

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P.No.2435 of 2021

M/s Alamdar Tahawar & Nasir (Private) Limited
Versus

Learned Rent Controller, Islamabad (West) and another

Date of Hearing:	19.07.2022
Petitioner by:	Mr. Khurram Mahmood Qureshi, Advocate
Respondents by:	Mr. Nouman Munir Paracha, Advocate for respondent No.2 (Waheed Ahmed) Mr. Ashraf Ali Awan, Advocate for C.D.A.

MIANGUL HASSAN AURANGZEB, J:- Through this judgment, I propose to decide writ petitions No.2435 and 3164/2021 as they entail certain common features.

2. Through writ petition No.2435/2021 the petitioner, Messrs Alamdar Tahawar & Nasir (Private) Limited, impugns the order dated 21.06.2021 passed by the Court of the learned Rent Controller, Islamabad whereby respondent No.2, Waheed Ahmed, was directed to deposit future monthly rent from June 2021 but not the past rent since March 2020 for two shops on the lower ground floor and area on the ground floor all measuring 3,960 square feet at building on Plot No.21-B, G-9 Markaz, Islamabad (“the rented premises”).

3. Through writ petition No.3164/2021 the petitioner, Messrs Alamdar Tahawar & Nasir (Private) Limited, impugns the order dated 31.07.2021 wherein the learned Rent Controller observed that his earlier order dated 21.06.2021 could not be construed as an order for the deposit of tentative rent under Section 17(8) of the Islamabad Rent Restriction Ordinance, 2001 (“IRRO”). Furthermore, the learned Rent Controller also observed that no order could be passed under Section 17(9) of the IRRO on the basis of said order dated 21.06.2021.

4. The record shows that vide rent agreement dated 25.01.2017, the petitioner gave the rented premises to respondent No.2 for a period of 20 years, i.e. from 01.02.2017 to 31.01.2037, for a monthly rent of Rs.8,50,000/- with an annual increase of 10%. It is not disputed that respondent No.2 occupied the rented premises on the basis of the said rent agreement.

5. Vide letter dated 12.08.2020, the Capital Development Authority cancelled the allotment of Plot No.21-B, Markaz G-9, Islamabad. For the purposes of clarity, the operative part of the said letter is reproduced herein below:-

“It is to inform you that Plot No.21-B, Markaz G-9, Islamabad was allotted to you for “Hotel”. Now the Building Control Section has reported that you have committed violations i.e commercialized the plot and changed its land use to multiple commercial instead of authorized trade “Hotel” which is violation of terms and conditions of allotment letter and is against the CDA rules/policy. Therefore, property/Plot No.21-B, Markaz G-9 Islamabad Stands cancelled due to non-conforming use. You may however, seek restoration of the property/plot in accordance with the Restoration Policy-2014.”

6. It is an admitted position that respondent No.2 has paid rent to the petitioner up to 28.02.2020. On 23.12.2020, the petitioner filed a petition under Section 17 of the IRRO seeking respondent No.2's eviction from the rented premises. The primary ground taken in the said petition was that respondent No.2 had committed default in the payment of monthly rent since March 2020. Furthermore, in the said petition, it was pleaded that for the period between March 2020 and December 2020, respondent No.2 had not paid rent amounting to Rs.1,13,13,500/-. The said petition was contested by respondent No.2 by filing a written reply in which it was pleaded that since the allotment of Plot No.21-B had been cancelled by the C.D.A. on 12.08.2020, no relationship of landlord and tenant existed between the petitioner and respondent No.2 any longer. It was also pleaded that vide order dated 09.05.2018, the allotment of Plot No.21-B had been cancelled by the C.D.A. but after this Court, vide order dated 24.10.2019, referred the matter to the C.D.A. for reconsideration, the allotment was cancelled yet again vide letter dated 12.08.2020.

7. On 21.06.2021, the learned Rent Controller passed an order directing respondent No.2 to deposit future monthly rent from June 2021 into the account of the Court in accordance with the terms of the rent agreement executed with the petitioner. In the said order, it was clearly mentioned that none of the parties shall be entitled to withdraw the rent deposited into the account of the Court until the conclusion of the eviction petition.

8. Since the learned Rent Controller did not direct respondent No.2 to deposit the past rent with effect from March 2020, the petitioner assailed the said order dated 21.06.2021 before this Court in writ petition No.2435/2021.

9. The petitioner asserts that respondent No.2 did not comply with the direction issued by the learned Rent Controller in his order dated 21.06.2021 inasmuch as the future rent was not deposited in the Court account by respondent No.2. On 28.07.2021, the petitioner requested the learned Rent Controller to pass an eviction order under Section 17(9) of the IRRO on the ground that respondent No.2 had not shown compliance with the directions of the learned Rent Controller in accordance with the order dated 21.06.2021. The learned Rent Controller, in his order dated 31.07.2021, confirmed that there was no direction for the deposit of the past rent in his order dated 21.06.2021. He also clarified that his order dated 21.06.2021 could not be construed as an order under Section 17(8) of the IRRO, and that the consequences of the non-payment of rent would be considered at the time of the final order. The said order dated 31.07.2021 has been assailed by the petitioner in writ petition No.3164/2021.

