

IN THE HIGH COURT OF SINDH AT KARACHI

Present: **Abdul Rasool Memon** and **Agha Faisal, JJ.**

Constitutional Petition D-2110/2009	Muhammad Tariq Qasmi vs. Federation of Pakistan & Others.
Constitutional Petition D-2120/2011	Wazir Ali & Others vs. Government of Pakistan & Others
Constitutional Petition D-1479/2012	Pak Distressed Employees Association vs. Federation of Pakistan & Others
Constitutional Petition D-5005/2015	Shafi Muhammad Kalwar vs. Federation of Pakistan & Others
Constitutional Petition D-5154/2015	Khawaja Rauf-ul-Hasan vs. Federation of Pakistan & Others
Constitutional Petition D-889/2016	Wali Muhammad Saheto vs. Federation of Pakistan & Others
Constitutional Petition D-1591/2016	Dr. Ghulam Zohra Chang vs. Province of Sindh and others
Constitutional Petition D-4997/2016	Khawaja Kaleemul Hassan & Others vs. Federation of Pakistan & Others
Constitutional Petition D-733/2017	Faqirullah vs. Director General Pakistan Public Works Department and Others
Constitutional Petition D-1108/2017	Dr. Shazia Shaikh vs. Province of Sindh and Others
Constitutional Petition D-1171/2017	Muhammad Ahmed vs. VIth ADK Karachi South and others
Constitutional Petition D-1248/2017	Mst. Anees Parveen vs. Government of Pakistan & another
Constitutional Petition D-1455/2017	Dr. Zubair Agha & Others V. Province of Sindh & Others
Constitutional Petition D-1664/2017	Sughra Khanam vs. Director General Pakistan Public Works Department and Others

Constitutional Petition D-2341/2017	Nadeem Shahzad Abro & Others vs. Section Officer (Estate) Services & Others
Constitutional Petition D-2750/2017	Abdul Ahad Sanghri vs. Province of Sindh and Others
Constitutional Petition D-2890/2017	Syed Nadeem Haider Jafferri & Another vs. Province of Sindh and Others
Constitutional Petition D-2898/2017	Muhammad Yousuf Kabooro & Others vs. Province of Sindh and Others
Constitutional Petition D-4287/2017	Ghulam Abbas & Others vs. Section Officer (Estate) & Others
Constitutional Petition D-4865/2017	Abdul Samad Memon vs. Secretary, SGA&CD and Others
Constitutional Petition D-7118/2017	Ms. Shahla vs. Federation of Pakistan and Others
Constitutional Petition D-7563/2017	Dr. Alveena Yousuf Alvi vs. Federation of Pakistan and others
Constitutional Petition D-48/2018	Prashuddin vs. Federation of Pakistan and others
Constitutional Petition D-1699/2018	Yasmeen Memon Kharal vs. Federation of Pakistan & Others
Constitutional Petition D-2086/2018	Mst. Alia Begum vs. Province of Sindh and Others
Constitutional Petition D-4333/2018	Yousuf Shah & Others vs. Section Officer (Estate) Services and Others
Constitutional Petition D-4990/2018	Dr. Shabnum Karim vs. Province of Sindh & Others
Constitutional Petition D-5004/2018	Nuzhat Parveen & another vs. Province of Sindh and others.
Constitutional Petition D-5057/2018	Abdul Hafeez Panhwar vs. Province of Sindh and Others
Constitutional Petition D-5107/2018	Muhammad Hanif vs. Province of Sindh and others.
Constitutional Petition D-5108/2018	Ali Bakhsh Mahar vs. Province of Sindh and others.

