

JUDGMENT SHEET
IN THE LAHORE HIGH COURT
RAWALPINDI BENCH RAWALPINDI
JUDICIAL DEPARTMENT

Writ Petition No.110 of 2010.

(Aftab Ahmad Raja vs. Malik Faizullah Khan Afridi, etc.)

J U D G M E N T.

Date of hearing	<u>24.03.2011</u>
Petitioner by	<u>Mr. Mujeebur Rehman Kiani,</u> <u>Advocate.</u>
Respondent No.1 by	<u>Mr. Muhammad Ilyas Sheikh,</u> <u>Advocate.</u>

NASIR SAEED SHEIKH, J.- This judgment will dispose of five connected Writ Petitions No.110, 111, 137,138 and 382, all of the year 2010. In all the writ petitions, proceedings for the ejectment of the writ petitioners/tenants, were instituted by one and the same private respondent Malik Faiz Ullah Khan Afridi. The subject matter of the ejectment proceedings are the shops/rooms forming part of one and the same building No.A-67-A & B situated at Rehman Abad Murree Road, Rawalpindi which is a multi storey building. All the ejectment petitions were instituted by the private respondent Malik Faiz Ullah Khan Afridi under Punjab Rented Ordinance, 2007 on 3.06.2008 against the Writ Petitioners/tenants in respect of the respective portions/rooms in possession of the petitioners. In all the ejectment petitions, the private respondent sought the ejectment of the tenants/Writ Petitioners on the ground that he has purchased the subject property bearing No. A-67-A & B, Khewat No.45, Khatooni No.51, Khasra

Nos.2216/889/39/2 measuring 10 marlas situated at Rehman Abad Murree, Road, Rawalpindi vide registered sale deed dated 18.01.2008 which is a multi storey building and that the petitioners/tenants were occupying different portions as shops/rooms of the said building at the time of purchase of the subject property by the private respondent and that their respective lease/tenancy agreements with the previous owner had expired on 31.05.2008. The private respondent/landlord thus alleged that after the purchase of the property by him, he has shown to the tenants/Writ Petitioners his registered sale deed and asked them to pay the rent to him. The respondent/landlord further alleged that the property is in a dilapidated condition and is not suitable for safe human use and as the landlord/respondent did not want to further extend the tenancy of the Writ Petitioners/tenants, therefore, the learned Special Judge (Rent Tribunal, Rawalpindi) was moved for the grant of ejectment orders against the petitioners/tenants primarily on the ground of expiry of the previously existing tenancy of the tenants.

2. The writ petitioners/tenants moved separate applications for leave to contest the ejectment petitions as per requirement of Section-22 of the Ordinance XX1 of 2007. All the tenants/Writ Petitioners admitted their status as tenants in respect of their respectively possessed portions of the building in question. The petitioners/tenants raised objections to the maintainability of the ejectment petitions by contending that although the tenancy period originally fixed with the previous owner of the building in question had expired,

yet, the landlord/respondent had not complied with the provisions of Section-8 and 9 of the Punjab Rented Premises Ordinance of 2007, therefore, the ejectment petitions were not maintainable. All the contentions raised by the landlord/private respondent in the ejectment petitions were denied to be available to him for seeking the ejectment of the Writ Petitioners/tenants and the ejectment petitions were prayed to be dismissed. In all the ejectment petitions, following common issues were framed by the learned Rent Tribunal:-

1. *Whether initially lease agreement has expired? OPP.*
2. *Whether the respondent is willfully rent defaulter? OPP.*
3. *Whether this Court lacks jurisdiction to entertain this application? OPR.*
4. *Whether this petition is not maintainable and liable to be dismissed with costs? OPR.*
5. *Relief.*

3. The parties produced their respective evidence in all the ejectment petitions separately. The learned Special Judge Rent Tribunal, Rawalpindi accepted the ejectment petitions and passed separate ejectment orders dated 04.03.2009 in all the ejectment petitions.

4. Five appeals were preferred by the petitioners against the ejectment orders dated 04.03.2009, which appeals have also been dismissed by the learned Additional District Judge, Rawalpindi vide judgment dated 17.12.2009.

