IN THE HIGH COURT OF SINDH AT KARACHI

FIRST RENT APPEAL NO.2/2018

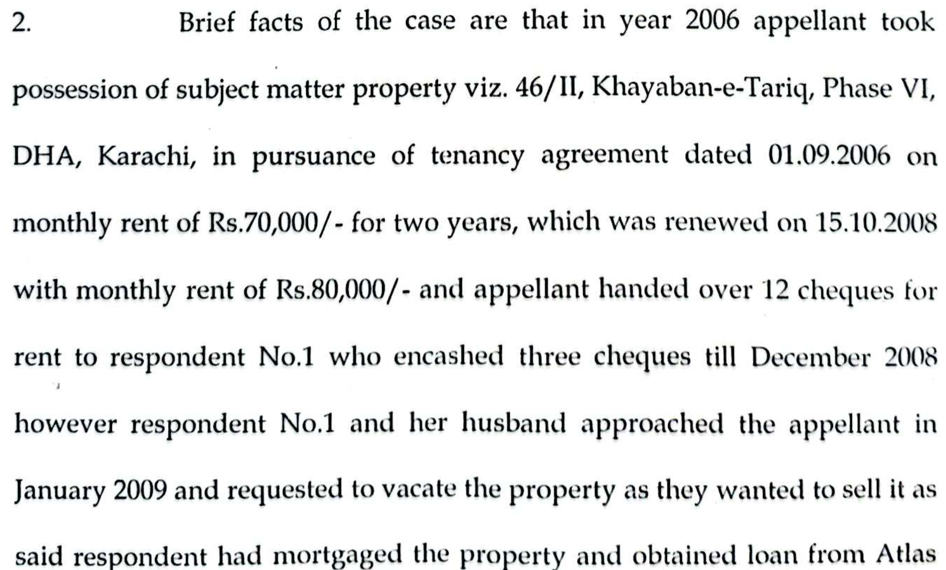
PRESENT: MR. JUSTICE SALAHUDDIN PANHWAR

Appellant	:	Saeed Mazhar Ali, through Mr. Khawaja Shamsul Islam, advocate.
Respondent	:	Aroosa Mubashir and another, through Mr. Amel Khan Kasi, advocate for respondent No.1.

Date of hearing	:	27.02.2018.
Date of announcement	:	22.03.2018.

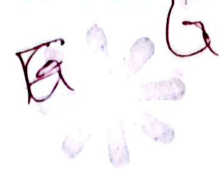
JUDGMENT

Appellant has assailed order dated 11.01.2018 passed by Additional Controller of Rents, Clifton Cantonment, Karachi, in Rent Case No.59/2014, allowing Application u/s 17 of the Cantonment Rent Restrictions Act, 1963 (hereinafter referred to as the Act of 1963) filed by respondent No.1, whereby appellant was directed to vacate and hand over possession of subject matter property, within thirty days.



2. Brief facts of the case are that in year 2006 appellant took possession of subject matter property viz. 46/II, Khayaban-e-Tariq, Phase VI, DHA, Karachi, in pursuance of tenancy agreement dated 01.09.2006 on monthly rent of Rs.70,000/- for two years, which was renewed on 15.10.2008 with monthly rent of Rs.80,000/- and appellant handed over 12 cheques for rent to respondent No.1 who encashed three cheques till December 2008 however respondent No.1 and her husband approached the appellant in January 2009 and requested to vacate the property as they wanted to sell it as said respondent had mortgaged the property and obtained loan from Atlas

