

ORDER SHEET
THE HIGH COURT OF SINDH, AT KARACHI

Constitutional Petition No.D-5500 of 2021

Order with signature of Judge(s)

1. For hearing of CMA No.23038/2021
2. For hearing of main case

17.2.2022

Mr. Faizan Hussain Memon, advocate for the petitioner
Mr. Ali Safdar Depar, AAG alongwith Mr. Ghulam Nabi, Sub-Engineer and Mr. Khaliqzaman,
APS, Estate Office

ORDER

The petitioner is seeking direction to the respondent-Secretary General Administration SGA&CD, Government of Sindh, to hand over the peaceful possession of the official accommodation duly allotted to him vide allotment order dated 10.01.2020, inter-alia on the ground that the official respondents have adjusted to the outsider, namely Maqsood Ali Malah, Stenographer, working in Chief Minister's Secretariat with effect from 30.08.2021 without allotment order on the premise that he is a hard worker and available round the clock for the office of Chief Minister's Secretariat; petitioner has averred that he is the differently-abled person cannot be dislocated from the subject official accommodation on the purported plea taken by the official respondents.

2. Mr. Faizan Hussain Memon, learned counsel for the petitioner, has submitted that the petitioner is authorized allottee of the subject official accommodation; that the respondents are not putting up the justiciable reasons to accommodate Stenographer of Chief Minister's Secretariat, who is even otherwise not entitled to be allotted the subject Flat on any administrative grounds; that the respondents have no jurisdiction to issue adjust to someone else without cancellation notice to the petitioner; and, without resorting to the legal procedure as provided under the law.

3. Mr. Ali Safdar Depar, learned Assistant Advocate General Sindh, has raised the question of maintainability of the instant petition on the plea that the petitioner has been given options of more than two accommodations to avail, therefore, the Fat No.L-9, GOR-III, Shadman Town Karachi, has been reserved for petitioner. He lastly prayed for the dismissal of the instant petition.

4. We have heard learned counsel for the parties, perused the material available on record and case-law cited at the bar.

5. Prima-facie the respondents are unable to demonstrate to adjust the outsider, the subject accommodation is meant for Secretariat Employees only. The document relied upon by the learned AAG i.e. employment/service certificate of Maqsood Ali Mallah cannot be treated as an allotment, which

does not confer right thereupon, permitting them to ask for the continuation of the adjustment of the outsider of subject premises.

6. Prima facie, we do not see any concrete documentary evidence to dislocate the petitioner from the subject Flat, and even they are unable to demonstrate that the petitioner has breached the terms of the allotment order, merely providing another accommodation to the petitioner at the far-flanged area is not justified on their part, which action is based on malice to favor an employee of Chief Minister's Secretariat, who is even otherwise not entitled to be allotted the subject Flat on any administrative grounds.

7. We have gone through the orders passed by the Hon'ble Supreme Court of Pakistan on the issue of irregularities in the allotment of official residence by different government departments including the Government of Sindh. The ratio of the orders of the Hon'ble Supreme Court of Pakistan is that the Chief Secretary Sindh was directed to get vacated all the Government-owned houses which are in illegal and unauthorized occupation in Karachi. In the present matter, we have not been provided any documentary proof that one Maqsood Ali Mallah who belongs to the Chief Minister's Secretariat is in legal and authorized occupation of the official accommodation, therefore, in absence of the aforesaid factum we are not in a position to non-suit the petitioner based on pleas taken by the respondents.

8. 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.

9. 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 and/or disturbing the authorized occupants.

10. 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.

11. In view of the above facts and circumstances of the case, the competent authority of the respondents is directed to hand over the possession of the official accommodation i.e. Flat No.15 situated as GOR-I, Bath Island Karachi to the petitioner today. In case of non-compliance, contempt proceedings shall be initiated against Secretary General Administration {SGA&CD}, Government of Sindh and other delinquent officials of estate office of Government of Sindh, including the unauthorized occupant of the subject Flat.

12. The petition is allowed in the above terms with no order as to costs. Office to communicate this order to the official respondents, such compliance report shall be submitted through MIT-II of this Court.

JUDGE

JUDGE

Zahid/*

