ORDER SHEET

IN THE HIGH COURT OF SINDH AT KARACHI

First Rent Appeals Nos.31 to 49 of 2016

Date	Order with signature of Judge

Present: Mr. Justice Nazar Akbar

Appellants

1.	(FRA No.31/2016)	:	Dr. Muhammad Hassan.
2.	(FRA No.32/2016)	:	Muhammad Sharif.
3.	(FRA No.33/2016)	:	Muhammad Sharif.
4.	(FRA No.34/2016)	:	Zaiba Aziz Jaleel.
5.	(FRA No.35/2016)	:	Tariq Munir Ahmed.
6.	(FRA No.36/2016)	:	Muzaffar Sultan Arshad.
7.	(FRA No.37/2016)	:	Bilqees Jahan.
8.	(FRA No.38/2016)	:	Feroz Ali.
9.	(FRA No.39/2016)	:	Riffat Ali.
10.	(FRA No.40/2016)	:	Rubab Bai.
11.	(FRA No.41/2016)	:	Muhammad Zaffar.
12.	(FRA No.42/2016)	:	Salim.
13.	(FRA No.43/2016)	:	Salim.
14.	(FRA No.44/2016)	:	Asif Iqbal.
15.	(FRA No.45/2016)	:	Amir Ali.
16.	(FRA No.46/2016)	:	Fatima Jalaluddin.
17.	(FRA No.47/2016)	:	Muhammad Saleem.
18.	(FRA No.48/2016)	:	Nahid Nafis.
19.	(FRA No.49/2016)	:	Zeenat.

All Appellants through
Mr. Mohsin Qadir Shahwani, Advocate

All Versus

Respondent No.1 : Additional Controller of Rent, Clifton Cantonment Board at Karachi.

Respondent No.2 : Director General Army Housing Directorate GHQ, through
Mr. Muhammad Asif Malik, Advocate.

Date of hearing : **04.02.2020**

Date of judgment : **06.03.2020**

JUDGMENT

NAZAR AKBAR, J:- By this common judgment I intend to dispose of all the above 19 First Rent Appeals, as the same are arising out of identical Rent Cases in respect to different shops in one

and the same Shopping Complex, Askari-I, Ch. Khaleeq-uz-Zaman Road, Clifton, Karachi. All the First Rent Appeals are directed against the identical order dated **19.05.2016** in Rent Case Nos.94/2015, 95/2015, 97/2015 to 111/2015, 113/2015 and 114/2015, whereby Additional Controller of Rents, Clifton Cantonment, Karachi on an Application under **Section 17(9)** of the Cantonment Rent Restriction Act, 1963 (CRRA, 1963) filed by Respondent No.2 has struck off defense of the appellants and directed them to vacate the demised shops within thirty (30) days.

2. Brief facts of these cases are that Respondent No.2 (DG Army Housing Directorate) after sending a common notice dated **31.10.2014** directed all the appellants to vacate their respective shops bearing Shop Nos.1, 2, 4, 5, 6, 7, 8, 9, 10, 10-A, 11, 12, 13, 14, 15, 16, 17, 19 and 20 in Shopping Complex, Askari-I, Ch. Khaleeq-uz-Zaman Road, Clifton, Karachi (the demised shops) filed rent application Nos.94/2015, 95/2015, 97/2015 to 111/2015, 113/2015 and 114/2015 under **Section 17(2)(iv)** of CRRA, 1963 for their eviction. The eviction of the appellants has been sought on the **sole** ground that ***Pakistan Army is fighting against the terrorism and to keep the morale of soldiers high, welfare budget is required to be enhanced by raising multistory commercial building on the plot to look after the families of Shuhada and disable persons of Pakistan Army.***

3. On service of notice of rent cases, the appellants filed identical written statements on **22.02.2016** and raised legal issues. The appellants have averred that they have acquired the shops from Respondent No.2 under a written agreement mostly dated **01.12.1985** on payment of non-refundable goodwill. It was also

averred in the written statements that opponent/Respondent No.2 has not filed a necessary reconstruction plan duly sanctioned by competent authority as a mandatory requirement for the landlord before invoking the provisions of **Section 17(2)(vi)** of CRRA Act, 1963.

