

**JUDGMENT SHEET  
IN THE HIGH COURT OF SINDH, KARACHI  
FRA No.06 of 2018**

Salahuddin Ahmed ..... Appellant

Vs.

Khurram Sultan Abbasi & others ..... Respondents

Khawaja Shams ul Islam, a/w M/s Javeria Saleem and Asfandyar Khan,  
advocate for appellant.

Mr. Saleem Thepdawala, Advocate for respondent No.1

Mr. Ghulam Muhammad Dars, advocate for respondent No.2.

**Date of hearing**      **19.09.2024.**

**Date of order:**      **27.09.2024**

**JUDGMENT**

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**MUHAMMAD IQBAL KALHORO J:** Respondent No.1 filed an application u/s 17 of Cantonment Rent Restriction Act, 1963 (Act, 1963) against appellant in respect of a Bungalow No.15-B/II, 22<sup>nd</sup> street, Khayban-e-Tanzeem, Phase-V, DHA, Karachi. He has stated in the application that he has purchased the property from Syed Shahzad Ali, who had rented the said bungalow to appellant w.e.f 01.07.2010 against monthly rent of Rs.25,000/-. He has further disclosed that he has purchased the said Bungalow for personal bonafide use, hence he sent a legal notice to appellant dated 23.12.2015 to vacate the Bungalow but he failed to even respond to the same. Hence, he has filed application.

2. This application was contested by the appellant on the ground that he was not the tenant but had purchased the property and paid US\$ 62091.00 to previous owner but since he did not perform his part of agreement, he has filed a civil suit No.161/2016 against him for specific performance of contract. He has further taken a plea in the written reply that there is no relationship of tenant and landlord between him and respondent No.1; that the application is an outcome of malafdie.

3. Learned Additional Controller of Rents by way of impugned order has allowed the application and ordered the appellant to vacate the demised premises within 30 days, hence this appeal.

4. Learned counsel for appellant has contended that Additional Controller of Rents has no jurisdiction to adjudicate upon the matter; that Additional Controller of Rents is no one but Additional Cantonment Executive Officer, he is not appointed u/s 6(2) of the Act, 1963, and powers conferred upon him to adjudicate rent matters are illegal, void *abinitio*. He in this regard has relied upon PLD 1989

Karachi 404 and PLD 2015 SC 401. Learned counsel has further submitted that appellant is in possession of demised premises in capacity of purchaser and not as a tenant which he had purchased against payment of US\$ 62091; that he was put in possession of the property by previous owner against occupancy charges of Rs.25000/- per month till the appellant was able to arrange amount of sale consideration; that subsequently appellant paid the sale consideration to the previous owner in shape of US dollars but he failed to perform his part of contract, hence the appellant filed a civil suit which is pending adjudication before this court on original side; that sale between respondent No.1 and previous owner is manipulated one in order to defeat the civil case put up by the appellant before this court for seeking enforcement of his rights; that sale deed dated 14.12.2015 shows that respondent No.1 was delivered vacant peaceful physical possession of the property which is false because appellant was in occupation of the property at the time of alleged sale deed between the parties and respondent No.1 was never delivered possession of the property, hence the sale of the demised premises between the parties was incomplete and not enforceable. He has relied upon 2001 SCMR 1888, 2019 YLR 2500, 2019 YLR 2846 and 2018 CLC Note 97.

5. On the other hand, learned counsel for respondent No.1 has supported the impugned judgment and has relied upon 2020 YLR 61 to establish jurisdiction of the Additional Controller of Rents to adjudicate upon the matter. He has further submitted that very issue was taken up by this court in FRA No.-02/2018 in the case of Saeed Mazhar Ali Vs. Mrs. Aroosa Mubashir & another, which was challenged before the Supreme Court in Civil Petition No.1152/2018 and upheld by an order dated 16.04.2018.

6. I have heard the parties and perused material available on record including case law relied upon by learned counsel. Insofar as issue of jurisdiction of Additional Controller of Rents is concerned, section 6 of the Act, 1963 has laid down a scheme whereby the Controller of Rents is appointed by a notification in official gazette for one or more cantonments. Learned counsel for appellant has not disputed that the Additional Controller of Rents in this case has been appointed through a notification as stipulated in law. Further in the case of Saeed Mazhar supra, this court has discussed this issue in detail as follows:-

Thus, in consequence to above legal position, I would prefer to attend the challenge made by the learned counsel for the appellant with reference to Section 6(2) of the Act. This challenge is entirely based on section 6 of the Act therefore, it would be appropriate to have a direct reference to the same which reads as:-

'Section 6. Appointment of Controller.-(1) The (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 (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 plain reading of the above makes it clear that '**appointment of controller**' requires only issuance of notification which however has not been made subject to '**consultation of Chief Justice**' rather the absolute competence has been vested with the Federal Government to appoint '**a person**' as '**Controller or Additional Controller**' by issuing notification in official gazette. Legally, in name of interpretation the Court cannot add or delete any thing in or out of above provision. The reference may well be made to the case of Khan Gul Khan v. Daraz Khan 2010 SCMR 539 wherein it is held as:-

26. It is a settled proposition of law that Courts have only power to interpret the law as laid down by this Court in various pronouncements. See Zia-ur-Rehman's case PLD 1973 SC 49. **In the grab of interpretation, the Courts have no power to add or omit even a single word from the provision of law.** In Muhammad Tariq's case supra by holding that pre-emptor and vendee are two distinct classes the distinction between the pre-emptor and vendee is not based on any legal, valid reason or logic or mandate of section itself.

