

# ISLAMABAD HIGH COURT, ISLAMABAD

NO. \_\_\_\_\_ IHC/Jude. Deptt.


(REVISED FORM OF BLUE SLIP)

Case No. WP- 1724 - 2009.

Titled Nadeem Asghar Vs Dr. Sheikh Siraj-ul-Haque etc

- (a) Judgment approved for reporting ☒ Yes / No
- (b) Judgment any comment upon the Conduct of the  
Judicial Officer for Quality of the impugned  
judgment is Desired to be made. Yes / ☒ No

(In case the answer is the affirmative Separate  
confidential note may be Sent to the Registrar  
drawing his Attention to the particular aspect).

  
Initial of the Judge.

- NOTE**
1. If the slip is used, the Reader must attach on top of first page of the judgment.
  2. Reader may ask the Judge writing the judgment whether the judgment is to be approved for Reporting of any comment is to be made about the Judicial Officer/ quality of judgment.
  3. This slip is only to be used when some action is to be taken.

## **JUDGMENT SHEET**

### **IN THE ISLAMABAD HIGH COURT,** **ISLAMABAD**

**CASE NO.: WRIT PETITION NO.1724 OF 2009**

**NADEEM ASGHAR**

**VERSUS**

**DR. SHEIKH SIRAJ-UL-HAQUE AND 4 OTHERS**

**DATE OF HEARING** : **15.03.2012.**  
**PETITIONER BY** : **Mr. Muhammad Ilyas Sheikh, ASC.**  
**RESPONDENTS No.1 to 3 BY :** **Syed Ishtiaq Haider, ASC.**

**NOOR-UL-HAQ N. QURESHI J.-** Tenant Nadeem

Asghar has preferred the instant writ petition, impugning judgment dated 04.5.2009 passed by Mr. Nisar Baig, learned Additional District Judge, Islamabad and order dated 01.11.2008 passed by Mr. Awais Muhammad Khan, learned Rent Controller, Islamabad.

2. Briefly the facts narrated in the petition are that respondents No.1 to 3 are owners/ landlord of property consisting of Ground floor, first floor and second floor having total covered area of 18000 square feet, be assessing each floor covered area about 6000 sq. feet., situated in Block No.4-B, F-7 Markaz, Islamabad.

3. Respondents No.1 to 3 leased out southern, eastern and western portion of first floor, measuring 3500 sq. ft alongwith toilet and stair hall to petitioner vide agreement dated 01.7.2003. The said agreement is extendable after expiry of three years subject to enhancement of 25% rent settled between the parties. First quarter commencing from July 2006 with 25% increase rent was paid at the rate of Rs.47,250/- per month vide Pay Order dated

10.7.2006, which the respondents refused and threatened to dispossess, therefore, the petitioner constrained to file a suit for permanent injunction as well as application for deposit of rent.

4. Allegedly, the ejectment petition under Section 17 of Islamabad Rent Restriction Ordinance, 2001 was filed as a counter blast on the ground of default in payment of rent, personal need, subletting, damage to the property and expiry of lease period. The petitioner after service appeared in the court and resisted the ejectment petition by filing written reply as well as preliminary objections raised thereby controverted the ejectment petition.

5. The learned Rent Controller, Islamabad framed the following issues from the divergent pleadings of the parties:-

**ISSUES.**

- i). Whether the suit premises, is required in good faith for establishing hospital? OPA
- ii). Whether the respondent is willful rent defaulter? OPA
- iii). Whether the respondent has damaged the suit premises in violation of lease agreement and has impaired its value? OPA
- iv). Whether the respondent has sublet the suit premises without permission of the petitioner? OPA
- v). Whether the ejectment petition is not maintainable? OPR
- vi). Relief.

6. Both the parties adduced their evidence while learned Rent Controller, Islamabad vide order dated 01.11.2008 accepted the ejectment petition on the grounds of default and personal need. The petitioner, therefore, being aggrieved preferred an appeal under Section 21 of the said Ordinance to the learned District Judge, Islamabad, which was entrusted to learned Additional

District Judge, Islamabad, who reversed the findings of learned Rent Controller to the extent of default, whereas personal need was maintained vide judgment dated 04.5.2009.

7. The petitioner, therefore, preferred the instant writ petition seeks setting aside both the order/judgment passed by the Courts below as without lawful authority, jurisdiction and illegal.

