

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

Mr. Justice Iftikhar Muhammad Chaudhry, HCJ
Mr. Justice Khilji Arif Hussain
Mr. Justice Tariq Parvez

Civil Petition No.1498 of 2011

Against order dated 04.07.2011 of Islamabad High Court, Islamabad, passed in C.M.No.140 of 2011 in W.P.No.2248 of 2009.

Muhammad Afsar

Petitioner(s)

VERSUS

Malik Muhammad Farooq

Respondent(s)

For the Petitioner(s) : In person.
For Respondent No.1 : Syed Arshad Hussain Shah, ASC
For Respondents No.2-3 : Mr. Dil Muhammad Alizai, DAG
Mr. M. S. Khattak, AOR
Mr. Kamran Lashari, Secretary,
M/o Housing & Works
Mr. Asim Ayub, Estate Officer,
Qaisar Mehmood, JEO
Date of Hearing : 19.10.2011

ORDER

Khilji Arif Hussain, J-. Through this petition, filed under Article 185(3) of the Constitution of the Islamic Republic of Pakistan, 1973, the petitioner seeks leave to appeal against order dated 04.07.2011, passed by Islamabad High Court, Islamabad, vide which Civil Miscellaneous Application (C.M.No.140 of 2011 in Writ Petition No.2248 of 2009), filed by respondent No.1, under Section 12(2) of Civil Procedure Code, 1908, was allowed and the judgment dated 16.03.2011 in Writ Petition Nos. 2248 of 2009 was recalled.

2. Brief facts to decide the listed petition are that the petitioner alleged in his petition that he was allotted the House No. 609-D, Street No.24, Sector G-6/4, Islamabad (hereinafter referred to as “the house in

question) vide allotment order dated 23.01.2008. The petitioner first filed suit in Civil Court, Islamabad, with the prayer that the house in question may not be allotted to any one else and in consequence thereof an order was passed in favour of the petitioner to the effect the house in question may not be allotted to any one else. The petitioner in his petition alleged that some unauthorized persons are living in the house in question, without lawful allotment in their favour, which is in violation of the law and as such sought directions to the official respondents to hand over the vacant possession of the house in question after dispossessing the illegal occupants. The learned High Court, vide judgment dated 16.03.2010 after calling parawise comments directed the respondents to arrange vacant possession of the house in question in favour of the petitioner within 10 days from the date of order, with the condition that the petitioner will place on record proof that he has handed over house bearing Quarter No.450-B, G-6/1-1 to the respondents.

3. The petitioner managed allotment order of the said house in favour of his brother and sought possession of the house in question.

4. The respondent No.1 on having information about the order passed by the High Court filed an application under Section 12(2)CPC alleging that his father was allotted the said house and on his retirement from Government service on 14.10.2007 the respondent No.1 who has all along been living with his father in the house in question, being eligible, applied for the allotment under Rule 15(2) of the Accommodation Allocation Rules, 2002 well before the retirement of his father, which entitles the eligible spouses and children of the Government servants to the allotment of government accommodation which had been allotted to and was in occupation of a retired government servant at the time of his retirement. The Ministry of Housing & Works, Islamabad, issued allotment order dated 12.02.2010, in favour of the respondent No.1 allotting the

house in question, which was earlier allotted to the petitioner in supersession of all previous orders.

5. The High Court after hearing the parties accepted the application under section 12(2), CPC and restored Writ Petition No.2248 of 2009 to its original number directing the petitioner to amend the petition by joining the respondent No.1 as respondent No.3. and fixed the same alongwith C.P. No. 2622 of 2010. Hence, this petition for grant of leave to appeal.

6. We have called the Secretary, Housing & Works as well as the Estate Officer to apprise the Court not only about the proceedings pending in various Courts, but also to explain the criteria on the basis of which they have allotted government accommodations, in their possession, to eligible government employees. We have also called a report from the learned District Judge, Islamabad, qua the cases pending, pertaining to the Estate Office, in various Courts.

7. As regards the cases pending in various Courts against the Estate Office, we have noted that delay in conclusion of the same mostly caused owing to non serious attitude of the officials of Estate Office and accordingly we directed that a mechanism should be adopted by the Estate Office to pursue the matters before the Courts of law and some responsible officers/officials should be deputed to check the progress fortnightly in order to avoid any mala fide on the part of the officers/officials of the Estate Office to delay the matters so as to favour the persons of their choice.

