

**JUDGMENT SHEET**  
**IN THE ISLAMABAD HIGH COURT, ISLAMABAD.**  
**JUDICIAL DEPARTMENT.**

W.P.No.1522 of 2017

Mansoor Ali

**Versus**

The learned Additional District Judge (West), Islamabad and  
others

**Date of Hearing:** 23.05.2017

**Petitioner by:** Sardar Muhammad Tariq Fareed  
Gopang, Advocate,

**Respondents No.3(a) to 3(f) by:** Mr. Ghulam Fareed Chaudhry,  
Advocate.

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**MIANGUL HASSAN AURANGZEB, J:-** Through the instant writ petition, the petitioner, Mansoor Ali, impugns the judgment and decree dated 09.01.2017, passed by the Court of the learned Additional District Judge, Islamabad, whereby the petitioner's appeal against the order and decree dated 18.11.2016, passed by the Court of the learned Rent Controller, Islamabad, was dismissed. Vide the said order and decree dated 18.11.2016, the learned Rent Controller allowed respondents No.3(a) to 3(f)s' petition under Section 17 of the Islamabad Rent Restrictions Ordinance, 2001 ("IRRO") seeking the petitioner's eviction from Basement Unit No.5, Plot No.15, G-9 Markaz, Islamabad ("the rented premises").

2. The record shows that on 01.05.2004, Muhammad Saeed/ respondent No.3(a) entered into a lease agreement with Mansoor Ali (petitioner) whereunder the said rented premises were taken on rent by the petitioner for a period of two years (i.e. from 01.05.2004 to 30.04.2006). As per Clause-4 of the said lease agreement, after the expiry of two years, a fresh lease agreement was to be executed between the parties with mutual consent. It is an admitted position that after the expiry of the said two-year period, a fresh lease agreement was not executed. On 21.12.2013, Mst. Jamil Akhtar (who was respondent No.3(a)'s wife, and the owner of the rented premises), filed an eviction petition under Section 17 of the IRRO against the petitioner

before the Court of the learned Rent Controller. The grounds taken in the said eviction petition were, (i) the expiry of the lease agreement, (ii) the unauthorized utilization of the rented premises, (iii) violation of the C.D.A.'s byelaws by the petitioner, and (iv) the owner's personal *bonafide* need for the rented premises. The petitioner contested the said eviction petition by filing a written reply. In the said reply, the petitioner admitted the existence of the relationship of landlord and tenant between Mst. Jamil Akhtar and the petitioner. Additionally, the petitioner did not deny Mst. Jamil Akhtar's pleading that she was the owner of the rented premises. During the pendency of the eviction petition, Mst. Jamil Akhtar died. Thereafter, an amended eviction petition was filed, wherein Mst. Jamil Akhtar's legal heirs (i.e. respondents No.3(a) to 3(f) were impleaded as petitioners in the said eviction petition. From the divergent pleadings of the parties, the learned Rent Controller, on 15.10.2014, framed the following issues:-

- “1. *Whether the lease agreement has been expired? OP Parties.*
2. *Whether the rented premises is required by the petitioner for the personal bonafide need? OPA*
3. *Whether the petitioner has no cause of action to file instant petition? OPR*
4. *Relief.”*

3. Mst. Jamil Akhtar's son, Aamir Saeed (respondent No.3(d) herein), entered the witness box as AW-1 and submitted his affidavit-in-evidence as Exh.A1. The petitioner appeared as RW-1 and submitted his affidavit-in-evidence as Exh.R1. Vide order and decree dated 18.11.2016, the learned Rent Controller allowed the eviction petition and directed the petitioner to hand over possession of the rented premises within a period of thirty days. The said order and decree was impugned by the petitioner in an appeal before the Court of the learned Additional District Judge, Islamabad. Vide judgment and decree dated 09.01.2017, the learned Appellate Court dismissed the petitioner's appeal.

4. The learned Courts below concurrently held that the lease agreement dated 01.05.2004 had expired. It was also held that

the eviction petitioners were successful in proving that the rented premises were required for their personal *bonafide* need. The petitioner in the instant writ petition has impugned the said concurrent judgments of the learned Courts below.

5. Learned counsel for the petitioner submitted that under Clause-4 of the lease agreement dated 01.05.2004, the parties to the said agreement were supposed to execute a fresh lease agreement after the expiry of the initial lease period of two years; that despite the expiry of the said lease agreement, the landlord continued accepting the rent in accordance with the said lease agreement; that the eviction petition was initially filed by Mst. Jamil Akhtar, who was not a party to the lease agreement dated 01.05.2004; that respondent No.3(a), who executed the lease agreement, had filed an affidavit-in-evidence deposing on oath that he was Mst. Jamil Akhtar's special attorney; that respondent No.3(d), who had appeared as AW-1 was not a party to the lease agreement; that the petitioner in his affidavit-in-evidence had deposed that he was not respondent No.3(d)'s tenant; that respondent No.3(d), in his cross-examination, had deposed that the rented premises had earlier been vacated through the process of the Court by taking the ground of personal *bonafide* need; that after evicting the tenants from the rented premises, the landlord again rented out the rented premises; and that the respondents had other properties which they could utilize for their personal *bonafide* need. In support of his contention that a tenant cannot be evicted on the ground of the expiry of the lease agreement, the learned counsel for the petitioner placed reliance on the case of Mst. Munawar Sultana Vs. Additional District Judge, Islamabad, and others (2005 CLC 1119). Learned counsel for the petitioner also placed reliance on the case of Allies Book Corporation through legal heirs Vs. Sultan Ahmad and others (2006 SCMR 152). Learned counsel prayed for the concurrent orders passed by the learned Courts below to be set-aside.

