

**P L D 2010 Lahore 389**

**Before Sh. Ahmad Farooq, J**

**MAJID KHAN through Special Attorney and 2 others---Petitioners**

**Versus**

**Mst. NASEEM BIBI and 9 others---Respondents**

Writ Petition No.10453 of 2010, decided on 17th June, 2010.

**Punjab Rented Premises Act (VII of 2009)---**

----Ss. 5, 8, 9 & 15---Punjab Rented Premises Ordinance (XXI of 2007), S.8--- Constitution of Pakistan (1973), Art.199---Constitutional petition---Ejectment of tenant--Mother of petitioners had rented out the premises in 1994 to the predecessor-in-interest of respondents---After expiry of tenancy period, respondents remained in possession as tenants and tenancy was not brought in conformity with the Punjab Rented Premises Ordinance, 2007---Petitioner filed ejectment petition before Special Judge (Rent) who directed the petitioner to deposit fine equivalent to ten per cent of annual value of the rented premises---Petitioners contended that the impugned order had been passed in disregard of section 8 of the Punjab Rented Premises Act, 2009 which provided a period of two years to an existing landlord and tenant to bring the tenancy in conformity with the Punjab Rented Premises Act, 2009---Petitioners contended that provisions of section 9 of the Punjab Rented Premises Act, 2009 could not be applied to the tenancies which existed before the promulgation of the Punjab Rented Premises Ordinance, 2007 and the Punjab Rented Premises Act, 2009 before the expiry of two years period provided for bringing such tenancies in conformity with the Punjab Rented Premises Act, 2009---Validity---Conjunctive reading of Ss. 8 and 9 of the Punjab Rented Premises Act, 2009 made it clear that the initial two years of the promulgation of the Punjab Rented Premises Ordinance, 2007 and the Punjab Rented Premises Act, 2009, penal provisions of section 9 of the Punjab Rented Premises Act, 2009 could not be applied on existing tenancies---Punjab Rented Premises Ordinance, 2007 remained in the field for two years beginning from 16th November, 2007 and was repealed by the promulgation of the Punjab Rented Premises Act, 2009 on 17th November, 2009---Section 8 of the (repealed) Ordinance was retained in verbatim by the Punjab Rented Premises Act, 2009 which meant that the legislature intended to provide the grace period of two more years to existing tenancies so that such tenancies could be brought in conformity with the Punjab Rented Premises Act, 2009 before said grace period ended on 16th November, 2011---Section 8 of the Punjab Rented Premises Act, 2009 provided a benefit/concession to the existing tenancies; such beneficial legislation had to be construed liberally---Case of the petitioners was within purview of section 8 of the Punjab Rented Premises Act, 2009 so they could not be ordered to deposit 10 per cent of the annual rent value of premises in dispute by the Special Judge (Rent) prior to the expiry of the period of two years w. e. f. 7-11-2009---Section 9 of the Punjab Rented Premises Act, 2009 could not be applied to the tenancies existing prior to promulgation of the said Act in contravention of S.8 thereof---Impugned order passed by the Special Judge (Rent), being in contravention of S.8 of the Punjab Rented Premises Act, 2009, was declared to be illegal and set aside---Constitutional petition was allowed accordingly.

Abdul Rehman v. Inspector General of Police, Punjab, Lahore and 2 others PLD 1995 SC 546 fol.

Asim Qureshi, Chief Editor, Haftroza Roshan, Gujranwala v. Farooq Ahmed Khan Leghari, President of Islamic Republic of Pakistan and another PLD 1999 Lah.76 rel.

Anwaar Hussain and Mehr Muhammad Iqbal for Petitioners.

Jawad Hassan, Addl. A.-G.

## **ORDER**

**SH. AHMAD FAROOQ, J.**---Though the instant constitutional petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, the petitioners have challenged the legality of the order dated 6-5-2010, whereby the learned Special Judge (Rent), Lahore has ordered them to pay 10% of the annual value of the rent of the premises in question in accordance with section 9 (b) of the Punjab Rented Premises Act, 2009.

