

HIGH COURT OF SINDH AT KARACHI

C.P. No.S-887 of 2010

J U D G M E N T

Dates of hearing: 05.11.2015, 10.11.2015 and 13.11.2015 .

Petitioner: M/s. Carpet Centre through Mr. Rehman Aziz Malik, Advocate .

Res. No.1: Mustafa Farabi Tapu Javeri through Mr. Muhammad Hanif Khatana, Advocate .

Res. No.2&3. VIIth Court of ADJ Karachi South and Vth Senior Civil Judge Karachi South .

IRFAN SAADAT KHAN, J. The instant petition has been filed with the following prayers:

“a) To set aside the Judgment dated 13.7.2010 passed by the respondent No.2 in First Rent Appeal No.349 of 2009 (titled M/s Carpet Centre versus Mustapha Farabi Tapu Javeri) and the Order dated 30.9.2009 passed by the Respondent No.3 in Rent Case No.1701 of 2006 (titled Mustapha Farabi Tapu Javeri versus M/s Carpet Centre) and dismiss the ejection application with costs.

b) Cost of the petition may be awarded.

c) To grant any other relief(s) which may deem is fit and proper in the circumstances of case and in the interest of justice”.

2. Briefly stated the facts of the case are that the petitioner is a tenant of shop on plot bearing Survey No.282/1, Survey Sheet No.A.M situated at Artillery Maidan Quarters, Abdullah haroon Road, Karachi (hereinafter as shop) since the last more than 40 years. The petitioner was inducted as tenant by the parents of the present respondent No.1 (hereinafter referred to as respondent) and is paying a rent of Rs.625/- per month since the day he was inducted as tenant. The respondent became the owner of the shop by virtue of a gift deed in the year 1996. The respondent since required the said shop for his personal bona fide need approached the petitioner to vacate the said shop, however, when the petitioner refused to vacate the same Rent Case No.1701 of 2006 was filed. The said matter proceeded before the 5th Rent Controller Karachi South, who vide her order dated 30.09.2009, decided the matter in favour of the respondent and directed the present petitioner to vacate the same and hand over the vacant and peaceful

possession to the respondent, within 60 days of the said order. Being aggrieved with said order an appeal was filed before the Additional District Judge-VII, Karachi South and the learned Judge in FRA No.349/2009, vide her order dated 13.07.2010, upheld the order of the Rent Controller (R.C) and dismissed the appeal filed by the present petitioner. It is against these orders that the present petition has been filed.

3. Mr. Rehman Malik advocate has appeared on behalf of the petitioner and submitted that the orders passed by the two Courts below are not in accordance with law as the two learned Judges have not considered the various facts going to the roots of the case. The learned counsel then read out the orders passed by the two courts below and the evidences recorded. The learned counsel thereafter submitted that the respondent has miserably failed to establish his personal bona fide need, as according to him, the respondent is bent upon to get the said premises vacated from the petitioner by hook or by crook. He submitted that from the cross-examination and documents attached it is evident that the said respondent is a jeweler by profession and with a mala fide intention wants to evict the petitioner from the said shop. He then read out the cross-examination of the respondent and also invited my attention to the certain interviews of the respondent as well as other documents to prove that the respondent is not a professional photographer, as claimed by him, and has given contradictory views about his so called profession as at some places he has stated that photography is only his hobby and at some places he stated that he is a professional photographer. Hence according to the learned counsel in view of the contradictory statements given by the respondent he is not liable for any relief. He submits that it is also an admitted position that the respondent is carrying on his hobby from his house hence he does not require any place for such purpose. He further states that to acquire a place on personal bona fide need good faith is also necessary, which is lacking in the instant case. He further stated that the respondent has also concealed certain important facts as if the respondent claims that he is a professional photographer as to why he has not disclosed any income from the said source in his income tax return. The learned counsel in the end submitted that in view of the facts narrated above this petition may be allowed. In support of his contentions, the learned counsel has placed reliance on the following decisions:-

