JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

W.P. No.1419 of 2017
Usman Ali Zafar and another
Versus
Shahzad Shafique and others

Date of Hearing: 25.07.2017
Petitioners by: Mian Tahir Iqbal, Advocate.
Respondent No.1 by: Mr. Muhammad Nazir Jawad, Advocate.

MIANGUL HASSAN AURANGZEB, J:- Through the instant writ petition, the petitioners, Usman Ali Zafar and another, impugn the judgment and decree dated 31.03.2017, passed by the Court of the learned Additional District Judge, Islamabad, whereby the petitioners' appeal against the order and decree dated 12.01.2017, passed by the Court of the learned Rent Controller, Islamabad, was dismissed. Vide the said order and decree dated 12.01.2017, the learned Rent Controller allowed respondent No.1's petition under Section 17 of the Islamabad Rent Restriction Ordinance, 2001, ("IRRO") seeking the petitioners' eviction from Basement No.07, Lower Ground Floor, Plot No.3-N, Shaheen Centre, I-9 Markaz, Islamabad ("the rented premises").

2. The record shows that on 16.05.2016, respondent No.1 filed a petition under Section 17 of the IRRO before the learned Rent Controller, Islamabad seeking the petitioners' eviction from the rented premises. The grounds taken in the said eviction petition were; (i) the expiry of the lease agreement, (ii) personal bonafide need of the landlord/respondent No.1 for the rented premises, and (iii) default in the payment of rent since June, 2015. The petitioners contested the said petition by filing a written reply. The position taken by the petitioners was that they had purchased the rented premises on 18.01.2015, and that the petitioners had already instituted a suit for specific performance against respondent No.1. The petitioners also pleaded that they had paid rent to the previous owner of the rented premises up to

September, 2015, and, thereafter, they had been depositing rent in the Court.

3. On 05.09.2016, the learned Rent Controller framed the issues. Respondent No.1 entered the witness box as AW-1, whereas petitioner No.1 gave evidence as RW-1. Vide order and decree dated 12.01.2017, respondent No.1's eviction petition was allowed, and the petitioners were given a period of 30 days to vacate the rented premises. The petitioners preferred an appeal against the said order and decree dated 12.01.2017, before the Court of the learned Additional District Judge, Islamabad. Vide judgment and decree dated 31.03.2017, the petitioners' appeal was dismissed. The concurrent orders and decrees passed by the learned Courts below had been impugned by the petitioners in the instant writ petition.

4. Learned counsel for the petitioners submitted that on 11.01.2015, an agreement to sell was executed between the petitioners and respondent No.1, whereby the petitioners agreed to purchase the rented premises; that due to respondent No.1's refusal to perform his obligation under the said agreement to sell, the petitioners instituted a suit for specific performance of the said agreement to sell; that the said suit is still pending adjudication, and until the decision in the said suit the petitioners could not be evicted from the rented premises; that the petitioners' occupation of the rented premises is in their capacity as owners, and not as tenants; that the lease agreement which was executed by the petitioners with the previous owners of the rented premises had already expired; that the petitioners paid rent to respondent No.1 until July, 2015, and thereafter, deposited rent in the Court; and that since respondent No.1 was already carrying on business close to the rented premises, his ground of personal bonafide need for the rented premises is not genuine. Learned counsel for the petitioners prayed for the concurrent orders and decrees passed by the learned Courts below to be set aside.

5. On the other hand, learned counsel for respondent No.1 submitted that the lease agreement between the petitioners and

previous owners has already expired; that the document produced as Mark-R/P is a disputed document and could not be read in evidence; that the petitioners were unable to prove that they had paid rent for the months of June, 2015 to August, 2015 to respondent No.1 or to the previous owner of the rented premises; that respondent No.1 needed the rented premises in order to expand his business of Auto Spare Parts; and that the mere fact that the petitioners have instituted a suit for specific performance of an alleged agreement to sell does not give them the right to occupy the rented premises. Learned counsel for respondent No.1 prayed for the writ petition to be dismissed.

6. I have heard the contentions of the learned counsel for the contesting parties and have perused the record with their able assistance. The facts leading to filing of the instant petition have been set out in sufficient detail in paragraphs No.2 to 3 above, and need not be recapitulated.