10. Learned counsel for the petitioner, after narrating the facts leading to the filing of the instant petition, submitted that respondent No.2's entry into the rented premises was on the basis of the rent agreement dated 25.01.2017; that under the said agreement, respondent No.2 was under an obligation to pay monthly rent at the rate of Rs.8,50,000/-; that admittedly respondent No.2 did not pay rent since March 2020; that although the allotment of Plot No.21-B had been cancelled by the C.D.A. due to the building on the said plot having been subjected to non-confirming use but the petitioner has had more than six tenants evicted from the said building and its representation for the restoration of the said plot is pending before the C.D.A. Board; that ever since 28.02.2020, respondent No.2 is occupying the rented premises without having paid any rent; that the mere fact that respondent No.2 denied the relationship of landlord and tenant with the petitioner, did not prevent the learned Rent Controller from passing a tentative rent order under Section 17(8) of the IRRO; that vide order dated 21.06.2021, the learned Rent Controller directed respondent No.2 in unambiguous terms to deposit future rent but the said direction was not complied with by respondent No.2; that the learned Rent Controller showed undue indulgence to respondent No.2 by absolving him from the consequences of defying an explicit direction for the deposit of future rent inasmuch as the learned Rent Controller did not pass an order for eviction under Section 17(9) of the IRRO; that even now respondent

No.2 is occupying the rented premises rent-free; and that since the impugned orders dated 21.06.2021 and 31.07.2021 suffer from jurisdictional errors, the same are liable to be set-aside by this Court. Learned counsel for the petitioner prayed for the writ petition to be allowed in terms of the relief sought therein.

11. On the other hand, learned counsel for respondent No.2 submitted that upon the cancellation of allotment of Plot No.21-B, the petitioner ceased to be the owner of the said plot and therefore, upon such cancellation, the relationship of landlord and tenant ceased to exist between the petitioner and respondent No.2; that since there was no such relationship between the petitioner and respondent No.2, the learned Rent Controller was bound to frame issues and could not have passed a tentative rent order; that at the time of the execution of the lease agreement dated 25.01.2017, the petitioner did not disclose that the purpose for the allotment of Plot No.21-B was construction of a hotel; that the petitioner had deceived all his tenants by allowing them to carry out commercial activities in a building which was meant for a hotel; that till date, the cancellation of allotment of the said plot has not been recalled by the C.D.A.; that in the eviction petition, the petitioner has not taken the ground that the rented premises were being subjected to non-conforming use; that vide order dated 31.07.2021, the learned Rent Controller had clarified that his earlier order dated 21.06.2021 was not a tentative rent order under Section 17(8) of the IRRO; that since no tentative rent order had been passed by the learned Rent Controller, the question of respondent No.2's eviction from the rented premises under Section 17(9) of the IRRO did not arise; that the learned Rent Controller has vide order dated 31.05.2022 directed the parties *"to come up before the Court for arguments within purview of Section 17(8)"* of the IRRO; and that since the impugned orders dated 21.06.2021 and 31.07.2021 are interlocutory orders, against which the provisions of the IRRO do not provide the remedy of the appeal, the writ petitions are liable to be dismissed as not maintainable. Learned counsel for respondent No.2 prayed for the writ petitions to be dismissed.

12. 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 these petitions have been set out in sufficient detail in paragraphs 2 to 9 above and need not be recapitulated.

13. Under the terms of the rent agreement dated 25.01.2017, respondent No.2 was under an obligation to pay rent at the rate of Rs.8,50,000/- per month to the petitioner. At no material stage did respondent No.2 bring on record any rent receipts for the period beyond 28.02.2020. Respondent No.2 has admittedly not paid rent for the period beyond 28.02.2020. Respondent No.2's excuse for not paying rent to the petitioner from 28.02.2020 onwards is that the allotment of the plot where the rented premises are situated had been cancelled by the C.D.A., and therefore, the relationship of landlord and tenant between the petitioner and respondent No.2 had ceased to exist. This means that respondent No.2 is occupying the rented premises rent-free since 28.02.2020 and resisting his eviction therefrom. Despite this the learned Rent Controller, vide order dated 21.06.2021, directed respondent No.2 only to pay future rent with effect from June 2021 in the Court account but not the past rent.