6. On the other hand, learned counsel for respondents No.3(a) to 3(f) submitted that the petitioner in his written reply,

filed before the learned Rent Controller, had admitted the relationship of landlord and tenant with the eviction petitioners; that Mst. Jamil Akhtar was the owner of the rented premises; that after her demise, her legal heirs were impleaded as petitioners in the eviction petition; that the lease agreement was executed between respondent No.3(a) (who is Mst. Jamil Akhtar's husband) and the petitioner; that respondent No.3(a) is a co-owner of the rented premises; that respondent No.3(d), (who is Mst. Jamil Akhtar and respondent No.3(a)'s son), is also a co-owner of the rented premises; that the rented premises were earlier vacated on the ground of personal *bonafide* need, but thereafter the owners had put the premises to their personal use by establishing an agency for cooking oil and rice; that given the definition of 'landlord' in Section 2(g) of the IRRO, Mst. Jamil Akhtar and her legal heirs come within the meaning of landlord; that the petitioner admits the execution of the lease agreement dated 01.05.2004; and that the petitioner entered the rented premises on the basis of the said lease agreement. Learned counsel prayed for the writ petition to be dismissed. In support of his contentions, the learned counsel for the respondents No.3(a) to 3(f) placed reliance on the cases of Asim Siddique Butt Vs. Muhammad Khursheed Mirza (2017 YLR Note 63), Jehangir Rustam Kakalia through legal heirs Vs. Messrs Hashwani Sales and Services (Pvt.) Limited (2002 SCMR 241), Najma Sultana through Attorney Vs. Anjuman Jamiat-ul-Akhwan and others (2017 YLR 164), and Bashir Ahmed through Special Attorney Vs. Mst. Fatima Begum and others (2017 YLR 453).

7. I have heard the contentions of the learned counsel for the contesting parties and have perused the record with their able assistance. The facts leading to the filing of the instant petition have been set out in sufficient detail in paragraphs 2 to 4 above, and need not be recapitulated.

8. The eviction petition was instituted by Mst. Jamil Akhtar (i.e. the owner of the rented premises) as early as 21.12.2013 (i.e. more than three years ago). During the pendency of the eviction petition, Mst. Jamil Akhtar passed away. Thereafter, her

legal heirs were impleaded as petitioners in the eviction petition. The relationship of landlord and tenant between the contesting parties has not been denied. Admittedly, the petitioner's entry into the rented premises was on the basis of lease agreement dated 01.05.2004. The said lease agreement was entered into between the petitioner and respondent No.3(a), who was Mst. Jamil Akhtar's husband. The lease agreement between the parties had long expired. The petitioner, in his cross-examination, admitted that after the expiry of the lease agreement dated 01.05.2004, a fresh lease agreement was not executed.

9. Respondent No.3(d), who was Mst Jamil Akhtar's son, and one of the co-owners of the rented premises gave evidence as AW-1. Respondent No.3(d), in his cross-examination, did not deny that earlier the landlord had had rented premises vacated on the ground of personal *bonafide* need, but it has also been deposed that after the rented premises were vacated by the earlier tenant, the same were used by landlord for the business of an agency for cooking oil and rice by the name of "Pak Traders". It was also deposed that this business continued for a year and a half after which the rented premises were again rented out. Therefore, it is my view that the owners of the rented premises could institute an eviction petition against the petitioner on the ground of personal *bona fide* need for the said premises.

10. It is also not denied that in addition to the rented premises, the landlords had other commercial properties, but it is well-settled that it is the landlord's unfettered choice as to which of his properties he puts to his personal use. It does not lie in the mouth of the tenant to say that the landlord should use any other of his properties for his personal use. Even the Rent Controller does not have the authority to determine the property which the landlord should put to his own personal use. A landlord is not even required to mention in the eviction petition or in his evidence, the nature of business he wants to carry out at the rented premises. In the case of Pakistan Institute of International

Affairs Vs. Naveed Merchant (2012 SCMR 1498), it has been held that the choice lies with the landlord to select any of the tenement for his personal need and for this purpose the tenant has no *locus standi* to give advice to the landlord to use alternate accommodation. In the case of S.M. Nooruddin Vs. Saga Printers (1998 SCMR 2119), it has been observed that a landlord has a complete option to choose from one of the several tenements occupied by tenants for his personal requirement and the discretion is not assailable, except in the rarest cases of bad faith. Furthermore, this Court, in the case of Javaid Ahmed Vs. Muhammad Imran Malik (PLD 2011 Islamabad 30), it has been held as follows:-