7. The admitted position is that the lease agreement executed between the petitioners and the previous owner of rented premises has already expired. The said lease agreement has not been brought on record by the petitioners. The rented premises were purchased by respondent No.1 from the original owner. Vide transfer letter dated 22.06.2015, the ownership of the rented premises was transferred to respondent No.1. Vide legal notice dated 14.09.2015, respondent No.1 informed the petitioners that the rented premises had been purchased by respondent No.1. Furthermore, the petitioners were called upon to vacate the rented premises. The refusal on the petitioners' part to vacate the rented premises caused respondent No.1 to file an eviction petition.

8. The learned counsel for the petitioners was asked to show from the record the payment of rent for the months of June, 2015 to August, 2015. As regards the payment of rent for the months of June and July, 2015, learned counsel for the petitioners referred to Mark-R/P. This document was disputed by respondent No.1. In the case of State Life Insurance Corporation of Pakistan Vs. Javaid Iqbal (2011 SCMR 1013), it has been *inter-*

alia held that a document not produced and proved in evidence but only marked could not be considered by Courts as legal evidence of a fact. The learned Rent Controller in his order has observed that the petitioners, in order to prove the rent receipts, had to produce the original register/documents, but they failed to do so. Therefore, I do not find anything to fault in the concurrent findings of the learned Courts below as regards the default on the petitioners' part to pay rent for the said months.

9. Respondent No.1's stance was that he needed the rented premises to expand his business of Auto Spare Parts. It has not been denied that in addition to the rented premises, landlord/respondent No.1 had other properties, but it is well-settled that it is the landlord's unfettered choice as to which of his/her properties he puts to his/her personal use. It does not lie in the mouth of the tenant to say that the landlord should use any other of his/her properties for his/her personal use. Even the Rent Controller does not have the authority to determine the property which the landlord should put to his own personal use. A landlord is not even required to mention in the eviction petition or in his/her evidence, the nature of business he/she wants to carry out at the rented premises. In the case of Pakistan Institute of International Affairs Vs. Naveed Merchant (2012 SCMR 1498), it has been held that the choice lies with the landlord to select any of the tenement for his personal need and for this purpose, the tenant has no *locus standi* to give advice to the landlord to use alternate accommodation. In the case of S.M. Nooruddin Vs. Saga Printers (1998 SCMR 2119), it has been observed that a landlord has a complete option to choose from one of the several tenements occupied by tenants for his personal requirement and the discretion is not assailable, except in the rarest cases of bad faith. Furthermore, this Court, in the case of Javaid Ahmed Vs. Muhammad Imran Malik (PLD 2011 Islamabad 30), it has been held as follows:-

> *"11. Now adverting to the contention that respondents Nos.1 and 2 are owners of other shop, suffice it to say that it is settled law that it is the prerogative of the landlord to choose premises for his personal need and no discretion in respect*

thereof can be given to the landlord and in this respect reliance is placed upon the case of Malik Muhammad Ramzan v. Messrs General Iron Stores and another ***(1995 SCMR 1125)****, wherein it has been held that "landlord" would have privilege to choose anyone of his properties for self-use, considered by him suitable for his requirement, provided his need was not tainted with mala fide. Further in the case National Tubewell Construction Corporation Ltd. v. Tariq Rahim (Advocate) and another* ***(NLR 1991 Civil 366)****, it has been observed that it is for landlord to choose and make a choice as to which of his properties is suitable to meet his needs/requirements and tenant cannot dictate to landlord that he should occupy this property or that property or that he should move for eviction against this tenant or that tenant."*

10. Coming to the contention of the learned counsel for the petitioners that the petitioners had instituted a suit for specific performance against respondent No.1, and until the decision of the suit, the petitioners could not be evicted from the rented premises, this contention is against the law well settled by the Superior Courts. It is trite law that a person cannot remain in occupation of rented premises simply because he asserts to be the owner of the rented premises and has instituted a suit for specific performance or declaration in this regard. Reference to case law, at this stage would be apposite:-

(i) In the case of Iqbal Vs. Rabia Bibi, reported as PLD 1991 SC 242, it has been held at page 245 of the report as follows:-