5. Through the instant writ petitions, all the ejectment orders as well as the appellate orders passed in the matter separately of the even date have been assailed.

6. All the five Writ Petitions have been fixed together for hearing, as these pertain to different portions of the same building and the private respondent/landlord is the same and the common questions of law of interpretation of Sections-8 and 9 of Punjab Rented Premises Ordinance, 2007 which later on has been legislated as Punjab Rented Premises Act, 2009 are involved, hence, all the Writ Petitions are being decided together through the instant consolidated judgment by me.

7. The learned counsel for the petitioners has argued that under the new rent law, first legislated on 16.11.2007 enforced through the Punjab Rented Premises Ordinance No.XX1 of 2007, the provisions of Sections- 9 of the Ordinance do not create an absolute right in favour of a landlord to seek the ejection of the tenants occupying the premises under an existing tenancy unless and until, the landlord conforms to the requirements of Sections 9 of the Ordinance of 2007/Act No.VII of 2009 which called upon a landlord to first deposit a fine of 10% of the annual value of rent of the premises in question in the Government treasury. The learned counsel for the petitioners argued that in order to avail of the substantive provisions of Section-8 of the said Ordinance in respect of existing tenancy, a grace period of two years has been allowed both to the landlord as well as to the tenant to bring the terms and conditions of the tenancy in-conformity with the provisions of the Ordinance/Act and that even after the expiry of the period of tenancy, both landlord as well as the tenant are obliged to enter into a fresh tenancy agreement keeping in view the provisions of Sections-5 and 6 of the Punjab Rented Premises Ordinance of 2007/ Act of 2009 and it

is only then an ejectment petition can be filed by the landlord for the ejectment of the tenant under the new rent law. As far as the ejectment orders passed by the learned Special Judge Rent Tribunal against the tenants/Writ Petitioners are concerned, the learned counsel has argued that the learned Special Judge Rent Tribunal as well as the learned Additional District Judge have mis-construed the above provisions of the Ordinance of 2007, in order to hold the ejectment petitions moved by the private respondent/landlord as maintainable. The learned counsel for the petitioners has submitted that the provisions of Section-9 of Punjab Rented Premises Ordinance of 2007 render the ejectment petitions incompetent on account of non-compliance by the landlord with the provisions of Section 9(b) of the Ordinance of 2007/Act of 2009 and in this respect reliance has been placed on PLD 2009 Lahore 429. The learned counsel thus prayed for the acceptance of all the instant Writ Petitions and the setting aside of the orders passed by the two forums below.

8. Conversely, the learned counsel for the private respondent/landlord has contended that the provisions of Section 9 Clause (a) and (b) cannot be termed to be of an absolute nature rendering the ejectment petitions as incompetent. The learned counsel has referred to an unreported judgment passed by the Hon'ble Supreme Court of Pakistan in C.P No.157/2010, whereby, it has been held that non-compliance with the provisions of Section-9 of the Ordinance does not render the ejectment petition as incompetent and the Hon'ble Supreme Court of Pakistan approved the judgment dated 01.12.2009

passed by a learned Single Judge of this Court in Writ Petition No.2432 of 2009, whereby, it was held that an ejectment petition cannot be held to be incompetent merely because the landlord does not comply with the provisions of Section-9(b) of making a prior deposit of fine equivalent to 10% of the annual value of the rent of the premises in the government treasury. The learned counsel has referred to another unreported judgment passed in Writ Petition No.996 of 2009 dated 25.06.2009 by a learned Single Bench of this Court, wherein a landlord was allowed to comply with the provisions of Section 9(b) even at Appellate stage and it was held by the learned Single Judge that it is a sufficient compliance with the provisions of Section 9(b) of the Ordinance of 2007. The learned counsel for the respondent thus argued that the ejectment petitions were maintainable and in the instant case, the learned Additional District Judge/First Appellate Authority allowed the respondent to make the deposit of 10% penalty at the appellate stage within twenty days of passing of the order dated 17.12.2009 while recording his findings on issue No.4 and the learned First Appellate Court held that non-deposit of the penalty in the period specified will render the ejectment petition liable to be dismissed. I have been informed by the learned counsel for the respondent that this direction of the learned Additional District Judge has been complied with. The learned counsel for the respondent has thus prayed for the dismissal of all the Writ Petitions.