Bank Limited and was not in a position to repay the same; during discussion respondent offered to sell the property to appellant who agreed to purchase it, hence an agreement to sale dated 28.01.2009 was executed between respondent and appellant; at that time principal amount of Rs.1,92,00,000/- was outstanding against loan besides markup which was responsibility of appellant as per clause 6 of agreement; pursuant to clause 5, power of attorney was executed in favour of appellant to deal with monthly payments and to receive original documents after completion of installments, a letter dated 28.01.2009 was written by respondent to the Bank informing them about aforesaid transaction and payment of loan/markup by appellant; hence appellant purchased subject matter property from respondent No.1 through agreement of sale dated 28.01.2009 and in execution of same deposited admitted amount of Rs.3,62,47,993/- to Atlas Bank Ltd (now Summit Bank) as sale consideration; it is stated that Rs.30,50,000/- was directly paid to respondent, Rs.1,90,80,145/- to bank towards principal loan and Rs.1,35,17,848/- towards markup, thus appellant after such agreement was not tenant nor respondent No.1 was landlord. It is pleaded that original title documents were with the bank and a set of documents viz. transfer orders dated 27.06.1994 and dated 17.08.1995, bifurcation letter and plan dated 29.08.1998, leases, approval of proposed building plan dated 22.08.1998, letter dated 06.10.1998, permission to mortgage, were provided; after sale agreement an amount of Rs.600,000/- was to be immediately deposited to the bank to avoid default, therefore appellant deposited said amount vide pay order, first payment of markup amounting to Rs.2,89,000/- to the bank was deposited by appellant on 06.02.2009; after such transactions parties ceased to be landlord and tenant; consequent to payment of loan, appellant requested the Bank to hand over title documents of property but to utter disbelief of appellant the Bank refused to do so and appellant was



informed that respondent had requested the bank to refrain from doing so; appellant approached respondent for clarification and execution of sale deed in favour of appellant but respondent kept him on false hopes and finally refused to do so, appellant sent a legal notice to respondent and the D.H.A., got published a public notice and also filed Civil Suit No.507/2013. Appellant prays as under:-

a. Set aside the impugned ejectment order dated 11.01.2018 passed by learned Additional Rent Controller Cantonment Board Clifton, Karachi in Rent Case No.59/2014.

b. Call R & P of the Rent case No.59/2014 from the Court of Additional Rent Controller Cantonment Board Clifton, Karachi.

c. Declare that the entire rent proceedings before the respondent No.2 are *coram non judice* as he is only Additional Cantonment Executive and has not been appointed Additional Rent Controller as per section 6(2) of the CRRA, 1969 and no notification in terms of section 6(1)(2) of the Cantonment Rent Restriction Act, 1969 has been issued by the Central Government with the consultation of the hon'ble Chief Justice of High Court of Sindh in pursuant to Sharaf Faridi's case reported as PLD 1989 Karachi 404 and upheld by hon'ble Supreme Court reported as PLD 1994 SC 105 as well as Mehram Ali case reported as PLD 1998 SC 1445.

3. Learned counsel has argued that entire rent proceedings before respondent No.2 are *coram non judice* as he is only Additional Cantonment Executive and has not been appointed Additional Rent Controller as per section 6(2) of the CRRA, 1969 and no notification in terms of section 6(1)(2) of the Cantonment Rent Restrictions Act, 1969 has been issued by the Central Government with the consultation of the hon'ble Chief Justice of High Court of Sindh in pursuant to Sharaf Faridi's case reported as PLD 1989 Karachi 404 upheld by hon'ble Supreme Court in case reported as PLD 1994 SC 105 and Mehram Ali's case (PLD 1998 SC 1445). He has further argued that in pursuance of tenancy agreement dated 01.09.2006 renewed on 15.10.2008

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with monthly rent of Rs.80,000/- and appellant handed over 12 cheques for rent to respondent No.1 who encashed three cheques till December 2008; an agreement to sale dated 28.01.2009 was executed between the parties; since property was mortgaged with Atlas Bank Ltd and principal amount of Rs.1,92,00,000/- was outstanding against loan besides markup it was agreed that such payment is responsibility of appellant as per clause 6 of said agreement to sale; pursuant to clause 5, a power of attorney was executed in favour of appellant to deal with monthly payments and to receive original documents after completion of installments, a letter dated 28.01.2009 was also written by respondent to the Bank informing them about aforesaid transaction and payment of loan/markup by appellant; hence appellant purchased subject matter property from respondent No.1 through said agreement and in execution of same deposited admitted amount of Rs.3,62,47,993/- to Atlas Bank Ltd as sale consideration; he paid Rs.30,50,000/- directly to respondent, Rs.1,90,80,145/- to bank towards principal loan and Rs.1,35,17,848/- towards markup, therefore it is stressed that appellant after such agreement was not tenant nor respondent No.1 was landlord and appellant never defaulted in payment of rent during tenancy. It is argued that respondent also provide set of documents relating to subject property; appellant deposited Rs.600,000/- vide pay order and first payment of markup amounting to Rs.2,89,000/- to the bank on 06.02.2009; it is argued that after such transactions parties ceased to be landlord and tenant; in terms of the agreement after of payment of loan, appellant sought title documents from the bank but surprisingly Bank refused to do so while informing that respondent asked the bank not to do so; it is argued that respondent remained in good terms with appellant till final payments in terms of the agreement but later on had changed her attitude towards appellant and refused to execute sale deed in favour of appellant; appellant sent a legal

