

JUDGEMENT SHEET
IN THE PESHAWAR HIGH COURT, D.I.KHAN BENCH
(Judicial Department)

W.P No. 656-D/2019 with
C.M No. 766-D/2019

Muhammad Ramzan and another
Vs
Mian Muhammad Waqas and others

For petitioners Syed Mastan Ali Zaidi, Advocate
 Muhammad Mohsin Ali, Advocate

For respondent Mr. Akbar Ali Barakzai, Advocate

Date of hearing 05.4.2022

JUDGMENT

MUHAMMAD FAHEEM WALLI, J.- Through the instant petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, I intend to dispose of this and connected writ petition No.657-D/201 and writ petition No. 658-d/2019 as all are arising out of the same judgment of learned Additional District Judge-IV, D.I.Khan.

2. The common facts in all the petitions are that the respondent No. 1/landlord filed eviction petition against the petitioners for recovery of arrears of rent and eviction in respect of suit shops situated in Mian Commercial Market on the grounds of default, illegal subletting (by the petitioners to others without consent of the landlord) and bonafide personal need of the landlord. It is contended in the petition that the suit shops are his ownership through registered deed No. 3096 dated 21.10.2014, and he is unemployed and needs the shops in question for establishment of his own business of cloths. As per



contents of the petition, it is also referred that actual tenants have sublet the shops in question without the permission of landlord/respondent No. 1 and are defaulter since November, 2014. All the tenants were served with legal notice but to no avail. After service of summons, the petitioners/respondents (original tenants as well as alleged sublettee) appeared before the trial court and contested the petition by filing their respective reply wherein they denied the allegations of the landlord. After trial, learned Civil Judge-II/Rent Controller, D.I.Khan dismissed the eviction petitions vide judgment and decree dated 31.3.2018. Disgruntled with the said judgment, the petitioners/respondents preferred separate appeals before learned Additional District Judge-IV D.I.Khan which were allowed vide judgment dated 03.5.2019, hence, these constitutional petitions.

3. I have considered arguments as raised by the respective parties coupled with impugned judgments/ orders and evidence brought on record.

4. The question that surfaces for determination by this Court is whether the appeal Court is justified to set aside the judgment and decree of Rent Controller, D.I.Khan holding the personal bonafide need of landlord/respondent No.1 as proved. The record, particularly the eviction petitions filed by the respondent/landlord and the findings recorded by the learned courts below, were examined carefully with the assistance of learned counsel for the parties, from where it is found, that there is no dispute of title *inter se* the parties rather it is reflected from record that the respondent No. 1 is lawful owner/landlord of the

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suit shops situated at Mian Commercial Market on the basis of two registered deeds No. 1397 dated 30.6.1994 and 3096- dated 21.10.2014. On perusal of the record, it transpires that petitioners the original tenants of the respondent No.1/landlord were respondents who subletted the shops in question to others without getting permission of the respondent No. 1/landlord and admittedly the petitioners had not paid rent regularly to the respondent No.1. It is borne out from the record that the petitioners have neither produced the previous tenant regarding the purchase of tenancy rights from the landlord nor produced any deed which might reflect any such transaction or to prove any such transaction by the production of evidence.

5. This Court, keeping in view the submissions made at the bar and considering the pleadings of the parties, has to see the personal bonafide need of respondent/landlord as valid/genuine? Suffice it to say that a decree of eviction has been passed by the appeal Court on the basis of personal need of landlord, such bonafide need should be clearly before the court of law. It is well settled that the landlord cannot seek eviction on whims and desire only and need should be bonafide, but at the same time, the bonafide need should not be so absolute and compelling which if not fulfilled, the landlord should be seen to be suffering misery or irreparable loss. The bonafide need of the landlord lies somewhere in between and it is the landlord, who is the best judge to really assess such need and make his planning and apply to the Court for eviction. If landlord is of the opinion that the suit shops would be required for

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the bonafide need of his own; or his or his children or grandchildren in future, the solitary statement of the landlord is sufficient in this regard and that it is to be left at the choice of the landlord to determine suitability of the premises although he may be owner of other premises as well.

6. It is by now established law that the landlord has a complete option to choose from one of the several tenements occupied by tenant to avail of the personal requirement and the said discretion is not assailable, exception being the rarest cases of bad faith. Wisdom in this regard has been taken from judgment passed in *S.M. Nooruddin, and 9 others v. SAGA Printers (1998 SCMR 2119)*, wherein it was held:--

"The law is too well-established on the point viz that a landlord has a complete option to choose from one of the several tenements occupied by tenants to avail of the personal requirement and the discretion is not assailable, except in the rarest cases of bad faith."



7. For seeking eviction of a tenant from the rented shops, the only requirement of law is the proof of his bona fide need by the landlord, which stands discharged the moment he appears in the witness box and makes such statement on oath or in the form of an affidavit-in-evidence as prescribed by law, if it remains unshattered in cross-examination and un-rebutted in the evidence adduced by the opposite party. If any case law is needed to fortify this view, reference can be made to the case of *Mst. Toheed Khanum v. Muhammad Shamshad (1980 SCMR 593)*, wherein the opinion of I. Mahmood, J. (as he then was)

in the case of Hassan Khan v. Munawar Begum (PLD 1976 Karachi 832) to the same effect, was approved.

