

ORDER SHEET.

IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

Writ Petition No. 1594/2019

Umair Ahmad Chheena

Versus

District Judge (West), Islamabad etc.

S. No. of order/ proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
(07)	16.12.2019	Mr. Wajid Hussain Mughal, Advocate for petitioner. Raja Muhammad Aftab Ahmed, AAG. Mohsin Pasha, Joint Estate Officer. Khubab Jafar, Section Officer, Ministry of Housing and Works.

Through this writ petition, the petitioner has assailed the order dated 20.02.2019 passed by learned Civil Judge 1st Class (West), Islamabad and judgment dated 28.03.2019, passed by learned District Judge (West), Islamabad, whereby, suit filed by the petitioner for declaration, permanent and mandatory injunction regarding Flat No. 02, Block No.33-E Cat-III, Street No. 22-C, Sector G-10/2, Islamabad has been dismissed, concurrently.

2. Learned counsel for petitioner inter-alia contends that the learned Trial Court has dismissed the suit of petitioner by declaring the same, as having become infructuous only on the one ground that the subject house, which was in possession of petitioner/Umair Ahmad Chheena, has been taken over from him by the Estate Office and possession of same was handed over to next allottee/Muhammad Afzal on 10.01.2019; that learned Trial Court has not answered the question raised in the civil suit qua the eligibility of

entitlement of said house, which requires adjudication on merits; that learned Appellate Court has adjudicated upon the question of eligibility in terms of Accommodation Allocation Rules, 2002, which was not visible from the record of learned Trial Court, even the said question is not mentioned in the impugned order dated 20.02.2019.

3. At this Stage, the Estate Officer alongwith learned AAG contends that subject flat has been allotted to Muhammad Afzal on 06.11.2018 and possession of the same has been handed over to him on 10.01.2019 and as such there is no need to re-adjudicate upon the matter under the Accommodation Allocation Rule, 2002, as the petitioner belongs to a non-entitled department.

4. Arguments heard, record perused.

5. It has been observed from the record that learned Trial Court has passed the impugned order dated 20.01.2019 without giving due opportunity of hearing to the petitioner to substantiate his eligibility for entitlement of allotment of said government accommodation under Accommodation Allocation Rules, 2002, which are amended in 2004, and as such the question of entitlement has not been discussed nor reflected from the impugned order.

6. I have also gone through the judgment dated 28.03.2019 passed by learned District Judge (West), Islamabad, in which the question of eligibility has been discussed, despite the fact that the said ground is not reflected from the order passed by learned Trial Court.

7. Keeping in view the above situation, principle of *audi alteram partem* has been violated. Even the right of fair trial in terms of Article 10-A of the Constitution of Islamic Republic of Pakistan, 1973 has not been attended too, hence, instant writ petition is **allowed**. The order dated 20.02.2019 passed by learned Civil Judge 1st Class (West), Islamabad and judgment dated 28.03.2019, passed by learned District Judge (West), Islamabad are hereby **set-aside**. The matter is remanded to the learned Trial Court for decision afresh on the merits, after impleading Muhammad Afzal (present occupant of Flat No. 02, Block No.33-E Cat-III, Street No. 22-C, Sector G-10/2, Islamabad) and after affording due opportunity of hearing to the petitioner side in accordance with law, within a period of four (04) months.

(MOHSIN AKHTAR KAYANI)
JUDGE

Khurram