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notice to respondent and the D.H.A., got published a public notice and also filed Civil Suit No.507/2013. Learned counsel for appellant has relied upon 2009 CLC 731, 1983 SCMR 1064, 2001 SCMR 1434, 2006 SCMR 705, 2010 MLD 1354, 2006 SCMR 1630, 2005 CLC 1422, PLD 2006 SC 328, PLD 2010 SC 642, PLD 2007 Karachi 405, 1992 MLD 1590, 2002 CLC 4, 2000 SCMR 1604, PLD 1991 SC 242, 1991 MLD Karachi 1051, 1989 CLC 1481, 1989 CLD Karachi 2309, 2017 SCMR 1249, 2017 SCMR 580, 2013 SCMR 21, 2013 SCMR 596, 2017 MLD 485, 2016 CLC 919, 2015 CLD 600, 2013 CLD 981, PLD 2017 SC 158, 2017 SCMR 1006, 2006 SCMR 1519, 2005 SCMR 895, 2005 SCMR 1544, 2004 SCMR 549, PLD 1992 SC 238, PLD 1965 SC 690, 2005 YLR 301, MLD 2015 Sindh 1077, 2013 MLD 655, 2016 MLD 358, 1989 CLD Karachi 2309, 1989 MLD 548, 2008 CLD Karachi 761, 2001 SCMR 1434, 2016 CLC 789, 2015 SCMR 1243, 2017 YLR Sindh 1607, 1998 MLD 1658, 1995 CLC 1541, 1989 CLC SC AJK 310, PLD 2005 SC 418, 2016 CLD 920, 2000 CLC 1168, 2010 YLR 1098, 2016 YLR 671, 2006 CLC Lahore 999, 2016 YLR 773, 2014 MLD 1436, 2017 YLR Note 318, 2014 CLC 1652, PLD 2008 Karachi 572, 1998 MLD 176 and NLR 1992 SCJ 84.

4. Learned counsel for respondent No.1 argued that the property was given on rent under tenancy agreement dated 01.09.2006 on monthly rent of Rs.70,000/- which was never renewed. However, the appellant continued to occupy the house inspite of expiry of the rent agreement and has paid rent up-till 14th October, 2008. It was argued that appellant stopped paying the rent and in order to cover the default in payment of monthly rent, he had prepared forged and fabricated sale agreement dated 28.01.2009; that the respondent had no knowledge of any such agreement till the appellant filed Civil Suit No.507/2013 in this Court, for the specific performance of that forged and fabricated sale agreement which suit was fully contested; that from

the averment of Suit No.507/2013 respondent came to know that the appellant has also fabricated a power of attorney of the respondent in his own favour; that cheque No.7521324 dated 30.01.2009 for Rs.6,50,000/- to be drawn at Standard Chartered Bank as mentioned, was not a cross cheque and according to bank certificate, it was never encashed; this was another forgery done by appellant to illegally grab subject matter property. It was stressed that appellant had not paid rent since 15th October, 2008 hence committed default, hence respondent had approached the competent forum that passed impugned judgment that is very much in accordance with law. Learned counsel for respondent No.1 has placed reliance on 2016 CLC 120, PLD 2009 SC 546, PLD 1999 SC 1101, 2011 SCMR 3201, 2017 YLR Sindh 1916, 1989 MLD 2245 (Lahore), PLD 1983 SC 238, 1996 SCMR 877 and PLD 2014 SC 347.

