

HIGH COURT OF AZAD JAMMU & KASHMIR

Writ petition No.224/2018.
Date of institution 05.07.2018.
Date of decision 02.05.2023.

Mohammad Iqbal Minhas s/o Mohammad Sadiq r/o House
No.127 Sector D/1 Tehsil & District Mirpur Azad Kashmir.

Petitioners

VERSUS

1. Senior Superintendent Police District Mirpur;
2. Raja Mohammad Ishtiaq s/o Mohammad Akram
r/o Samahni Tehsil Samahni District Bhimber Azad
Kashmir, presently Shop No.9 situated at Police
Welfare Plaza Nangi Mirpur Azad Kashmir

Respondents

WRIT PETITION

Before:- Justice Syed Shahid Bahar, J.

PRESENT:

Mirza Mohammad Ameen Baig, Advocate for the
Petitioner.

Sardar Hamid Raza Khan, Advocate for Respondent No.2.

JUDGMENT:

Through this petition filed under Article 44 of
Azad Jammu & Kashmir Interim Constitution, 1974, the
petitioner seeks for annulment of the order dated
21.06.2018 passed by SSP Mirpur.

2. The facts of the case in hand are that
respondent No.1 allotted shop No.9 to the petitioner and in
this regard agreement was signed between the petitioner
and respondent No.1 and after acquiring the possession,
the petitioner spent huge amount for renovation of the

shop and in year 2014, when petitioner suffered huge loss, he went abroad for a period of one year and he made an agreement with respondent No.2 which was temporary for a period of one year and during the year, all dues were paid by the petitioner, whereas, respondent No.2 never paid any amount to the petitioner. It has been stated that when petitioner came back to Pakistan, he asked respondent No.2 to handover the possession of shop to petitioner who seeks time, meanwhile, respondent No.1 issued a notice for cancellation of allotment of the supra shop, while mentioning the reasons that as per agreement, the petitioner was not authorized to sublet the shop. On notice issued by the petitioner, respondent No.2 denied to handover the possession, therefore, petitioner filed an application for ejectment of the said respondent before the Rent Controller which was objected by respondent No.2 and thereafter, respondent No.2 was ordered to deposit the arrears and rent in the Court every month and as per judgment of the Rent Controller, respondent No.2 was declared tenant and also declared defaulter. As per contents of petition, the issue between petitioner and respondent No.1 was settled after written apology of petitioner and the petitioner was ordered to carry on his

agreement, so, petitioner deposited Rs.38,432/- in account of respondent No.1. and fresh agreement was also signed by respondent No.1 and advanced rent of one year amounting to Rs.3,26,700/- was also deposited by the petitioner in MCB Bank. It has been stated that after the judgment of the learned Rent Controller Mirpur dated 16.07.2017, the petitioner filed an application for execution of the judgment before the Rent Controller and respondent No.2 also filed an application for setting aside the ex-parte judgment dated 16.10.2017 which was dismissed and thereafter, respondent No.2 filed an appeal before the learned District Judge Mirpur which is still pending before the Court below. Respondent No.2 also filed a writ petition before this Court against the order of Rent Controller dated 25.05.2017, which was also dismissed. It has also been craved that the petitioner filed an application before Inspector General Police but all in vain, hence, this petition for setting aside the order of respondent No.1 dated 21.06.2018.

3. Heard, record perused. Annexure "PB" is the agreement of the petitioner Mohammad Iqbal Minhas which was issued by the SSP Mirpur. Condition No.4 of the agreement is as under:-

4۔ مظہر دوکان میں کسی قسم کی الٹریشن یا تبدیلی ویلفیئر کمیٹی کی اجازت کے بغیر کرنے کا مجاز نہ ہوگا نہ ہی دوکان کسی دوسرے شخص کو (SUBLET) کرے گا اور نہ ہی قبضہ کسی دوسرے شخص کے حوالہ کرے گا۔ اگر عرصہ کرایہ داری کے دوران دوکان خالی کر دے تو دیر پا سیکورٹی سے بچنے والی رقم کا مطالبہ کرنے کا مجاز نہ ہوگا۔ اور بقیہ رقم بخت پولیس ویلفیئر کمیٹی ضبط تصور ہوگی جب کہ محکمہ نئے کرایہ دار سے سیکورٹی حاصل کرنے کا مجاز ہوگا۔“

As per condition No.4 of the supra agreement, the petitioner was not competent to make any alteration in the shop without the permission of Welfare Committee and neither he was authorized to sublet the shop nor handover the possession to any other person. The petitioner in para No.4 of the writ petition himself admitted that after suffering huge loss, he went abroad and sublet the shop to respondent No.2 by making an agreement with him for one year. Meaning thereby that the petitioner violated the terms and conditions of the agreement and sublet shop No.9 to Mohammad Ishtiaq s/o Raja Mohammad Akram.

4. As adumbrated the petitioner is guilty of subletting the shop, without prior permission of the landlord, which is suffice for ejectment of the petitioner. High Court in extraordinary jurisdiction conferred under Article 44 of the Interim Constitution cannot sit over the such like decisions in order to have judicial scrutiny of same particularly, where disputed questions of facts requiring evidence are involved, that too, where conduct of the petitioner is not good enough to attract the

conscious of the Court. High Court in exercise of constitutional jurisdiction does not extend the protection of law to a person to retain a gain, privilege or benefit which prima-facie, appears to have been acquired by manipulation, vis a vis. High Court in its constitutional jurisdiction cannot sit as a Court of appeal and cannot substitute findings of fact recorded by the Court below on such matters.¹

5. Remedy of writ is like an oxygen tent for a patient of asthma, indeed it is a blessing and ray of hope for an aggrieved one. Power of judicial review cannot be gauged in the lens of technicalities and no mathematical niceties are required to have a judicial audit of the matter but clean handed approach of the person and bona-fide of the claimant is *sin quo non* for issuance of high prerogative command. Order impugned herein is speaking and well-reasoned. Petitioner has failed to point out violation of any law. It is also celebrated principle of law that one who seeks

¹. 2004 MLD 69+PLD 2004 Lah. 9

equitable relief must come with clean hands.

Resultantly, the petition in hand fails.

In view of above, finding no force in this petition, it is hereby dismissed with no order as to the costs.

Circuit Mirpur.

02.05.2023 (Saleem)

JUDGE