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

W.P.No.1238 of 2016
Sadaqat Ali Khan & another
Versus.
Ayesha Sohail & others

S. No. of order / proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	06.04.2016	**Ch. Manzoor Ahmad Kamboh, Advocate for the petitioners**

Through the instant writ petition, the petitioners, Sadaqat Ali Khan and M. Arshad Zia, have impugned the Order dated 29.03.2016, passed by the Court of the learned Additional District Judge (West) Islamabad, whereby the petitioners' appeal against the Order dated 13.10.2015, passed by the Court of the learned Rent Controller, Islamabad, was dismissed. Vide the said order dated 13.10.2015, the learned Rent Controller had allowed respondents No.1 & 2's eviction petition under Section 17 of the Islamabad Rent Restriction Ordinance, 2001 ("IRRO") and the petitioners were directed to vacate House No.04, Khayaban-e-Iqbal, F-8/3, Islamabad ("the rented premises"), within a period of fifteen days.

2. The facts essential for the disposal of this appeal are that on 01.07.2003, a lease agreement was executed between the co-owners of the rented premises and the petitioners, whereby the rented premises were leased to the petitioners for a period of three years. Again on 01.07.2006, another lease agreement was executed between the said parties for a further period of three years. As per clause 01 of the lease agreement dated 01.07.2006, the said lease period was extendable with the mutual consent of the lessor

and the lessee subject to an increase in the rent. With the mutual consent of the parties, the validity of the said lease agreement was extended up to 30.06.2010. The monthly rent by that stage was agreed to be Rs.2,20,000/-. Clause 9 of the lease agreement dated 01.07.2006 is reproduced herein below:-

> *"9. That the lessee shall use the said premises for his own residential purposes only and shall not sublet it or portion thereof to any body else throughout the tenure of this lease."*

3. Vide letter dated 21.05.2012, the Directorate of Building Control, Capital Development Authority ("CDA") informed respondent No.1 that a school had been established at the rented premises and in this way violation of the [Building Regulations of 1963 and 2005] had been committed. Furthermore, the Deputy Commissioner, CDA, was requested to take action against the owner / occupant of the rented premises under Section 49-C of the CDA Ordinance, 1960 ("Ordinance 1960") and Clause 2.17 of the Islamabad Residential Sectors Zoning (B.C.) Regulations, 2005.

4. Vide letter dated 28.05.2012, respondent No.1 informed the petitioners that the owners of the rented premises had decided not to renew the lease which was due to expire on 30.06.2012. The petitioners were requested to vacate the rented premises by that date. The petitioners were also informed that the CDA had strongly objected to the use of the rented premises as a school. Again vide letter dated 05.11.2012, respondent No.1 requested the tenants to vacate the rented premises. In order to enable the tenants to make alternative arrangements, he was given until 30.06.2013 to vacate the rented premises. Vide notice dated 09.01.2013 from the

Court of the Deputy Commissioner, CDA Islamabad, respondent No.1 was ordered to remove the said violation within a period of fifteen days or else action would be taken under Section 49-C of the Ordinance and Clause 2.17 of the Islamabad Residential Sectors Zoning (B.C.) Regulations, 2005. Vide letter dated 19.04.2013, the petitioners were given until 01.07.2013 to handover vacant possession of the rented premises to its owners. Despite the above mentioned notices, the petitioners did not vacate the rented premises. This recalcitrant attitude on the part of the petitioners necessitated respondents No.1 & 2 to institute an eviction petition under Section 17 of the IRRO before the Court of the learned Rent Controller, Islamabad, on 05.12.2013. The petitioners resisted this petition by filing a written reply. To the eviction petitioners' assertion regarding notices from the CDA as to the non-conforming use that the rented premises had been subjected to by the petitioners, the petitioners' reply was as follows:-

> *"The notice is maneuvered by the petitioners themselves otherwise in the same vicinity other schools are being run without any adverse action by the CDA."*

5. Vide Order dated 13.10.2015, the learned Rent Controller allowed the said eviction petition almost two years after its institution. The said order was assailed by the petitioners in appeal under Section 21 of the IRRO before the Court of the learned District Judge, Islamabad. Vide judgment dated 29.03.2016, the said appeal was also dismissed. The petitioners in the instant writ petition have assailed the said concurrent orders passed by the learned courts below.

6. Learned counsel for the petitioners submitted that one of the grounds on which

respondents No.1 & 2 were seeking the petitioners' eviction from the rented premises was that they wanted to reconstruct the same; that respondents No.1 & 2 had not obtained the sanction for reconstruction from the CDA in terms of Section 17(2)(v) of the IRRO; that as there were many other schools established in the residential areas, the use of the rented premises as a school was not a valid ground on which respondents No.1 & 2 could seek the petitioners' eviction; and that the expiry of the lease agreement is not a ground under Section 17 of the IRRO on which an eviction petition can be filed.

7. I have heard the arguments of the learned counsel for the petitioners and have perused the record with his able assistance.

8. The learned counsel for the petitioners did not deny that the rented premises were being used as a school. He also did not deny that under Clause 9 of the lease agreement dated 01.07.2006, the rented premises could not only be used for residential purposes. By using the rented premises as a school, the petitioners have clearly breached the said Clause 9 of the lease agreement. Under Section 17(2)(ii)(b) of the IRRO, the Rent Controller can, on an application of a landlord, direct the tenant to vacate the rented premises if he is satisfied that the tenant has without the written consent of the landlord used the rented premises for a purpose other than that for which it was leased or has infringed any conditions on which the rented premises were held. As the petitioners are running a school at the rented premises in transgression of the above mentioned Clause 9 of the lease agreement, the learned courts below have

correctly allowed respondents No.1 & 2 eviction petition under Section 17 of the IRRO.

