

ORDER SHEET

IN THE HIGH COURT OF SINDH AT KARACHI

C.P. No.D-4179 of 2016
C.P. No.D-5651 of 2017
C.P. No.D-8582 of 2017
C.P. No.D-5329 of 2018
C.P. No.D-5828 of 2018

Order with signature of Judge

For hearing of main case

30.08.2018

Mr. Ahmed Ali Ghumro, Advocate for petitioner in C.P.
No. D-4179 of 2016

Mr. Mohammad Hanif Samma, Advocate for the petitioner in C.P.
No.D-5651 of 2017.

Mr. Rehman Dino Mahesar, Advocate for Petitioner in C.P. No.D-
8582 of 2017.

Mr. M.K. Shikoh, Advocate for alleged contemnor in C.P. No.D-
8582 of 2017.

Mr. Fareed Ahmed Dayo, Advocate for the Petitioner in C.P.
No.D-5329 of 2018.

Mr. Syed Aamir Ali Shah Jeelani, Advocate for the petitioner in
C.P. No.D-5828 of 2018.

Mr. Saifullah, AAG Sindh.

This five subject petitions shall be decided by this common order since the subject matter is common to all, being the determination of occupancy rights in respect of government accommodation.

2. In C.P. No.D-5615 of 2017 Mr. Mohammad Hanif Samma, learned counsel for the petitioner, submitted that the petitioner is an employee of the Government of Sindh serving at Karachi in BPS-19. It is submitted that she is a Doctor rendering professional services at Jinnah Sindh Medical College, Karachi. Per learned counsel the petitioner was married to respondent No.8, also being in service of the Government of Sindh, on 24.12.2012. It is stated that government accommodation was

allotted to the respondent No.8 and the petitioner alongwith respondent No.8 began occupying the said accommodation upon it being so allotted. The marriage of the petitioner ended on 17.01.2017 however she remained in the premises allotted to her ex-husband, the respondent No.8. Per learned counsel two applications were preferred by the petitioner to the respondents seeking allotment of government accommodation however, the same have not been granted as of date. It is further submitted that notwithstanding the divorce of the petitioner she was duly entitled to remain in government accommodation until the same was either allotted to her in her name or suitable accommodation was provided thereto by the respondents and, hence the petition.

3. Mr. Saifullah, learned AAG Sindh, opened the case of the respondents and submitted that there is no vested right for the petitioner to remain in occupation of the subject premises. It was further argued that the petitioner had failed to substantiate any document whereby her entitlement to retain the present accommodation could be demonstrated.

4. Mr. Ilyas Khan Tanoli, learned counsel for the respondent No.8, argued that the accommodation in question has been allotted to respondent No.8, however, on account of the petitioner's illegal possession of the said premises the respondent No. 8 remains deprived from the residence and yet the rent in respect thereof is being deducted from his salary every month. Learned counsel also demonstrated, vide a statement filed today, which was taken on record, that the petitioner had attempted to legitimize her illegal occupation of the government accommodation by instituting proceedings before the Provincial Ombudsman Sindh for Protection against Harassment of Women at the Work Place and learned counsel drew attention to the following constituents of the order dismissing the petitioner's complaint.

"21. Indeed, actual dispute between the complainant and proposed accused Dr. Kashif is regarding the withholding of the possession of the official flat which is allotted to Dr. Kashif by the JPMC Administration in accordance with law, while complainant is neither allottee of said flat nor she is entitled for such allotment being employee of JMSU and working in JPMC on deputation. Consequently, Dr. Kashif

approached the administration of JPMC for eviction of complainant from said flat and after issuance of notice by the Allotment committee to the complainant, she at the first instance, approached honourable High court by filing C.P. and obtained status quo order, and subsequently, she filed instant complaint painted with the allegations of causing sexual harassment and mental agony with the sole object to create a pressure upon Dr. Kashif and members of allotment committee of JPMC, thus refraining them from eviction of subject flat.

22. It is worthwhile to refer that the prime burden to narrate and establish the allegations of causing sexual harassment lies upon the complainant herself and then witnesses come in picture to corroborate such allegations, if she fails to establish her allegations, here witnesses could not be permitted to travel beyond the set of allegations leveled by the complainant herself nor they can demonstrate any justification to establish such allegations which neither were alleged in complaint nor narrated by the complainant in her affidavit. Similarly, when the demeanor of the complainant crystal clear reflects malafide intention and ulterior motive on her part regarding the allegations for causing of sexual harassment against the proposed accused, such malice does not deserve any indulgence and complaint must be dismissed in limine.”

