

JUDGMENT SHEET

ISLAMABAD HIGH COURT, ISLAMABAD,
(JUDICIAL DEPARTMENT)

ICA No.223/2019

Lubna Said Ghias

versus

Federation of Pakistan through Secretary Cabinet Division & 7 others

Appellant by: Raja Rizwan Abbasi and Mr. Gulfam Ashraf
Goraya, Advocates for appellant.

Respondents by: Mr. Saqlain Haider Awan, AAG.
Mr. Sher Afzal Khan Marwat, Respondent No.7
Mohsin Pasha, Joint Estate Officer.
Syed Kashif Kazmi, Deputy Director, APO.

Date of Decision: 27.04.2020.

MOHSIN AKHTAR KAYANI, J: Through the instant intra court appeal, Lubna Said Ghias (appellant) has assailed order dated 16.05.2019, passed by learned Single Judge in Chambers in W.P. No.4011/2018, whereby the said writ petition was disposed of with direction to the learned Trial Court to decide the pending application filed under Section 12(2) CPC within the period of 90 days.

2. Learned counsel for appellant contends that House No.13, Street No.15, Sector F-6/3, Islamabad was allotted to appellant vide allotment letter dated 20.07.2018, however possession was not given to her, regarding which she filed a writ petition before this Court; that the house in question is an abandoned property controlled and administered under the Abandoned Properties (Taking Over and Management) Act, 1975 while the Board of Trustee constituted by the Federal Government under the said law is authorized to issue allotment, which was made in favour of the appellant, but the house in question is in illegal occupation of Khursheed Ahmad Khan Marwat/respondent No.7, who also claims to be allottee of the said house on the strength of allotment letter dated 10.05.2017, issued by Estate Office/respondent No.5 despite the fact that Estate

Office has no jurisdiction under the law to issue the allotment; that respondent No.7 has obtained a decree in illegal and collusive manner from the learned Civil Court vide ex-parte judgment and decree dated 09.11.2017 to defeat the process of law as well as to protect the unauthorized allotment, however when Abandonment Properties Organization (APO)/respondent No.2 came to know about this fact, they filed an application under Section 12(2) CPC and assailed the said judgment and decree on the ground of misrepresentation and fraud, even the allotment in favour of respondent No.7 was cancelled, but possession was not delivered to the appellant; that the learned Single Judge in Chambers has not adjudicated upon all these questions and directed the learned Civil Court to decide the pending application filed under Section 12(2) CPC within the period of 90 days without touching the merits of the case; that matter has also been taken up by the apex Court in HRC No.30827/2013, whereby direction for vacation has been passed vide order dated 13.06.2018, which is reflected from report dated 26.07.2018 submitted in pending proceedings before the apex Court, but Mr. Allah Yar/ Administrator of APO/respondent No.2, who is a batch-mate as well as a close friend of respondent No.7, has extended benefit to unauthorized occupant i.e. respondent No.7; that report submitted by M/o Housing and Works and Secretary Cabinet Division on the direction of the learned Single Judge in Chambers further confirmed that allotment of suit house in favour of respondent No.7 has been cancelled, even the application filed under Section 12(2) was allowed by the learned Civil Court and the decree passed in favour of respondent No.7 was set aside vide judgment dated 15.10.2019, while the civil suit is now pending before the learned Civil Court along with other miscellaneous proceedings without any restraining order in field.

3. Conversely, learned counsel for respondent No.7 contends that he is lawful allottee of subject house and the decree passed in his favour by learned Civil Court still holds the field; that numerous civil proceedings regarding the suit property are pending before the Civil Court on behalf of respondent No.7 and as such, the appellant has failed to justify her allotment on legal touchstone, even the Board of Trustee of APO has not yet approved the allotment in favour of appellant and the order passed in her favour is illegal as it was passed without acknowledging the rights of respondent No.7. Similarly, learned counsel for respondents No.2 & 3 along with its officers contend that property in question is their property under the Abandoned Properties (Taking Over and Management) Act, 1975 and as such, the allotment issued by the Estate Office in favour of respondent No.6 is illegal and action shall also be taken against the Estate Officer for issuing order not warranted the law and the authorities including Secretary Cabinet Division and Secretary M/o Housing and Works have already decided the matter, whereby the allotment issued in favour of respondent No.7 by the Estate Office was cancelled declaring the occupation of respondent No.7 illegal. Learned AAG on behalf of respondents No.4 to 6 contends that the house in question was allotted to respondent No.7 by the Estate Office and at present it has been cancelled from his name, however the same is in possession of respondent No.7 as several proceedings regarding the same are pending before Civil Court, whereas the decree passed in his favour has been set aside and a formal decision has been passed by the Secretary Cabinet Division and Secretary M/o Housing and Works, regarding which a report has been placed on record; that instant intra court appeal is not competent and same may be dismissed as no order has been passed by the learned Single Judge in Chambers, whereby the parties could be affected, including the appellant.