1. *NDFC Vs. Fazal Sugar Mills Ltd.* [1993 CLC 642]
2. *Khalid Saeed Vs. Mrs. Shamim Rizwan* [2002 YLR 2325]
3. *Chiragh Din and others Vs. The State* [1987 SCMR 37]
4. *Mahboob Elahi Vs. Muhammad Zaman* [1983 SCMR 37]
5. *Haji Muhammad and others Vs. Muhammad Rafique and another* [1980 SCMR 02]
6. *Lal Din Masih Vs. Mst. Sakina Jan and another* [1985 SCMR 1972]

7. *Muhammad Yousuf Vs. Additional District Judge and others [1988 CLC 444]*
8. *Sardar Khan Vs. Riaz Ahmad and others [1986 SCMR 1981]*
9. *Sh. Khushi Muhammad Vs. Kh. Muhammad Rashid Wain [1968 SCMR 1158]*
10. *Muhammad Azizullah Vs. Abdul Ghaffar [1984 CLC 2837]*
11. *Mst. Ashraf Alia Vs. Dr. Asif Majeed [1991 CLC 53]*
12. *Shakir Hussain Chishty Vs. E.A. Dreganza [PLD 1984 Karachi 141]*
13. *Muhammad Hafeez and another Vs. District Judge, Karachi East [2008 SCMR 398]*
14. *Mst. Shirin Bai Vs. Famous Art Printers (Pvt.) Ltd. and others [2006 SCMR 117]*
15. *Allies Book Corporation Vs. Sultan Ahmad and others [2006 SCMR 152]*
16. *Muhammad Rafique Vs. Azad Jammu & Kashmir Government and 3 others [1980 CLC 99]*
17. *Malik Muhammad Ramzan Vs. Messrs General Iron Stores, Sargodha and another [1984 CLC 2418]*
19. *Mst. Begum Jan Vs. Abdul Rasool [1984 CLC 755]*
20. *Mst. Farukh Nisa Vs. Safdar Ahmed and 6 others [PLD 1985 Karachi 639]*
22. *Messrs Eastern Express Co. Ltd., Karachi Vs. Tariq Hameed [PLD 1986 Karachi 84]*
23. *Nasim Shah Vs. Muhammad Ali Batalvi [1984 CLC 3157]*
24. *Nasim Shah Vs. Muhammad Ali Batalvi [NLR 1978 Civil 644]*
25. *Mst. Hajra Bai Sulaiman Vs. Mst. Aisha Bai [NLR 1981 Civil 707]*
26. *Muhammad Asghar Vs. Abdul Rehman and 8 others [2010 MLD 665]*
27. *Mst. Razia Khatoon Vs. Abdul Razzak [1991 CLC 1236]*
28. *Brig. (Retd.) Muhammad Zubair Hashmat Khan Vs. Government of Pakistan [2007 YLR 954]*

4. Mr. Muhammad Hanif Khattana, advocate has appeared on behalf of the respondent and at the very outset submitted that this petition is not maintainable since concurrent findings are in favour of the respondent and the petitioner has miserably failed to demonstrate any misreading or non-reading of the evidences in the orders of the two courts below. While elaborating his view point the learned counsel submitted that this Court is not a Court of appeals, so far as the rent matters are concerned, and hence this petition being on a rent matter is not maintainable. In support of his contention, the learned counsel has placed reliance on the decision given in the case of *Muhammad Husain Munir and others Vs. Sikandar and others (PLD 1974 SC 139)*. He has further submitted that this Court also has no jurisdiction to decide the cases involving disputed question of facts as in the instant petition factual controversy and disputed question of facts have been agitated, hence this petition is liable to be dismissed. In support of his above contention, the learned counsel has placed reliance on the following decisions:-

