

# IN THE HIGH COURT OF SINDH KARACHI

## **Before:**

Mr. Justice Salahuddin Panhwar

Mr. Justice Adnan-ul-Karim Memon

## **C.P. No. D- 5030 of 2021**

### **Muhammad Rafique Qureshi**

Petitioner

Through : Mr. Muhammad Arshad Khan Tanoli,  
Advocate.

Respondents No.1 & 2 : Mr. Ali Safdar Depar, AAG along with Mr.  
Khaleeq Ahmed, Superintendent,  
SGA&CD

Through

Respondent No.3 : Mr. G. N. Qureshi, advocate.  
Through

Date of hearing : **12.10.2021**

Date of Order : **12.10.2021**

## **ORDER**

**ADNAN-UL-KARIM MEMON, J.** Through this petition, the petitioner has prayed that official respondents be directed to take over possession of the subject official accommodation i.e House No. Annexe No.2 situated at GOR-1 Bath Island Karachi from respondent No. 3 and to hand over the same to him as it has been allotted to him vide allotment order dated 16.11.2017. It is stated by the petitioner that official respondents have failed to hand over possession of the subject official accommodation to him despite his repeated requests as respondent No.3 has flatly refused to vacate the House No. Annexe No.2 inter-alia on the ground that it was allotted to her in the year 2002 and her case is pending before the Honorable Supreme Court in HRC Nos. 20746, 30827-P, 30588-S, 30001-K of 2018 and HRMA 444/2018.

2. Mr. G. N. Qureshi, learned counsel representing the respondent No.3 while arguing the case has referred to the parawise comments filed by respondent No.3 and mainly contended that she is not an unauthorized occupant as portrayed by the petitioner. He further argued that the petitioner was allotted the subject accommodation on

29.5.2020 and the rent from her salary has been deducted. Learned counsel submitted that the official accommodation falls within the ambit of terms and condition of service of the petitioner as such this Court has no jurisdiction to entertain the grievance petition of the petitioner as the same is barred under Article 212(2) of the Constitution. At this stage, we have asked the learned counsel to show us the order passed by the Hon'ble Supreme Court in her favour as stated by her in the comments, however, the learned counsel is not in a position to place on record the stay order, if any, passed by the Hon'ble Supreme Court in her HRC No.35990-S/2018 and HRMA-444/2018. He prayed for dismissal of the instant petition.

3. Learned counsel for the petitioner has refuted the claim of respondent No.3 on the premise that he was legally allotted the subject accommodation on 16.9.2017, however, the possession of the same could not be handed over to him due to illegal occupation by respondent No.3. Learned counsel referred to the summary for Chief Minister Sindh whereby it was proposed to reserve the subject accommodation in favour of one Mr. Asif Ikram, an officer of Provincial Administrative Service (BPS-20) by canceling his allotment and prayed for its annulment.

4. At the outset, learned AAG concedes that the subject issue involved in these proceedings has already been set at rest by this Court vide common Judgment dated 12.10.2020 passed in C.P. No. D-4129 of 2020 and other connected petitions.

5. We have heard learned counsel for the parties and have perused the material available on record with their assistance.

6. Comments have been filed by the official respondents wherein they have admitted that the subject quarter was allotted to the petitioner on 16.11.2017 as per the Accommodation Allocation Rules, 1999. They have further admitted that respondent No.3 has no right to retain possession of the subject quarter as she does not belong to cadre officers of Sindh Secretariat, who are entitled to the allotment as per policy discussed supra. The officer from the Estate Office / SGA&CD present in Court stated that respondent No.3 has been repeatedly called upon and directed verbally as well as through letters and notices to

vacate the subject quarter on the premise that she is not entitled to retain the premises being non-secretariat employee, but she has failed to do so and cited frivolous reasons to retain the possession; that she is illegal occupant; besides that she has no stay order in her favour from the Hon'ble Supreme Court. In support of the above contention, official respondents have relied upon the orders dated 24.10.2018, 08.01.2019, and 21.6.2020 passed by the Hon'ble Supreme Court in HRC Nos.20746, 30827-P, 30588-S, and 30001-K of 2018.

