

Form No: HCJD/C-121.

ORDER SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P. No. 777 of 2020

Muhammad Rukhsar

Vs

Learned Rent Controller (West) Islamabad and another

S. No. of order/ proceedings	Date of order/ proceedings	Order with signature of Judge and that of parties or counsel where necessary.
------------------------------------	----------------------------------	--

- 03) 05-06-2020. Mian Muhammad Arshad Javed and Muhammad Rustam Malik Advocates, for the petitioner.
Sardar Haroon Sami Advocate, for respondent no. 2.
Mr Imran Raza, representative/Law Officer PIMS.

Through this constitutional petition, the petitioner has assailed orders, dated 23.01.2020 and 17.02.2020, passed by the learned Rent Controller, West-Islamabad.

2. The facts, in brief, are that respondent no. 2 i.e. Pakistan Institute of Medical Sciences [hereinafter to as the "**Hospital**"] executed an agreement, dated 28.07.2005, [hereinafter referred to as the "**First Agreement**"] with the petitioner. Perusal of the record, prima-facie, does not show that the Hospital had rented out an area to be used as a "coffee corner" after observing the mandatory principles of transparency. Subsequently, another agreement, dated 04.03.2011, was

executed by the parties and the same was to expire in June, 2012. However, the petitioner filed a suit on 30.01.2020, which was decreed vide judgment and decree, dated 05.04.2013. The Civil Revision filed by the Hospital was dismissed by this Court vide order, dated 11.10.2019, passed in C.R. no. 434/2015. The Hospital filed an eviction petition and in the said proceedings the learned Rent Controller, passed the impugned orders, dated 23.01.2020 and 17.02.2020.

3. It appears from the record that order, dated 23.01.2020, has not been implemented as yet. The learned Rent Controller was required to determine the area occupied by the petitioner. It further appears that the latter is resisting the determination of the area so that the eviction petition could not be adjudicated. Moreover, the learned Rent Controller does not appear to have correctly appreciated the orders passed by this Court because neither the question of rent default nor validity of the agreement was decided or upheld. The pending proceedings pursuant to filing of an eviction petition by the Hospital are expected to be completed by the learned Rent Controller without being influenced by any other proceedings. It is also not convincing why the learned trial court did not pass an order in exercise of powers vested under section 17(8) of the Islamabad Rent Restrictions

Ordinance, 2001 [hereinafter referred to as the **"Ordinance of 2001"**].

4. The learned counsel for the petitioner, despite his able assistance, was not able to persuade this Court that the impugned orders adversely affect the rights of the petitioner. The conduct of the latter shows his reluctance to have the matter adjudicated within a reasonable time. The Hospital is a public entity and the tenancy agreement executed with the petitioner was obviously intended to benefit the patients and their attendants. The Hospital being a service provider owned by the Government was and continues to be under an obligation to offer the use of its property or portion thereof for commercial purposes subject to strictly observing the principles of transparency. Moreover, it is also the duty of the Hospital to ensure that the public property under its management and control is not used in an illegal manner leading to enrichment of private parties. The learned trial court was expected to make a tentative assessment as required under sub section 8 of section 17 of the Ordinance of 2001 and thereafter pass an appropriate order. This was necessary in order to secure the interests of the Hospital and the exchequer.

5. In the light of the above observations order, dated 17.02.2020 is hereby set aside and the matter is

remanded to the learned Rent Controller. The learned Rent Controller pursuant to order, dated 23.01.2020, is expected to determine the area occupied by the petitioner and thereafter pass an order under section 17(8) of the Ordinance of 2001 after affording an opportunity of hearing to the parties. This Court expects that the eviction petition filed by the Hospital will be decided by the learned Rent Controller at the earliest, preferably within 30 days from the date of receiving a certified copy of ~~this~~ order.

CHIEF JUSTICE

Tanveer Ahmed.