1. *Ghulam Nabi Vs. Noushad Ali and 2 others [2010 MLD 1543]*
2. *Secretary to the Government of the Punjab, Forest Department Vs. Ghulam Nabi and 3 others [PLD 2001 SC 415]*
3. *2003 MLD 1033*
4. *Shakeel Ahmed and another Vs. Muhammad Tariq Farogh and others [2010 SCMR 1925]*
5. *Muhammad Islam Vs. Saeed Ahmed Butt and 2 others [2013 CLC 280]*
6. *Muhammad Ishaque Qureshi Vs. Zahir Hussain Jafri and 2 others [PLD 2013 Sindh 245]*
7. *Muhammad Arshad Vs. Syed Ali Hussain Rizvi and 2 others [2013 CLC 1129]*

5. The learned counsel for the respondent has further submitted that the respondent is a partner of his father in the jewelry business however since his childhood he was very fond of photography and adopted the same as his hobby. However, afterwards his zeal towards the photography increased and thereafter he decided to become a professional photographer. The counsel in this regard has produced a copy of the Album of photographs taken by the respondent of several renowned personalities to augment his view point. He submitted that while the respondent was considering photography as his hobby he was operating the same from his house but when he decided it to be his full-fledged profession he needed a big space to open his own studio. Hence according to the learned counsel, the respondent required the said shop for his personal bona fide need, which view has been endorsed by the two courts below, hence this petition may be dismissed and the petitioner may be directed to vacate the shop. The learned counsel has further submitted that the reason why no professional income from the photography was declared in the income tax return being that the respondent was carrying on photography as his hobby and not as a profession hence there was no income from this source. In support of his above contentions, the learned counsel has placed reliance on the following decisions:

1. *Muhammad Husain Munir and others Vs. Sikandar and others [PLD 1974 SC 139]*
2. *Muhammad Iqbal and another Vs. Mukhtar Ahmad [2008 SCMR 855]*
3. *Ahmed Nawas Khan Vs. Muhammad Jaffar Khan [2010 SCMR 984]*
4. *Moulvi Muhammad Azeem Vs. Alhaj Mehmood Khan Bangish and another [2010 SCMR 817]*
5. *Karim Bakhsh Vs. Jindwadda Shah and others [2005 SCMR 1518]*
6. *Bashir Ahmed Vs. Mst. Taja Begum and others [PLD 2010 SC 906]*
7. *Mir Muhammad alias Miral Vs. Ghulam Muhammad [PLD 1996 Karachi 202]*
8. *Begum Hijab Imtiaz Ali and others Vs. Salim Mumtaz Sayed and 3 others [2008 MLD 362]*
9. *Ch. Shahbaz Babar Vs. Mrs. Rehmana Mirza [2006 SCMR 1032]*
10. *Nizamuddin Vs. Mst. Siddique Begum and 2 others [2007 SCMR 46]*
11. *Mst. Tahira Dilawar Ali Khan Vs. Mst. Syeda Kaneez Sughara and 2 others [PLD 2007 Karachi 50]*
12. *Azizur Rehman Vs. Pervaiz Shah and others [1997 SCMR 1819]*
13. *Ghulam Nabi Vs. Noushad Ali and 2 others [2010 MLD 1543]*
14. *Khurram Shuja Vs. Mst. Kishwara Zia and another [2010 CLC 1557]*
15. *United Bank Limited Vs. Mrs. Alafia Hussain [1999 SCMR 1796]*
16. *Mst. Dilshad Bibi Vs. Ramzan Ali and 3 others [2006 CLC 1853]*
17. *Syed Feroze Ali Vs. IVth Additional District & Sessions Judge, Karachi Central and 2 others [2006 CLC 1416]*
18. *Javed Khalique Vs. Muhammad Irfan [2008 SCMR 28]*
19. *Muhammad Shafi Vs. Mst. Samina Kausar [1999 MLD 2098]*
20. *Muhammad Yaqoob Vs. Nazirullah Khan [1999 CLC 868]*
21. *Muhammad Shafi Vs. Shahid Nadeem and 5 others [1999 CLC 1273]*
22. *Muhammad Rafique and 14 others Vs. Muhammad Hanif [1998 CLC 802]*
23. *Muhammad Ismail Vs. S. Zahoorul Hassan and another [1998 CLC 1013]*
24. *Muzaffar Aleem Vs. Iqbal Ahmed [1999 MLD 3178]*
25. *S.M. Nooruddin and 9 others Vs. Saga Printers [1998 SCMR 2119]*
26. *Ghulam Hussain Vs. Court of Vth Additional District Judge, Karachi South and another [2009 CLC 272]*
27. *Mian Muhammad Lateef Vs. Mst. Nasima Warsi [2009 CLC 279]*

