

HIGH COURT OF AZAD JAMMU AND KASHMIR

Writ petition No.4275/2021.

Date of inst.10.12.2021.

Date of decision 03.03.2022.

Noman Ashraf S/o Muhammad Ashraf R/o Dewan Tarar, Tehsil Rawalakot, District Poonch, Presently Royal Plaza Chandni Chowk Rawalakot, Azad Jammu & Kashmir.

Petitioner

VERSUS

1. Sardar Nazar Muhammad Khan S/o Muhammad Ashraf Khan cost Sudhan R/o Baghayana Pachoot, Tehsil Rawalakot, Azad Jammu & Kashmir.
2. Senior Civil Judge empowered Rent Controller Bagh, Azad Jammu & Kashmir.
3. District Judge empowered Rent Controller Bagh, Azad Jammu & Kashmir.

Respondents

WRIT PETITION

Before:- **Justice Syed Shahid Bahar, J.**

PRESENT:

Mirza Kamran Baig, Advocate for the petitioner.

Raja Sajjad Ahmed Khan, Advocate for respondent No.1.

ORDER:-

The instant writ petition has been addressed under Article 44 of the Azad Jammu and Kashmir Interim Constitution, 1974, whereby the petitioner challenged the decision of the learned Rent Controller Rawalakot dated 29.05.2021 and appellate decision of the learned District Judge/Appellate Authority Poonch, Rawalakot dated 23.11.2021, by invoking extra ordinary jurisdiction of this Court.

The facts necessary for disposal of the instant writ petition as oozing from the record are that the petitioner and respondent No.1 are in relationship of tenant and landlord respectively. The

landlord filed an application for ejection of the tenant Noman Ashraf (petitioner herein) and also prayed for recovery of arrears of rent from the petitioner, herein (hereinafter "tenant"). As per averments made in the application of ejection filed by the landlord, he claims to be a landlord of Royal Plaza Chandni Chowk Rawalakot, which was rented out in favour of the tenant Noman Ashraf (petitioner herein), through a rent deed dated 14.10.2019 and monthly rent was fixed as Rs.87,200/- per month. Furthermore, as per stance (on record) of the landlord Sardar Nazar Muhammad Khan (late), tenant Noman Ashraf only paid rent of one month i.e. October 2019, whereas he had failed to pay rent of remaining 03 months started from 11/2019 to 01/2020 besides electricity bills are also outstanding on part of the tenant. The stance of the landlord is that the tenant has violated the conditions of rent agreement and has become defaulter, hence, the tenant is liable to be ejected and the landlord Sardar Nazar Muhammad Khan (late), was entitled to receive arrears as per rent deed from respondent No.1. While in juxta position respondent No.1, contested the application and negated the stance of landlord ultimately the Rent Controller dealt with the matter in accordance with law and framed 03 issues by fixing burden of proof regarding stance of both the parties. Both the parties produced their witnesses in support of their respective stance and in light of the evidence adduced by the both parties the learned Rent Controller in light of the juxta pose analysis of the evidence brought on record partly accepted the application to the

extent of default on the part of tenant (petitioner herein) and accordingly ordered for his ejection with respect of prayer regarding sublet and personal need as alleged by the landlord same was rejected and ordered accordingly for ejection of the tenant by declaring him defaulter.

Feeling aggrieved from the aforesaid decision of the learned Rent Controller, petitioner, herein, preferred an appeal before the appellate authority on 28.06.2021, which was dealt with accordingly by the learned District Judge Rawalakot, vide decision dated 23.11.2021.

At the outset Raja Sajjad Ahmed Khan, the learned counsel for contesting respondent has drawn the attention of the Court to the material fact that answering respondent No.1, Sardar Nazar Muhammad Khan, has passed away and the instant writ petition has been filed against the dead person. Therefore, keeping in view this aspect of the matter whether in such like eventuality writ petition is maintainable against a dead person particularly when his legal heirs are alive and the petitioner even after this objection raised at bar did not bother to seek time for bringing on record the legal heirs of the landlord respondent No.1.

