IN THE SUPREME COURT OF AZAD JAMMU AND KASHMIR

(Appellate Jurisdiction)

PRESENT:

MR. JUSTICE RAZA ALI KHAN

CIVIL PLA N0. 306 OF 2024

(Against the judgment dated 29.02.2024, passed by the High Court in writ petition No. 1633 of 2023)

Khawaja Khalid Mehmood s/o Khawaja Ghulam Muhammad r/o Madina Market Tehsil and District Muzaffarabad.

…Petitioner

VERSUS

District Judge empowered as Rent Controller Muzaffarabad and others.

…Respondents

Appearances:

For the Petitioner:	Mr. Amjad Hameed Siddiqui, Advocate.
For the Respondents:	Ch. Shoukat Aziz, Advocate.
Date of hearing:	27.08.2024

JUDGMENT:

***Raza Ali Khan, J*:-** This petition stems from the judgment of the High Court dated 29.02.204, whereby, the writ petition filed by the petitioner, herein, has been dismissed in limine.

2. The pertinent facts of the case are that Shahzad Hameed applicant-landlord initiated legal proceedings by filing an application for ejectment and possession from shops No. 10 and 11 situated at ground floor, shops No. 9 and 10 at first floor, before the learned Senior Civil Judge/Rent Controller, Muzaffarabad, on 07.08.2021. Concurrently, the petitioner herein also filed an application for fixation of fair rent and rendition of accounts on 05.11.2021. Upon thorough deliberation and hearing both the parties, the learned Senior Civil Judge/Rent Controller, Muzaffarabad, rendered an order on 31.12.2022, whereby the application filed by Shahzad Hameed (owner) was accepted, and the petitioner's application was dismissed. The aforementioned order was subsequently contested before the District Rent Controller, Muzaffarabad, through an appeal, which also resulted into dismissal. Thereafter, the petitioner sought redressal of grievance by seeking extraordinary writ jurisdiction of the High Court, challenging the order of the District Rent Controller, Muzaffarabad. However, the learned High Court, through its impugned judgment dated 29.02.2024, dismissed

3. Mr. Amjad Hameed Siddiqui, the learned counsel for the petitioner, submitted that the impugned judgment of the High Court is contrary to law, the facts, and the record of the case. He contended that the learned High Court failed to consider a crucial aspect of the matter while rendering the impugned judgment; especially, that the petitioner did not challenge the order of the Rent Controller in the writ petition, rather assailed the order of the appellate court, rendered by the District Judge, DRC, Muzaffarabad, in his appellate capacity. He further argued that, pursuant to the Rent Restriction Act, only one appeal

is permissible against the final order passed by the Rent Controller, thereby justifying the petitioner's decision to challenge the order dated 18.03.2023 by way of a writ petition before the High Court. He concluded by asserting that a significant question of law of public importance is involved, warranting grant of leave.

4. Conversely, Ch. Shoukat Aziz, the learned counsel for the respondents, contended that the High Court has rightly rendered the impugned judgment, which does not warrant any interference by this Court. He argued that the exercise of writ jurisdiction is justified only in exceptional cases. In the present case, both; the Rent Controller and the District Rent Controller, after thorough examination of the record and evidence, have delivered concurrent orders. These orders were not subject to challenge before the High Court as permitting such a challenge would render the provisions of the Rent Restriction Act, designed for expeditious trials, redundant. Consequently, the High Court has correctly passed the impugned judgment, which should be upheld, and this petition should be dismissed.

5. I have heard the learned counsel for the parties and meticulously reviewed the case record made available. The pivotal question before me is whether the order issued by the Rent Controller, subsequently upheld on appeal by the District Rent Controller, could be contested by seeking the writ jurisdiction of the High Court. The learned High Court dismissed the writ petition at the preliminary stage, reasoning that the findings recorded by the Rent Controller and affirmed by the District Rent Controller are substantiated by the record and, therefore, cannot be

