

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

“W.P No.845 of 2020”

Khalid Sohail Gulzari

Versus

Learned Additional District Judge, Islamabad-West & others

Petitioner By: Sh. Muhammad Khizar ur Rashid,
Advocate

Respondent No.3 by: Raja Faisal Younas Advocate

Date of Hearing: 24.07.2020

Ghulam Azam Qambrani, J: Through this petition, the petitioner has assailed Judgment and decree, dated 04.03.2020 passed by the learned Additional District Judge, Islamabad-West, whereby appeal filed by the petitioner was dismissed and the order and decree, dated 21.01.2020, passed by the learned Rent Controller (West) Islamabad filed by the respondent No.2, whereby ejectment petition was summarily allowed on the ground of expiry of lease, was upheld.

2. Brief facts of the petition are that Zahoor Ahmad Raja/ respondent No.3 leased out shop No.02, constructed on Plot No.17, Lord Trade Centre, F-11 Markaz, Islamabad, to the petitioner, Khalid Sohail Gulzari vide lease agreement, dated 27.11.2004; that the petitioner has been regularly paying the rent and nothing is outstanding against him. It has been further averred that respondent No.3 leased out the premises for unlimited period at the desire of petitioner, but he suddenly filed eviction petition on the ground of personal need and expiry of lease. It is also the case of petitioner that he filed reply to the eviction petition, thereafter the learned Rent Controller passed the impugned order by allowing the eviction petition in favour of respondent No.3 on the ground of expiry of lease. Feeling aggrieved from the order and decree, dated

21.01.2020, the petitioner filed appeal before the learned Additional District Judge (West) Islamabad, which was upheld by the first appellate Court through impugned judgment and decree dated 04.03.2020, hence this writ petition.

3. Learned counsel for the petitioner has contended that the learned Rent Controller and the learned Appellate Court did not consider the point that the tenancy was expired in the year 2006, whereas the eviction has been filed in the year 2019, after lapse of fourteen years of expiry of lease period; that the learned Rent Controller and the learned Appellate Court did not carry proper inquiry; that there were several stages of proceedings including framing of issues, but instead of framing the issues, the learned Rent Controller and the learned Appellate Court/respondents 1 & 2 passed the impugned orders in a hasty manner, which are against the law and according to Islamabad Rent Restriction Ordinance, 2001, (*hereinafter be referred to as “**Ordinance**”*) expiry of lease period does not constitute a ground of eviction. Learned counsel for the petitioner raised a question that the ejectment petition was filed through attorney, but nowhere the attorney was authorized to file eviction application against the petitioner. Further contended that the respondent No.3 did not need the shop for personal bonafide use and occupation. Lastly prayed that the impugned orders are based on surmises and conjectures, hence liable to be set aside.

4. Conversely, the learned counsel for respondent No.3 opposed the contentions of the learned counsel for the petitioner and has stated that rent of four months has not been paid by the petitioner; the learned counsel has relied upon judgment of august Supreme Court of Pakistan in case titled as “Waqar Zafar Bakhtawari & six others vs. Haji Mazhar Hussain Shah and others” (PLD 2018 SC 81). Further submitted that the relationship of landlord and tenant is admitted therefore, there was no complicated question of law involved in the case and there was no need of

further proceedings in the matter. Lastly prayed that writ petition filed by the petitioner may kindly be dismissed.

5. I have heard the arguments of the learned counsels for the parties and have perused the material available on record.

6. Perusal of the record reveals that respondent No.3 filed ejectment petition against the petitioner regarding Shop No.2, Plot No. 17, Lord Trade Centre, F-11 Markaz, Islamabad which was leased out to the petitioner vide lease agreement, dated 27.11.2004 at monthly rent of Rs.28,000/- per month till 30.11.2006. Later on, this relationship continued till notice, dated 19.09.2019. Perusal of record further reveals that the petitioner filed reply to the eviction petition, wherein it has been mentioned that the lease was verbally extended for twenty years and has denied the contentions of personal bonafide use of the respondent and also has denied the receiving of legal notice with the contention that the respondent No.3 wants increase in the rent of the premises in violation of the IRRO, 2001. There is no such evidence in black and white that respondent No.3 has entered into any verbal agreement for un-limited term or for a term of twenty years. This contention of the petitioner does not attract to a prudent mind. The record depicts that the lease agreement, dated 27.11.2004 has already been expired in the year, 2006.

