

Stereo. H C J D A 38.

Judgment Sheet
IN THE LAHORE HIGH COURT AT LAHORE
JUDICIAL DEPARTMENT

S.A.O. No. 21 of 2015

Indo Pakistan Corporation Ltd. & another. Versus Manzoor-ul-Haq Pandit & others.

JUDGEMENT

Date of hearing 10.05.2017

Appellants by Mr. Tahir Mehmood Khokhar, Advocate

Respondents by Ch. Manzoor Hussain, Advocate

IBAD-UR-REHMAN LODHI, J: Naturally when
ejectment petition filed on 28.06.1977 is before this Court in present
S.A.O. relating to year 2015, the same must have some checkered
history which now need not to be repeated as the remand orders
which were passed in the earlier rounds of litigation were finally
have been answered in detail by means of impugned appellate
judgment passed by the learned District Judge, Lahore, as Appellate
Rent Authority on 22.06.2015. The sole ground, on which the
ejectment of appellant No.1 was sought for from the rented property
i.e. S-31-R-151 Mcleod Road, Lahore, was willful default in
payment of rent for preceding 44-months from the date of filing of
ejectment petition.

2. However, when during pendency of the rent proceedings,
appellant No.1 was declared as Enemy property and thus the Hon'ble

Supreme Court of Pakistan directed, through reported judgment as *Indo-Pakistan Corporation Limited and another versus Mansoor Iqbal Butt and 6 others* (1989 SCMR 905) to implead the Custodian of Enemy Property in Ministry of Government of Pakistan as a necessary party. Notwithstanding such impleadment, the respondents in ejectment petition never filed any amended written reply to the ejectment petition in order to incorporate the role of Custodian or effect of the impleadment of Custodian upon the rent proceedings, however the learned counsel for the appellant has argued with reference to Section 5 of the Enemy Property (Custody and Registration) Order, 1978 that all enemy property vesting in the Custodian shall be exempt from attachment, seizure or sale in execution of a civil Court decree or orders of any other authority. But at the same time on query of the Court candidly admitted that even after the impleadment of Custodian of Enemy Property in the ejectment petition, no such ground was added in the written reply to the ejectment petition. Despite the lapse on the part of the respondents in not pleading such plea still it is admitted that the rented premises with reference to which ejectment petition was filed, the predecessor in interest of the respondents herein was never declared as Enemy Property and it is in fact the lockers, fixtures or belonging in shape of paraphernalia of appellant No.1 which was declared as Enemy Property but such declaration would not change the nature of rented property which remain the ownership of private persons viz. the respondents herein. It is also an admitted position

that despite having been impleaded as respondent No.2 in the ejectment petition, no further evidence was produced on behalf of the Custodian. As such the findings arrived at by the forum bellows on additionally framed issues viz. 3-a to 3-c do not require any interference.

3. In a case of similar nature, when a tenant company was taken over by the Government and in the ejectment proceedings, such company came forward with a plea that since the Government has taken over the company, it was the Federal Government, which could only discharge the rights and liabilities of the tenant, Karachi High Court in case titled “Messrs MAQBOOL COMPANY LIMITED versus ABDUL GHAFFAR and others” (1985 CLC 2635), while hearing first Rent Appeal has held that taking over of company by the Government would cast no effect on rented property, as by taking over the company by the Government, property in possession of the company as a tenant, would not vest in Government. The Federal Government after taking over could only discharge rights and liabilities of tenant’s company, but rented property could not be deemed to have vested in it. It was further held that even after taking over the administration of a company, the status of the Federal Government even with regard to the rented property where prior to the step of taking over by the Government, the company was a tenant, would not absolve in stopping payment of rent and in case, where a tenant company is taken over by the Government and thereafter neither the company nor Government makes the payment

of rent to the landlord, it was held that willful default was established as after taking over the company by the Government, such step did not absolve the tenant to pay rent to the landlord and if tenant company claims some protection in changed circumstances, when the affairs of the company was taken over by the Government, even then in such case, the Government was bound to discharge obligation under law as a tenant.

4. In a case of nationalized school, where the property was rented out by the owner to former Headmaster of private school, which was subsequently nationalized, Karachi High Court in case titled “DEPUTY DIRECTOR (NATIONALISATION), HYDERABAD versus Syed ZAHOORUL HASSAN” (1982 CLC 1640) has held that only school and its management vested in Government and not building of school, which belongs to the landlord and the process of nationalization of the management of school cannot be treated as a step providing exemption under Rent Laws, which is available only for the property vests in Government.

5. So far as the crucial issue i.e. issue No.2 regarding willful default on the part of the appellant-Corporation is concerned it has been answered in detail by the learned courts below by rightly concluding that appellant No.1/Corporation is willful rent defaulter in the background that in a way the tenant has admitted the default in payment of rent by taking a plea which was having no basis to the effect that despite demand the original owner of the rented premises was not agreeable to settle the revised rate of rent and thus on

account of such non-settlement of rate of rent, the tenant stopped the payment of even that rent which earlier was being paid to the landlord as allegedly it was not being accepted by the landlord. The tenant has further admitted that no effort was made to tender such stated refused rent to the landlord through money order or any other permissible mode and also that the forum of Rent Controller was never approached with a request to allow the tenant to deposit the rent which statedly was refused to be accepted by the landlord.

6. Appellant No.1 has rightly been declared as willful defaulter in payment of rent and thus has no right to remain in possession of the rented premises without payment of the rent in view of the enjoyment of use and occupation of rented premises.

7. Resultantly, finding no force in this appeal, the same is **dismissed.**

(Ibad-ur-Rehman Lodhi)
Judge

Approved for reporting.

Judge