

IN THE HIGH COURT OF SINDH AT KARACHI

Const. Petition No. D – 6256 of 2019

Date	Order with signature of Judge
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For hearing of Main Case :

10.03.2020 :

Mr. Kamal Mustafa, advocate for the petitioner.
Mr. Muhammad Nishat Warsi, DAG.
Mr. Umar Farooq Khan, advocate for respondent No.3 along with Fazal-e-Rabbi
respondent No.3.
Zafar Iqbal, Superintendent, Estate Office, Government of Pakistan.
Shakeel Ahmed, Assistant (Legal), Estate Office, Government of Pakistan.

Through this petition, the petitioner has prayed that official respondents be directed to take over possession of the subject official quarter from respondent No.3 and to hand over the same to him as it has been allotted to him vide allotment order dated 19.07.2019. It is stated by the petitioner that official respondents have failed to hand over possession of the subject quarter to him in spite of his repeated requests as respondent No.3 has flatly refused to vacate the quarter.

Comments have been filed by the official respondents wherein they have admitted that the subject quarter was allotted to the petitioner on 19.07.2019 as per the Accommodation Allocation Rules, 2002. They have further admitted that respondent No.3 has no right to retain possession of the subject quarter as he has retired from service long ago. Learned DAG and the officers from Estate Office present in Court state that respondent No.3 has been repeatedly called upon and directed verbally as well as through letters and notices to vacate the subject quarter, but he has failed to do so.

Respondent No.3, who is also present in Court, concedes that the subject quarter is not his personal property, he came into possession thereof while he was in service, and he retired from service in the year 2002. He claims that his possession after retirement is legal as he has paid rent up to July 2019 and on the basis of such claim, he asserts that he is not liable to vacate the quarter. He also concedes that an order was passed by the Hon'ble Supreme Court directing the relevant authorities to get all the quarters in the vicinity in question, including the subject quarter, vacated, however, the time granted for such purpose has not yet expired. In support of his above contention, he has placed on record copies of orders dated 24.10.2018 and 08.01.2019 passed by the Hon'ble Supreme Court in HRC Nos.20746, 30827-P, 30588-S and 30001-K of 2018.

We do not agree with the contention of respondent No.3 as he came into possession of the quarter admittedly during service ; his relationship with the Estate Department / Government is not that of landlord and tenant ; the amount paid by him for occupying the quarter cannot be treated as rent as defined in the rent laws ; at best his possession could be deemed to be that of a licensee, which possession could be enjoyed by him subject to the terms and conditions of the license and at the will and pleasure of the licensor / Government ; and, admittedly the licensor / Government has revoked his license after his retirement by issuing him notices to vacate the quarter. This being the legal position, respondent No.3, in our view, is not entitled to retain possession of the subject quarter and his possession in respect thereof is unauthorized.

In addition to the above, the above referred orders of the Hon'ble Supreme Court also do not support him as perusal of the said orders show that vide order dated 04.10.2018, 4,268 Federal Government accommodations in illegal / unauthorized possession were to be ordered to be vacated ; and, vide order dated 24.10.2018, the aforesaid order was held in abeyance only for a period of two (02) months with the direction to Federal Government to take over possession of the said accommodations in a peaceful and appropriate manner without creating any law and order situation. Whereas, a specific order was passed by the Hon'ble Supreme Court on 31.07.2018 in the above matters in relation to retired employees, whereby occupants who have retired from service and/or families of deceased Government servants, holding out property beyond their entitlement, were allowed thirty (30) days time to make alternate arrangement and to vacate the property and to hand over its possession to the Estate Office.

Since respondent No.3 admittedly retired from service in the year 2002 i.e. 18 years ago, he is liable to vacate the subject quarter and the Estate Office is liable to take over possession thereof from him. Accordingly, respondents 1 and 2 are jointly and severally directed to take over possession of the subject quarter strictly in accordance with law and the directions of the Hon'ble Supreme Court. The petition stands disposed of in the above terms with no order as to costs.

JUDGE

JUDGE