ORDER SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD

JUDICIAL DEPARTMENT

W.P. No. 2788 of 2022

Habib Ullah Zahid Vs Mrs. Shaheena Wajid Mirza, etc.

Serial No. of order of proceedings	Date of order of proceedings	Order with signatures of judge, and that of parties of counsel, where necessary.
1	2	3
	26.06.2022	Mr. Qaiser Imam, Advocate.

The instant writ petition is arising out of order, judgment and decree dated 16.06.2022 and 21.07.2022, passed by the learned Rent Controller and Additional District Judge, Islamabad-West respectively, whereby ejectment petition filed by the respondent No.1 (**"landlady"**) was allowed while the appeal against the order was dismissed.

2- Precisely, relevant facts are that respondent No.1 (Mrs. *Shaheena Wajid*) filed ejectment petition under Section 17 of the Islamabad Rent Restriction Ordinance, 2001 ("**Ordinance 2001"**) for eviction of the petitioner-tenant from Plot No.14-H, F-8 Markaz, Islamabad, 1st & 2nd floor alongwith roof, (**rented premises**) on the grounds of expiry of lease agreement, reconstruction of the rented premises and default in payment of rent.

3- In response to notice, petitioner entered appearance and filed written reply. The learned Rent Controller after hearing arguments from both the sides, allowed the petition summarily vide order dated 16.06.2022. The petitioner assailed the order-in-original in appeal, but the same was also dismissed, hence, instant writ petition.

4- Vide order-in-original dated 16.06.2022, the learned Rent Controller came to the conclusion that the lease agreement has since expired which is a legally

acknowledged ground for eviction of the tenant by placing reliance upon the judgment of the Hon'ble apex Court reported as PLD 2018 SC 81. The principle laid down in the judgment ibid holds that without ***express consent*** of the landlord to extend the tenancy period, the tenant shall be guilty of having infringed the conditions of tenancy and thus liable to be evicted in terms of Section 17(2)(ii)(b) of the Ordinance, 2001.

5- The learned Appellate Court concurred with the order of eviction passed by the learned Rent Controller with further observation that the tenant had failed to produce any written consent of the landlady regarding extension of lease agreement; that the landlady also served a notice of vacation upon the petitioner and that the matter could not be referred to the Mediation Council as the lease agreement already expired and the status of the petitioner has become one of illegal occupant.

6- Heard. Record perused.

7- In support of the ground for referring the matter to the Mediation Council, learned counsel referred judgment of this court passed in the case of *"Ms. Memoona Zainab Kazmi v. Additional District Judge (MCAC), Islamabad & 2 others), W.P. No.1631 of 2022".*

8- In order to appreciate the submission, the judgment in the case of Ms. Memoona Zainab Kazmi supra has been gone through. Under concluding paragraph 14(e) it was held:-

> *"The Rent Controller* ***shall not refer*** *those cases to Mediation Council under Section 16A where the default of rent is apparent or where the order for deposit of rent in terms to Section 17(8) of IRRO, 2001 has not been complied with or* ***where lease agreement has already been expired.****"*
> *(emphasis added)*

9- The case of the petitioner falls under the category ibid as lease agreement inter se the petitioner and the landlady has since expired and there is no express extension of the same, therefore, the ground urged in this regard is misconceived and accordingly repelled.

10- On the aspect of expiry of lease agreement, the learned counsel argued that both the agreement contain a clause thereby stating that after the expiry of 10 years, the agreement shall be extendable with mutual consent of the parties. According to the learned counsel, it nowhere state that at the time of expiry of agreement i.e. 30.04.2022 the petitioner is under obligation to handover the rented premises to the landlady. The learned counsel added that in absence of specific stipulation to that effect, eviction on the expiry of lease agreement can be sought which is not the case of the petitioner as there was no provision in the agreement that after the expiry of lease period, the petitioner shall handover possession of the rented premises to the landlady.