9. As regards the contention of the learned counsel for the petitioners that in the absence of a lease agreement or where the lease period mentioned in the lease agreement had expired, the landlord could not seek the tenant's eviction under Section 17 of the IRRO, this question has been definitively answered in the judgment dated 22.01.2016, passed by the Hon'ble Islamabad High Court in Writ Petition No.854/2015, titled "Muhammad Mushtaq Vs. Muhammad Zubair etc" where, after reproducing Section 17 (1) & (2) of the IRRO, it has been held at paragraph 8 as follows:-

> *8. "The bare reading of the provision of law shows that where the tenant infringes any condition on which the building or rented land is held by the tenant that is a ground for eviction. In the lease agreement where it is specifically provided that the lease shall expire on a specific date and the tenant on the referred date fails to deliver the vacant possession of the demised property the same may be considered as a breach of condition of the lease agreement. In this behalf landlord is required to prove that it was a condition on which the property was leased out to the tenant that on expiry of the lease agreement possession of the property shall be handed over to him; whether the lease agreement is in writing or oral or even where after the expiry of written lease agreement the parties continue the arrangement through oral agreement the condition regarding the expiry of the lease may provide to the landlord a ground for eviction if it is proved that intention of the parties was to the effect. Learned counsel for petitioner during the course of arguments referred to the definition of tenant as provided in Section 2 (J) of 2001 Ordinance which provides that the tenant includes any person which continues to be in possession or occupation after termination of tenancy. Similarly in Section 6 of the Ordinance, it is provided that no tenancy shall be valid beyond such period as the landlord and tenant may by mutual agreement fix before or after commencement of the Ordinance. The effect of the referred provisions alongwith Section 17 (2)(ii)(b) ibid is that even after expiry of the lease agreement the tenant*

continues to qualify as a tenant, however, there has to be a specific expiry date of the lease agreement and in case of failure by the tenant to deliver possession of the property in question to the landlord then the same may amount to breach of condition of tenancy. The Honourable Supreme Court in case titled Qaiser Javed Malik Vs Pervez Hameed (2009 SCMR 846) held that the plain reading of Section 6 of the Ordinance commencing with the use of word "subject to the provision of Section 17"signifies that the provision of Section 17 continues to apply as a ground for eviction of the tenant. It was observed by the Apex Court that Section 6 of the Ordinance is in addition to the grounds for eviction and is available exclusively with respect to the property situated within territorial limit where provision of the Ordinance apply. The Honourable Supreme Court in the referred judgment held that after expiry of lease the tenant is not entitled to retain possession of the rented property and can be evicted on the basis thereof. The referred decision of the Honourable Supreme Court is binding on this court. Under Sub Section 1 to Section 17 of the Ordinance a tenant in possession of the building or rented land shall not be evicted from the same except in accordance with provisions of the section. The bare reading of the referred provision shows that the grounds on which the eviction application can be filed by the landlord are provided in Section 17 and though there is no ground for eviction on the basis of expiry of lease agreement, however, it is reiterated that the effect of Section 6 of the Ordinance read with Section 17 (2)(ii)(b) ibid is that a tenant may be evicted if he fails to deliver the possession of the property after expiry of the lease agreement."

10. In view of the above, the expiry of the lease period can be a ground for filing an eviction petition. Where there is no written rent agreement in existence between the landlord and the tenant, the landlord is at liberty, at any stage, to institute eviction proceedings before the Court of the Rent Controller. The learned counsel for the petitioners did not deny that the validity period of the lease agreement dated 01.07.2006 had come to an end well before respondents No.1 & 2 filed the eviction petition. As mentioned above, respondents No.1 & 2 had given the

petitioners until 01.07.2013 to vacate the rented premises. Section 5 of the IRRO provides *inter-alia* that every agreement for letting out a building or rented land shall be in writing. As the lease agreement between the petitioners and respondents No.1 & 2 had clearly expired, the eviction orders against the petitioners suffer from no legal infirmity.

11. The learned counsel for the petitioners somewhat feebly contended that there was an oral agreement between respondents No.1 & 2 and the petitioners to extend the validity period of the lease agreement for a period of twenty years. Such an oral agreement cannot give a reason to the petitioners to continue in occupation of the rented premises. As mentioned above Section 5 of the IRRO requires every rent agreement to be in writing. The use of the word "shall" in Section 5 *ibid* denotes a mandatory requirement. Furthermore, the learned lowers courts are correct in holding that Article 103 of the Qanun-e-Shahadat Order, 1984, provides that when the terms of any contract are reduced to the form of a document, no evidence of any oral agreement or statement shall be admitted as between the parties to an instrument for the purpose of contradicting, varying, adding or subtracting from its terms.

12. At the end of his arguments, learned counsel for the petitioners submitted that reasonable time would be required for the petitioners to take their business onto some other premises. As the petitioners were asked by respondents No.1 & 2 to vacate the rented premises about three years ago, and the petitioners did not accede to their request, but on the contrary subjected the said respondents to

the rigors of litigation, I do not feel that the petitioners are entitled to any more indulgence.

13. By reasons of the aforementioned, I do not find any merit in this petition, which is dismissed in limine with no order as to costs.

(MIANGUL HASSAN AURANGZEB)
JUDGE

Qamar Khan*

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