

ISLAMABAD HIGH COURT, ISLAMABAD

NO. _____ IHC/Jude. Deptt.

(REVISED FORM OF BLUE SLIP)

Case No. WP-3281-2011

Syed Masroor Ahmad Sabzwari

Titled

Vs

Federation of Pakistan etc

(a) Judgment approved for reporting

Yes/No

(b) Judgment any comment upon the Conduct of the
Judicial Officer for Quality of the impugned
judgment is Desired to be made.

Yes/No

(In case the answer is the affirmative Separate
confidential note may be Sent to the Registrar
drawing his Attention to the particular aspect).

D. M. Ash
Initial of the Judge.

NOTE

1. If the slip is used, the Reader must attach on top of first page of the judgment.
2. Reader may ask the Judge writing the judgment whether the judgment is to be approved for Reporting of any comment is to be made about the Judicial Officer/ quality of judgment.
3. This slip is only to be used when some action is to be taken.

FORM NO.HCJD/C
JUDGMENT SHEET

IN THE ISLAMABAD HIGH COURT,
ISLAMABAD

Writ Petition No. 3281/2011

Syed Masroor Ahmed Sabzwari
Vs.
Federation of Pakistan & Another

Date of hearing : **07.03.2012**

Petitioners by : Muhammad Nazeer Jawad, Advocate

Respondents by : Rana Abid Nazeer Khan, Advocate alongwith
Qaiser Mehmood, Law Officer Estate Office.

NOOR-UL-HAQ N. QURESHI J.- The petitioner through the instant petition has challenged the cancellation proceedings initiated by respondent No.2 thereby vacation of government accommodation being against the law, fundamental rights, discriminatory in nature without lawful authority same being abuse and misuse of powers and nullity in the eye of law therefore, seeks direction to restore the allotment of said accommodation to the petitioner.

2. The main facts narrated in the petition are that the petitioner being Director Ministry of Social Welfare & Special Education, was entitled for government accommodation, therefore, house No.12, category-I I-8/1, Islamabad was allotted vide allotment letter No.12-CAT-II/8/EIV/EO dated 24.7.1997. The petitioner is living with his family and servants since then. Petitioner proceeded on Ex-Pakistan leave from 20.2.2011 to 13.10.2011 with his family members. The servants of petitioner were living in the servant quarter of house for looking after it in the absence of petitioner and his family. The petitioner on expiry of said leave assumed

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charge on 14.10.2011 after closing of duty hours, the petitioner proceeded to his home found some persons inside and main gate was locked from inside. Persons inside refused to open the gate with the reason that allotment to the petitioner has been cancelled. Therefore, he on contact with respondent No.2 acquire knowledge that cancellation of accommodation as a final notice has been issued, they have processed and took over the possession. The petitioner alleged that more than Rs.2.5 million house hold articles were lying in the house. The efforts for getting back the said an illegal act was treated with deaf ear, therefore, petitioner preferred the instant writ petition.

3. In support of contention raised, petitioner relied upon appointment letter, occupation report of house in question, notification of 19th February about his proceeding on leave since 20.2.2011 which extended time to time up till 13.10.2011. He also submitted the passport showing visa and charge relinquishing report as well as pay slip, cancellation order dated 11.10.2011 and other documents.

4. Since, the petitioner avoided to join Muhammad Iqbal, new allottee of said residence, therefore, he through an application dated 08.2.2012 requested for his implementation which with the consent of counsel for petitioner was allowed vide order dated 17.2.2012. The said newly joined respondent No.3 on completion of formal stages submitted preliminarily objections and written reply denying the allegation levelled in petition also he submitted in support of contention raised in reply and undertaking executed by petitioner in favour of Dr.Mustafa Kamal whereby he shown his willingness to vacate the house and extended his no objection if it is allotted to Dr.Mustafa Kamal. Said undertaking executed on 10.2.2011. He contended therein that by proper proceedings

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adopted according to rules, the house was got vacated and now the said respondent No.3 is in lawful occupant thereof.