11- The relationship of landlord and tenant under the lease agreement that already stood expired are the admitted facts. The pre-requisite for asserting claim of extension of lease agreement is the **"*express consent*",** which should be positive, direct, and unequivocal, requiring no inference or implication to supply into its meaning. Mere an oral assertion cannot be termed "*express consent*" and cannot be made basis to hold the tenancy valid under the lease agreement that already stood expired. In the light of the law laid down by the Hon'ble Apex Court in the case of **Waqar Zafar Bakhtawari** (PLD 2018 SC 81) the tenant shall be held guilty in the event of having no express consent of the landlord to extend tenancy and liable to be evicted in terms of Section 17(2)(ii)(b) of the Ordinance, 2001.

12- The intention of the Legislature has to be gathered by reading the whole statute. In case, the argument of the learned counsel is accepted, it would amount to render the provisions ibid redundant. It is settled law that every attempt should be made to save the statute rather than to declare its provisions redundant. Furthermore, the law relating to mandatory and directory provisions of any given statute is well settled and it has been held by the Hon'ble Supreme Court of Pakistan that where legislature has provided penalty/consequences for non-compliance of a provision, such provision is mandatory in nature, however, if such consequences are not provided the provision is to be taken as directory. It has further been held that the complete statute is to be read to determine the nature of such provisions in a statute. Reliance is placed upon "Ghulam Hassan v. Jamshaid Ali and others" (2001 S.C.M.R. 1001), Maulana Nur-ul-Haq v. Ibrahim Khalil (2000 SCMR 1305) and Niaz Muhammad Khan v. Mian Fazal Raqib (PLD 1974 SC 134).

13. In the case of **Waqar Zafar Bakhtawari and 6 others v. Haji Mazhar Hussain Shah and others (PLD 2018 S.C. 81)**, the Hon'ble Supreme Court has held that Section 17 of the Islamabad Rent Restriction Ordinance, 2001 provides for the grounds on the basis of which an eviction can be sought by the landlady and there was no provision in the said section as to what will happen after the term of the tenancy expires. On the other hand Section 6 related to the tenure of the tenancy but no reference of such a ground was contained in Section 17 of the said law. The Hon'ble Supreme Court observed as under:-

> "It is settled that while interpreting the law, a specific provision of any statute, which is independent in nature, cannot and should not ordinarily be held to be redundant, especially on the touchstone of another independent provision of the same statute; rather all possible efforts should be made to apply and adhere to

> the rules of purposive and harmonious construction, so that the allegedly conflicted provisions should be reconciled and saved. If some precedent law is required in this behalf, reference can be made to the judgments reported as Combined Investment (Pvt.) Ltd. v. Wali Bhai (PLD 2016 SC 730), Lucky Cement Ltd. v. Commissioner Income Tax, Zone Companies, Circle-5, Peshawar (2015 SCMR 1494), Aftab Shahban Mirani v. Muhammad Ibrahim (PLD 2008 SC 779), Collector of Sales Tax and Central Excise (Enforcement) and another v. Messrs Mega Tech (Pvt.) Ltd. (2005 SCMR 1166), Mirza Shaukat Baig v. Shahid Jamil (PLD 2005 SC 530) and D.G. Khan Cement Company Ltd. v. Federation of Pakistan and others (2004 SCMR 456)."

The Hon'ble Supreme Court further held as under:-

> "Thus, we conclude that as after expiration of the tenancy period, a tenant, though can continue to hold over the possession of the rented premises, but this tenancy is rendered invalid, in that, it has come to an end and if there is no express consent of the landlord to extend the tenancy period the tenant shall be guilty of having infringed the conditions of tenancy, rendering him liable to be evicted under section 17(2(ii)(b) of the Ordinance, 2001."

14. In view of above, the impugned orders in the backdrop of facts and the law on the subject referred to by the learned Rent Controller in its order and affirmed by the Appellate Court, are well reasoned and do not call for any interference. Consequently, instant writ petition is accordingly **dismissed in limine**.

(ARBAB MUHAMMAD TAHIR)
JUDGE

A.R.ANSARI*