

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

Mr. Justice Amin-ud-Din Khan
Mr. Justice Jamal Khan Mandokhail

Civil Petition No. 361-P of 2018

***Govt. of Pakistan M/O Housing & Works through
Joint Estate Officer, Federal Government Colony
Hassan Ghari, Peshawar***

...Petitioner

Versus

Malik Safeer Ahmed

...Respondent

For the Petitioner : Mr. Amir Javed, Addl. AGP

For the Respondent : Mr. Abdul Munim, ASC

Date of hearing : 18.08.2022

JUDGMENT

Jamal Khan Mandokhail, J.- The respondent was serving in the Income Tax Department, Government of Pakistan and was posted at Peshawar. He was allotted an official residence in the Federal Government Employees Housing Colony, Hassan Garhi, Peshawar. Upon his transfer from Peshawar, the Estate Officer cancelled the allotment vide notice/letter dated 10th of August 2011, and directed the respondent to vacate the official residence (**the residence**). Being aggrieved, the respondent filed a civil suit in the Court of Senior Civil Judge, Peshawar, which was decreed in his favour. The petitioner filed an appeal and a civil revision, both of which were dismissed by the Appellate Court and the High Court respectively, hence, this petition for leave to appeal.

2. The learned Additional Attorney General of Pakistan (**AAG**) stated that on the recommendation of the Federal Government, the President of Pakistan in exercise of the powers conferred by sub-section (1) of section 25 of the Civil Servants Act, 1973 (LXXI of 1973) (**the Act of 1973**) made the Accommodation Allocation Rules, 2002 (**the Rules 2002**), wherein a remedy has been provided to an aggrieved person. He stated that the order of cancellation was passed by the competent authority by exercising power under the Rules 2002, therefore, the Senior Civil Judge has wrongly assumed the jurisdiction. On merits, the learned AAG contended that the respondent after his transfer from Peshawar, was not entitled to retain the residence, but the courts below did not consider this aspect of the case as well and have permitted him to retain the same, without taking into account Rule 15 of the Rules 2002.

3. The learned counsel for the respondent opposed the contention on legal as well as on factual grounds. He stated that no question of law of public importance has been raised through the instant petition against the concurrent findings of fact of three courts below, therefore, the same is liable to be dismissed.

4. Arguments heard and have perused the record. It is a fact that as a policy, the Governments (Federal and Provincial), within their available resources, provide basic necessities of life, including housing to the persons in service of Pakistan. Consequently, the Federal and Provincial Governments, autonomous, semi-autonomous bodies, authorities, corporations etc., respectively, own their own official residences in limited number, for allotment of the same to their officials and employees, subject to availability of the accommodation. The allotment to official(s) is made in

accordance with his/their respective applicable rules, regulations, policies, instructions or directions issued in this behalf from time to time by the authorities concerned, determining the mechanism, eligibility criteria, terms and conditions, and defines the authority to allot and cancel the allotment of an official accommodation. They also provide a remedy to an aggrieved person for redressal of his/her grievance, if an order for allotment or cancellation is made by an officer in respect of an official accommodation, in violation of the applicable terms and conditions. Upon allotment of an official accommodation to an official, his/her monthly house rent allowance, being paid to him/her along with monthly salary is discontinued and is adjusted towards the rent of the said accommodation. As such, the matter of allotment or cancellation of an official residence is connected with the terms and conditions of the service of the persons in the service of Pakistan, in public service and other officials of the concerned government, autonomous, semi-autonomous bodies, authorities, corporations etc.

5. Any order of allotment or cancellation thereof, in respect of an official accommodation is to be made by an authorized officer in accordance with the terms and conditions of their respective applicable rules, regulations, policies, instructions, directions etc., subject to the availability of the official accommodation. If any person is aggrieved from any order made or proceedings taken by an authorized officer in respect of an official accommodation, can avail the remedies, provided by the relevant applicable rules, regulations, policies, instructions, directions etc., for redressal of his/her grievance. Since, no serious question of facts normally involves in the matter of allotment or cancellation of an official accommodation, therefore, the said forums, having all the powers to consider the vires of any order made or proceedings taken by an officer, could rectify the error and

resolve the disputes on the basis of the available material, in accordance with the applicable rules, regulations, policies, instructions, directions etc. One of the purposes of establishing a separate forum is to proceed with the matters pertaining to the official accommodation summarily, and to resolve the issue in a shortest possible time, in order to avoid the procrastinated litigation. Under such circumstances, any order made or proceedings taken in respect of an official accommodation, pursuant to the applicable rules, regulations, policies, instructions, directions etc., shall not be called in question before any court, except the forums provided therein. However, if such forum is not provided, a High Court may, if it is satisfied, exercise its power, as provided by Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973.

6. In the case in hand, the respondent is an official of the Federal Government, to whom the official accommodation was allotted and was subsequently cancelled through an order made by an officer authorized by the Rules 2002. Under Section 23B of the Act of 1973, no order made or proceedings taken under the Rules could be called in question in any court and no injunction shall be granted by any court in respect of any decision made, or proceedings taken in pursuance of any power conferred by, or under the rules made thereunder. Since the order of cancellation was made by an authority, exercising power under the Rules 2002 framed under the Act of 1973, therefore, it could have been called in question in the forum, provided by the Rules 2002. The respondent, feeling aggrieved from the order of cancellation of allotment of his official accommodation, made by an authorized officer in pursuance of the power conferred upon him by the Rules 2002, instead of availing the remedy provided by the Rules 2002, approached the civil court which

had no jurisdiction in the matter. Under such circumstances, the judgment and decree passed by the trial court were void. The appellate court as well as the High Court have failed to consider this legal aspect of the case and have come to a wrong conclusion by maintaining the judgment and decree of the trial court, hence, committed an illegality.

Thus, in view of the above, this petition is converted into appeal and is allowed. The impugned judgment passed by the High Court and the judgments and decrees of the Courts below are set aside. The Trial Court, having no jurisdiction in the matter, should return the plaint along with annexures to the respondent.

Copies of the judgment be transmitted to the Registrars of the respective High Courts, to the petitioner and the Chief Secretaries of the Provinces.

Judge

Judge

Peshawar
18th August, 2022
K.Anees/-

APPROVED FOR REPORTING