14. Section 17(8) of the I.R.R.O. reads thus:-

*"17(8)In proceedings under this section on the first date of hearing, or as soon thereafter as may be but before the issues are framed, **the Controller shall direct the tenant to deposit in his office before a specified date all the rent due from him and also to deposit regularly, till the final decision of the case before the fifteenth day of each month, the monthly rent which subsequently becomes due, and if there be any dispute as to the amount of rent due, the Controller shall determine such amount approximately.**"*
(Emphasis added)

15. Section 17(8) places an obligation on the Rent Controller to determine the tentative rent prior to the framing of issues and direct the tenant to deposit "*all the rent due from him*" as well as future rent before a specified date. Where a tentative rent order is to be passed, it must include the past unpaid rent in addition to future rent. In order to determine the quantum of past unpaid rent resort is to be made by the Rent Controller to *inter alia* the provisions of the rent agreement, pleadings of the contesting parties, and rent deposit receipts that may be produced before him. Where the eviction of a tenant is sought on the ground of default in the payment of rent, and the Rent Controller, after inquiring into the matter, finds no material to show that past rent had been paid, it is obligatory on him to pass a tentative rent order which includes past unpaid rent as well as future rent. Section 17(8) of the I.R.R.O. does not give discretion to the Rent Controller to absolve the tenant from depositing the past unpaid rent.

16. The purpose of a tentative rent order under Section 17(8) of the I.R.R.O. and the manner in which it is to be passed was explained by this Court in the Order dated 04.05.2018 passed in writ petition No.1685/2018 titled “Muhammad Ayaz Chaudhry Vs. Learned Rent Controller, etc.” in the following terms:-

“10. As regards, the determination of tentative rent is concerned, it is, as the word ‘tentative’ conveys, only provisional and approximate in nature. For fixing tentative rent the recording of evidence is not required. The purpose of fixing tentative rent is to afford protection to the landlord during the pendency of the eviction petition. This determination is made in a summary manner. No doubt the learned Controller is not required to determine the rent due finally for the purpose of a tentative rent order, which could be approximate but such order should be a judicious order and after considering all the material placed on record.”

17. Perusal of the order dated 21.06.2021 shows that the learned Rent Controller was cognizant of the fact that respondent No.2 had not paid rent since 28.02.2020 to the petitioner. The omission on the part of the learned Rent Controller to direct respondent No.2 to deposit the past unpaid rent, after a summary inquiry, and to restrict his direction for the deposit of future rent amounts to acting contrary to the mandate in Section 17(8) of the I.R.R.O. as well as non-exercise of jurisdiction justifying interference with the said order dated 21.06.2021 in the Constitutional jurisdiction of this Court.

18. As mentioned above, the learned Rent Controller, in the order dated 21.06.2021, did issue a direction to respondent No.2 for the deposit of future rent from June 2021 in the Court account. However, subsequently when the learned counsel for the petitioner requested him to pass an order in consequence of respondent No.2’s failure to comply with the direction for the deposit of future rent, the learned Rent Controller, vide order dated 31.07.2021, clarified that the earlier order dated 21.06.2021 could not be construed as an order under Section 17(8) of the IRRO. Now, the only order for the payment of rent contemplated by the IRRO during the pendency of the eviction petition is a tentative rent order under Section 17(8) of the IRRO. If the learned Rent Controller’s direction in the order dated 21.06.2021 for the deposit of future rent was not a tentative rent order, then what was it?

19. The learned Rent Controller justified the non-issuance of a direction to respondent No.2 for the payment of past rent on the ground that respondent No.2 had denied the relationship of landlord and tenant with the petitioner. This was a paradoxical approach adopted by the learned Rent Controller because respondent No.2’s denial of a relationship of landlord and tenant

with the petitioner prior to or after June 2021 was on the very same ground *viz* cancellation of allotment of Plot No.21-B by the C.D.A. If such cancellation was to furnish as a ground for not requiring respondent No.2 to deposit past rent for the period between 28.02.2020 and 30.06.2021, why did the learned Rent Controller direct respondent No.2 to deposit future rent from June 2021 onwards?

20. Another jurisdictional irregularity committed by the learned Rent Controller is that in his order dated 31.07.2021 he observed that the consequences of the non-payment of rent would be considered at the time of the final order. By adjourning the matter after so observing, the learned Rent Controller went contrary to the express mandate of Section 17(9) of the I.R.R.O., which reads thus:-

“17(9) If the tenant fails to deposit the amount of rent before the specified date or, as the case may be, before the fifteenth day of the month, his application if he is an applicant shall be dismissed or his defense, if he is a respondent, shall be struck off, and the landlord shall be put in possession of the building without any further proceedings.”

