

ORDER SHEET**IN THE LAHORE HIGH COURT, BAHAWALPUR BENCH,
BAHAWALPUR.
JUDICIAL DEPARTMENT****Writ Petition No.4645/2015****Sayed Mohammad Areeb Abdul Khafid Shah Bukhari****VS****Government of the Punjab etc.**

Sr.No. of Order/ Proceeding	Date of Order/ Proceeding	Order with signatures of Judge and that of parties or counsel, where necessary.
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09.05.2017 Sayed Mohammad Areeb Abdul Khafid Shah Bukhari, Advocate (petitioner) in person.
Mr. Muhammad Tahir Saeed Ramay, A.A.G.

Through this writ petition, the petitioner has challenged the order dated 06.01.2015 whereby his application for registration of rent agreement was turned down by the Rent Registrar with the direction to the petitioner to produce any document of ownership of the property.

2. Brief facts of the case are that M/s. Mohammad Ahmad Rehmani etc. being owners of the properties (Nos.411, 411/A, 411/B, 411/1, 490 to 498 and 500/Block-I) upon which shops / Chowbaras (total 85) are constructed to be known as Muhammadia Market in Mohallah Kuhna Kutchery near Jamia Masji Al-Sadiq, Bahawalpur statedly appointed the petitioner as their special attorney to be specifically authorized, entitled and empowered him for letting out the shops and chowbaras on rent and also to obtain afresh rent agreements from the new or existing tenants over all the shops and if need be also to institute suit for the ejectment as well as recovery of the rents etc. That respondents No.5, to 8 hired the shops on rent from the petitioner as landlord and have

executed tenancy agreements respectively. The petitioner moved separate applications to the Rent Registrar, Bahawalpur for registration / incorporating the particulars of the tenancy agreements in the relevant register as required under Section 5 of the Punjab Rent Premises Act, 2009 and also requested for the return of the original tenancy agreements to the petitioner after affixing the official seal on the tenancy agreements by retaining a copy thereof accordingly but learned Rent Tribunal / Ex. Officio Rent Registrar, Bahawalpur for the time being turned down the request and directed the petitioner to produce any sort of proof of ownership qua the property on the next date of hearing. Hence, this writ petition.

3. Petitioner (in person) submits that learned Civil Judge/Rent Tribunal has no jurisdiction to perform/function as Rent Registrar; further submits that Rent Registrar cannot ask for proof regarding the ownership of rented premises in the registration proceeding of the rent agreement, as such, impugned order may be declared as illegal and same may kindly be set aside.

4. Heard. Record perused.

5. In this case, the following questions required to be answered:-

a) Whether Rent Controller/Rent Tribunal established u/s 35 (d) of the Rented Premises Act, 2009 has any jurisdiction to function as a Rent Registrar?

b) Whether the Rent Registrar has the power to require the title document before registration of the rent agreements.

c) Whether the Sr. Civil Judge/Special Judge Rent has the authority/power to entrust the application to any other Special Judge Rent for adjudication/decision?.

Firstly, I perused the Enactments on the subject i.e. the West Pakistan Urban Rent Restriction Ordinance, 1959 was in field before promulgation of the Punjab Urban Rent Registration Ordinance, 2007. Later on, in the year 2009 said Ordinance 2007 was also repealed and the Punjab Rented Premises Act, 2009 was promulgated in the Province of Punjab with the object to remove or minimize the existent flaws in the legislation of Ordinance, 1959 and also to bring it in conformity with the need of time and also to introduce a comprehensive mechanism covering entire aspects relating to the issue of tenancy and the expeditious resolutions.

6. It is most appropriate to elucidate the law on the subject. The Punjab Rented Premises Act, 2009 (to be referred hereinafter as “the Act”) was promulgated on 17.11.2009 to regulate the relationship of landlord and tenant in respect of rented premises and to provide an accelerated mechanism for settlement of disputes, interse the parties in an expeditious and effective manner as well as also to resolve all the ancillary matters such like relationship of landlord and tenant, period of tenancy, particulars of tenancy, rate of rent, mode of Pagri and payment of rent, registration of rent agreement, rights and

