

JUDGMENT SHEET
ISLAMABAD HIGH COURT, ISLAMABAD,
JUDICIAL DEPARTMENT

W.P. No.1203/2019
Khalid Mehmood
versus
Muhammad Shabbir, etc.

Petitioner: Mr. Faheem Ahmad Ch., Advocate.
Respondent No.1: In-person.
Date of Hearing: 24.09.2019.

MOHSIN AKHTAR KAYANI, J: Through this writ petition, the petitioner has assailed concurrent findings of the learned Rent Controller as well as of the learned First Appellate Court, passed vide impugned judgments and decrees dated 29.10.2018 and 12.03.2019, respectively, whereby eviction petition filed against the petitioner was allowed by the learned Rent Controller and upheld by the learned First Appellate Court.

2. Brief facts referred in the instant matter are that Muhammad Shabbir (*Respondent No.1*) filed eviction petition under Section 17 of the Islamabad Rent Restriction Ordinance, 2001 against Khalid Mehmood (*Petitioner*) on 05.09.2017 regarding vacation of three (03) shops (two on ground floor, one in basement) situated at Mistri Bashir Market, Tarnol, Islamabad on the grounds of expiry of lease agreement, rent default and personal bonafide need. The petition was contested by both the parties, whereafter the learned Rent Controller (West), Islamabad vide impugned judgment and decree dated 29.10.2018 allowed the eviction petition and directed the petitioner to hand over peaceful possession of the rented shops. Feeling aggrieved thereby the petitioner filed an

appeal, which was dismissed by the learned Additional District Judge (West), Islamabad vide impugned judgment and decree dated 12.03.2019. Hence, the instant writ petition.

3. Learned counsel for petitioner contended that the learned Rent Controller has no jurisdiction to entertain the eviction petition as the demised premises do not fall within the notification in terms of Section 2(k) of the IRRO, 2001, referred as SRO No.83(K)/2002, dated 19.02.2002, however the said question was not answered by both the Courts below; that on account of expiry of tenancy period the status of tenant neither extinguishes, nor changes; that respondent No.1 failed to tender in evidence any proof with respect to default of rent; that the impugned judgments and decrees are based on surmises and conjectures; that both the Courts below have not appreciated the evidence available on record and passed the impugned judgments and decrees in slipshod manner without determination of real controversy between the parties, therefore, the same may be set-aside.

4. Conversely, learned counsel for respondent No.1 contended that the petitioner became a tenant on the basis of oral agreement, which had already been expired in the year 2007 and since then the status of petitioner over the demised premises is of a trespasser; that the petitioner is defaulter from April, 2015 and till now he has not paid any rent; that both the Courts below have rightly appreciated the evidence available on record and passed the impugned judgments and decrees, therefore, the instant writ petition may kindly be dismissed.

5. Arguments heard, record perused.

6. Perusal of record reveals that petitioner through an oral agreement of lease with Muhammad Bashir (late) became tenant of five shops situated at Mistri Bashir Market, Tarnol, Islamabad, however 02 shops, as a result of litigation between the parties, were vacated and handed over back to respondent No.1 i.e. the real son of Muhammad Bashir. Later on, respondent No.1 filed eviction petition against the petitioner on the grounds that petitioner has not paid due rent for the period starting from 2007 to 2009 and further defaulted in rent w.e.f. April, 2015, even the amount of enhanced rent was also not paid. Respondent No.1 has claimed eviction of petitioner on the ground of personal bona fide need and expiry of lease agreement, though the petitioner has denied the averments of respondent No.1.

7. I have gone through the evidence of parties and observed that petitioner appeared as RW-1 in the eviction proceedings and acknowledged the following stance.

"یہ درست ہے کہ سال 2007 تا 2009 تک کرایہ کی ادائیگی کے حوالے سے کوئی ثبوت پیش نہ کر سکا ہوں۔ یہ غلط ہے کہ میں اس وجہ سے ثبوت پیش نہ کر سکتا ہوں کیونکہ کرایہ ادا ہی نہ کیا ہے۔ یہ غلط ہے کہ میں نے سابقہ کیس میں یہ موقف لیا تھا کہ سائل نے زبردستی دودوکانوں پر قبضہ کر لیا جبکہ موجودہ جواب میں موقف یہ ہے کہ راضی نامہ کی بنا پر دودوکانیں چھوڑ دی ہے۔ یہ بھی درست ہے کہ متذکرہ راضی نامہ کے حق میں کوئی گواہ پیش نہ کر سکتا ہوں۔ یہ غلط ہے کہ اس بابت جان بوجھ کر جھوٹ بول رہا ہوں۔ یہ درست ہے کہ جب سے دوکانیں لیں تب سے اضافے کی مد میں ایک روپیہ ادا نہ کیا ہے۔"

8. The above referred admission made by petitioner left no stone unturned to believe that he is admittedly a rent defaulter from the year 2007 to 2009, even he has not paid any amount towards enhanced rent from the start of lease period. I have also gone through the documentary evidence appended with this writ petition and observed that petitioner has placed on record Exh.R4 (102 receipts of deposit of rent), which

shows that petitioner had been depositing monthly rent @ Rs.1,300/- per shop w.e.f. January, 2010 till March, 2019, but surprisingly the learned Rent Controller as well as the learned first Appellate Court has not given any verdict on the question of enhancement of rent despite the fact that Section 10 of the Islamabad Rent Restriction Ordinance, 2001 deals with the increase of rent, which reads as under:

"The rent of residential as well as non residential building shall stand automatically increased at the end of every three years of its tenancy by 25% of rent already being paid by the tenant."

