

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
C.P.No.D-5334 of 2018

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| Date | Order with signature of Judge |
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Present

Mr. Justice Muhammad Ali Mazhar
Mr. Justice Agha Faisal

Mrs. Shamim Mumtaz.....Petitioner

V E R S U S

Mrs. Zeenat Umer & others.....Respondents

Date of Hearing: 01.03.2019

Mr. M. Aziz Khan, Advocate for the Petitioner.

None present for the Respondent No.1.

Mr. Ishrat Zahid Alvi, Assistant Attorney General.

Muhammad Ali Mazhar, J: The petitioner has brought this Constitution Petition with the following prayers:

- a. To issued writ in the nature of mandamus by restraining executive authorities, officers from performing judicial function in the Court of Controller/Additional Controller of Rent in Court constituted under the provision Section 6 of the Cantonment Act, 1963 is in negotiation of article 175 (3) of the Constitution of Islamic Republic of Pakistan 1973. Further hold that the order dated 05.10.2017 and 10.07.2018 are void ab-initio and contrary to decision of Supreme Court of Pakistan as well as High Court reported from 1996 to 2018 and to set-aside the same.
- b. To issue directions to the Federation of Pakistan to appoint Special Judge/Controller of rent in accordance with Article 175 (3) of the Constitution of Islamic Republic of Pakistan 1973 in Sindh as well as in other Province of Pakistan as directed in judgment reported 2006 SCMR 145 & PLD 2018 L-19.
- c. Any other relief/relives this Hon'ble Court may be deem fit and proper in the circumstances, of the case in the interest of justice.”

2. The brief facts of the case are that the respondent No.1 filed Rent Case No.80/2016 under the provisions of the Cantonments Rent Restriction Act, 1963 for the ejectment of the petitioner. The ejectment application was allowed vide order dated 05.10.2017 thereafter the petitioner filed First Rent Appeal No.47/2017 in this court which was also disposed of by consent vide order dated 27.07.2018. The execution application No.07/2018 was allowed on 10.07.2018 by the Court of IVth Rent Controller, Karachi-South. The learned counsel for the petitioner argued that the respondent No.3 has no authority to execute the order dated 05.10.2017 passed by the respondent No.2 whose appointment was made under Section 6 of the Cantonments Rent Restriction Act, 1963 whereby the Federal Government for the purposes of the said Act by the notification in the official Gazette, may appoint a person to be the Controller of Rents for one or more cantonments and under Sub-Section (2) the Federal Government may also appoint a person to be the Additional Controller of Rents for one or more cantonments. He further argued that under Sub-Article (3) of Article 175 of the Constitution of the Islamic Republic of Pakistan, it is clearly provided that the Judiciary shall be separated progressively from the Executive within fourteen years from the commencing day. He further referred to the judgment passed by the hon'ble Supreme Court in the case of **Ghulam Mustafa Bughio vs. Additional Controller of Rents, Clifton (2006 SCMR 145)** and judgment of the Lahore High Court in the case of **Malik Zaheer Arshad vs. Federation of Pakistan (PLD 2018 Lahore 19)**. The learned counsel prayed that the order passed by the Rent Controller and the order passed in the execution application by the Senior Civil Judge are void ab-initio and contrary to the decision of the hon'ble Supreme Court as well as the Lahore High Court, therefore, he prays that both the orders be set aside.

3. This matter was fixed on 07.08.2018 when the controversy raised in this petition was jot down by the Division Bench. Despite pendency of the appeal, the counsel for the petitioner requested to the court for some restraining order not to evict the petitioner in view of the ejectment order and the order allowing the execution application by the learned Senior Civil Judge, however, after arguing at some length, he agreed that so far as the ejectment order passed by the Additional Rent Controller in Rent Case No.80/2016 is concerned, the said order has already been challenged in First Rent Appeal and for the time being he did not press CMA No.23201/2018. On this statement the stay application was dismissed as not pressed. The record reflects that on 05.10.2017, the Additional Rent Controller allowed the application moved under Section 17 (9) of the Cantonments Rent Restriction Act, 1963 and struck off the defence of the opponent with directions to evict the premises within thirty days. The defence was struck off obviously for not complying with the tentative rent order. The learned counsel in court has also produced the certified true copy of the order dated 27.07.2018 passed by the learned single Judge of this court in First Rent Appeal No.47/2017. For the ease of reference, this order is reproduced as under:

“27.07.2018

1-3]. After hearing learned counsel for the parties to some extent, by consent, the instant FRA stands disposed of in the following terms:-

ij]. The Appellant/Tenant besides ready and willing to surrender the tenancy rights hereby gives an undertaking that she shall hand-over physical ‘peaceful vacant possession’ of the ‘demised premises’ viz. rear portion of Bungalow No.2-A/I, 13th South Street, Phase-II, DHA, Karachi to Respondent/Landlady on or before 01.03.2019, as agreed today between the parties.