5. Heard the learned counsels for respective parties and have also examined the available material *minutely*.

6. Number of *plea(s)* have been raised by learned counsel for the appellant which do includes the one pertaining to competence and jurisdiction of *lower* forum in entertaining and deciding the matter (rent petition). There can be no exception to the legally established principle of law that *jurisdiction* is a creation of law which is never dependant upon consent or *waiver* of parties; a challenge to jurisdiction *even* can render an *order* as *coram non judice* hence same is always to be taken up *first.* I would also include that question of *inherent* jurisdiction, *normally* a *pure* question of law, may well be raised at any stage and non-raising thereof before lowest *forum* (waiver) would not be sufficient for ousting the jurisdiction of appellate forum from examining the same. In other words, a challenge to *inherent jurisdiction* would never earn status of '**new**

plea' which *normally* is not permissible to be taken at *later* stages. The reliance was rightly placed by learned counsel for the appellant on the case of *Jan Muhammad & Ors* PLD 2017 SC 158 wherein at Rel. Page-163, it was held as:-

> "We are clear in our minds that the appellants do not have a right to raise an absolutely new plea before this Court and seek a decision on the basis thereof. Nor can such plea be allowed to be raised and the case decided accordingly as a matter of course or right on the pretext of doing complete justice. The leave of this Court in this context is mandatory but the considerations for the purposes of granting leave to raise a new point depend upon the facts and circumstances of each case. This Court has the discretion to grant leave at the time of hearing an appeal in which leave has been granted on a different point (s) and **to consider such point of law, including for instance the question of inherent jurisdiction, undoubtedly being a pure question of law; even if not earlier taken up in any proceedings including those before the Supreme Court**. This could very well apply to the point of limitation too where such plea was not dependant upon any factual determination. **However, those cases which require a factual foundation and adjudication for the purposes of settling a legal issue cannot be said to be pure questions of law and the same cannot be allowed to be raised before this Court for the first time**.

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 Govenrment) may also, by notification in the official Gazette, appoint a person to be the Additional Controller of Rents for one or more cantonments.

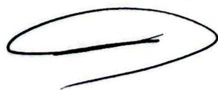
The *plain* reading of the above makes it clear that ***'appointment of controller'*** requires only issuance of *notification* which *however* has not been made subject to **'consultation of Chief Justice'** rather the absolute competence has been vested with the Federal Government to appoint **'a person'** 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-Rehma'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 statue 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, I would take up the *second* part of such *plea* whereby competence of the **Additional Cantonment Executive Officer** has been challenged while saying that no *notification* with regard to his appointment, as required by Section-6 of the Act, has been issued by the Federal Government. To this, it can safely be said that section 6 of the Act *itself* has given absolute and exclusive jurisdiction to the Federal Government to appoint **'a person'** as **'Controller or Additional Controller of Rent'** which has not been *limited* to any **condition** including that such **'person'** cannot be a public servant rather such *appointed* person has been clothed as **public servant,** per Section 30 of the Act. In short, the *issuance* of notification by

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Federal Government thereby declaring **'any person'** as **'Controller or Additional Controller Rents'** would be a sufficient compliance of Section 6 of the Act and such *'person'* would stand designata as such *even* if same is *'ex officio'*.

The learned counsel for the appellant has claimed that there exists no notification designating **Additional Cantonment Executive Officer** as **Controller or Additional controller Rents** but in support whereof placed no such proof. On the other hand, learned counsel for the respondent has placed reliance on the case of *Ghulam Haider v. Farooq Ahmed Bhatti* PLD 1983 SC 238 wherein such *notification* was reproduced at Rel. P-240 as:

> "It will be appropriate further to reproduce the notification where-under Additional Rent Controllers for Lahore were appointed. It reads :-
>
> > "In exercise of the powers conferred by subsection (2) of section 6 of the Cantonment Rent Restrict Act, 1963 (XI of 1963) , the Federal Government is pleased to appoint the **Additional executive Officer** of Lahore, Multan and **Karachi Cantonments,** to be the ***Additional Controllers of Rent for their respective Cantonments."***
> >
> > (Rawalpindi, issued by Ministry of defence on 25.8.1976, No.25/15/G/AD(C)/76/3431/D-12/M L & C/76)"