5. Learned counsel for the petitioner argued that new allottee is Director of housing and works therefore, by special proceedings initiated, the house was got vacated in illegal manner without issuing notice as required by Rule 16(2) of A.A.R 2002. As a general principle before vacation, the petitioner must be served with notice or an opportunity of personal hearing should have been afforded to him even allegation of sublet is alleged against him. He argued that section 4 very clearly discloses no ground of subletting, notice of 14 days is proper requirement of law which has not been issued. When the petitioner was out of station on Ex-Pakistan leave, they while taking undue advantages got the premises forcibly vacated by using illegal method when the servants of petitioner with his wife were available in the servant quarter. He also argued that respondent No.3 is deputationist having no right of allotment of premises, therefore, it is clear cut case of favoritism and officer has been accommodated by his will and wishes, whereas legitimate rights of petitioner have been assassinated. He relied upon **2011 CLC 1333** titled Saadat Hayat Khan...vs....Zaheerud Din and another wherein Hon'ble High Court while entertaining Intra Court Appeal discussed a question that after passing of period of six months required by A.A.R Rules 2002, the occupant on retirement was required to vacate the house. The appellant allowed official residence, therefore, cancellation whereof subsequently is illegal.

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6. Learned counsel for the respondent No.3 argued that the petitioner while submitting petition has concealed the material facts of executing undertaking in favour of Dr.Mustafa Kamal on 10.2.2011 where after he alongwith his entire family left Pakistan on Ex-Pakistan leave went abroad for his livelihood and merely he is passing the time till his retirement used to come and only by attending formally his office waiting for his retirement. He challenged that till today, petitioner is not available in Pakistan. He has proceeded to London which fact has been admitted by the learned counsel for petitioner.

7. Further he emphasized that the said residence after execution of undertaking in the month of February 2011 where after on 20.2.2011 petitioner left for abroad when said accommodation was allotted to Dr.Mustafa Kamal. Dr.Mustafa Kamal did not occupy the same, therefore, again it was cancelled in view of Rule 20 of A.A.R Rules 2002. Cancellation therefore, entitled observing such sublet by respondent no.2 and thereupon house was allotted to respondent no.3. He placed on record such documents drawing my attention confirming that undertaking was executed which too has not been denied by learned counsel for petitioner and subsequent to that it was allotted to said Dr.Mustafa Kamal but for extraneous reasons, he did not occupy the same. He also referred the statement of one Abdul Majeed who was found in occupation of premises in dispute as admitted the fact that he is residing therein since 1 ½ years not knowing name of its allottee and is a driver. Learned counsel argued that if spouse he could have been the

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servant of petitioner, he must have disclose such a fact in his statement but even he shown ignorance about the actual allottee as to whom it was allotted. Another aspect, he argued that the premises was got vacated on 11.10.2011 as alleged, the said Abdul Majeed being servant must have inform his Master but the petitioner throughout his petition has not alleged so on the contrary, he stated that he on assuming charge, went to his house found such alleged mischief not supporting his own version. He argued another aspect that if spouse that person found in possession whose statement recorded by said office must have come with an affidavit before this court in support of allegation levelled by petitioner failure whereof providing a clear view that subletting on the part of petitioner was observed, hence, the premises was got vacated through process of law. Learned counsel for the respondents referred Rule 10, Rule 16, Rule 20 and Rule 27 of A.A.R. Rules 2002 which strongly supports the arguments advanced by learned counsel for respondent no.3.

8. On minute examination of above referred Rules of A.A.R 2002 leading toward a different aspect which might have not been taken into consideration earlier, therefore, such an examination in scheme is necessary to be discussed herein under while referring the same rules referred above:

Sub-rule 2 of Rule 10 provides that in case allotment to a Federal Government servant, if not accepted within seven days or does not occupy within ten days of the allotment without any cogent reason, such allotment shall be cancelled

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without any notice. For convenience sub-rule 2 Rule 10 is reproduced here under:-

"Where a FGS does not accept allotment within seven days or does not occupy the allotted house within ten days of the allotment without any cogent reason, such allotment shall be cancelled without any notice and his name shall be brought at the bottom of the relevant General Waiting List and the Government accommodation shall be allotted to next eligible FGS as per rule 7. In case of hired house, the permission of occupation shall be withdrawn."

