

HIGH COURT OF AZAD JAMMU & KASHMIR

*Writ Petition No.32/2021;
Date of institution 24.09.2021;
Date of decision 31.03.2022.*

Ghulam Raza Latif S/o Muhammad Latif Khan
caste Sudhan R/o Soon Topa Tenant of Shop
situated in Bahadar Ali Khan Plaza General
Bus Stand adjacent to Ghaz-e-Milalt Road
Rawalakot.

Petitioner
V E R S U S

1. Muhammad Abbas Khan S/o Sardar Ameer Muhammad Khan R/o Kharick Tehsil Rawalakot District Poonch;
2. Rent Controller Rawalakot.

Respondents

WRIT PETITION UNDER ARTICLE 44 OF
THE AJ&K INTERIM CONSTITUTION, 1974

Before:- Justice Sardar Muhammad Ejaz Khan, J.

PRESENT:

M/S Rizwan Farooq and Sardar Bilal Shakeel,
Advocates for petitioner.
Mr. Abbas Mushtaq, Advocate for the respondent.

O R D E R:

Through the captioned writ petition
addressed under Article 44 of Azad Jammu and
Kashmir Interim Constitution, 1974, the *vires* of

the impugned order of Rent Controller, Rawalakot, dated 24.08.2021 has been challenged for having been passed without lawful authority.

2. The main thrust of the petitioner is that private respondent No.1 filed an application for possession/eviction pertaining to shop situated in Badhar Ali Plaza Goian Nala Road Rawalakot against the petitioner before the Rent Controller, Rawalakot, whereby it has been claimed rent of shop amounting to Rs.6000/- per month and during proceedings, the learned Rent Controller, Rawalakot, vide impugned order dated 24.08.2021 fixed the rent @ Rs.6000/- per month and ordered the petitioner to pay the same to private respondent, which is illegal, capricious and against law, hence, the same may be *set-aside*.

3. On pre-admission notices, private respondent filed the parawise comments wherein stand taken in writ petition by the

petitioner was refuted from top to bottom and it has been prayed for dismissal of writ petition in *limine* on legal grounds.

4. Preliminary arguments heard. Record perused.

5. Preliminary objection raised by the learned counsel for private respondent is that against the interim order of the learned Rent Controller neither appeal nor writ petition can be filed because the Azad Jammu & Kashmir Rent Restriction Act, 1986 is special law in which no such provision for filing appeal has been provided. He further argued that against the interlocutory order of the learned Rent Controller writ petition too is not maintainable. In support of his contention, he referred to and relied upon a case reported [2020 SCMR 260]. According to relevant provisions of law, no appeal shall lie against the interim order of the learned Rent Controller. For proper appreciation

of the matter, Section 18 of the Act, *supra*, is reproduced as under:-

“Appeal. - (1) Any party aggrieved by an order of the Controller finally disposing of an application made under this Act may, within thirty days of the date of such order, prefer an appeal in writing to the District Judge having jurisdiction over the area where the building or rented land in relation to which the order is passed, is situated:

Provided that no appeal shall lie against an order made by a Controller under sub-section (6) of Section 14 determining approximately the amount of rent due or the rate of rent and directing the tenant to deposit all the rent due:

Provided further that no appeal shall be from an interlocutory order passed by the Controller.”

6. So when, the special law does not provide the right of appeal against interlocutory order, hence, the same cannot be challenged by invoking the constitutional jurisdiction of this Court, hence, relevant provisions of law itself clearly bar a remedy, which was not available to party under the Statute. However, extra-

ordinary jurisdiction of this Court by-way of writ petition can be exercised in extra-ordinary situation and in exceptional circumstances where any flagrant violation of law, jurisdictional defect or patent illegality appears to have been found on the face of record as such the same cannot be invoked in a routine matter.

7. It is relevant to mention here that while passing the impugned order dated 24.08.2021, the learned Rent Controller, Rawalakot, committed no illegality or perversity because Sub-section (8) of Section 14 of the Azad Jammu & Kashmir Rent Restriction Act, 1986 empowers the learned Rent Controller to determine approximate amount and direct the tenant to pay the so determined amount to landlord. For proper appreciation of the matter, Sub-section (8) of Section 14 of the Act, *supra*, is reproduced below:-

“(8) In proceeding under this section on the first date of hearing or as soon as possible after that date and

before issues are framed, the Controller shall direct the tenant to deposit all the rent due from him, and also to deposit regularly till the final decision of the case, before the fifteenth day of each month the monthly rent due from him. If there is any dispute about the amount of rent due, or the rate of rent, the Controller shall determine such amount approximately and direct that the same be deposited by the tenant before a date to be fixed for the purpose. If the tenant makes default in the compliance of such an order, then if he is petitioner, his application shall be dismissed summarily and if he is the respondent his defense shall be struck off and the landlord put in possession of the property without taking any further proceeding in the case. The Controller shall finally determine the amount of rent due from the tenant and direct that the same may be paid to the landlord, subject to adjustment of the approximate amount deposited by the tenant.”

8. In such like state of affairs, the order passed by the learned Rent Controller, Rawalakot, on 24.08.2021 is quite in accordance with law while the above-referred provisions of law empower the learned Rent

Controller to determine approximate amount and direct the tenant to pay the same to landlord, hence, the learned Rent Controller, Rawalakot, committed no illegality while recording the impugned order dated 24.08.2021. Apparently, the petitioner seems neither to be an aggrieved party within the meaning of Article 44 of the Azad Jammu & Kashmir Interim nor has *locus-standi* to invoke the extra-ordinary jurisdiction of this Court by-way of writ petition. The case law reported as [PLD 1988 (Quetta) 42], [1995 MLD (Pehsawar) 298], [2011 CLC (Peshawar) 273] & [2011 CLC (Lahore) 1779] referred to and relied upon by the learned counsel for the petitioner has nothing to do with the case in hand because of distinguishing fact.

9. Law is quite clear that writ lies where any violation of rules and departure of law has been made but no such violation appears to have been found or pointed out by the learned

counsel for the petitioner during the course of arguments to which it can be said that any violation on the part of respondents has been made, hence, the writ petition has been filed on conjunctures, surmises and false hopes of the petitioner, which cannot be issued in vacuum.

10. Foregoing reason makes it clear that the instant writ petition, having no statutory backing, is hereby dismissed in *limine* in the manner as indicated hereinabove and the same shall be consigned to record with no order as to costs.

Circuit Rawalakot:
31.03.2022(ZEB)

-Sd-
JUDGE

APPROVED FOR REPORTING

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JUDGE