ORDER SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P. No.4017 of 2017
Muhammad Ajmal Khan Baloch
Versus.
Additional District Judge (West) Islamabad and others

S. No. of order / proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	22.12.2017	M/s Sheikh Ehsan-ud-Din and Zahra Shahbaz, Advocates for the petitioner.

Through the instant writ petition, the petitioner, Muhammad Ajmal Khan Baloch, impugns the judgment and decree dated 25.10.2017, passed by the Court of the learned Additional District Judge (West), Islamabad, whereby the petitioner's appeal against the order and decree dated 30.06.2017, passed by the Court of the learned Rent Controller, Islamabad, was dismissed. Vide said order and decree dated 30.06.2017, the learned Rent Controller allowed respondent No.3's petition under Section 17 of the Islamabad Rent Restrictions Ordinance, 2001 ("IRRO") seeking the petitioner's eviction from Shop No.3, Kamran Shopping center, Aabpara Market, Islamabad ("the rented premises").

2. Learned counsel for the petitioner submitted that respondent No.3 did not give any notice to the petitioner before filing the eviction petition; that the learned Courts below erred by holding that the filing of the eviction petition to be considered as a notice to the petitioner to vacate the rented premises or to bring to an end the oral tenancy; that the lease agreement dated 28.10.2013, which was produced by respondent No.3 as mark-A is a forged and a fabricated document; that the petitioner has already lodged an FIR against respondent No.3 for producing a forged document before the Court; that the

learned Rent Controller, has correctly held that respondent No.3 was not able to prove the execution of the lease agreement dated 28.10.2013; that the petitioner has been respondent No.3's tenant since the year 2001; that the tenancy has been extended from time to time; that the last written lease agreement was executed between the petitioner and respondent No.3 on 01.03.2011; that the lease period under the said lease agreement was three-year i.e. upto 31.08.2013; that thereafter, no other lease agreement had been executed between the petitioner and respondent No.3; that the tenancy between the petitioner and respondent No.3 has been verbally extended on the understanding that the rent would be enhanced by 25% after every three years; that respondent No.3 has been accepting rent at the enhanced rate as agreed between the parties; that respondent No.3 in his evidence deposed that the petitioner was still his tenant; that even during the pendency of the eviction petition, respondent No.3 has been accepting rent from the petitioner; and that learned Courts below correctly held that respondent No.3 had not been able to prove default in the payment of rent by the petitioner.

3. Furthermore, learned counsel for the petitioner submitted that respondent No.3 in his eviction petition and evidence did not state the reason and purpose for which he required the rented premises; that it is not enough simply to plead that the rented premises are required by the landlord for his own personal need; that a specific plea has to be taken specifying the use to which the landlord wants to subject the rented premises to; that respondent No.3 has 22 other shops in the same building, therefore, the plea of

personal *bonda-finde* need taken by respondent No.3 is for a *malafide* purpose; and that the eviction petition has been filed only to arm-twist the petitioner into paying an unreasonably high rent for the rented premises. Learned counsel for the petitioner prayed for the writ petition to be allowed, and for the concurrent judgments passed by the learned Courts below to be set aside. In making his submissions, the learned counsel for the petitioner placed reliance on the cases of M/s Javed Malik Vs. Pervaiz Hameed (2009 SCMR 846), Sardar Nabeel Wali Vs. The Additional District Judge/appellate authority, Sahilwal (PLD 2000 SC 89), Akbar Khan Vs. Wajid Zahoor (2015 YLR 2039), Sami Ullah Azeem Vs. Khaiyam (2014 CLC 1595), and Manzoor Ahmad Vs. Nusrat Malik (PLJ 2012 Lahore 114).

4. I have heard the contentions of the learned counsel for the petitioner and have perused the record with his able assistance.