Section 6 of the Ordinance provides as under.-

"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."

7. The Order of eviction has been passed under Section 6 of the Islamabad Rent Restriction Ordinance of 2001. The Hon'ble Supreme Court in a judgment reported as "*Qaiser Javed Malik vs. Pervaiz Hameed and 20 others*" [2009 SCMR 846] held as under:-

"The result is that for the areas where the provisions of said Ordinance are attracted, by virtue of the provisions of section 6 of the Ordinance, the tenancy ceases to be valid and the fact of expiry of the period agreed between the parties as the tenure of tenancy would suffice to order the ejectment of the tenant by the Rent Controller. At the same time, the right of the landlord to seek eviction on the grounds specified under Section 17 of the Ordinance also remains unaffected."

8. The plain reading of section 6 of the Ordinance commencing with the use of words "*subject to the provisions of section 17*" signifies that the provisions of section 17 continue to apply as grounds for eviction of the tenant in addition to a further condition of existence of a valid tenancy agreement. The words do not affect the rights conferred upon the parties by Section 6 of the Ordinance, but mean as conditional upon the observance of provisions of Section 17 of the Ordinance. The violation of any of the provisions of Section 17, may, therefore, continue to regulate the ground of eviction of the tenant by the landlord. Section 6 further reads "*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.*"

9. It is pertinent to mention here that even though under the Ordinance, expiry of lease is not a specific ground for eviction however, under Section 17 of the IRRO, 2001 violation of terms and conditions of the agreement is one of the grounds for seeking eviction. In the lease agreement, executed between the parties there is a specific condition "*that after the expiry of two (2) years, a fresh agreement shall be made in between the parties by mutual understanding. In case of breach, the lessee shall vacate the said*

premises and possession should be handed over to the lessor accordingly in the same condition.” In spite of the expiry of lease agreement, the petitioner failed to enter into another agreement and remained in possession, thus he violated the terms and conditions of the agreement. It was also a ground of respondent No.3 in his eviction application that after expiry of term fixed by lease agreement, tenant will lose right to continue to occupy or hold over premises. In such circumstances, right of the landlord to seek eviction of tenant on this ground would be valid.

10. In the case in hand, the relationship of landlord and tenant is not disputed. The lease agreement was executed by the parties for a period of two years which ended on 30.11.2006. In the case of “Waqar Zafar Bakhtawari and six others versus Haji Mazhar Hussain Shah and others” (PLD 2018 SC 81), it has been held as follows:-

“After expiration of 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 a 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.”

11. It is also pertinent to mention here that in judgment titled as “Shuja Ahmed versus Additional District Judge(West)” (2019 MLD 590) of this Court, it has been held that the learned Rent Controller was not required to frame issues and record evidence in every case in the eviction petitions. If Section 17 of IRRO, 2001 is attracted in the matter, then judgment in summary manner is to be passed as in the case of default or expiry of lease agreement.

12. Since it is an admitted position that the rent agreement was valid till 30.11.2006, therefore, in the light of the recent judgment, rendered by the august Supreme Court in the case *“Waqar Zafar Bakhtawari, etc”* supra, the petitioner cannot claim a right to retain

the possession of the rented premises. Moreover, the petitioner cannot expect equitable relief from this Court under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, since admittedly the lease agreement stands expired with effect from 30.11.2006. Moreover, it has been held that after expiry of the term fixed in the lease agreement, a tenant loses his or her right to continue to occupy or hold the premises. By now it is settled law that a tenant cannot claim a right to remain in possession of the rented property after the term of lease has expired. It is worth mentioning that the Ordinance of 2001 is a Special Law in respect of regulating the relationship between a landlord and tenant in respect of the rented premises. It is a self contained and comprehensive statute having an overriding effect over other laws. It is also settled law that statutory provisions would prevail over contractual terms.

13. In view of the above, the learned counsel for the petitioner has not been able to point out any misreading, non-reading or misapplication of law by the learned Rent Controller or the learned Appellate Court. The impugned orders are well reasoned and do not suffer from any illegality or jurisdictional error. The concurring findings are in accordance with law and no interference is required by this Court.

14. For the foregoing reasons, instant petition is without merit and is accordingly **dismissed**.

Ghuulam Azam Qambrani
Judge

Announced in Open Court, on this 28th day of July, 2020.

Judge