"Be that as it may, in some recent judgments this court has taken the view that in cases like the present one, where the sale agreement or any other transaction relied upon by a tenant is seriously and bona fide disputed by the landlord, the appellant/tenant cannot be allowed to retain the possession during the litigation where he continues to deny the ownership of the landlord who had inducted him as a tenant, without any condition and/or reservation. It has been ruled that in such cases although the tenant has a right to adduce evidence and take a short time for that purpose to remain in occupation despite having set up a, hostile title which is denied by the landlord, but on the well-known bar of estoppel in this behalf, he (the tenant) cannot be permitted to remain in occupation and right the litigation for long time--even for decades. In this case it is more than a decade that the appellants have been able to keep the possession on a claim which the landlord asserts is false. Accordingly, as held in those cases in fairness to both sides, while the tenant is at liberty to prosecute the litigation, wherein he should try to establish his claim but it should not be at the cost of' landlord/owner. It should be at the cost of himself

and he must vacate--though of course he would be entitled to an easy and free entry as soon as he finally succeeds in establishing his title against his own landlord. See Makhan Bano V, Haji Abdul Ghani (PLD 1984 Supreme Court 17), Allah Yar and others v. Additional District Judge and others (1984 SCMR v. Mufti Abdul Ghani (PLD 1985 SC 1).”

(ii) In the case of Jumma Khan Vs. Zarin Khan, reported as PLD 1999 SC 1101, the relationship of landlord and tenant was denied by the tenant on the ground that the landlord had executed an agreement to sell the rented premises to the tenant, and that a substantial amount had been paid to the landlord, and that a civil suit for specific performance was pending adjudication against the landlord. The landlord had unequivocally refuted the execution of any agreement for sale. The Hon'ble Supreme Court of Pakistan dismissed the tenant’s petition in the following terms:-

“7. On the basis of dictum laid in aforequoted reports we unhesitatingly hold that petitioner cannot legitimately resist maintainability of ejectment proceedings pending against him on the ground of sale-agreement. Suffice it to observe that genuineness or otherwise of such agreement and its consequential effort will be independently determined by the Civil Court. However, in the instant case we are satisfied that issue regarding relationship of tenancy and personal bona fide requirement of respondent-landlord has been correctly decided by the Courts below. There does not appear any material defect or legal infirmity with regard to conclusions drawn in the impugned judgments. Accordingly the petition having no merit is dismissed and leave to appeal is refused.”

(iii) In case of Barkat Masih Vs. Manzoor Ahmad, reported as 2006 SCMR 1068, it was held that if a tenant denies the relationship of the landlord and tenant he should first vacate the premises in his possession and then contest his proprietary rights.

(iv) In the case of Abdul Rasheed Vs. Maqbool Ahmed, reported as 2011 SCMR 320, the petitioner/tenant had denied the relationship of landlord and tenant between parties. The petitioner had claimed that he had purchased demised premises subsequently through a sale

agreement. The Hon'ble Supreme Court of Pakistan dismissed the petition by holding as follows:-

> *"5. ... It is settled law that where in a case filed for eviction of the tenant by the landlord, the former takes up a position that he has purchased the property and hence is no more a tenant then he has to vacate the property and file a suit for specific performance of the sale agreement whereafter he would be given easy access to the premises in case he prevails. In this regard reference can be made to Shameem Akhtar v. Muhammad Rashid (PLD 1989 SC 575), Mst. Azeem un Nisar Begum v. Mst. Rabia Bibi (PLD 1991 SC 242), Muhammad Rafique v. Messrs Habib Bank Ltd. (1994 SCMR 1012) and Mst. Bor Bibi v. Abdul Qadir (1996 SCMR 877). In so far as determination of the relationship of landlord and tenant is concerned, such enquiry by the Rent Controller is of a summary nature. Undoubtedly the premises were taken by the petitioner on rent from the respondent and according to the former he later on purchased the same which was denied by the latter. Consequently, the relationship in so far as the jurisdiction of the Rent Controller is concerned stood established because per settled law the question of title to the property could never be decided by the Rent Controller."*

(v) In the case of Gohar Ali Shah Vs. Shahzada Alam, reported as 2000 MLD 82, the appellant was seeking to avoid eviction from the rented premises by claiming that he had purchased the rented premises. The Hon'ble High Court of Sindh struck off the tenant's defence and directed him to vacate the premises subject to refund by the landlord of the amount of consideration paid towards the price of the premises in question to the tenant after adjustment of rent till the delivery of possession. Furthermore, it was held as follows:-

