

ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT
COURT, HYDERABAD.

CP. No. S- 184 of 2020

Qazi Aslam v. Saadullah & others

CP. No. S- 186 of 2020

Ayaz v. Saadullah & others

Petitioners: Qazi Aslam in CP No. S- 184 of 2020 & Ayaz
in CP No. S- 186 of 2020 through Mr. Abdul
Ghafoor Hakro, Advocate

Respondents 1-4: through Mr. Babar Ali Mirani, Advocate.
Mr. Wali Muhammad Jamari, Asstt. A.G.

Date of hearing: 06.12.2021

Date of Decision: 17.12.2021

ORDER

ADNAN-UL-KARIM MEMON, J.- Through the captioned
petitions, the petitioner(s) have prayed for declaration as under:-

A. It be declared that the judgment dated 29.02.2020 passed by the respondent No. 5 in FRA No. 92/2016 (re-Saadullah & others v. Aslam) setting aside the order dated 24.10.2016 passed in RA No. 90/2013 (re-Saadullah & others v. Aslam) by respondent No.6 may be declared, illegal, without lawful authority in excess of his jurisdiction, authority and of no legal effect and may be set-aside.

B. The cost of the petition may be borne by respondents No. 1 to 4.

C. Any other relief Justice deemed fit and proper may be granted.

2. Brief facts of the case are that on 8.5.2013 respondents 1 to 4 filed Rent Application under Section 15 of Sindh Rented Premises Ordinance, 1979, (SRPO) against the petitioner in C.P.S-184 of 2020 in respect of Shop No. 12 and Shops Nos 2 and 4 in C.P.S-186 of

2020 situated at Marble Market constructed over Plot No.12 admeasuring 600-00 sq. yds, Block-E, Unit No.7, Latifabad, Hyderabad being its allottee. The said property consists of many shops which were let out to different tenants; that the petitioners were occupying Shop Nos. 2, 4 and 12 and running the business of Marble; after the change of ownership a notice under Section 18 of SRPO 1979 was served upon the petitioners in March 2013; that being the property in dilapidated condition, the respondents got the property inspected through M/s. Al-Hamra Architects, who certified that the building is not in a position to be repaired or renovated and suggested that new construction be erected after the demolition of the old one, besides the respondents requiring the property for personal bonafide use also alleged that the petitioner has committed default in payment of utility bills, hence they filed the ejectment application.

3. The petitioners filed written objections, denied the tenancy and dilapidated condition of the property, and further asserted that the certificate issued by M/s. Al-Hamra Architect is false and managed; that the respondents have no plan to raise a new building as they had not got any map approved from the concerned authority; the shops do not even require the respondents for their personal bonafide use and they are not entitled to file ejectment application for the personal use of their brothers and relatives.

4. That respondent No.1 Saadullah being the attorney of respondents 2 to 4 filed an affidavit in evidence and produced a copy of the allotment order dated 20.2.2013, a copy of the letter dated 23.3.2013 issued by Mehran University of Engineering & Technology, copy of the certificate dated 11.3.2013 issued by Al-Hamra Architects, legal notice dated 28.3.2013 along with courier receipt, copy of the complaint made by respondents 1 to 4 to Director General Hyderabad Development Authority (H.D.A.), original water bill, copy of special power of attorney and 25 photographs of subject rented premises.

5. Petitioners also filed an affidavit in evidence and produced copies of rent receipts from April 2013 to September 2013 and electricity bills.

6. The trial Court on the pleadings of the parties framed the following points for determination:-

1. Whether the applicants require the premises for reconstruction after having obtained the necessary sanction for such reconstruction from the competent authority as required under the law?
2. Whether the applicants require the shops in question for their personal bonafide use?
3. What should the order be?

7. Learned trial Court after recording evidence and hearing the parties dismissed the rent applications vide order dated 24.10.2016. An excerpt of the order is reproduced as under: -

" Point No.1

1. The burden to prove this point is upon applicants and in order to discharge such liability, applicants have taken stand in their ejection application that the demised premises is required for reconstruction and erection of new building because same is in fragile condition. It is admitted position on record that neither any approved building plan is produced nor exhibited on behalf of applicants, and it is evident from the evidence of PW Saadullah, whereas, it is mandatory requirement of law that when premises is required for reconstruction of new building, the landlord is required to fulfill the condition precedent as stipulated Section 15(2)(vi) of Sindh Rented Premises Ordinance, 1979. It is germane to reproduce the relevant provision for resolving the controversy as under:

"Section 15(2).....

(vi) the premises is required by the landlord for reconstruction or erection of a new building at the site and the landlord has obtained necessary sanction for such reconstruction or erection from the authority competent under any law for the time being in force to give such sanction."