9. I have considered the arguments of the learned counsel for the parties and have perused the reported

judgment PLD 2009 Lahore 429 referred to by the learned counsel for the petitioner and the copies of unreported judgments produced by the learned counsel for the respondent.

10. In view of the law as laid down by the Hon'ble Supreme Court of Pakistan in an unreported judgment dated 29.04.2010 passed in CP No.157/2010, whereby, the judgment announced by a learned Single Bench of this Court in W.P No.2432 dated 1.12.2009 holding that non-compliance with the provisions of Section 9(b) of the Punjab Rented Ordinance, 2007 does not render the ejectment petition incompetent, the law on the subject has been settled down by the Hon'ble Supreme Court of Pakistan and following paragraph No.3 of the said judgment is reproduced as under:-

“Learned counsel contended that ejectment application was not competent under section 9 of the Punjab Rent Restriction Ordinance, 2007 unless the landlord deposited a fine equivalent to ten percent of the annual value of the premises in the Government treasury as according to him section 5 of the Ordinance was violated, therefore, section 9 was applicable. This aspect of the case has been attended to by the learned High Court in the impugned judgment as follows:-

“6. It is not denied that the shop in dispute was previously owned by the previous landlord and the present petitioner was a tenant under him. The said shop was purchased by the present respondents No.3 and 4 on 18.06.2008 and the relationship of landlord and tenant is admitted between the parties. The Punjab Rented Premises Ordinance, 2007 came into force on 16.11.2007. It is pertinent to mention Section 8 of the said Ordinance which is reproduced as under for convenience:-

“An existing landlord and tenant shall as soon as possible, but not later than two years from the date of coming into force of this Ordinance, bring the tenancy in conformity with the provisions of this Ordinance”.

For further convenience Section 9 of the said Ordinance is also reproduced as under:-

Section 9 Effect of non-compliance

“If a tenancy does not conform to the provisions of this Ordinance, the Rent Tribunal shall not entertain an application under this Ordinance:-

- a. On behalf of the tenant, unless he deposits a fine equivalent to 5% of the annual value of the rent of the premises in the Government Treasury; and*
- b. On behalf of landlord, unless he deposits a fine equivalent to 10% of the annual value of the rent of the premises in the government treasury”*

“The perusal of Section 8 clearly shows that if the tenancy was in existence, as is in the present case as all the petitioners were tenants under the previous landlord, then, a maximum period of two years was provided to the parties to bring the tenancy in conformity with the provisions of the new Ordinance. This period of two years was to lapse on 16.11.2009. However, the present ejectment petition was filed on 23.04.2009 i.e. prior to the expiry of the said period of two years. The embargo of Section 9(b) is only operative after 16.11.2009. If the ejectment petition had been filed after 16.11.2009, then, Section-9 would have come into operation and the learned Rent Tribunal was not competent to entertain the application without imposing the fine as provided in Section-8. There is wisdom behind the legislation of Section-8 of the Ordinance. In case of existing tenancy for the sake of arguments, if a tenant does not agree for the registration of a new agreement of tenancy as provided under section 5 of the said Ordinance, then, the landlord would be debarred to file the petition for ever in case a tenancy is not registered because the tenant does not agree to it and without the registration, the landlord cannot come to the Court until and unless, he pays the penalty. It is apparently due to this reason that Section-8 of the Ordinance was inserted in order to give the maximum period of two years to the parties to bring the tenancy in conformity with the provisions of the said Ordinance”.

11. The Hon'ble Supreme Court further in the un-reported judgment laid down the following principle of law with respect to the interpretation of Sections 8 and 9 of the Punjab Rented Premises Ordinance, 2007 and extract of para-4 of the judgment is reproduced as under:-

“In this behalf it is to be noted that we have gone through the pleadings of the parties and find that there is no denial on the part of the petitioner in respect of accepting the respondents as landlord, meaning thereby that the ownership of the respondents was not denied. Now coming to the provisions of Section-8 of the Ordinance, where the words “ an existing landlord” have been used, it is to be seen that in absence of any denial in respect of the ownership of the respondents, it would be deemed that the relationship exists between the parties and the petitioner would be deemed to be a tenant in the premises, therefore, he was under obligation to deposit the rent within the period agreed. This aspect of the case has been considered by the Rent Controller in its judgment dated 23.05.2009 and has been affirmed by the First Appellate Court as well as by the High Court, therefore, contention of the learned counsel that without adhering to the provisions of Section-9 of the Ordinance, Ejectment Application was not competent, is without force”.

