

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

Writ Petition No.3086 of 2015

Saeed ur Rehman

Versus

Secretary to the Government of Pakistan, Ministry of Religious Affairs and
Interfaith Harmony, Islamabad and others.

Petitioner by:	Barrister Talha Ilyas Sheikh, Advocate. Saeed ur Rehman/Petitioner in- person.
Respondents by:	Mr. Mudassar Ikram Ch., Advocate. Muhammad Abid, Inspector on behalf of respondent No. 3 & 4.
Dates of hearing:	11.03.2021 & 18.03.2021

Tariq Mehmood Jahangiri, J: The petitioner has filed the
instant writ petition with the following prayer:-

***“It is, therefore, respectfully prayed that Writ Petition
may, kindly be accepted, the impugned orders as well
as notice dated 15-09-2015 may kindly be set aside.
Any other relief, which this Honorable Court deems just
and proper may also be granted.”***

02. Brief facts of the case are that Abdul Rehman father of the petitioner was tenant of Evacuee Trust Property Department with respect to property bearing No. 334, Iqbal Road, Rawalpindi and after his death the petitioner's mother on 26-11-1995 submitted an application before respondent No. 4/ Assistant Administrator (ETPO) for transfer/change of tenancy rights to her, which is still pending. Again, the petitioner being legal heir/son of Abdul Rehman applied for change of tenancy

rights on 01-01-2015, whereas other legal heirs of Abdul Rehman sworn affidavits in favour of the petitioner, but the application was dismissed without hearing the petitioner. The application filed by petitioner's mother for change of tenancy rights is still pending adjudication and has not yet been decided by the respondent No. 4/Assistant Administrator (ETPO). The petitioner, who is a poor and illiterate person, after having permission from the health department, installed a small water filtration plant in the premises of his residence in the year 2012 and on 15-01-2014 submitted an application for change of residential rent into commercial rent before respondent No. 4/Assistant Administrator (ETPO) which is still pending. The premises owned by respondent No. 4 / Assistant Administrator (ETPO) is situated in the commercial hub of the city. The respondent No. 4 / Assistant Administrator (ETPO) passed ejectment order against the petitioner. The petitioner filed an appeal before respondent No. 3/Zonal Administrator Evacuee Trust Property, which was dismissed, vide order dated 16-06-2015, whereas the petitioner assailed both the impugned orders through Revision Petition before the Revisional Authority i.e. respondent No. 2/Senior Joint Secretary to the Government of Pakistan, Ministry of Religious Affairs and Interfaith Harmony, Islamabad but the same was also dismissed, vide order dated 18-08-2015. So respondent No. 4 / Assistant Administrator (ETPO) issued a notice dated 15-09-2015 to the petitioner for vacation/handing over possession of the property, hence, this petition.

03. Learned Counsel for the Petitioner, inter-alia, contends that the impugned orders passed by the respondents are against the law and facts of the case, which are not maintainable in the eye of law; the impugned orders are illegal resulting in miscarriage of Justice. The learned Counsel for the Petitioner further contends that the respondents were duty bound to change the tenancy rights of the property in favour of legal heirs of the deceased but the respondents had not acted according to law; the water filtration plant was installed by the petitioner within the premises with verbal permission of the respondents. The petitioner also applied for change of residential rent into commercial rent but the same has not yet been decided by the respondent No. 4 / Assistant Administrator (ETPO) with malafide intention and by ulterior motives; no opportunity of personal hearing was afforded to the petitioner; the petitioner is paying rent regularly and a valuable right for change of tenancy rights has been accrued in favour of the petitioner. Lastly, the learned Counsel has prayed for setting aside the impugned orders.

04. Conversely, learned Counsel for the respondents has vehemently controverted the arguments advanced by learned Counsel for the Petitioner stating that mother of the petitioner has filed an application for transfer/change of tenancy rights with delay of many years after the death of allottee/father of the petitioner, the petitioner has illegally and unlawfully converted the status of premises from residential to commercial and has further stated that tenancy has rightly been cancelled by the respondents.

05. Arguments advanced by the learned Counsel for both the parties have been heard and record has been perused with their able assistance.

06. Father of the petitioner namely Abdul Rehman, who was tenant of the Evacuee Trust Property Department, died on 12.08.1993, widow of the deceased applied for the change of tenancy in the names of legal heirs on 26.11.1995 i.e. after about twelve (12) years of the death of actual allottee/tenant. The petitioner applied for the change of tenancy in his name on 01-01-2015, i.e. after thirty two (32) years of the death of his father. The petitioner converted the status of the property from residential to commercial by installing a water filtration plant on commercial basis without permission of the respondents. The respondents have cancelled the tenancy rights of the petitioner vide order dated 05.03.2015 on the ground that the petitioner has installed a water filtration plant without the permission of the respondents / authority. Show Cause Notices dated 29.07.2013 & 07.03.2014 were issued and in response, the petitioner filed a Civil Suit which was dismissed on 28.06.2016 and appeal was also dismissed on 08.03.2017. Consequently, the tenancy of the property was cancelled and the petitioner was directed to hand over the possession to the concerned authorities.

