

IN THE HIGH COURT OF SINDH AT KARACHI

CP. No. D-2739 of 2011

(Haji Muhammad Ashraf Memon v Ministry of Housing & Works & others)

Date

Order with signature of Judge

Before:

Mr. Justice Muhammad Karim Khan Agha

Mr. Justice Adnan-ul Karim Memon

Date of hearing and Order: 11.12.2024

Mr. Shehenshah Hussain advocate for the Petitioner.

Ms. Wajiha Mehdi DAG

ORDER

Adnan-ul Karim Memon, J: Through this petition, the petitioner has prayed as under:-

- a. *To declare that the portion of the order of the president in so far as it set aside the recommendation of Mohtasib-e-ala regarding payment of rent for the entire building is illegal and void.*
- b. *To direct the official respondents No. 1 and 2 to comply with the recommendation of Mohatasib-e-Aala upheld by the President regarding payment of dues of Karachi Water & Sewerage Board.*

2. Brief facts of the case are that the petitioner owned a building known as “Khalid Chambers’ situated on plot No. B-10, Block 8, Union Central Commercial Area, Off Shaheed-i-Millat road, Karachi, which consists of ground plus three floors and its total covered area is 20124 square feet, which building was let out on 29.03.1975 to the Estate Office, Government of Pakistan (Respondent No.1) as one unit on a yearly rent of Rs. 22, 378.50; that building remained in the use of different Government offices/departments from time to time and finally, it was allotted sometime in 1979 to the Department of Protector of Emigrants, Bureau of Emigration & Overseas Employment, Government of Pakistan, for the establishment of their office at Karachi. The petitioner filed a complaint with the Wafaqi Mohtasib against the Government officials for non-payment of rent and utility bills. The Mohtasib ruled in favor of the petitioner. However, the petitioner appealed to the President of Pakistan to the extent of payment of rent, who partially overturned Mohtasib's decision, setting aside the order to pay rent but upholding the order to pay utility bills. The petitioner now challenges the President's order in this court to that extent. The findings of the Ombudsman dated 05.03.2007 and revised findings dated 21.07.2008 show that the direction was to the agency to pay the rent to the complainant, and resolve the water bill dispute. The excerpts whereof are reproduced as under:-

“In view of the above findings, it is recommended that:-

- (a) *The Agencies (Estate Office as well as the Protectorate of Emigrants) should pay the rent to the complainant for the entire building as per the agreement for the entire covered*

area of 20124 sq.ft., up to the actual date of vacation, i.e. 11.07.2005 forthwith.

- (b) The Agency (Protectorate of Emigrants) shall take up the matter with KW&SB for resolution of their dispute with regard to arrears and, in any case, whatever the dues are found outstanding, the same shall be paid by the Agency forthwith.*
- (c) The Agencies shall report compliance within 30 days from the receipt of these recommendations in terms of Article 11(2) of President's Order No. 1 of 1983".*

"Considering the findings as discussed above the grounds taken by the Agencies calling of a review of the findings dated 05.03.2007 are not held to, be maintainable and the review petitions are accordingly rejected. The Agency should implement the original findings dated 05.03.2007 and report compliance within 60 days of the receipt of the copy of these Revised Findings. In case the Agency continues to be aggrieved by these Revised Findings it may if so desires prefer a representation to the President under Article 32 of P.O of 1983 within 30 days of the receipt of a copy of these recommendations"

3. The learned counsel for the petitioner argues that the government rented the petitioner's building in 1975. In 2001, part of the building was vacated. The government paid rent until 2003, but the petitioner seeks rent for the vacated portion. He added that the government has occupied the building for a sufficient period and owes significant utility bills. Despite acknowledging the debt, they have been reluctant to pay due to the large amount and now it is the respondent's responsibility to clear all outstanding dues. The President's order, which partially overturned the Wafaqi Mohtasib's decision, is incorrect. The learned counsel claims that the government office was not entitled to vacate a portion of the rented building and should have either used the entire building or vacated it completely. The petitioner further argues that the government office has failed to pay the utility bills, despite the Ombudsman's order. He argued that the President's decision to overturn the Ombudsman's findings was unlawful to the aforesaid extent. On the issue of jurisdiction of the Wafaqi Mohtasib, he submitted that the Ombudsman's Order of 1983 empowers the Ombudsman to investigate maladministration, including actions contrary to law. The Ombudsman found the case of the petitioner genuine. He added that the Wafaqi Mohtasib (Ombudsman) can interfere in rent matters between the Federal Government and a private party under certain circumstances, which are set out in the complaint of the petitioner. The Wafaqi Mohtasib is an independent office established to redress grievances of the public against maladministration in Federal Government Agencies. While the Ombudsman's powers are not unlimited, he can investigate complaints related to rent matters if they involve maladministration or injustice on the part of a Federal Government Agency, therefore, the President's interference to the extent, was unjustified, as the Ombudsman jurisdiction extends beyond contractual

