

**JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
(JUDICIAL DEPARTMENT)**

W. P. No.4562/2018

Malik Muhammad Yaqub, etc.

Versus

Addl. District Judge (East, Islamabad, etc.

Petitioners by : Mr Muhammad Munir Paracha, ASC.
Mr Haseeb Shakoor Paracha, AHC.
Mr Nauman Munir Paracha, AHC.
Raja Inam Amin Minhas, Advocate and
Ms. Sadia Naureen Malik, Advocate.
Ms Saadia Abbasi, AHC in W.P No. 4684/2018.

Respondents by : Mr Muhammad Ilyas Sheikh, ASC.
Mr Moazzam Habib, AHC.
Mr Talha Ilyas Sheikh, AHC.
Ms. Robina Shaheen, Advocate.

Date of hearing : 26-04-2019

ATHAR MINALLAH, C.J.- Through this consolidated judgment, I shall decide the instant petition along with W.P no. 3307/2018 titled "Malik Muhammad Yaqoob, etc. vs. Rent Controller (East) Islamabad", W.P no. 4684/2018 titled "CNPC Chaunqing Drilling Engineering Company Ltd. vs. Learned Additional District and Sessions Judge (East) Islamabad, etc." and W.P no. 4817/2018 titled "Malik Muhammad Yaqoob, etc. Vs. Additional District Judge (East), Islamabad, etc."

2. The facts, in brief, are that in all these petitions orders, judgments or decrees passed by the learned Rent Controller and the learned appellate Court have been assailed. The impugned orders/judgments stem from proceedings which were instituted before the learned Rent Controller under the Rent Restriction Ordinance, 2001 (hereinafter referred to as the '**Ordinance of 2001**'). The dispute relates to plots situated in the Industrial Triangle Area Sihaha, Islamabad. The dispute is regarding tenancy of plots No. 20, 21, 55, 56 and 57, Industrial Triangle Area Sihala, Islamabad (*hereinafter referred to as the '**Property**'*). Plots 20 and 21 were allotted in favour of M/s Sihala Chemicals Limited (*hereinafter referred to as the '**respondent Company**'*) vide letter, dated 20-01-1982. Plots 55, 56 and 57 were subsequently allotted vide letter, dated 26-02-1987. It is noted that the respondent Company is a juridical person incorporated under the company laws of Pakistan. It is essential for adjudication of the petitions in hand to refer to the proceedings before a competent Court at Quetta, Province of Balochistan. A suit for recovery was filed at Quetta by M/s Pakistan Petroleum Limited (*hereinafter referred to as the '**PPL**'*) on 10-12-1999 against Syed Hassan Raza. The said suit was filed against him in his personal capacity and not against the respondent Company. The suit at Quetta was decreed vide judgment and decree, dated 20.04.2000, by a competent Court. The decree was for an amount of Rs.20,36,117/-. The execution proceedings relating to the aforementioned decree passed against a natural person were instituted at Islamabad. The Property was auctioned during execution

proceedings on 20-03-2001 and its sale was confirmed on 15-03-2005 in favour of Haji Mazhar Hussain (hereinafter referred to as the "**Predecessor-in-interest**"). The petitioners in W.P no. 4562/2018 are legal heirs of the Predecessor-in-interest (hereinafter referred to as the '**Petitioners**'). Possession of the Property was transferred pursuant to transfer of title in the name of the Predecessor-in-interest on 01-08-2007. The Predecessor-in-interest executed a tenancy agreement with the juridical person i.e. M/s CNPC Chaunqing Drilling Engineering Company Ltd. (*hereinafter referred to as the 'tenant Company'*).

3. Relating to judgment and decree, dated 20.04.2000, an application was filed by the judgment debtor, namely Hassan Raza under section 12(2) of the Code of Civil Procedure, 1908 (*hereinafter referred to as the 'CPC'*). The application was dismissed vide order, dated 20-12-2011. The said order was challenged by invoking the revisional jurisdiction of the learned High Court of Balochistan and the petition was allowed vide order, dated 14-06-2013. PPL challenged the said decision by filing Civil Appeal No.18-Q/2013, which was allowed by the august Supreme Court vide order, dated 07-03-2016, and the relevant portion thereof is reproduced as follows:-

For the above reasons, we find no justification for maintaining the impugned judgment dated 14.06.2013 passed by the High Court, the same is therefore set-aside and the exparte decree passed by the trial Court is

maintained. So far the dispute with regard to sale of property and its purchase by auction-purchaser is concerned, the same will be decided in accordance with law and if any party is aggrieved by any order passed by the forums, the same could be challenged accordingly."