8. Learned counsel for the petitioner while arguing referred lease agreement dated 01.7.2003 showing such condition of increase of 25% rent after three years, whereas ejectment petition was filed on 12.10.2006. Initially there were following five grounds raised in the ejectment petition:-

- (i) Personal need.
- (ii) Default
- (iii) Damage to property
- (iv) Subletting, and
- (v) Expiry of lease period.

9. It is argued that learned Rent Controller has only established grounds of personal need and default in payment of monthly rent. Learned counsel for the petitioner referred para-4(a) of ejectment petition and emphasized that area in occupation of the petitioner has not been specified and respondents have not disclosed the purpose for personal use based area under occupation of the petitioner i.e. 3500 sq. ft. rest other area has already been vacated by other tenant. Therefore, a sufficient portion was available for establishing hospital. He also referred preliminary objections, whereby Paras No.1 and 3 specifies the objections raised that no sanction or permission for reconstruction or alteration from CDA has been appended as well as occupation of respondents respecting entire ground floor and second floor has been highlighted and fact was so concealed by respondent No.3.

While referring affidavit Ex.A-1 of Dr. Sheikh Siraj-ul-Haq (respondent No.1), which was tendered in evidence, showing further improvement, which in fact not contended in the ejectment petition. Learned counsel for the petitioner also referred cross-examination of respondent No.1, wherein allegedly he has not contended about subletting. Likewise, he also referred the order of learned Rent Controller, which as a result of discussing issue No.1 has observed that to the extent of personal need, there is no cross-examination, hence goes un-rebutted and erroneously it is being established that demise premises is required to respondents No.1 to 3 for personal need while referring the vacation of premises by other tenant, which is lying vacant for last two years. While referring cross-examination upon respondent No.1, it is argued that no sublet is proposed, therefore, both the Courts below have failed to appreciate the evidence available on record. It is also argued that through out proceedings, nowhere the respondents No.1 to 3 slightly alleged that the portion in occupation with the petitioner, will not be useable for owners, therefore, the order of learned Trial Court is based upon un-pleaded grounds. It is further argued that unless the landlord plausibly explained personal use with particularity that the vacated portion is insufficient for the purpose he is getting the premises vacated. He in support of his contention relied upon case laws reported in **"2008 SCMR 398 (Muhammad Hafeez and another Vs. District Judge, Karachi East and another), 2006 SCMR 152 (Allies Book Corporation through L.Rs Vs. Sultan Ahmad and others), 1991 CLC (Karachi) 53, (MST. Ashraf Alia Vs. Dr. Asif Majeed) and 2005 MLD 1184 (Sohail Ahmad Bajwa through Special Attorney Vs. Muhammad Riaz).**

10. Learned counsel while relied upon above case laws also referred Section 17(4)(b) proviso (ii), whereby earlier the possession of residential or commercial building rented out has been obtained, the landlord shall not be entitled to apply again the said clauses for the possession of any other building unless showing previously taken possession for his needs.

11. Learned counsel for the respondents while referring again ground 4(a) of ejectment petition argued that respondents No.1 to 3 while seeking ejectment elaborately submitted the reason and purpose. He argued that no ground for reconstruction has been raised throughout the petition but on the contrary Para 4(a) has clearly and sufficiently provided suitable requirements according to the need of the hospital and the clinic. Para 4(a) is reproduced as under:-

*"That the respondent is doctor by profession and demised premises is required by him in good faith for establishing hospital and allied institutions and for this purpose the petitioner intending to make improvement, alternation or reconstruction of the building if required according to the need of the hospital and clinic."*

12. It is also argued that the demise premises was required by the petitioner in good faith for establishing hospital and allied institutions. With intention to make improvement, alteration and reconstruction of the building if required, which could only be farmed out when possession is delivered, otherwise it will be impossible to ascertain as to which portion is required for which purpose when duly design through a recognized architect. Learned counsel for respondents No.1 to 3 argued that through the cross-examination referred by learned counsel for the petitioner no

where such plea raised even with regard to the pleas now raised respecting Section 17(4)(b) proviso (ii) nor any specific question regarding stance now taken was ever raised during cross-examination or through the pleadings. It is wrongly argued by learned counsel for the petitioner that it was duty casting upon respondents No.1 to 3 that they should have submitted permission or sanction from CDA for reconstruction, which is a secondary step could be initiated after vacation of the demised property for the purpose of establishing hospital and clinic as well as allied institutions, for which, it is needed. So far concern of point raised that the building is not reserved for the hospital, it requires a specific plea with permission, ignoring the facts that hospital by itself is to be established for commercial purpose when the building already in use of such purpose, which is not disputed fact as the petitioner himself running a commercial business (fact so not disputed). It is also argued that the landlord was not cross-examined on such point of opening hospital and the area required for such purpose nor any slight suggestion has brought on record, therefore, the improvement now has been raised cannot support the petitioner to seek relief.

