

JUDGMENT SHEET
ISLAMABAD HIGH COURT, ISLAMABAD,
JUDICIAL DEPARTMENT

W.P. No.3620/2019.

Noor Ahmed Zeeshan

versus

Ch. Abdul Rauf etc.

Petitioner by: Mr. Amir Latif Gill, Advocate.

Respondent No.1 by: Syed Waqas Pirzada, Advocate.

Date of Decision: 13.01.2020.

MOHSIN AKHTAR KAYANI, J: Through this writ petition, the petitioner has assailed the judgment dated 23.05.2019, passed by learned Rent Controller, Islamabad (East), whereby eviction order has been passed against the petitioner. The petitioner has also assailed the judgment dated 08.10.2019, passed by learned Additional District Judge-I (East) Islamabad, whereby appeal filed by the petitioner was dismissed and judgment of learned Rent Controller has been upheld.

2. Learned counsel for the petitioner contends that the petitioner is tenant in the leased premises measuring 30 x 100 (two rooms with kitchen and bath) situated in Ch. Abdul Rauf Market Sihala Bagh, Islamabad alongwith land for the purpose of godown measuring 7 x 95 x 18 against monthly rent of Rs.8,500/- vide agreement dated 25.04.2014; that both the Courts below have passed the impugned judgments without considering objection raised by the petitioner that learned Rent Controller has no jurisdiction to adjudicate upon the matter as the leased premises do not fall within Urban Area of Zone-V, ICT and as such notification dated 15.03.2018 vide S.R.O. No.1/2/97-ICT-II is not applicable in the case of petitioner; that both the Courts below have not decided the question of jurisdiction, which is a legal question.

3. Conversely, learned counsel for respondent No.1 contends that the petitioner is rent defaulter, who has not paid the rent since September, 2018 and lease agreement has expired; that the petitioner has not produced any evidence in his favour nor even highlighted ground argued by learned counsel for the petitioner before this Court at the time of evidence; that respondent No.1 has raised ground of personal bonafide need of the rented premises, which cannot be negated in any manner as argued by learned counsel for the petitioner and even the question of territorial jurisdiction of Zone-V has been settled in Para-19 of the impugned judgment of learned Rent Controller dated 23.05.2019 under issue No.3-A, which clarifies entire proposition.

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

5. Perusal of the record reveals that respondent No.1/Ch. Abdul Rauf is owner of warehouse measuring 30 x 100 and 7 x 95 x 18 comprising of two rooms with bath and kitchen situated in Ch. Abdul Rauf Market Sihala Bagh, Islamabad, which was leased out to the petitioner vide agreement dated 25.04.2014 for period of 10 years w.e.f. 01.06.2014 to 31.05.2024. As per contents of the eviction petition filed by the landlord/respondent No.1, the petitioner has committed rent default in the month of September, 2018 and at the same time respondent No.1 has taken plea of personal bonafide need of the rented premises. The petitioner has contested the eviction petition mainly on the ground that eviction petition is not maintainable as lease period has not yet been expired and the learned Rent Controller lacks jurisdiction to decide the matter due to the fact that Sihala Bagh does not fall within Urban limits of ICT and as such the jurisdiction of learned Rent Controller in terms of IRRO, 2001 is not available.

6. I have gone through the record with able assistance of learned counsel for the parties as well as evidence produced by respondent No.1 as Exh.P.W.1, in which he has taken categorical stance that rent w.e.f. September, 2018 was not

paid and lease agreement has expired and he needs the premises in question for his personal use, however, during cross-examination he acknowledged that leased premises was rented up to 23.03.2014 and he also owns the other properties, however, he admitted that rent was dispatched through money order but the same was late for at least 2 months due to which same was not received. Respondent No.1 also highlighted personal bona fide need as his one son is jobless.

7. On the other hand, the petitioner has submitted his affidavit Exh.R.1, who acknowledged the tenancy as well as relationship and acknowledged that respondent No.1 has intentionally refused to accept the rent in order to create ground for constructive eviction, however, not a single word has been uttered qua jurisdiction of learned Rent Controller regarding non-application of S.R.O, under which property in Zone-V falls within jurisdiction of learned Rent Controller. Surprisingly respondent No.1 has not put appearance to substantiate his evidence referred in his affidavit Exh.R.1, whereas it is trite law that when the deponent fails to appear before the Court to substantiate his plea, such affidavit cannot be considered or taken into account. Reliance is placed upon PLD 2016 Lahore 383 (Abdul Majeed through Legal Heirs vs. Abdul Rasheed and others) & 2014 MLD 1206 [Lahore] (Mst. Iqbal Bibi vs. Additional District Judge and others).