4. It is noted that the Property was transferred in the name of the respondent Company by the Capital Development Authority vide letter, dated 29-01-2015. The respondent Company filed a suit on 29.10.2015, wherein the learned trial Court passed an injunctive order which is valid and subsisting at present. The title of the Property is in the name of the respondent Company. It would also be relevant to mention that relating to the auction proceedings which were purportedly held by the executing Court at Islamabad, a judicial inquiry was ordered because it was alleged that the auction of the Property in favour of the Predecessor-in-interest was manipulated and based on a forged document. It was concluded in the said judicial inquiry that the forged document had been prepared by one of the officials of the learned executing Court, namely Abdul Khaliq, Ahlmad. Disciplinary proceedings against the latter led to imposition of major penalty. A criminal case FIR No.11/2013, dated 04-03-2013, was also registered against the Predecessor-in-interest, but the proceedings abated after he passed away. The Petitioners as well as the respondent Company have instituted separate suits which are pending before the competent Court at Islamabad. The dispute between the Petitioners and the respondent Company is regarding

validity of the auction proceedings and the sale which was confirmed in the name of the Predecessor-in-interest.

5. As noted above, the title of the Property was transferred in the name of the respondent Company which is valid and subsisting. The latter filed a petition on 02.11.2015 under the Ordinance of 2001 seeking eviction of the tenant Company. The learned Rent Controller vide order, dated 04.01.2016 passed under section 17(8) of the Ordinance of 2001 directed the tenant Company to deposit the arrears and monthly rent. The tenant Company did not comply with the order, dated 04.01.2016, and failed to deposit the entire rent and thus, the learned trial Court vide order, dated 06.10.2018 passed under section 17(9) of the Ordinance of 2001 allowed the eviction petition and directed the tenant Company to handover possession to the respondent Company. The Petitioners had filed an application under Order I rule 10 of CPC seeking impleadment as respondents. This application was dismissed by the learned Rent Controller vide order, dated 20.06.2018. The Petitioners filed a separate eviction petition which was dismissed by the learned Rent Controller vide order, dated 19.10.2018. The appeal preferred by the Petitioners assailing the said order was dismissed by the learned appellate Court vide order, dated 06.12.2018. The Petitioners have challenged orders, dated 20.06.2018, 04.01.2016 and 16.09.2017 through W.P no. 3307/2018, through W.P No. 4817/2018 orders, dated 19.10.2018 and 06.12.2018 and through the instant petition orders, dated 14.11.2018, 06.10.2018, 20.06.2018 and 04.01.2016.

The tenant Company has challenged judgment, dated 14.11.2018, passed by the learned Additional District Judge, East Islamabad whereby appeal preferred against Rent Controller's order, dated 06.10.2018, was dismissed.

6. The learned Counsel for the Petitioners has contended that; the confirmation of sale was sufficient to establish ownership of the petitioners; the possession of the Property was handed over to the predecessor-in-interest; the title was thereafter also transferred in the name of the predecessor in interest; the eviction petition filed by M/s Sihala Chemicals was not maintainable; the Board Resolution, dated 08-02-2014, does not mention that eviction petition could be filed against the tenant; reliance has been placed on the cases of '*Messrs The Brands v. Rent Controller, Islamabad and 2 others*' [2012 CLC 825], '*Messrs Industrial Corporation Limited v. Aijaz Mehmood and others*' [2006 SCMR 437] and '*Muhammad Ikhtlaq Memon v. Zakaria Ghani and others*' [PLD 2005 SC 819]; the learned Rent Controller erred in not deciding the eviction petition which was filed by the Petitioners; the respective suits filed by the Petitioners and respondent Company are pending before the competent Court; refusal to stay the proceedings sine die was not in consonance with law; the Property was not within the jurisdiction of the learned Rent Controller; the superstructure thereof was also illegal; the learned Rent Controller instead of allowing the eviction petition under section 17(9) was required to struck-off the right of the respondent Company and thereafter record evidence so as to determine as to who was the

landlord; to the extent of the Property the relevant notification has not been amended so as to extend the jurisdiction of the learned Rent Controller; the learned appellate Court erred in dismissing the appeal of the Petitioners on the sole ground that they had not been impleaded as party to proceedings; reliance has been placed on the cases of '*Muhammad Azeem Qureshi v. Hakim Syed Akhtar Irshad and 4 others*' [1990 CLC 122], '*Abdul Rashid v. Haji Syed Ainullah*' [PLD 1985 Quetta 56], '*Ghulam Hyder v. Muhammad Haneef and others*' [PLD 1979 Karachi 167], '*National Bank of Pakistan v. Raja Ishtiaq and others*' [1986 CLC 975]; the appeal of the Petitioners could not have been dismissed and, therefore, a case for remand is made out; when the tenant denies the relationship of landlord, proceedings before the learned Rent Controller are not competent; reliance has been placed on the case of '*Mian Umar Ikram Ul Haq v. Dr Shahida Hasnain and another*' [2016 SCMR 2186].