9. The terms "shall" and "automatically" refer the mandatory application of the said provision. By placing Exh.R4 (102 receipts) in juxtaposition with wordings of Section 10 of the IRRO, 2001, the same clearly proves that the petitioner is a rent defaulter, who for the last 10 years has not paid the enhanced rent w.e.f. the year 2009 till 2019, rather kept depositing the monthly rent @ Rs.1,300/- per shop. Such blatant violation of Section 10 of the IRRO, 2001 proves the ground of default in payment of rent as raised by respondent No.1 against the petitioner.

10. The concept of automatic increase in rent has been highlighted in cases reported as PLD 2010 SC 19 (Sikandar Hayat vs. Hasina Sheikh), PLD 2008 Lahore 250 (Pakistan Bait-ul-Mal vs. Umar Mehmood Kasuri) and 2003 CLC 1584 Lahore (Muhammad Habeeb Subhani vs. Muhammad Ameen), wherein it was held that if tenant fails to pay enhance rent in accordance with mandatory provision of automatic increase as provided in the IRRO, 2001, he is declared to be a defaulter. As such, the default on the part of petitioner is widespread over past 10 years, whereas the increase of 25% is applicable after every three years, which was not paid under the law, therefore, the eviction of petitioner

on the ground of default of rent has rightly been proved by respondent No.1. Even otherwise, the petitioner in his cross-examination has acknowledged that he has not paid rent w.e.f. the year 2007 to 2009, which further strengthened the case of respondent No.1 with respect to eviction of petitioner.

11. The other ground taken by petitioner is the lease in perpetuity and accordingly he claimed that he is tenant for life. Although, such concept is not acknowledged under the law unless such lease or tenancy was created on the basis of registered instrument, whereas in this case the petitioner being tenant has acknowledged that the lease has been settled through oral tenancy and as such, there is no valid document of proof to justify the stance taken by the petitioner being a tenant. It is trite law that tenancy agreement, purported to create a lease in perpetuity, requires registration in terms of Registration Act, 1908 or under the rent restriction law, otherwise a statutory increase would come into existence under the IRRO, 2001. Reliance is placed upon 1994 SCMR 1012 (Muhammad Raffique vs. Habib Bank Limited) and 2011 MLD 226 Lahore (Taimur Shahzad vs. Saqib Latif).

12. On the other side, Respondent No.1 has also taken the ground that lease period has been expired. The apex Court in its recent judgment reported as PLD 2018 SC 81 (Waqar Zafar Bakhtawari vs. Haji Mazhar Hussain Shah) has explained the concept of expiry of lease in the following manner:

"After expiration of tenancy period, a tenant though could continue to hold over the possession of the rented premises, but his tenancy was rendered invalid, in that, it had come to an end and if there was 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 IRRO 2001."

13. At last, the main objection raised by the petitioner side is qua the jurisdiction of learned Rent Controller with reference to Section 2(k) of the IRRO, 2001, especially in connection with SRO No.83(K)/2002, on the basis of which the petitioner maintains that the leased premises do not fall within the jurisdiction of learned Rent Controller, though the respondent side controverted the said stance of petitioner on the ground that this is the second round of proceedings and this Hon'ble Court vide judgment dated 27.06.2014, passed in W.P. No.337/2013 (Khalid Mehmood Khan vs. Rent Controller), has already settled the ground of territorial jurisdiction in the following manner:

"4. The petitioner is a tenant against whom, rent application for ejectment under Section 17 of IRRO was filed by the respondents. At the verge of final arguments, an application was moved by the petitioner challenging the jurisdiction of the Court for the reason that it being property situated in rural area cannot be entertained by the rent controller in view of Section 1(2) and Section 2(k) of the IRRO. Reply and preliminary objections were filed, denied the controversy raised by referring the notification SRO 83-(k)/2002 dated 19.07.2002. Both the parties argued by referring their notifications and claimed that the property situated at Mistri Bashir Market, GT Road, Tarnol, Tehsil and District Islamabad does not fall within the urban area of Islamabad.

5. To resolve the controversy I have confirmed such fact through my Private Secretary from the concerned revenue authorities that it is situated within urban area of Islamabad. Petition is therefore, dismissed being meritless. The trial court to conclude the trial expeditiously. As it being rent matter cannot be further prolonged."

14. The above referred observations clarify the preliminary objection that in the earlier round the question of jurisdiction was settled. The above referred judgment of this Court in first round of proceedings has

never been agitated further and as such, the question of jurisdiction has been settled and could not be re-agitated by the petitioner as it falls within the concept of constructive *res judicata*, therefore, at this stage, this Court will not enter into the question of jurisdiction.

15. The above referred circumstances persuaded this Court to hold that the petitioner has failed to make out his case before this Court, the learned Rent Controller as well as the learned first Appellate Court has rightly passed the eviction order against the petitioner and as such, no illegality has been observed in the impugned judgments and order. Since the petitioner through this constitutional petition has failed to make out his case for interference in the concurrent findings of both the Courts below, therefore, the instant writ petition is hereby **DISMISSED** having no merits.

(MOHSIN AKHTAR KAYANI)
JUDGE

Announced in open Court on: 30th September, 2019.

JUDGE

Khalid Z.