obligations of both the landlord and the tenant, forum of resolution of the dispute and procedure before the said forum through proper and obligatory documentation for the benefit of the parties to the agreement of tenancy with clarity of the existence of relationship of landlord and tenant between the parties whereas the West Pakistan Urban Rent Restriction Ordinance, 1959 (repealed) was also aimed at to restrict the exorbitant increase in the rent of rented premises within the limit of urban area and the eviction of tenant therefrom and also to maintain relaxed controls over the other ancillary issue relating to rights and obligations of the parties under the tenancy agreement. The mechanism provided in the Act 2009 is wider and more comprehensive than the repealed Ordinance 1959 where Act 2009 also covers the field of creation of tenancy and has made it obligatory upon the parties to get the rent agreement / deed registered with the Rent Registrar. The Legislators by promulgating of this Act on one hand has permitted the ejection of tenant only on the specified ground and on the other hand, it has also kept in view the interests of the parties. The Act 2009 provides protection to the landlord as well as tenant for sustainable tenancy and expeditious resolution of the disputes relating to the rented premises and it entail the entire mechanism of the tenancy. Status of landlord and tenant, demised premises, registration of rent agreement, rate of rent, mode of payment of rent, right and obligation of parties, mechanism for adjudication of controversy and forum provided for resolution of the dispute, i.e. relationship of the parties to rent agreement, particular of properties and Pagri or

rate of rent, mode of payment of rent etc., object and purpose of tenancy as well as the rights and obligations of the tenant and landlord, determination of default, ejection of tenant etc. at an exclusively established separate forum. Aimed the above Section 5 of the Act is introduced to maintain the record and also minimize the un-necessary rent related litigation. Further, Section 5 of the Act provides mechanism for the registration of the rent agreement in order to streamline the rights and obligations arising out of rent agreement. Further, in the Ordinance of 2007, the power of registration of rent agreement was made available with the Rent Controller which remained temporarily continues with Rent Tribunal established under the Act 2009. It is worth-mentioning here that the Ordinance of 1959 has neither any such provision for registration of rent agreement nor any office of the Rent Registrar was available. All registerable document including the rent deed were got registered at the forum of Registrar established under the Registration Act, 1908. For the first time, with promulgation of Ordinance 2007 the power of mandatory registration of rent agreement was devolved upon the Rent Tribunal who was performing duties as presiding officer of a judicial forum / Rent Tribunal as well as administrative function of being Rent Registrar. The above set up of registration of rent agreement remained continue under Act 2009 with regard to registration of the rent agreement temporarily with the Rent Tribunal till the establishment or appointment of permanent incumbent to the office of Rent Registrar.

7. Under Section 17 (1) of the Act 2009, the Government is competent to appoint a Rent Registrar in a district or an area as it may deem necessary. However, under Section 35 (d) of the Act, the Rent Controller appointed under the repealed Ordinance (Ordinance 2007) was renamed or re-designated as Rent Tribunal and all the pending matter relating to rent stood transferred to the newly established forum for adjudication. Rent Tribunal besides its judicial function, was also competent to exercise and perform the functions as Rent Registrar till the appointment of a permanent Rent Registrar for the district or the specified area. Later on, the Governor of the Punjab vide Notification No.SO (JUDL-III) 4-24/2004 dated 26.01.2012 appointed Deputy District Officer(s) (Registration) in the Punjab as Rent Registrar(s) in their respective area of jurisdiction in terms of Section 17 (1) of the Act. Notification dated 26.01.2012 is as under:-

“NOTIFICATION

No. SO (JUDL-III) 4-24/2004. The Governor of the Punjab is pleased to empower Deputy District Officer (s) (Registration) in the Punjab as Rent Registrar (s) in their respective area of jurisdiction in addition to their own duties in terms of Section-17(1) of the Punjab Rented Premises Act, 2009.

The Rent Registrars, shall perform the following functions:-

- i. The Rent Registrar shall maintain a Register to enter particulars of tenancy agreement, agreement to sell or any other agreement in respect of rented premises.
- ii. Rent Registrar shall ensure adherence to provisions of Punjab Rented Premises Act, 2009.”

With issuance of afore-quoted notification and the establishment the office as well as appointment of the Rent Registrar all the delegated power to the Rent Tribunal who was function as Rent Registrar stood withdrawn whereafter they are not vested with any jurisdiction or power to register any rent agreement.