2. In the case of Liaquat Ali Shah & others versus Noor Ahmed (2001 CLC 1778), it is authoritatively held as under:

" As far reasonableness of decision to reconstruct the building is concerned, it is the owner of the premises who is in the best position to determine whether despite the fact that the building is relatively recent or structure thereof is quite firm, he would like to remove or reconstruct it for its benefit. Then it is mandatory for consideration for the owner of the property to produce a sanctioned plan of the proposed building. It is advantageous to rely on a case of Abdul Aziz V. Rent Controller and others in 1987 SCMR 2074. The operative part of the judgment is reproduced as under:-

"The contention raised by the learned counsel for the petitioner also overlooked that it has been repeatedly held by this court in cases under clause (iv) of Section 13(2) that if the owner of a building seeks eviction of the tenant on the ground of reconstruction, the only condition that he is required to fulfill is to produce a copy of duly sanctioned plan of the proposed building and that in view of the provisions of subsection (5) of Section 13 it shall be presumed that the landlord requires the building for reconstruction (or material, alteration) both reasonably and bonafide."

3. For the aforementioned reasons, the point No.1 is accordingly answered in the negative.

Point No. 2:-

4. As regards to this point is concerned, it is surprising to note that applicants on one hand claim that property in question is not good condition and dangerous to life of people, therefore, same is required for reconstruction and erection of new building, on the other hand, they are claiming that the demised premises is needed for their brothers and close relative who are not satisfied with their jobs. It is evidently apparent from record that the ground of personal bonafide need and ground of reconstruction are self contradictory, and one property is in dangerous condition than as to why they want to induct their brothers and close relative in such premises.

5. Be that as it may, it is admittedly stated in affidavit in evidence by applicant No.1 that "it is also a fact that there we are four co-owners in said building and our various close relatives/family members are presently jobless or presently dissatisfied with the temporary job. Till the demolition of the said building the above referred our close relatives shall run their business of multiple nature in different units of said building." In order to appreciate the meaning of landlord, it is pertinent to reproduce the relevant provision of Section 15(2)(vii) of the Sindh Rented Premises Ordinance which reads as under:-

--- The landlord requires the premises in good faith for his own occupation or use or for the occupation or use of his spouse or any of his children--

6. In view of above section, the brothers and close relatives are not spouse or children of the applicants, therefore, applicants cannot seek ejection of tenant on the ground of personal bonafide need of the case premises for their relatives. Hence the point No.2 is also answered in the negative.

Point No. 3:-

7. In view of my findings on point No.1 and 2, the instant application is liable to be rejected and it is accordingly dismissed with no order as to costs.

8. Respondents 1 to 4 challenged the said order filed First Rent Appeals (FRAs). The learned appellate Court after hearing the parties vide Judgment dated 29.02.2020 allowed the appeal and set aside the order dated 24.10.2016 passed by the Rent Controller, hence the instant petitions have been filed against the conflicting findings of Courts below. An excerpt of the Judgment dated 29.02.2020 is reproduced as under: -

" POINT NO [1]

11. Perusal of the R & Ps of trial court reveals that the appellants have sought the eviction of the respondents on two grounds first is the reconstruction of the premises and second for personal bonafide need. The trial court also formulated the such relevant points at the time of giving its finding. The point No.1 is relating to the reconstruction of the premises which was replied by the Rent Controller in negative on the sole ground that appellants have failed to produce any approved building plan, but it is suffice to say that learned trial court did not discuss the evidence so brought on record. Record further reveals that respondent at the time of cross examination has failed to shatter the plea of the appellant and appellant in his cross examination admitted that **"The demises premises is in dilapidated condition therefore, the same was inspected by Al-Hamra Architects and expert from Mehran University who had issued certificate. The certificate has been issued by the experts after inspecting the site"**. This reply of the appellant is sufficient to prove their plea which is also supported with the documentary evidence in shape of certificate issued by the Al-Hamra Architects. The respondent in his cross examination admitted that **"It is correct to suggest that I have not produced any picture that shop in question is in good condition. It is correct to suggest that I have not produced any receipts regarding fixed deposit with my written objections or affidavit in evidence. It is correct to suggest that I have not issued any legal notice to Engineers of Mehran University and Al-Hamra Architect regarding issuance of their opinion"**. This version of the respondent clearly shows that he has failed to prove the fixed deposit amount during his evidence. He also failed to support his plea that demised premises is in good condition and not require reconstruction. The respondent also failed to bring any sufficient proof to show that appellants are not in need demised premises. The appellants also produced the photographs on record including that of certificates of the expert. It is also settled provision of law that owner always remain owner and admitted the appellants are the joint owner of the demised premises and they have right to reconstruction or renovate the premises. Therefore, I am of the humble opinion that the order of the learned Rent Controller is not speaking one and requires interference of this court. Moreover the law relied upon by the learned counsel of the Respondent is distinguishable from the facts of the present case. Thus point under discussion is answered in "affirmative".

