

Form No: HCJD/C.

JUDGEMENT SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

Case No: Writ Petition No.2413 of 2017

Jammu & Kashmir Cooperative Housing Society
Vs.
Federation of Pakistan etc.

Petitioner by: Mr. Abdul Wahid Qureshi,
Advocate.

Respondents by: Mr. Bilal Saeed, Advocate.

Date of Decision: 14.03.2022

AAMER FAROOQ, J.- The petitioner, in the instant petition, has challenged orders dated 02.05.2017 and 17.08.2016 passed by respondent No.1 & 3, respectively.

2. The facts, leading to filing of the instant petition, are that respondent No.7 was allotted a plot by the petitioner which is a housing society registered under the Cooperative Societies Act, 1925 (the Act). Litigation ensued between the parties with respect to the payment of additional dues and the matter was decided by respondent No.4 to 6. Respondent No. 7 also agitated the matter before respondent No.3 which complaint was dismissed vide order dated 17.08.2016 on the question of jurisdiction. Respondent No.7 filed a representation before respondent No.1 which was allowed and the decision of respondent No.3 was overturned, hence the petition.

3. Learned counsel for the petitioner, *inter alia*, contended that the petitioner, which is a cooperative housing society, is not amenable to the jurisdiction of *Wafaqi Mohtasib* as it does not fall within the concept of agency as defined under the law. It was contended that the petitioner is registered with the Registrar Cooperative Societies who is appointed by the Office of Chief Commissioner, Islamabad Capital Territory under the Act. It was further submitted that the Chief Commissioner in Islamabad Capital Territory is a Provincial Government in light of the Presidential Order 18 of 1980 pertaining to Islamabad Capital Territory hence the Office of the Chief Commissioner or the Registrar does not fall within the purview of Federal Government or is also not under the control of Federation or Federal Government. It was submitted that already the matter is pending by way of review before respondents No.4 to 6, hence respondent No.1 could not have entertained the representation or even issued direction. Reliance is placed on the case titled *Capital Development Authority through Chairman and another v. Zahid Iqbal and another* (PLD 2004 S.C. 99), *Capital Development Authority through Chairman v. Raja Muhammad Zaman Khan and another* (PLD 2007 S.C. 121) and decision by this Court in W.P. No.2406/2021 titled *Shuja Hussain Kiyani v. Director, FIA Islamabad and others.*

4. Learned counsel for the respondent No.7, *inter alia*, contended that the petitioner has been dealing with respondent No.7 with highhandedness as he has been deprived of his plot and the matter is still pending before the Office of Registrar. It was contended that insofar as the order impugned in the instant petition is concerned, the same does not suffer from any jurisdictional defect or illegality, hence the instant petition merits dismissal.

5. Arguments advanced by the learned counsel for the parties have been heard and the documents placed on record examined with their able assistance.

6. Respondent No.1 while dealing with representation filed by respondent No.7 has held the petitioner to be an agency within the meaning of word as provided in Article 21 of Establishment of Office of Wafaqi Mohtasib (Ombudsman), Order 1983 as amended by the Federal Ombudsman Institutional Reforms Act, 2013. The concept of agency as it exists in light of the amendment is an office or entity in which the Federal Government has any share or which has been licensed or registered by the Federal Government and notified by the Federal Government in the Official Gazette. The petitioner is a housing society registered under the Act. The petitioner is regulated by the Registrar who in turn is appointed by the office of Chief Commissioner, Islamabad Capital Territory. The Commissioner, Islamabad

Capital Territory is Provincial Government for the purposes of Islamabad Capital Territory and does not work under the Federal Government. This aspect of the matter was considered by this Court in **W.P. No.2406/2021 titled Shuja Hussain Kiyani v. Director, FIA Islamabad and others** in the following terms:

*“10. The answer to the question of whether or not the petitioner is liable to be investigated for involvement in aiding or abetting any corrupt practices on part of an office holder in a housing society registered under the Societies Act, is not in and of itself sufficient to grant FIA jurisdiction over such investigation. Housing societies are registered under the Societies Act, which is a provincial law, and when such societies are owned and controlled by private persons any offences committed in connection with affairs of such societies do not constitute matters concerning the Federal Government. As in the investigation being undertaken by FIA against the petitioner the second part of the test laid down by the august Supreme Court in **Kamran Iqbal** is not made out, the matter not concerning the Federal Government, there is no need for this Court to render the judgment to whether or not the first part of the test is satisfied. The learned AAG had relied on **Muhammad Khalid Vs. National Accountability Bureau (2017 SCMR 1340)**. But the subject matter did not relate to the jurisdiction of FIA and the august Supreme Court had only issued general guidelines for purposes of*

*safeguarding citizens from misconduct on part of housing societies. The learned AAG also relied on **Oxford University Press, Peshawar Vs. Inayat-ur-Rehman (2021 SCMR 321)**, which is also not relevant for our present purposes. In *Inayat ur Rehman*, the High Court had struck down Item No. 26 of the schedule to the FIA Act while exercising criminal jurisdiction under Section 561-A of Cr.P.C. And the august Supreme Court set- aside the said judgment while holding that the High Court in exercise of its criminal jurisdiction could not strike down an entry in the schedule to the FIA Act. And that in order to challenge the FIA Act or an entry in its schedule the petitioner was required to file a constitutional petition before the High Court. The apex Court in *Inayat ur Rehman*, did not omit or override the two-part test for establishment of jurisdiction of FIA laid down by the august Supreme Court in *Kamran Iqbal*. The question of legality of an investigation came before the august Supreme Court in **Anwar Ahmad Khan Vs. The State (1996 SCMR 24)**, wherein it was held that, “where investigation is mala fide or without jurisdiction, the High Court, in exercise of its Constitutional jurisdiction under Article 199, is competent to correct such proceedings and pass necessary order to ensure justice and fair play. The Investigating Authorities do not have entire and total authority of running investigation according to their whims”*

7. In light of the above judgment the housing societies which are registered under Provincial law form subject matter

of the Province and are not regarded as Federal entity. There is no occasion to take any exception with respect to the findings rendered in the above judgment of this Court, hence the finding of respondent No.1 that the petitioner is an agency is untenable. Moreover, as noted above and acknowledged by both the counsel that *lis* already is pending before respondents No.4 to 6 by way of review; where such is the case jurisdiction of the Ombudsman is ousted under the Presidential Order as amended by the Act of 2013. Moreover, no jurisdiction or power vests with either respondent No.1 or respondent N.3 to issue direction to any Tribunal or Court. In view of the foregoing, the decision by respondent No.1 dated 02.05.2017 is without jurisdiction and untenable.

8. For the above reasons, the instant petition is allowed and the impugned judgment dated 02.05.2017 by respondent No.1 is set aside and the representation filed by respondent No.7 stands dismissed.

(AAMER FAROOQ)
JUDGE

Approved for reporting