From above, it is *quite* evident that office of 'Additional Executive Officer' of **'Cantonments'** of Lahore, Multan and **'Karachi'** has also been given *ex officio* designata of ***'Additional Controllers of Rent'*** , therefore, the learned counsel for the appellant is *factually* not correct in saying that there has been issued no such *notification*. Such *ex-officio* designata even would be sufficient to competently clothe *Additional Executive Officer* with all powers, available to the **Controller or Additional Controller of Rents** under the Act. The referral to relevant portion (page-242) of judgment of case of *Ghulam*

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Hyder supra would also make the picture more *clear* and brighter which reads as:-

> ....To draw the analogy, such an appointment if made of a functionary who is already acting as an Additional Executive Officer, would not be relatable to his competence and or authority as an Additional executive Officer but (as a mere *persona designata) for* the purpose to pick out, a person who is to function as an Additional Controller of Rents; used in section 6(2) of the Cantonment Rent. Viewed in this light the two relevant provisions, namely, sections 2(*d)* and 6(2) of the Cantonment Rent Restriction Act, would produce the result that any person could be appointed and designated by the Federal Government as an Additional Controller of rent. **The appointed, through a properly issued notification, a person not by his name but by his designation as such Additional Controller of Rent.** In this exercise the qualification, authority or competence of such person as Additional executive Officer under the Cantonment Act was not a relevant element, under the Cantonment Rent Restriction Act, so as to be gone into. **Once the act of appointment by designation was complete, the person concerned would be clothed with full power and authority of a "controller" as defined in section 2*(d)*;** because whosoever thus stood appointed would be a controller under the relevant sub-clause *(d)* of section 2, unless of course there is any thing repugnant in the subject or context. Nothing in that behalf was presented at the bar nor has it been discovered otherwise. We, therefore, hold that notwithstanding any defect in the appointment or qualification of the concerned Additional Executive Officers, they having been validly designated as Additional Controllers of Rent and could exercise the power and jurisdiction accordingly under the Cantonment Rent restrict Act, 1963."

Besides, a *legally* issued notification would continue holding the field unless otherwise so *expressly* intended. The referred notification *prima facie* was not subject to any *time* limitation nor there has been placed anything on record that said notification was either recalled / cancelled etc.

8. With regard to the plea with reference to Article 175 (3) of the Constitution. Suffice to say that it is *only* the Constitutional Jurisdiction of High Court under Article 199 through which it (*High*

Court) can declare any law or any custom or usage, having the force of law, as void and not any other court, including *High Court* while exercising **'appellate jurisdiction'**.

I would add that in the case of *Ghulam Mustafa Bughio v. Additional Controller of Rents, Clifton & others* (2006 SCMR 145), the honourable Apex Court without declaring the *existing* section 6 of the Act as *void* or declaring order of *Additional Controller* as *coram non judice* had directed as:-

> *"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."*

In the said case the *jurisdiction* to deal with such like matters was also not vested with any other Court. Unless necessary measures are taken thereby bringing the proviso in line with such *directives* or the provision of Section 6 of the Act is *otherwise* specifically declared as *ultra vires* , the rights of the *aggrieved* legally cannot be left hanging rather he would be *legally* justified to approach the forum, so is directed by *existing* law. This has been the position because of which when such *question* was raised, it was concluded in the cases of *Nasir Mehmood v. Khawar Hussain & 5 others* 2014 CLC 832 as:

> "6. It is also pointed out that Cantonment Rent Restriction Act, 1963 has been promulgated for the control of rent of certain classes of buildings within the limits of cantonment area and for the eviction of tenant there from and section 17 thereof provides for eviction of a tenant from such premises by applying to the Controller for an order in that behalf The "Controller" as defined by section 2(d) of the said Act means a Controller of rent, appointed by the Central Government under subsection (1) of section 6 and includes the Additional

> controller. **This being so, the ejectment petition could be filed in the court of learned Rent Controller, appointed under the provisions of Cantonment Rent Restrict Act, 1963** and not in the court of Special Judge (Rent) , appointed under the Punjab Rented Premises Act, 2009. ..'