POINT NO.(2)

12. In the light of the discussion aforesaid, the impugned order of learned Rent Controller is set aside and instant F.R.A stands allowed. The respondent is directed to hand over the vacant physical possession to the appellants within sixty days from the date of this order. The parties to bear their own costs. Let true copy of judgment

be transmitted to learned trial Court along with R&Ps for information and record."

9. Mr. Abdul Ghafoor Hakro learned counsel for the petitioners has argued that respondent No.5 has illegally exercised the jurisdiction and erred in law by not appreciating that respondent No.1 failed to produce evidence in terms of Section 15(2)(vi) of Sindh Rented Premises Ordinance; that the evidence of respondent No.1 is not sufficient to prove that the demised premises were required to them for reconstruction or erection of new building as the respondent No.1 failed to obtain necessary sanction for such reconstruction or erection from the competent authority under the relevant law; that respondent No.5 illegally held that respondent No.6 did not discuss the evidence so brought on record; and, petitioners failed to shatter the plea of respondents in cross-examination; that respondent No.5 had no jurisdiction to allow eviction application without assigning the reasons for setting aside the order of respondent No.6; that respondent No.5 erroneously relied upon the certificate and Site Inspection Report produced at Ex. 26/C and failed to exercise jurisdiction that it is not sufficient to prove that the premises were/are required by respondent No.1 for reconstruction or erection of a new building; that the requirement of Section 15 (2) (vi) of SRPO, 1979 would be the production of sanctioned and approved plan for reconstruction; and, in absence of it respondent No.5 had no jurisdiction to allow eviction application; that obtaining of sanctioned or approved the plan by respondent No.1 in respect of building is *sine-qua-non* before application for eviction can be filed by them on the ground of reconstruction but respondent No.5 failed to apply judicial mind and illegally exercised the jurisdiction; that respondent No.6 held that respondent No.1 is not entitled to seek eviction of the petitioners on the ground of reconstruction; and, he failed to prove necessary sanction or approval by the competent authority for reconstruction or erection of the building. Per learned counsel mere obtaining possession on the ground of reconstruction does not ipso facto terminate the tenancy of the tenant; that respondent No.5 neither discussed this aspect of the case in the impugned judgment nor assigned plausible ground to invoke the jurisdiction for eviction of the petitioners; that respondent No.6 decided points 1 and 2 regarding reconstruction and personal need in negative and respondent No.5 allowed eviction application only on point No.1 and

failed to set aside the findings on point No.2 without discussing preservation of right of tenancy; that admittedly respondents 1 to 4 did not seek personal bona fide need for their children and spouse thus eviction application is not maintainable for personal need of brother and close relatives but respondent No.5 failed to consider that aspect of the case and illegally allowed the eviction application; that reconstruction does not terminate tenancy and respondent No.5 allowed the eviction application on point No. 1 and failed to determine conditions laid down in Section 15 (2) (iv) of SRPO, 1979; that the ground of personal bona fide requirement and reconstruction are destructive to each other and respondent No.5 had no jurisdiction to allow eviction application which was not maintainable; that the petitioners specifically denied Site Inspection Report of Al-Hamra Architects and certificate of expert of Mehran University Jamshoro and the respondents 1 to 4 neither examined authorities who inspected the demise the premises nor proved alleged certificate and Inspection Report and very judgment of respondent No.5 is perverse and contrary to evidence on record; that respondent No.1 filed R.A No. 94/2016 against one Nihar Khan Pathan who is running the business over Shop No.5 constructed over Plot No. 12/E Makki-shah Road, Hyderabad wherein the disputed premises is situated in the name of M/s. Syeda Peshawar Marble on the same ground i.e. reconstruction or erection of the new building and the matter was finally compromised in FRA No. 94/2016 and such statement, iqarnama dated 29.10.2019 and order dated 30.10.2018 proves that the alleged ground of reconstruction and erection of the new building is based on malafides; that tenant of shop No. 5 Nihar Khan is still in possession of above shop running the same business; that learned appellate court committed glaring irregularities, infirmities, illegalities, misreading, non-reading of evidence and committed the jurisdictional error while passing eviction order.

