

ORDER SHEET
LAHORE HIGH COURT
RAWALPINDI BENCH RAWALPINDI
JUDICIAL DEPARTMENT

Writ Petition No.98 of 2014

Dr. Shahida Mansoor

Versus

Federation of Pakistan through Secretary Ministry of Defence and 3 others

S.No. of order/ proceeding	Date of order/ proceeding	Order with signature of Judge and that of parties or counsel, where necessary
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08.10.2024	Mr. Abdul Rasheed Awan, Advocate for the petitioner. M/s Sajid Ilyas Bhatti, Additional Attorney General and Tahir Raheel Awan, Assistant Attorney General for Pakistan alongwith Zafar Mehmood, Military Estate Officer, Rawalpindi.
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This petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 stems from letter dated 3rd January, 2014, whereby respondent No.2 conveyed the sanction of the competent Authority to the petitioner for conversion of lease in cantt code Form ‘B’ into regular lease in schedule IX-C of the Cantonments Land Administration Rules, 1937 (hereinafter referred to as “C.L.A, Rules, 1937”) in respect of Bungalow No.251/A survey No.562/A situated at Iftkhar Janjua Road, Rawalpindi. The grouse of the petitioner is only related to demand of premium amounting to Rs.6,79,74,976/- as a condition precedent for the sanction.

2. Facts forming background of this petition are that property bearing survey No.562-A situated at Iftikhar Janjua Road, Rawalpindi Cantt. was an evacuee property which was initially held on lease by Jawalla Sahe as evacuee lessee. After partition of the sub-continent the property became vested in the custodian and subsequently it was acquired by the Federal Government (respondent No.1). The property was then divided into three units i.e. Bungalows

No.251-A, 251-A/1 and 251-B. As per claim of the petitioner said bungalows were later on transferred to various persons and finally bungalow No.251-A was transferred on lease to her brother namely Shahid Yousaf from whom through gift deed the petitioner derived the lease hold rights. As per stance of the petitioner in order to change the status of bungalow from residential to commercial, she though moved various applications from time to time but respondents remained deaf ear, however, on her last application dated 25th May, 2011 the respondents conveyed the sanction for conversion of lease but she has been asked to deposit an amount of Rs.6,79,74,976/- on account of premium which is illegal.

3. In their report and parawise comments respondents No.1 to 3 submitted that site measuring 0.493 acres comprising survey No.562/A known as Bungalow No.251/A situated at Iftikhar Janjua Road, Rawalpindi Cantt. is held on lease in cantt. code Form 'B' of 1912 by Shahid Yousaf who transferred the lease hold rights in favour of M/s Zahid Yousaf and Shahida Mansoor (petitioner) by way of oral gift vide declaration of gift dated 28th November, 1981. It is also canvassed that the lessees unauthorizedly converted the premises in commercial use by establishing a clinic known as "Zohra Nursing Home" on account of which they were served with notices to stop the unauthorized use of property. In response lessees applied for conversion of the premises from residential to commercial and finally sanction was accorded and conveyed through letter dated 3rd January, 2014 subject to fulfillment of conditions mentioned therein, including deposit of premium amounting to Rs.6,79,74,976/-.

4. Learned counsel for the petitioner contended that the petitioner is the lessee of property in question and in said status she applied for conversion of property from residential to commercial. Added that first application to this

effect was moved in the year 1983 which followed various applications but no positive response from the respondents. Learned counsel emphasized that last application to this effect was moved in the year 2011 upon which sanction was accorded and conveyed through impugned letter demanding premium of Rs.6,79,74,976/- which is highly unwarranted. It is contended with vehemence that the respondents cannot claim the premium at the rates when sanction was accorded as the application of the petitioner was pending since long. Learned counsel submitted that premium should be charged at the rate prevailing in the year 1983.

5. Conversely, learned Law Officer seriously resisted this petition. He submitted that the amount of premium has been demanded as per prevailing policy and the petitioner is bound to pay the same.

6. Heard. Record perused.

7. The moot point involved herein is confined and restricted to the applicability of rates for premium chargeable from the petitioner. The claim of the petitioner is that as her case for conversion is pending since 1983 so the respondents are precluded to claim the premium at the rates prevailing in the year 2011. To this effect learned counsel for the petitioner has relied upon unreported judgment of a Division Bench of Sindh High Court passed in Constitutional Petitions No.D-2314 and 2315 of 2008. From the perusal of judgment dated 30th November, 2010 it evinces that claims of the petitioner in said case remained unresponded by the respondents therein without any reason or justification albeit they fulfilled all the requirements and in that backdrop it was held as under :-

“14. In view of hereinabove facts and circumstances of this case, the respondents cannot be allowed to take benefit of their own mistakes not the petitioners can be penalized or financially burdened for the delay and inaction on the part of respondents. Since the petitioners, after complying with all the requirements had approached the respondents for the purposes of conversion

of their residential plots into commercial plots in terms of policy prevailing in the year 1996 and no deficiency or discrepancy was ever pointed out by the respondents in this regard, we are of the opinion that their cases were required to be processed in terms of the policy prevailing in the year 1996 when the petitioners applied for commercialization and not in terms of the subsequent revised policy, as suggested by the respondents.”

8. Now looking at the case of the petitioner it is noticed that the petitioner in the first instance moved an application for the conversion of premises from residential to commercial in the year 1983 which was declined on 9th June, 1983. The petitioner thereafter moved another application in the year 1986 which too was not acceded to and rejected vide letter dated 11th March, 1989. It is an admitted position that petitioner did not question the orders resulting into rejection of application and instead moved a fresh application on 25th May, 2011. Admittedly the impugned letter is the outcome of said application. The case of the petitioner thus cannot be termed as pending and as such principles laid down in the judgment dated 30th November, 2010 by Sindh High Court cannot be stretched into service.