4. Arguments heard, record perused.
5. Perusal of record reveals that Lubna Said Ghias (appellant) claims to be allottee of House No.13, Street No.15, Sector F-6/3, Islamabad on the basis of her allotment letter dated 20.07.2018, issued by respondents No.2 and 3, for a period of three (03) years, whereas the said house was already in possession of respondent No.7 on the basis of his allotment letter dated 10.05.2017, issued by the Estate Office, Government of Pakistan under the Accommodation Allocation Rules, 2002. The appellant filed W.P. No.4011/2018 with the claim that possession of suit house be handed over to her and the proceedings initiated by the Civil Court under Order XXXIX Rule 2(3) CPC may also be declared ineffective qua the rights of appellant, however the learned Single Judge in Chambers while hearing the said writ petition disposed of the matter in the following terms:

"3. The learned counsel for respondent No.7 has stated that the latter had filed a suit on 11.05.2017 seeking declaration, mandatory and permanent injunction relating to allotment of the Property in his favour and that the said suit was decreed vide judgment and decree, dated 09.11.2017. He has further stated that an application under Section 12(2) of the Code of Civil Procedure, 1908 (hereinafter referred to as the "CPC") has been filed by the Abandoned Properties Organization which has not been decided as yet. The learned counsel has, therefore, argued that the judgment and decree, dated 09.11.2017, cannot be interfered with by this Court while exercising jurisdiction under Article 199 of the Constitution.

4. In the light of the above stated facts, it would be appropriate not to make any observation regarding merits of the case lest it may prejudice the case of either of the parties in the proceedings relating to the pending application under Section 12(2) of CPC. However, in order to meet the ends of justice, the learned Court, before which application under Section 12(2) of CPC is pending, is directed to afford an opportunity of hearing to the parties and thereafter decide the said application in accordance with law at the earliest, not later than ninety days from the date of receiving a certified copy of this order."

The appellant being aggrieved with the above mentioned order of learned Single Judge in Chambers challenged the same through the instant intra court appeal.

6. It has been observed from the record that property in question is an abandoned property and could only be managed under the Abandoned Properties (Taking Over and Management) Act, 1975, whereas the Federal Government through Cabinet Division is the competent authority to deal with the affairs of such properties, however it has been noted with great concern that respondent No.7 has also placed on record an allotment letter in his favour, dated 10.05.2017, issued by the Estate Office and has obtained ex-parte decree in his favour vide judgment and decree dated 09.11.2017, in case titled as Khursheed Ahmad Khan Marwat v. Federation of Pakistan, etc.

7. The perusal of judgment dated 09.11.2017 reveals that the Estate Office has not contested the civil suit as they have not submitted their written statement and technically favoured Respondent No.7 for the reason best known to them. Even the law as well as policy decision of the Government presented before this Court further clarifies that property in question has no concern with the Estate Office or M/o Housing and Works and it exclusively falls within the domain of Cabinet Division as the files of respective houses were transferred to APO vide letter dated 06.03.2008 by M/o Housing and Works, but Mohtasim Billah/Joint Estate Officer (as he then was) has not correctly considered the law and passed the allotment order in favour of respondent No.7, which itself is against the direction of M/o Housing and Works, however when the Deputy Attorney General along with Estate Officer have been confronted regarding any action initiated against the then Joint Estate Officer, they candidly conceded that no action has been taken against the said officer, even they have not supported the occupation and possession of respondent No.7 at this stage. The learned AAG has also placed a Joint Report of Secretary Cabinet and Secretary M/o Housing and Works, which was requisitioned by learned Single Judge in Chambers during

the hearing of W.P. No.4011/2018. The contents of the report are reproduced as under for ready reference.

