

JUDGMENT SHEET.

IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

Civil Revision No. 377/2018.

Muhammad Zafar Malik

Versus

Federation of Pakistan, etc.

Petitioner by: Mr. Muhammad Akram Malik, Advocate.

Respondents by: Barrister M. Mumtaz Ali, AAG.
Ms. Maimana Khattak, Advocate alongwith
respondent No.4.
M. Mohsin Pasha, Joint Estate Officer.

Date of Decision: 18.02.2020.

MOHSIN AKHTAR KAYANI, J:- Through this Civil Revision, the petitioner has assailed the order dated 28.06.2018, passed by learned Civil Judge, 1st Class (West), Islamabad, whereby execution petition filed by petitioner was dismissed and the said order was further upheld by the learned Appellate Court vide order dated 06.09.2018, passed by District Judge (West), Islamabad.

2. Learned counsel for the petitioner contends that petitioner was former Assistant Director in FDE and is presently represented through Mst. Gohar Bano (widow sister of deceased being dependent family member); that late Muhammad Zafar Malik was allottee of House No.331-E, G-6/4, Islamabad vide allotment letter dated 14.02.2014 on the basis of judgment & decree dated 18.02.2010, passed by learned Civil Judge, Islamabad, however the possession was not delivered to the late decree-holder; that in execution of the said decree the Executing Court has dismissed the same being infructuous mainly on the ground that decree-holder Muhammad Zafar Malik died on 14.06.2017; that on

the death of decree-holder the decree stands and rights accrued to the decree-holder stands devolved in the favour of legal heirs; that Mst. Gohar Bano, widow sister of deceased falls within the definition of family in terms of Rule 2(f) of Accommodation Allocation Rules, 2002; that learned Executing Court as well as Appellate Court have wrongly observed that allotment right sustains in the life of allottee and the effect of PM Assistance Package has not been considered in its true perspective which gives a special acknowledgement of right to retain the allotted quarter till the age of superannuation of the deceased by family members; that both the courts below have not exercised jurisdiction vested in it and the question of retention of government house has wrongly been appreciated.

3. Conversely, learned AAG alongwith Estate officer contends that decree passed in favour of late allottee Muhammad Zafar Malik shall remain intact, however, question of retention of the accommodation is contingent to the possession and as such allottee was not in possession of the accommodation although decree has been challenged by respondent No.4 in terms of Section 12(2) CPC but at the same time suit house had been allotted to respondent No.4, who was not made party to the suit filed by Muhammad Zafar Malik and decree is yet to be adjudicated upon the pending application.

4. Learned counsel for respondent No.4 contends that concurrent findings of the Courts below could not be interfered in the revisional jurisdiction, even, complete record has not been appended with this case and only those family members are entitled for the accommodation of the late allottee who are dependent and living with the allottee in the same accommodation but in this case suit accommodation was not in possession of the allottee and as such the execution of decree is not possible; that Ministry of Housing & Works and Estate office allotted the suit quarter to respondent No.4 on 09.09.2006 but despite

having knowledge of this fact late Muhammad Zafar Malik has not impleaded the respondent No.4 in the suit and managed the decree in collusive manner by way of misrepresentation and fraud and as such application U/S 12(2) CPC is yet to be adjudicated on this score.

5. Arguments heard, record perused.

6. Perusal of record reveals that suit quarter No.331-E, G-6/4, Islamabad was allotted to respondent No.4 on 09.09.2006, which was occupied by respondent No.4 on 10.02.2009 from the Inquiry Office of the CDA as per occupation vacation report, however, Muhammad Zafar Malik has filed a civil suit for declaration, mandatory and permanent injunction on 01.03.2008 with the prayer that he is entitled for allotment of quarter against 25% hardship quota, however, said suit was decreed in his favour vide judgment & decree dated 18.02.2010 and Late Muhammad Zafar Malik has filed the execution application on 17.05.2012, however, Muhammad Zafar Malik died on 14.06.2017 without getting the possession in the execution of decree whereas the allottee respondent No.4 has filed an application U/S 12(2) CPC which is yet to be adjudicated on merit.

7. The primary question raised in this civil revision is whether after the death of late Muhammad Zafar Malik allottee on the basis of judgment & decree, execution proceedings stand abetted or continue whereas learned Executing Court dismissed the proceedings as having become infructuous and the said order was maintained by the Appellate Court. In order to resolve the controversy, I have confronted the learned counsel for the petitioner who contends that petitioner Gohar Bano, widow sister of deceased Muhammad Zafar Malik falls within the definition of family in terms of Section 2(f) of the Accommodation Allocation Rules, 2002 and as such PM Assistance Package is applicable to the late Muhammad Zafar Malik case who died during service and

as such PM Assistance Package dated 04.12.2015 extends the rights in the following manner:-

ITEM	IN SERVICE DEATHS	SECURITY RELATED DEATHS
Accommodation	Retention of Government house or payment of rent of hired house till age of superannuation.	Retention of Government house or payment of hired house till the age of superannuation.

8. The above referred rights referred in the O.M dated 04.12.2015 spells out the minimum requirement for the accommodation is "retention of government house", whereas the term retention if considered in the light of dictionary meaning, says continuation to or continue to have something, therefore, the simple meaning of term retention if considered in the favour of allottee Muhammad Zafar Malik, it has to be justified on record that the decree-holder was in possession of the same although his execution application was pending for the purpose of possession which was not decided due to pending litigation, even otherwise Rule 15(1) of Accommodation Allocation Rules 2002 regulate the procedure of allotment and retention in case of death of allottee during service. The said rule states that in case of death of allottee, the family of the allottee shall be entitled to retain the accommodation under their occupation for a period not exceeding one year on payment of normal rent, as such Mst. Gohar Bano widow sister of deceased Muhammad Zafar Malik was not in possession of suit accommodation, hence, Accommodation Allocation Rules, 2002 as well as PM Assistance Package are not applicable in this case coupled with the fact that mere allotment of house or decree for allotment without obtaining possession of allotted accommodation does not confers any right in favour of family members for obtaining possession of any accommodation allotted to an employee who has passed away without obtaining possession of official accommodation. Moreover, allotment of house or entitlement for allotment of official accommodation is not inheritable right under Accommodation Allocation Rules, 2002. Learned

Executing Court as well as Appellate Court has rightly appreciated the matter concurrently and it is settled law that concurrent findings of the Courts below could not be interfered by the High Court at revisional stage. Reliance is placed upon 2018 YLR 1950 (Muhammad Rafique Vs. Province of Punjab through District Collector Vehari). It is also trite law that findings and facts recorded by the appellate Court based upon appraisal of evidence could not be interfered in terms of Section 115 CPC merely because different view was possible to be taken. Reliance is placed upon 2001 SCMR 798 (Abdul Qayyum Vs. Mushk-e-Alam). The scope of revisional jurisdiction is limited in which Court cannot set aside the facts recorded by the courts of competent jurisdiction, the same cannot be interfered by the High Court in exercise of its revisional jurisdiction, unless such findings suffer from controversial defects, illegality or material irregularity. Reliance is placed upon 2010 SCMR 5 (Muhammad Idrees Vs. Muhammad Pervaiz).

9. I have gone through the concurrent findings of the Courts below and as such there is no illegality and the orders have been passed within four corners of law and as such right of late Muhammad Zafar Malik seized to exist to the extent of retention of government accommodation as decree in his favour could not be satisfied at this stage, therefore, instant civil revision is misconceived and the same is hereby dismissed.

(MOHSIN AKHTAR KAYANI)
JUDGE

Zahid