> *"Mere agreement to sell would not absolve the appellant to pay rent only because he was proposed purchaser of the premises when there has been no term that appellant would not pay rent on this executing such agreement of sale when such agreement of sale would not create any right title or interest in or over the property in favour of appellant the proposed purchaser until and unless the said relationship of landlord or tenant is determined by an agreement."*

(vi) In the case of Muhammad Akmal Vs. Faisal Saeed Mirza, reported as 2004 CLC 862, the tenant had denied the existence of relationship of landlord and tenant between the parties alleging that predecessor-in-interest of the

landlord had entered into agreement to sell the premises in question in favour of the tenant. The tenant had also stated that he had filed a suit for specific performance of the agreement to sell. The said assertions of the tenant did not find favour with the Hon'ble Lahore High Court, and in paragraph 8 of the said report, it was held as follows:-

> *"8. ... It may be pointed out here that learned Rent Controller has not to decide the fact of sale and purchase allegedly made between the appellant and predecessor-in-interest of the respondents. The Civil Court, seized of the matter, is competent to decide such dispute and if appellant turns successful in that suit he would have the chance for the recovery of possession, in case of his ejectment. Till the decision of the civil suit proceedings of this case (ejectment petition) cannot be stayed or stalled as held in Iqbal and 6 others v. Mst. Rabia Bibi and another PLD 1991 SC 242. The intention of suit for specific performance of contract cannot furnish a ground to the appellant to get the proceedings before the Rent Controller stayed as held in Muhammad Amjad v. Mst. Rehana Kausar 2001 YLR 939."*

(vii) In the case of Muhammad Parvez Vs. Additional Rent Controller, Lahore, reported as 2013 YLR 1881, an applicant, claiming to be the purchaser of the rented premises, had filed an application under Order I, Rule 10 C.P.C. for impleadment in the eviction petition before the Rent Controller. The landlord's writ petition against the order of the Rent Controller allowing the application for impleadment was allowed by the Hon'ble Lahore High Court, holding as follows:-

> *"6. ...By applying above said principles in the instant case the inescapable conclusion is that a tenant remains a tenant, he cannot prolong his occupation by exercising his right of being subsequent purchaser unless so held by the court of competent jurisdiction. The reasons behind is that he has no status to justify his possession and if he denies the relationship of landlord and tenant he will be known to be an illegal occupant. The rent proceedings are between the land owner and tenant and entry or interference by the third party is to be jealously guarded. In this view of the matter, the impugned order is set aside and the writ petition is allowed. Resultantly application under Order 1 Rule 10, C.P.C. filed by respondents Nos.2 and 3 is dismissed."*

(viii) In the case of Refhat Hamidee Vs. Abdul Aziz, reported as 2013 YLR 1898, it has been held by the Hon'ble High Court

of Sindh that unless and until a registered sale deed existed between the parties, the relationship of landlord and tenant existed between the parties, the tenant could not get the benefit of a 'sale agreement' to avoid payment of rent. The eviction of the tenant from the rented premises was held to be justified.

(ix) In the case of Muhammad Rafique Vs. Farida Khan (2016 CLC 1451), I have had the occasion to hold as follows:-

> *"It has become commonplace for unscrupulous tenants/litigants to avoid eviction proceedings by contending that the rented premises had been sold to them. Unless and until the petitioner was able to establish his claim for specific performance on the basis of the alleged sale agreement through a judgment (not an interim order) in his favour passed by a Court of competent jurisdiction, respondent No.1 would continue to enjoy the status of being the owner and landlord of the rented premises. Pendency of a civil suit does not give a license to the tenant to remain in occupation of the rented premises. There is a catena of case law in support of the proposition that ejectment proceedings could not be stayed or stalled on the plea that tenants in possession were holding an agreement to sell. Mere pendency of a suit for declaration or specific performance of an agreement is no ground to avoid eviction of tenants, who claim to have purchased the rented premises."*

11. In view of the above, I do not find any merit in this petition, which is dismissed with no order as to costs.

(MIANGUL HASSAN AURANGZEB)
JUDGE

ANNOUNCED IN AN OPEN COURT ON _____/2017

(JUDGE)

Ahtesham Majid*

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