12. In the present case, the learned first appellate Court while recording its finding on issue No.4 observed as follows in the judgment dated 17.12.2009:-

“This issue relates to non-maintainability of ejectment petition and non imposition of penalty has not been taken ground for maintainability of the petition, as I have already discussed above that the period of two years have not expired for bringing the tenancy in conformity with the Rented Premises Ordinance and according to decision of Hon’ble High Court in the above said unreported judgment, this defect is curable, therefore, respondent is provided 20 days time from date of passing of this order to deposit penalty equal to 10% under Rented Premises Ordinance in the treasury, otherwise, the ejectment petition will be deemed to have been dismissed”

13. A learned Single Judge of this Court in another unreported judgment dated 25.06.2009 passed in Writ Petition No.996 of 2009, referred to in the above para by the learned Additional District Judge, laid down as follows:-

“As far as the powers of Appellate Court qua the deposit of rent are concerned, Section 28 of the Ordinance, 2007 takes care of the same, because under Section 28(6) of the Ordinance, 2007, the appellate court exercises the similar powers as are available to the rent controller, therefore, the first appellate court clearly has authority to direct a delinquent tenant to deposit rent, as such the direction

issued in this regard was in consonance with law and no exception can be taken to the same".

14. Admittedly, the private respondent has complied with the above deposit order; therefore, the objection of the learned counsel for the petitioners about non-maintainability of the ejectment petitions on the ground of non-compliance with Section-9(b) of the Punjab Rented Ordinance of 2007 loses its force and is repelled. The judgment relied upon by the learned counsel for the petitioner PLD 2009 Lahore 429 has no binding effect in view of the judgment passed by the Hon'ble Supreme Court of Pakistan.

15. The subject matter of the instant Writ Petitions does not simply come to an end in view of the above settled exposition of law. The question really now called upon is as to how the provisions of Sections 5,6 read with Section-8 of the Ordinance of 2007/Act of 2009 are to be interpreted, so as to create a harmonious situation for both the parties i.e. landlord and the tenant. Section 5,6 and 8 of the Ordinance of 2007/Punjab Rented Premises Act, 2009 are reproduced below:-

"Section-5 Agreement between landlord and tenant:-

1. *A landlord shall not let out a premises to a tenant except by a tenancy agreement.*
2. *A landlord shall present the tenancy agreement before the Rent Registrar.*
3. *The Rent Registrar shall enter the particulars of the tenancy in a register, affix his office seal on the tenancy agreement, retain a copy thereof and return the original tenancy agreement to the landlord.*
4. *The entry of particulars of the tenancy shall not absolve the landlord or the tenant of their liability to register the tenancy agreement under the law relating to registration of documents.*

5. *A tenancy agreement entered in the office of a Rent Registrar or a certified copy thereof shall be a proof of the relationship of landlord and tenant.*
6. *Any agreement which may be executed between the landlord and the tenant in respect of the premises shall be presented before the Rent Registrar in the same manner as provided in Sub-Section (2).*

Section-6:- Contents of tenancy agreement:-

- (1) *A tenancy agreement shall contain as far as possibly the following:-*
 - (a) *particulars of the landlord and the tenant;*
 - (b) *description of the premises;*
 - (c) *period of the tenancy;*
 - (d) *rate of rent, rate of enhancement, due date and mode of payment of rent;*
 - (e) *particulars of the bank account of the landlord, if the rate is to be paid through a bank.*
 - (f) *The purpose for which the premises is let out; and*
 - (g) *Amount of advance rent, security or pagri, if any.*

(2) if the tenure of the tenancy is fixed, but a rent is fixed only for a part of tenure, in the absence of any stipulation to the contrary in the tenancy agreement, the rent shall be deemed to remain the same for the whole of the tenure”.