10. Mr. Babar Ali Mirani, learned counsel for the private respondents have supported the orders passed by the learned appellate Court by arguing that the personal bona fide need has been proved beyond realm of doubt by producing irrefutable and concrete evidence. He emphasized that even in case of non-construction; and/or reconstruction of building, the personal bona fide use by the landlord could be the sufficient ground of eviction on the premise that the statement of landlord on oath was quite consistent with his

avertment made in the ejectment applications and the same had neither been shaken nor anything had been brought in evidence to contradict the statement, such statement on oath would be considered sufficient for acceptance of the ejectment applications. He further dilated upon the issue of the desire of the landlord to put the property to a more profitable use after demolition and reconstruction is also a factor that may be taken into account in favour of the landlord; that it was not necessary that the landlord should go further and establish under section 15 (2) (iv) of the ordinance, 1979 that the condition of the building is such that it requires immediate demolition, however the landlord has efficiently proved his case on both the grounds. He lastly prayed for dismissal of the instant petitions.

11. I have heard the arguments of learned counsel for the parties and perused the case record, which reveals that the private respondents (through an attorney) has categorically urged the ground of demolition of the existing building and its reconstruction as a whole, as well as subject shops, in possession of petitioners, and in support of his plea he had also produced before the Court of Rent Controller, the requisite letter dated 23.3.2013 issued by Mehran University of Engineering & Technology, copy of the certificate dated 11.3.2013 issued by Al-Hamra Architects. Similarly, in support of his claim of personal bona fide need of the building after its reconstruction. In my opinion, once the landlord has started processing in obtaining approval of his building plans and necessary permission for the reconstruction of the building from the competent authority, he was not required to get sanction from the tenant. In this regard, the intention of the legislature is very much clear from the simple reading of the relevant provisions of section 15(2)(iv) of the Ordinance of 1979, which makes it obligatory for the owner/landlord of the building to obtain necessary sanction for the said reconstruction or erection from the Municipal Corporation, the Municipal Committee, the Town Committee or the Provincial Urban Development Board, as the case may be, at the time of filing of eviction application or even during its pendency, but do not require approval of tenant before starting the actual process of reconstruction of the building. In the present case, admittedly subject Shops of the building are in possession of the tenants/petitioners, therefore, it was not possible for the respondents that they could

demolish the whole building and start with the process of its construction. However, it was again the sole prerogative of the owner of a building/landlord to decide whether he want to demolish and reconstruct it as per his choice and suitability or not. For this purpose, neither the Rent Controller nor the tenant has any say in the matter. Even in a situation where the present structure of the building is habitable, it is still the choice of the landlord to demolish and reconstruct it as per his suitability and need; therefore, a tenant cannot validly resist his eviction on such ground. In this factual background, it is inconceivable and hard to believe that the eviction application filed by the respondents on the ground of reconstruction was declared mala fide by the learned rent controller, as he has to demolish not only the shops in possession of the petitioners but also other portions of the building, including the vacant shops in his possession. In so far as the plea of personal bona fide need of the petitioners is concerned, consistent statement of the respondents on oath, un-shattered in the cross-examination, was more than sufficient to show his bonafide and answering the issue of personal need in his favor. On the aforesaid proposition, I am guided by the decision of the Honorable Supreme Court rendered in the cases of *Toheed Khanam v. Muhammad Shamshad* (1980 SCMR 593) and *Fazal Azim v. Tariq Mahmood* (PLD 1982 SC 218).

12. In my view, eviction of a tenant on both the grounds of personal requirement and reconstruction in the same proceedings, would not be said self-destructive. On the aforesaid proposition, I am guided by the decision of the Honourable Supreme Court in the cases of *Ghulam Nabi V/S Mushtaq Ahmed*, (PLD 1980 S.C. 206) and *Abdul Bari V/S Khadim Hussain*, (PLD 1978 S.C. 78.)

13. In my view, the appellate Court, thus has rightly proceeded to form a view on both the grounds as discussed supra. Even by section 15 (iv) and (v) of the Ordinance of 1979, sufficient safeguard is provided to protect the interest of a tenant in both the situations, when the eviction is sought by the landlord on the ground of reconstruction; and, he fails to meet the requirement of these penal provisions.

14. Primarily, these petitions are filed under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, and the view formed by the appellate Court, while considering the evidence, cannot

be given a second thought, just because of the reason that another view is possible out of the evidence that was read by the appellate Court.

15. In principle these petitions are not a remedy available under a special law of Sindh Rented Premises Ordinance, 1979 and the remedy of appeal has already been exhausted by the petitioners. It is not a case that could be considered as the case of misreading and non-reading of the evidence; and, hence the conclusion reached by the appellate Court does not require any interference. As a sequel to the above discussion, these petitions are dismissed.

16. As the rented premises are in possession of petitioners two months are allowed to them from today for vacating and handing over its actual physical possession to the private respondents. In case petitioners fail to vacate and hand over actual physical possession of the rented shops on or before the expiry of two months period, the Rent Controller shall issue a writ/warrant of possession with police aid, without any further notice to them.

Sd/- ADMAN-UL-KARIM MEMON,
JUDGE.