& that of *Habib Masih and another* 2003 YLR 1245 wherein it is reaffirmed as:-

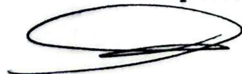
> "It may also be observed that the very title of the ejectment petition filed by respondent No.1 is indicative of the fact that the property was situated within the cantonment limits of Lahore to which Cantonment Rent Restrict Act, 1963 , is applicable and the learned Additional Controller, Cantonment Board, Lahore , could only exercise jurisdiction under the law..."

In the case of *Zaheer Arshad v. Federation of Pakistan* PLD 2018 Lahore 19 also came into notice whereby while referring to directives, given in the case of *Ghulam Mustafa Bughio* supra, the Section 6 of the Act has been declared as violative while observing as:

> "4. In view of what has been discussed above, it is clear that representatives from executive are performing judicial functions in the Courts of Controller of Rents constituted under the provisions of the Act, which is in negation of Article 175(3) of the Constitution of Islamic Republic of Pakistan, 1973 providing complete separation of judiciary from executive. The enabling provision of appointment of Contrller of Rents i.e Section 6 of the Act, thus, is declared as violative to Article 175(34) of The Constitution of Islamic Republic of Pakistan, 1973 and the concept of independence of judiciary from exective."

with further direction as:

> "5. The Federal Government is directed to take appropriate measures to bring the provisions of the Act in conformity with the Constitution and the findings already arrived at by the Superior Courts **within a period of next six months** and either the appointment as Controller of Rents in view of Section 6 of the Act be made from amongst the persons having legal knowledge and skill with the consultation of the concerned Chief Justices of the Provincial High Courts or such judicial powers within the meaning of Section 6 of the Act be directed to be performed by the Civil Judges already performing their duties as Special Judges Rent (in



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> Punjab) and Rent Controllers in other Provinces under Urban Rent Laws."

The said *judgment* even is dated 29th August, 2017 hence it would not prejudice the proceedings, conducted by the lower forum, prior to date of such decision even rather same are protected within meaning of Section-6 (e) of the General Clauses Act.

9. In view of above, I am of the clear view that proceedings were rightly entertained and decided by the learned Additional Controller of Rents as subject matter is *undisputedly* falling within area of the *Cantonment.*

10. Reverting to other *plea (s),* taken by the learned counsel for the appellant, with reference to merits of the case, I would say that it is the case of the appellant *himself* that he (appellant) was put in possession of *subject* matter as **'tenant'** in the year 2006; tenancy agreement was renewed upto 2008 but in year 2009 he (appellant) entered into an agreement of *sale* so stopped paying the rent who (appellant) *even* has filed a suit for Specific Performance of Contract against the respondent.

Before going into details, it would be significant to say that there is a *marked* distinction in between the jurisdiction of a **Rent Controller** and that of a **Civil Court.** The **Rent Controller** legally cannot go into details of status of any *document* nor can decide status thereof except that of ***tenancy.*** The *domain* of the Rent Controller is confined to rights and liabilities of *two* i.e landlord and tenant which *however* shall never include determination of any rights and liabilities, arising out of an *agreement* to sell which could only be enforced through a competent Civil Court. The moment a *tenant*

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deliberates to part with his status of *tenant* while choosing to claim himself as *purchaser* under an agreement, his all rights would be subject to legal enforcement of such *document* only. A *sale* agreement is not a title document but at the most grants a right to sue for such title as well rights, arising out of such agreement therefore, the deliberation on part of the ***tenant*** in raising such ***plea*** in rent matters was *seriously* taken note of by Apex Court and by now following *principles* have now been settled in response to such plea which are:-

> i) the relationship of landlord and tenant would be deemed to be *existing;*
>
> ii) the moment a *tenant* (who admits his entry as *tenant)* , if takes plea of *subsequent* purchaser, would be required to hand over possession to landlord *first*, if Rent Controller so directs, and then to seek all rights, arising out of sale agreement, including that of **possession';**
>
> iii) the pendency of civil suit for Specific Performance of contract would not be a ground to delay or postpone the rent proceedings;
>
> iv) the *controversy* arising out of such sale agreement is better to leave open to be answered by Civil Court.