Section-8 *“ An existing landlord and tenant shall as soon as possible, but not later than two years from the date of coming into force of this Ordinance, bring the tenancy in conformity with the provisions of this Ordinance”.*

16. In the instant case, all the five writ petitioners admitted the existence of relationship of landlord and tenant in respect of the portions of the building in question respectively possessed by them and this relationship existed prior to the purchase of the subject property by the private respondent on 18.01.2008. Only one of the tenants/Writ Petitioners Aftab Ahmad Raja of W.P.No.110 of 2010 claimed the existence of a written

agreement of tenancy with the previous owner, whereas, four of the Writ Petitioners claimed the existence of oral tenancy with the previous owner. In any case, even the written agreement of tenancy claimed in respect of the writ petitioner Aftab Ahmad Raja has not been produced by either of the parties. The private respondent claimed that whatever be the nature, written or oral forming the basis of tenancy with the previous owner of the premises in question it was attorned to and accepted by the new owner i.e., the private respondent of the Writ Petitions, and it was alleged by him that the tenancy with all the Writ Petitioners has expired as per claim of the private respondent on 31.05.2008. The question arises as to whether a written agreement of tenancy exists or is claimed by the parties or was there an unwritten tenancy prevails when the Ordinance XXI of 2007 was enforced on 16.11.2007, what is the effect of the new rent law upon the existing tenancy. It is in both the situation that Section-8 of the Ordinance of 2007/Act of 2009 comes into operation.

17. The provisions incorporated in Section-8 are meant to be utilized for the benefit of both the landlord as well as the tenant. The provisions of Section-8 create a grace period of two years for both the parties for bringing the tenancy in conformity with the provisions of this Act. It is understood that if the parties are governed by a written agreement of tenancy and it expires or if there is unwritten tenancy between the parties and is to be considered on months to months basis, then, the period of two years has to play a vital role in both the cases from the date of enforcement of the Ordinance, XXI of 2007,

which date is 16.11.2007. Both the landlord as well as the tenant have been allowed a period of two years to get their terms and conditions settled in between them keeping in view the provisions of Sections 5 and 6 of the Ordinance of 2007/ Act of 2009. It means that the landlord as well as the tenant can bring their relationship in conformity with the provisions of the new rent law in maximum of two years time as envisaged by the provisions of Section-8 of the said Ordinance. Unless and until the parties fail to do the needful, and a period of two years as fixed in the Ordinance expires, an ejectment petition though can be instituted but cannot be allowed in favour of the landlord simply on the ground that the tenancy period during the interregnum period of two years has expired as the tenant can till the end of the prescribed period call upon the landlord to enter into a tenancy agreement complying with the provisions of Sections 5 and 6 of the Ordinance of 2007. The law is to be interpreted in such a manner as to create a harmonious situation for both the parties governed by it. Let us suppose that a landlord of an existing tenancy claims that there was a written tenancy agreement and it expired after 16.11.2007 but before the expiry of two years mentioned in Section 8, and the landlord claims that after the expiry of the written agreement of tenancy, the tenancy between the parties is to be treated on months to months basis and that on the expiry of the first month of tenancy, either written or unwritten agreement, the landlord institutes an ejectment petition on the ground that he does not want to further extend the tenancy with his tenant and seeks his ejectment after the expiry of the first month of tenancy as per the

Ordinance of 2007/Act of 2009, would such a situation not create an undue advantage for such a landlord vis-à-vis his tenant and would not render the provisions contained in Section-8 of the Ordinance as redundant and nugatory. The simple answer would appear to be in the affirmative.

18. There is a consistent view of the superior courts that an interpretation of law, which renders any provisions of the law redundant or nugatory has never been favoured with. The Hon'ble Supreme Court of Pakistan in a judgment reported as Qaiser Javed Malik vs. Pervaiz Hameed and 2 others (2009 SCMR 846) laid down the following law at page 851 in para 6:-

"It is settled principle of interpretation that the Courts should adopt an interpretation, which may give meanings of each word of an enactment taking into consideration the spirit of such legislation. An interpretation, whereby any portion of an enactment is rendered ineffective is not to be adopted when clear meanings can be given to various provisions of an enactment in a harmonious manner as held by this Court in the cases of Shahid Nabi Malik and another Vs Chief Election Commissioner and 7 others (PLD 1997 SC 32), M Aslam Khaki vs Muhammad Hashim (PLD 2000 SC 225), Hafiz Abdul Waheed V Mrs. Asma Jehangir (PLD 2004 SC 219), D.G Khan Cement Company Limited and others V Federation of Pakistan and others, (2004 SCMR 456) and Shoukat Baig V Shahid Jami (PLD 2005 SC 530)."