5. It is apparent from the record that the petitioner has not been conferred with any right to occupy or retain the official accommodation. The only reason the petitioner was in residence at the said premises was because she was married to the respondent No.8, to whom the said accommodation was allotted. No vested right to continue in occupation of the subject premises has been demonstrated by the petitioner and hence this petition is prima facie devoid of merit. This Court has already delivered a judgment dated 16th July, 2018 in C.P. No.D-2110 of 2009 being the case titled *Mohammad Tariq Qasmi vs. Federation of Pakistan and Others* (“**Tariq Qasmi**”), wherein it was maintained that in the absence of any demonstrable right for the occupation of government accommodation, such occupation could not be sustained. The judgment in *Tariq Qasmi* had also relied upon an earlier judgment of a Divisional Bench of this Court dated 03.05.2018 in *C.P. No.D-3433 of 2015* (“**C.P. No.D-3433 of 2015**”) wherein it was maintained that in the absence of any subsisting rights to occupy to a property, a petition to sustain such occupation would be misconceived and the Court would not pass any orders to perpetuate the illegal occupation of such property.

6. In C.P. No.D-8582 of 2017 Mr. Rahman Dino Mahiser, learned counsel for the petitioner, submitted that the petitioner was an employee of the National Security Printing Corporation Ltd. Karachi (“**NSPC**”) serving in grade 18 as Deputy Manager Production. Learned counsel submits that he has been provided official accommodation vide allotment order dated 12.12.2012, copy whereof was never filed along with the petition. Learned counsel submitted that he has been served with a vacation order dated 3.12.2017, which is contrary to law and norms of justice, hence the same may be set aside and the petitioner may be permitted to retain the possession of the official accommodation at least until his retirement.

7. Mr. M.K. Shikoh, learned counsel for the alleged contemnor in a contempt application pending in the subject petition, drew attention to a statement filed by the respondents and content whereof is reproduced herein below:

- “1. We would like to state that the petitioner Mr. Imdad Hussain Mirani, is an employee of National Security Printing Company which has been registered with Securities and Exchange commission of Pakistan (SECP) under Companies Ordinance, 1984 (XLVII of 1984) on 18th April, 2017 (annex-A).
2. The company was not aware of this petition before the receipt of suspension of vacation notice from the honourable High court of Sindh, Karachi. The property under reference i.e. Flat No.C-2 (Ground Floor) is owned by Pakistan Security Printing Corporation and not National Security Printing Company.

In the light of above, the matter does not pertain to NSPC. Therefore, the Chairman National Security Printing Company and Managing director National Security Printing Company may please be deleted as respondent in C.P. No.D-8582 of 2017 dated 14.12.2017. Whereas, position of Dy. G.M. (HR) does not exist in National Security Printing Company. Henceforth, National Security Printing Company may please graciously be exempted from Court appearance in next hearing.”

7. Per learned counsel the petition is prima facie motivated by mala fide because the owner of the accommodation has not been even impleaded as party to this petition and interim orders have been obtained by misleading the Court. Upon a specific direction by the Court the learned counsel for the petitioner presented before this Court an

allotment letter dated 12.12.2012 wherein it was clearly stated that the same was issued by the Pakistan Security Printing Corporation Private Ltd (“**PSPC**”) and not by NSPC. It is also gleaned from the record that the notice of vacation of the official accommodation was also served upon the petitioner by the PSPC and not by the NSPC. Also available on record is an appeal made by the petitioner to the NSPC (not PSPC) dated 7.11.2017 wherein the retention was requested on humanitarian grounds and none of the grounds taken in the present petition were contained therein. It is also gathered from the record that the said appeal was dismissed vide order dated 11.12.2017. It is noted that instead of assailing the action of the PSPC, the petitioner instituted the present petition against the NSPC and obtained ad-interim orders sustaining his occupation of the accommodation. The learned counsel was unable to justify the reason for filing the petition against the wrong respondents. It is the view of this Court that the Petitioner has approached the Court with unclean hands and even otherwise the petitioner has been unable to demonstrate any vested right to the property under possession and hence based on the ratio enunciated by the judgments in the case of *Tariq Qasmi* and *C.P. No.D-3433 of 2015* the occupancy of the accommodation by the petitioner could not be sustained.