For the Petitioners

Muhammad Tariq Qasmi in person
(in C.P D-2110 of 2009)

Mr. Naeem Suleman, Advocate
(in C.P D-2120 of 2011)

Mr. Muhammad Habib Jalib, Advocate
(in C.P D-1479 of 2012)

Mr. Rafiq Ahmed Kalwar, Advocate
(in C.P D-5005 of 2015)

Mr. Haq Nawaz Talpur, Advocate
(in C.P. D-889 of 2016)

Mr. Syed Mehmood Alam Rizvi,
Advocate (in C.Ps.No.D-1591 of 2016
and 7563 of 2017)

Mr. Waqas Ahmad Khan, Advocate
(in C.Ps. D-5154 of 2015 and for
Petitioner No.5 in 4997 of 2016)

Mr. Muhammad Ajmal Awan, Advocate
(in C.P D-4997 of 2016)

Mr. Farooq H. Abbasi, Advocate
(in C.P D-733 of 2017)

Mr. G. N. Qureshi, Advocate
(in C.Ps. D-1108 & 2898 of 2017)

Mr. Muhammad Riaz, Advocate
(in C.P D-1171 of 2017)

Mr. Fareed Ahmed Dayo, Advocate
(in C.P D-1455 of 2017 & 5057 of
2018)

Mr. Jawad Hyder Rizvi, Advocate
(in C.P D-1664 of 2017)

Mr. Muhammad Arif, Advocate
(in C.P D-2341 of 2017, C.P D-4333 of
2018 & C.P. D-5004 of 2018)

Mr. Kashif Nazeer, Advocate
(in C.P D-2750 of 2017)

Mr. Shahid Akhtar, Advocate
(in C.P D-2890 of 2017)

Mr. Amir Jamil, advocate
(in C.P. No.D-4287 of 2017)

Mr. Abdul Samad Memon, Advocate
(in C.P D-4865 of 2017)

Mr. Abdul Majeed Khoso, Advocate
(in C.P D-7118 of 2017)

Mr. Hussain Bux Baloch, Advocate
(in C.P D-48 of 2018)

Mr. Rasheed A Razvi, Advocate
(in C.P D-1699 of 2018)

Mr. Ahmed Niazi, Advocate
(in C.P D-2086 of 2018)

Ms. Benazir Behan, Advocate
(in C.Ps. D-4990, 5107 & 5108 of 2018)

For the Respondents

Mr. Salman Talibuddin,
Additional Attorney General

Mr. Abdul Wasey Khan Kakar
Deputy Attorney General

Mr. Saifullah, Assistant Advocate
General and Ms. Nasreen Sahito, State
Counsel for the Province of Sindh.

M/s. Ghulam Hyder Shaikh and
Ghulamullah, Advocates for
Respondent No.3 in C.P D-1591 of
2016

Mr. Ghulam Muhammad, Advocate for
respondent No.3 of Sindh Katchi
Abadi Authorities in C.Ps. D-1664 &
733 of 2017

Mr. Saleem Raza Kazmi, Assistant
Executive Engineer on behalf of PWD

Mr. Owais Nazir Mughal, S.O. (Estate)
SGA&CD in C.P D-1699 of 2018

Mr. Bashir Ahmed, Additional Estate
Officer, Estate Office, Karachi in C.Ps.
D-2110 of 2009 and 5154 of 2015

Dates of Hearing

02.07.2018, 04.07.2018, 09.07.2018,
10.07.2018, 11.07.2018 & 12.07.2018

JUDGMENT

Agha Faisal, J: By this common judgment we intend to decide 31 interconnected Constitution Petitions seeking determination of whether the occupancy of Government residential accommodation by the respective Petitioners is sanctioned under the law. The petitions under consideration may be classified into five broad categories. The first category is a collection of petitions whereby the Petitioners, being retirees or legal heirs of retirees, are in occupation of residential facilities belonging to Government of Pakistan and in respect whereof ejectment notices have been issued from time to time and yet the Petitioners remain in occupation, sustained by interim orders passed by this Court. The second cluster of petitions assail ejectment notices issued by the Government of Sindh to serving employees stationed at Karachi, prior to competent determination of whether the respective occupation was sustainable in law. The third category comprises of one petition which has been disposed of and in respect thereof a contempt application has been preferred by the Petitioner. The fourth category pertains to another singular petition wherein the Petitioner seeks the implementation of an allotment order of accommodation issued in his favour. The final category pertains to another solitary petition whereby a Show Cause Notice seeking to determine encroachment was served upon a serving officer and on the basis thereof the said petition was filed and interim orders were obtained preserving the possession of the Petitioner.

