

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT:

MR. JUSTICE UMAR ATA BANDIAL
MR. JUSTICE IJAZ UL AHSAN.

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**CIVIL PETITIONS NO.1028 TO 1030, 1326 TO 1339,
1514, 1543 AND 1544 OF 2019.**

(Against the judgment dated 20.02.2019 passed by the Peshawar High Court, Peshawar in Writ Petitions No.4717-P to 4735-P, 4807-P & 4819-P of 2018).

The President, All Pakistan Women Association,
Peshawar Cantt.
...Petitioner(s).

(in all cases)

Versus

Muhammad Akbar Awan and others.
(in CP.1028/19)

Hussain Bukhari and others.
(in CP.1029/19)

Alla-ud-Din and others.
(in CP.1030/19)

Muhammad Asghar Awan and others.
(in CP.1326/19)

Chaudhry Muhammad Bashir and others.
(in CP.1327/19)

Saleem Javed and others.
(in CP.1328/19)

Zahid Hussain and others.
(in CP.1329/19)

Miraj Aslam and others.
(in CP.1330/19)

Kazim Ali and others.
(in CP.1331/19)

Khalid Zubair and others.
(in CP. 1332/19)

Syed Sharafat Ali and others.
(in CP.1333/19)

Masood-ur-Rehman and others.
(in CP. 1334/19)

Anees Ullah Khan and others.
(in CP. 1335/19)

Abdul Rehman & Baligh-ur-Rehman and others.

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(in CP.1336/19)

Farooq Jalal and others.

(in CP. 1337/19)

Iftikhar Ahmad and others.

(in CP. 1338/19)

Shah Nawaz Khan (decd) through L.Rs. and others.

(in CP. 1339/19)

Farman Ullah and others.

(in CP.1514/19)

Syed Ashraf Ali and others.

(in CP.1543/19)

Maria Ahmad and others.

(in CP.1544/19)

...Respondent(s)

For the petitioner(s): Mr. Ihsanullah, ASC.
Syed Rifaqat Hussain Shah, AOR.
(in all cases)

For the respondent(s): N.R. (in all cases)

Date of Hearing: 21.11.2019.

ORDER

IJAZ UL AHSAN, J.- By this single order, we propose to decide the listed petitions, as they all arise out of the same impugned judgment of the Peshawar High Court, Peshawar, dated 20.02.2012.

2. The petitioner seeks leave to appeal against a judgment of the Peshawar High Court, Peshawar, dated 20.02.2019. Through the impugned judgment, constitutional petitions filed by it against an interlocutory order dated 20.06.2017 passed by the Additional Rent Controller, Peshawar Cantt was dismissed.

3. Brief facts necessitating decision of this *lis* are that a number of ejectment petitions were filed on behalf of

the President of All Pakistan Women Association (APWA), Peshawar alleging that the said Organization was owner of a property situated at 28-Arbab Road, Peshawar Cantt and had rented out the same to a number of tenants. Eviction was sought on the ground of default in payment of rent as well as the plan² of the petitioner-Organization to demolish the existing building and construct a multistorey building in the name and style of APWA Tower. It also appears that litigation regarding title of the said property was at the relevant time pending between APWA, Peshawar and APWA, National Headquarter, Karachi which is not relevant for the purposes of the present proceedings. A spate of litigation followed where various miscellaneous applications were filed before the Additional Rent Controller as well as the learned Peshawar High Court in which a number of orders on different issues were passed. Discussion of the said proceedings is also unnecessary for the purposes of the *lis* before us.

4. On 30.05.2017 an application was filed on behalf of President APWA, Karachi before the Additional Rent Controller for being impleaded as a party in the ejectment petition on the ground that in consequence of a civil suit between APWA, Peshawar and APWA, Karachi, title of APWA, Karachi over the property in dispute had been declared and an appeal against the said order had also been dismissed by a Court of competent jurisdiction. The Additional Rent Controller allowed the said application, vide order dated

20.06.2017 on the ground that APWA, Karachi was a necessary party. The said order was challenged by the petitioner before the Peshawar High Court by way of a constitutional petition which was dismissed on the ground that where there is a specific statutory bar against an appeal against interlocutory orders, a constitutional petition could not be used as a substitute for the same purpose.

5. Learned counsel for the petitioners has argued that an identical application for impleadment had earlier been moved and dismissed and that a subsequent application was not competent. Further, the Additional Rent Controller had shown scant respect for the order of the Peshawar High Court and had accepted the application of Respondent No.3 for being impleaded in violation of the orders of the learned High Court. He further submits that the bar contained in Section 24 of the Cantonments Rent Restriction Act, 1963 for an appeal against interim order is not absolute and where the order is illegal, malafide or without jurisdiction, the same can be challenged in the constitutional jurisdiction.

