

1988 S C M R 890**Present: S. A. Nusrat and Zaffar Hussain Mirza, JJ****Mrs. SHAZAEH POOYA--Appellant
versus
Mrs. MUBARAK SHAH--Respondent**Civil Petition for Leave to Appeal No. 97-K of 1987, decided on 29th October, 1987.

(On appeal from the judgment of the High Court of Sind, dated 1-9-1987 in F.R.A. No. 686 of 1983).

West Pakistan Urban Rent Restriction Ordinance (VI of 1959)--

---Ss.13-A & 15--Constitution of Pakistan (1973), Art.185(3)- Ejectment on ground of default--Change of ownership of rented premises not known to tenant--No notice served under S.13-A of Ordinance (VI of 1959)--Tenant continuing payment of rent to agent of former landlord--Rent Controller drawing contrary conclusion from facts which were never pleaded and proved--High Court's order setting aside ejectment order upheld--Leave to appeal refused.

Nasim Farooqi, Advocate Supreme Court with S. M. Abbas, Advocate-on-Record for Petitioner.

Sami Ahmad, Advocate Supreme Court with A. Aziz Khan, Advocate-on-Record for Respondent.

Date of hearing: 29th October, 1987.

ORDER

ZAFFAR HUSSAIN MIRZA, J.--The petitioner who claims to be the owner of the disputed residential property has brought this petition for leave to appeal from the judgment of a learned Single Judge of the Sind High Court, dated 1st February, 1987, whereby the appeal of the respondent, who is the tenant in the disputed premises was allowed and the eviction order passed against her was set aside.

2. The facts are that the building in which the premises in question are located was originally owned by one Mst. Iffat and consists of a portion on the ground floor of a double storey bungalow. The petitioner and her sister purchased the above said bungalow from its previous owner Mst. Iffat on 16th September, 1976. In 1979, the petitioner sought the eviction of the respondent on the ground of default in the payment of rent for the period commencing from 1st March, 197E to 30th April, 1979. The plea of the petitioner was that a notice dated 5th April, 1979 under section 13-A of the West Pakistan Rent Restriction Ordinance, 1959 intimating to the respondent the change of ownership of the premises in favour of the petitioner was sent to her. The respondent, however, denied the receipt of the notice and resisted the eviction application on the legal ground that notice under section 13-A was not served on her and on facts her defence mainly was as under: -

"Mr. Murtaza Pooya was the concerned man in respect of the demised premises and the opponent knew him to be the landlord of the demised premises and under his instructions the rent was being paid to his appointed rent collector, Mr. Ibrahim Ali. Since the tenancy is as old as of about 30 years so there was firm confidence between the parties, and the rent collector used to collect rent in lump sum at his pleasure. Mr. Murtaza Pooya being a very busy and respectable man and mostly away from Karachi never desired to be disturbed on such petty matters."

According to the respondent's plea in the written statement there was a practice established between the previous landlord and the respondent that the Rent Collector would collect the rent periodically but when he did not turn up she sent the rent upto September, 1979, through cheque to Mr. Murtaza Pooya who by his letter dated 12th September, 1979, refused to accept the rent and for the first time informed her that his wife the present petitioner and his sister- in-law were the owners and landladies of the demised premises.

3. The learned Rent Controller, on the evidence led before him, held that as admittedly the respondent was paying rent to Ebrahim Ali the rent collector of the petitioner, although the service of written notice had not been proved, that fact established that the respondent had knowledge of the change of ownership. In this view of the matter he held the respondent guilty of default and by his order dated 30th July, 1983 passed the order of eviction against her. In appeal, however, by the impugned judgment in this petition the learned Single Judge of the High Court reversed the finding of the Rent Controller and accepted the appeal of the respondent.

4. In arriving at the conclusion that the appellant had no knowledge of the change of ownership of the premises, the learned Single Judge observed that the learned Rent Controller had reached the contrary conclusion from the facts which were never pleaded and proved. He, however, analysed the circumstances from which the learned Rent Controller has inferred that the respondent had knowledge of the change of ownership and observed:-

"The only fact from which the Controller assumed knowledge is that the appellant stated in her affidavit-in-evidence that Mr. Murtaza Pooya introduced Rent Collector Ibrahim Ali to the appellant and told her to pay rent to him. It is an admitted position that the rent collector was the employee of Mr. Murtaza Pooya, viewed in the light of the circumstances will not justify an inference that the appellant had the requisite knowledge about the change of ownership. It is also an admitted position that Ibrahim Ali was collecting rent from all the tenants including the appellant on behalf of Mst. Iffat. It is also an admitted position that the rent collector was collecting rent from the appellant much prior to the purchase of the property by the respondent and her sister-in-law. The rent collector did not state in his affidavit-in-evidence that he personally informed the appellant about the purchase of the property by the respondent and her sister-in-law. It was not the case of the respondent that Mr. Murtaza Pooya informed her that his wife and his sister purchased the property from Mrs. Iffat."

5. In support of the petition learned counsel contended that the learned Single Judge had erred in not holding that on the evidence on record, the petitioner had established the fact that the respondent had knowledge that the petitioner had become the new landlady. It is, however admitted position that during the time of the original landlady Ibrahim Ali was collecting the rent on her behalf from the respondent and according to the case of the petitioner he continued to be the rent collector. Therefore, unless Ibrahim Ali had expressly informed the tenant that he was collecting the rent after the transfer of ownership on behalf of the new owner, the mere fact of the same rent collector recovering rent from the tenant for some time after the transfer is no evidence that the tenant had knowledge of the change of ownership. We, therefore, agree with the reasoning that prevailed with the learned Single Judge to hold that neither a notice as required by section 13-A of the Urban Rent Restriction Ordinance was served on the tenant, nor the tenant had knowledge of the change of ownership by any other means.

6. For these reasons we find no force in this petition which is accordingly dismissed.

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