4. On **03.3.2016** Respondent No.2 filed a statement of rent and on same day statement was filed by the appellants disclosing that rent upto December, 2016 is lying with the Nazir of High Court in terms of order of High Court dated **20.2.2015** in a Constitution Petition jointly filed by the appellants. On **21.04.2016** the Rent Controller passed a tentative rent order, whereby the appellants were directed to deposit arrear of rent amounting to **Rs.17,296/-** from January, 2015 to April, 2016 (16 months) @ Rs.1081/- per month on or before **29.04.2016** and future monthly rent @ Rs.1081/- per month from May, 2016 onward before 5th day of each month in the Court of Additional Controller of Rent, Clifton Cantonment. The tentative rent order is common about alleged period of arrears of rent but rate of rent are varying according to agreement with individual. The figures quoted in this para are from the record of FRA No.31 of 2016.

5. The appellants on **28.4.2016** filed an application to review tentative rent order dated **21.4.2016**, amongst others, on the ground of bar of jurisdiction of Rent Controller under **Section 3(b)** of CRRA, 1963. On **09.5.2016** Respondent No.2 filed counter affidavit to review application and also filed an application under **Section 17(9)** of CRRA, 1963 to strike off defense of appellants. On the very next date i.e **19.05.2016** the Rent Controller, dismissed review application being meritless and allowed the application under **Section 17(9)**

CRRA, 1963, whereby, defence of the appellants was struck off and the appellants were directed to vacate the demised shops in their respective possession within thirty (30) days. The appellants, therefore, have preferred the instant First Rent Appeals before this Court against the order of their eviction.

6. I have heard learned counsel for the parties and perused the record as well as written arguments submitted by the learned counsel for the respective parties.

7. Learned counsel for the appellants has contended that the appellants have promptly filed written statements wherein they have raised certain legal objections as well as the plea that Respondent No.1/Rent Controller has no jurisdiction to adjudicate upon the rent application filed by Respondent No.2 as Respondent No.1 (the Rent Controller) is an employee of Cantonment Board working under direct administrative control of DG, ML&C/Respondent No.2. He contended that learned Rent Controller without considering the legal objections, in hasty, partial and biased manner passed tentative rent order dated **21.04.2016** in clear violation and negation of **Section 3** of CRRA, 1963. He further contended that the appellants promptly filed review application on **28.04.2016** praying therein for recalling order dated **21.04.2016**, but Respondent No.1 while blatantly ignoring the review application was adamant upon enforcing his illegal and unlawful order, therefore, the appellants challenged the jurisdiction of Respondent No.1 by filing identical Constitutional Petitions bearing C.P-D Nos.2578/2016 to 2594/2016 before this Court. Notices of the said petitions were also served on both the Respondents and yet Respondent No.1 as an employee/subordinate to Respondent No.2 has passed the impugned order without deciding the legal pleas

particularly issue of jurisdiction raised by the appellant. Learned counsel for the appellants further contended that the appellants keeping in view **Section 3** of the CRRA, 1963 on refusal to accept the rent which was offered as routine by pay order for the year 2015 to Respondent No.2 through courier service was returned with endorsement that *"**Rent of subject shop is returned herewith due to legal compulsion**"*. The appellants jointly filed a Constitution Petition No.285/2015 before this Court to allow them to deposit their respective rent in this Court. The appellants in compliance of order dated **20.02.2015** have deposited rent upto December, 2016 before Nazir of this Court in time and they are regularly depositing rent with the Nazir of this Court. Learned counsel for the appellants has relied on the following case-laws in support of his contentions:-

i. *Suo moto Case No.04 of 2010 (**PLD 2012 SC 553**);*

ii. *Inaam-ul-Haq vs. Muhammad Ali Shaheen and another (**2013 CLC 904 Lahore**);*

iii. *Sh. Riaz-ul-Haq and another vs. Federation of Pakistan through Minisry of Law and others (**PLD 2013 SC 501**);*

iv. *Zulfiqar Ahmed khan vs. Station Commander, Station Headquarters, Karachi and another (**2010 CLC 354**).*