2. The first category comprises of C.Ps. Nos.D-2110 of 2009, 2120 of 2011, 1479 of 2012, 889 of 2016, 4997 of 2016, 733 of 2017, 1171 of 2017, 1248 of 2017, 1664 of 2017, 1699 of 2018, 48 of 2018 and it may be pertinent

to encapsulate the brief facts therein in addition to the arguments led by the respective learned counsel for the Petitioners in regard thereof.

3. In C.P. No.D-2110 of 2009, it was submitted by the Petitioner, appearing in person, that he is a retired government servant and an allottee of property vide allotment letter dated 07.01.1982. It was contended that the Petitioner though retired from service was entitled to retention of the residential accommodation as the same was his inherent vested right. It was demonstrated from the record that the Petitioner had initiated civil litigation in order to substantiate his claim to the property, however, he was unsuccessful at each progressive stage and finally an order in revision was passed by this Court on 04.09.2009, in Civil Revision Application 75 of 2009, wherein the Petitioner's contentions were dismissed with the observation that the Petitioner may be permitted to remain in the property for another one month on humanitarian grounds. The present petition was filed to challenge the said impugned order in revision. The Petitioner was asked to point out any infirmities present in the impugned order in revision yet he was unable to do so and on the contrary stated that he placed reliance upon the arguments advanced by the learned counsel for the Petitioner in C.P. No.D-1479 of 2012 to justify his continued occupation of the property.

4. Mr. Naeem Suleman, learned counsel for the Petitioner in C.P. No.D-2120 of 2011 submitted that an allotment order was issued in favour of the Petitioner on 21.05.1987 and that despite having retired from service the Petitioner was entitled for the said allotment to be converted into a lease in favour of the Petitioner. The learned counsel submitted that the allotment issued in favour of the Petitioner pertains to a property in *Katchi Abadi* area and that in similar circumstances leasehold rights have been granted in favour of housing societies that had been provided land in *Katchi Abadi* upon which

construction was to be raised by their own means. Per learned counsel, it was settled law that in *Katchi Abadi* areas, a person in possession of the property is entitled to have the same regularized and of or leased in his favour.

5. Mr. Rizwan Ahmad Siddiqui, learned counsel for the Petitioners in C.P. No.D-1479 of 2012, submitted that the Petitioners were issued allotment letters in the year 2007. It was submitted that while the petitioners were in service at the time that the allotment orders were issued but despite having retired many years ago their occupation of the respective Government allotted accommodation subsists. Learned counsel submitted that the aforesaid allotment letters amounted to transfer of the ownership of the property to the Petitioners. It may be pertinent to reproduce the relevant content of one such allotment letter by way of an illustration:

“Sub:-ALLOTMENT OF GOVERNMENT RESIDENCE IN TERMS OF
THE Karachi ALLOCATION RULES AND AS PROVIDED UNDER
F.R. 45, S. R. 311, 312, 313, 314, 315, 316 AND 317 AND
SUBSEQUENT AMENDMENTS MADE THERETO”

I have the honour to state the Quarter No.3 of 49-E, situated at Jehangir Road East, Karachi, is hereby allotted to you provisionally.

This allotment does not entitle you to any lien on the residence but you will remain in occupation till further orders. The house is to be occupied within four days from the date of issue of this letter after handing over vacant possession of the Quarter No.4 of 80, Clayton Road to the Pak PWD Enquiry Office, Clayton Road, failing which the allotment will be treated as withdrawn.

Rent and other charges shall commence to be assessed against your name from the date of occupation or from the fourth day of the issuance of this letter, whichever is earlier. Such demand of bills shall be realized from your monthly emoluments through your Department or the Audit Office on monthly basis. But it is in your interest to see that all bills are regularly realized and nothing falls in arrears, otherwise, you may face unpleasant situations and also difficulties while vacating the house on transfer of retirement etc.”

(Underline added for emphasis.)