2. The facts necessary for the adjudication of lis in hand are that the petitioners' mother/Mrs. Naeema Khanum (since died on 1-1-2010) rented out a shop No.1, Mall Mansions, 30-Shahrah-i-Quaid-i-Azam, Lahore (hereinafter called the Rented Premises) to Muhammad Akram (predecessor-in-interest of present respondents Nos.1 to 9) for a period of one year and three months, vide Lease Agreement dated 16-1-1994. However, after the expiry of the said period of tenancy, the predecessor-in-interest of the respondents Nos. 1 to 9 remained in possession as tenants. On promulgation of the Punjab Rented Premises Ordinance, 2007, the petitioners' predecessor issued a notice dated 30-4-2009, under section 8 of the Ordinance *ibid*, to the respondents' predecessor-in-interest for renewal of tenancy and to bring the same in conformity with the provisions of the Ordinance *ibid* but without response. Thereafter, the petitioners filed an ejection application against respondents Nos.1 to 9 on 5-5-2010 wherein Special Judge (Rent), Lahore directed the petitioners to deposit fine equivalent to 10% of the annual rent of the demised premises, vide order dated 6-5-2010 in view of section 9(b) of the Punjab Rent Premises Act, 2009.

3. Despite service through ordinary as well as courier service, no one appeared on behalf of the respondents. Even otherwise, the impugned order is not against respondents and only the wires of the said order qua application of sections 8 and 9 of the Punjab Rented Premises Act, 2009 has been assailed through this constitutional petition.

4. It is contended by the learned counsel for the petitioners that the impugned order is illegal, unlawful and without jurisdiction as it has been passed without considering section 8 of the Punjab Rented Premises Act, 2009, which provided a period of two years to an existing landlord and tenant to bring his tenancy in conformity with the provisions of Act *ibid*. The learned counsel further contended that the learned Special Judge (Rent) did not consider the provisions of sections 8 and 9 of the Punjab Rented Premises Act, 2009 conjunctively. He argued that the purpose of providing two years period in section 8 would be defeated, in case the provisions of section 9 of the Act *ibid* are applied to the tenancies which existed prior to the promulgation of the Punjab Rented Premises Ordinance, 2007 and the Punjab Rented Premises Act, 2009 respectively. He also argued that the effect of section 9 of the Punjab Rented Premises Act, 2009 would only come into play, if a tenancy agreement is entered into after promulgation of the Act and the same has

not been registered under section 5 of the Act *ibid* or it was in existence at the time of promulgation of the Act *ibid* and has not been brought in conformity with the provisions of the Act within two years of coming into field of the Act.

5. Arguments heard. Record perused.

6. Rent law in the Province of Punjab was completely revised by the Legislature and new concepts have been introduced through the Punjab Rented Premises Ordinance, which was promulgated on 16 November, 2007 and was later replaced by the Punjab Rented Premises Act, 2009, which came into force on 17 November, 2009.

7. Section 5 of the Act *ibid*, is most important, which deals with agreement between landlord and tenant and it has been made compulsory that the agreement of tenancy shall be in writing and be presented before Rent Registrar, who shall enter the particulars of the tenancy agreement in a register and affix his official seal on tenancy agreement in a register and affix his official seal on tenancy agreement, retain a copy thereof and return the original agreement to the landlord.

8. A careful perusal of the Act *ibid* indicates that Legislature in its wisdom dealt with the question as to how a tenancy, which existed at the time of promulgation of the Punjab Rented Premises Act, 2009 would be governed. Section 8 of the Act *ibid* provides the manner in which the existing tenancies are to be dealt with, as under:-

"Section 8. Existing Tenancy.--An existing landlord and tenant shall, as soon as possible but not later than two years from the date of coming into force of this Act, bring the tenancy in conformity with the provisions of this Act."

A bare reading of aforequoted section 8 of the Act *ibid* makes it amply clear that two years time period was granted to the parties of existing tenancies to bring their tenancies in conformity with the provisions of the Act *ibid* i.e. reduce it in writing and cause its particular to be entered in a register maintained by the Rent Register in accordance with section 5 of the Act *ibid*.

9. Section 9 of the Act *ibid* deals with the effect of non-compliance of the provisions of the said Act by the parties. It would be advantageous to reproduce hereunder section 9 of the Act *ibid*:--

"Section 9. Effect of non-compliance.--If a tenancy does not conform to the provisions of this Act, the Rent Tribunal shall not entertain an application under this Act:-

(a) on behalf of the tenant, unless he deposits a fine equivalent to five per cent of the annual value of the rent of the premises in the Government treasury; and

(a) on behalf of the landlord, unless he deposits a fine equivalent to ten per cent of the annual value of the rent of the premises in the Government treasury."

However, while applying penal effects of non-compliance of section 9 to the parties, the scheme of the statute must be kept in mind. As a matter of fact, there are two types of tenancies, which have been visualized and dealt with by the Legislature at the time of promulgation of the Ordinance (XXI of 2007) as well as Punjab Rented Premises Act, 2009. Firstly, those tenancies, which came into existence after the promulgation of the Ordinance/Act *ibid*, and in that case, section 9 is to be applied in the light of section 5 thereof. The second type of tenancies are those which were in