8. In rebuttal, learned counsel for Respondent No.2 by referring to the orders passed in suit No.2293/2014 filed by the appellants has contended that the appellants have agreed to submit to the jurisdiction of Rent Controller. He has also referred to the order of High Court in C.P No.285/2015 to emphasis that Rent Controller had the jurisdiction when this Court has allowed the appellants to deposit rent as their own risk. However, he has not answered the question of bar of jurisdiction of Rent Controller under **Section 3** of CRRA, 1963 in respect of the buildings owned by the Cantonment Board. Learned counsel for Respondent No.2 in his written arguments has also

contended that the appellants had committed willful default in payment of rent prior to filing CP No.285/2015 for depositing rent before this Court. He further contended that it is a matter of record that the rent agreement contained 10% increment after every three years in rent but in addition to default in payment of monthly rent, the appellants have also committed default by not paying the rent with increase rate as stipulated in rent agreements. This argument of Respondent No.2 is devoid of any merit, since neither in the pleading default was alleged nor any application under **Section 18(8)** of CRRA, 1963 was filed with specific allegation of period of default. Even order dated **21.4.2016** does not points out from which part of the pleading default was detected by the Rent Controller. Learned counsel for Respondent No.2 only on the point of *eviction of tenant for non-compliance of tentative rent orders* has relied on the following case-laws:-

1. *M.H Mussadaq vs. Muhammad Zafar Iqbal (**2004 SCMR 1453**);*
2. *Khawaja Muhammad Mughees vs. Mrs. Sughra Dadi (**2001 SCMR 2020**);*
3. *Asif Najma Ansaizi vs. Mrs. Mariam Mirza and another (**2014 MLD 1304**);*
4. *Arif Lakhani vs. Irfan Nazar and another (**2014 CLC 1756**);*
5. *Uzma Construction Co. vs. Navid H. Malik (**2015 SCMR 642**);*
6. *Muhammad Saqib vs. S.M Mushtaq (**2015 YLR 723**);*
7. *Mian Muhammad Lateef vs. Mst. Nasima Warsi through L.R (**2009 CLC 279**);*
8. *Najma Aziz Sethi vs. Muhammad Azeem Butt (**2008 MLD 42**);*
9. *Dawood Khan through Attorney vs. Sheraz Ahmed (**2009 YLR 1238**);*

10. *Zulfiqar Ahmed Khan vs. Station Commander, Station Headquarters, Karachi an another (**2010 CLC 354**);*

11. *M.K Muhammad and another vs. Muhammad Abu Bakar (**1993 SCMR 200**);*

12. *Mrs. Ghazala Iftikhar vs. Controller/Additional Controller of Rents and another (**2012 YLR 74**);*

13. *Abdul Latif and another vs. Messrs Parmacie Plus (**2019 SCMR 627**).*

9. The main thrust of the arguments of learned counsel for the appellants was on the question of jurisdiction exercised by the Additional Controller of Rents in respect of the property admittedly owned, managed and controlled by the Central Government through the D.G, ML&C Army Housing Directorate. He has repeatedly referred to **Section 3** of the CRRA, 1963 which is reproduced below:-

> 3. ***Act not to apply to certain buildings**. Nothing contained in this Act shall apply to—*
>
> *(a) any evacuee property as defined in the Pakistan (Administration of Evacuee Property) Act, 1957 (XII of 1957); and*
>
> (b) *any property **owned by the Central Government,** any Provincial Government, Railway, Port Trust or **Cantonment Board** and property **owned**, **managed or controlled by** any other local authority under the administrative control of **the Central Government** or of any Provincial Government.*

In this context learned counsel for the appellants has relied on the case of **Zulfiqar Ahmed khan** vs. **Station Commander, Station Headquarters, Karachi** and another **(2010 CLC 354)**, relevant observations are reproduced below:-