28. *Almas Khan Vs. Mrs. Bano through Attorney and 2 others [PLD 2009 Karachi 268]*
29. *Muhammad Farooque Vs. Shakeel Ahmed and 2 others [2007 CLC 717]*
30. *Secretary to the Government of the Punjab, Forest Department Vs. Ghulam Nabi [PLD 2001 SC 415]*
31. *Muhammad Arshad Vs. Syed Ali Hussain Rizvi and 2 others [2013 CLC 1129]*
34. *Miss Akhtar Qureshi Vs. Nisar Ahmad [2000 SCMR 1292]*
35. *Muhammad Islam Vs. Saeed Ahmed Butt [2013 CLC 280]*

6. I have heard both the learned counsel at some length and have perused the record and the decisions relied upon by them.

7. In my view the only point involved in the instant petition is whether the landlord i.e. respondent requires the shop in question for his personal bona fide need and in good faith or otherwise and would restrict my decision on this point only. From the pleading of the parties, it is evident that the petitioner has admitted that in the year 1996 by virtue of a gift deed the respondent has become the owner of the shop hence there is no dispute with regard to the status between the petitioner and the respondent as that of a landlord and a tenant. It is also an admitted position that the petitioner is paying rent in MRC in the name of the respondent hence the question of default in payment of rent also does not arise. Moreover since the respondent has not raised any issue with regard to the payment of pagri during the course of arguments hence so far as pagri is concerned no decision on this issue is also warranted.

8. Now coming to the core controversy of the case that whether the respondent requires the shop for his personal bona fide need in good faith or not? It is the claim of the petitioner that since the respondent has adopted photography as his hobby only hence his claim to be a professional photographer is misconceived. With regard to this argument, I would like to disagree with the contention raised by the learned counsel for the petitioner as in my view there is no bar on any person to convert his hobby into a profession. It is a world renowned phenomena that amateurs turn into professionals hence no restriction in this regard could be imposed on any person. In my view turning of an amateur into a professional is purely a decision of that individual and no hard and fast rule in this regard could be laid down. In my view the only thing which is to be judged is the personal bona fide need of a landlord in good faith. If the landlord is able to bring home his case he is entitled to get his place vacated from the tenant however facts and circumstances of each case play a vital role while giving a decision in a particular case.

9. In the instant case the respondent has claimed himself to be a professional fashion photographer of high class whose work has been exhibited in various

exhibitions at various prestigious places and has also taken part in various shows on different T.V. channels and his articles on the subject have also been published in different newspapers. It is also an admitted position that the respondent at present is running his studio from his house. It is the claim of the respondent that since his photography work is increasing day by day therefore he needs a bigger place. It is the claim of the respondent that the shop which at present is in the occupation of the petitioner is located in Saddar Area which is a prime location, hence the said place is most suitable for his much required studio. In the cross-examination the respondent has categorically admitted that he is a photographer, jeweler and an announcer on a Radio Station. He has further admitted that it is incorrect to suggest photography is not his business but hobby. It is also seen from the cross-examination of the petitioner that he has admitted that he cannot produce any proof to show that the respondent has any other shop apart from the shop in question. The petitioner has further admitted that he has no proof regarding payment of pagri amount to the petitioner. Hence from the facts recorded above it has become obvious that the respondent is the owner of the said shop who at present is running his studio from his house and he needs the shop for his personal bona fide in good faith.