8. Now coming to the next point as to whether the Rent Registrar has the power to require the title document from the landlord. It is appropriate to understand the legal meaning of word 'landlord' before entering into the field of registration of rent agreement. The word "Landlord" is defined in Section 2 (d) in the Act, 2009 which is reproduced as under:-

"Landlord" means the owner of premises and includes a person for the time being entitled or authorized to receive rent in respect of the premises"

From the plain reading of the language of the afore-quoted provision of law, three significant expression of a landlord has been described firstly, a landlord should be the owner of the property, secondly a person who has been declared entitle through a legal adjudication and thirdly an agent duly authorized person by the owner as entitled to receive the rent shall be considered as landlord.

9. Now adverting to the point of modus operandi of registration of a rent agreement in this regard Section 5 of the Act describes the parameters for the registration of agreement between the landlord and tenant whereas the particulars of tenancy agreement are prescribed in Section 6 of the Act. For ready

reference, Sections 5 and 6 of the Act are reproduced as under:-

“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 official 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).

6. Contents of tenancy agreement.—(1) A tenancy agreement shall contain, as far as possible, 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 rent 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 the 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.”

From the perusal of Sections 5, 6 coupled with Section 2 (d) of the Act, the landlord means the owner of premises and includes a person for the time being entitled or authorized to receive rent in respect of the premises, as such, it is mandatory for a person claiming to be the landlord to provide any prima facie proof of ownership or any authorization from the owner in recognition of his being ostensible landlord qua the rented premises to the Rent Registrar for registration of the rent agreement and the Rent Registrar is also competent to ask the landlord for production of any proof regarding the ownership or title document of the demised premises. Even a person who files application under Section 5 of the Act for registration of rent agreement on behalf of the landlord is also under obligation to provide a reasonable proof of ownership of the landlord for the purpose of registration of rent agreement which is not tantamount to decision of the title rather it is only satisfaction of the Rent Registrar for the purpose of the registration of the document of rent agreement.

10. In this case, the petitioner filed application under Section 5 of the Act for registration of rent agreement before learned Rent Tribunal, Ex-Officio Rent Registrar working under Section 35 (d) of the Act. On the presentation of the rent agreement, the learned Rent Tribunal / Rent Registrar required document of title from the landlord before its (rent agreement) registration. The petitioner being

disagreement with the order of Rent Registrar challenged the said order through this constitutional petition. Much emphasis has been placed on this point that Rent Registrar is debarred to require the title document before registration of a rent agreement as requiring the said document amounts to decide the question of the title of the rented premises, suffice it to say that though the applicability of the registration has not *stricto sensu* been excluded and all registerable documents including rent deed can be got registered under the Registration Act yet for expeditious registration of a document is made convenient and an expeditious forum for registration of rent agreement has been made available. Further, a registered document undeniably get sanctity of an official document creating certain rights and obligations in favour of the parties. The intention of the Legislator is to bring ultimate transparency and genuineness in the relationship and to make maximum precaution to eradicate or minimize even a little possibility of misrepresentation, personification and element of fraud with regard to relationship, mode of payment etc. in registration process as well as the parties to the rent. To achieve the said object, the Registrar is under obligation to carry out preliminary *prima facie*, tentative probe *qua status* of the parties and title of landlord. The Punjab Rented Premises Act, 2009 provides elaborate mechanism for registration of rent agreement and gives power to the Rent Registrar that before registration of the rent agreement should satisfy himself regarding the *prima facie* ownership of the landlord and thereafter register the same after notice to the tenant as glorified

provisions of Article 10 (A) of the Constitution of Islamic Republic of Pakistan, 1973 has awarded an unalienable right of fair trial and due process to the tenant, as such, the argument of the petitioner that the Rent Registrar lacks authority to require the title document from the landlord qua the rented premises is misconceived and same is repelled accordingly.

Furthermore, as discussed above, after issuance of the Notification No.SO (JUDL-III) 4-24/2004 dated 26.01.2012 whereunder the appointment of a Rent Registrar has been made and the power of compulsory registration of rent agreement stood vested to notified Registrar and no other authority is competent to register any rent agreement, as such, the Rent Tribunal established under Section 35 (d) of the Act has no jurisdiction even to entertain application and pass an order on the application under Section 5 of the Act for registration of rent agreement after issuance of the above said notification dated 26.01.2012 whereas learned Tribunal functioning as Rent Registrar has illegally assumed the jurisdiction and passed the impugned order dated 06.01.2015 which is patently illegal void ab-initio and same is hereby set aside. The application under Section 5 of the Act filed by the petitioner may be returned to the petitioner to file before the notified Rent Registrar for registration of rent agreement.

