of said order, the petitioner preferred yet another appeal under Section 21 of the IRRO, 2001, which was dismissed by the learned Additional District Judge (West), Islamabad vide impugned judgment dated 26.10.2018. Hence, the instant writ petition.

3. Learned counsel for petitioner contended that the Courts below in violation of settled principles of the apex Court and view rendered by this Court in earlier round of proceedings have passed the impugned order and judgment; that respondent No.2 was bound to hand over the possession back to the petitioner as he neither demolished the suit premises nor using the same for his personal need; that the impugned order and judgment are based on surmises and conjectures and have been passed merely on assumptions and in violation of law consistently laid down by the superior Courts, therefore, the same may kindly be set-aside.

4. Conversely, learned counsel for respondent No.2 while supporting the impugned order and judgment contended that the learned Rent Controller had accepted the eviction petition in accordance with law, while appeal preferred thereto by the petitioner was dismissed by the learned Additional District Judge pursuant to proper appreciation of evidence; that the learned Rent Controller has rightly appreciated that the petitioner has failed to narrate facts including the

dates as to when and how the family members of respondent No.2 obtained possession of suit premises or when and to whom the same has been rented out to some other tenant except the petitioner; that the petitioner has badly failed to prove his case before both the forums below and the impugned judgment and order suffer from no illegality, therefore, the same may kindly be maintained and the instant writ petition may be dismissed.

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

6. Perusal of record reveals that the petitioner was tenant in Shops No.1, 2, 3, 4, 7 & 8 situated at Plot No.119, I&T Centre, Sector G-9/1, Islamabad, which were leased out by Ghulam Murtaza/respondent No.2 to the petitioner through lease agreement dated 30.07.1990, which had expired on 30.06.1991 after the elapse of one year but the eviction petition was filed by respondent No.2 on 01.04.2011 before learned Rent Controller, Islamabad on three grounds i.e. reconstruction, personal bonafide use and expiry of lease agreement. The eviction petition was allowed in the first round of proceedings and appeal was preferred by the present petitioner in terms of section 21 of IRRO, 2001 before learned Additional District Judge, which was dismissed and order was maintained in writ petition as well as before Apex Court and CPLA filed by the petitioner was also dismissed. The petitioner after final decision from Apex Court was dispossessed, however, he filed another application in terms of section 17(6) of IRRO, 2001 with the claim that he may be allowed to put into possession of the shops by the order of Rent Controller as respondent No.2/landlord has failed to demolish the premises within 04 months nor reconstructed the building and violated his own commitment on which he sought eviction against the petitioner. The said application was dismissed by learned Rent Controller, Islamabad vide judgment dated 20.07.2018. The same was maintained in Court of appeal by learned Additional District Judge (West) Islamabad vide judgment dated 26.10.2018.

7. However, in order to resolve the controversy, it is necessary to go through the provisions of section 17(6) of IRRO, 2001, which is reproduced as under:-

*"17(6) Where the landlord who has obtained possession of a building in pursuance of an order made under sub-section (5) does not himself, or where possession of the building or rented land has been obtained for any member of his family such member does not, occupy the building or rented land within one month of the date of obtaining its possession, or having obtained possession relets it within six months of the said date to any person other than the tenant, the tenant may apply to the Controller for an order directing that the possession of such building be restored to him and the Controller may make an order accordingly."*

8. The above referred provisions of law explain certain rights available to the landlord in eviction process of tenant, however, if the landlord has obtained the possession of the building in pursuance of an order made under sub-section 5 of section 17 does not himself or where possession of building or rented land has been obtained for any member of his family, fails to occupy the building within one month of the date of obtaining its possession or relets the same within six months of the date of dispossession of the tenant, the right of tenant stands revived. Sub-section 5 of section 17 of IRRO, 2001 spells out satisfaction of learned Rent Controller that claim of the landlord is bonafide and as such Rent Controller can pass order directing the tenant to put the landlord in possession of the building or rented land. Be that as it may, the petitioner being ex-tenant of respondent No.2 to has to discharge his onus that the order of eviction obtained by respondent No.2 on the ground of bonafide claim or personal bonafide need has not been complied with. I have gone through the judgment passed by learned Rent Controller in first round as well as in the pleadings and evidence of affidavit Exh.A.1. The issues were framed on 21.04.2015 wherein issue No.1 was as to Whether respondent is liable to be ejected from the demised premises on the grounds taken in this petition, whereby learned Rent Controller has given his findings on issue No.1 in para 8 of the judgment of eviction dated 21.1.2013, in which it has been referred that "petitioner has stated categorically regarding his

personal bonafide need, therefore, bonafide need stands proved." The said finding has been challenged through the present application U/S 17(6) of IRRO, 2001 but the pleadings of the petitioner as well as the record does not reflect any of the material evidence to substantiate the plea that the building has been relet to third party in order to deprive the petitioner from his right protected U/S 17(6) of IRRO, 2001. Even otherwise, if such facts have been justified on record by the petitioner, even then the petitioner is not entitled for such relief mainly on the ground that the eviction order passed against the petitioner in the first round of the proceedings U/S 17 of IRRO, 2001 was also passed due to expiry of lease agreement, which itself is admitted on record.

9. I have gone through the order passed by learned Rent Controller in the first round dated 21.1.2013 qua issue No.1, wherein beside the personal bonafide need and reconstruction of shops, question of expiry of lease has specifically been urged as in para 12 of the said order it has specifically been mentioned that "Moreover, the lease agreement between the parties, which is available on file as Exh.P.4, has already been expired and there is no fresh lease agreement between the parties. Further, the respondent has also admitted in his cross-examination that the lease agreement has already been expired. The respondent self-stated that no fresh agreement has been executed between the parties and as per agreement he should vacate the premises. So, these admissions on part of respondent prove beyond any shadow of doubt that the tenancy has expired."

Therefore, in such type of situation the Apex Court has now settled the rights in the recent judgment reported as PLD 2018 SC 81 (Waqar Zafar Bakhtawri vs. Haji Mazhar Hussain Shah), wherein it has been held that:-

*" 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."*

As per law laid down by the Apex Court in above referred judgment the petitioner was liable to be evicted from the demised premises on this score alone.

10. In the light of above principles laid down by the Apex Court, when the lease agreement has already been expired, no right survives in favour of the tenant, even otherwise, Courts below have rightly held that the petitioner has failed to provide the credentials of the newly admitted tenant in the said premises, even no date has been mentioned on which the shops were rented out by respondent No.2 to some other person. I have gone through the concurrent findings of learned Rent Controller and learned Appellate Court and as such no illegality has been observed, which requires interference in Constitutional jurisdiction in terms of Article 199 of Constitution of Islamic Republic of Pakistan, 1973.

11. In view of above discussion, the instant writ petition bears no merits, therefore, the same stands *dismissed*.

(MOHSIN AKHTAR KAYANI)  
JUDGE

Announced in open Court on 26.11.2019.

JUDGE

R.Anjam.