

**IN THE PESHAWAR HIGH COURT,**  
**PESHAWAR,**  
**[Judicial Department].**

**Writ Petition No.2692-P/2013**

Date of hearing:- 27.02.2017

Petitioner(s):- Tahir by Mr. Abdul Sattar Khan, Advocate.

Respondent (s):-Late Jehangir Khan through his LRs by Mr. Muhammad Saeed Khan, Advocate.

**JUDGMENT**

**ROOH-UL-AMIN KHAN, J:-**This common judgment shall dispose of the instant writ petition, filed by petitioner Tahir and connected writ petitions, particulars of which are being given below, as common question of law fact is involved therein.

**Connected Writ petitions:**

1. **Writ Petition No.2691-P/2013**  
(Sayar Vs Jehangir Khan through LRs)
2. **Writ Petition No.2690-P/2013**  
(Liaqat Vs Jehangir Khan through LRs)
3. **Writ Petition No.2693-P/2013**  
(Shah Wali Vs Jehangir Khan through LRs)
4. **Writ Petition No.2694-P/2013**  
(Maqbool Vs Jehangir Khan through LRs)
5. **Writ Petition No.2695-P/2013**  
(Abdul Abdul Hadi Vs Jehangir Khan through LRs).
6. **Writ Petition No.2696-P/2013**  
(Ismail Bukhar Vs Jehangir Khan through LRs)
7. **Writ Petition No.2697-P/2013**  
(Mulla Abdul Baseer Vs Jehangir Khan through LRs)

2. Facts in brief necessary for the disposal of these writ petitions are one Jehangir Khan filed ejectment petitions under section 13 of the Urban Rent Restriction Ordinance, 1959, (**the Ordinance**), bearing No.266/RC,

267/RC, 269/RC, 270/RC, 272/RC, 273/RC, 278/RC and 279/RC, against the present petitioners, namely, Sayar, Liaqat, Abdul Hadi, Tahir, Maqbool, Mulla Basir and Muhammad Ismail Bukhari, respectively, in the Court of learned Rent Controller, Peshawar, seeking eviction of the petitioners from the disputed premises i.e. Lakhi Faqir Electric Market Chowk-e-Yadgar, Peshawar City, on the grounds of default in payment of monthly rent and bona fide personal need. During pendency of the petitions, Jehangir Khan died, as such his LRs were impleaded as petitioners, who are now respondents in the writ petitions.

**3.** It is averred in the ejectment petitions that petitioners were the tenants of landlord Faisal Naveed in the disputed premise. Vide registered sale deed No.3812 dated 27.10.2008, the disputed premises was purchased by Jehangir Khan from Faisal Naveed, so in this way, the petitioners-tenants came under his tenancy. Allegedly, after purchase, a legal notice qua change of the ownership and payment of onward monthly rent to said Jehangir Khan was communicated to the petitioners-tenants, but they failed to pay the same, hence, the above mentioned ejectment petitions.

**4.** Petitioners-tenants contested the respective ejectment petitions filed against them by filing their respective written reply, raising therein variety of objections, legal as well as factual, however, their specific

denial of the relationship of landlord and tenant and contumacious denial of payment of rent to the respondents, led the learned Rent Controller to formulate a preliminary issue in this regard:-

***Whether the relationship of landlord and tenant exists between the parties?***

5. In support of their stance qua the aforesaid issue, an opportunity of leading evidence was provided to the parties, which they did avail and on conclusion of trial, the learned Rent Controller while deciding the issue, declared the petitioners as tenants of the respondents and held them as defaulters of monthly rent, hence, directed their eviction within 30 days vide judgment dated 30.04.2012. Tenants-petitioners being dissatisfied, preferred appeals before the learned Appellate Court/ District Judge-XII, Peshawar, but the same were dismissed vide judgments dated 12.09.2013, hence, these writ petitions.