> *A reading of the above two provision i.e. section 3 and subsection (11) of section 17, clearly indicates the position in law to be that except to the extent of subsection (11) of section 17, the provisions of the Cantonments Rent Restriction Act, 1963 are not applicable to a building or premises owned by the Federal Government or*

> *other authorities named in section 3 of Act of 1963.* ***The tenant of such building could not have recourse to any proceeding under the Act of 1963.***

I definitely have the same opinion as expressed in the above quoted judgment. However, learned counsel for Respondent No.2 has neither disputed the Law laid down in the above citation nor referred to another case law on the jurisdiction of Controller of Rents in respect of property owned by the Central Government.

10. Learned counsel for Respondent No.2, while trying to answer another objection of appellants about requirement of **Section 17(4)** of the CRRA, 1963 regarding sanction of building plan has not been fulfilled, has admitted that Government is landlord in respect of the demised shops. He has countered the objection regarding necessary sanction of plan for reconstruction by referring to **Section 3** of Government Building Act 1899. I reproduce his contentions from his written arguments as follows:-

> *".....since the Government is landlord in respect of shops as such they are exempted from any municipal laws to regulate the erection of buildings etc. Reference can be made to Act No.IV,* ***Government Building Act 1899****. The* ***section 3*** *is reproduced below:-*
>
> > ***"3. Exemption of certain Government buildings from municipal laws to regulate the erection, etc. of buildings within municipalities.*** *Nothing contained in any law or enactment for the time being in force to regulate the erection, re-erection, construction, alteration or maintenance of buildings within the limits of any municipality shall apply to any building used or required for the public service or for any public purpose, which is the property, or in the occupation of the government, or which is to be erected on land which is the property, or in the occupation of the government."*

It is strange that on the one hand learned counsel for respondent No.2 has relied on **Section 3** of Government Building Act, 1899 for exemption from any municipal Laws and on the other hand he does not want to follow the mandate of law in **Section 3** of CRRA, 1963 quoted above wherein it is categorically mentioned that *the* ***Act shall not apply to the property owned by the Central Government***. Both the acts, namely the Government Building Act, 1899 and the Cantonment Rent Restriction Act, 1963 have to be followed by the Central Government and its functionaries. Respect of law is always mandatory not optional.

11. As far as the contention of learned counsel for respondent No.2 that the appellants have agreed to submit to the jurisdiction of Rent Controller by reference to the order passed in civil suit and/or Constitution Petition is concerned, it is misconceived. Neither any other Court nor the parties can confer jurisdiction on a Court/ Tribunal when it is expressly barred by the Act itself. When the law clearly provides that CRRA, 1963 **"shall not apply on the property owned by the Federation"** and the dispute relates to the Government property, jurisdiction cannot be conferred on the Court by interpreting the contention raised by the parties and incorporated in various orders of different Courts when **Section 3** of CRRA, 1963 was not even examined by said Courts. It is settled law that whenever a question of jurisdiction of a Court is raised by any party, it has to be decided first by the Court as preliminary issue. I feel fortified by the findings of Hon'ble Supreme Court in the case of A.M Qureshi vs. Government of Sindh and others reported in **1991 SCMR 1103**. Relevant from side note "E" at page-112 and side note "I" at page 113 are reproduced below:-

> *"----------.Nevertheless they did raise the point and objected to the legality of the order before the final orders of eviction were passed. So far as the absence of the respondent Government on the date when the tentative order was passed,* ***it did not absolve the learned Rent Controller from the responsibility to examine the written statement and determine the preliminary question if, as subsequently held by him, it was raised in the proceedings.*** *We also cannot subscribe to the view taken by the learned District Judge that. The question of relationship between the parties if raised has to be determined tentatively at the stage of passing the order under section 17(8) of the Act.* ***As explained in several judgments, this is a jurisdictional question and has to be finally determined by the Rent Controller, so far as he is concerned, before he proceeds further in the matter and cannot be deferred to a point of time after passing the order under section 17(8)****.*
>
> *----------.The Rent Controller being Tribunal of limited jurisdiction, any error committed by him as to the jurisdictional facts, would render proceedings subsequent to the committing of such error bad in law.* ***For rendering the order under section 17(8) to be valid, and capable of producing the consequences prescribed by law, it was necessary for the Rent Controller to determine the preliminary question first.*** *The subsequent determination, even though independently, by the learned District Judge could as explained above, not be pressed to support an order of eviction passed as a consequential order flowing from the illegal order passed under section 17(8)."*