10. It is also a settled proposition of law that even if a landlord is having a number of places/premises at his disposal he is the master to choose among those various places/premises that which place is best suitable for his needs and the assertion of a tenant that since 'X' place/premises is already vacant the landlord may be directed to run his business from 'X' place rather than choosing 'Y' place. There are a plethora of judgments on this score; however, I will discuss only some of the judgments. In the decision given in the case of *M/s. M. Kassam & Brothers Vs. Sharbat Khan* (1992 MLD 1225) it has been held that the statement of the landlord on oath that he required the place for his personal bonafide need is sufficient to pass an order of eviction. Similar view was taken in the case of *Farkhunda Jawaid Vs. IInd Additional District Judge and others* (2008 CLC 362). In the said judgment it was observed that even if the landlady possesses more than one house it is her choice that where she would like to live alongwith her family which is her prerogative and discretion. In the case of *Muhammad Shafi Vs. Muhammad Adam Khan* (1983 CLC 2657) again it was held that it is the choice of the landlord to select among many premises which place/ premises suits him best. Again in the case of *International Computers Limited Vs. Standard Chartered Bank Limited and others* (PLD 2012 Sindh 481) it was held as under:-

“12. . . . Furthermore it is a settled principle of law, recognized by the apex Court that it is the exclusive prerogative of the landlord to choose any building amongst others suitable for expanding or establishing the business and nobody including the tenant of the premises required for personal bona fide use, can insist/suggest any other premises to the landlord for his business then, disclosing or not, the other building belonging to him in the ejectment proceedings would be immaterial.”

Similar view was adopted in the case of Niaz Muhammad Dar Vs. District Judge, Jhelum and another (1985 MLD 419). Again in the case of Qamar Zaman Vs. IInd Additional District Judge, Karachi and another (2008 CLC 431) it has been held that tenant cannot impose restriction upon a landlord to select a property suitable for his business.

11. It is also a well settled proposition of law that it is the prerogative of the landlord to choose among a number of places which suits him or her best and no bar could be placed in this behalf upon him. The only criterion, which has to be fulfilled by the landlord, so far as the cases of personal bonafide use is concerned, is to establish that such place is genuinely required by the said landlord in good faith and such good faith has to be established from the facts obtaining in a particular case. The orders passed by the appellate Court as well as trial court would reveal that while allowing the said appeals they have relied upon a number of decisions given by the Superior Courts, which the learned counsel for the petitioner has failed to either dislodge or distinguish. The two Courts while allowing the appeals, have categorically observed that it is the discretion of the landlord to choose a place which suits him best. Before me also the learned counsel for the petitioner has failed to adduce a single reason with regard to the fact that the said shop was not required for the personal bonafide use by the respondent. Perusal of clause (vii) of subsection (2) of Section 15 of Sindh Rented Premises Ordinance, 1979, clearly stipulates that application to the Controller could be given in the case where landlord requires the premises in good faith for his personal occupation.

12. I was able to lay my hands on a decision given in the case of Mst. Akhtari Begum Vs. Muhammad Qasim (2000 SCMR 1937) wherein the landlady required the premises to set up her business in the premises and the High Court disallowed her claim by finding that the same was not bonafide. However, the Hon’ble Supreme Court set aside the judgment of the High Court and observed that:

“Even otherwise, the suitability of premises for personal requirement is to be judged by the landlady herself and she could not be compelled to accept any other premises if she preferred her choice for one of the shops. Mr. Abdur Rahim Kazi the learned counsel for the respondent has relied on the case of Muhammad Rifatullah Alvi v. Imran Ansari (PLD 1990 SC 369) and Qamaruddin v.- Hakim Mahmood Khan (1988,SCMR 819) to support his contention that the landlady, in the circumstances, was not entitled to get possession of the premises occupied by the respondent. The cases cited by the learned counsel for the respondent are distinguishable on facts and are of no assistance to the respondent in the above case”.