6. It may be noted that initially all the writ petitions were filed by petitioners through their counsel Mr. Muhammad Tariq Yousafzai, Advocate. Subsequently, the worthy counsel withdrew his power of attorney (Wakalat-nama) in all the cases, therefore the petitioners were served personally, out of whom, petitioners in Writ Petitions No. 2695-P, 2697-P, 2692-P of 2013, engaged Mr. Abdul Sattar, Advocate, while petitioners in Writ Petitions No. 2693-P of 2013, engaged Mr. Asghar Khan,

Advocate for pleading their cases. Today when the cases were taken up for hearing, learned counsel for the petitioners Maqbool, Muhammad Ismail Bukhari and Sayar, did not turn up, however, learned counsels for rests of the petitioners were present and heard along with counsel for respondents.. Having heard the arguments and perusing the record, this Court observed that by virtue of involvement of a common question of law and fact in all the cases, any decision in absence of learned counsel for some of the petitioners, would not prejudice their cases, hence, I am going to be decided all the cases through this single judgment.

7. Learned counsel for the petitioners-tenants forcefully emphasized that petitioners are tenants of Faisal Naveed and regularly paying monthly rent to him, whereas the respondents have miserably failed to establish their relationship as landlord of the petitioners. Though the respondents claim their ownership over the disputed premises on the basis of registered sale-deed dated 27.10.2008, but it is an undeniable fact that the landlord Faisal Naveed had filed an application in the court of learned Rent Controller for ejectment of petitioners which ultimately culminated in to a settlement and the petitions were dismissed vide order dated 12.1.2009. Subsequently the above named Faisal Naveed instituted a suit for declaration and perpetual injunction before the Civil Judge,

Peshawar, which was, later on, dismissed as withdrawn. Likewise, the disputed premises came under litigation in a suit titled “Muhammad Ahmad versus Sahib Naseem”, however, the same resulted into dismissal on account of withdrawal. They went on to say that the respondents have never acquired the status of owner or landlord of the disputed premises, hence, question of default never arises. While buttering their arguments, the learned counsel for petitioners submitted that even if for the sake of arguments it is admitted that the respondents have established their ownership in the disputed premises, even then, the petitioners cannot be ejected as no notice with regard to change of ownership, as required under section 13-A of the Ordinance, has been given and served upon the petitioners nor the petitioners have been asked to enter into a fresh agreement of tenancy with the respondents. Both the Courts below by not advertng to the above crucial legal aspects of the case have arrived at an erroneous conclusion by holding the petitioners as defaulters of rent and directing their ejection.

**8.** Conversely, learned counsel for the respondents while supporting the impugned judgments contended that respondents have proved upto the hilt that their predecessor had purchased the disputed premises from Faisal Naveed through registered sale deed dated 27.10.2008 and as such they have stepped into the

shoes of vendor and have become landlord of the disputed property. The change of ownership of respondents was in the knowledge of petitioners, but they deliberately avoid paying rent to the respondents, thus have become willful defaulters of rent. The plea of deferment of rent to the respondents on the ground of alleged dispute between the respondents and previous owner is fallacious and self-contradictory as the petitioners have neither paid any rent to respondents nor to previous owner. He vehemently argued that the service of notice under section 13-A of the Ordinance, 1959 upon the petitioners and their willful default in payment of rent as well as their bona fide personal need have been proved through cogent and confidence inspiring documentary as well as oral evidence, hence, sought dismissal of the writ petitions.

**9.** Arguments of learned counsel for the parties heard and record perused with their able assistance.

**10.** Admittedly, respondents have not denied the disputed premises to be the ownership of one Faisal Naveed till 2008, however, they have shown their ignorance, rather denied the purchase of the disputed premises by Jehangir Khan from said Faisal Naveed vide registered sale deed No.3812, Exh.PW.1/1. As recorded in the preceding para-7, the disputed premises remained under litigation between the respondents and Faisal Naveed, therefore, they (petitioners) were not in a position

