ORDER SHEET

IN THE HIGH COURT OF SINDH, KARACHI

Constitutional Petition No.D-578 of 2015

(Irfan Jillani v. the Government of Sindh and 03 others)

DATE	ORDER WITH SIGNATURE OF JUDGE

Before

Mr. Justice Riazat Ali Sahar,

Mr. Justice Ali Haider 'Ada',

1. For order on Nazir report dated 11.5.2022
2. For order as to maintainability of petition

27.10.2026

Mr. Shoukat Ali Shaikh advocate for the petitioner
Mr. Zohaib Sarki Addl. A.G Sindh

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RIAZAT ALI SAHAR, J.- Through the instant constitutional petition, the petitioner seeks to assail the impugned orders/decisions dated 28.02.2014 and 23.12.2014, respectively, and further seeks a declaration that he is the lawful owner of plot No. L-18/1, measuring 80 square yards, situated at Block-15, Scheme No.36, Gulistan-e-Jauhar, Karachi (subject plot).

2. The case of the petitioner is that he purchased the subject plot in the year 2011, whereafter the same was transferred in his name by the official respondents, and he has remained in possession thereof since then. It is further contended that respondent No.4 lodged a complaint before respondent No.2/Provincial Ombudsman Sindh without impleading the petitioner as a party, despite the fact that the matter directly concerned his rights and interests. Upon gaining knowledge of the said proceedings, the petitioner moved an application before respondent No.2/Provincial Ombudsman Sindh for impleading him as a party; however, respondent No.2/Provincial Ombudsman Sindh proceeded to pass the impugned order dated 28.02.2014. The petitioner challenged the said order before respondent No.1/ Governor of Sindh, which upheld the decision of respondent No.2/Provincial Ombudsman Sindh. Being aggrieved by the concurrent decisions of the said authorities,

the petitioner has invoked the constitutional jurisdiction of this Court through the instant petition.

3. We have heard learned counsel for the parties and perused the material available on record.

4. We have observed that the impugned orders are not sustainable in law, as the proceedings before respondent No.2 were concluded without impleading or affording an effective opportunity of hearing to the petitioner, despite his assertion that the subject plot had been transferred in his name and remained in his possession since 2011. The petitioner's interest in the property was direct and substantial, and his application for impleadment required due consideration in accordance with the principles of natural justice. The subsequent order passed by respondent No.1, whereby the decision of respondent No.2 was maintained, did not cure the aforesaid procedural infirmity.

5. In the case of *Messrs Kanpur Old Boys Association v. Messrs Karachi Metropolitan Corporation and another* **(2024 SCMR 1361)**, the Hon'ble Supreme Court of Pakistan held as under:

> *"6. We are of the considered view that the Ombudsman did not have jurisdiction and the petitioner's complaint was not maintainable, as what was complained of did not constitute maladministration. The petitioner had asserted purported transgression or non-fulfilment of its contractual rights which the petitioner could only do by the filing of a suit. However, the Ombudsman assumed the powers, which vest in civil court, under section 9 of the Code of Civil Procedure, 1908. The Ombudsman did that which the law neither envisages nor permits. This aspect was not considered by the Ombudsman, and the Governor dismissed KDA's representation on technicalities. Moreover, the complaint was submitted to the Ombudsman seventeen years after KDA had issued its letter dated 21 April 1984. whereas section 10(3) of the Act stipulates a period of three months within which a complaint may be preferred. There is also nothing on the record to show that the petitioner had accepted KDA's offer letter dated 21 April 1984 let alone that it did so within the period of one week mentioned therein. The requisite payment was also not made within the stipulated period, and only half of the occupancy value was ever paid."*

6. In view of the principles laid down by the Honourable Supreme Court in the case of ***Messrs Kanpur Old Boys Association v. Messrs Karachi Metropolitan Corporation and another***, we are of the considered opinion that the Ombudsman in complete disregard of the provisions of the Act, and the facts noted above, not only assumed jurisdiction but also granted extraordinary and uncalled for relief to the respondent. The Ombudsman did not have jurisdiction and his decision was *coram non judice*. The Governor should have set aside the illegal decision of the Ombudsman, but instead dismissed petitioner's representation on technicalities. Therefore, we have no option but to set aside the decision of the Ombudsman and that of the Governor. Accordingly, the decision of the Ombudsman, dated 28.02.2014, as endorsed by the Governor vide decision dated 23.12.2014, are hereby set aside. Consequently, the instant petition is ***allowed*** with no order as to costs.

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