

JUDGMENT SHEET.

**ISLAMABAD HIGH COURT,
ISLAMABAD.**

C.R. No.46 of 2011

**Shazia Manzoor
Versus
Estate Officer and others.**

Petitioner by: Mr. Umer Verdag Advocate

DATES OF HEARING: 06-3-2012.

DATE OF DECISION: 06-3-2012.

Muhammad Azim Khan Afridi, J:- Learned counsel for the petitioner argued that Quarter No.53/6-D, Street No.39, F-6/1, Islamabad was allotted to Manzoor-ul-Haq and, thereafter to his wife being teacher in a Government school who retired on 20-9-2004.

2. That the petitioner, being Trained Under Graduate Teacher (TUGT) in BPS-14 and serving in educational department of the Federal Directorate of Education was appointed on contract, period of which was extended from time to time and, vide order dated 17th September, 2008, her services were regularized w.e.f. 01-7-2008. That the mother of the petitioner made numerous correspondence for the allotment of the said quarter to the petitioner but the

same remained inactioned and subsequently, vide notice dated 29-11-2006, vacation of the said quarter was asked for within 24 hours which necessitated the institution of a civil suit for declaration, permanent and mandatory injunction. That temporary injunction was granted by the Court of learned Civil Judge and appeal against the same was dismissed vide order dated 13-7-2007 by the learned Additional District Judge, Islamabad. However, the said order was set aside by this Court vide order dated 17-6-2009. That the August Supreme Court of Pakistan vide orders dated 19-6-2009 directed that no adverse action should be taken against the petitioner but in spite of the same, the petitioner was forcibly evicted.

3. That the August Supreme Court of Pakistan observed that ante status quo cannot be granted and that the suit be expeditiously disposed of. That the learned trial Court dismissed the suit of the petitioner without affording an opportunity of hearing on the plea that the petitioner has been dispossessed from disputed quarter and hence, the suit has become infructuous. Special costs to the tune of Rs.15,000/- were also imposed against the petitioner and deduction of the same was ordered from the pay/G.P.Fund of the petitioner. That the said judgment was impugned before the learned appellate Court who partially accepted the appeal

of the petitioner to the extent of setting aside costs of Rs.15,000/- and deduction thereof from the pay of the petitioner. However, remaining part of the appeal was dismissed vide impugned judgment and order dated 27-1-2011.

4. Learned counsel further argued that the learned trial Court as well as learned appellate Court had failed to appreciate the facts of the case as ouster of the petitioner from the said quarter had not justified dismissal of the suit of the petitioner as the same was also containing prayer of declaration and mandatory injunction.

5. Arguments of the learned counsel for the petitioner heard and record perused.

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6. The August Supreme Court of Pakistan vide order dated 19-6-2009 directed that the matter pertains to ejectment of widow lady, therefore, till next date of hearing no adverse action should be taken against her. The CPLA was adjourned for further hearing to 22-6-2009. On the said date, the August Supreme Court of Pakistan had observed that it would not be appropriate to pass an order status quo ante as the possession was taken over from the petitioner on the orders passed by the competent authority. Directions for expeditious disposal of the matter were issued by the August

Supreme Court of Pakistan while dismissing the petition for leave to appeal. Since the possession of the said quarter was not with the petitioner at the time of passing of the restraint order by the August Supreme Court of Pakistan as evident from its order dated 22-6-2009, as such the petitioner cannot justifiably assert that she was forcibly dispossessed in spite of restraint order passed in her favour by the August Supreme Court of Pakistan.

7. Petitioner is admittedly out of possession of the said quarter. Her prayer in suit for declaration and injunction was to the effect that being in lawful possession of the said quarter she was entitled to the allotment of the same and that the demand of the respondents for vacation of the said quarter was unlawful, illegal and without lawful authority.

8. According to Section 42 of Specific Relief Act, 1877, a person entitled to any legal character or to any right as to any property may institute a suit against any person denying or interested to deny his/her title to such character or right and the Court may grant such declaration if such a person is found entitled to the same. Pre-requisite for declaration sought by the petitioner would be availability of possession of the petitioner over the property which requirement and criterion, though essential, is missing and in such eventuality

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no assertion, contention or action for declaration would be maintainable.

9. Similarly the prayer of mandatory injunction to direct respondent No.1 to allot the said quarter to her being in lawful possession of the same has also become redundant as mandatory injunction for allotment of the quarter on the basis of lawful possession cannot be pleaded without possession. Same would be the case for issuance of perpetual injunction seeking restraint orders for debarring the respondents from interfering in such lawful possession.

10. After ouster of the petitioner from the disputed quarter by the competent authority suit of the petitioner was no longer competent and the learned trial Court as well as the learned Court of appeal has, therefore, correctly categorized the same as "infructuous".

11. No illegality or material irregularity has either been committed or pointed out in the impugned orders, as such the civil revision in hand is dismissed in limine.

(MUHAMMAD AZIM KHAN AFRIDI)
JUDGE

Approved for reporting.

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Muhammad Afzaal