to pay rent to either party. To substantiate the plea raised in eviction petitions, the respondents produced registered sale deed No.3812 dated 27.10.2008 (Exh.PW.11), legal notice under section 13-A of the Ordinance as Exh.PW.1/2 and postal receipt as Exh.PW.1/3 along with A.D. Jehanzeb Khan appeared as PW.1, who is the attorney of Mst. Shamshad Begum widow of deceased Jehangir Khan. He supported the affidavit filed by Jehangir Khan along with ejectment petitions. Similarly, Rahim Gul while appearing as PW.2, fully substantiated the claim of the respondents by deposing that the disputed premises was sold out by Faisal Naveed to Jehangir Khan, in his presence and in this regard sale deed No.3812 dated 27.10.2008 (Exh.PW.1/1), was executed in his presence and he signed the same as a marginal witness. Both the witnesses have been subjected to lengthy and taxing cross-examination, but nothing beneficial to the petitioners-tenants could be extracted from them. In their cross-examination, the learned counsel for the petitioners instead to prove bonafide of the petitioners in payment of rent or their reasonable and justifiable abstinent, tried its level best to prove the registered sale deed Exh.PW.1/1 as bogus and fictitious, but failed. It appears from the record that though the sale-deed Exh.PW.1/1 was challenged by Faisal Naveed in suit No.130/1 of 2009, but his suit was dismissed as withdrawn on 14.04.2011. Similarly, his

application for review of the said order met the same fate. No doubt, at the moment, a suit had been filed by one Muhammad Ahmad wherein he has challenged the sale-deed Exh.PW.1/1, but this would not advance the case of the petitioners-tenants because any dispute between the ostensible owner and a third person would not equipped the tenant with a plea of justification to defer the payment of rent to landlord. Tenants are not obliged to satisfy themselves about the title of the premises, particularly when there is no demand of rent from the rival claimant in the title. For the sake of arguments, if the plea of petitioners with regard to existence of litigation over the disputed premises is presumed to be a justifiable abstinent, then they were required to pay the monthly rent to rival claimant i.e. (Faisal Naveed), but they have also failed to produce a single receipt showing the payment of rent during subsistence of alleged litigation between the claimants of the properties. The tenants were required to prove their good conduct, bonafide justifiable abstinent in non-payment of rent, otherwise, mere pendency of any dispute in respect of title between landlord and other party, would not absolve them from the liability of payment of rent. I have scanned the record of the case from cover to cover, but could not find an iota of evidence suggestive of the facts that the petitioners have ever refrained or abstained by any alleged litigant from payment of rent to

the respondents. Admittedly without being interested in the title of disputed premises, the petitioners/tenants took upon themselves to challenge the title of respondents/transferee. Demonstrating such a conduct is sufficient to hold the petitioners as contumacious defaulter of rent and on such ground their eviction would appear to be amply justified and beyond the interference of constitutional jurisdiction. A similar controversy with regard to non-payment of rent due to dispute over title came before the august Supreme Court of Pakistan in case titled “**Makhan Bano Vs Haji Abdul Ghani**” (PLD-1984 SC-17), wherein it was ruled that “*the futility of his efforts to take up a dispute over title of the property, abandoning it at a crucial stage and withholding rent on that account for over 10 months showed an element of contumacy and persistency in the misconduct.*”

11. In the cases in hand, the petitioners admit their tenancy in the disputed premises but have refused to acknowledge the land lordship of respondents and commission of persistent default in payment of rent on the sole ground of dispute between respondents and some other persons despite the fact that neither the petitioners have been restrained by any party from payment of rent to respondents nor the landlord-respondents have refused to receive the monthly rent. Even, in case of refusal, the petitioners were equipped with a remedy to tender the rent