matters. The petitioner seeks this court's order to declare the relevant portion of the President's order as illegal and to compel the Government Office to comply with the Wafaqi Mohtasib's decision. In support of his contention, he relied upon the reported case in **PLD 2004 SC 99**.

4. Learned DAG referred to the comments and argued that the Ombudsman's Order of 1983 mandates an investigation into maladministration only and his interference was unjustified in the disputed question, which requires evidence as such both the orders are liable to be set aside. She has next contended that the Commercial building namely "Khalid Chambers" situated off Shaheed-e-Millat Road, Karachi comprising ground plus three floors admeasuring 20124 sq.ft. was hired by Respondent No.1 and allotted the same to the Department of Protector of Emigrants and Overseas Employment (Respondent No.2) in 1975 and the last lease agreement was executed by Respondent No.1 with the petitioner for the period up to 24.11.2001. She next contended that Respondent No.2 vacated the entire 3rd floor and shops on the ground floor measuring 5205 sq.ft. and 626.5 sq.ft respectively and handed over the possession to Pakistan Public Works Department on 12.11.2001; that on receipt of vacation report from Enquiry Office of Pakistan PWD, the Respondent No.1 (Estate Office) requested the petitioner vide letter No. 753/276/OA/79/EIII dated 23.11.2011 to take over possession of the vacant premises from the Enquiry Office, Pak. PWD. She next contended that the petitioner refused to take over possession of the vacated area and consequently, Respondent No.1 released payment of rent of the area (14292.5 sq.ft) in possession of Respondent No.2 till 30.09.2003 to the petitioner, however, the petitioner himself delayed in taking over possession of the vacated area and the petitioner took over the possession of 3rd floor and few shops of ground floor from PWD authorities w.e.f. 23.11.2001 i.e. the actual date of physical vacation of the said premises by Respondent No.2. She next contended that there is no specific clause in the agreement that bound the parties to vacate the entire building simultaneously and the said building was/is not a residential but commercial unit and each floor have separate access; that ground floor also comprises several shops. Therefore, the vacation of the entire 3rd floor and a few shops on the ground floor did not hinder the petitioner from taking over the possession of the same. She lastly contended that since the President of Pakistan has set aside the order of Wafaqi Mohtasib in respect to the payment of rent claimed by the petitioner in the light of the Presentation of Respondent No.1 who has fulfilled all legal requirements and cleared all rental dues as per agreement. The petitioner has filed this petition against Respondent No.1 by twisting the facts. This petition is not maintainable under the law, therefore she prayed for the dismissal of the

instant petition on the analogy so put forward by the Respondent department in their comments.

5. We have heard learned counsel for the parties present in court on the maintainability of this petition and have perused the material available on record with their assistance and case law cited at the bar.

6. Haji Muhammad Ashraf, representing Haji Abdul Razzaq Waqf Trust, complained to the Wafaqi Mohtasib with the allegations that his building, Khalid Chambers, had been rented to the Estate Office since 1975. The Protectorate of Emigrants occupied the building but vacated portions later. The complainant alleges delayed rent payments for the remaining occupied area. The Mohtasib's investigation revealed that the Protectorate offered partial possession to the complainant, who declined. The Protectorate claims to have paid rent until August 2004 and vacated the entire building on that date. Regarding water and sewerage bills, the Protectorate Agency states that it is responsible for clearing dues up to the vacation date. The petitioner submitted that the entire building was rented as a single unit and the department's demand for partial possession was unjustified. They should have vacated the entire building to stop rent payments. The petitioner claims to have taken possession of the entire building on July 11, 2005, and that the department was/is responsible for clearing utility bills. The petitioner emphasized that the entire building was rented as a single unit.

