

JUDGMENT SHEET
IN THE PESHAWAR HIGH COURT,
MINGORA BENCH (DAR-UL-QAZA), SWAT
(Judicial Department)

W.P No.364-M/2024

Nisar Ullah Vs. Farman Ali

Present: Mr. Umar Ali Akhunzada, Advocate for petitioner.
Nemo for Respondent (motion case).

Date of hearing: 05.06.2024

JUDGMENT

MUHAMMAD NAEEM ANWAR, J.- This single judgment in the instant petition shall also decide connected writ petitions, ten in number, as a common question of law and facts is involved in all these petitions. Particulars of the connected writ petitions are as under:

- 1) W.P No.365-M/2024
(Ihsan-ur-Rahman Vs. Khaista Muhammad)
- 2) W.P No.366-M/2024
(Nasar Hayat Vs. Muhammad Ismail)
- 3) W.P No.367-M/2024
(Fawad Ahmad Vs. Khaista Muhammad)
- 4) W.P No.368-M/2024
(Anwar Ali and another Vs. Muhammad Ismail)
- 5) W.P No.369-M/2024
(Fazal Subhan Vs. Ayub Khan)
- 6) W.P No.370-M/2024
(Nisarullah Vs. Khaista Muhammad)
- 7) W.P No.371-M/2024
(Anwar Ali and another Vs. Ayub Khan)
- 8) W.P No.372-M/2024
(Shahzada Vs. Khaista Muhammad)
- 9) W.P No.373-M/2024
(Amjad Ali Vs. Ayub Khan)
- 10) W.P No.377-M/2024
(Said Rahman Vs. Ayub Khan)

2. Briefly, the facts of these petitions are that the petitioners have filed separate applications under the provisions of the West Pakistan Urban Rent Restriction Ordinance, 1959 (the Ordinance of 1959) for eviction of the respondents/tenants from the shops situated at Ali Market Madyan road Mingora as described in Para No.1 of each application, on the ground that they have purchased these shops from Nasar Hayat

& Habib Ur Rehman who were the vendees from Sher Shah Khan, the erstwhile owner, who rented the shops to the tenants. That the respondents were intimated accordingly. It was averred that the agreed period of tenancy has been expired on 31.12.2022 however, neither the fresh agreement was executed nor the possession was handed over to them, hence, the rent agreement was violated. The grounds for ejectment were personal need, default in payment of rent and violation of the agreement. All the respondents (tenants) resisted the applications through their written reply, on different legal and factual objections. They have denied the relationship of tenant and landlord. It was also alleged that no notice was served upon them regarding the change of ownership, with a further plea that earlier applications u/s 145 Cr.P.C was filed by Sher Shah Khan which were later on withdrawn. It was also averred that the document is unregistered, on which, the respective petitioners claim themselves to be the owners of the premises. During proceedings, the petitioners submitted applications seeking directions to the respondents/ tenants for the payment of outstanding rent and monthly rent in accordance with law, which were resisted by the respondents. Record reflects that the respondents have also submitted applications for summarily dismissal of ejectment applications. Both the applications were resisted by the parties respectively however, the learned Rent Controller through its separate orders dated 22.02.2024 dismissed the applications of both the parties. The learned Rent Controller framed issues with directions to the petitioners to produce their evidence, hence, these petitions.

3. Arguments heard and record perused.

4. It was the contention of the petitioners that Sher Shah Khan was the owner of the property, who has sold it to Habib-Ur-Rahman and Nasir Hayat through deed dated 17.12.2022 and thereafter, the vendees of Sher Shah through sale agreement

dated 20.12.2022 etc. have transferred the ownerships of the rented premises to them but since the respondents were in possession of the shops (rented premises) as tenants through rent agreement executed with the erstwhile landlord Sher Shah Khan, as such, they were required to be directed by the learned Rent Controller in terms of section 13 (6) of the Ordinance of 1959 to deposit the rent before the learned Rent Controller. Scrutiny of the record reveals that the petitioners, in their respective applications, claim their title through Habib-Ur-Rahman and Nasir Hayat, who too were the vendees of Sher Shah Khan (erstwhile landlord of the respondents) and both these are unregistered sale deeds but neither Sher Shah Khan nor Habib-Ur-Rahman & Nasir Hayat were arrayed as necessary or property party to depose in favour of petitioners in order to substantiate their contention as that of the landlords. It is an admitted fact that the petitioners never ever entered into any rent agreement with the respondents rather the respondents were inducted in the shops by erstwhile landlord Sher Shah Khan. The respondents have denied from being served with the notice in respect of change of ownership and even otherwise no copy of the notice has been annexed with these petitions. Though, the submission of the application for eviction of the tenants itself is a notice for the said purpose but when the petitioners are transferees from Nasir Hayat and Habib-Ur-Rahman who too were vendees of Sher Shah Khan, then in such an eventuality, the respondents/ tenants should have been apprised about the change of ownership and about their status as that of landlord.