7. The learned counsel for the tenant Company has contended that; the learned appellate Court dismissed the appeal without affording an opportunity of hearing; the counsel who was to appear before the appellate Court was on leave; the learned appellate Court had passed an order whereby direction was given for deposit of rent within two weeks; the rent could not be deposited pursuant to the direction given by the appellate Court because the case was transferred; the direction to deposit rent within two weeks was given vide order, dated 16-10-2018; the Pay Order was prepared by the tenant Company on 08-12-2018; the tenant Company had no

concern whatsoever with respondent Company; the relationship of tenant and landlord was with the predecessor in interest of Petitioners; reliance has been placed on the cases of '*Mian Umar Ikram ul Haque v. Dr Shahida Hasnain and another*' [2016 SCMR 2186], '*Haji Faqir Muhammad V. Hazra Tullah*' [1989 CLC Karachi 252], '*Jehangir Khan Jadoon v. Gulnigar Manzoor and another*' [2008 CLC 547], '*Raja Talat Mahmood v. Ismat Ehtishamul Haq*' [1999 SCMR 2215], '*Khyber Tractors (Pvt) Ltd through Manager v. Pakistan through Ministry of Finance, Revenue and Economic Affairs, Islamabad*' [PLD 2005 SC 842], '*MCB Bank Ltd through Authorized Officer and another v. State Bank of Pakistan through Governor and another*' [2013 CLD 1895], '*Said Zaman Khan and others v. Federation of Pakistan through Secretary Ministry of Defence and others*' [2017 SCMR 1249].

8. The learned Counsel for the respondent Company has argued that; the Regulator of the Property i.e. the Capital Development Authority had restored the title of the Company vide letter, dated 29-01-2015; the title continues to remain in the name of the respondent Company till date; the auction proceedings pursuant whereof the title was transferred in the name of the predecessor in interest of the Petitioners was based on fraud and forged documents; order, dated 04-01-2016, whereby tentative rent was fixed by the learned Rent Controller was assailed through Writ Petition No.1600/2016, which was dismissed order, dated 02-06-2016; the said order was challenged before the apex Court in CPLA

No.2647/2016 and the said petition was withdrawn after arguing at length and accordingly dismissed vide order, dated 17-05-2017; the order passed by the learned Rent Controller has attained finality; the learned Rent Controller was left with the only option to pass an order under section 17(9) of the Ordinance of 2001; the order of the appellate Court for deposit of arrears was not complied with by the tenant Company; the appeal of the tenant Company was dismissed on the sole ground that rent was not deposited within the time prescribed by the learned appellate Court; the petitioners were not party to the proceedings before the learned Rent Controller and, therefore, an appeal was not competent under section 21 of the Ordinance of 2001; reliance has been placed on the cases of '*Amir Akbar Khan v. Irshad Ahmed Khokhar and 5 others*' [2005 MLD 1493], '*Raja Hassan Ali Khan v. Additional District Judge Islamabad and 2 others*' [2003 CLC 1819], '*Habibullah v. Zakir Ali and another*' [PLD 2000 Karachi 238], '*Syed Sarfaraz Ali v. Shah Jehan Begum and another*' [1996 CLC 1034], '*Muhammad Mobin Siddiqui v. Mst. Shahzadi Begum and 2 others*' [1982 SCMR 233], '*Syed Saghir Ahmed Naqvi v. Province of Sindh through Chief Secretary, S&GAD, Karachi and another*' [1996 SCMR 1165], '*Hameed Jilani Tiwanas v. Abdul Aziz Ghafoor Khan and 2 others*' [2005 MLD 1232], '*Farrukh Nadeem v. Muhammad Ahmed Khan and another*' [2009 MLD 955], '*Shafiq Ahmed v. Abdul Wajid and 2 others*' [2012 MLD 122], '*Province of Punjab through Education Secretary and another v. Mufti Abdul Ghani*' [PLD 1985 SC 1], '*Muhammad Zahid v. Additional District Judge*' [2011 MLD 31], '*Dr Muhammad Saeed v. Sardar*

Muhammad Akram and others' [2017 MLD 1643], *'Muhammad Akbar Chohan v. Rent Controller, Islamabad and others'* [2017 MLD 53], *'Muhammad Shahid Fahim v. Abdullah Tayyab and 2 others'* [2016 MLD 1121].