11. Now coming to the next argument of the petitioner that learned Senior Civil Judge is vested with no jurisdiction to allocate case pertaining to rent matter to other Civil Judges cum Rent Tribunal for the adjudication as the rent law is special law which only

provide jurisdiction to the learned Senior Civil Judge/Special Judge Rent to adjudicate the matter whereas learned Civil Senior Civil Judge / Rent Tribunal lacks any authority to entrust / allocate the case to the other Judges for adjudication and decision on merit. Suffice it to say that in this regard under Sections 16 and 19 (2) of the Act has described the elaborate procedure for establishment of the Rent Tribunal and entrustment of the application filed in respect of rented premises before the Rent Tribunal of the area or district. The learned Senior Civil Judge / Rent Tribunal who has the jurisdiction to hear the case either himself or allocate the same for hearing to the other designated Special Judge Rent functioning as Rent Tribunal as defined under Section 2 (j) and 2 (k) of the Act 2009. Section 16 of the Act deals with the establishment of Rent Tribunal whereas Section 19 (2) manifestly deal with the entrustment of the cases to Special Judge Rent functioning as Rent Tribunal. Moreover, it is function of the Government to establish a Rent Tribunal in a district or an area as it may deem necessary under Section 16 of the Act which is reproduced as under:-

“16. Establishment of Rent Tribunal.– (1)

The Government shall establish a Rent Tribunal in a district or an area as it may deem necessary.

(2) A Rent Tribunal shall consist of one or more Special Judges (Rent) to be appointed by the Government in consultation with the Lahore High Court.

(3) Subject to this Act, the Lahore High Court may empower a Civil Judge or a Judicial Magistrate to act as Rent Tribunal for a district or an area.

(4) The Rent Tribunal shall exercise exclusive jurisdiction over a case under this Act.

(5) If there are more than one Special Judges (Rent) in a district or an area, a Special Judge (Rent) designated by the Lahore High Court shall act as an Administrative Special Judge (Rent) in the district or the area.

Further, with the institution of application before the Tribunal for resolution of a dispute relating to tenancy agreement, it exclusively falls within the domains of the learned Senior Civil Judge / Rent Tribunal or the designated Special Judge Rent under Section 19(2) of the Act to hear the application either himself or entrust the same to other learned Rent Tribunal. Section 19(2) is reproduced as under:-

19. Filing of application.—(2) If an application is filed under sub-section (1), the Administrative Special Judge (Rent) of the area or the district may take cognizance of the case or entrust the same to any other Special Judge (Rent).”

From the perusal of Section 16 (2) of the Act, a Rent Tribunal shall consist of one or more Special Judges (Rent) to be appointed by the Government in consultation with the Lahore High Court and under Section 16 (3) of the Act 2009 the Lahore High Court may empower a Civil Judge or a Judicial Magistrate to act as Rent Tribunal for a district or an area and while exercising the power conferred under Sections 16 (3) of the Act 2009. All Civil Judges-cum-Judicial Magistrates in the Punjab have been empowered by the High Court to act as Special Judges (Rent) in the area falling under their jurisdiction vide this Court Notification No.261 JOB-II(1)/XXI.C.35. dated 27.08.2015, as such, the Senior Civil Judges at the District Headquarters and Senior Most Civil Judges at the Tehsil Headquarters are empowered to act as Administrative Special Judges (Rent) in terms of Section 16 (5) of the Act within the areas falling under their jurisdiction and are also empower under Section 19(2) of the Act as well as afore-referred notification of the High Court to entrust the said

applications to the other Special Judges Rent functioning as Rent Tribunals, as such, the arguments of the petitioner that learned Senior Civil Judge / Special Judge Rent lacks authority to entrust the application to other Rent Tribunal is misconceived and same are hereby repelled.

12. For what has been discussed above, this writ petition is **disposed of** accordingly.

**(CH. MUHAMMAD IQBAL)
JUDGE**

Approved for Reporting.

JUDGE