And after the 18th amendment in the Constitution of Pakistan, 1973 whenever such question if not answered before passing any adverse order against the party who has raised the question of jurisdiction, it would be clear violation of **Article 10-A** of the Constitution. In the case in hand the question is what has prevented the learned Rent Controller from passing an order on the question of jurisdiction in terms of **Section 3** of CRRA, 1963 before exercising power under **Section 19(8)** of CRRA, 1963. Total silence of the learned Rent Controller on the preliminary issue of jurisdiction of Rent Controller

raised by the appellants amounts to exercise jurisdiction which was not vested in him.

12. Beside the lack of jurisdiction, the perusal of the orders dated **19.5.2016** and the order dated **21.4.2016** respectively passed by the learned Additional Controller of Rents in exercise the powers under **Section 17(8)** and **17(9)** of the CRRA, 1963 clearly indicate that the tentative rent order by itself was devoid of any merits. It is not the intention of law makers that in all cases the Additional Controller of Rents while exercising powers under **Section 17(8)** of CRRA, 1963 is under an obligation of law to give directions to the tenant to deposit rent in Court. Every case has to be decided on the basis of its own facts. The courts are not supposed to apply law without referring to the facts brought before them by the two sides. When the facts of the case are such that neither there is any dispute about the rate of rent and/or mode of payment of rent nor there is allegation of breach of any of the terms and conditions of the agreement, the Rent Controller was not required to give direction to deposit rent in the Court of Rent Controller in contravention to the agreed mode of payment of rent. It is also settled law that parties are bound by the agreement between them even if the agreement has expired and the relationship is that of a statutory landlord and tenant, the terms and conditions of agreement shall continue to be binding. If any authority is required, one may refer to the latest judgment of the Hon'ble Supreme Court in the case of Abdul Latif and another vs. Messrs Parmacie Plus (**2019 SCMR 627**) wherein it was held that:-

> *3. "……Hence where the tenant continues to occupy the tenement after the expiry of the term mentioned in the agreement* ***the covenants of the agreement continue to apply except such covenants that are in conflict with the***

> ***provisions of the applicable rent law****. In that eventuality rent law would prevail."*

13. The tentative rent order does not suggest that Respondent No.1 while passing tentative rent order has examined the rent agreement on the basis of which rent case was filed. He has failed to appreciate from the contents of tenancy agreement that the tenancy was not month to month nor it has any date of termination. The perusal of basic two undisputed stipulations from the rent agreement were enough for the Rent Controller to refuse to give directions to the appellants to deposit rent on every month in Court of Rent Controller. The undisputed clauses 2 and 3 of the tenancy agreement about nature of agreement and mode of payment of rent stand breached by respondent No.2 under the cover of order of Rent Controller. Clauses-2 and 3 in all the agreements are common and the same from R&Ps in FRA No.31/2016 are reproduced below:-

> *2. That the tenant has* ***paid a sum of Rs.130,000/-*** *(Rupees One lac Thirty Thousand only)* ***to the Landlord as Goodwill of the said shop, which is non-returnable. However, the Goodwill money is transferable to another party with the consent of the Landlord, at a cost of 10% of new Goodwill payable to the Landlord*** *which will be assessed in accordance with the prevailing rates. However, new increase in Goodwill money will in No CASE be less than 10% of the Old Goodwill money. In such cases, Landlord reserves the right to take over the shop on the quoted price of the tenant for transfer to other party. New tenant shall have to execute fresh tenancy agreement with the Landlord.*
>
> *3. That the tenant shall pay to the Landlord, a sum of Rs.400/- (Rupees Four Hundred only), as monthly rent for the demised shop which* ***shall be payable in advance for each six month****, failing which tenant shall be liable for ejectment without any Notice.*