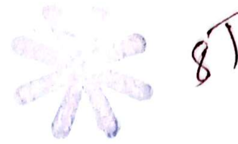
Guidance is taken from the following cases:-

Haji Jumma Khan v. Haji Zarin Khan PLD 1999 SC 1101.

> 6. ... Therefore, till the time that petitioner is able to establish his claim for specific performance on the basis of alleged sale-agreement , **respondent-landlord would continue to enjoy the status of being owner and landlord of the premises**. Relationship between the parties till such time would be regulated by the terms of tenancy. ...

Syed Imran Ahmed v. Bilal & Ors PLD 2009 SC 546

> "5. It is principle too well established by now that a sale agreement did not itself create any interest even a



charge on the property in dispute that unlike the law in England, the law in Pakistan did not recognize any distinction between the legal and equitable estates, that a sale agreement did not confer any title on the person in whose favour such an agreement was executed and in fact it only granted him the right to sue for such a title and further that such an agreement did not affect the rights of any third party involved in the matter. It may be added that till such time that a person suing for ownership of a property obtains a decree for specific performance in his favour, such a person cannot be heard to deny the title of the landlord or to deprive the landlord of any benefits accruing to him or arising out of the property which is the subject-matter of the litigation. Postponing the ejectment proceedings to await the final outcome of a suit for specific performance would be causing serious prejudice to a landlord and such a practice, if approved by this Court, would only give a license to un-scrupulous tenants **to defeat the interests of the landlords** who may be filing suits for specific performance only to **delay the inevitable and to throw spanners in the wheels of law and justice**.

Abdul Rasheed v. Maqbool Ahmed & others 2011 SCMR 320

5. ... It is settled law that where in a case filed for eviction of the tenant by the landlord, the former takes up a position that he has purchased the property and hence is no more a tenant then he has to vacate the property and **file a suit for specific performance of the sale agreement whereafter he would be given easy access to the premises in case he prevails**....... Consequently, the relationship in so far as the jurisdiction of the Rent Controller is concerned stood established because per settled law the question of title to the property could never be decided by the Rent Controller. In the tentative rent order the learned Rent Controller has carried out such summary exercise and decided the relationship between the parties to exists.

Muhammad Nisar v. Izhar Ahmed Sheikh & Ors. PLD 2014 SC 347

"6. ... In our opinion such averment cannot displace the law itself since per section 2(j) of the Sindh Rented Premises Ordinance, 1979 each legal heir of the tenant after his demise becomes a tenant and consequently the learned lower forum below have correctly held that there was a relationship of landlord and tenant between the parties. **Per settled in such circumstances when the tenant puts up a plea in an ejectment application that he had purchased the property then he has to file a suit for his remedies (which has already been done) and vacate the premises and thereafter if he succeeds he would be entitled to take possession of the premises again....**"

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In the instant matter, it is *prima facie* evident that appellant admits his entry into subject matter as ***tenant*** and then he claims to have purchased the same through an agreement to sell, therefore, the binding effects of above enunciated principles of law are sufficient for *eviction* of the appellant from subject matter *first* while leaving it open for the appellant to continue pressing his rights before proper forum. Further, since the four-lines of appellate jurisdiction of *Rent Controller* also does not permit to make any comments onto evidences and documents, so brought on record by the appellant, with reference to his plea of *purchaser* as same would prejudice the case of either parties. Such domain *even* otherwise is not legally available with Rent Controller or its appellate authority.

Further, since it is not a matter of dispute that the appellant had stopped payment of the rent in year 2009 under his *undetermined* status of purchaser which *act* alone is sufficient for stamping the order of ejectment of the appellant from the subject matter.

11. In consequence to what has been discussed above, I find no illegality in the order *impugned* which is accordingly maintained. In consequence thereof the appeal in hand is hereby dismissed.

JUDGE 20/3/2018

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Announced by me

22.3.2018

Muhammad Saleem Jessar, J.