

**IN THE SUPREME COURT OF PAKISTAN**

(Appellate Jurisdiction)

**PRESENT:**

**MR. JUSTICE MAZHAR ALAM KHAN MIANKHEL**

**MR. JUSTICE JAMAL KHAN MANDOKHAIL**

(AFR)

**Civil Appeal No. 999 of 2017**

*(On appeal from the judgment of the High Court of Balochistan Quetta dated 08.11.2016 passed in FAO No. 49 of 2014)*

Mrs. Muhammad Akbar

... Appellant(s)

**VERSUS**

Abdul Jalil & others

... Respondent(s)

For the Appellant(s)

: Mr. Kamran Murtaza, Sr. ASC  
Syed Rifaqat Hussain Shah, AOR

For the Respondent(s)

: Mrs. Misbah Gulnar Sharif, ASC

Date of Hearing

: 26.05.2022

**JUDGMENT**

**Jamal Khan Mandokhail, J.** Facts in brief are that the respondents filed separate applications for vacation of houses, described in the applications, rented by them to the appellant and other tenants on the ground of personal *bona fide* use of the houses for non-residential purposes, after removing the intervening walls between the houses and their rooms, to make it as a single unit for the purpose of sale and purchase of construction material. The applications were allowed by the Rent Controller and were confirmed by the learned High Court. Thereafter, the appellant and others filed separate civil petitions before this Court, wherein, leave was granted on 20.07.2017, in the following terms:-

*"It is argued by the learned counsel for the petitioners that the demised premises are houses, which were rented out to the petitioners for residential purpose. The respondent's*

father, Abdul Majeed (deceased), instituted an eviction application against the petitioners mainly on the ground that "the house in question is reasonably and in good faith is required to the applicant for his personal bona fide use, as the applicant want to start business of construction material as now a days the applicant is jobless and the above noted house will be used as a Godown for construction material". The petitioners resisted the eviction application on, inter alia, the ground that without first having obtained the permission of the Rent Controller for conversion of the property from residential to non-residential in terms of Section 11 of the Urban Rent Restriction Ordinance, 1958, the eviction applications were not maintainable. However, the legal question had throughout been decided against the petitioners by the learned trial Court as well as the learned Appellate Court on an erroneous understanding of the law and presumably on the ground that no specific permission for conversion of residential property was required when the landlord had been able to establish his personal bona fide requirement for using the same for non-residential purposes. According to the learned counsel, this view set out is against the law laid down by this Court in the judgments reported as *Munir Ahmad Naulakha and other Vs. Ch. Muhammad Din and other* (PLD 2006 SC 422) and *Muhammad Arshad Khokhar Vs. Mrs. Zohra Khanum and others* (2010 SCMR 1071).

2. Leave to appeal is granted to consider whether before filing of the eviction application, permission of the Rent Controller in terms of Section 11 (supra) is mandatory or such permission can be granted while examining the personal bona fide requirement of the landlord to use the residential property for a non-residential purpose, which may be deemed to be an inbuilt permission when an eviction order is passed.

3. It is however clarified that if the petitioners have not paid the rent during the period when the matter remained pending in the Courts or even before that period, which might be a fresh cause of action accruing to the respondents, they may file fresh petition(s) for ejectment on the ground of default in payment of rent.

#### **C.M.As NO.284-Q, 286-Q and 7804 of 2016**

4. In the meantime, the operation of the impugned judgments is suspended. The applications are accordingly allowed."

2. On 26.05.2022, when this appeal and other two connected appeals came up for hearing, learned counsel for appellants in the

connected appeals decided to withdraw those appeals (Civil Appeals No. 997 and 998 of 2017) with a request that some reasonable time be granted to the appellants for vacation of premises. Hence, those appeals were disposed of through a separate order. However, the appellant in this appeal opted to argue the matter for its decision on merits.

3. Heard the learned counsel for the parties and have perused the record. The only question raised before this Court by the learned counsel for the appellant is that the house in question was sought to be vacated by the respondents for non-residential purposes. It is contended that before converting of a residential building into a non-residential building, a permission from the Rent Controller (**the Controller**) is required as mandated by Section 11 of the Balochistan Urban Rent Restriction Ordinance, 1959 (**the Ordinance**), which is reproduced herein below:-

*"11. Conversion of a residential building into a non-residential building.---No person shall convert a residential building into a non-residential building, except with the permission in writing of the Controller."*

4. According to section 11 of the Ordinance, before conversion of a residential building into a non-residential building, a permission in writing is required from the Rent Controller. The judgments so relied upon by the appellant and mentioned in the leave granting order confirm the proposition of law that for conversion of a residential building into a non-residential one, prior permission of the Rent Controller is necessary. However, facts of those cases are different from the facts and circumstances of the case in hand. In the cases cited above, the buildings were built for residential purposes and they were required for the non-residential use, without any structural change nor was there any plan of the landlord/owner to demolish the residential building and to reconstruct a non-residential building. In the present case, the respondents have planned that after vacation of the premises, they will completely change the structure of the building by removing the

intervening walls between the houses and their rooms, to make it as a single unit, in result whereof, the building cannot be utilized as a residential building. Section 11 of the Ordinance relates to the conversion of the existing residential building into a non-residential building, without any structural change. However, after a material change in the structure of a residential building or after demolishing the building with a plan to reconstruct a non-residential building, the Controller loses its authority, therefore, under such circumstances, permission of the Controller under section 11 of the Ordinance is not required. In the case of **Mrs. Faiz Muhammad and 3 others v. Widow of Late Syed Abdul Sattar Shah and 7 others** (1991 SCMR 1994), this Court has held in Para 5 (at 'B') as under:-

*"....we find that section 11 of the Ordinance relates to an existing building and its use and not to a building which is to be reconstructed after demolition of the old building. The latter would be governed by its own zoning bye-laws of the local authority, the Rent Controller playing no part in the sanctioning of the plan or the utilization of the property after such reconstruction."*

5. It is abundantly clear that the respondents intend to use the building of the houses, as a non-residential building, by making major structural changes in them. The request of the respondents as per their plan has been acceded to by the learned High Court as well as the Rent Controller concurrently. The judgments referred to by the appellants at the leave granting stage are not applicable to the case in hand, as such, the objection so raised by the appellant has no force in the circumstances.

Thus, in view of above, the appeal is dismissed. The appellant shall vacate the premises within a period of sixty days, from the date of hearing of this appeal i.e. 26.05.2022. The appellant shall also deposit the outstanding amount of rent, if any, to the Rent Controller within ten days of the receipt of this judgment. Since six years have already been elapsed during the pendency of this matter before this

Court, therefore, if the premises in question are not vacated by the appellant by or before the stipulated period, the respondents will be at liberty to get the premises vacated with the assistance of the concerned law enforcement agencies, without filing an execution petition.

26.05.2022

Islamabad,

**APPROVED FOR REPORTING**

*K.Anees/-*