8. While considering above background, this Court is fully convinced that no illegality has been committed by learned Rent Controller as well as the Appellate Court for deciding the question raised in Issues No.1 & 2, which were discussed at length in Para-14, which confers that the petitioner is rent defaulter and even sole testimony of landlord regarding choice of his property and personal *bona fide* need has not been rebutted in any manner, which seems to be consistent with averments of ejectment petition. Reliance is placed upon 2001 SCMR 1197 (Iqbal

Book Depot vs. Khatib Ahmad and *2001 SCMR 1700 (Muhammad Akhtar vs. Mst. Manna)*.

9. I have gone through the last objection raised by the petitioner side qua the jurisdiction of learned Rent Controller in terms of S.R.O No.1/2/97-ICT-II, dated 15.03.2018, which is reproduced hereunder for ready reference.

“S.R.O.1/2/97-ICT-II. In exercise of the power conferred by sub-section (2) of section 1 of the Islamabad Rent Restriction Ordinance, 2001 (IV of 2001) and in supersession of its Notification No. S.R.O 83(KE)/2002, dated the 19th July, 2002 and No. S.R.O 538(I)/2004, dated 24th June, 2004, the Federal Government is pleased to specify the following areas, namely:-

- (a) areas within urban limits of the Islamabad Capital Territory in Zones I, II & V;*
- (b) housing schemes approved and demarcated as such by the Capital Development Authority in accordance with the Islamabad Capital Territory (Zoning) Regulations, 1992;*
- (c) area declared as urban areas by the Capital Development Authority with the approval of the Federal Government in accordance with the Capital Development Authority Ordinance, 1960 (XXIII of 1960);*

to be the area to which the said Ordinance No.IV of 2001 shall extend, except-

- (i) lands and buildings in the diplomatic enclave; and*
- (ii) such buildings, lands, offices and public properties owned or hired by the Government.”*

10. While considering the above notification, I have gone through the Islamabad Capital Territory (Zoning) Regulations, 1992, whereby the leased property in question falls in Zone-V, however, much emphasis has been placed on term urban limits and raised the question that leased premises does not fall within the urban limit of Zone-V, however, when confronted regarding definition of urban limits, learned counsel for the petitioner has referred judgment of this Court reported as *2018 YLR 222 (Moazzam Habib vs. FOP etc)*, whereby this Court passed direction for inclusion of areas in Zone-V in terms of

the Islamabad Capital Territory (Zoning) Regulations, 1992 for the purpose of application of IRRO, 2001, which were approved by the Federal Government in terms of sections 11 and 51 of CDA Ordinance, 1960.

11. In order to resolve the controversy, relevant extract of Zone-V defined in the Islamabad Capital Territory (Zoning) Regulations), 1992 is reproduced as under:-

Chapter-II Zonation of ICT
3. Delineation of Zones
For the purpose of this Regulation the entire Islamabad Capital Territory shall be divided into the following five zones as delineated in the annexed Master Plan and specified below:-
5) Zone-5
This zone comprises areas falling south of Islamabad Park and extending upto outer limits of ICT towards south, south west and south east.

12. Besides the above referred concept of Zone-V defined in the Islamabad Capital Territory (Zoning) Regulations, 1992, it is necessary to go through areas referred in the site plan of Zone-V as portrayed in the notified master plan of Islamabad under the said zoning regulations and as such, perusal of the site plan of Zone-V reveals the following areas (in alphabetical order).