9. The learned Counsels have been heard and record perused with their able assistance.

10. In all these constitutional petitions, judgments and orders were passed during the proceedings which had been initiated under the Ordinance of 2001. It is the case of the Petitioners that the Property was transferred in the name of the Predecessor-in-interest pursuant to auction proceedings which were finalized by the executing Court at Islamabad pursuant to judgment and decree, dated 20.04.2000, passed by a competent Court at Quetta, Province of Balochistan. They claim that since the Predecessor-in-interest had executed a tenancy agreement with the tenant Company, therefore, they should have been impleaded as respondents because they were necessary and proper parties. It is also an admitted position that the title of the Property was transferred from the name of the Predecessor-in-interest to that of the respondent Company by the Capital Development Authority vide letter, dated 29.01.2015. The title of the Property in the name of the respondent Company being valid and subsisting is not disputed. The latter is, therefore, for all intent and purposes to be treated as an owner and thus a landlord for the purposes of the Ordinance of 2001. The Petitioners have belatedly instituted a suit claiming title of the Property. The Petitioners, therefore, on the basis of admitted facts have no locus standi

because they do not enjoy the status of an owner under the Ordinance of 2001. The Petitioners though lacking locus standi for the purposes of the Ordinance of 2001 have managed to delay adjudication by filing applications and objections in the eviction proceedings which were instituted by the respondent Company. The Petitioners completely lack locus standi in so far as the proceedings under the Ordinance of 2001 are concerned. The learned Rent Controller exercising powers and jurisdiction under the Ordinance of 2001 cannot adjudicate questions relating to title of the Property. It is for this reason that the Petitioners have instituted a suit which is pending before a competent Court.

11. The eviction proceedings under the Ordinance of 2001 were initiated by the respondent Company because title of the Property admittedly vests in it. The respondent Company was, therefore, competent to file an eviction petition under the Ordinance of 2001. The status of the tenant Company is also admitted as that of a tenant under the Ordinance of 2001. The learned Rent Controller vide order, dated 04.01.2016, passed under sub section (8) of section 17 of the Ordinance of 2001 directed the tenant Company to deposit the arrears and tentative rent within the specified time. The tenant Company did not comply with the order passed under section 17(8) of the Ordinance of 2001 and, therefore, the consequences described under section 17(9) *ibid* followed. The learned Rent Controller vide order, dated 06.10.2018, allowed the eviction petition in accordance with the mandate of section 17(9) of the Ordinance of

2001. An appeal preferred by the tenant Company was dismissed by the learned appellate Court vide judgment, dated 14.11.2018.

12. It is settled law that the consequences of non-deposit and non-compliance of the order of the Rent Controller are given in subsection (9) of the Ordinance of 2001. In this regard, it would be pertinent to refer to the precedent law. In the case of '*Mohammad Yousaf versus Mohammad Bashir and others*' [1990 SCMR 557] the delay in deposit pursuant to the direction of the learned Rent Controller under section 13(6) of the West Pakistan Urban Rent Restriction Ordinance 1959 was of only one day. However, the apex Court observed; "As held by this Court the Rent Controller has no discretion to condone it as distinguishable from the default in payment of rent relatable to the other provision of section 13". Likewise, the august Supreme Court in another judgment titled '*Safeer Travels (Pvt) LTD versus Mohammad Khalid Shafi*' [PLD 2007 SC 504] affirmed the principles and law relating to 'default' on part of a tenant in complying with the directions of the learned Rent Controller in connection with payment of arrears or rent due for subsequent months. It held that it was obligatory for the Court to strike off the defence if the directions of the learned Rent Controller are not complied with. The chain of judgments of the august Supreme Court had thoroughly examined different laws but all contained similar provisions, with some variations, as in section 17(8) of the Ordinance. Reference may be made to the cases of '*Ghulam Muhammad Khan Lundkhor v. Safdar Ali*' [PLD 1967 SC 530],

'Province of Punjab and others v. Muhammad Jalil-Ur-Rehman' [1986 SCMR 1705], 'Muhammad Amin v. Ghulam Nabi and 2 others' [PLD 1990 SC 1201], 'Khawaja Muhammad Mughees v. Mrs. Sughra Dadi' [2001 SCMR 2020], 'M. H. Mussadaq v. Muhammad Zafar Iqbal and another' [2004 SCMR 1453].

13. The learned Rent Controller and the learned appellant Court had passed judgments, dated 06.10.2018 and 14.11.2018, respectively in accordance with law keeping in view the above principles enunciated by the august Supreme Court. The learned counsels for the Petitioners and the tenant Company could not show any legal infirmity requiring interference with powers exercised and orders passed by the learned Rent Controller under Section 17(9) of the Ordinance of 2001. As already noted above, the Petitioners were alien to the proceedings initiated by the respondent Company under the Ordinance of 2001 for want of locus standi. They had no locus standi and, therefore, the application seeking impleadment was rightly dismissed. The Petitioners also had no locus standi to file a separate eviction petition.

14. For the above reasons, all these petitions /are without merit and, therefore, accordingly dismissed.

(CHIEF JUSTICE)

Announced in open Court on 02.07.2019.

(CHIEF JUSTICE)

Saeed.