

ORDER SHEET.
IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

C.R.No.124 of 2016
Muhammad Yaqub Brohi
Versus
Ministry of Housing & Works and others

S. No. of order / proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	05.10.2016	Mr. Mujeeb-ur-Rehman Kiani, Advocate for the petitioner, Mr. Musharraf Khan, Advocate for the respondent, Ms. Sitwat Jahangir, learned Standing Counsel with Ali Akbar Sial, Joint Estate Officer.

Through the instant civil revision petition, the petitioner, Muhammad Yaqub Brohi, who is a Section Officer in the National Assembly Secretariat, Islamabad, impugns the Order dated 15.03.2016, whereby the Court of the learned Additional District Judge, Islamabad, dismissed the petitioner's appeal against the order dated 24.02.2016, passed by the Court of the learned Civil Judge, Islamabad.

2. Vide the said order dated 24.02.2016, the learned Civil Court dismissed the petitioner's suit for declaration and permanent injunction. In the said suit, the petitioner had prayed for a declaration that he was the lawful allottee of Quarter No.3/5-C, Street No.42, Sector G-7/2, Islamabad ("the suit accommodation"). Furthermore, the petitioner had sought a restraint against the respondents from canceling the allotment order in the petitioner's favour.

3. Learned counsel for the petitioner submitted that the petitioner was working as a Lower Division Clerk (BPS-07) in the National

Assembly Secretariat, Islamabad, and vide allotment letter dated 09.01.2013, the petitioner was allotted the suit accommodation; that soon after the allotment, the petitioner occupied the suit accommodation; that apprehending the cancellation of the said allotment, the petitioner filed a civil suit and obtained interim relief from the learned Civil Court; that the said allotment order in favour of the petitioner was not fake; that vide judgment and decree dated 24.02.2016, the suit instituted by the petitioner was dismissed by the learned Civil Court; that the petitioner's appeal against the said judgment and decree was dismissed on 15.03.2016, by the Court of the learned Additional District Judge, Islamabad; that during the pendency of the litigation, the petitioner was dispossessed; that since the allotment letter in favour of the petitioner is not fake, the petitioner should be put back in possession of the suit accommodation; that the criminal proceedings initiated against the petitioner should be stopped. The petitioner prayed for the revision petition to be allowed and the concurrent orders passed by the learned courts below to be set aside.

4. On the other hand, learned counsel for the respondents submitted that the allotment letter dated 09.01.2013 relied upon by the petitioner, was fake and bogus; that the Joint Estate Officer, who had signed the allotment letter dated 09.01.2013 had retired from government service on 04.12.2012; that the matter has been inquired into by the Ministry of Housing and Works, and it had been referred

to FIA for further investigation; that the learned Civil Court had dismissed the petitioner's suit on merits after appreciating the facts and law on the subject; that the suit accommodation has been vacated by the petitioner, and possession has been handed over to another allottee/Federal Government Servant. Learned counsel for the respondents prayed for the revision petition to be dismissed.

5. I have heard the contentions of the learned counsel for the parties and have perused the record with their able assistance.

6. The record shows that on 21.02.2013, the petitioner instituted a suit for declaration and permanent injunction against (i) the Ministry of Housing & Works, (ii) the Estate Office, (iii) the Director Revenue Capital Development Authority, praying for a declaration that the petitioner is the lawful allottee of the suit accommodation. The petitioner had also sought an injunction restraining the respondents from canceling the allotment of the suit accommodation in his favour. This suit was contested by the respondents, who filed a written statement. In this written statement, the defendants admitted that the suit accommodation was allotted to the petitioner in exchange of Quarter No.6/24 Cat-V, G-6/1-1, Islamabad, under Rule 12 of the Accommodation Allocation Rules, 2002. After the framing of issues and recording of evidence, the learned Civil Court dismissed the suit, vide judgment and decree dated 24.02.2016. The petitioner's appeal against the said judgment and decree was also dismissed. Consequently, the learned courts below

spurned the contention of the respondents that the allotment letter dated 09.01.2013 was a fake or bogus document.

7. The primary reason which prevailed over the learned courts below in non-suiting the petitioner was that since the allotment letter dated 09.01.2013 was issued to the petitioner in exchange and in lieu of Quarter No.6/24 Cat-V, G-6/1-1, Islamabad, under Rule 12 of the Accommodation Allocation Rules, 2002, and since in terms of Rule 12 *ibid*, the petitioner had to prove that he was in possession of the earlier allotted accommodation, in exchange of which he was allotted the suit accommodation, this had cast a shadow of doubt on the genuineness of the allotment letter dated 09.01.2013.