13. He in support of his contention raised, he relied upon *"2010 SCMR 837 (M/S Captain PQ Chemical Industries (Pvt.) Ltd Vs. Mrs. Romana Amjad and another), 2011 SCMR 487 (Major (Rtd) Ahsan-ul-Haque Vs. Muhammad Ejaz), 2010 SCMR 1925 (Shakeel Ahmed and another Vs. Muhammad Tariq Farogh and others), 2011 CLC (Quetta) 1606 (Mehmood Khan Vs. Muhammad Ibrahim and another) and 2006 SCMR 145 (Ghulam Mustafa Bughio Vs. Additional Controller of Rents, Clifton and others).*

14. I have heard the arguments of both the learned counsel for the parties at length as well as perused the judgment/order of both the Courts below carefully and evidence produced has been scrutinized.

15. Though the personal bonafide need severally discussed by many High Courts and apex court formed very confirm view that in cross-examination if the averments in the application not shaken or disproved in rebuttal would be sufficient to prove that need was bonafide and Courts would normally not questioned such need. In the instant case, I find such a position in the present matter. However, petitioner has subsequently improved the case by such exaggeration that the landlord not obtained the permission from concerned authorities of CDA. The very law envisaged by section 17(2)(v) provides a very clear view, which is divided into two parts, building or rented land required in good faith by the landlord for the reconstruction or erection of new building or obtained the necessary sanction for the said reconstruction or erection from the authority. A clear concept that in other sense, when it is necessary to have a sanction for the said reconstruction. But in the instant case, it is for the landlord to get the building reconstruct or its change if needed when premises will be vacated, whereafter a final opinion could be formed. Above referred provision is reproduced as under:-

*"The building or rented land is reasonably and in good faith required by the landlord for the reconstruction or erection of a building or the landlord has obtained the necessary sanction for the said re-construction or erection from the Authority."*



16. So far the concern of intention of landlord, whether bonafide or malafide or in good faith or for enhancement for the rent is to be determined. From the evidence, it clearly transpired that the entire building was got vacated through a notice and definitely for the purpose of personal use being genuine demand, which appears to be established. It is rather, prerogative of the landlord to get his premises vacated for his personal need and the doctor since intend to get his premises vacated for construction of the hospital for his own and his daughter, she is also a doctor, therefore, the landlord cannot be deprived of from such his right. However, in case, if it appears that tenant would be ejected from the rented premises or the building, or premises not being used for the purpose, it was got vacated in any manner, he has to be re-inducted in the premises on making an application to the Rent Controller under Section 17(6)

17. From the record, it appears that the points now raised by the petitioner has never been agitated during pendency of the ejectment petition nor at the time of cross-examination have been slightly such suggestions were made or highlighted by the petitioner, therefore, his own affidavit or in cross-examination. Mere to that the case laws relied upon mostly on different facts, therefore, not supporting the defence of the petitioner particularly when such pleas have not been raised before the learned Trial Court. So far the concern of application of Section 17(4)(b)(ii) of Islamabad Rent Restriction Ordinance, 2001, it become crystal clear that petition for ejectment showing elaborately the purpose in a wider meaning "*establishing of hospital and allied institutions*" then "*building if required according to the need of the hospital and clinic*" clearly support the version of respondents No.1 to 3 that

they extended their need, the building as a whole for the purpose of establishing hospital on broad basis. The case laws in support of petitioner's case fully inconsonance with the arguments advanced, therefore, I feel that the respondents No.1 to 3 has strong case on the ground of personal need. Particularly, the other tenants have vacated the premises, only on account of petitioner, the purpose for which, respondents No.1 to 3 is not going to achieve, is sufficient reason for getting premises vacated is however, established. Therefore, in view of above circumstances and evidence on record, I feel no interference is required in the judgment and order of the Courts below.

18. In view of above discussion, I find no merit in the writ petition, which is dismissed with no order as to costs.

(NOOR-UL-HAQ N. QURESHI)  
JUDGE

\*AR.ANSARI/

ANNOUNCED IN THE OPEN COURT ON : 21.03.2012.

JUDGE

Approved for reporting.

Blue slip added.  
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