

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT,
ISLAMABAD

CASE NO. : C.R. NO.317-2018

**Government of Pakistan through Secretary, Ministry of Housing and
Works, Islamabad etc.**

Vs.

Mst. Shazia Shamim Rizvi

**Petitioner by : Raja Khalid Mahmood Khan, DAG with
Mohsin Pasha, Joint Estate Officer**
Respondent by : Mr. Muhammad Ali Raza, Advocate
Date of decision : 15.04.2020

AAMER FAROOQ J. Mst. Shazia Shamim Rizvi (the respondent) filed a Suit for Declaration, Possession, Permanent and Mandatory Injunction with respect to her entitlement and possession of government accommodation i.e. House No.28-B, APO, Street No.27, F-8/1, Islamabad, against the petitioners. The claim of the plaintiff, in the referred Suit, was that she was Associate Professor BS-20 and residing in Category-III, Type-E Flat in G-11/4, Islamabad. She applied for change in accommodation and was allotted House No.28-B, APO, Street No.27, F-8/1, Islamabad vide allotment letter dated 11.12.2012. It was claimed that the allotment was made under Rule 12 of the Accommodation Allocation Rules, 2002 (the Rules); the respondent sought possession of the allotted government accommodation and also declaration and injunction to the effect that she is entitled to the referred government accommodation and the petitioners be restrained from cancelling the same. Even earlier, the respondent had filed a Suit against the petitioners and on the assurance of petitioners (the defendants in the Suit), that they are not cancelling or dispossessing the respondent, the same was disposed of. The Suit was

contested by the petitioners and the main objection was taken to the Suit was that allotment made to the respondent was under Rule 29-A of the Rules and in light of judgment of Hon'ble Supreme Court of Pakistan, all allotments, made under the said Rule as a matter of policy, were cancelled and the request for allotment of Government Accommodation of Government Servants/applicants were to be placed on General Waiting List (GWL). Out of divergent pleadings of the parties, following issues were framed by the learned trial court:-

- “1. *Whether plaintiff is entitled to decree for declaration, possession, permanent and mandatory injunction? OPP*
2. *Whether plaintiff has no locus standi to file the instant suit?OPP*
3. *Whether plaintiff has concealed the material facts and come to the court with unclean hands?OPD*
4. *Whether suit is false, frivolous and vexatious hence, liable to be dismissed?OPD*
5. *Relief?”*

The parties led their evidence and learned trial court, vide judgment and decree dated 12.06.2018, dismissed the Suit filed by the respondent; appeal was preferred which was allowed and consequently, the Suit filed by the respondent was decreed in her favour vide judgment and decree dated 17.07.2018. In the instant civil revision, the petitioners have assailed judgment and decree dated 17.07.2018.

2. Learned Deputy Attorney General, *inter alia*, contended that allotment of government accommodation was made to the respondent in violation of Rules inasmuch as the same was under 'hardship', but in light of judgment of Hon'ble Apex Court reported as 2012 SCMR 274, all such allotments were set aside and the applications for allotment of Government Accommodation of such allottees were placed on General Waiting List. It was submitted that since the allotment made to the respondent did fell in the said category, hence notice was issued. It was

further contended that at the relevant time, respondent was not eligible for the allotment. It was argued that respondent ought to have been in General Waiting List and there was no urgency or ground for 'hardship'.

3. Learned counsel for the respondent, *inter alia*, argued that allotment has been made to the respondent under Rule 12 of the Rules which does not require her case to be in General Waiting List. It was submitted that bare perusal of the allotment letter dated 11.12.2012 clearly shows that allotment was under Rule 12 *ibid*. It was further submitted that there is nothing on record that the case of respondent was processed under Rule 29-A of the Rules and due to 'hardship', General Waiting List was bye-passed. It was further submitted that earlier, respondent was residing in a house of different category, which was allotted to her in accordance with then entitlement, however, as she was in BPS-20, she became eligible for better accommodation which was accordingly done. It was also contended that formally, documents were never executed at the time of possession, as the Estate Office asked her to take possession. It was submitted that respondent is paying all utility bills and the rent is being deducted from her salary.