JOINT REPORT OF SECRETARY CABINET AND SECRETARY HOUSING AND WORKS FOR THE HONOURABLE ISLAMABAD HIGH COURT IN CASE NO. W.P.4011/2018 FILED BY MS. LUBNA SAID GHIA, DEPUTY SECRETARY, ESTABLISHMENT DIVISION V/S SECRETARY CABINET AND OTHERS

*House No.13, St-15, 17-6/3,(Old No.332). Islamabad was notified as abandoned property along with other properties vide notification No.3/25/76-RV, dated 3rd March. 1976. A number of abandoned properties were transferred to various departments and the remaining were publically auctioned. Sale proceeds in both cases were deposited in the Abandoned Properties Bank Account. Under the APO Act 1975 Abandoned Properties Organization the sole custodian of its properties and these properties are being managed under Section 16 of Act *ibid*.*

The Ministry of Housing & Works was managing seven houses owned by the APO on hiring basis. Being the custodian of these houses and in pursuance of the Prime Minister's directive and in view of decentralization policy, the same were handed over to the APO by the Ministry of Housing and Works vide its letter dated 3rd March, 2008. Files of the respective houses were also transferred to the APO vide their letter 6.3.2008.

The Estate Office discontinued allotment of six houses from March, 2008, however one house i.e. House No.13, St-15, F-6/3,(Old No.332), Islamabad continued to be allotted by the Estate Office. The last allotment of the subject house was made to Mr. Khurshid Ahmed Khan Marwat and after knowing the actual position the same was also cancelled.

It is further stated that in light of the recommendation made by Dr. Ishrat Hussain, Adviser to the Prime Minister on Institutional Reforms and Austerity, the Secretaries Committee in its meeting held on 8th March, 2019 has decided the following:

“Abandoned Properties Organization may be abolished through an Act of Parliament, however, an interim institutional set up would be placed to cater for its assets, properties and liabilities”.

The Federal Cabinet in case No.381/16/2019 dated 16-4-2019 has also directed Cabinet Division to submit a Strategy in consultation with Foreign Affairs Division and the Law and Justice Division for disposal of the APO properties.

Accordingly, a strategy to dispose of the abandoned properties is under process. No further allotment of APO Houses is being made. It is requested that peaceful possession of the said house may be handed over to APO for auctioning the said property.

NAVEED KAMRAN BALOCH
Cabinet Secretary

DR. IMRAN ZEB KHAN
Secretary
Ministry of Housing & Works

8. Besides the above referred report, it has also been argued by the respondents No.1 to 3 on behalf of Abandon Property Organization that the ex-parte judgment and decree, passed in favour of respondent No.7, dated 09.11.2017, have been set aside on the application filed under Section 12(2) CPC, filed by them vide order dated 15.10.2019, and as such, no decree is in field. However, it has been stated at bar that certain other miscellaneous proceedings are pending before the learned Civil Court.

9. In view of above position, we are surprised to know that proceedings before the learned Civil Court are still pending despite the fact that the apex Court, in HRCs No.20746, 30827-P, 30588-S and 30001-A/2018 (in the matter of irregularities in allotment of official residents), passed the direction to conclude all the cases, however the matter has not yet been decided, except the decision passed on the application filed under Section 12(2) CPC.

10. We have also confronted the learned counsel for appellant to justify the maintainability of instant intra court appeal as no adverse order has been passed by the learned Single Judge in Chambers against either party, as the learned Single Judge in Chambers has restrained himself from passing any order due to pendency of civil proceedings qua the suit property, however no justifiable reason has been placed on record to persuade this Court to entertain the instant intra court appeal, therefore, the instant intra court appeal is **NOT MAINTAINABLE** and the same is hereby **DISMISSED** with direction to

the learned Civil Court seized with the matter to decide the pending applications/proceedings within the period of 30 days. The learned District Judge (West), Islamabad is also directed to ensure disposal of the pending proceedings of the Civil Court within the period of 30 days, under intimation to this Court.

(LUBNA SALEEM PERVEZ)
JUDGE

(MOHSIN AKHTAR KAYANI)
JUDGE

Khalid Z.