

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

Writ Petition No. 4015/2020

Sobia Jabeen and another*Vs***The Learned Judge Guardian Court (East), Islamabad**

S. No. of order/ proceedings	Date of order/ proceedings	Order with signature of Judge and that of parties or counsel where necessary.
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28.01.2021.

Mr. Umer Saleem Mirza, Advocate for the petitioners.

Petitioners namely Sobia Jabeen widow of Tariq Saleem and Ayyan Tariq s/o Tariq Saleem (minor) has assailed order dated 14.11.2020, passed by learned, SCJ-II/Guardian Court-East, Islamabad, whereby the application of petitioner No. 1 (Widow) for permission to sell the share of petitioner No. 2 (Minor), in the immovable properties of deceased (Father) was dismissed, in view of the provision of section 16 of the Guardians and Wards Act, 1890, as the properties in question are situated in the province of Punjab i.e. beyond the territorial jurisdiction of the Court.

2. Learned counsel of the petitioners through instant petition has prayed as under:-

"In view of the above, it is most humbly prayed that by accepting instant petition the impugned order dated 14.11.2020 passed by respondent may kindly be set-aside and the respondent be directed to allow petitioner No. 1 to sale out the property of petitioner No. 2 for his welfare in the best of interest of justice. Any other relief which this Honorable court may be just and proper also be awarded."

3. Perusal of the record revealed that the deceased Tariq Saleem expired on 01.09.2019, who left behind two widows, three sons and four

daughters as his legal heirs. The petitioner No. 1 is deceased's second wife (widow) and petitioner No. 2 is her only son from the deceased. The succession certificate has also been issued in the name of all the legal heirs of deceased Tariq Saleem, vide judgment dated 14.12.2020, by learned Civil Judge 1st Class, Lahore. As per record Petitioner No. 1 has been appointed as Guardian of the minor Ayyan Tariq u/s 7 of the Guardian & Wards Act, 1890, vide order dated 9.02.2020, amended by order dated 30.09.2020, issued by the Senior Civil Judge (Guardian) East, Islamabad. Record further shows that following properties have been left by the deceased Tariq Saleem wherein the petitioners have their respective shares as legal heirs. The properties are situated in province of Punjab details of which are given as under:-

- i. *House situated at NFC Housing Society, Lahore;*
- ii. *Land measuring 296 Kanal, 04 marlas situated at Burj Fateh Ali, Tehsil & District Hafizabad.*
- iii. *Land measuring 229 Kanals, 06 Marla vide mutation No. 346, situated at 22-RB, Tehsil Sangla Hill, District Nankana Sahib;*
- iv. *An amount of Rs. 2,00,28,921.56 lying in the A/C No. 0152-0095-002074-01-7 with Bank Al-Habib Ltd.;*
- v. *An amount of Rs. 50,00,000/- lying with Bank Al-Habib Ltd., Valencia Town Branch Lahore, under receipt No. 0000000022;*
- vi. *An amount of Rs. 50,00,000/- lying with Bank Al-Habib Ltd., Valencia Town Branch Lahore, under receipt No. 0000000023.*

3. The petitioner No. 1 filed application for permission to sell the share of Petitioner No.2/minor Ayyan Tariq, before the learned

Senior Civil Judge/Judge Guardian Court, East-Islamabad, on 06.11.2020, which was dismissed, vide order dated 14.11.2020, on the ground that the properties of the deceased in which the minor has share are situated beyond the territorial jurisdiction of the court and in view of Section 16 of the Guardian and Wards Act, 1890, the Court within whose territorial jurisdiction the property is situated under the law is competent to accept the applicant as duly appointed guardian of the minor or declared and give effect to such order. For ready reference, Section 16 of Guardian and Wards Act, 1890 is reproduced herein below for ready reference:-

“16. Appointment or declaration of guardian for property beyond jurisdiction of the Court. If the Court appoints or declares a guardian for any property situate beyond the local limits of its jurisdiction, the Court having jurisdiction in the place where the property is situate shall, on production of a certified copy of the order appointing or declaring the guardian, accept him as duly appointed or declared and give effect to the order.”.

4. As per Section 16 *ibid*, if the petitioner, who has been appointed as a guardian of the minor by a Guardian Judge, Islamabad, through an order, in respect of properties, which are situated beyond the local limits of the Islamabad i.e. in the province of Punjab, may produce the certified copy of the said order before the Court within whose territorial jurisdiction the property is situated and that very Court shall accept him/her as duly appointed guardian or declared and give effect to such order. Therefore, I am in consonance with the view taken by the learned Trial Court that in view of the clear language of section 16 of the Guardian and Wards Act, 1890,

the petitioner can file application seeking permission to sell the share/property of ward before the Court, within whose local limits the property is situated and due to the word 'shall' used in the said Section 16, it is mandatory upon such court to accept the person as a duly appointed guardian and give effect to the order of appointment of the applicant as Guardian, by allowing the requisite permission.

5. For what has been discussed above, the impugned order dated 14.11.2020, passed by learned Guardian Judge, Islamabad is declared to be lawful and justified which does not suffer from any illegality, irregularity or infirmity and is hereby upheld.

6. The instant writ petition, being devoid of any merit is hereby **dismissed**.

(LUBNA SALEEM PERVEZ)
JUDGE

Approved for Reporting
Blue Slip added.

ADNAK.