19. In such a situation, however, the tenant cannot be allowed a free hand latitude of refusing the payment of rent .Section-7 of the Punjab Rented Premises Ordinance of 2007/Act of 2009 which is reproduced below provides for the payment of rent by the tenant under the new law:-

" Payment of Rent

- (1) *A tenant shall pay or tender the rent to the landlord in the mode and by the date mentioned in the tenancy agreement.*

- (2) *If the date of payment is not mentioned in the tenancy agreement, a tenant shall pay or tender the rent not later than tenth day of the following month.*
- (3) *If the mode of payment is not mentioned in the tenancy agreement, a tenant shall pay or tender the rent to the landlord through money order or deposit in the bank account or the landlord".*

20. The obligations thus created for both the parties under the new law can be enforced by the machinery provided therein except that an ejectment petition solely on the ground of expiry of the period of tenancy cannot be allowed to succeed unless the period of two years provided in Section-8 of the Punjab Rented Premises Ordinance of 2007/Act of 2009 expires. Since Section 4 of the Punjab Rented Premises Ordinance of 2007/Act of 2009 give an overriding effect to the provisions of this new rent law, therefore, the parties of an existing tenancy are obliged to care for the newly created statutory provisions.

21. In the instant case, the period of two years as provided in Section 8 of the Ordinance of 2007 commenced on 16.11.2007 and expired on 15.11.2009, therefore, an ejectment petition can now be validly accepted in favour of the landlord/private respondent on the ground that the period of tenancy has expired without any effort being made by the tenant to get a new tenancy agreement executed with the landlord and the tenant is thus liable to be ejected simply on the said ground as the tenancy in such an eventuality can be treated on month to month basis. The ejectment orders were firstly passed by the learned Rent Tribunal on 4.03.2009, and were upheld by the learned Addl: District Judge on 17.12.2009. It is not argued by the learned

counsel for the petitioners that any of the petitioners have made any attempt for bringing the tenancy in conformity with the provisions of the new rent law during the two years period commencing from 16.11.2007 to 15.11.2009, therefore, in exercise of my writ jurisdiction, I hold that the ejectment orders although passed during the grace period of two years will not be set aside by this Court on account of the conduct of the petitioners, as they did not make any effort for bringing the tenancy in conformity with the provisions of new rent law calling upon the landlord to enter into a written agreement of tenancy complying with the provisions of Sections 5 and 6 of the Punjab Rented Ordinance of 2007 and allowed the grace period as mentioned in Section-8 *ibid* to expire. In this context, the judgment of Hon'ble Supreme Court of Pakistan *Qaiser Javed Malik vs. Pervaiz Hameed and 2 others* (2009 SCMR 846), which although related to the Islamabad Rent Restriction Ordinance of 2001 can be safely relied upon to conclude that after the expiry of period of his tenancy, the tenant does not have an absolute right to remain in possession of the rented premises and a right has been conferred upon the landlord to seek the ejectment of such a tenant on the ground of expiry of the period of tenancy.

22. In view of above, the instant Writ Petitions instituted by the tenants/petitioners are **dismissed** with no order as to costs. The ejectment orders passed by the two courts below are upheld. However, each of the petitioners is allowed a period of two months to vacate his respective portion of the subject-property and hand over the vacant possession to the private respondent

subject to payment of rent as per Section 7 of the Ordinance. This judgment will not debar the private respondent to recover the arrears of rent, if any, from the petitioners through the learned Rent Tribunal by filing independent proceedings.

(NASIR SAEED SHEIKH)
JUDGE

Announced in open Court on 01.04.2011.

JUDGE

APPROVED FOR REPORTING

Abid*