At the other place the Hon’ble Apex Court observed that:

“5. We, accordingly, allow the above appeal, set aside the judgment and decree of the learned Judge in Chambers and grant application filed by the appellant against the respondent on the ground of personal and bona fide requirement of her son. In the circumstances of the case, there will, however, be no order as to costs. The respondent is allowed six months’ time from today to vacate the premises, subject to the condition that during this period he will continue to deposit the rent regularly with the Rent Controller and in case he failed to deposit the rent as directed by the Rent Controller or vacate the premises after expiry of six months, he will be evicted therefrom without any further notice”.

13. In another judgment given by the Hon’ble Apex Court in the case of Shakeel Ahmed Vs. Muhammad Tariq Farogh (2010 SCMR 1925) the landlord was doing the business of clearing and forwarding, then he decided to change his business to hardware business and needed the place for such purpose. The Hon’ble Apex Court while disposing of the matter observed that:

“There is no denial of the fact that at the time of commencement of ejectment proceedings before the Court of Rent Controller on 10-11-2000, the clearing and forwarding license of the appellants was under suspension and they have moved the concerned authority for its restoration. In case the appellant No.1 has decided to change his business from clearing and forwarding’ to hardware business and he needs the possession of rented shop from respondent No.1 for this purpose, mere fact that during the pendency of rent case his license for clearing and forwarding was restored, will not come in way from pressing his claim of personal need as bona fide. Here it may also be observed that the selection of business is the sole prerogative of the landlord so also choice of rented shop, if having more than one, and therefore no restriction can be imposed upon the landlord/ appellant No.1 on the pretext of restoration of his clearing and forwarding license during the pendency of rent case”.

14. In another judgment given by the Hon’ble Supreme Court in the case of Mst. Shirin Bai Vs. Famous Art Printers (Pvt.) Ltd. and others (2006 SCMR 117) the Hon’ble Supreme Court observed as under:

“Sufficiency or insufficiency of accommodation available with a landlord

is a matter of individual taste and discretion with which neither Controller nor the Appellate Authority would ordinarily interfere. All that Controller has to see or the Appellate Authority has to examine is whether the landlord requires the premises in "good faith" for his own occupation or use or for occupation or use of his spouse or any of his children. Expression "require the premises in good faith" cannot be confined to precise, identical and invariable definition nor any hard and fast rule can be propounded as to encompass all possible eventualities which could arise due to particular facts and circumstances of a case. Bona fide requirement cannot be turned down simply on assumption of tenant that proposed business could not be carried out profitably in the tenanted premises”.

The Hon’ble Supreme Court in the decision quoted supra also observed as under:

“Once a landlord has elected to live in his own house or start a business in the premises earlier let out on rent, his demand for eviction of the tenant would be presumed to be bona fide and founded on "good faith" unless mala fide is alleged and proved by the tenant. Suitability of requirement of landlord to commence a lawful business in the premises in dispute can by no stretch of imagination be said to be mere desire rather than bona fide need. In law a landlord is required to discharge his onus and to satisfy the conscience of the Controller that his requirement is based on "good faith" and is bona fide. Once a landlord is able to satisfy the Controller about the truth and genuineness of his requirement, the latter is left with no discretion but to order ejection of a tenant irrespective of the fact that it would result in uprooting its long standing trade or business”.

I was also able to lay my hands on the decision given in the case of Sarwar Ali Vs. IInd Additional District and Sessions Judge, Karachi (East) (2010 YLR 815) wherein it was held that it is the right of the landlord to decide and determine as to which premises is more suitable for him and tenant cannot be given a veto over such right of landlord.

In another judgment Ghulam Hussain Vs. Court of Vth Additional District Judge, Karachi South (2009 CLC 272) it was held that the landlord had a prerogative right for property of his own personal use and no exception could be taken to such findings as it is the landlord who has to judge the suitability of premises of his requirement and a tenant could not have an option to advice with regard to suitability or other of premises.

In the case of Muhammad Shafi Vs. Muhammad Adam Khan (1983 CLC 2657) it was held that if a statement of landlord remains consistent with his averments in his application bona fide requirement is established.

