

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
C.P. No.D-6784 of 2018

Order with signature of Judge

Before: **Salahuddin Panhwar and Agha Faisal, JJ.**

1. *For orders on CMA No.29648 of 2018*
2. *For hearing of CMA No.29649 of 2018*
3. *For hearing of main case*

21.01.2019

None present for the petitioner. Same was the position on 29.10.2018. Pre-admission notice was issued in this matter on 01.10.2018, however, the matter has not been proceeded with till date. While this may be a fit case for dismissal on the ground of non-prosecution, it is considered prudent to review the case file and pass appropriate orders upon consideration of the pleadings. The petitioner No.1 is in occupation of official accommodation at Karachi since 2005, notwithstanding the admission contained in the petition stipulating that he is posted at District Shaheed Benazir Abad. The petitioner No.2 is stated to be the widow of a long deceased employee of the Government. The prayer clause shows that the petitioners require that they remain in possession of the official accommodation on humanitarian grounds.

2. It has been stated in the memorandum of petition that the petitioners had earlier filed a constitutional petition before this Court, which was disposed of by an earlier Division Bench on 12.07.2018. The reference to the said judgment is also contained in the notice issued by the respondents dated 23.07.2018 and the final notice of ejectment dated 22.09.2018, impugned herein. It is the considered view of this Court that once the subject matter hereto had already been adjudicated

by an earlier Division Bench of this Court then the submissions of same issue for determination in subsequent writ petition is contrary to the enshrined principles of law. Notwithstanding the foregoing, even otherwise it would fall upon the petitioners to demonstrate the existence of subsisting rights to remain in occupation of the official accommodation in order to sustain their petition. Neither the petitioners nor their counsel is present and the pleadings demonstrate no right, with respect to the official accommodation, subsisting in favour of the petitioners.

3. Comments have been filed on behalf of the respondent nos. 1 and 2 and it has been stated therein that an earlier petition filed by the petitioners already stood adjudicated by this Court, hence, this petition was not maintainable. It was further stated that pursuant to the earlier judgment, the rights of the petitioners were subjected to a de novo determination and it was found that they were in unlawful occupation of official accommodation. It was thus prayed that the present petition be dismissed forthwith.

4. We have considered the pleadings filed by the petitioners and have observed that no subsisting right to remain in occupation of the official accommodation under possession is demonstrable therefrom. It is also apparent that the petitioners have agitated the issue in an earlier round of litigation which has concluded and attained finality.

5. The issue of retention of official accommodation has been deliberated upon in considerable detail by an earlier Division Bench of this Court in the case of *Muhammad Tariq Qasmi vs. Federation of*

Pakistan & Others being C.P. No. D- 2110 of 2009 (“*Tariq Qasmi*”). *Tariq Qasmi*, inter-alia, maintained that persons seeking to remain in occupation of official accommodation were required to demonstrate the tenability of their subsisting rights in such regard. It is clear from the said judgment that the writ jurisdiction of this Court could not be invoked to sustain occupation of official accommodation in the absence of any demonstrable right to be able to do so. The said ratio was followed in several successive Division Bench judgments of this Court including judgments in the cases of *Saqib Ali Shaikh vs. Government of Sindh and Others* being CP No. D-5329/2018 (“*Saqib Ali Shaikh*”), *Malik Muhammad Ibrahim vs. Federation of Pakistan and Others* being CP No. D-6877/2018 (“*Malik Muhammad Ibrahim*”), *Abdul Rauf Khan vs. Federation of Pakistan & Others* being CP D 7032 of 2018 (“*Abdul Rauf Khan*”) and *Akhtari Begum vs. Federation of Pakistan & Others* being CP D 7234 of 2018 (“*Akhtari Begum*”). *Tariq Qasmi* was assailed before the honorable Supreme Court of Pakistan in *Pak Distressed Employees & Others vs. Federation of Pakistan & Others* (Civil Petition No. 893-K of 2018) and *Faqirullah vs. Director General Pakistan Public Works Department & Others* (Civil Petition No. 947-K of 2018) successively. The honorable Supreme Court, vide its judgment dated 30th August 2018 (“*Pak Distressed Employees*”), maintained the decision of *Tariq Qasmi* and was pleased to observe that since a large number of other employees are awaiting official accommodation, it is imperative that the same be vacated by those with no longer any subsisting rights in respect of such accommodation.

6. In the present facts and circumstances the petitioners has been unable to demonstrate any subsisting right with respect to the official

accommodation under occupation. It is thus our considered view that in the absence of any such rights the continual retention of the official accommodation by the petitioners is also depriving subsequent lawful allottees, of the said official accommodation, of their due entitlement. The present petition is covered by the earlier judgment in *Tariq Qasmi*, followed by *Saqib Ali Shaikh, Malik Muhammad Ibrahim, Abdul Rauf Khan* and *Akhtari Begum*, as maintained by the honorable Supreme Court in *Pak Distressed Employees* and in mutatis mutandis application of the ratio enunciated therein, the present petition, being devoid of merit, is hereby dismissed, along with pending application/s, with no order as to costs.

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