8. The submission of learned counsel for the petitioners that respondent/landlord does not require the shops in question for his personal banafide need, rather he has an inclination to re-let to other persons which amounts to infringement of statutory safeguard to original tenants. In this context a passing reference to the relevant provision to sub section (4) of section 13 of the ordinance is also perhaps instructive. This provides a statutory safeguard in cases where a landlord secures possession of premises for the purpose of his own occupation or his family's use but subsequently does not do so. Sub-section (4) of section 13 entitles the tenant to move the Controller for restoration of possession to him and on being satisfied of the requirements of this provision, the Controller is obliged to make an order accordingly.

9. The Provisions of *section 13 of the Ordinance VI of 1959* envisage eviction of tenants on various grounds but the eviction ordered under clause (iv) of the subsection (2) or under sub-paragraphs (i) and (ii) of paragraph (a) of subsection (3) of the said section was reversible if the condition which had led to the said eviction, were not satisfied within the prescribed time.

10. If the tenant is dispossessed on the ground that the landlord or his children required the rented premises for his or their occupation and he or they did not occupy the said premises or having occupied the same re-let it within two months of taking over of the possession thereof, then the Rent Controller, on being approached, could straight away direct that the evicted tenant be put back into possession of the property in question. In this

behalf, reliance can be placed on the case reported as *Mahboob Elahi and others vs. Mst. Hamida Begum and others* (PLD 2010 Supreme Court 709), wherein it was held as under:-

(a) West Pakistan Urban Rent Restriction Ordinance (VI of 1959)---

----S. 13(2)(iv), (3)(a)(i)(ii), (4) (5) & (5-A)---
Constitution of Pakistan (1973), Art. 185(3)---
Ejectment petition--- Bona fide personal need of
landlord and reconstruction of demised shop---
Eviction of tenant ordered by Rent Controller---
Failure of landlord to demolish/construct shop
within prescribed period---Conviction and
punishment of landlord and restoration of
possession of shop to tenant on his application by
Rent Controller---Order of Conviction and
punishment of landlord upheld by Appellate
Authority was set aside by High Court for being
without jurisdiction---Plea of tenant that provision
of S. 13 of West Pakistan Urban Rent Restriction
Ordinance, 1959 envisaged eviction of tenant on
various grounds, but eviction ordered under sub-
section (2)(iv) or (3)(ii) thereof was reversible if
condition which had led to eviction, were not
satisfied within prescribed limit; that if tenant was
dispossessed on ground that landlord or his children
required premises for his or their occupation and he
or they did not occupy premises or having occupied
same re-let same within two months of taking over
possession thereof, then Rent Controller on being
approached could straight away direct that evicted
tenant be put back into possession thereof as
envisaged by S.13(4) of the Ordinance, and that if
Rent Controller was cheated by landlord and secured
eviction of tenant on ground of reconstruction of
premises, then would it be just and proper and could
that be intention of law that such a deceitfully
evicted tenant should first go to a criminal Court;
seek eviction of landlord under S.13(5) of the
Ordinance then pursue conviction of landlord in
appellate and revisional Courts possibly up to
Supreme Court to ensure that conviction was
maintained, which exercise could take months and
even years and then go back to Rent Controller



asking for a direction to be put back into possession of premises wherefrom he had been cheated out--- Supreme Court granted leave to appeal to consider such questions for being of first impression.

11. Having considered the matter from all angles in the light of material on file, I find that the appellate Court after taking into consideration evidence on record rightly came to the conclusion that the shops in question are required by the respondent No.1/landlord for his personal bonafide use. The appeal Court in its well reasoned judgment after taking into consideration sufficient reasons to hold the bonafide need of landlord as genuine/valid. Such findings of the appeal court are based on elaborate, careful and correct appraisal of evidence and do not suffer from any misreading of the evidence as the shops in question are ownership of the landlord. Learned counsel for the petitioners/tenants are unable to point out any illegality or irregularity in the findings of the learned appeal court in respect of conceding the personal bonafide need of landlord warranting interference by this Court in its Constitutional jurisdiction. Guidance is being sought from the case laws reported as, *Zahoor Din v. Mirza Ayub Baig (1981 SCMR 1081)*, *Syed Jan Muhammad and another v. Syed Abdul Khair (2001 SCMR 1287 and Muhammad Iqbal v. Syed Sohail Wajid Gillani (2004 SCMR 1607)*.

12. Moreso, while exercising jurisdiction under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, this Court would not enter into factual controversies which has already been dealt with by a competent Court of law, vested with

statutory powers, particularly when there is no jurisdictional error or other legal infirmities such as arbitrariness and others, in the order assailed before the High Court. It is not the mandate of High Court in writ jurisdiction to substitute its own findings for the findings recorded by the Court of appeal after due appraisal of evidence.

13. The pith and substance of above discussion is that the impugned judgment passed by appeal Court is perfect in all respects, with proper facts, circumstances and evidence available on file which hardly calls for interference by invoking the constitutional jurisdiction of this Court under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973. The party approaching the High Court under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 has to demonstrate gross misreading or non-reading of the evidence or any jurisdictional defect floating on the surface but in all the writ petitions, all these preconditions are clearly missing, therefore, *the instant writ petition alongwith W.P No. 657-D/2019 and W.P No. 658-D/2019* are devoid of any force which are dismissed with no order as to cost.

Announced
April 5th, 2022
Hasnain/*



JUDGE

(S.B)

Hon'ble Mr. Justice Muhammad Faheem Wali

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