

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

**C.P. No.S-654 of 2016.**

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<b>DATE</b>	<b>ORDER WITH SIGNATURE OF JUDGE</b>
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For orders on office objections.  
For hearing of M.A. No.6689/2016.  
For orders on M.A. No.842/2017.  
For hearing of main case.

**11-12-2020**

Mr. Muhammad Arshad S. Pathan advocate for petitioners.  
Mr. Altaf Sachal Awan, advocate for respondents.

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This is apparently 3<sup>rd</sup> round of litigation; the eviction application was filed by the respondents on the ground of reconstruction of the building. There were apparently eight tenants and tenements out of them one Mst. Shamshad Begum (tenant) has expired and perhaps she has not followed the litigation. As of now there are only seven tenants who contested the rent application. The penultimate order as passed in these proceedings is of Additional District Judge which order was maintained by the High Court in C.P. No.S-617 of 2011 which order is available at page No.57. The appellate Court observed as under:-

*“In the light of above circumstances, the impugned order of rent controller is maintained. However, prior to execution, the respondents shall submit fresh approval plan and permission of authority before Rent Controller. In case, the respondents fails to demolish the premises within six months of taking over the possession of premises, the appellants shall be entitled to apply the Rent Controller for an order of put them in possession of the premises. The landlords shall take into consideration the rights of tenants in accordance with law for accommodating them with regard the available shops in newly constructed building. Appeal is disposed of accordingly and parties are left to bear their own costs.”*

Thus prior to execution the respondents were required to submit fresh approved plan and permission of authority before Rent Controller. The approved plan shows that there are only two shops i.e. shop No.1 and Shop

No.2, carved out in the approved plan, hence, the provisions of section 15 (3) would be violated in case such construction is raised over the plot in question.

The tenancy rights were secured under the law in respect of an application filed against the tenants for their eviction on the ground of reconstruction. The law provides that when the premises required by the landlord for reconstruction or erection of a new building at site, the landlord has to obtain a necessary sanction for the reconstruction or erection from the authority competent under the law for the time being in force to give such sanction. This is followed by sub section 3 of section 15. Its requirement is that where the landlord has obtained the possession of the premises for the purposes of reconstruction of the building or erection of a new building, he/she shall demolish the existing building within six months and taking over the possession of the premises or as the case may be, commence the erection of new building within two years of taking over the possession of the premises and in case the landlord fails to demolish the building as aforesaid the tenant shall be entitled to put into possession of the premises and for that purpose they may apply to the Rent Controller for an order in that behalf.

Sub-section 4 provides that where the landlord constructs the building as aforesaid, the tenant who was evicted from the old building may, before the completion of new building and its occupation by another person, apply to the Controller for an order directing that he be put in possession of such area in the new building as does not exceed the area of the old building of which he was in occupation and the Controller shall make an order accordingly in respect of the area applied for or such smaller area, as considering the location and type of the new building and the needs of the tenant, he deems just and on payment of rent to be determined by him on the basis of rent of similar accommodation in the locality.

By placing the subject plan apparently the rights of atleast five tenants would be deprived as there are only two shops of large dimensions carved out, instead of existing seven tenements.

I therefore, deem it appropriate to refer the matter back to the Executing Court after setting aside the orders impugned in this petition and direct the Rent Controller/ Executing Court to decide the objections of the tenants/ petitioners who have been arrayed as judgment debtors in the execution application, strictly in terms of section 15 (2) (vi) and 15 (3) and (4) of the Sindh Rented Premises Ordinance, 1979 as to their tenancy rights. The Executing Court shall decide these objections of the tenants in respect of their respective area of the tenements within 45 days.

The petition is disposed of in the above terms.

**JUDGE**

Irfan Ali