In the case of Hafiz Ferozeuddin Vs. Arshad Begum (2010 CLC 365) it was held that if the landlord owns more than one properties neither a tenant nor Court can sit in judgment over such a right of the landlord.

In the case of Haji Abdul Majid through Legal Heirs Vs. Khawaja Kamaluddin (1994 MLD 958) it was observed that in case the landlord owns more than one property, it is the prerogative of the landlord to choose among various properties which property suits him best.

In the case of Rajab Ali Vs. Darius B. Kandawalla (PLD 1984 Karachi 14) again it was held that suitability of an accommodation is the prerogative of the landlord which could not be determined by a tenant.

In the case of Noorul Amin Vs. Sheeraz Sori and others (2008 MLD 1299) again it was held that it is the prerogative of the landlord to decide which of the premises was best for his personal need.

In the case of Wahid Hassan, Advocate Vs. Muhammad Aleem (1994 MLD 2418) it was held that choice of a premises remains with the landlord and it is not for the tenant to determine the requirement of the landlord.

In the case of Haji Majid Vs. Haji Imamuddin (1981 CLC 1091) it was held that landlord can choose to pick any one of his shop which suits him best.

In the case of Asghar Hussain Vs. Mst. Tauheed Begum (2005 CLC 633) again it was held that if a landlord has many premises under her ownership, choice would always remain with her to choose shop best suited for her.

In the case of Arif Baig Vs. Syed Nasir Hussain Zaidi (1991 MLD 1297) again it was held that the choice to select premises always vests with the landlord. Similar view was adopted in the case of M/s. Hamdard Laboratories (Waqf) Pakistan Vs. Mohammad Yousaf (1993 MLD 469).

In the case of Haroon Kassam and another Vs. Azam Suleman Madha (PLD 1990 SC 394) the Hon'ble Apex Court observed as under:

“It is by now the settled law that if the landlord possesses more than one house in the same urban area the choice, as to the house in which he would like to live in, is surely a matter within his prerogative and discretion and the law does give either to the tenant or the Rent Controller the power to determine where the landlord should personally reside (Sabu Mal v. Kika Ram alias Heman Das, 1973 SCMR 185). Earlier in the case of Nooruddin and others v. Asghar Ali and others (1968 SCMR 1087) a somewhat similar situation was noted inasmuch as another flat in the same building had fallen vacant, which the landlords had let out to another tenant and failed to utilize it for themselves. In the circumstances, it was held that the question as to which portion of the building would suit the landlords better must be left to their discretion and there was nothing unreasonable in the landlords insisting that a particular portion of the building should be made available to them. This view has consistently been followed by us as pointed out by the learned counsel for the respondent, the latest authority being the one reported as Sardar Khan v. Riaz Ahmad and others (1986 SCMR 1981).”

15. The decision relied upon by the learned counsel for the petitioner are found to be distinguishable as in most of the cases the Court observed that personal bona fide need of the landlord has not been proved in good faith, hence the decision in the case of NDFC Vs. Fazal Sugar Mills Ltd. (1993 CLC 642) is found to be distinguishable. Facts of the case of Khalid Saeed Vs. Mrs. Shamim Rizwan (2002 YLR 2325) is also found to be totally distinguishable as in this case it was held that premises used for Body Talk Gymnasium and Health Club do not fall in the term of office. Facts of the case of Chiragh Din and others Vs. The State (1987 SCMR 37) is also found to be distinguishable as in that case provision of penal laws have been discussed, which has no relevancy with this case. In the case of Mahboob Elahi Vs. Muhammad Zaman (1983 SCMR 37) it has been discussed that High Court ordinarily should not interfere with the concurrent findings however it can interfere if the concurrent findings are based on misreading and non-reading of the evidence, which is a settled proposition of law and no comments in this regard are required. Similar view was taken in the case of Haji Muhammad and others Vs. Muhammad Rafique and another (1980 SCMR 02). Similar view was also taken in the case of Lal Din Masih Vs. Mst. Sakina Jan and another (1985 SCMR 1972). Facts of the case Muhammad Yousuf Vs. Additional District Judge and others (1988 CLC 444) are also found to be distinguishable. In the case of Sardar Khan Vs. Riaz Ahmad and others (1986 SCMR 1981) it was held that matter of choice in selecting premises lies with landlord which case is found to be against the petitioner. In the case of Sh. Khushi Muhammad Vs. Kh. Muhammad Rashid Wain (1968 SCMR 1158) the Hon’ble Apex Court did not find the bona fide requirement of a landlord to be sufficient. In the case of Muhammad Azizullah Vs. Abdul Ghaffar (1984 CLC 2837) also