through postal money order or to deposit it in the office of the Rent Controller. The petitioners were under obligation to pay the monthly rent either to the previous order/landlord or subsequent transferee, and on mere plea of dispute regarding ownership of the property, the petitioners-tenants were not entitled to defer payment of monthly rent and on doing so, they have exposed themselves to be declared as willful defaulters in payment of rent and as such liable to be ejected from the premises. From the evidence on record one thing is clear as crystal that the sale-deed Exh.PW.1/1 is still intact in favour of the respondents and has not been cancelled by any competent authority. An iota of evidence is not available on file to prove the stance of the petitioners-tenants. Sufficient evidence is available on file which proves the disputed premises to be the ownership of the respondents. In support of the stance of the petitioners-tenant, Faisal Naveed never appeared in the Court despite the fact that so many opportunities had been granted to the petitioners-tenants by the learned Rent Controller during trial nor did he opt to become party in the lis. The petitioners-tenants failed to produce any current receipt in support of payment of the monthly rent to Faisal Naveed. The receipts produced by them pertain to 2008 i.e. the year in which the change of ownership has been taken place. After change of ownership of the disputed premises, the tenants-petitioners

were under legal obligation to pay rent to the respondents, but they willfully did not pay the same to the respondents.

**12.** Reverting to the contention of learned counsel for the petitioners-tenants regarding non-service of notice under section 13-A of the Ordinance on the petitioners-tenants, on one hand, legal notice in terms of section 13-A of the Ordinance, 1959 has been exhibited during trial as Exh.PW.3/1, while on the other hand, its receipt has also been admitted by the tenants, however, for the sake of discussion if we presume that no such notice was served upon the petitioners, even then, this ground would not benefit the petitioners-tenants because filing of eviction petitions amount to a notice under section 13-A of the Ordinance, and after institutions of the same, the tenants were under legal obligations to have made payment of the rent from the date, the respondents became the landlord/owners of the disputed premise, but they failed. The non-payment of the rent after institution of the ejectment application would alone be sufficient ground for ejectment of a tenant in light of ratio of judgments rendered by the apex and high court of the country in cases titled, *“Muhammad Yousaf Vs Mehraj ud Din and others”* (1986 SCMR 751). *“Syed Azhar Imam Rizvi Vs Mst. Salma Khatoon”* (1985 SCMR 24), *“Mst. Huma Bilal Vs Gulam Farid”* (2005 CLC Lahore 983), *“Shah Mir Vs Ghulam Hussain”* (2012 YLR Balochistan 148).

Institution of ejectment petition and receipt of copy of eviction application and knowledge about transfer of tenanted premises has been considered to be due notice treated substantially compliance of section 13-A. As per the ratio of the judgments (*supra*), filing of ejectment petition is a sufficient notice of change of ownership in favour of landlord whereafter tenant is not entitled to raise such plea. It has been further held in **1986 SCMR 751 (*supra*)** that if service of notice under section 13-A is not proved then filing of ejectment petition itself would be a notice. If thereafter entire rent due is not paid to the new landlord, then tenant could be ejected on the ground of default.

**13.** So far as pendency of a civil suit between Muhammad Ahmad and the respondents about the sale-deed Exh.PW.1/1 is concerned, on one hand, the sale-deed is still intact in favour of the respondents, while on the other hand, question of title has no relevancy in proceedings before Rent Controller as pivotal point requiring determination in the matters of rent, is relationship of landlord and tenant, which relation has been squarely proved by the respondents through cogent documentary and oral evidence. Tenant would have absolutely no right to raise any objection regarding ownership as same would have no substantial effect on factum of his tenancy and his status would remain as

tenant. The Rent Controller is not competent under the Ordinance, 1959, to determine question of title of property, which is the job of Civil Court.

**14.** For the reasons discussed above, the respondents have squarely proved their status as landlord of the disputed premises and the petitioners as their tenants and contumacious defaulter of rent since purchase of the disputed premises, therefore, both the Courts below have rightly passed their ejectment orders. The impugned judgments of the two Courts below being well reasoned and based on proper appreciation of evidence and the law on the subject, do not warrant any interference by this Court in its constitutional jurisdiction. Accordingly, all the writ petitions being meritless are hereby dismissed.

**Announced:**

**27.02.2017**

*Siraj Afridi P.S.*

**JUDGE**