6. We have heard the learned counsel for the petitioners at considerable length and gone through the material available on record. We would refrain from commenting on the merits of the case of either party, lest it should prejudice the case of either which is pending adjudication before the Additional Rent Controller, Peshawar.

We would therefore confine ourselves to the proposition on the basis of which the learned High Court has dismissed the

constitutional petition filed by the petitioners. For the said purpose, Section 24 of the Cantonments Rent Restriction Act, 1963, need to be interpreted. For ease of reference, the said Section is reproduced below:

"24. Appeal. (1) *Any party aggrieved by an order, not being an interim order, made by the Controller may, within thirty days of such order, prefer an appeal to the High Court.*

(2) *The High Court may, pending the final disposal of the appeal, make an order staying further proceedings or action on the order of the Controller:*

Provided that no such order shall be made if the appeal has been preferred from an order made under subsection (6) of section 17A.

(3) *The High Court shall, after perusing the record of the case and giving the parties an opportunity of being heard and, if necessary, after making such further enquiry either by itself or by the Controller as it may deem fit, make an appropriate order which shall be final.*

(4) *No order of the Controller except by an appeal under this section, and no order of the Appellate Court made under this Act shall be called in question in any Court by any suit, appeal or other legal proceedings."*

7. It is clear and obvious to us that the order dated 20.06.2017 which was impugned before the High Court was an interlocutory order, had not finally decided the *lis* and was passed to safeguard the interests of all who *prima facie* appeared to have an interest in the property. We have repeatedly asked the learned counsel for the petitioners to show how impleading President, APWA, Karachi would prejudice the case of the petitioners. However, no legally sustainable or satisfactory response has been forthcoming. It is settled law that when the Statute does not provide the right of appeal against certain orders, the same cannot be challenged by invoking the constitutional jurisdiction of the High Court in order to gain a similar objective. Where a Statute has expressly barred a remedy which is not available

to a party under the Statute, it cannot be sought indirectly by resort to the constitutional jurisdiction of the High Court.

8. In the present case, the intent of the Legislature to keep out interlocutory/interim orders from the scope of appeal is not difficult to understand. It is meant to curtail delays, piecemeal and fractured litigation at various *fora* at the same time. In our view, such orders cannot be challenged under the guise of invoking the constitutional jurisdiction of the High Court because the same would tantamount to negating the provisions of the Statute itself and rendering the bar imposed by the Legislature in the interest of expeditious disposal of rent matters totally redundant. The High Courts exercising constitutional jurisdiction must be fully cognizant and conscious of this Rule and strictly adhere to the same in the interest of advancing the policy of law and delivering expeditious justice in accordance with the law and the Constitution. Even otherwise, constitutional jurisdiction is equitable and discretionary in nature and should not be exercise to defeat or bypass the purpose of a validly enacted statutory provision. This Court has repeatedly held to that effect in a number of cases including Mushtaq Hussain Bukhari v. The State (1991 SCMR 2136), Mohtarma Benazir Bhutto, MNA and Leader of the Opposition, Bilawal House, Karachi v. The State (1999 SCMR 1447), Mst. Seema Begum v. Muhammad Ishaq and others (PLD 2009 SC 45) and Muhammad Raza Hayat Hiraj v. Election Commission of Pakistan (2015 SCMR 233), Saghir Ahmed Naqvi v. Province

of Sindh (1996 SCMR 1165) and Muhammad Iftikhar Mohmand v. Javed Muhammad (1998 SCMR 328). We respectfully reiterate and affirm that principle.

9. We also notice that the learned High Court made an effort to strike a balance in litigation pending before it considering that it is a rent matter and has been lingering for years where the rival claimants have filed multiple miscellaneous applications and the aggrieved parties have challenged them before all available *fora* which has resulted in the litigation dragging for years on end. Keeping this in mind, the learned High Court has directed the Additional Rent Controller, Peshawar Cantt to proceed with the cases on daily basis and decide the same as early as possible.

10. Learned counsel for the petitioners has not been able to demonstrate any legal, procedural or jurisdictional error, defect or flaw in the impugned judgment of the High Court that may furnish basis for interference by this Court by way of granting leave to appeals.

11. For reasons recorded above, we do not find any merit in these petitions. The same are accordingly dismissed. Leave to appeal is refused.

ISLAMABAD, THE

21.11.2019

ZR/

'Not Approved For Reporting'

77/12/19