5. The record shows that on 28.10.2013, a lease agreement was executed between the petitioner ("tenant") and respondent No.3 ("landlord"). By virtue of the said lease agreement, the rented premises were given on rent to the petitioner for a period of three years from 01.09.2013 to 31.08.2016. After the expiry of the said lease agreement, another lease agreement has not been entered into between the petitioner and respondent No.3. It appears that the petitioner has been in occupation of the rented premises as a tenant since 2001.

6. On 20.10.2016, respondent No.3 filed a petition against the petitioner under Section 17 of the IRRO seeking the petitioner's eviction from the rented premises. The grounds taken in the said eviction petition were (i) the expiry of the

lease agreement, (ii) violation of the terms and conditions of the lease agreement by the tenant, (iii) respondent No.3's personal *bonafie-fide* need for the rented premises, and (iv) default in the payment of rent since 31.08.2016. The petitioner contested the said eviction petition by filing a written reply. The petitioner took the position that since 2001, the tenancy has been extended from time to time; that the lease agreement filed by respondent No.3 along with his eviction petition was forged and fabricated; that the petitioner has lodged FIR No.304, dated 23.11.2016, against respondent No.3 under Sections 420, 468, and 471 of the Pakistan Penal Code, 1860 at Police Station Margalla, Islamabad; that there is a verbal tenancy available between the petitioner and respondent No.3; that respondent No.3 refused to receive the rent since September, 2016; that the rent for the months of September, October, and November, 2016, was sent in the form of cheques to respondent No.3 through courier (TCS); that the petitioner never defaulted in the payment of rent; that respondent No.3 and his family has more than 20 other shops adjacent to the rented premises; that the eviction petition was filed only as a pressure tactic aimed at enhancing the rent for the rented premises to an unreasonable level; and that respondent No.3 had had two of his shops, vacated through the Court and rented them out again.

7. From the divergent pleadings of the contesting parties, the learned Rent Controller framed the following issues:

1. *Whether the lease agreement executed between the parties has already expired? OPA.*
2. *Whether the respondent has committed sheer violation of the clauses of the lease*

agreement as well as CDA Bye-Laws? OPA.

3. *Whether the petitioner required the demised premises for his bonafide personal need? OPA.*
4. *Whether the respondent is a willful defaulter in payment of rent from 31.08.2016? OPA.*
5. *Whether the petitioner has got no cause of action and locus standi to file the instant ejectment petition? OPR.*
6. *Whether the instant ejectment petition is false, frivolous and vexatious, hence, the same is liable to be dismissed? OPR.*
7. *Relief.*

8. Respondent No.3 entered in the witness box as AW-1 and produced his affidavit-in-evidence. He also produced copies of the lease agreements executed between the petitioner and respondent No.3. A copy of the lease agreement dated 28.10.2013, was also tendered in the evidence as Mark-A.

9. The petitioner appeared as RW-1 and submitted his affidavit-in-evidence. He produced copies of the cheques and the courier (TCS) receipts in order to show that he had not defaulted in the payment of the rent. A copy of FIR No.304/2016 was produced as Mark-R/F.

10. The petitioner's stance before the learned Rent Controller was that after the expiry of the three-year lease agreement executed between the petitioner and respondent No.3 on 01.03.2011, the tenancy arrangement was verbally extended on the understanding that the monthly rent to be increased by 25% after every three years. It was candidly admitted that there was no written lease agreement which presently governs the relationship of the landlord and tenant between the said parties.

11. Vide order and decree 30.06.2017, the learned Rent Controller allowed respondent No.3's eviction petition primarily on the ground

that the lease agreement dated 01.03.2011 between the petitioner and respondent No.3 had expired, and that the rented premises were required by respondent No.3 for his personal *bonafie-fide* need. The issue regarding the default in the payment of rent and the violation of the terms of the lease agreement were decided against respondent No.3.

12. The petitioner assailed the said order and decree dated 30.06.2017, in an appeal before the Court of the learned Additional District Judge, Islamabad. Vide judgment and decree dated 25.10.2017, the said appeal was dismissed, and the petitioner was given a period of thirty days to handover vacant possession of the rented premises to respondent No.3. The said concurrent judgments of the learned Courts below have been impugned by the petitioner in the instant writ petition.