(Emphasis added)

21. Admittedly, respondent No.2 did not even comply with the learned Rent Controller's direction to deposit future rent. By observing in the order dated 31.07.2021 that the earlier order dated 21.06.2021 was not an order under Section 17(8) of the IRRO, the learned Rent Controller has, in effect, absolved respondent No.2 from the penal consequences of non-compliance with an explicit direction to deposit future rent in the Court account. By doing so, the learned Rent Controller disregarded the law laid down by the Hon'ble Supreme Court in the case of Mushtaq Ahmad Kiani Vs. Bilal Umair (2009 SCMR 1008) wherein it has been held that the provision of Section 17(9) of the IRRO was mandatory, and where the tenant does not deposit the rent in compliance with an order passed under Section 17(8) of the IRRO, the learned Rent Controller was left with no discretion except to order the ejectment of the tenant without further proceedings. Additionally, in the case of Bilal Abid Vs. District Judge (West) Islamabad (2015 YLR 2405), this Court did not even condone a delay of two days on the part of the tenant in showing compliance with the direction of the Rent Controller to deposit tentative rent under Section 17(8) of the IRRO. On account of such delay in the deposit of rent, the tenant was held to have become a defaulter and liable to be evicted from the rented premises under Section 17(9) of the IRRO. In the case of

Shamshad Ali Vs. Ghulam Muhammad Chaudhry (2009 CLC 52), this Court held that the learned Rent Controller was fully competent under the law to pass the ejectment order and strike off the defence of the tenant in case of non-compliance of an order passed under Section 17(8) of the IRRO. In the said case, this Court dismissed a writ petition against an appellate order whereby the appeal against the eviction order passed by the learned Rent Controller under Section 17(9) of the IRRO was dismissed. This is what also happened in the case of Hassan Ali Khan Vs. Additional District Judge Islamabad (2003 CLC 1819). The omission on the part of the learned Rent Controller in passing an eviction order under Section 17(9) of the IRRO in the face of clear non-compliance by respondent No.2 with the direction in the order dated 21.06.2021 to deposit future rent from June 2021 is also a jurisdictional irregularity warranting correction in judicial review by this Court.

22. The C.D.A., while cancelling the allotment of Plot No.21-B, informed the petitioner that it may seek the restoration of the said plot in accordance with the Restoration Policy-2014. The petitioner's representation for the restoration of the said plot is pending before the C.D.A. Board. Clause 7 of the said policy provides *inter alia* that plots cancelled due to non-conforming use will be restored after the non-conforming use has been removed. Now, presently Respondent No.2 is using the rented premises for commercial purposes, which comes within the ambit of non-conforming use. The continuation of commercial activity by respondent No.2 at the rented premises amounts to a perpetuation of the non-conforming use of the building on Plot No.21-B. Until respondent No.2 vacates the rented premises, the petitioner's pending application before the C.D.A. Board for the restoration of Plot No.21-B cannot be considered. The petitioner asserts that he wants all the tenants evicted from the building on Plot No.21-B so that its use is brought in conformity with the purpose for which the said plot was allotted. If the petitioner is successful in achieving this object, he would have a strong ground for the restoration of the said plot before the C.D.A. Board, where his representation is pending. By resisting the petitioner's eviction petition, respondent No.2 is, in fact, thwarting the petitioner's attempt to get the allotment of Plot No.21-B restored. Respondent No.2 is well aware that the continuation of commercial activity at the rented premises would operate to

the petitioner's detriment since its application for the restoration of Plot No.21-B cannot be taken up for consideration by the C.D.A. Board until all commercial activities ceases. In other words, respondent No.2 wants to create a situation which enables him to continue subjecting the rented premises to non-conforming use and that too rent free. Respondent No.2 appears to be successful in his design since, by denying the relationship of landlord and tenant with the petitioner, he has been able to protract the eviction proceedings before the learned Rent Controller for more than a year and a half and during this period he has not paid a single penny towards past or future rent. All this, the learned Rent Controller seems to have shut his eyes to and proceeded with the petitioner's eviction petition at a snail's pace, which is a violation of the guidelines given by this Court in the case of Muhammad Akbar Chohan Vs. Rent Controller, Islamabad (2017 MLD 53). Given these facts and circumstances, I cannot but hold that respondent No.2's purpose behind denying a relationship of landlord and tenant with the petitioner is contumacious and tainted. Respondent No.2's assertions that he was not informed as to the purpose for the allotment of Plot No.21-B when the rent agreement was executed or that he spent substantial funds on the rented premises given the long lease period are of no consequence to him in the proceedings before the learned Rent Controller. If respondent No.2 feels that he has been wronged by the petitioner on these counts, he may, subject to law, institute a suit for damages against him.

23. Primarily, a tenant is under a legal obligation to pay rent to the landlord as and when due and if he fails to pay in accordance with the terms of the rent agreement, he would be liable to ejectment. Where there is a *bona fide* dispute regarding the landlord's right to receive rent, the tenant would be entitled to take proceedings under Section 17 (2) read with explanation (i) of the I.R.R.O. and deposit the rent in the Court, thereupon he would be deemed to have paid the rent to the landlord and consequently he would be relieved of his liability of eviction. However, he cannot stop paying rent to the landlord and start depositing it in the Court without any justification. The provisions of the I.R.R.O. safeguard the tenants' interests but it also preserves the landlord's right to receive rent, and in the event of a default in such payment, the landlord's right to seek the tenants' eviction. In the case at hand, if respondent No.2's decision not to pay rent to the petitioner due to the

cancellation of allotment of Plot No.21-B was to be considered as *bona fide*, he should have filed an application for deposit of rent in the Court. His decision to remain in occupation of the rented premises without depositing rent in the Court or paying it to the petitioner makes his case shorn of *bona fides*.