No doubt there is no cavil with the legal proposition that despite passing away of a person, rights and liabilities could not be vanished and pending disputes are always liable to be decided in accordance with law and legal as heirs are

present having interest in the matter to face the consequences pro or contra. Therefore, in such like eventuality when despite acquiring knowledge of death of the respondent No.1 and objection of maintainability raised by the other side at bar, the petitioner kept mum and even did not make any request for adjournment or filing an application or seeking time quo bringing on record the legal heirs of the respondent No.1. While exercising Constitutional jurisdiction I observed that non-impleadment of necessary party is fatal and minimize the maintainability of writ petition.

Preliminary arguments pro & contra heard, record perused.

Mirza Kamran Baig, learned counsel for the petitioner vehemently argued that both the decisions rendered by the learned Rent Controller Rawalakot and learned District Judge, Rawalakot are contrary to law and facts of the case. He staunchly contended that both the Courts below have failed to adhere to the evidence brought on record and did not pay heed to the real controversy regarding investment of the landlord and the learned Rent Controller failed to consider the controversy in its true perspective, hence, rights of petitioner-tenant have been infringed by the landlord. He categorically argued that according to the agreement of rent old building was rented out to the petitioner Noman Ahmed by the respondent No.1, Sardar Nazar Muhammad Khan (late)

and petitioner accordingly paid the rent of the whole building to the respondent No.1, but at the same time the respondent No.1, Sardar Nazar Muhammad Khan (late), had taken rent of shops of his plaza himself and this was the main controversy which remained unattended by both the Courts below, hence, decision of both learned Rent Controller and learned District Judge are liable to be set at naught in extra ordinary writ jurisdiction conferred under Article 44 of the Interim Constitution, 1974.

The parameters and compass of Section 44 of Interim Constitution, 1974, itself reveals that writ can only be issued where any sort of violation of any law/statutory rules or fundamental guaranteed rights are infringed. Although doctrine of ubi jus ibi remedium envisages that where there is infringement of right there is a remedy but all sort of grievances in bulk cannot be remedied in extra ordinary writ jurisdiction without adhering to the limits required by Article 44 of Interim Constitution, 1974 in this regard. Particularly as to embark upon the concurrent findings of two Judicial or Quasi Judicial forums, then there must have some cogent reasons for set at naught or reverse the such findings.

On the other hand Raja Sajjad Ahmed Khan, learned Advocate for the respondent No.1, by controverting the arguments of the learned counsel for the petitioner staunchly argued that the instant writ petition is not maintainable in

the eye of law as the decision impugned by the petitioner, herein, in writ jurisdiction was delivered in favour of the respondent No.1, and he was a beneficiary of both the decisions, who has been expired. Therefore, the writ petition against a dead person is without arraying his legal heirs as party is not maintainable. That too even otherwise both the decisions, passed by the learned Rent Controller and learned District Judge Rawalakot are completely in consonance with law and facts of the case, hence, merits no indulgence of this Court in writ jurisdiction. He further contended that decisions of the learned Rent Controller and of the learned Appellate Authority are final in its nature which espouses the wisdom of the special law i.e. Rent Restriction Act, 1986. The learned counsel for the respondent No.1, in support of his contention and stance referred three vertical case law:-

- i. 2012 CLC 1933;
- ii. 2015 MLD 417;
- iii. 219 CLC (note) 22 & 27

For proper appreciation Section 44 of Interim Constitution, 1974, is reproduced as under:-

“44. Jurisdiction of High Court.- (1) The High Court shall have such jurisdiction as is conferred on it by the Constitution or by any other law.

(2) Subject to [the Constitution], the High Court [may] if it is satisfied that no other adequate remedy is provided by law.-

(a) on the application of any aggrieved party, make an order.-

(i) directing a person performing functions in connection with the affairs of Azad Jammu &

Kashmir or local authority to refrain from doing that which he is not permitted by law to do, or to do that which he is required by law to do; or

(ii) declaring that any act done or proceedings taken [...] by a person performing functions in connection with the affairs of the State or a local authority has been done or taken without lawful authority, and is of no legal effect; or

(b) on the application of any person, make an order, ---

(i) directing that a person in custody in Azad Jammu & Kashmir be brought before the High Court so that the Court may satisfy itself that he is not being held in custody without lawful authority or in an unlawful manner; or

(ii) requiring a person [...] holding or purporting to hold a Public office [in connection with the affairs of Azad Jammu & Kashmir] to show under what authority of law he claims to hold that office; or

(c) on the application of any aggrieved person, make an order giving such direction to the person or authority, including the Council and the Government, exercising any power or performing any function in, or in relation to, Azad Jammu & Kashmir as may be appropriate for the enforcement of any of the fundamental rights conferred by [the Constitution].

