

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT,
ISLAMABAD

WRIT PETITION NO. 3220 OF 2020

KHURSHEED AHMED.

Vs.

LEARNED RENT CONTROLLER, ISLAMABAD (WEST), ETC.

**Petitioner by : Mr. Muhammad Shahid Kamal Khan,
Advocate.**

Respondent by : Sh. Junaid Nadeem, Advocate.

Date of hearing : 13.04.2021.

LUBNA SALEEM PERVEZ, J. The instant writ petition has been filed by the petitioner [Khursheed Ahmed] against order dated 18.09.2020, passed by learned Civil Judge/Rent Controller-West, Islamabad, whereby the application of the petitioner seeking stay of eviction petition filed by Respondent No. 2 Sohaib Jalil was dismissed.

2. Necessary facts are that the petitioner obtained Shop No. 4, Ground floor, Block 6-B, F-6 Markaz, Islamabad, vide *Iqrar Nama Babat Zar Pagri* dated 19.06.2013 w.e.f. 01.07.2013, for an unlimited period from its previous occupant namely Muhammad Ameen Mughal and paid an amount of Rs. 6,000,000/- as premium (*pagri*) with an amount of Rs. 1,000,000/- paid to Mehmood ul Hassan who was the actual owner of the said shop at that time through his attorney namely Abdul Jalil Malik. The rent of the shop was fixed @ Rs. 50,000/- per month to be paid in advance with 25% increase in the rent after every three years. As per agreement, it was also settled between the parties that at the time of transfer of the property to any other person(s) 25% amount as *zar-e-pagri* would be paid to the owner. The above said property was subsequently transferred to Sohaib Jalil who happens to be the son of Abdul Jalil Malik (Attorney holder) and the nephew of Mehmood ul Hassan (the actual owner of the suit property). The Respondent No. 2 filed eviction petition under section 17 of the Islamabad Rent Restriction Ordinance, 2001 (*hereinafter referred to as IRRO*) for ejectment of the present petitioner on the ground of default of payment of rent as per agreement dated 19.06.2013 and for personal bonafide need. For that purpose a legal notice dated

04.08.2018 was also served by Respondent No. 2 on the petitioner to vacate the premises till April, 2019 and thereafter he filed Eviction Petition on 23.10.2019 against the present petitioner. After receipt of notice of eviction petition from Respondent No. 2, the petitioner also filed suit for declaration, cancellation, permanent and mandatory injunction on 01.02.2020 against (i) Abdul Jalil Malik, (ii) Mehmood ul Hassan and (iii) Sohaib Jalil (Respondent No. 2) before Civil Judge 1st Class West-Islamabad, who vide order dated 01.02.2020, granted ad-interim injunction on the application under order XXXIX Rule 1 & 2 CPC and directed to maintain status quo till the next date of hearing. It appears that petitioner sought stay of proceedings from the learned Rent Controller in view of the fact that amount of Rs. 7,000,000/- has been paid by the petitioner in respect of the suit property as *pagri* and, therefore, is of the opinion that a charge has been created in favour of the petitioner which he is claiming as a right and offered to purchase the shop from Respondent No.2. The application for stay of proceedings was dismissed by the learned Rent Controller vide order dated 18.09.2020 in the following words:-

“4. Under section 11 of the Islamabad Rent Restriction Ordinance, 2001 the land lord cannot claim any premium over the rented premises other than fair rent. However, if any premium is paid that would not be a clog on the petitioner to file eviction petition as alongwith premium, the respondent also agreed to pay monthly rent. In the spirit of section 11, the respondent can make recourse to civil courts to recovery of premium but in humble opinion of this court it does not operate as a charge over the demise premises.

5. In view of the above, this application for stay of proceeding is dismissed. Now to come up for evidence of the petitioner for 16.10.2020.”.

3. Before this Court, learned counsel for the petitioner reiterated the admitted facts and contended that since, a huge amount has been paid by the petitioner to the then owner of the property, therefore, the petitioner has a right to know the change of ownership of the property and unless and until payment of the amount of *pagri* is not made to the petitioner, the lien created upon the property would not be discharged and neither petitioner can be evicted from the suit premises nor the property can be transferred to someone else.