13. Without going into the question as to whether the lease agreement dated 28.10.2013, is genuine or not, it is an admitted position that the petitioner and respondent No.3 entered into a lease agreement dated 01.03.2011. Under clause 2 of the lease agreement dated 01.03.2011, the lease period was from 01.09.2010 to 31.08.2013. Clause 8 of the said lease agreement provided that the petitioner will deliver peaceful possession of the rented premises to respondent No.3 after the expiry of the lease period in a good and acceptable condition. If the petitioner's contention is to be accepted, then a fresh written lease agreement was not entered into after the expiry of the lease agreement dated 01.03.2011. It is my view that the petitioner cannot continue to occupy the rented premises simply because

respondent No.3 had been accepting rent at an enhanced rate from the petitioner.

14. One of the grounds under Section 17 of the IRRO, on which a tenant can be evicted from the rented premises is an infringement by the tenant of the terms and conditions on which the rented premises are held. As mentioned above, the parties had agreed for the lease period to be (years ending on 31.08.2013). By not vacating the rented premises when called upon to do so by respondent No.3 after the expiry of the written lease agreement, the petitioner infringed an essential term/condition on which the rented premises were held, and therefore, rendered himself liable to be evicted from the rented premises. The mere fact that respondent No.3 had been accepting rent at an enhanced rate from the petitioner beyond 30.08.2013, would not condone the petitioner's infringement of the abovementioned essential term/condition of the lease agreement.

15. 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" wherein, after reproducing Section 17 (1) & (2) of the IRRO, it has been held in paragraph 8 as follows:-

> ***"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."

16. The said judgment of this Court has recently been upheld by the Hon'ble Supreme Court vide judgment dated 21.12.2017, passed in civil appeal No.852/2017, tiled, "Muhammad Mushtaq Vs. Muhammad Zubair etc". In the said judgment, the Hon'ble Supreme Court after making reference to Section 6 of the IRRO held as follows:-

""11. Thus, as per the clear mandate of Section 6 ibid, such a tenancy shall come to an end after the expiry of the term of tenancy and if thereafter the tenant holds such a property without the consent of the landlord, it shall be a clear violation and the infringement of the condition of the tenancy, on which the property was held by him, because the condition of tenancy is for a particular period of time either by the terms stipulated in the tenancy agreement or by the afflux of time, which is specified in Section 6 (ibid.) itself."

17. Furthermore, after making reference to Section 17(2)(ii)(b) of the IRRO, it was held as follows:-

"Therefore, applying the above said definition to the expression "subject to" a tenant, who holds the property beyond the term of tenancy, under Section 17(2)(ii)(b) of the Ordinance, 2001 shall be evicted from the premises which is held on the condition for holding it for a specific period of time if he continues to occupy the rented property beyond such period without the "written consent" of the landlord. Eviction of the tenant thus will be on the grounds of violation of the term of tenancy which will be seen as a condition of the tenancy agreement."

18. In conclusion, it was held as follows:-

"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 his 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."

19. Since the written lease agreement between the petitioner and respondent No.3 has long expired, the learned Courts below were correct in allowing respondent No.3's eviction petition on the ground of the expiry of the written lease agreement.

20. As regards the contention of the learned counsel for the petitioner that respondent No.3's assertion that the rented premises were required for his personal *bonafie-fide* use, was based on *malafide-fides* because respondent No.3 had several other properties, which he could make use of, I do not find the same to be tenable. Respondent No.3 in his affidavit-in-evidence had deposed that he wanted the rented premises for his personal *bonafie-fide* use. In his cross-examination, respondent No.3 deposed that he wants to do business at the rented premises. I have found nothing in the concurrent judgments of the learned Courts below in allowing respondent No.3's eviction petition on the said ground, to be faulted.