Ari Saiyidan	Balana	Bhandher Gagri	Bhambar Tarar	Bhokar
Burji	Chak kamadal	Channimistrian	Charah Zemindarian	Cherah Mohara Darzan
Chuckhai	Churki Mohra	Darwala	Dhok Baswa	Dhok Dhanyal
Dhok Gojra	Dhok Kanial	Dhok Kashmirrian	Dhok Mal Knwab	Dhok Mughian
Dhok Natha	Gehr Hardo	Geht Hardo	Ghagar	Ghok
Gucha	Gurha Shah	Humak	Hundamal	Jabba
Jandain	Jawa	Kangota Gulan	Kangota Saiyidan	Khathal
Khumana	Kotha	Latniot Saiyidan	Madhra Nagial	Mahara
Manga haver	Mari	Miana Thub	Mohi	Mohra Anne
Mughal	Pandori Hatnalai	Pind Dara	Pind Dhok Darain	Pind Malkan
Pondari Saiyidan	Rakh	Ran Majra	Rawat	Saga
Saraj	Sher dhamal	Sihala	Thalib	

In addition, majority of the areas have been converted into planned urban housing schemes, such as:

- i) PWD Housing Society,
- ii) Soan Garden,
- iii) Accountant Group Officers Cooperating Housing Society,
- iv) River Garden Housing Scheme,
- v) Jinnah Garden,
- vi) Naval Anchorage,
- vii) Police Academy,
- viii) DHA Phase-II, and,
- ix) Emaar Canyon Views, etc.

Note: The status of Pak PWD Housing Society was earlier settled in case reported as 2017 YLR 1224 Islamabad Saleem Ullah Khan Vs. Federation of Pakistan, whereby Pak PWD society was excluded from notification No. SRO No. 83(KE)/2002 dated 01.08.2002, however, after amendment of the notification, vide SRO No. 1/2/97-ICT-II, dated 15.03.2018, the Pak PWD Housing Society has now covered in Zone-V, therefore, the Rent Controller has jurisdiction to deal with the cases under IRRO, hence the judgment passed to the extent of Pak PWD in *Saleem Ullah Khan's case supra* has no effect in this regard.

13. The above referred definition of Zone-V, if seen in juxtaposition with present proposition, the leased premises as claimed by the petitioner falls within the revenue estate of Mouza Sihala, which is the part of Zone-V, and as such, whether any construction was approved by the CDA or otherwise under the Islamabad Capital Territory (Zoning) Regulations, 1992, the same has to be considered covered under the S.R.O. No.1/2/97-ICT-II, dated 15.03.2018, even otherwise, any site which is located in main body of village, in this case in Mouza Sihala, which is native village, falls within Zone-V, therefore, learned Rent

Controller has jurisdiction to settle the dispute of landlord and tenant under the law, and as such, if any part of the said Mouza stands excluded on the ground raised by the petitioner, it amounts to violation of Articles 4, 9, 24 & 25 of the Constitution of Islamic Republic of Pakistan, 1973.

14. Moreover, it is settled proposition of law that every citizen of Pakistan is entitled for equal protection of law and in case his legal cover was exposed, the Courts have to rescue and protect the rights of the individual being guardian of the rights under the law. I have gone through site plan available with the Zoning Regulations in which Mouza Sihala and Sihala Bagh is entirely covered in Zone-V except that CDA has not launched any scheme for modernization, rather different cooperative housing schemes were launched, approved by the CDA. It is not denied that CDA is not exercising its jurisdiction in Zone-V, rather Islamabad Capital Territory (Zoning) Regulations, 1992 are meant to regulate construction affairs of the property situated in that Zone and it will not be considered that the properties, which were constructed by the individuals prior to the promulgation of the Islamabad Capital Territory (Zoning) Regulations, 1992 or after with or without permission of CDA will distinguish on the touchstone of urban area or rural area as such all properties in Zone-V covered under Rent Restriction Ordinance in terms of S.R.O No.1/2/97-ICT-II, dated 15.03.2018, even otherwise, it is not the case of the petitioner that Mouza Sihala Bagh is out of Zone-V of the Islamabad Capital Territory (Zoning) Regulations, 1992.

15. For the foregoing discussion, I hold that both the Courts below have rightly passed the impugned order and judgment, no illegality has been observed. The instant writ petition bears no merits, therefore, the same stands **DISMISSED.**

16. Before parting with the said judgment, learned Registrar of this Court is directed to send copy of this judgment to the learned District and Sessions Judges of both Divisions (East) and (West), Islamabad as well as to the learned Rent Controller concerned for their perusal and information. However, in case of any ambiguity or dispute qua the location and site of any property, the learned Rent Controller are empowered to call a report from the concerned official of CDA for settlement of the question of territorial jurisdiction.

(MOHSIN AKHTAR KAYANI)
JUDGE

APPROVED FOR REPORTING.

JUDGE

R.Anjam.