ii]. The Appellant/Tenant shall continue to clear utilities bills and also pay the agreed rent regularly as being paid at presently until the ‘physical vacant peaceful possession’ of the ‘demised premises’ is handed-over to the Respondent/Landlady. The copies of the paid bills regarding utilities and rent shall need to be provided/furnished to the Respondent/Landlady, as well as, to the concerned learned Rent Controller.

iii]. Respondent/Landlady during the agreed period commencing from 27.07.2018 and ending on 01.03.2019, shall not dis-continue the facilities of the 'demised premises'.

iv]. The Appellant/Tenant, if, however, commits any default in payment of rent and utilities bills then, this concession of the agreed period commencing from 27.07.2018 and ending on 01.03.2019, shall not be available, to the Appellant/Tenant and in such eventuality, the concerned executing court is to issue 'writ of possession' against the Appellant/Tenant immediately, with Police aid and break open of locks order and that too without notice.

v]. Upon ending of the agreed period w.e.f. 27.07.2018 to 01.03.2019, the possession and keys of the 'demised premises' shall be handed over by the Appellant/Tenant to the concerned executing court of its' onward transmission/handing-over to the Respondent/Landlady and not to anyone and anywhere else. In case of any default/non-compliance, 'writ of possession' with Police aid and break-open of locks order shall be issued by the concerned executing court, immediately without any notice.

The instant FRA stands 'disposed of' in the above terms alongwith all listed application[s]."

4. Another order dated 22.02.2019 is also attached which shows that in the First Rent Appeal which was disposed of by consent, the same petitioner filed another application but again the learned single Judge vide order dated 22.02.2019 dismissed the application with the following order:

"22.02.2019

Heard learned counsel for the Appellant.

Admittedly, appellant alongwith his counsel was present on 27.07.2018, on which, by consent instant FRA was disposed of, hence, the learned counsel for the appellant has failed to point out any illegality in the impugned order. Accordingly, listed applications are dismissed."

5. When we asked the question to the learned counsel for the petitioner that in the Rent Appeal the appellant/tenant, who is the petitioner in this case gave the consent and assurance that she will vacate the rented premises on or before 01.03.2019, the

learned counsel gave a simple statement that no such consent was given but the order reflects not only the presence of the said learned counsel, who is representing the petitioner here but the appellant was also present which is clearly manifesting from the appellate order. Even otherwise this question cannot be raised in this petition which was confined to the appellate jurisdiction where such plea could have been taken which obviously seems to be an afterthought and misconceived. In the case of **Ghulam Mustafa Bughio vs. Additional Controller of Rents, Clifton (2006 SCMR 145)**, the petitioner in that case applied for leave to appeal against the Sindh High Court judgment dated 22.08.2005 passed in F.R.A. No.2/2005 under the provisions of Section 24 of the Cantonments Rent Restriction Act, 1963. While dismissing the petition with costs, the hon'ble Supreme Court in the context which is presently in issue before us, 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.”

6. The similar question was also raised before the learned Lahore High Court in the case of **Malik Zaheer Arshad vs. Federation of Pakistan (PLD 2018 Lahore 19)** and the learned single Judge also relied on the case of **Ghulam Mustafa Bughio** (supra) and held in paragraph 5 of the judgment as under:

“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 Punjab) and Rent Controllers in other Provinces under Urban Rent Laws.”

7. On 22.01.2019, the learned Assistant Attorney General sought time to prepare the brief and he also communicated us that according to his information the judgment of the Lahore High Court (supra) has been challenged in the Supreme Court but he could not inform us today as to whether the judgment of the Lahore High Court is under challenge in the Supreme Court or not.

8. What we have perceived from the intention of the petitioner from this petition is that once she failed to comply with the tentative rent order, as a consequence her defence was struck off by the Rent Controller thereafter she filed First Rent Appeal in this court which was also disposed of by consent and she gave an undertaking that she will vacate the rented premises on or before 01.03.2019. When on 01.03.2019, the time was due to evict, the counsel for the petitioner filed urgent application yesterday, so we fixed the matter for today so that he may argue the petition.

9. It appears from overall situation that basic interest is just to get the interim orders so that the earlier orders passed in the hierarchy of Rent Laws jurisdictions may be frustrated. The issue has already been discussed by the hon'ble Supreme Court and certain directions have already been given and even Lahore High Court judgment also speaks of the same terms as the judgment of the hon'ble Supreme Court (supra) reflects. Even otherwise the observations given by the hon'ble Supreme Court in the case of **Ghulam Mustafa Bughio** (supra) are already in field in which the Government has to take steps for amendment in the provisions of the Act, 1963 providing for appointment of Judicial Officers as Controller and Additional Controller of Rent

under Section 6 of the Act, 1963, therefore, no further directions are required in this constitution petition.

10. We dismissed this petition in limine through our short order passed today. Above are the reasons.

The copy of this judgment may be transmitted to the Attorney General of Pakistan as well as the Federation of Pakistan through Ministry of Law, Justice & Parliamentary Affairs, Islamabad so that further steps may be taken by concerned quarters in compliance of the Supreme Court judgment.

Judge

Judge

Asif