21. It is also not denied that in addition to the rented premises, respondent No.3 had other commercial properties, but it is well-settled that it is the landlord's unfettered choice as to which of his properties he puts to his personal use. It does not lie in the mouth of the tenant to say that the landlord should use any other of his properties for his 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 evidence, the nature

of business he 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."***

22. There was no inconsistency between the averments in the eviction petition and the evidence adduced by respondent No.3. It is well settled that the sole statement of the landlord

regarding the personal *bona-fide* need for the rented premises was sufficient for the eviction of the tenant. In the case of Iqbal Book Depot Vs. Khitab Ahmed (2001 SCMR 1197), it has been held the where the statement of the landlord on oath was consistent with his averments in the ejectment application and the same had neither been shaken nor had anything been brought in evidence to contradict the statement, such a statement would be considered sufficient for the acceptance of the ejectment application.

23. Under Section 17(5) of the IRRO, the Rent Controller has to satisfy himself about the bona-*fides* of the landlord's claim regarding his requirement for his own occupation of the rented premises in good faith. The learned Courts below happen to be concurrently satisfied as to the eviction petitioner's *bonafides* regarding the said claim. There is no convincing material before me to doubt the satisfaction of the learned Courts below as to the eviction petitioner's *bonafides*. In the event, the rented premises are not occupied by the eviction petitioner or by any of his family members, Section 17(6) of the IRRO gives ample protection to the petitioner. For ready reference, the said Section 17(6) is reproduced herein below:-

> ***"17(6). Where the landlord who has obtained possession of a building in pursuance of a building in pursuance of an order made under subsection (5) does not himself, or where possession of the building or rented land has been obtained for any member of his family such member dies to, occupy the building or rented land within one month of the date of obtaining or rented land within one month of the date of obtaining its possession, or having obtained possession relates it within six months of the said date to any person other than the tenant, the tenant may apply to the Controller for an order directing that the possession of such building be restored to***

him and the Controller may make an order accordingly."

24. As regards the contention of the learned counsel for the petitioner that no notice was given to the petitioner by respondent No.3 before filing of the eviction petition, suffice it to say that the issuance of such a notice, in my view, was not mandatory for seeking the tenant's eviction from the rented premises. The eviction petition was decided by the learned Rent Controller within a period of more than seven months. The petitioner was well aware of the grounds on which, respondent No.3 was seeking the petitioner's eviction. In the case of Azhar Imam Rizvi Vs. Salma Khatoon (1985 SCMR 24), it has been held that receipt of a copy of the ejectment petition, and knowledge with respect to the same constitute due notice, and the same was to be treated as substantial compliance with the requirement of a notice under the rent restriction laws. Furthermore, in the case of M/s. Tanveer Spinning and Weaving Mills (Pvt.) Ltd. Vs. Tariq Saeed (2017 YLR 1762), wherein the Hon'ble Lahore High Court has held as follows:-

""Even otherwise, mere filing of an ejectment petition in itself was a sufficient notice to the tenant for termination of rent deed as settled by Hon'ble Supreme Court of Pakistan in case titled as Major (Retd.) Muhammad Yousaf v. Mehraj-ud-Din and others (1986 SCMR 751). Similar view has been taken by this Court on the case reported as Rahatlqbal v. Allauddin and another (2010 MLD 1988), as such, the petitioner was well cognizant about the rigorous of the legal proceeding and it should have made arrangement bona fidely for vacation of the demised premises but no such honest effort is shown from the record and now petitioner cannot take stance about the non-service of legal notice regarding the termination of rent agreement as well as the vacation of demised premises. Further, despite the termination of the tenancy, the petitioner/tenant is occupying the rented premises without the consent of the landlord

and the status of such tenant is not better than an illegal occupant and it is well settled by now that law does not favour the illegal occupant."

25. For the foregoing reasons, I am of the view that the learned Courts below correctly allowed respondent No.3's eviction petition. Resultantly, this writ petition is dismissed with no order as to costs.

(MIANGUL HASSAN AURANGZEB)
JUDGE

Sanaullah*

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