7. The Wafaqi Mohtasib opined that the building was rented as a single unit. The Agency's claim of partial vacation and reduced rent is incorrect. The entire building was handed over to the petitioner on July 11, 2005, and the Agency was/is liable for the full rent until that date. It is further held that the Agency, as the long-term occupant, is responsible for clearing utility bills, including the KW&SB arrears. The petitioner/complainant should not be held responsible. The Agency should resolve the issue with KW&SB. Finally, the Wafaqi Mohtasib recommends that the concerned agency should pay full rent for the entire building until July 11, 2005. The Protectorate of Emigrants should resolve the KW&SB dispute and pay any outstanding dues. In the intervening period, the revised findings were also given. The petitioner, dissatisfied with the partial findings of the Wafaqi Mohtasib, to the extent of payment of rent for the entire building, appealed to the President of Pakistan, who maintained the findings with the following observations:-

“Where a contract is repudiated by one party the injured party is entitled to recover damages against the repudiator to compensate him for such financial loss as the repudiate breach has caused him to suffer and which was not avoidable.

The complainant contends that no tenant was willing to rent the vacated portion. The Estate Office contends that the complainant was not willing to rent out the vacated portion in market. The Muhtasib has not recorded any opinion on who is right.

The questions of whether the rent market for the vacated portion was available or not during the period from 24.11.2001 to 01.10.2003 require to be decided after hearing of evidence and interpretation of the lease agreement, the right of the landlord accruing on account of overstay beyond the period of the written lease the non-availability of a tenant for the unexpired period of the lease for the portion of the property and the determination of an adequate compensation keeping in view all the circumstances and conduct of the parties.

Determination of these controversial questions is not within the ambit of jurisdiction of the Mohtasib nor was this case falling under the scope of maladministration. The factual questions had to be decided by a court or an urban rent controller.

So far as the recommendation relating to the payment of KW&SB dues is concerned Mohtasib in his revised finding dated 02.07.2008 has clarified that he has recommended the resolution of the dispute through verification of actual payable dues. To this extent of the findings, the Mohtasib is right. The Agencies shall resolve this dispute as recommended by the Mohtasib.

Accordingly, the president has been pleased to set aside the Mohtasib's recommendation relating to payment of rent while rejecting the case of the Agency relating to the payment of the utility bills."

8. The Government rented the entire Khalid Chambers building in 1975 and paid rent until 2001. It then unilaterally vacated a portion and reduced rent without negotiating with the landlord. The respondent's claim that rent should not be paid for vacated floors is incorrect. Unless the entire building is vacated, the respondent is responsible for the full rent. The respondent has also failed to provide any documentation for the specific dates of the alleged vacation. The complainant claims loss due to the tenant's wrongful stay, but the Mohtasib did not determine who's right. This requires a detailed inquiry beyond the Mohtasib's jurisdiction. The President rightly set aside the rent payment recommendation. Such complex disputes should be handled by civil courts, not by the Wafaqi Ombudsman and the High Court, wherein the evidence is required.

9. The High Court's constitutional jurisdiction is extraordinary and should only be used when other remedies are unavailable. The Supreme Court's judgment in *Dr. Abdul Nabi's* case (2023 SCMR 1267) supports this view.

"The extraordinary jurisdiction under Article 199 of the Constitution is envisioned predominantly for affording an

express remedy where the unlawfulness and impropriety of the action of an executive or other governmental authority could be substantiated without any convoluted inquiry. The expression "adequate remedy" signifies an effectual, accessible, advantageous, and expeditious remedy that should also be remedium juris, i.e. more convenient, beneficial, and effective. To effectively bar the jurisdiction of the High Court under Article 199 of the Constitution, the remedy available under the law must be able to accomplish the same purpose which is sought to be achieved through a writ petition. This extraordinary jurisdiction is provided as a remedy to cure illegality which can be established without any elaborate inquiry into disputed facts"

10. This court finds that the complex factual issues, including the dispute over utility charges, should be resolved in a civil court. As both parties have conflicting claims, a detailed evidence is necessary in the matter. Therefore, the petition is dismissed along with the pending application(s), and the petitioner may seek remedy through civil court proceedings.

JUDGE

JUDGE