24. The learned Rent Controller has taken the view that when the relationship of landlord and tenant is denied by a respondent in an eviction petition, the Court of the learned Rent Controller cannot pass an order for the deposit of tentative rent. This view militates against the mandate of Article 115 of *Qanoon-e-Shahadat* Order, 1984 (“the 1984 Order”), which reads thus:-

“115. Estoppel of tenant and of licensee of person in possession:---No tenant of immovable property, or person claiming through such tenant, shall during the continuance of the tenancy, be permitted to deny that the landlord of such tenant had, at the beginning of the tenancy, a title to such immovable property; and no person who came upon any immovable property by the license of the person in possession thereof shall be permitted to deny that such person had a title to such possession at the time when such license was given.”

25. Under Article 115 of the 1984 Order (which is in *pari materia* to Section 116 of the Evidence Act, 1872), the lessee is estopped from denying the title of the transferee landlord. The said Article provides that no tenant of immovable property shall, during the continuance of the tenancy, be permitted to deny the title of the landlord meaning thereby that so long as the tenant has not surrendered the possession, he cannot dispute the title of the landlord. The rule of estoppel embodied in the said Article is that, a tenant who has been let into possession cannot deny his landlord's title, however defective it may be, so long as he has not openly restored possession by surrender to his landlord. Howsoever, defective the title of the landlord may be, a tenant is not permitted to dispute the same unless he has surrendered the possession to his landlord. A lease of an immovable property is determined by forfeiture in case the lessee renounces his character by setting up a title in a third person. The effect of such a disclaimer is that it brings to an end the relationship of landlord and tenant, and such a tenant cannot continue in possession. In the case at hand, respondent No.2, by disputing the petitioner's title to the Plot No.21-B, justifies his denial of a relationship of landlord and tenant with the petitioner and non-payment of

rent. But while doing so he continues occupying the rented premises and subjecting them to non-conforming use and not paying any rent.

26. Respondent No.2 does not deny that his entry into the rented premises was only on the basis of the rent agreement dated 25.01.2017. It is a well settled doctrine that once a tenant always a tenant. This doctrine is based on the principle that once one enters into the premises as a tenant, he cannot be heard to deny the lessor's title. Simply because the allotment of Plot No.21-B has been cancelled, respondent No.2 does not lose his status as a tenant. Such cancellation does not *ipso facto* bring to an end the tenancy created by the said rent agreement nor does it create a tenancy with the C.D.A. There is no rent agreement between respondent No.2 and the C.D.A. There cannot be such an agreement because respondent No.2 is using the rented premises for a commercial purpose which was not the purpose for which Plot No.21-B, in which the rented premises are situated, was allotted by the C.D.A. Respondent No.2 is estopped by Article 115 of the 1984 Order from disputing the title of the petitioner so long as he is in possession of the rented premises. Therefore, respondent No.2's denial of a relationship of landlord and tenant with the petitioner based on his objection to the title of the petitioner could not have been looked into by the learned Rent Controller. This brings me to the conclusion that the learned Rent Controller committed a jurisdictional irregularity by holding that an order for the deposit of tentative rent cannot be passed where there is a denial of a relationship of landlord and tenant. In holding so, reliance is placed on the following case law:-

- (i) The facts in the case of Amin Vs. Ghulam Muhammad (PLD 2006 SC 549) were that the premises in dispute had been provisionally transferred to the respondent under the provisions of the Displaced Persons (Compensation and Rehabilitation) Act, 1958. The respondent had raised construction thereon and inducted the petitioners as tenants under a written rent note. On the application of the Assistant Administrator, Evacuee Trust Property Board ("E.T.P.B."), the Chairman of the said Board declared the said premises as evacuee property and directed the cancellation of the Provisional Transfer Order issued in favour of the respondent. On a revision petition filed by the respondent, the Federal Government remanded the case but even after the remand, the Chairman maintained his earlier order. The Chairman,