5. Admittedly, no rent agreement was executed between the petitioners and respondents and in such eventuality, it is yet to be proved before the learned Rent Controller that the vendors of the petitioners were the landlord on the strength of the deed/ agreement with Sher Shah Khan. The respondents/ tenants have

outrightly refuted the tenancy, and in such state of affairs, the learned Rent Controller was required to determine the existence of the relationship of the parties as that of landlord and tenants. The learned Rent Controller has already framed an issue regarding the existence of tenancy, which shall yet to be substantiated by the petitioners, therefore, this aspect is still sub judice before the learned Rent Controller. The petitioners have not alleged in their applications to have received the rent from the respondents. The mandate of section 13 (6) of the Ordinance of 1959 is to direct the tenant to deposit the monthly rent before 15th of each month but if the relationship is denied, then first obligation of the landlord is to prove the existence of the relationship of landlord and tenant. If such relation is proved then rest of the issues require no deliberation but if this issue is decided in negative then the learned Rent Controller loses his jurisdiction and, in such circumstances, the learned Rent Controller, he has rightly directed the petitioners to lead evidence in order to prove the existence of the relationship. In the case of "Mst. Razia Begum and another Vs. Senior Civil Judge and others" (PLD 1996 Peshawar 08), this Court has held that when the relationship was denied by the alleged tenant, directions could not be given to him to deposit the monthly or tentative rent in terms of section 13 (6) of the Ordinance of 1959. Similarly, in the case of "Ghulam Rasool Vs. Khurshid Ahmad" (2000 SCMR 632), it was held by the apex Court that where relationship of landlord and tenant is denied, the Rent Controller, in the first instance should decide said issue before directing tenant to deposit arrears of rent or future rent, but where the tenant failed to produce even prima facie evidence in support of his assertion, no prejudice would be caused by reason of omission of framing of formal issue on the existence of relationship of landlord and tenant between the parties. Reliance may be placed on the case of Mst. Miskina

Jan versus Rehmat Din (1992 SCMR 1149), Government of Sindh through Advocate General, Sindh, Karachi versus A.M. Qureshi through Legal Heirs and others (2001 SCMR 2012), Irfanullah Shah Versus Wahabullah and another (2003 YLR 1195), Muhammad Wakil Khan Versus Additional District Judge, Lahore and 3 others (2007 CLC 1151), BABU DIN Versus CIVIL JUDGE/RENT CONTROLLER, MULTAN and 6 others (2006 CLC 926).

6. More-so, since the unregistered deeds relied upon by the petitioners pertaining to the transfer of ownership from their vendors are still requiring recording of evidence because neither the transferors are the party to the ejectment applications nor they have yet been examined by the petitioners as witnesses in order to prove their status as transferees and then as landlord by proving that the respondents were served with the notice of change of ownership, as alleged by them, in view of denial of the relationship of landlord and tenant, no order under section 13(6) of the Rent Restriction Ordinance, 1959 could be passed for directing the respondents to deposit of rent before the Rent Controller.

7. We have not been persuaded to admit these petitions for further proceedings because the learned counsel for the petitioners has not been able point out any legal error, illegality or jurisdictional defect in the orders of the Courts below. Thus, for the forgoing reasons, these petitions being without substance are hereby dismissed in limine.

Announced on.

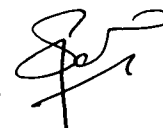
05.06.2024.

Released on.

10.06.2024.



JUDGE



JUDGE

SABZ ALI (D.B)

HON'BLE MR. JUSTICE MUHAMMAD NAEEM ANWAR
HON'BLE MR. JUSTICE SHAHID KHAN

Office
10/6/2024