4. On the other hand, learned Counsel for Respondent refuted the assertions of learned counsel for petitioner by contending that impugned order is in accordance with law and does not call for any interference by this Court. He submitted that proceedings in civil suit are entirely different proceedings and have no relevance

with case filed under IRRO, 2001 for eviction of petitioner and the decision in both the cases would be based on respective statutes. He further submitted that petition under IRRO, 2001 has been filed as the petitioner required the premises for his bonafide need.

5. After giving careful consideration to the argument of the learned counsel for the petitioner, I don't find myself convinced with the contention of the petitioner that Respondent No. 2 who is now the owner of the suit property cannot terminate the agreement dated 19.06.2013 for his personal bonafide use and upon refusal he is barred to file eviction petition under IRRO. The learned Rent Controller's observation regarding payment of rent has considerable force as payment of premium / *pagri* cannot operate as an obstacle against the right of Respondent No. 2 to use his own property when genuinely required, by filing the eviction petition, on refusal of petitioner to vacate the suit property.

5. In my view, filing of a suit by the petitioner before learned Civil Judge claiming of creating of a charge or lien on payment of *pagri* to the respondents (plaintiffs No. 1 to 3) is all together a different proceedings. The assertion of the petitioner regarding admission of receipt of amount of Rs. 7,000,000/- as *pagri* is a charge created in favour of petitioner and unless the claim is settled in civil suit the eviction would be unlawful is also not convincing as this charge does not confer the rights of ownership upon the petitioner who shall remain a tenant in the property in pursuance of agreement dated 19.06.2013, who can claim his amount paid as *pagree* as per terms and conditions of agreement but cannot force the owner to sell his property for the reason that he had paid a considerable amount as *pagree*. hence, the remedy of evicting the tenant under Section 17 of IRRO from the demised premises for personal bonafide need is very much available to the respondent as both these proceedings are separate and distinct for resolving the disputes falling in the jurisdiction of respective statutes. Guidance in this regard has also been sought from the observation of the Hon'ble Supreme Court in the following cases:-

i) ***Sheikh Muhammad Yousaf vs. District Judge, Rawalpindi (1987 SCMR 307):***

However, that being mutual arrangement between the parties, would not debar the respondent-landlord from instituting eviction proceedings on the ground of bona fide personal need.

ii) ***Aziz ur Rehman vs. Pervaiz Shah (1997 SCMR 1819):***

6. Now examining the plea relating to payment of 'Pagri', it may be seen that same admittedly does not form terms or condition of tenancy. There is hardly any doubt that concept of 'Pagri' is contrary to public policy, therefore, on the settled principles, any supra-contractual arrangement which negates tenancy, would not affect maintainability of eviction proceedings. The observations of this Court in case Sheikh Muhammad Yousaf v. District Judge, Rawalpindi and 2 others (1987 SCMR 307) are sufficiently instructive on this aspect, therefore, operative part is reproduced below:--

"We have carefully considered these arguments of the learned counsel for the petitioner-tenant. The Courts below had held that the respondent-landlord was successful in establishing a bona fide personal need of the said shop and, therefore, while exercising Constitutional jurisdiction the learned Single Judge of the Lahore High Court, Rawalpindi Bench was justified in observing that since that issue had been correctly and properly resolved it being a question of fact was not reviewable in the exercise of Constitutional jurisdiction. According to the lease agreement the shop had been let out to the tenant-petitioner for a fixed period of ten years with a right of re-entry reserved by the respondent-landlord, but it is not mentioned in the lease deed that the respondent-landlord had received Rs.11,000 as Pugree from the petitioner-tenant, although it is so stated by him in its statement before the Rent Controller. However, that being mutual arrangement between the parties, would not debar the respondent-landlord from instituting eviction proceedings on the ground of bona fide personal need."

6. In view of the above, no irregularity, infirmity or illegality has been committed by the learned Rent Controller while rejecting the application for stay of eviction proceedings, vide impugned order dated 18.09.2020, which is thus upheld. Resultantly, instant writ petition, being devoid of any merit, is hereby **dismissed**.

(LUBNA SALEEM PERVEZ)
JUDGE

Announced in open Court on _____.

JUDGE

Approved for Reporting
Blue Slip added.