challenged via writ jurisdiction. It is pertinent to note that Section 18(7) of the Rent Restriction Act, 1986, unequivocal in this regard, states that the order of the Controller, subject to the outcome of any appeal, is final and cannot be contested in any Court of law, including the High Court, by way of a suit, appeal, or otherwise. The legislature's intent was to shield landlords and tenants from the harassment and delays typically associated with protracted litigation, ensuring their grievances are addressed within a reasonable timeframe. Judicial pronouncements have consistently underscored that a factual determination made by a tribunal with exclusive jurisdiction cannot be overturned by the High Court in the exercise of its writ jurisdiction, nor can the High Court substitute such findings with its own. The High Court's intervention is warranted only if the finding is found entirely unsupported by evidence or contradicts the evidence on record. When an authority or tribunal with exclusive jurisdiction issues an order in excess of its jurisdiction, the High Court is indeed empowered to intervene. However, a clear distinction must be maintained between an order issued without jurisdiction and one issued erroneously. This distinction can be quite nuanced. To interpret the constitutional provision as enabling the High Court to interfere with the decisions of a lower Court or tribunal merely because it deems the decision incorrect is a flawed approach and should be disapproved. In this regard I are guided by the judgment of this Court reported as *Faiz Akbar vs. Mst. Nasim Begum & 8 others*[1], wherein, it was observed as under:—

---

[1] [2003 SCR 240]

> "....A question of fact resolved by a tribunal of exclusive jurisdiction cannot be set aside by the High Court in exercise of its writ jurisdiction by substituting such findings by its own. It can interfere only m exercise of its writ jurisdiction if the finding is based on no evidence or is against the evidence available on the record. Therefore, in our view, the High Court was not justified to sit as a Court to appeal over the finding of the Custodian and substitute its own finding in place of finding recorded by the Custodian."

In another case reported as *Mir Alam Khan vs. Mst. Afsar Jan & another*[2], it was observed as under:-

> "....Whenever an order passed by an authority or tribunal having exclusive jurisdiction is passed in excess of the jurisdiction, the High Court, no doubt, will intervene. But distinction must always be made between an order passed without jurisdiction and an order passed wrongly. The distinction sometime is very subtle one. To consider that the constitutional provision was designed to empower the High Court to interfere with the decisions of a Court or tribunal of inferior jurisdiction merely because in its opinion the decision is wrong, will be a wrong approach and it ought to be viewed with disapproval. In that case it would make the High Court's jurisdiction indistinguishable from that exercise-able in full-fledged appeal, which is not the intention of the Constitution-makers. When there is jurisdiction to decide aparticular matter then there is a jurisdiction to decide it rightly or wrongly."

Similarly, in a case reported as *Khadim Hussain Khan & 2 others vs. Dr. Akbar Hussain & 4 others*[3], it was observed as under:-

> "In the present case the order of the learned Election Tribunal cannot be said as to have been passed without jurisdiction. The learned

---

[2] [PLD 1982 SC (AJ&K) 107]
[3] [PLD 1986 SC (AJ&K) 45]

> Election Tribunal had the jurisdiction to decide the issue which it had exercised with due care and diligence. Evidence, oral and documentary, has been appreciated in accordance with law. In these circumstances, the High Court had no jurisdiction to entertain the writ petitions of the appellants." It was further observed in same report as under:— "....Unless a clear case of illegal or excess of jurisdiction or lack of jurisdiction or mistake apparent on the face of the record is not established, the High Court is to respect the findings recorded by a special Tribunal."

6. It is imperative to understand that while the sanctity of factual findings by Tribunals or functionaries with exclusive jurisdiction remains undisputed, the High Court may intervene if such findings exhibit grave misreading, non-reading, are patently erroneous, or are based on inadmissible evidence. In such instances, the High Court is justified in disturbing the findings. Otherwise, the High Court must respect the determinations made by the special Tribunal. In the present case, the Rent Controller, after a thorough examination of the record and consideration of all pertinent facts and circumstances, rendered an order which was subsequently affirmed by the District Rent Controller with a plausible explanation. Consequently, there was no occasion for the High Court to reassess the decision of the District Rent Controller or to substitute its own judgment, which is substantiated by evidence. Furthermore, the learned counsel for the petitioner failed to identify any instance of misreading or non-reading of evidence that may compel the High Court to overturn the findings of the District Rent Controller. Therefore, the High Court appropriately concluded the matter and dismissed the writ petition at the preliminary stage.

In view of the above, the leave in the titled petition is refused. No order as to costs.

JUDGE

Muzaffarabad,
28.08.2024