

**IN THE HIGH COURT OF SINDH
BENCH AT SUKKUR**

Present : Yousuf Ali Sayeed &
Zulfiqar Ali Sangi, JJ

C.P No. D-1644 of 2023

Ghulam Qadir.....Petitioner

Versus

Province of Sindh and others.....Respondents

C.P No. D-1645 of 2023

Ghulam Fiza.....Petitioner

Versus

Province of Sindh and others.....Respondents

Muhammad Hamza Buriro, Advocate, for the Petitioners.

Date of hearing : 14.11.2023.

ORDER

YOUSUF ALI SAYEED, J - The Petitioners espouse a common grievance, gravitating around their assertion that certain applications preferred by them individually before the concerned officials of the Revenue Department are being wrongly kept in abeyance rather than being attended to in a timely manner.

2. For his part, the Petitioner No. 1 professes to have tendered an application seeking that the foti khatta of certain agricultural land situated in Deh Mari Janullah Sha, Tapo Patni, Taluka Rohri, District Sukkur be changed to his name from that of his deceased father, whereas the Petitioner No.2 claims to have tendered an Application for demarcation of land in the same vicinity which is said to be in her name in the revenue record.

3. In that backdrop, they have invoked the jurisdiction of this Court under Article 199, arraying the Province of Sindh, the Assistant Commissioner (Revenue) Rohri, the Survey Superintendent Khairpur and Mukhtiarkar (Revenue) Rohri as the Respondents Nos. 1 to 4 respectively, while praying that they be directed to do the needful.

4. Proceeding with his submission, learned counsel simply contended that the Respondents were duty bound to act on the basis of the aforementioned applications, and that the Petitioners would be satisfied if directions were given to the Respondents to process the same in accordance with law within a specified timeframe.

5. Under the given circumstances, even if the stance of the Petitioners is accepted, what falls to be considered is that the matter at best constitutes one of '*maladministration*' on the part of an '*agency*' as per the definitions ascribed to those terms in Section 2 of the Establishment of the Office of Ombudsman for the Province of Sindh Act 1991 (the "**Act**"), which read as follows:

(1) "Agency" means a Department, Commission or office of the Provincial Government or a statutory corporation or other institution established or controlled by the Provincial Government but does not include the High Court;

(2) "Mal-administration" includes: -

(i) A decision, process, recommendation, act of omission or commission which: -

(a) is contrary to law, rules or regulations or is a departure from established practice or procedure, unless it is bonafide and for valid reasons; or

(b) is perverse arbitrary or unreasonable, unjust, biased, oppressive, or discriminatory; or

(c) is based on irrelevant ground; or

(d) involves the exercise of powers or the failure or refusal to do so, for corrupt or improper motives, such as, bribery, jobbery, favouritism, nepotism and administrative excesses; and

(ii) neglect, inattention, delay incompetence, inefficiency and ineptitudes, in the administration or discharged of duties and responsibilities;

[underlining added for emphasis]

6. As such, it is apparent from a conjoint reading of Sections 2(1) and 2(2)(ii) that both the matters sought to be agitated by the Petitioners fall squarely within the domain of the Provincial Ombudsman, and that such forum may be readily approached vide a complaint in terms of Section 9 of the Act through the concerned regional office, whereafter the Ombudsman would be competent to attend to the same while exercising the powers conferred under the Act, including those envisaged terms of Sections 11,12, 14 and 16, the relevant excerpts of which presently read as follows:

11. Recommendation for implementation. - (1) If, after having considered a matter on his own motion or, on a complaint or on a reference by the Governor, or the Provincial Assembly, or on a motion by the supreme Court or the High Court, as the case may be, the Ombudsman is of the opinion that the matter considered amounts to maladministration, he shall communicate his findings to the Agency concerned:-

- (a) ...
- (b) ...
- (c) ...
- (d) ...
- (e) to dispose of the matter or case within a specified time;
- (f) ...
- (g) to take other steps specified by the Ombudsman.

(2) ...

(3) ...

(4) ...

(5) If the Agency concerned does not comply with the recommendations of the Ombudsman or does not give reasons to the satisfaction of the Ombudsman for non-compliance, it shall be treated as "Defiance of Recommendations" and shall be dealt with as hereinafter provided.