(3) An order shall not be made under [sub-Article] (2) of this [Article] on application made by or in relation to a person in the Defence Services in respect of his terms and conditions of service, in respect of any matter arising out of his service or in respect of any action taken in relation to him as a member of the Defence Services.

(4) Where,--

(a) application is made to the High Court for an order

under clause (a) or clause (c) of [sub-Article] (2); and

- (b) the Court has reason to believe that the making of an interim order would have the effect of prejudicing or interfering with the caring out of a public work or otherwise being harmful to the public interest,*

the Court shall not make an interim order unless the Advocate-General has been given notice of the application and the Court, after the Advocate-General or any officer authorized by him in this behalf has been given an opportunity of being heard, is satisfied that the making of the interim order would not have the effect referred to in clause (b) of this [sub-Article].

- (5) In this [Article], unless the context otherwise requires,*

‘person’ includes any body politic or corporate, any authority of or under control of the Council or the Government and any Court or Tribunal other than the [Supreme Court of Azad Jammu & Kashmir], the High Court or a Court or Tribunal established under a law relating to the Defence Services.

[44-A.

44-B.

[44-C. ...”

First of all, I take up and resolve the matter of non-joinder of necessary party in the rent application and appeal and its legal consequences:-

At this juncture it is pertinent to mention here that matter pertaining to rent issues are being governed by a special law on the subject i.e. *“The Azad Jammu & Kashmir Rent Restriction Act, 1986.”* Although under Section 20 of the Act, certain provisions of CPC have been expressly made applicable regarding summoning and enforcing the

attendance of witnesses by compelling their production as are vested in a civil Court under the Code of Civil Procedure 1908. Except these provisions no other provisions of the CPC including Order 22 of the same has been made applicable. Therefore, the Rent Controller has ample power to adapt any procedural mod regarding the lis pending before him as well as the appellate fora.

Nub and crux of the above discussion is that non-joinder of respondent(s) by way of arraying his legal heirs made no difference at all solely. Thus, I am fortified to adapt the guide lines from horizontal precedents of this Court as well as from Pakistan Journals given below:-

- (1). 1993 CLC 1042.
- (2). 1998 CLC 1574.
- (3). PLD 1975 Lah. 1195.

Order passed by the Rent Controller and Appellate Authority could not be regarded as violation of law calling for interference in exercise of writ jurisdiction. In this regard ready reference is [1998 MLD SC AJ&K page 429] titled Muhammad Ilyas Afridi Vs. Rent Controller and others; & [1999 YLR SC AJ&K 275] titled MCB Vs. Rent Controller and others.

In back drop of above argumentation and matrix of the case, at the very outset, I have been apprised by learned counsel for the respondent No.1, that the respondent No.1, was beneficiary of the impugned decisions who had already

passed away and his legal heirs have not been arrayed as party.

The petitioner has invoked extra ordinary writ jurisdiction of this Court quo challenging decisions of the learned Rent Controller and learned District Judge, Rawalakot, that too decision of the Appellate Authority has attained finality in view of the said law i.e. Rent Restriction Act, 1986.

The petitioner has not made out case for interference in concurrent findings delivered by the learned Rent Controller and the Appellate Authority. Findings given by the learned Rent Controller and the Appellate Authority are in consonance with law and fact, hence, merits no interference. For multiple reasons inter-alia, petition grounded against dead person attracts conscious of this Court along with other reasons.

Nutshell of above discussion is that the instant writ petition is not maintainable, admission of which will be a futile exercise, hence, the same merits dismissal in limine accordingly.

Muzaffarabad,
03.03.2022 (MM)

-Sd-
JUDGE

TO BE REPORTED

-Sd-
JUDGE