however, recommended the outright sale of the premises in dispute in favour of the respondent. The said recommendation was followed by the Federal Government which directed the sale of the premises in dispute to auction. The respondent filed a suit for declaration against the said decision. The plaint in the said suit was rejected and the respondent's appeal against such rejection was dismissed. The High Court, on the respondent's revision petition, remanded the case to the Trial Court. As a result of the order of the Assistant Administrator, the respondent's tenants withheld the payment of rent to the respondent and started paying the rent to E.T.P.B. The tenants denied the relationship of landlord and tenant with the respondent. The Rent Controller directed the eviction of the tenants from the said premises. Against the order of the Rent Controller, appeals were filed by the tenants as well as E.T.P.B., which were dismissed. The eviction of the tenants was ordered on the ground of default in the payment of rent with the observation that the tenants were estopped from denying the relationship of landlord and tenant with the respondent. The matter went up to the Hon'ble Supreme Court which observed that since the tenants had been inducted in the premises by the respondent to whom rent was paid until the Provisional Transfer Order was ordered to be cancelled. The Hon'ble Supreme Court, after referring a catena of case law, dismissed the appeals filed by the tenants and E.T.P.B. by holding as follows:-

“11. Perusal of the above judgments show that in case of denial of landlord's title in both the situations i.e. when the tenant sets up his own title or when he sets up somebody else's title, the principle of Article 115 of the Qanun-e-Shahadat Order was applied and the tenant was ordered to be ejected. The reason therefore, is not far to seek. In all the judgments, dominant feature has been that in ejectment matters, the question of title is not relevant. We may like to add that if a dispute arises between the two rival contenders for title to the property, the tenant has no locus standi to intervene and it is for the appropriate Court to resolve the dispute. We have also noted some peculiar features of this case in the paragraph 7 ante. Undisputedly, the petitioners-tenants were inducted in the premises after the superstructure had been raised by the landlord and in the letter dated 27-10-1998 of the Federal Government respondent-landlord has been accepted as “allottee/occupant”. Not only by virtue of induction in the property by the respondent but also on the basis of the facts noted above there was absolutely no justification for the petitioners-tenants to repudiate the title of the landlord. It appears that by paying rent to the E.T.P.B. the tenants are making a ground ultimately to claim sale of the property in their favour. Thus, we hold that principle of Article 115 of

the Qanun-e-Shahadat Order was applicable to the facts and circumstances of the case and unless the petitioners had surrendered possession, they could not repudiate landlord's title.

12. The second plea of the learned counsel for the petitioners that the default was not contumacious has no merit either. In such a situation, the plea might have been acceptable had the tenants deposited the rent in the Court and then filed an inter-pleader suit which was not done. ..."

- (ii) In the case of Zarina Khan Vs. Farzana Shoaib (2017 SCMR 330), simultaneous with the execution of a rent agreement between the petitioner / landlord and the respondent / tenant, an agreement to sell was executed between the said parties for the sale of the rented premises to the respondent. Two months after the execution of the said agreements, the respondent stopped paying rent and also failed to pay the balance sale consideration. The respondent, however, retained possession of the rented premises. This caused the petitioner to file an eviction petition before the Court of the Rent Controller on the ground of default in the payment of rent. The tentative rent order passed by the Rent Controller was not complied with by the respondent. This failure on the part of the respondent caused the Rent Controller to issue an eviction order against him. The respondent's appeal against the eviction order was allowed by the Hon'ble High Court of Sindh and the matter was remanded to the Court of the Rent Controller with the direction to allow the parties to produce evidence on the question as to whether a relationship of landlord and tenant existed between the parties. The judgment of the Hon'ble High Court of Sindh was assailed by the petitioner before the Hon'ble Supreme Court in a civil petition which was allowed by the Hon'ble Supreme Court by holding as follows:-

"We may observe that it is not a rule of thumb that wherever a person inducted in the rented premises subsequently denies his/her status as tenant, the Rent Controller is bound to first frame point for determination/issue to this effect and decide it before passing a rent order to secure the interest of the landlord during the pendency of such proceedings. More so, as such rent order will be tentative in nature and subject to final adjudication. The Rent Controller was, thus, fully justified in passing the rent order in terms of section 17(8) and consequent order of striking off the defence under section 17(9) of the Cantonments Rent Restriction Act, 1963, due to its admitted non-compliance."

- (iii) In the case of Sadiq Ali Vs. M.D. Arif (PLD 1975 Lahore 284), the appellant had been put in possession of a shop by the respondent on

the execution of a rent deed. The appellant attempted to deny the relationship of landlord and tenant with the respondent by taking the plea that the shop was an evacuee property and the respondent had obtained the Provisional Transfer Order in respect thereof only after the rent deed had been executed with the appellant. In other words, the appellant's assertion was that the respondent was not the appellant's landlord at the time when the rent deed was executed. The Hon'ble Lahore High Court spurned the appellant's plea by holding as follows:-

"4. It is true that the shop in question is an evacuee property and the respondent is the transferee thereof. It is also true that the record does not indicate that the respondent was in possession of a P.T.O. on the 1st of December 1965 when he let out the shop to the appellant. But it is to be noted that in the application for ejectment the respondent did not plead statutory tenancy but based his claim on the rent-deed executed by the appellant.