The above clauses clearly stipulate that the landlord has transferred **leasehold right** in favour of the appellants and these rights are even

saleable/transferable on payment of 10% from the new Goodwill to the Respondent/landlord. The learned Rent Controller has not even carefully examined the statement of account filed by the Respondent while directing the appellants to deposit arrears of rent from **January, 2015** to **May, 2016**. The Rent Controller failed to appreciate that if the appellants were in default since **January, 2015**, then why in Rent Cases filed in **October, 2015** default was not taken as a ground to seek eviction of appellants. The learned Additional Controller of Rents also failed to appreciate that landlord in the statement of accounts has concealed the fact that rent is payable in advance for six months according to the agreed term of payment of rent. This covenant in the rent agreement is not contrary to rent laws, and, therefore, binding on the landlords. The landlord and the tenants were admittedly not in dispute over the rate of rent and its mode of payment and that is why the Respondent has not sought eviction of applicant on default. In view of this admitted position, the Additional Controller of Rents ought to have refused to issue any directions to the appellants by giving due respect to the relevant covenants of the agreement of tenancy between the parties as well as in obedience to the law laid down by the Hon'ble Supreme Court that the covenants of rent agreements continue to apply and binding except such covenants that are in conflict with the provisions of the applicable rent law. Therefore, even the order dated **21.4.2016** in addition to the jurisdictional defect was inherently defective and, on this score too, subsequent order of eviction of appellants as consequences of its non-compliance is not sustainable.

14. Learned counsel for Respondent No.2/landlord has relied on several case laws on the point that there is no escape from non-

compliance of the order passed by the Rent Controller under **Section 19(8)** of the CRRA, 1963. I have gone through each one of the said case laws and there is no cavil to the preposition discussed in these case laws, however, not a single case law was in respect of the property owned by the Central Government and, therefore, the basic question of jurisdiction of the Rent Controller was not in dispute in these case-laws. Similarly in the cite judgments the Courts have not declared that even if the order to deposit of rent in Court was defective and corum-non-judice, it should have been complied with. In the case in hand as discussed in detail above, the learned Rent Controller has passed defective order of deposit of rent by not applying his mind to the material already available before him including so-called statement of accounts filed by the counsel for Respondent No.2 which was neither any official ledger nor even signed by any officer of the Respondent/landlord. Therefore, all the citations were not relevant to the case in hand. The Court having no jurisdiction to adjudicate on the dispute between the parties on merit cannot even pass interim order and then penalize the parties for its non-compliance.

15. Now I will take up the contention of the appellants that the learned Rent Controller happened to be subordinate of Respondent No.2, the landlord and, therefore, he has inherent bias and fair trial was not expected. The learned counsel for respondent No.2 has not denied in his written arguments that the Presiding Officer of the Court of Additional Controller of Rents is not an **Executive Officer of Cantonment** and that he is not direct subordinate to respondent No.2. As already observed, the demised shops are admittedly owned by the Central Government and the Rent Controller appointed under

Section 6 of the CRRA, 1963 is always appointed by the Central Government from the officers of Military Land and Cantonment Group generally called ML&C group of Central Superior Services (CSS) of Pakistan. **Section 6** of the CRRA, 1963 is reproduced below:-

> ***6. Appointment of Controller.***__ *(1) The 1 [**Federal Government**] may, for purposes of this Act, by notification in the official Gazette, appoint a person to be the Controller of Rents for one or more cantonments.*
>
> *(2) The 1 [**Federal Government**] may also, by notification in the official Gazette, appoint a person to be the Additional Controller of Rents for one or more cantonments.*