12. Defiance of Recommendation. - (1) If there is a "Defiance of Recommendations" by any public servant in any Agency with regard to the implementation of a recommendation given by the Ombudsman, the Ombudsman may refer the matter to the [Chief Minister] who may, in his discretion, direct the Agency to implement the recommendation and inform the Ombudsman accordingly.

(2) In each instance of "Defiance of Recommendations" a report by the Ombudsman shall become a part of the personal file or Character Roll of the public servant primarily responsible for the defiance:

Provided that the public servant concerned had been granted an opportunity to be heard in the matter.

14. Powers of the Ombudsman. - (1) The Ombudsman shall, for the purposes of this act have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908, in respect of the following matters, namely:-

- (a) summoning and enforcing the attendance of any person and examining him on oath;
- (b) compelling the production of documents;
- (c) receiving evidence on affidavits; and
- (d) issuing commission for the examination of witnesses.

(2) The Ombudsman shall have the power to require any person to furnish information on such points or matters as, the opinion of the Ombudsman, may be useful for, or relevant to, the subject matter of any inspection or investigation.

(3) The Powers referred to in sub-section (1) may be exercised by the Ombudsman or any person authorized in writing by the Ombudsman in this behalf while carrying out an inspection or investigation under the provisions of this Act.

(4) ...

(5) If any, Agency, public servant or other functionary fails to comply with a direction of the Ombudsman, he may, in addition to taking other actions under this Act, refer the matter to the appropriate authority for taking disciplinary action against the person who dis-regarded the direction of the Ombudsman.

(6) If the Ombudsman has reason to believe that any public servant or other functionary has acted in a manner warranting criminal or disciplinary proceedings against him, he may refer the matter to the appropriate authority for necessary action to be taken within the time specified by the Ombudsman.

(7) The staff and the nominees of the office may be commissioned by the Ombudsman to administer oaths for the purposes of this Act and to attest various affidavits, affirmations of declarations which shall be admitted in evidence in all proceedings under this Act without proof of the signature or seal or official character of such person.

16. Power to punish for contempt. (1) The Ombudsman shall have the same powers, mutatis mutandis, as the Supreme Court has to punish any person for its contempt who:-

(a) abuses, interferes with, impedes, imperils, or obstructs the process of the Ombudsman in any way or disobeys any order of the Ombudsman;

(b) scandalizes the Ombudsman or otherwise does anything which tends to bring the Ombudsman, his staff or nominees or any persons authorized by the Ombudsman in relation to his office, into hatred, ridicule or contempt;

(c) does anything which tends to prejudice the determination of a matter pending before the Ombudsman; or

(d) does any other thing which, by any other law, constitutes contempt of court:

Provided that fair comments made in good faith and in public interest on the working of the Ombudsman or any of his staff, or on the final report of the Ombudsman after the completion of the investigation shall not constitute contempt of the Ombudsman or his office.”

7. The aforementioned provisions create a mechanism for redressal of the grievances espoused in the matter at hand, and indeed any matter that properly qualifies as ‘mal-administration’ on the part of an ‘agency’”. As to the question of whether the same is an ‘adequate remedy’, suffice it to say that it was observed by a learned Division Bench of this Court in the case reported as State Life Insurance Corporation of Pakistan v. Wafaqi Mohtasib, Federal Ombudsman Secretariat, Islamabad and another 2000 CLC 1593 that:

“Wafaqi Mohtasib's Order is an extraordinary statute enacted for taking expeditious action in order to redress and rectify any injustice done to a person through maladministration.”

8. Albeit said in the context of the Establishment of the Office of the Wafaqi Mohtsaib (Ombudsman) Order, 1983, the foregoing observation applies equally in respect of the Act, being *in pari materia* with the federal statute. As such, it is apparent that an adequate alternate remedy is available to the Petitioners and direct recourse to the writ jurisdiction of this Court under Article 199 of the Constitution under such circumstances is not warranted.

9. In view of the foregoing, the Petitions are found to be misconceived. As such, while granting the application for urgency we hereby dismiss the petition in *limine*, along with other pending miscellaneous applications, leaving the Petitioners at liberty to avail the alternate remedy, if so desired.

JUDGE

JUDGE