

**IN THE SUPREME COURT OF PAKISTAN**  
(Appellate Jurisdiction)

7/25

AFR  
AD

**Present:**

Mr. Justice Irfan Saadat Khan  
Mr. Justice Shahid Bilal Hassan

**Civil Petition No.4389/2023**

Against the order dated 27.10.2023  
passed by Peshawar High Court in WP  
No. 4357-P of 2017

Umar Gul

...Petitioner(s)

**VERSUS**

Dr. Hafiza Akhtar and others

...Respondent(s)

For the Petitioner(s):

Mr. Tariq Aziz, AOR/ASC

For the Respondent(s):

N.R

Date of Hearing:

13.01.2025

**ORDER**

**Irfan Saadat Khan, J.-** The instant civil petition for leave to appeal has been filed against the judgment passed by the Peshawar High Court in Writ Petition No.4357-P of 2017 dated 27.10.2023.

2. Briefly stated the facts of the case are that the respondents filed an eviction petition against the petitioner under section 13 of the (West Pakistan) Urban Rent Restriction Ordinance, 1959 (hereinafter referred to as the “**Ordinance**”) on the ground that the petitioner was their tenant through a rent agreement in respect of the Shop No. PT-448 situated in Sarai Mohallah Islamabad, outside Lahori Gate, Peshawar City and that he was a defaulter in payment of the monthly rent since February 2010. The said eviction petition was filed primarily on two grounds; Personal *bona fide* need/use and default in payment of monthly rent. The present petitioner appeared before the learned Rent Controller-1, Peshawar and opposed the said eviction petition.

The Rent Controller then, after framing the issues and fulfilling other necessary legal and codal formalities, decided the matter against the present respondents and dismissed the eviction petition filed by them *vide* order dated 21.04.2016. Being aggrieved with the said order, the respondents preferred an appeal before the learned Additional District Judge-VIII, Peshawar, who heard the parties at some length and thereafter, *vide* order dated 25.08.2017, set aside the order of the Rent Controller and accepted the appeal filed by the respondents. The petitioner now aggrieved with the appellate Court's order then filed the above referred writ petition before the High Court, who after hearing the parties upheld the order of the appellate Court after holding that the relationship of landlord and tenant existed between the parties. It is against the order of the High Court that the present leave to appeal has been filed.

3. Mr. Tariq Aziz, learned ASC/AOR has appeared on behalf of the petitioner and stated that the Rent Controller, after threshing out the entire evidence and examining the parties, decided the matter in favour of the present petitioner by rejecting the eviction petition filed by the present respondents; whereas the appellate Court has set aside the order of the Rent Controller without giving cogent and valid reasons, which has caused serious prejudice to the present petitioner. He has further submitted that the High Court has also not considered various facts going to the roots of the case and has upheld the order of the appellate Court without considering that no relationship of landlord and tenant existed between the parties, since the petitioner has claimed to be owner of the subject property by producing sale agreement in his favour as well as the electricity, Sui-Gas and telephone bills in his name, thus establishing that he was the owner of the same. The learned counsel stated that no doubt proper recourse with regard to the ownership of a property lies with the Civil Court, however in the instant matter the

petitioner has vehemently denied that he was the tenant of the present respondents and therefore the appellate Court as well as the High Court were not legally justified in deciding the matter against him hence the decisions may therefore be set aside. Nobody is in attendance on behalf of the respondents.

4. We have heard the learned counsel for the petitioner at some length and have also perused the record.

5. Contention of the learned counsel appearing for the petitioner is twofold; (i) that since his predecessor had entered into a sale agreement dated 30.01.2010 with the predecessor of the respondents, hence he is not their tenant, (ii) that since the utility bills i.e. Electricity, Sui Gas and Telephone are in his name thus he is the owner of the suit property, therefore, the orders of the appellate Court as well as the High Court allowing and upholding the ejectment petition filed by the respondents were legally and factually incorrect.

6. A perusal of the record reveals that the marginal witnesses of the said alleged sale agreement were not produced. It is also a matter of record that the unexhibited mutation documents were not proved. The mutation was neither produced nor was any revenue official examined to support the contention of the present petitioner, which fact has duly been recorded by the appellate as well as the High Court. Though it is averred by the petitioner that the said property was given by the predecessor of the respondents namely Syed Mazhar Ali Shah, to the father of the petitioner, namely Amroz Gul, however, he has failed to explain as to under what capacity the said property was given by the predecessor of the respondents to his late father.



7. Apropos the aspect of utility bills is concerned, suffice it to say that the utility bills in the name of a person only denote possession of the property, but they do not prove ownership of the same. Moreover, it is also an admitted position that some of the utility bills were stated to be in the name of the petitioner's late brother, namely, Aitbar Gul. Even before us, the learned counsel for the petitioner has failed to adduce any document in support of his claim with regards to the ownership of the property proving his ownership. Whereas the respondents before the Appellate Court, by producing cogent material i.e. the rent deed and the rent receipts in their favour alongwith other relevant documents and witnesses, have duly proved the relationship between the petitioner and the respondents as that of a landlord and a tenant. It is also a settled proposition of law that when a tenant disputes the very ownership of the landlord, the only recourse available with him is to file a civil suit. In the instant matter both the appellate Court and the High Court have correctly opined that the contention with regards to the ownership of the property, if any, could only be resolved through a Civil Court. Reliance in this regard can be placed upon the cases of Tassaduq Hussain<sup>1</sup> and Nasar-ud-Din<sup>2</sup>.

8. In the light of the above discussion, we do not find any illegality or irregularity, in the orders passed by the Appellate Court and the High Court, which may warrant any interference or granting leave to appeal in the instant matter. This petition is thus found to be without any merit and accordingly stands dismissed.

9. It will not be out of place to mention here that the observations made above are only with regards to the claim of the respondents being landlords of the petitioner. Hence, any claim of the petitioner made in a civil suit with

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<sup>1</sup> Tassaduq Hussain vs. Mst. Muneer Fatima (2014 SCMR 1744)

<sup>2</sup> Ahmad Ali alias Ali Ahmad vs. Nasar-ud-Din (2009 PLD 453)

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regard to the purported sale agreement between the parties would be adjudged independently, if so filed, subject to the limitation and as per the averments made in that matter, in accordance with the law.

ISLAMABAD  
13.01.2025  
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"Approved for Reporting"