*“11. Now adverting to the contention that respondents Nos. 1 and 2 are owners of other shop, suffice it to say that it is settled law that it is the prerogative of the landlord to choose premises for his personal need and no discretion in respect thereof can be given to the landlord and in this respect reliance is placed upon the case of Malik Muhammad Ramzan v. Messrs General Iron Stores and another (1995 SCMR 1125), wherein it has been held that "landlord" would have privilege to choose anyone of his properties for self-use, considered by him suitable for his requirement, provided his need was not tainted with mala fide. Further in the case National Tubewell Construction Corporation Ltd. v. Tariq Rahim (Advocate) and another (NLR 1991 Civil 366), it has been observed that it is for landlord to choose and make a choice as to which of his properties is suitable to meet his needs/requirements and tenant cannot dictate to landlord that he should occupy this property or that property or that he should move for eviction against this tenant or that tenant.”*

11. As mentioned above, Respondent No.3(d) entered the witness box as AW-1 and deposed that the rented premises were required to be used as a clinic by his wife, who was a doctor. Respondent No.3(d)'s said stance was not shaken in his cross-examination. Respondent No.3(d), in his cross-examination, had deposed that he had got married in 1998; that his wife was doctor before they got married; and that she continued to work as a doctor after their marriage. In the eviction petition, it has been clearly pleaded that respondent No.3(d)'s wife was a Senior Registrar in the Radiology Department of Pakistan Institute Medical Sciences, Islamabad; and that the rented premises were required to be used by respondent No.3(d)'s wife

as a clinic. There was no inconsistency between the averments in the eviction petition and the evidence adduced by respondent No.3(d). It is well settled that the sole statement of the landlord regarding the personal *bona fide* need for the rented premises was sufficient for the eviction of the tenant. In the case of Iqbal Book Depot Vs. Khitab Ahmed (2001 SCMR 1197), it has been held that where the statement of the landlord on oath was consistent with his averments in the ejectment application and the same had neither been shaken nor had anything been brought in evidence to contradict the statement, such a statement would be considered sufficient for the acceptance of the ejectment application.

12. The petitioner, in his affidavit-in-evidence, has deposed that he is not respondent No.3(d)'s tenant, but that of his parents. It was also deposed that the petitioner was regularly paying rent. Now, on account of Mst. Jamil Akhtar's demise, both respondent No.3(a) and respondent No.3(d) have become co-owners of the rented premises. Therefore, they were both competent, jointly or severally to institute or pursue the eviction proceedings against the petitioner. The term "landlord" has been defined in Section 2 (g) of the IRRO in the following terms:-

*““landlord” means the owner of the premises and includes any person for the time being authorized or entitled to receive rent in respect of any building or rented land, whether on his own account or on behalf, or for the benefit, of any other person, or as a trustee, guardian or receiver, and or a tenant who, being authorized under the terms of his lease so to do, sublets the building and every other person for the time being deriving title from the landlord;”*

(Emphasis added)

13. Since it is not disputed that Mst. Jamil Akhtar was the owner of the rented premises, there was no legal impediment before her to have instituted an eviction petition. After her demise during the pendency of the eviction petition, her legal heirs were brought on record. One of her legal heirs was her husband/respondent No.3(a), who had executed the lease agreement dated 01.05.2004, with the petitioner.

14. Under Section 17(5) of the IRRO, the Rent Controller has to satisfy himself about the *bonafides* of the landlord's claim

regarding his requirement for his own occupation of the rented premises in good faith. The learned Courts below happen to be concurrently satisfied as to the eviction petitioners' *bonafides* regarding the said claim. There is no convincing material before me to doubt the satisfaction of the learned Courts below as to the eviction petitioners' *bonafides*. In the event, the rented premises are not occupied by the eviction petitioners or by any of their family members, Section 17(6) of the IRRO gives ample protection to the petitioner. For ready reference the said Section 17(6) is reproduced herein below:-

*“17(6). Where the landlord who has obtained possession of a building in pursuance of an order made under subsection (5) does not himself, or where possession of the building or rented land has been obtained for any member of his family such member dies to, occupy the building or rented land within one month of the date of obtaining or rented land within one month of the date of obtaining its possession, or having obtained possession relates it within six months of the said date to any person other than the tenant, the tenant may apply to the Controller for an order directing that the possession of such building be restored to him and the Controller may make an order accordingly.”*

15. By reason of the above, without going into the question whether the expiry of a lease is a ground under the IRRO to seek the eviction of a tenant, I am of the view that the learned Courts below correctly allowed the eviction petition on the ground of landlords' *bonafide* need for the rented premises. Resultantly, this writ petition is dismissed with no order as to costs.

(MIANGUL HASSAN AURANGZEB)  
JUDGE

ANNOUNCED IN AN OPEN COURT ON \_\_\_\_\_/2017

(JUDGE)

**APPROVED FOR REPORTING**

Sultan\*

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