In another case of Lanvin Traders, Karachi v. Presiding Officer, Banking 2013 SCMR 1419 it was held as:

"46. The above discussion as regards the scope and interpretation of Order XXI, Rule 66 of the Code, leaves me **in no doubt to hold** that firstly nothing could be added or read in a provision of law which is not provided therein by the legislature.

I would further add that the scope of interpretation is to make a bona fide attempt to unfold ambiguous words or phrases without disturbing the object and intention of the legislature rather legally every attempt even while interpreting such ambiguous thing, the intention and object of the legislation has to be protected. Reference may well be made to the case of Mumtaz Hussain v. Nasir Khan 2010 SCMR 1254 wherein it is held as:-

\*10. It is cardinal rule of interpretation that objects made Reasons of a Statute is to be looked into as an extrinsic aid to find out legislative intent only when the meaning of the Statute by its ordinary language is obscure or ambiguous. But if the words used in a statute are clear and unambiguous then the Statute itself declares the intention of the Legislature and in such a case it would not be permissible for a Court to interpret the statute by examining the object and reasons for the Statute question.

Further, that status of the '**Act**' aimed to control of rent matters of certain classes of buildings within the limits of cantonment area only hence the Act shall enjoy the status of special law. The special law shall prevail over the *general* law and the Courts are not supposed to widen the scope thereof by adding or deleting anything else object and intention of the *legislature* shall fail.

Since, the literal and plain language of the Section 6 of the Act does not leave any room for presuming even that the appointment of the **Controller or Additional Controller** would require consultation of the Chief Justice hence legally the plea of learned counsel for the appellant to such an extent cannot be accepted.

7. Now, insofar as merits of the case are concerned, the attorney of the appellant in his cross examination has admitted that he had received a legal notice from respondent's counsel informing change of ownership of Bungalow in the year 2015. He has further admitted that rent of January, 2016 to March, 2016, he started depositing in the court of Additional Controller of Rents through an application. He has also admitted in cross examination that after lapse of four months of receipt of the notice regarding change of ownership dated 23.12.2015, he filed an application and deposited the rent in the court.

8. Learned counsel for appellant while referring to cross-examination of the respondent has argued that he has admitted that he had received the rent upto date and there was no issue of outstanding rent in support of his case. He has further contended that learned Additional Controller of Rents has erred in allowing the application on the ground of default. However, I am not convinced with this proposition because attorney of the appellant has admitted in cross examination that he deposited the rent of three months from January, 2016 to March, 2016 only in April, 2016. The relevant question which was put to the respondent in his cross examination was on 03.04.2017, after the incidence of depositing the rent had already happened. Therefore, admission of the respondent that he had received the rent up to the date was not incorrect, but could not absolve the appellant of the liability of default in respect of three months i.e. January, 2016 to March, 2016. This can be explained by the following example. If a tenant does not pay the rent from January to April, in any given year, and then pays the rent of all the months in May of that year. And then the landlord is asked as to whether he has received the rent upto date, his answer would be in positive. But it could not change the fact that for four months, the tenant had not paid the rent, had committed default and then paid the rent after four months in May of that year. In the present case also this is what happened; as per admission of attorney of the appellant after getting the notice of change of ownership, the appellant did not pay rent for three months and then without any refusal by respondent No.1 to receive the rent in the fourth month of April, 2016, he deposited the same in the court through an application.

9. Be that as it may, the ground on which the application u/s 17 of the Act, 1963 was filed by the respondent was related to his personal bonafide need and not default in payment of rent. The respondent No.1 in the application as well as affidavit in evidence has categorically stated that he had purchased the demised premises for his personal bonafide use. This assertion has not been controverted by the appellant in cross examination of respondent. Instead, respondent No.1 has been asked questions regarding the suit filed by the appellant against the previous owner. Nothing rebutting the ground of personal bonafide use of respondent has

been propounded by the appellant through any oral or documentary evidence. Hence the case of respondent No.1 on the ground of personal bonafide stands proved.

10. Insofar as case of appellant that he has purchased the property from previous owner is concerned, it goes without saying that if the appellant succeeds in the suit for specific performance, undoubtedly he would succeed in acquiring possession of the property, if this is what he has sought in the suit is granted by the court. As far as, merit of the present appeal is concerned, attorney of the appellant has admitted possession of the demised premises in the capacity of tenant and depositing the rent in the court. No further proof in presence of such admission is needed to show the nature of relation of the appellant with the respondent. I, therefore, find no merit in this appeal and dismiss it accordingly.

The appeal stands disposed of in the above terms alongwith pending application.

Judge

A.K.