8. In C.P. No.D-5329 of 2018, Mr. Fareed Ahmed Dayo learned counsel for the petitioner, submitted that the petitioner was a government servant to whom the official accommodation was allotted on 7.11.2016. It was next contended that vide order dated 27.01.2017 the petitioner was asked to vacate the said premises in lieu of alternate accommodation and it may be pertinent to reproduce the terms of the said notice herein below:

“ I am directed to convey that a meeting was held on 20.01.2017 at 10:30 a.m. between Honorable Chief Justice, high Court of Sindh and Chief Secretary, Sindh in which it was decided to get physical possession of Ground Floor of Annexee, ridge House which is in your possession in order to construct Chief Justice House on the plot of Ridge House. In this regard an alternate residence i.e. DS Flat No.52, GOR-I, Bath Island, Karachi has already been allotted to you and lying vacant but you have not shifted there.

You are hereby requested to comply with the orders of competent authority and move to the DS flat No.52, GOR-I, Bath Island, Karachi immediately and possession of Annexee (Ground Floor) Ridge House. Bath Island, may be handed over to Estate Office, SGA&CD to avoid contempt proceedings.”

9. It was submitted that two further vacation notices were served upon the petitioner dated 16.08.2017 and 16th June, 2018. However the petitioner did not vacate the premises as he was stated to be entitled to retain the same. Learned counsel referred to letter dated 4.07.2018 wherein the petitioner has sought to justify his occupation of the premises. It may be pertinent to reproduce contents of the said reply herein below:

“As regards order of the Hon: Supreme Court of Pakistan in Human Rights Case No.30588-S of 2018 (referred to your letter), pertains to employees occupying Federal Government Properties and the respondents in this case are J.S. Ministry of housing and works Islamabad, representative of Ministry of Establishment Islamabad and others. The Chief Secretary, government of Sindh shown as respondent because the properties are Federal government are located in Sindh. Therefore my contention is that decision/direction of Supreme court of Pakistan applies to Government officers of Federal government and others person occupying un-authorizedly and does not apply to officers of Sindh Government (order of Hon: Supreme Court of Pakistan is enclosed as Annexure “C”).

It is further submitted that my father Mr. Ali Mohd. G. sheikh Rtd. Federal Secretary who is heart patent and my mother who is 76 years old are also living with me. It will be very difficult to move them frequently.

In view of the above facts it is clear that flat DS52 occupied by me is allotted to me by the competent Authority i.e. chief Secretary Sindh as alternate/in lieu of accommodation handed over by me to Estate Department.

I am eligible for the present accommodation (i.e. DS52) therefore it is humbly prayed that my case is very much covered in compliance of the orders of Hon: Supreme Court of Pakistan and I am entitled to retain the present accommodation.”

10. Learned counsel submitted that the present case was not covered under the second category delineated in the case of *Tariq Qasmi* and hence was to be determined on merits and could not be disposed of in

terms of paragraph 54 thereof. Learned counsel submitted that the petitioner is an employee of the secretariat group of the Government of Sindh and hence the Policy Governing Allotment of Residential Accommodation (Meant For Secretariat Employees) at Karachi by Estate Office, SGA&CD dated 25th May, 1999 (“**Policy**”) applies to the petitioner and hence his case is distinguishable from those referred to in the second category of *Tariq Qasmi*. The learned counsel also drew attention to the comments filed by the respondents wherein the issue of the petitioner belonging to the secretariat group was not controverted.

11. Mr. Saifullah, AAG submitted that the Policy is applicable to the petitioner and while it allows for accommodation to officers serving at Karachi, the petitioner was admittedly overseas and in illegal occupation of the government accommodation despite his prolonged absence from the country. Learned AAG referred to clause 9 of the Policy and stated that the registration was a condition precedent to the award of accommodation under the Policy and admittedly the petitioner is not registered thereunder. Learned AAG further submitted that the petitioner does not enjoy any vested right to be provided accommodation and the same is manifest from clause 13 of the Policy which states as follows:

“13. The Provincial government has no legal obligation to provide residential accommodation to any government Servant and no Government Servant has any legal right to claim to the allotment of Government owned residential accommodation.”

12. Per learned AAG the Policy provided a dispute resolution mechanism and in the presence of a categorical admission that the Policy was applicable to the petitioner the present petition was not maintainable. The learned counsel for the Petitioner was confronted with the issue of an alternate relief being available thereto, however he submitted that the petitioner exercised his right to institute the present petition instead.

13. We have considered the contentions of the learned counsel for the petitioner and have observed that in his case an alternate accommodation was provided thereto, however, he opted to retain the possession of the property notwithstanding the orders of the competent

authority to vacate the same. No justification was provided for the retention of the accommodation and the failure to comply with the direction to relocate to the alternate accommodation provided. In any event, since the petitioner is admittedly bound by the Policy and an alternate remedy has been provided therein, no case has been made out to justify why such a remedy was not availed instead of invoking the writ jurisdiction of this Court.