7. It also appears from the record that the private respondent is attempting to convince this Court about her entitlement to official accommodation as discussed supra, whereas the record explicitly shows that the aforesaid accommodation is only available to the employees of the Government of Sindh, secretariat side only as per Policy Governing Allotment of Residential Accommodation 1999 (Meant For Secretariat Employees) at Karachi by the Estate Office, SGA&CD.

8. Prima-facie the private respondent is unable to demonstrate any vested/fundamental right, whereby her claim for occupation/allotment of official accommodation, which is meant for the secretariat side cadre officers of the Government of Sindh. The documents relied upon by her do not confer any right thereupon permitting her to ask for the continuation of the allotment of subject premises.

9. Reverting to the point that the private respondent is not an unauthorized resident of official accommodation, suffice it to say that the basic purported permission/allotment in her favor was illegal as admittedly she is not a Secretariat employee.

10. Since the issue involved in this petition is akin as decided by this Court in C.P. No. D-4129 of 2020 and other connected petitions vide common Judgment dated 12.10.2020 and in the light of findings recorded in the aforesaid judgment, therefore, we do not agree with the contention of respondent No.3 as she came into possession of the quarter admittedly through allotment order dated 29.5.2002; her relationship with the Estate Department / Government is not that of landlord and tenant; the amount paid by her for occupying the subject accommodation cannot be treated as rent as defined in the rent laws; at best her possession could be deemed to be that of a licensee, which

possession could be enjoyed by her 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 her license after allotting to petitioner by issuing her 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 her possession in respect thereof is unauthorized being a non-Secretariat employee.

11. In addition to the above, the above-referred orders of the Hon'ble Supreme Court also do not support her case as the perusal of the said orders show that vide order dated 04.10.2018, the Government accommodations in illegal/unauthorized possession were ordered to be vacated; and, vide order dated 24.10.2018, the aforesaid order was held in abeyance only for two (02) months with the direction to Government to take over possession of the said accommodations peacefully and appropriately without creating any law and order situation. Whereas, a specific order was passed by the Hon'ble Supreme Court on 31.07.2018 and order dated 21.6.2020 in the above matters concerning unauthorized occupants, were allowed thirty (30) days to make alternate arrangements and to vacate the property and to hand over its possession to the Estate Office.

12. In view of the above, it may be observed that there are so many government official accommodations owned by the Provincial Government which are under unlawful and unauthorized occupation. In our view, the Courts are duty-bound to uphold the constitutional mandate and to maintain the salutary principles of rule of law. To uphold such principles, it has been stated time and again by the superior Courts that all acts should be transparently done by the public functionaries after applying judicious mind and after fulfilling all requirements. The public functionaries are supposed to adhere to the principle of transparency in the performance of their duties and are not bound to carry out / implement any order which is not under the law and they are only obliged to carry out the lawful orders of their superiors and if they are being pressurized to implement an illegal order, they should stay out and record their dissenting notes. But unfortunately, the officers in the Estate Office of the Government of

Sindh not only implemented the illegal orders but acted thereupon for their benefits/gain.

13. The record reflects that the respondent-department is not following the decisions of the Honorable Supreme Court on the subject issue in its letter and spirit as well as accommodation policy in case of allotment of Government accommodations and is indulged in illegal allotments, extensions, and waivers in favor of employees who are not entitled.

14. In our view, a more effective approach needs to be adopted and allotment must be made strictly under the law. It may be observed that because of such arbitrary and illegal exercise of discretion by the official respondents, official accommodation remains occupied by such employees who are not entitled thereto, and the employees who are legally entitled to official accommodation are deprived of such right/facility.

15. Since respondent No.3's allotment was canceled long ago; besides that, she has not brought on record any stay order from the Hon'ble Supreme Court in her favor to substantiate her claim to retain the possession of the subject official accommodation, therefore she is liable to vacate the subject quarter and the Estate Office of the Government of Sindh is liable to take over possession thereof from her. Accordingly, respondents No.1 and 2 are jointly and severally directed to take over possession of the subject quarter strictly under the law and the directions of the Hon'ble Supreme Court given in such matters from time to time.

16. The petition stands allowed in the above terms with no order as to costs.

17. These are the reasons for our short order dated 12.10.2021, whereby we have allowed the instant petition.

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Shahzad Soomro