07. The petitioner has also filed an application on 15.01.2014 to the respondent No. 4 / Assistant Administrator (ETPO), wherein the petitioner has mentioned that he has already converted the property from residential to commercial without any permission of the concerned authorities and has requested

for change of status of the property which clearly shows that the petitioner has committed violation of the relevant laws and rules.

08. The petitioner filed an Appeal before respondent No. 3/ Zonal Administrator, Evacuee Trust Property which was dismissed on 16.06.2015, thereafter, the petitioner filed a Revision Petition before the Revisional Authority i.e Senior Joint Secretary to the Government of Pakistan, Ministry of Religious Affairs which was also dismissed on 18.08.2015 and notice for eviction was issued on 15.09.2015, strictly in accordance with law.

09. It is important to mention here that the instant writ petition has been filed by misrepresentation and by concealment of facts. Show Cause Notice dated 29.07.2013 was issued to the petitioner for the cancellation of tenancy on the ground that without permission of the Competent Authority, he has installed a water filtration plant and has converted the status of the property from residential to commercial. The petitioner challenged the said notice in the Court of learned Civil Judge, 1st Class, Rawalpindi, which was returned for presentation before the proper forum vide order dated 28-06-2016 and Regular First Appeal against the said order was dismissed being time barred by the Court of learned Additional District Judge, Rawalpindi vide Judgment dated 08.03.2017. The petitioner has neither mentioned the facts regarding filing of the Suit, challenging the Show Cause Notice in the Civil Court, Rawalpindi as well as the dismissal of appeal, in the Writ Petition nor has enclosed any document / decision of the

judicial forums. The respondents have produced copies of decisions of the Courts.

10. Rule 3(i)(e) of the Scheme for the Management and Disposal of urban Evacuee Trust Properties, 1977 provides that *“the tenant shall use the property only for the purpose for which the tenancy was granted / held by the tenant. If the tenant desires to use the residential premises for commercial purposes he shall apply to the District Officer / Competent Authority of the Evacuee Trust Property Board for the said purpose. Such Officer / Authority may grant the permission on such terms and conditions as to the rent and period as may be determined by the Competent Authority”*. But in this case it is admitted by the petitioner that he changed the status of the property from residential to commercial without permission of the Competent Authority.

11. Rule 3(iii)(b) provides that *“On the demise of a tenant the tenancy of a unit / sub-unit shall be alienable in favour of the legal heir(s), indicated in the schedule of tenancy deed.”* In the instant case, neither the petitioner nor his mother applied for the transfer of tenancy in the names of legal heirs for more than twelve (12) years.

12. It is well settled that *certiorari* is only available to quash a decision for an error of law. It will also be issued for correcting errors of jurisdiction when an inferior Court or a tribunal acts without jurisdiction or in excess of its jurisdiction, or fails to exercise its jurisdiction or where the Court or a tribunal acts illegally in exercise of its undoubted jurisdiction and it decides

a matter in violation of the principle of natural justice. The High Court issuing a writ of *certiorari* acts in exercise of supervisory and not appellate jurisdiction. The High Court in exercise of its writ jurisdiction will not review the findings of fact reached by the inferior Court or a tribunal. Reliance may be made to the following case laws:

(i) In the case of ***“Owais Shams Durrani and others V. Vice-Chancellor, Bacha Khan University, Charsadda and another (2020 SCMR 1041)”***, wherein it is held by the Hon’ble Supreme Court that ***“It is trite that where a citizen seeks relief in constitutional jurisdiction he must point to a right statutory or constitutional which vests in him and has been denied in violation of the law.”***

(ii) In the case of ***“Amjad Khan V. Muhammad Irshad (Deceased) through LRs (2020 SCMR 2155)”***, wherein it is held by the Hon’ble Supreme Court that ***“it is by now a settled principle of law that the High Courts must not exercise their constitutional jurisdiction in order to interfere with the discretion exercised by lower courts unless the same suffers from jurisdictional, factual or legal errors. In other words, such interference would be justified in cases where the impugned order has been passed without jurisdiction or is based on misreading or non-reading of evidence, or is not in accordance with the law. If none of these errors is present, the High Courts must not exercise their constitutional jurisdiction to interfere with the findings of lower courts merely because it reached a different conclusion as to the controversy than the latter. In this regard, reference can be made to a collective reading of Mst. Mobin Fatima V. Muhammad Yamin (PLD 2006 SC 214) and Nadira Shahzad V. Mubashir Ahmad (1995 SCMR 1419).”***