Since the appellant was put in possession of, the shop by the respondent as a tenant, the latter is precluded from denying the tenancy. Regardless of whether at the relevant time the respondent was in possession of a P.T.O. or not. He became the landlord of the appellant in respect of the shop in question."

- (iv) In the case of Muhammad Aslam Vs. Abdul Majeed (1991 CLC 481), the respondent, who had given commercial premises on rent to the appellant, filed an eviction petition seeking the appellant's eviction on the ground of default in the payment of rent. After the Rent Controller allowed the eviction petition, the appellant filed an appeal and during the pendency of the appeal, he received a notice from the Municipal Corporation, Sukkur in which it was mentioned that the premises in occupation of the appellant belonged to the said Corporation and that there was encroachment over the plot. The appellant tried to resist his eviction on the basis of the said notice. The Hon'ble High Court of Sindh dismissed the appeal by holding as follows:-

"19. Article 115 of the Qanun-e-Shahadat Order, 1984, embodies the principle of estoppel arising from the contract of tenancy. It is based upon a healthy and salutary principle of law and justice that a tenant who could not have got possession but for his contract of tenancy admitting the right of the landlord should not be allowed to launch his landlord in some inequitable situation taking undue advantage of the possession that he got and probable defect in the title to his landlord."

- (v) In the case of Anjuman Jamiat-ul-Ikhwan Vs. Karachi Building Control Authority (2006 YLR 1395), the Division Bench of the Hon'ble High Court of Sindh held that a tenant obtaining possession of a property is

deemed to obtain it upon the terms that he will not dispute the title of his landlord who gave it to him and without whose permission he would not have received it.

- (vi) In the case of Muneer Khan Vs. Uzma Oufak (2011 CLC 248), this Court rejected the plea taken by the tenant that since the C.D.A. was claiming to be the owner of the rented premises, the tenant was under no obligation to pay rent to the party / landlord with whom the tenancy agreement had been executed. This Court held that the dispute between the landlord and the C.D.A. had no relevance to the tenancy between the tenant and the landlord.
- (vii) In the case of Aqsa Jawed Vs. Muhammad Hassan (2021 CLC 1780), the Hon'ble High Court of Sindh held as follows:-

“11. It is well settled law that once Respondent No.1 is shown to be inducted as tenant of the demised premises, he could not claim any exemption from payment of rent on account of institution of suit for cancellation of sale deed. Article 115 of the Qanun-e-Shahadat Order, 1984 lays down that no tenant of immovable property shall, during continuance of the tenancy, be permitted to deny that his landlord had a title to such property. The relationship of landlord and tenant is not severed even if the execution of sale deed / agreement to sell is admitted.”

- (viii) In the case of Shri Ram Pasricha Vs. Jagannath (AIR 1976 SC 2335), the Indian Supreme Court held that in a suit for eviction, the tenant is estopped from questioning the title of the landlord. It was held as follows:-

“15. ... The tenant in such a suit is estopped from questioning the title of the landlord under Section 116 of the Evidence Act. The tenant cannot deny that the landlord had title to the premises at the commencement of the tenancy. Under the general law, in a suit between landlord and tenant, the question of title to the leased property is irrelevant.”

- (ix) In the case of D. Satyanarayana Vs. P. Jagadish (AIR 1987 SC 2192), the Indian Supreme Court held as follows:-

“3. ... Section 116 of the Evidence Act provides that no tenant of immovable property shall, during the continuance of the tenancy, be permitted to deny that the landlord of such tenant had, at the beginning of the tenancy, a title to such immovable property. Possession and permission being established, estoppel would bind the tenant during the continuance of the tenancy and until he surrenders his possession. The words, “during the continuance of the tenancy” have been interpreted to mean during the continuance of the possession that was received under the tenancy in question, and the Courts have repeatedly laid down that estoppel operates even after the termination of the tenancy so that a tenant who had been let into possession, however, defective it may be, so long as he has not openly surrendered

possession, cannot dispute the title of the landlord at the commencement of the tenancy...”

- (x) In the case of Vashu Deo Vs. Balkishan (AIR 2002 SC 569=2002 (1) SCR 171), the Indian Supreme Court summed up the law as to estoppel of tenant in the following terms:-

“6. ... Section 116 of the Evidence Act, which codifies the common law rule of estoppel between landlord and tenant, provides that no tenant of immovable property or person claiming through such tenant, shall, during the continuance of the tenancy, be permitted to deny that the landlord of such tenant had at the beginning of the tenancy, a title to such immovable property. The rule of estoppel so enacted has three main features: (i) the tenant is estopped from disputing the title of his landlord over the tenancy premises at the beginning of the tenancy; (ii) such estoppel continues to operate so long as the tenancy continues and unless the tenant has surrendered possession to the landlord; and (iii) Section 116 of the Evidence Act is not the whole law of estoppel between the landlord and tenant.”