The above provision of appointment of Additional Controller of Rents read with **Section 3** of the CRRA, 1963 clearly identifies the very intention of legislature to understand why "***nothing contained in this act shall apply to***.....***any property owned by the Central Government***". It is rightly feared by the appellants that a sub-ordinate cannot pass an order on merit against the officials who have appointed him to hold the office of Additional Controller of Rents and have the key of his next promotion. Therefore, the contention of learned counsel for the appellants that the case in respect of the buildings owned by Central Government should not have been heard by the Additional Controller of Rents appointed by the Central Government has force. It cannot be expected by an Executive Officer from the services cadre of Central Government to be independent in the matters between his bosses/employer and common man like a judicial officer whose success in career depends on his independence reflected in discharge of his judicial duty in his judgments. Not only this, the Executive Officer is not supposed to have legal acumen nor judicial training to understand the

consequence of their obedience to the bosses while dealing issues relating to the valuable proprietary rights of common men in immovable properties situated in cantonments. In this context I find strength from the observations of Hon'ble Supreme Court of Pakistan in a case titled "GHULAM MUSTAFA BUGHIO v. ADDITIONAL CONTROLLER OF RENTS, CLIFTON and others" (**2006 SCMR 145**). In this case the Hon'ble Supreme Court while dealing with a matter relating to the Cantonments Rent Restriction Act, 1963 at page-150 has observed as under:-

> *"It is high time that the Government should take steps for amendment in the provisions of Act, 1963 providing for appointment of Judicial Officers as Controller and Additional Controller of Rent under section 6 of the Act, 1963, instead of conferring quasi-judicial powers on* ***Executive Officer of the Cantonment, who is generally not fully well versed with the complexities of law but otherwise invested with the power to deal with very valuable property rights of the citizens*** *owning properties in Cantonment areas throughout the country."* (Emphasis provided).

16. In the above background of the Additional Controller of Rents as discussed in detail in para-12 onward, it can safely be said that the learned Additional Controller of Rents neither had the jurisdiction nor has applied judicial mind to the facts and circumstances of the case. The impugned order and conduct of learned Rent Controller reflects that the author of the impugned order had no legal acumen. He has mechanically received a statement of accounts and passed tentative rent order on **21.4.2016** and immediately after receiving an application under **Section 17(9)** of the CRRA, 1963 on **09.05.2016**, within one month on **19.5.2016** like an obedient servant struck off the defence of the appellants and dismissed their applications to Review order dated **21.4.2016** without assigning any reason. Such conduct of the Additional Controller of Rents has violated

fundamental right of the appellants under **Article 10-A** of the Constitution.

17. Before parting with this judgment I must observe that whenever and wherever any action is taken by any authority against the common citizen of Pakistan adversely affecting their fundamental rights guaranteed to hold immovable property under **Article 23** of the Constitution, they are entitled to have complete information about such actions. Their right to such information is also guaranteed under **Article 19-A** of the Constitution and even otherwise if an order/action adverse to interest/right of a person in an immovable property taken, he should be informed about the circumstances leading to such adverse action as he has a right to challenge the same in accordance with law. None disclosure of such information to the effectee would amount to deprive him/her of fundamental right to be dealt with in accordance with law (**Article 4** of the Constitution). In the case in hand prima-facie the appellants have a perpetual right in the demised shops under the agreement with Respondent No.2 in terms of clauses No.2 and 3 quoted in para-13 above, and, therefore, whenever the Director General ML&C (Army Housing Directorate)/Respondent No.2 decide to launch any commercial project by demolishing the property in question the rights of the appellants under the existing agreement should be protected and no effort should be made to wriggle out of the contractual obligations except in accordance with law. The appellants should be properly informed with relevant material details of any proposed action. The Respondent/landlord appears to have filed rent cases in the Court of Additional Controller of Rent despite the fact that he had no jurisdiction and then tried to subvert the entire trial in the name

of **Section 19(8)** of the CRRA, 1963 was a malafide attempt to deprive the appellants from their constitutionally guaranteed lawful right in the demised shops which are subject matter of these First Rent Appeals.

18. In view of the above, all these First Rent Appeals are allowed and the ejectment orders are set aside. Office is directed to place copy of this judgment in all connected matters.

JUDGE

Karachi, Dated: 06.03.2020

Ayaz Gul