4. Arguments advanced by learned counsels for the parties have been heard and the documents, placed on record, examined with their able assistance.

5. The controversy, between the parties, has been mentioned above, therefore need not be repeated.

6. As noted above, respondent is a government servant and is entitled to the allotment of government accommodation; in this behalf,

according to her entitlement, government accommodation was allotted to her in Category-III, but as soon as she was promoted in BS-20, she applied for better accommodation as per her entitlement.

7. It seems that the reason mentioned in the request for exchange/grant of better accommodation by the respondent is that because of her medical condition, she be granted the same on urgent basis, however, there is no document on record to establish that said consideration prevailed with the petitioners.

8. The respondent was allotted government accommodation, mentioned above, i.e. House No.28-B, APO, Street No.27, F-8/1, Islamabad vide allotment letter dated 11.12.2012 (Exb.P1); the said document states that allotment was made under Rule 12 of the Rules.

For the sake of brevity, referred Rule is reproduced below:-

“12. Changes of accommodation.- Changes from one accommodation to the other or exchange of accommodation between two allottees for same category of accommodation may be permitted by the Ministry of Housing and Works subject to production of a certificate from their employers to the effect that they are not expected to be retired or transferred during the next one year and other required documents as prescribed by Ministry of Housing and Works from time to time”.

The bare perusal of above Rule shows that it provides for changes from one accommodation to the other or exchange of accommodation for same category of accommodation between two allottees with permission of Ministry of Housing and Works, subject to production of certificate from the employers that the government servant is not expected to retire or transferred during next one year. During course of trial, the petitioners though led oral evidence to the effect that allotment was made under Rule 29-A of the Rules hence had been cancelled in light of judgment of Hon'ble Supreme Court of Pakistan reported as

2012 SCMR 274, however, there is document on record to substantiate the said plea of the petitioners. In case, respondent's case was treated under Rule 29-A of the Rules as a 'hardship case', there ought to have been approval to the effect by the competent authority, but no such document was tendered in evidence. In light of said position, the issuance of cancellation of allotment by the petitioners to the respondent does not seem to be justifiable under the facts and circumstances. It is relevant to observe that if such was the case then the petitioners were required to prove through cogent evidence that the competent authority sanctioned the allotment of accommodation to the respondent treating her case as one of 'hardship' bypassing General Waiting List. Even-otherwise, the matter was agitated by respondent by way of writ petition and civil revision, earlier, before this Court (W.P. No.2019-2017 and C.R. No.277-2017); the civil revision was allowed and the matter was remanded to be decided on merit after framing of issues, whereas writ petition was dismissed. This Court, while deciding both cases through consolidated judgment dated 08.11.2017, observed that allotment made to respondent was under Rule 12 *ibid*. The said judgment was not assailed further and attained finality.

9. It was argued on behalf of petitioners that General Waiting List exists with respect to every category of allotment made except allotment made under Rule 6(7) of the Rules. Under Rule 6 of the Rules, the Estate Office is required to maintain General Waiting List with respect to allotments of government accommodations to be made to government servants. There is only one exception to the same which is provided under sub-rule (7) of Rule 6 of the Rules viz the Federal

Secretaries in BS-22 and other officers in BS-22, who are to be given priority in allotments of government accommodations in case they are not in occupation of government accommodation elsewhere. The referred argument of learned Deputy Attorney General has substance that even in case of change of accommodation to a better one by a government servant, he or she has to be in the queue of General Waiting List, however, as noted above, the petitioners were required to show through evidence and prove that such was the case that respondent was allotted government accommodation as a case of 'hardship' under Rule 29-A of the Rules.

10. In view of above position of law and facts, there does not seem any jurisdictional error in the judgment of learned appellate court and the judgment of learned trial court does not depict the correct position, hence judgment and decree impugned, in the instant petition, does not call for any intervention.

11. For what has been stated above, instant petition is without merit and is accordingly dismissed.

(AAMER FAROOQ)
JUDGE

Zawar