6. It was next contended that by virtue of certificates issued by the Ministry of Housing and Works the rights of the Petitioners in the allotted property were

further cemented. It may be pertinent to reproduce one of the certificates also as an illustration:

“GOVERNMENT OF PAKISTAN
MINISTRY OF HOUSING & WORKS
ESTATE OFFICE – KARACHI

“This is to certify that Mr. Iqrar Ahmed Siddique sonof Mukhtar Ahmed Siddique the occupant of Quarter No.183-F, Old Lalukhet measuring a liveable area of 676 Sq. Ft. in Jehangir Road (West) on the basis of longstanding occupation is eligible for ownership.”

Date 11-09-2007

Sd of -
Estate Officer”

7. Learned counsel referred to a judgment of the honourable Supreme Court dated 15.02.1984 in the case of *Pakistan Distressed Employoees Association vs. The Islamic Republic of Pakistan etc. (CPSLA No.K-216 of 80)* and drew our attention to the following passage:

“4. After carefully going through the file we feel that the matter has been dealt with by the Government, on administrative level, keeping in view the political and other exigencies and we are of the view that no vested right has been created in the Petitioner on the basis of the President’s order dated 5.2.1972, to remain in occupation of the Government accommodation provided to them while in service.”

The Petitioner’s counsel submitted that although land has been earmarked for construction of flats for the Petitioner, yet they are not being constructed due to paucity of funds. He urged that the Government may give land to the Petitioner and they would themselves build flats on it at their own expense, without bothering the Government. This plea can be urged before the Government which should consider it on merits.

In view of the above discussion we do not consider this a fit case for interference by this Court. The petition is consequently dismissed.”

(Underline added for emphasis.)

8. It was submitted by the learned counsel that in furtherance of the aforesaid judgment the Ministry of Law and Parliamentary Affairs issued a Estate Office Memo dated 15.06.1984 and relied upon the following passage therefrom:

“You accordingly requested to maintain ‘STATUS QUO’ on the question of ejection concerned occupants with the directive and the Court

Order until such time that the matter is brought to the notice of the President himself with relevant facts through the Secretary, Works Division and other appropriate channels for necessary clarification in clear terms.”

9. Learned counsel referred to further correspondence wherein it had been suggested that the ejectment of occupants of Government accommodation may be deferred or reconsidered on compassionate grounds.

10. Mr. Noor Muhammad Sahito, son of the Petitioner in C.P. No.D-889 of 2016 appeared in response to the receipt of Court notice by the Petitioner and submitted that the property had been allotted to his father on 21.03.1985. It was submitted that the Petitioner retired from service in the year 2008, however, remains in possession of the property till date and in justification of such occupation he relied upon and adopted the arguments put forth by the learned counsel for the Petitioner in C.P. No.D-1479 of 2012.

11. Mr. Muhammad Ajmal Awan, learned counsel for the Petitioner in C.P. No.D-4997 of 2016 submitted that the property has been allotted to the late father of the Petitioner on 31.01.1974. It was submitted that the father of the Petitioner had expired post retirement and also the mother of the Petitioner expired in the year 2008. It was submitted by the learned counsel that the Petitioner being one of the legal heirs of the deceased Government servant, to whom the property was allotted, was entitled to retain the subject property in perpetuity notwithstanding the fact that the same property had been allotted in favour of another and that the said allotment was sanctified vide an Order of a Division Bench of this Court passed in C.P. No.D-5154 of 2015.

12. Mr. Farooq Hashmat Abbasi, learned counsel for the Petitioner in C.P. No.D-733 of 2017 submitted that the property had been allotted to the Petitioner on 20.02.1982 and the subsisting occupation of the said property was justified in reliance upon and by adopting the arguments of the learned counsel for the Petitioner in C.P. No. D-1479 of 2012.

13. The Petitioner appeared in person in C.P. No.D-1171 of 2017 and submitted that he retired as an employee of EOBI in March 2009. It was submitted that he remains in the property since 1987 and is entitled to remain therein on account of his inability to find alternate accommodation.

