

**HIGH COURT OF AZAD JAMMU & KASHMIR**

*Writ Petition No.568/2020.*

*Date of institution 23.12.2020.*

*Date of decision 16.11.2022.*

1. Qadeer Hussain.
2. Shabir Hussain sons of Fazal Hussain.
3. Qasir Sajad S/o Sajad Mehmood.
4. Usman Arif S/o Arif Hussain R/o Tenants of Farman Plaza, Chowk Shahidan Tehsil and District Mirpur.

*....Petitioners*

**Versus**

1. District Judge Mirpur Azad Jammu & Kashmir.
2. Rent Controller/Civil Judge Court No.II Mirpur AJ&K.
3. Ch. Ajaib Hussain S/o Saad Muhammad Resident of Jural Kalan Tehsil and District Mirpur, Azad Jammu & Kashmir.

*.....Respondents*

**AMENDED WRIT PETITION**

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

**PRESENT:**

Muhammad Siddique Chaudhary, Advocate for the petitioners.  
Sheikh Ayaz Naseem, Advocate for respondent No.3.

**ORDER:**

The above titled writ petition has been filed under Article 44 of the Azad Jammu and Kashmir Interim Constitution, 1974, whereby the petitioners sought infra relief:-

*"It is therefore respectfully prayed by accepting writ petition impugned judgment/orders passed by Rent Controller Mirpur dated 08.12.2020 and orders dated 28.09.2020, 22.10.2020, 05.11.2020 and 10.11.2020" passed by Rent Controller Mirpur and judgment passed by District Judge Mirpur dated 18.12.2020 may very kindly be set aside and ejectment application may be dismissed with cost. Any other relief which is adequate and*

*permissible under law may also be granted to the petitioners.”*

Precise facts of the case according to petitioners are that a plot measuring 16380 sq ft situated at Sub Sector C/1 Mirpur AJ&K had been allotted to Ch. Farman Ali S/o Atta Muhammad in year 1967 for construction of restaurant. It is averred that allottee after due process of law and approval of plan with the permission of Municipal Corporation Mirpur constructed Hotel, residential rooms and shops over the said plot. It is contended that on 28.03.1972, Ch. Farman Ali owner of Farman Plaza gifted 04 shops on ground floor towards North West to Ch. Saad Muhammad S/o Noor Hussain R/o Jural Kalan and remaining shops, rooms & hotel building to his legal heirs. It is stated that Ch. Farman Ali deceased demolished the Farman Plaza situated in Sector C/1 Chowk Shaheedan Mirpur and reconstructed 04 story commercial building in year 1995, which consists of Jinah Hospital Mirpur, shops, two mosques, residential rooms and offices. It is averred that respondent No.3 filed an application titled “Ch. Ajaiab Hussain vs. Qadeer Photostat and others” before the Rent Controller Mirpur on 27.03.2020 for ejection of petitioners and others, whereupon, petitioners submitted objections wherein they refuted the stance of respondent No.3. It is claimed that the learned Rent Controller Mirpur on 28.09.2020 ordered the petitioners to deposit the rent in the court and case was adjourned for framing of issues and consequently on 10.11.2020 the right of defence of petitioners was struck off and

ordered the petitioners for ejection from the shops. Feeling aggrieved, petitioners preferred an appeal before the learned District Judge Mirpur. The learned District Judge Mirpur vide judgment dated 08.12.2020 dismissed the appeal. It is prayed that the judgment passed by learned District Judge Mirpur dated 08.12.2020 and orders passed by Rent Controller Mirpur dated 28.09.2020, 22.10.2020, 05.11.2020 and 10.11.2020 are liable to be set aside.

Written arguments were submitted on behalf of learned counsel for the parties on the direction of this Court.

Muhammad Siddique Chaudhary, the learned counsel for the petitioner reiterated the facts and grounds narrated in the petition and submitted written arguments wherein it is contended that respondent No.3 is not landlord and there is no relationship of landlord and tenant between petitioners and respondent No.3, rather respondent No.3 by concealing the facts with bad intention filed ejection application regarding shops and rooms which are situated on first floor while respondent No.3 and his brothers are owners of 4 shops which are situated on ground floor and the same are not in possession of petitioners as tenants of respondent No.3, but the learned Judge/ Rent Controller, respondent misconceived the facts record and law and passed the impugned order without lawful authority. He vehemently contended that the learned courts below misconceived the law and held that interim orders cannot be challenged in appeal without challenging interim orders if appeal is against final order under Rent Restriction Act then interim order

can also be challenged without final order in appeal, but the learned Rent Controller as well as learned District Judge Mirpur overlooked the law, even then no penal provision has been provided in AJ&K Rent Restriction Act, 1986. Finally, the learned counsel prayed for acceptance of the writ petition by setting aside the impugned orders of the courts below.

Sheikh Ayaz Naseem, the learned counsel appearing on behalf of respondent No.3 submitted written arguments wherein the claim of the petitioners have been opposed and negated. It is submitted that the matter in hand pertains to the factual controversy which cannot be resolved in writ jurisdiction, thus, the same is liable to be dismissed. The learned counsel contended that the petitioners filed undertaking before Rent Controller that if the proceeding for ejectment is cancelled, petitioner will pay the rent regularly. The learned counsel submitted that the petitioners are prolonging the matter by misusing process of law and deliberately filed an appeal before wrong forum. Petitioners challenged the judgment of District Court Mirpur dated 08.12.2020 through the instant writ petition and obtained status-quo, the writ petition as well as application for interim relief is liable to be dismissed. The learned counsel vehemently contended that under Section 14(8) of AJ&K Rent Restriction Act, 1986 the Rent Controller has ample power to direct the tenant to deposit all the rent dues and deposit the same regularly till decision of the case. The learned counsel

defended the impugned orders on all counts and prayed for dismissal of the writ petition with cost.