9. Referred Rule 16 elaborated sublet which strongly recommended to be not done by allottee and all its sub rules are giving very important features that in case found guilty of subletting the allotment shall be cancelled from the date of taking over possession of house, as well as liable to be disciplinary action as well as his name shall be placed at the bottom. From such scheme of law as envisaged by Rule 16 of A.A.R 2002 it becomes clear that the cancellation from date of taking over possession of house is mandate by the law therefore, there is no requirement of issuance of notice as claimed. Rule 16 also reproduced for convenience:-

"Subletting.-(1) The accommodation shall not be sublet by allottee.

(2) If an allottee is found guilty of subletting his accommodation the allotment shall be cancelled from the date of taking over possession of the house and he shall be charged monthly rent at the rate of one rental ceiling of his entitlement for the entire period.

(3) If an allottee or illegal tenant is a FGS, he shall be liable to disciplinary action for misconduct under the relevant rules or laws and such allottee shall be disqualified for future allotment of accommodation for five years.

(4) On becoming eligible for Government accommodation his name shall be placed at the

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bottom of the GWL on that date provided he applies."

10. Rule 20 referred above provides precautions for not residing in allotted accommodation which in the instant case is materially high lighted while refereeing the statement of Abdul Majeed who at the time of vacation of the premises by Estate Department even not disclosed the name of allottee nor the petitioner himself has ever tried to establish by swerving his affidavit to substantiate that said person was his servant and because of this reason, he was not occupant but while referring the contents of petition no where name of servant disclosed, hence, I am with the confirmed view that it becomes a case of non-residing of petitioner in allotted accommodation coupled with the fact that admittedly, the petitioner is residing at London which otherwise proved from the documents available in the Court as discussed in the preceding paras. However, Rule 20 also submitted hereunder:-

"Not residing in allotted accommodation.- (1) if an allottee or his family does not ordinarily reside in the allotted accommodation or allows some other person to live in the allotted accommodation, the allotment shall be liable to be cancelled.

(2) A FGS whose allotment is cancelled under sub-rule (1) shall be disqualified for a period of five years and he shall be liable to disciplinary action for misconduct under the relevant rules or laws.

(3) On becoming eligible for Government accommodation his name shall be placed at the bottom of the GWL on that date provided he applies."

11. Another very important feature which highlighted by referring Rule 27 which provides reporting of allottee to the Estate office through his department in case of his transfer,

retirement, posting abroad which by referring Rule 27 is incumbent upon the allottee which gravely proved against the petitioner that did not exhaust his duty while leaving abroad. Rule 27 is therefore, referred hereunder:-

"Reporting of transfer, retirement, posting abroad etc.- Within a fortnight of the transfer, retirement, resignation, dismissal or removal from service or in the event of the death of an allottee or of his proceeding abroad on training or deputation, the Establishment Division or the head of the office of the allottee, as the case may be, and the allottee himself shall be responsible for reporting any such fact to the Estate Office through his department."

12. By general examination of above referred Rules and the conduct of petitioner in view of general complexion of the case as well as documents produced by either side, the petitioner indulged in concealment of the facts on record as well as maneuvering the record by signing wakalat nama in the month of October on his return from London and again proceeded abroad but there appear reasonably the petition filed in his absence as such the discrepancies on his part comes on record from signing wakalat nama and submitting the petition before this Court.

13. I while scrutinizing the record noticed that wakalat nama seems to have been signed on 30.10.2011 by petitioner whereas affidavit sworn on 01.12.2011 and petition submitted in the office on 02.12.2011 for which a query raised by court, learned counsel for petitioner not plausibly explained his position merely, he contended that there may be an inadvertent mistake while obtaining signatures of petitioner. So for the concern of petitioner's availability at London and his proceeding

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back to Pakistan at what dates have also not been furnished the true account to substantiate his availability in Pakistan whereupon he signed the petition to pursue his claim.

14. From the record, it transpires that the material facts have been concealed by the petitioner, however, during arguments when the fact divulged learned counsel for petitioner with weak arguments tried to create justification that Dr.Mustafa Kamal is cousin of petitioner. The explanation, he furnished not to be proved, nor the learned counsel for the petitioner offered to submit any affidavit of said Dr.Mustafa Kamal in this regard.

15. In view of my above observation, I feel no substance in the petition, the same being devoid of force is dismissed with all listed application.

(NOOR-UL-HAQ N. QURESHI)
JUDGE

Imran
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Wagha
Approved for reporting
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