

ORDER SHEET

IN THE HIGH COURT OF SINDH, KARACHI

Before: Faisal Kamal Alam &  
Mohammad Abdur Rahman, JJ,

C.P. No. D-2365 of 2023

Nighat Rafey Ansari

Vs.

Province of Sindh & 3 others

---

For hearing of Main Case.

Petitioner : Through Mr. Izhar Alam Farooqui, Advocate.  
Respondent No. 1 and 2 : Through Ms. Naushaba Solangi, learned AAG.  
Respondent No. 3 : Nemo  
Respondent No. 4 : through Mr. Muabarak Shah  
Date of hearing : 21.02.2024

---

**ORDER**

**MOHAMMAD ABDUR RAHMAN, J.** Through this Petition, maintained under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, the Petitioner seeks implementation of an Order dated 24 May 2013 passed by the Provincial Ombudsman directing that as a Plot bearing No. R-32/26-C, Shah Latif Town, Karachi admeasuring 120 square yards (hereinafter referred to as the "Said Property"), which had been allotted to the Petitioner by the Malir Development Authority, stood encroached, an alternate plot should be allotted to her in lieu of her entitlement to the Said Property.

2. The facts as contended by the Petitioner are that she being the owner of the Said Property had sought to take possession of that property from the MDA. At that time the Said Property was found to be encroached and hence possession was never handed over to her. Seeking possession of the Said Property she maintained a complaint before the Provincial Ombudsman and which was allowed on 24 May 2013 but despite the passing of the Order, she has not received an alternate plot and is now seeking implementation of that Order, by this Court, in

this Court's jurisdiction under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973.

3. The counsel for the Petitioner appeared before this Court and stated that despite his best efforts, the recommendations made by the Provincial Ombudsman are not being implemented and he is as such seeking that directions be given by this Court to implement the order passed by the Provincial Ombudsman. He did not forward any legal citations in support of his contentions.

4. We have heard the Counsel for the Petitioner and have perused the record. The jurisdiction that is available to this Court under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 in respect of the functioning of the Office of the Ombudsman has been considered by the Honourable Supreme Court of Pakistan in the decision reported as **Pakistan International Airlines Corporation Karachi vs. Wafaqi Mohtasib**<sup>1</sup> wherein it was held that:

“ ... 11. *As to the question, whether the Constitutional petition filed by the appellant before the High Court was competent, it may be pointed out that the learned Judges of the High Court have first referred to Article 32 of P.O. 1 of 1983 which provides for a representation to the President in respect of an order passed by the Mohtasib. Reference was also made to Article 29 in the said Order, which bars the jurisdiction of the Courts in this regard. They then went on to hold that since the petition filed by the respondent No.2 before the Mohtasib was competent, no interference with the same in the exercise of the Constitutional jurisdiction was warranted. It may however, be pointed out that, now it is well established that any order passed by the Mohtasib can be interfered with under Article 199 of the Constitution if it suffers from lack of jurisdiction. In fact, the learned Judges of the High Court have themselves referred to the case of International Cargo Handling, Company (Pvt.) Ltd. v. Port Bin Qasim Authority (PLD 1992 Kar. 65) wherein it was held:*

*"No doubt, the jurisdiction of Courts is barred, inter alia, in respect of any decision or order made including order of injunction or stay, by the Mohtasib but where the order from the face of it is repugnant to law under which it was made or suffers from want of jurisdiction, a Court may invoke its inherent jurisdiction vested in it under law so as to prevent injustice done to an aggrieved person."*

*There can be no cavil with the above observations. Having already held that the said order of the Mohtasib is without jurisdiction, the same could, therefore, be interfered with by the High Court. The learned Judges, therefore, erroneously declined to set aside the said order."*