I have perused the written arguments submitted on behalf of the learned counsel for the parties and gone through the case with due care.

The petitioners' claimed that by accepting the writ petition, the impugned orders passed by the courts below dated 08.12.2020, orders dated 28.09.2020, 22.10.2020, 05.11.2020 and 10.11.2020 as well as judgment passed by District Judge Mirpur may be set-aside.

From perusal of the aforesaid orders as well as record of the case reveals that an application titled "Ch. Ajaib Hussain vs. Qadeer Photostat and others" was subjudice before Civil Judge, Court No.II Mirpur empowered as Rent Controller Mirpur. The record further reveals that the petitioners/ non-petitioners (therein), did not deposit the rent of shops etc. from January 2020 to September 2020. During proceedings before the trial Court, respondent No.3 filed an application for ejectment of petitioners herein in the trial Court alongwith the application under Section 14(8) of AJ&K Rent Restriction Act, 1986, wherein vide order dated 28.09.2020, the learned trial Court ordered the petitioners to deposit rent in the court on 15<sup>th</sup> of every month and case was fixed for depositing of rent alongwith framing of issues on 15.10.2020. The record further reveals that the Rent Controller issued the order dated 10.11.2020 for eviction of demised premises against the

petitioners and issued warrant for possession to Tehsildar Mirpur. Against which the petitioners filed an appeal before the learned District Judge Mirpur on 21.11.2020 and same was dismissed vide order impugned herein on 08.12.2020, and in the order dated 21.12.2020, Tehsildar Mirpur sealed the offices and shops and evicted the petitioners. Later on, after obtaining status-quo from this court, the petitioners herein again break the sealed locks of offices and shops on 23.12.2020, by suppressing the actual facts and circumstances of the lis pending adjudication before the lower courts. It is important to mention here that the petitioners have been evicted due to non-compliance of the court order, in this regard section 14(8) of Rent Restriction Act, is mandatory and binding provision. It is also worth mentioning that the matter relates to Rent law and Rent law is special law, while the petitioners when failed to pay the rent before the court below, the Rent Controller ordered for eviction of the petitioners under the aforementioned provision/section of concerned law.

Furthermore, it is celebrated principle of law that factual controversy cannot be resolved through the constitutional jurisdiction.

The record further shows that the matter regarding ownerships of shops etc. is subjudice before the court of Additional District Judge and yet to be decided.

After perusal of whole record as well as impugned orders, passed by the learned courts below seems to be just, proper and quite in accordance with law, which in my considered view needs no interference by this Court. Even otherwise, the petitioners have failed to point out any violation of law, rules or violation of statutory provisions of relevant law, thus, no direction can be made.

**Remedy in the shape of writ is purely an extra ordinary equitable relief, which inter-alia is subject to bonafide approach of the person who seek indulgence of the court quo redressal of his grievance, random approach with unclean hands, particularly pertaining to the matter governed under special law cannot find room qua entertainment of litigation.**

(underlining is ours)

Some guiding principles quo issuance of high prerogative writ are useful to be reproduced infra:-

- (1) Disputed question of facts cannot be normally resolved in extra ordinary jurisdiction<sup>1</sup>.
- (2) One who seeks remedy by way of filing writ petition must come with clean hands.
- (3) Where civil litigation is already pending between the parties then in such like matters civil court has jurisdiction to entertain the matter and the jurisdiction of the civil court cannot be ousted<sup>2</sup>.
- (4) The conduct of litigant plays an important role. Where a person has not come with clean hands or the court finds that he is not a bonafide person or where his conduct is dubious, the Court can decline to go into the merits of the case<sup>3</sup>.
- (5) High Court can exercise the jurisdiction vested in it under Article 44 of the Interim Constitution in some appropriate and exceptional circumstances

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<sup>1</sup> 2018 YLR 412 + PLD 2005 SC 792 + PLD 2011 SC 44 + 2020 YLR 537.

<sup>2</sup> 2010 YLR 2159 + 2006 CLC 1719 + 1999 SCMR 2380.

<sup>3</sup> 2017 YLR 411.

when a case is made out that forums/courts below have exercised the jurisdiction not vested in them by law or failed to exercise the jurisdiction<sup>4</sup>.

- (6) Decisions of forums constituted under the special law are normally not interfered with in exercise of constitutional jurisdiction unless the same are illegal, void and without jurisdiction<sup>5</sup>.

The matter in hand is a dispute quo landlord and tenant which is governed under special law.

Some tested principles deducted from pronouncement of superior court quo Rent matters are--

- (1) Default of even one day fatal and sufficient for ejectment.
- (2) Bonafide personal need is suffice to ask for ejectment.

Thus, scope of writ against concurrent findings of courts below is narrow.

Challenge to the title of landlord at random by tenant is not helpful in the instant matter. Ready reference in this regard is **2011 CLC 1464.**

Nub of above discussion is that finding no substance in this writ petition, the same stands dismissed in limine under the doctrine of limine control alongwith miscellaneous applications.

*Muzaffarabad,*  
16.11.2022.

-Sd-  
**JUDGE**

Note:-

Judgment is written and duly signed. Office is directed to transmit this file to Circuit Mirpur, forthwith. Deputy Registrar Circuit Mirpur is directed to intimate the parties or their counsel, after due notices.

-Sd-  
**JUDGE**

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<sup>4</sup> 2020 CLC Note 14.  
<sup>5</sup> 2004 MLD 635.