8. We have surprised to note that all the allotments till date made by the Estate office are not on the basis of first come first get, as per the General Waiting List maintained by them under Rule 6 of the Accommodation Allocation Rules, 2002 but on the basis of some

extraneous consideration orders were passed by the high-ups without assigning any reason in favour of the employees of their own choice.

9. The Courts are duty bound to uphold the constitutional mandate and to keep up the salutary principles of rule of law. In order to uphold such principles, it has been stated time and again by the superior Courts that all acts should be done by the public functionaries in a transparent manner 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 in accordance with 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 put on record their dissenting notes. But unfortunately, the officers in the Estate Office not only implemented the illegal orders but apparently acted for their own personal benefits/gain.

10. As regards the petitioner he managed allotment in his favour, under the order of Federal Minister for Housing & Works who without assigning any reason by a non speaking order directed for the allotment of the house in question in favour of the petitioner.

11. Rule 29A of the Accommodation Allocation Rules, 2002 empowers the Federal Government to relax any rule governing allotment of accommodation to eligible Federal Government Servants in public interest for deserving and hardship cases and on compassionate grounds for reasons to be recorded in writing for such relaxation.

12. From a bare reading of Rule 29A of the Accommodation Allocation Rules, 2002, it appears that while exercising the powers under said rule, the Federal Government has to record justifiable reasons in writing for relaxation of the rules. Rule 6 of Rules 2002 mandate that the applications for the allotment of government accommodations when

received from the applicants shall be acknowledged by the Estate Office by issuing Registration Cards and the Estate Office shall maintain a General Waiting List of the employees, who have applied for the allotment of government accommodations on the prescribed form and the employees who applied first are entitled for the allotment of government accommodations first as and when the same are made available.

13. The right accrued to an employee in General Waiting List maintained by the Estate Office under Rule 6 of the Accommodation Allocation Rules, 2002 cannot be taken away by the Federal Government on its own sweet will just because they have been empowered to relax the rules under Rule 29A of the Accommodation Allocation Rules, 2002. The denial of right of accommodation to employees under Rule 6 of the Accommodation Allocation Rules, 2002, is denial of fundamental right of life, which includes to have shelter/house as guaranteed under Article 9 of the Constitution. On reading rule 29A of the Accommodation Allocation Rules, 2002 alongwith Rule 6 of the Accommodation Allocation Rules, 2002, it appears that only in very exceptional circumstances the relaxation can be granted to accommodate a deserving government employee in public interest but for that too a justifiable reason has to be recorded by the concerned authority which is lacking in the present case. However, we would not like to dilate upon this matter, in detail, as the petition filed by the petitioner is still sub-judice before the Court of competent jurisdiction.

14. As regards respondent No.1, he sought allotment under Rule 15(2) of the Accommodation Allocation Rules, 2002, being in possession of the house in question, which was previously allotted to his father, who stood retired on 14.10.2007 from government service. Despite repeated queries made by us, the respondent No.1 has been failed to point out any rule under which an allotment order can be issued with retrospective effect and the officials/officers appeared on behalf of the Estate Office

have frankly conceded that there is no such rule under which an allotment order can be given a retrospective effect.

15. We have called for a report from the Estate Office to know that how many applications are pending on General Waiting List under Rule 6 of the Accommodation Allocation Rules, 2002. From a perusal thereof, it appears that thousands of employees are waiting for allotment of government accommodations for the last many many years and some of the applications pertain to the years 1977-78, and the official respondents have failed to give any reason as to why they have not been allotted government accommodations as and when made available. The official respondents have admitted that till date no allotment has been made on merits, on the basis of General Waiting List maintained by them under Rule 6 of the Accommodation Allocation Rules, 2002.

In the circumstance, while dismissing the instant petition, we direct the authorities concerned as under:-

- i. that in future all the allotments will be made strictly on merits on the basis of General Waiting List; and*
- ii. Relaxation of rules under Rule 29A of the Accommodation Allocation Rules, 2002 will not be often exercised, except in the cases of hardship and that too by recording justifiable reasons for the same, after hearing the likely affected employees in the General Waiting List.*

Chief Justice

Judge

Judge

ISLAMABAD
19.10.2011

Approved for reporting