5. Clearly, while this Court has jurisdiction under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 to interfere with a decision passed by the Provincial Ombudsman in the event that the Provincial Ombudsman takes cognisance of a complaint filed in excess of its jurisdiction under the Establishment of the Office of Ombudsman for the Province of Sindh 1991; this Court's jurisdiction under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 does not extend to implementing or executing the orders passed by the Ombudsman Sindh. This issue has been considered by the Honourable Supreme Court of

---

<sup>1</sup> 1998 PLC 212

Pakistan in the decision reported as **Faraz Ahmed vs. Federation of Pakistan**<sup>2</sup> and wherein it has been held that:

“ ... *It is quite astounding that the petitioner had filed petition for implementation of the Judgment of the Labour Court in the High Court when no such provision is available under Article 199 of the Constitution of 1973 whereby the execution or implementation of Judgment passed by the subordinate Courts may be implemented by the High Court. It was not the case within the premise or confines of Sub-Article (2) of Article 187 of the Constitution in which any decision, order or decree passed by the Supreme Court may be executed by a High Court as if it had been issued by the High Court.*”

Similarly, this Court in **Umer Gul vs. Government of Sindh**<sup>3</sup> has held that:

“ ... *3. Even otherwise, from the perusal of the prayer clause, it transpires that the petitioner has approached this court for implementation/execution of the order of the Chairman Provincial Transport Authority Sindh and the Ombudsman. This Court does not act as an executing Court of any authority/Court or Tribunal except the Supreme Court in view of the provisions of Article 187 of the Constitution of the Islamic Republic of Pakistan.*”

6. We are clear that an entire mechanism has been provided in Section 12 read with Sub-Section (5) of Section 11 of the Establishment of the Office of Ombudsman for the Province of Sindh 1991 whereby the Provincial Ombudsman has been given certain powers to implement its recommendations. Sub-Section (5) of Section 11 of the Establishment of the Office of Ombudsman for the Province of Sindh 1991 clarifies that:

“ ... *(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.*

As such, in the event that the “Agency” concerned does not comply with the recommendations of the Provincial Ombudsman, the Complainant can invoke the jurisdiction of the Ombudsman under Section 12 of the Establishment of the Office of Ombudsman for the Province of Sindh, 1991 which states as under:

“ ... *12. (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 Governor 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.”*

---

<sup>2</sup> 2002 PLC 198

<sup>3</sup> 2007 YLR 3191

7. Clearly an adequate remedy is available to the Petitioner under Section 12 read with Sub-Section (5) of Section 11 of the Establishment of the Office of Ombudsman for the Province of Sindh 1991 to implement the order passed by the Provincial Ombudsman and which she is free to avail if she deems fit. In addition and purely from a constitutional perspective this Court does not have jurisdiction under Article 199 of the Constitution to act as an implementing or executing court for recommendations made by the Ombudsman Sindh under the Establishment of the Office of Ombudsman for the Province of Sindh 1991, as under the Constitution of the Islamic Republic of Pakistan, 1973 the only provision that exists conferring such implementing or executing jurisdiction on this Court or any other Court or quasi-judicial forum is, as has been held in ***Umer Gul vs. Government of Sindh***<sup>4</sup> found in Sub-Article (2) of Article 187 of the Constitution of the Islamic Republic of Pakistan, 1973 and which is to implement or execute orders passed by the Supreme Court of Pakistan.

8. Needless to say, the Petitioner has every right to avail the remedy as contained in Sub-Section (5) of Section 11 and Section 12 the Establishment of the Office of Ombudsman for the Province of Sindh 1991 to see the enforcement of the Order dated 24 May 2013 passed by the Provincial Ombudsman and the Provincial Ombudsman has a statutory obligation to enforce its order in terms of the aforementioned sections of that statute. That being said, we are clear that this Petition for implementing or executing the recommendations of the Provincial Ombudsman is not maintainable by this Court in its jurisdiction under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 and which is therefore dismissed with no order as to costs.

JUDGE

JUDGE

ANNOUNCED BY

JUDGE

JUDGE

---

<sup>4</sup> *op cit.*