14. In C.P. No.D-5828 of 2018 Mr. Syed Amir Ali Shah learned counsel for the petitioners submitted that petitioners are in occupation of government accommodation on the basis of an order dated 06.03.1994 issued in favour of the petitioner No.1 which reads as under:

“constable No.842 Khalid Mahmood of Incharge Dog Sec. Police Line Distt. South. Karachi, is hereby allowed to repair one unused room of the stable of horses at police Line Distt. South, at his own cost for his residential purpose with immediate effect.”

15. It is submitted that while the petitioners remain in service they have been asked to vacate the subject premises vide undated vacation notices filed alongwith the petition.

16. Mr. Saifullah learned AAG countered the arguments of the petitioners and submitted that the order referred to hereinabove conferred no rights upon the petitioners. It was stated that the petitioners have no vested right created by virtue of the aforesaid order nor could they sustain their occupation in perpetuity based upon the order which in any event was issued only to the petitioner No.1, and not the remaining eleven petitioners. Notwithstanding the foregoing the learned AAG also submitted that the person who had purportedly authored the above order had no authority to issue the same and that the said order was a nullity in the eyes of law and hence void ab initio. It is our considered opinion that the aforesaid order does not create any vested right in favour of the petitioners and nor could it be made the basis for sustaining the occupation of official accommodation by the petitioners.

17. In respect of the petitions referred to supra, it is the considered opinion of this Court that the petitioners were unable to demonstrate any

right whereby their continued occupation of the government owned residential accommodation was tenable. The documents relied by the respective petitioners do not confer any rights thereupon permitting them to remain in occupation of the premises. Nothing has been placed on record to demonstrate that the license/permission on the basis whereof the petitioners initially occupied the government accommodation, stood novated into any other form by any event subsequent thereto. Therefore in application of the ratio enunciated by the earlier judgments of this Court in *Tariq Qasmi* and *C.P. No.D-3433 of 2015* it would appear that the aforesaid petitions are devoid of merits.

18. In C.P. No.D-4179 of 2016 Mr. Ahmed Ali Ghumro, Advocate for the petitioner, submitted that the petitioner is a serving employee of Government of Sindh posted at Karachi enjoying occupancy rights in accommodation allotted thereto vide order dated 11.07.2016. It was submitted that the terms whereof allotment of the accommodation was granted thereto still subsists. However, the same allotment order cancelled the allotment of respondent No.3, while issuing the said allotment in favour of the petitioner. It was next contended that a vacation notice dated 21st July, 2016 was served upon the petitioner wherein the petitioner was directed to vacate the property as the competent authority had taken a decision to vacate the non-secretariat employees from government accommodation. It was submitted that the notice of vacation served upon the petitioner prima facie is untenable in law as no violation of the terms of the allotment has been done by the petitioner and no determination of the allotted rights had ever been undertaken by any competent authority.

19. Mr. Saifullah learned AAG submitted on behalf of respondents No.1 and 2 that even though comments have been filed by the respondents controverting the assertions of the petitioner, however, it would appear that the facts and circumstances of the present petition are covered in the second category of petitions determined vide the judgment in *Tariq Qasmi*. Learned AAG submitted that it may be just and proper that the said petitions be disposed of in terms of paragraph 54 of *Tariq Qasmi*.

20. We have considered the case of the petitioner and it appears that the property in question was allotted to a serving employee of the government of Sindh and notwithstanding the fact that no violation of the allotment order had taken place the petitioner was required to vacate the premises in question. It is our considered view that the competent authority ought to have initiated and concluded proceedings to determine the occupation rights of the petitioner prior to serving a vacation notice and hence it is just and proper for the said petition to be disposed of in terms of paragraph 54 of *Tariq Qasmi*.

21. In view of the reasoning and rational delineated herein the petitions under review are determined in seriatim as follows:

- i. C.P. No.D-5651 of 2017, C.P. No.D-8582 of 2017, C.P. No.D-5329 of 2018 and C.P. No.D-5828 of 2018 are hereby dismissed, along with all interim applications, with no orders as to costs.
- ii. C.P. No.D-4179 of 2016 is hereby disposed of in mutatis mutandis application of the directions prescribed in paragraph 54 of *Tariq Qasmi*.

22. The petitions under consideration stand determined in the above terms.

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