8. The learned lower courts in giving the above mentioned findings seems to have lost sight of the respondents' pleadings in the written statement. At this juncture, it is pertinent to reproduce herein below paragraph 2 of the suit and its reply in the written statement:-

Paragraph 2 of the suit	Paragraph 2 of the written statement
2. That in pursuance of Accommodation Allocation Rules, 2002, the plaintiff was allotted Government accommodation House No.3/5-C, Street No.42, Sector G-7/2, Islamabad (hereinafter called suit House) on 09.01.2013 by the defendant No.1 in accordance with the entitlement of the plaintiff. The copy of the said allotment letter was sent to the plaintiff by the defendant No.2 is	2. Admitted. Quarter No.3/5-C, Street No.42, G-7/2 Islamabad has allotted to plaintiff in change, in lieu of quarter No.6/24 Cat.V, G-6/1-1 Islamabad under Rule 12 of AAR-2002 on subject to vacation basis.

enclosed herewith for kind perusal of this Honourable Court.	
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9. The respondents in their pleadings did not assert that the allotment letter dated 09.01.2013 was fake or bogus. The respondents' possession is clearly set out in paragraph 2 of their written statement. The respondents after the filing of written statement could not take a vault face by asserting that the said allotment letter was a forgery. It is well settled that parties are bound by the averments made in their pleadings, and evidence adduced beyond the pleadings was not permissible under the law. Evidence or arguments with respect to a plea not taken in pleadings cannot be looked into. Deviation from the pleadings is deprecated being against the age-old maxim '*secundum allegata et probata*' (a party can succeed according to what was alleged and proved). Reference in this regard may be made in the law laid down in the cases of Major (Retd.) Barkat Ali Vs. Qaim Din (2006 SCMR 562), and Mst. Jannat Bibi Vs. Sher Muhammad and others (1988 SCMR 1696).

10. As mentioned above, the learned courts below concurrently dismissed the petitioner's suit and appeal, because the learned lower courts were under the impression that Rule 12 of the Accommodation Allocation Rules, 2002, requires a government servant to prove that he was in possession of the earlier allotted accommodation before he can be given accommodation in exchange or in lieu of the earlier allotted accommodation. It is pertinent

to reproduce herein below the findings of the learned courts below in this respect:-

FINDINGS OF THE LEARNED CIVIL COURT

"10...however, the said allotment letter was admittedly issued under Rule 12 of AAR, 2002 and it is a pre-requisite for issuance of any allotment under Rule 12 of AAR, 2002 the allotment as well as possession of previous accommodation would be with the plaintiff."

FINDINGS OF THE LEARNED APPELLATE COURT

"...In terms of Rule 12 AAR, 2002 the appellant has to prove his possession of earlier allotted accommodation in change of which accommodation the suit accommodation was allotted to him. Nothing exists on case record nor brought by the appellant to substantiate his possession over the earlier allotted accommodation, therefore, the appellant failed to establish that he was in possession of any accommodation in lieu of which accommodation he has been allotted the suit accommodation. In this state of affairs a shadow of doubt is cast upon the genuineness of the allotment letter."

11. I do not find the above findings to be in accordance with the law since there is no requirement regarding possession of the earlier allotted accommodation in Rule 12 ibid, which is reproduced herein below:-

"12. Changes of accommodation. - Changes from one accommodation to the other or exchange of accommodation between two allottees for same category of accommodation may be permitted by the Ministry of Housing and Works subject to production of a certificate from their employers to the effect that they are not expected to be retired or transferred during the next one year and other required documents as prescribed by Ministry of Housing and Works from time to time."

12. The mere fact that the petitioner was not able to establish that he had occupied the earlier allotted accommodation (i.e. Quarter No.6/24 Cat-V, G-6/1-1, Islamabad), before allotment letter dated 09.01.2013 with respect to the suit accommodation was issued to him, did not render the allotment letter dated

09.01.2013, unlawful or void. Furthermore, the defendants in their pleadings did not allege that the issuance of allotment letter dated 09.01.2013 was not in accordance with Rule 12 *ibid*, rather it has been pleaded that suit accommodation was allotted to the petitioner under Rule 12 *ibid*. It was also not alleged that the suit accommodation was not commensurate with the petitioner's entitlement.

13. I am mindful of the fact that the petitioner has impugned two concurrent orders in this petition, and that the High Court has very limited jurisdiction to reverse concurrent findings in its revisional jurisdiction. However, in the case of Saheb Khan Vs. Muhammad Pannah (PLD 1994 SC 162), it has been held that where a court based its decision on a wrong proposition of law, the High Court could interfere in its revisional jurisdiction. Furthermore, in the case of Malik Muhammad Khaqan Vs. Trustees of the Port of Karachi (2008 SCMR 428), it has *inter-alia* been held that when concurrent findings are against the law, then the revisional court has the jurisdiction to remove the illegality in the judgment. If the revisional court finds any violation of a provisions of law or ignorance of law by the court then it is vested with the authority to set aside the concurrent findings.

14. As I do not find the findings of the learned courts below to be in consonance with the law (i.e. Rule 12 of the Accommodation Allocation Rules, 2002), I am inclined to allow this petition by setting aside the concurrent orders of the learned Courts below, and remanding the case

to the learned Civil Court for arguments and decision on the basis of the available record. The mere fact that the petitioner was dispossessed during the pendency of this litigation cannot cause this Court to such its eyes to the error in law committed by the learned Courts below. The petitioner may take his pleas regarding re-possession of the suit accommodation before the learned Civil Court. The parties are directed to appear before the learned Civil Court on 20.10.2016.

**(MIANGUL HASSAN AURANGZEB)
JUDGE**

APPROVED FOR REPORTING

Qamar Khan*

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