14. In C.P. No.D-1248 of 2017 no one appeared for and on behalf of the Petitioner despite the issuance of repeated notices and also pasting of the said notices upon the address of the Petitioner and also at the property, the subject matter of the petition. It was determined from the perusal of the record that the property in question was originally allotted to the father of the Petitioner and upon his death occupation of the said property remained with the mother of the Petitioner and now after the death of the parents the Petitioner is in occupation thereof. The Petitioner has not pleaded any grounds to substantiate her entitlement to or her retention of the said property which was supposedly allotted to her long deceased father.

15. Mr. Jawwad Haider Rizvi, appeared on behalf of the Petitioner in C.P. No.D-1664 of 2017 and submitted that the Petitioner was allotted the property on 10.06.1971 and remains in possession thereof despite having retired on 15.02.1997. In order to justify his occupation of the official accommodation he relied upon and adopted the arguments of the learned counsel for the Petitioner in C.P. No.D-1479 of 2012.

16. Mr. Hussain Bux Baloch, learned counsel for the Petitioner in C.P. No.D-48 of 2018 submitted that notwithstanding the fact that the Petitioner had retired from service back in 2016, the Petitioner continued to occupy the official accommodation as he is unable to acquire an alternate. No allotment order was placed before us and the learned counsel placed reliance to the arguments of the learned counsel for the Petitioner in C.P. No.D-1479 of 2012 in order to justify his continued occupation of the premises.

17. Mr. Rasheed A. Razvi, learned counsel for the Petitioner in C.P. No.D-1699 of 2018 submitted that the official accommodation was allotted to the deceased husband of the Petitioner. It was demonstrated that after the demise of the Petitioner's husband she was permitted to remain in the said property until 15.12.2016 on humanitarian grounds, despite her entitlement as a widow having expired in 2012. It was next contended that the Petitioner being an employee of the Government of Sindh was entitled to the official accommodation belonging to the Government of Sindh and that it was just and proper that the property wherein she was residing, belonging to the Government of Pakistan, be swapped for a property belonging to the Government of Sindh. Per learned counsel, the request for initiation of the swap was initiated by the Provincial Government and that the same has not been acceded to till date. Learned counsel submitted that eviction of the Petitioner from the property would be in violation of Article 10A of the Constitution and Section 24A of the General Clauses Act. Learned counsel also raised an alternate plea that in the event that the Court was of the opinion that the Petitioner being employee of the Government of Sindh was not entitled to remain in occupation of the property of the Government of Pakistan then on humanitarian grounds the Petitioner may be allowed to continue living at the said property till June 2019, at which time the Petitioner shall stand retired.

18. In response to the arguments of the aforesaid Petitioner, Mr. Salman Talibuddin, learned Additional Attorney General for Pakistan, addressed the Court with respect to C.P. No.D-1699 of 2018. It was submitted that the matter of residential facilities belonging to the Federation was governed by the Accommodation Allocation Rules 2002, issued by the Government of Pakistan, Ministry of Housing and Works in exercise of powers conferred by subsection

(1) of Section 25 of the Civil Servants Act, 1973 (LXXI of 1973), (“Rules”). It was demonstrated that Rule 15 of the aforesaid Rules deals with the retention of the accommodation belonging to the Government of Pakistan. It may be appropriate to reproduce the relevant Rule herein below:

“15. Retention of Accommodation.- (1) In case of death of allottee.-

(a) the family of the allottee shall be entitled to retain the accommodation under their occupation for a period not exceeding one year on payment of normal rent; and

(b) his serving widow or serving legitimate children may be allotted the said accommodation provided he is eligible for the accommodation or becomes eligible for the said accommodation within one year of the event. In case the allottee expires within six months after retirement, his serving spouse or legitimate children may be considered for allotment provided all other conditions are met. Where the accommodation is of a class or category higher than his entitlement, he shall be allotted the first available accommodation in that class or category as the case may be, and shall not be dislodged and shall be charged normal rent till such time as the alternative accommodation of his entitlement has been made available to him.

(Underline added for emphasis.)

Provided that in no case the occupant shall be entitled to retain the accommodation of higher category for more than one year.