(iii) In the case of ***“President All Pakistan Women Association, Peshawar Cantt V. Muhammad Akbar Awan and others (2020 SCMR 260)”***, wherein it is held by the Hon’ble Supreme Court that ***“It is settled law that when the Statute does not provide the right of appeal against certain orders, the same cannot be challenged by invoking the constitutional***

jurisdiction of the High Court in order to gain a similar objective. Where a Statute has expressly barred a remedy which is not available to a party under the Statute, it cannot be sought indirectly by resort to the constitutional jurisdiction of the High Court. The High Courts exercising constitutional jurisdiction must be fully cognizant and conscious of this Rule and strictly adhere to the same in the interest of advancing the policy of law and delivering expeditious justice in accordance with the law and the Constitution. Even otherwise, constitutional jurisdiction is equitable and discretionary in nature and should not be exercised to defeat or bypass the purpose of a validly enacted statutory provision.”

(iv) In the case of “Jurist Foundation through Chairman V. Federal Government through Secretary, Ministry of Defence and others (PLD 2020 SC 1)”, wherein it is held by the Hon’ble Supreme Court that *“Judicial review must, therefore, remain strictly judicial and in its exercise Judges must take care not to intrude upon the domain of the other branches of Government. Judicial restraint, in this perspective, is essential to the continuance of rule of law, and for the continued public confidence in the political impartiality of the judiciary and the voluntary respect for the law as laid down and applied by the Courts.”*

(v) In the case of “Chief Executive MEPCO and others V. Muhammad Fazil and others (2019 SCMR 919)”, wherein it is held by the Hon’ble Supreme Court that *“where the Court or the Tribunal has jurisdiction and it determines specific question of fact or even of law, unless patent legal defect or material irregularity is pointed out, such determination cannot ordinarily be interfered with by the High Court while exercising jurisdiction under Article 199 of the Constitution.”*

(vi) In the case of “Chairman, NAB V. Muhammad Usman and others (PLD 2018 SC 28)”, wherein it is held by the Hon’ble Supreme Court that *“the powers of judicial review vested in High Court under Article 199 of the Constitution is no doubt a great weapon in the Judge’s hands however, the same shall not be exercised in a case where discretion is exercised by the subordinate court/Tribunal in a fair and just manner without violating or disregarding statutory provision*

of law, likely to occasion the failure of justice. Ordinarily such extraordinary jurisdiction shall not be exercised at random and in routine manner. The following case law is reproduced for the guidance of the learned Judges of the High Court for future course of action:

(i) Brig. (Rtd.) Imtiaz Ahmed v. Government of Pakistan, through Secretary, Interior Division, Islamabad (1994 SCMR 2142)

(ii) Shahnaz Begum v. The Hon'ble Judges of the High Court of Sindh and Balochistan (PLD 1971 SC 677)

(iii) Malik Shaukat Ali Dogar v. Ghulam Qasim Khan Khakwani (PLD 1994 SC 281)

(vii) In the case of "Shajar Islam V. Muhammad Siddique and 2 others (PLD 2007 SC 45)", wherein it is held by the Hon'ble Supreme Court that "the High Court in exercise of its constitutional jurisdiction is not supposed to interfere in the findings on the controversial question of facts based on evidence even if such finding is erroneous. The scope of the judicial review of the High Court under Article 199 of the Constitution in such cases, is limited to the extent of misreading or non-reading of evidence or if the finding is based on no evidence which may cause miscarriage of justice but it is not proper for the High Court to disturb the finding of fact through reappraisal of evidence in writ jurisdiction or exercise this jurisdiction as a substitute of revision or appeal."

13. The learned counsel for the petitioner made no submission on the point as to how the concurrent orders passed by both the lower forums i.e by the Court of Zonal Administrator, Evacuee Trust Property, Northern Zone, Rawalpindi (Appellate authority) and Sr. Joint Secretary to the Government of Pakistan, Ministry of Religious Affairs and Interfaith Harmony (Revisional authority) were the consequence of an error of law or without jurisdiction or in excess of jurisdiction.

14. It has become common for the learned counsel to argue the petitions seeking issuance of writs of *certiorari* as if they are arguing the appeals. This practice must be stopped as the same is not in consonance with the well settled principles for hearing and deciding petitions seeking the issuance of writs of *certiorari*.

15. Finding no jurisdictional infirmity in the concurrent findings / orders passed by both the lower forums, the instant writ petition is dismissed being meritless.

(TARIQ MEHMOOD JAHANGIRI)
JUDGE

Announced in Open Court on 24.03.2021.

JUDGE

Ahmed Sheikh*

Approved for Reporting