9. A wade through the record reveals that the petitioner submitted a building plan for construction of new building after demolition of existing structure which was approved in the year 1989. The petitioner after completion of new construction started using the building for commercial purpose in contravention of her own undertaking to this effect. This prompted the Government to resume the site and for the said purpose a notice was served upon the petitioner on 4th May, 1989. The petitioner assailed the notice by instituting a suit for declaration and injunction before the Civil Court, however, notices were withdrawn and in view thereof suit was disposed of as having become infructuous by way of judgment and decree dated 24th September, 1991. The petitioner though challenged the said judgment and decree before the learned Additional District Judge, Rawalpindi but of no avail, as the appeal was dismissed by

way of judgment and decree dated 30th January, 1996. In the above backdrop the petitioner alongwith her brother Zahid Yousaf being lessees applied on Schedule V dated 25th May, 2011 alongwith site plan for conversion of cantt. code Form 'B' into regular lease in schedule IX-C of the "C.L.A. Rules, 1937" for commercial hospital purposes. The unauthorized construction was regularized by the Chaklala Cantonment Board vide letter dated 12th November, 2012 by issuing no objection certificate from municipal point of view subject to furnishing of bank guarantee worth Rs.5.0 million as composition fee which was submitted by the petitioner in the shape of pay order Barley Bank Rawalpindi.

10. It is an undisputed fact that the Government of Pakistan Ministry of Defence in terms of power conferred under the "C.L.A. Rules, 1937" issued policies from time to time for conversion of properties held on old grant/cantonment code leases into regular leases, including conversion/change of purpose of regular leases into fresh leases. To this effect previously policy was introduced in the year 1996 which was then superseded by another policy in the year 2007. As at the time of moving of application in the year 2011 later i.e. Policy 2007 was in vogue so the case of the petitioner was considered thereunder. In terms of the said policy leases for Hospitals, Educational/Training Institutions (including Hostel facilities), Museums and Libraries are to be executed in schedule IX-A under "C.L.A. Rules, 1937" for perpetuity. Clause 2 of the policy deals with the change of purpose from residential to commercial, which reads as under :-

"2. Change of Purpose From Residential to Commercial. Sites held for residential purpose may be leased out for commercial purpose subject to the following conditions.
a. **Obtaining of NOC.** The following NOCs will be required:-

(1) Sites outside Bazar Areas

(a) NOC from GHQ in consultation with Service Headquarters concerned from military/security point of view.

- (b) NOC of the respective Cantt Board from municipal point of view.
- (2) **Sites Inside Bazar Area.** NOC of the local Cantt Board from municipal point of view.
- b. **Premium.** 50% of the Revenue Rate (Commercial) will be charged for conversion from residential to commercial lease in Schedule IX-C.
- c. **Ground Rent.** The ground rent shall be charged at the rate of Rs.4/- per sq yd per annum.”

Whereas clause 3(h) provides the procedure for dealing with cases of unauthorized change of purpose, in the following manner :-

- “h. Cases of Unauthorized Change of Purpose.** Cases of unauthorized change of purpose, e.g. site for hospital/education purposes being used for commercial/other purposes and residential property being used for commercial purposes, will be treated as under:-
- (1) **NOC.** NOC shall be obtained from GHQ, through respective Garrison Headquarters and Station Headquarters.
 - (2) **Premium.** Shall be charged on revenue Rate applicable for the said purpose.
 - (3) **Penalty/Composition Fee.** After approval of conversion, respective Cantt Board to charge due composition fee as per the existing rules.
 - (4) **Resumption of Property.** Those who fail to pay the premium and composition fee, their property shall be resumed.”

In furtherance to the above policy, the Government of Pakistan Ministry of Defence (ML&C Deptt) through letter No.55/305/Lands/ MC&C/07 circulated instructions to Directors Military Lands and Cantonments to the following effect :-

- “a) Rate for calculation of premium and other charges shall be charged as applicable on the date of issue of final approval by the Competent authority.
- b) A check list/complete details of documents required to process the case shall be handed over to the applicant/lessee/grantee at the time of issue of Schedule V of the CLA Rules 1937.
- c) All CEOs be asked to complete the zoning of the Cantonment through Station HQs within three months from the date of issue of this letter.”

(Underlining supplied for emphasis)

11. In the wake of above discussion it can safely be held that after rejection of previous applications when the petitioner instead of challenging the orders of rejection opted to apply afresh in the year 2011, so her case would clearly fall under the policy 2007. The petitioner is thus

precluded to claim the benefits of previous policy. In other words, petitioner cannot be benefited for her own wrongs. Reference to this effect can be made to Mst. SAEEDA BANO SIDDIQUI versus CANTONMENT EXECUTIVE OFFICER, CANTONMENT BOARD MALIR, KARACHI (2018 SCMR 1616).

12. The nutshell of above discussion is that though the petitioner is claiming equitable relief but her petition is founded on concealment/withholding of material facts as narrated in preceding para 9. Even otherwise there is no vested right of the petitioner to bring her cause under a policy favourable to her, which is even not in existence. Resultantly this petition being devoid of any merits is **dismissed *in limine*.**

(MIRZA VIQAS RAUF)
JUDGE

Dictated
17.10.2024

Signed

Announced in open Court on 30.10.2024.

JUDGE

APPROVED FOR REPORTING

JUDGE

*Shahbaz Ali**