personal bona fide need was not found sufficient. In the case of Mst. Ashraf Alia Vs. Dr. Asif Majeed (1991 CLC 53) personal bona fide need in good faith was found to be missing. In the case of Shakir Hussain Chishty Vs. E.A. Dreganza (PLD 1984 Karachi 141) element of personal bona fide was found to be missing. In the case of Muhammad Hafeez and another Vs. District Judge, Karachi East (2008 SCMR 398) it was found that the judgment of the appellate Court was suffering from misreading and non-reading of the evidences. In the case of Allies Book Corporation Vs. Sultan Ahmad and others (2006 SCMR 152) the Hon'ble Apex Court has come to the conclusion that the landlord has concealed certain facts with regard to having one or more premises having fallen vacant during proceedings of the ejectment petition which has not been disclosed. The facts of this case surely are distinguishable from the present case. Facts in the case of Muhammad Rafique Vs. Azad Jammu & Kashmir Government and 3 others (1980 CLC 99) are also found to be distinguishable. In the case of Malik Muhammad Ramzan Vs. Messrs General Iron Stores, Sargodha and another (1984 CLC 2418) ejectment application was dismissed since bona fide requirement was not established. In the case of Mst. Begum Jan Vs. Abdul Rasool (1984 CLC 755) again personal bona fide need was not proved. In the case of Mst. Farukh Nisa Vs. Safdar Ahmed and 6 others (PLD 1985 Karachi 639) personal bona fide need was found missing. In the case of Messrs Eastern Express Co. Ltd., Karachi Vs. Tariq Hameed (PLD 1986 Karachi 84) personal bona fide need was found missing. In the case of Nasim Shah Vs. Muhammad Ali Batalvi (1984 CLC 3157) element of good faith was found missing. The facts in the case of Nasim Shah Vs. Muhammad Ali Batalvi (NLR 1978 Civil 644) are found to be distinguishable as in that case landlord did not appear in the witness box, which was necessary. The facts of Mst. Hajra Bai Sulaiman Vs. Mst. Aisha Bai (NLR 1981 Civil 707) are found to be distinguishable as in that case mere desire of a landlord to occupy his premises however strong may be was not found to be sufficient to prove personal requirement. In the case of Muhammad Asghar Vs. Abdul Rehman and 8 others (2010 MLD 665) personal bona fide need was found missing. In the case of Mst. Razia Khatoon Vs. Abdul Razzak (1991 CLC 1236) personal bona fide need was not proved. The case of Brig. (Retd.) Muhammad Zubair Hashmat Khan Vs. Government of Pakistan (2007 YLR 954) is found to have no relevancy with the facts obtaining in the present petition.

16. In view of the above observations and the decisions referred to above and the facts obtaining in the instant petition, I have come to the conclusion that it is the prerogative of the landlord to select any place/premises which place suits best

for his personal requirement in good faith and the tenant cannot direct the landlord in this regard and make the same the basis for not vacating the premises/place required by the landlord. I, therefore, uphold the judgments passed by the two Courts below and dismiss this petition along with the listed application, with no order as to costs. As the petitioner is running his business in the shop in question since quite some time, only by taking a lenient view and in the interest of justice, I grant him three months' time from today to vacate the said shop.

JUDGE