

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Present:

Mr. Justice Qazi Faez Isa, CJ
Mr. Justice Amin-ud-Din Khan
Mr. Justice Athar Minallah

Human Right Case No. 82928 of 2018

[Application in respect of Property Dispute]

In Attendance:

For Mr. Moez Ahmed Khan: Mr. Hafeez-ur-Rehman Ch., ASC
a/w Mr. Moez Ahmed Khan.

On Court's Call: Ch. Aamir Rehman,
Addl. Attorney-General for Pakistan.
Mr. Farooq H. Naek, Sr. ASC.
Mr. Salman Aslam Butt, ASC.

Date of Hearing: 08.11.2023.

ORDER

Qazi Faez Isa, CJ. Mrs. Zahida Javaid Aslam had written to the Human Rights Cell in the Supreme Court and leveled had serious allegations against Mr. Moez Ahmed Khan. The matter was put up in Chamber before the then Chief Justice, Justice Mian Saqib Nisar. As per the report of the Director-General, Human Rights Cell, Justice Mian Saqib Nisar had '*by order dated 3.11.2018 summoned both parties for hearing for 06.11.2018 and 15.11.2018 in Chamber of the Chief Justice.*' Thereafter, as per the said report, the Counter Terrorism Department and the Capital Police Officer, Rawalpindi were activated. Learned Mr. Hafeez-ur-Rehman Ch. states that the dispute between the private parties was attended to and decided.

2. During the hearing the question arose whether the Chief Justice in Chamber could have summoned parties under Article 184(3) of the Constitution of the Islamic Republic of Pakistan ('**the Constitution**'). Learned counsel stated that the exercise undertaken by the then Chief Justice is not one envisaged in the Constitution, nor in any law or in the Supreme Court Rules, 1980 ('**the Rules**').

3. A number of senior counsel were present in Court and Ch. Aamir Rehman, learned Additional Attorney-General for Pakistan ('AAG'). Mr. Farooq H. Naek, Senior ASC, and Mr. Salman Aslam Butt, a former Attorney-General for Pakistan were asked to assist the Court on the question of whether the Chief Justice could pass the said orders and do so in his Chamber. They unanimously stated that the power of the Chief Justice in Chamber is circumscribed by the Rules and he could not have passed such orders. They stated that a Chief Justice, or a Judge of the Supreme Court in Chamber can only pass orders envisaged in the Rules. But, neither the Rules nor any law permits that parties be summoned, direct the registration of cases and/or order investigations to be undertaken.

4. We called upon the Director-General, Human Rights Cell, to apprise us of any law, rule or regulation attending to the Human Rights Cell, and the scope of a Chief Justice's or a Judge's powers which may be exercised in Chamber. The Director-General stated that there is no law, rule or regulation with regard to the Human Rights Cell. He then referred to the minutes of a Full Court Meeting, held on 12 December 2019 under the Chairmanship of the then Chief Justice of Pakistan, Justice Asif Saeed Khan Khosa; the following relevant extract wherefrom is reproduced:

'4. PROPOSED AMENDMENT IN ORDER XXV OF THE SUPREME COURT RULES, 1980

7. The Chair stated that the working paper suggesting amendment in Order XXV of the Supreme Court Rules, 1980 has been prepared with the view to streamline the procedure to be adopted by the Supreme Court while exercising its *Suo Motu* jurisdiction. Hon'ble Judges appreciated and observed that the working paper lays down a basis for further discussion on the subject.

DECISION:

After detailed discussion it was observed that the matter needed further deliberation. All the Hon'ble Judges may also like to submit proposals in this regard before the next Full Court Meeting.'

However, no further meeting on the abovementioned subject took place. The next Full Court meeting was held on 18 September 2023 when the said matter was not on the agenda nor was it raised by any Judge.

5. We have heard the learned counsel and the learned AAG and have considered the matter. Neither can the Chief Justice nor any Judge in Chamber alone can pass an order beyond what is provided for in the Rules. Therefore, the *proceedings* that the former Chief Justice undertook with regard to the said matter, in our considered opinion, were not legal proceedings, and were of no legal effect.

6. The Human Rights Cell can only consider the complaints it receives, and if the same meet the test of Article 184(3) of the Constitution, that is, the matter is one of *public importance with reference to enforcement of any of the Fundamental Rights* put it up for consideration of the Chief Justice of Pakistan, and the Chief Justice in Chamber could only direct that it be numbered and put up for consideration in Court. However, since the promulgation of the Supreme Court (Practice and Procedure) Act, 2023 (**'the Act'**) the Chief Justice has lost even this power as now the Committee, under section 2(1) of the Act, comprising of the Chief Justice and the next two senior Judges, will determine whether the matter should be numbered and fixed in Court for hearing.

Chief Justice

Judge

I will be adding a separate note.

Judge

Islamabad:
08.11.2023
(M. Tauseef)

Approved for Reporting

Athar Minallah J. I have had the privilege of reading the opinion authored by my learned brother Qazi Faez Isa CJ. While I concur with his conclusion, I felt it necessary to add my opinion as well.

2. We have been informed that the Human Rights Cell (‘ **Cell** ’) was set up in the Supreme Court building in 2005. It has been functioning since then. We have also been informed that it was not established under any law, nor did its proceedings, held by the Chief Justice in his Chambers, or orders/directions and letters issued to public bodies and organisations have any legal backing. The orders, directions and letters in the name of this Court create a wrongful impression of being judicial. The summons issued to parties and the proceedings held in the Chamber of the Chief Justice or a meeting room, rather than in open Court, are likely to infringe the right to a fair trial and due process. The proceedings, orders, directions and letters are taken as those of this Court and, therefore, cause grave miscarriages of justice because they can be abused. As an illustration, reference may be made to the facts of the case in a reported judgment of the High Court titled *Azhar Iqbal v. Government of Pakistan*.¹

3. This Court has been conferred with jurisdiction under Articles 184, 185 and 186, while it exercises the power of review under Article 188. The extraordinary original jurisdiction conferred under Article 184(3) can only be exercised by this Court and, that too, in the manner described under the Supreme Court Rules, 1980 (‘ **Rules of 1980** ’). The Cell is bereft of jurisdiction or power to, directly or indirectly, perform any functions or exercise purported powers which are judicial in nature or may affect the rights of the parties in any manner. The only function that the Cell may perform is to receive representations, letters

¹ PLD 2015 Islamabad 140

or correspondence from the general public and then place them before the Chief Justice to be dealt with under the Rules of 1980. Any proceedings undertaken or held by the Chief Justice or the Director General and summons, orders, directions or letters issued pursuant thereto are declared as illegal and *ultra vires* the Constitution. The Registrar of this Court may, therefore, restrain the Cell from undertaking any activity, proceedings or to issue summons, orders, directions and letters having no legal backing.

Athar Minallah

'APPROVED FOR REPORTING