- (xi) In the case of Sheela Vs. Firm Prahlad Rai Prem Prakash (2002 (3) SCC 375), the Indian Supreme Court held as follows:-

“12. ... Section 116 of the Evidence Act embodies therein a rule of estoppel. No tenant of immovable property, or person claiming through such tenant, shall, during the continuance of the tenancy, be permitted to deny that the landlord of such tenant had, at the beginning of the tenancy, a title to such immovable property. This estoppel so long as it binds the tenant excludes the tenant from raising a plea disputing the title of his landlord at the commencement of the tenancy. It flows as a corollary therefrom that the proof of landlord-tenant relationship tantamounts during the continuance of tenancy to proof of ownership of landlord over the tenancy premises at the beginning of the tenancy so far as the tenant is concerned.”

27. Learned counsel for respondent No.2 relied heavily on the judgment of the Hon'ble Supreme Court in the case of Umar Ikram-ul-Haque Vs. Dr. Shahida Hasnain (2016 SCMR 2186) in support of his contention that where there is a denial of a relationship of landlord and tenant, the Rent Controller cannot issue a direction for the deposit of tentative rent. Indeed in the said report, the Hon'ble Supreme Court had held *inter alia* that where the relationship of landlord and tenant was denied by the respondent in an eviction petition, the Rent Tribunal would lack jurisdiction, on account of the doctrine of jurisdictional fact, to pass an order for payment of rent due under Section 24 of the Punjab Rented Premises Act, 2009 unless and until the Tribunal positively ascertains the relationship of tenancy and establishes that the respondent to the eviction petition is in fact a “tenant” in terms of Section 2(I) of the said Act. However, in the said judgment, it is also held that where

the denial of the relationship of tenant *prima facie* appears to be tainted and contumacious, the Rent Tribunal would refrain from granting leave to the respondent as a matter of right, and instead the Rent Tribunal, without framing an issue, could conclude that the denial of tenancy was contumacious in nature and may allow the eviction petition. In the case of Yasin Khan Vs. Additional District Judge (2019 YLR 2894), I had the occasion to hold as follows:-

“11. The I.R.R.O. proceeds on the assumption that there is a relationship of landlord and tenant between the petitioner and the respondent, and the latter's eviction is sought. If the respondent/tenant denies such a relationship, the Rent Controller has to determine that question through an inquiry or recording of evidence as he may deem appropriate. A simple denial of the relationship cannot oust the jurisdiction of the Rent Controller under the I.R.R.O. A respondent whose eviction is sought cannot be permitted to block the proceedings under the I.R.R.O. by a simple denial of the relationship of landlord and tenant. If the Controller decides that there is no such relationship, the proceeding has to be terminated without deciding the main question in controversy namely, the question of eviction. If on the other hand, the Controller comes to the opposite conclusion and holds that the person seeking eviction was the landlord and the person in possession was the tenant, the proceedings have to go forward.”

28. It is not in each and every case where a party whose eviction is sought denies the relationship of landlord and tenant with the party seeking his eviction, that the Rent Controller will not issue a direction for the deposit of tentative rent. The Rent Controller will have to determine whether such denial is a sustainable reason or a ploy to avoid liability to the landlord. I have in paragraph 22 of this judgment given reasons for holding that respondent No.2's denial of a relationship of landlord and tenant with the petitioner is not just contumacious but designed to perpetuate his rent-free occupation of the rented premises and also to thwart the petitioner's attempt / representation before the C.D.A. for the restoration of the allotment of Plot No.21-B in accordance with the Restoration Policy-2014.

29. Although I find the proceedings conducted by the learned Rent Controller to be replete with procedural and jurisdictional irregularities, I refrain from setting aside either of the orders dated 21.06.2021 and 31.07.2021 impugned in these petitions. Turning the clock back in these circumstances would, in my view, not subserve the interests of justice. I am told that the eviction petition filed by the petitioner has been transferred from the learned Rent Controller who passed the said orders. Therefore, these petitions are disposed of with the direction to the contesting parties to

appear before the learned Rent Controller on the next date of hearing on which date the learned Rent Controller shall give a decision of the consequences of respondent No.2's failure to show compliance with the direction given to him in the order dated 21.06.2021 for the deposit of future rent i.e., from June 2021. In deciding the matter, the learned Rent Controller shall not in any manner be influenced by observations in the orders 21.06.2021 and 31.07.2021, which are interlocutory in nature. The learned Rent Controller shall not adjourn the matter beyond the said date unless the reasons are compelling, which shall not include the pre-occupation of the learned counsel for the parties before some other forum. The costs pertaining to these proceedings shall follow the event before the learned Rent Controller.

**(MIANGUL HASSAN AURANGZEB)
JUDGE**

ANNOUNCED IN AN OPEN COURT ON 18/08/2022

(JUDGE)

*Qamar Khan**

APPROVED FOR REPORTING

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