(2) An allottee, on his retirement or expiry of contract period shall be entitled to retain the accommodation under his occupation for a period not exceeding six months, on payment of normal rent and this facility will be available to FGS once only.

(3) An allottee who has resigned or is dismissed, removed, compulsorily retired from service may retain accommodation under his occupation for a period of two months.

(4) An allottee who is.-

(a) transferred or sent on deputation to an out station eligible department, he shall be entitled to retain the accommodation till his posting back to the station of accommodation or till the availability of accommodation at the new station with the permission of Works Division provided he does not claim the accommodation or house rent allowance at his new place of posting and his Ministry shall take up the case with the Ministry of Housing and Works for this purpose;

(b) transferred to an ineligible Federal Government department or organization at the same station may be allowed to retain the accommodation on normal rent for a period not exceeding five years from the date of his transfer or the date of his permanent absorption in the new department, whichever is earlier;

(c) transferred to an autonomous organization at the same station may retain the accommodation under intimation to the Estate Office till such time as that organization provides him alternate accommodation or for a period of five years whichever is earlier. The total monthly house rent allowance payable to the allottee or his rental ceiling, whichever is more, will be payable into govt treasury by the organization; and

(d) transferred to an autonomous organization at an out station may retain accommodation under intimation to the Estate Office for a period of six months or till such time as such organization provides him alternate accommodation (whichever is earlier) on payment of house rent allowance payable to the allottee by his organization or his rental ceiling whichever is higher.

(5) A FGS may.- (a) retain accommodation for entire period of Government sponsored courses or training only and in case of self-financed training or studies may retain accommodation for a period of six months only; and (b) retain accommodation for a maximum period of upto one year during all kinds of leave.

(6) An allottee or his family shall be served a notice of cancellation along with permission of retention of the house in case of retirement from service or resignation etc., from the date of occurrence of the event. This shall be treated as final notice and no further notice shall be served upon him for vacation of the accommodation.”

19. It was submitted that the case of the Petitioner did not qualify under Rule 15(1)(a) or Rule 15(1)(b) and, therefore, the said Petitioner was in illegal occupation of the official accommodation. Learned Additional Attorney General demonstrated from the record that the documents relied upon by the Petitioner to substantiate her occupation of the property were in themselves discrepant as it was apparent that orders were issued by the Government of Sindh to confer rights in property admittedly belonging to the Government of Pakistan. Learned Additional Attorney General further submitted that swapping of the Premises is not permissible under the Rules and therefore such a request cannot be acceded to by the Federation and that the same has been duly intimated to the Petitioner vide correspondence available on the Court file.

20. Per learned Additional Attorney General, Article 10A afforded no protection to the Petitioner when it was in fact the Federation that remains deprived of its property by the conduct of the Petitioner. It was further contended that Section 24A of the General Clauses Act relates to exercise of discretionary powers vested by law in an officer and while no discretionary powers vested in the Provincial Government to confer an allotment of property belonging to Federation of Pakistan, the Federation had rightly refused to accede to the demand for swapping of premises as the same was not permissible under the Rules.

21. On the issue of the alternate prayer on humanitarian ground, it was submitted that while the Petitioner may be entitled to accommodation owned

by her employer, being the Government of Sindh, but the property under the Petitioner's unlawful occupation was depriving the lawful allottee in respect of the same. It was submitted that even though the entitlement of the Petitioner to remain in the Property expired in 2012, her subsistence therein till date in itself is in misuse of the humanitarian consideration already extended thereto.

22. Learned D.A.G. appearing on behalf of the Federation in the remaining matters adopted the arguments of Mr. Salman Talibuddin and further demonstrated from the record that there was no right available to the Petitioners to remain in unlawful occupation of the respective properties. Learned D.A.G. also sought to rely upon the documentation submitted along with the Counter Affidavit filed in C.P. No.D-1479 of 2012 to support his contentions regarding the disentitlement of the Petitioners and submitted that the same arguments shall apply mutatis mutandis to the remaining petitions as well.

23. Mr. Ghulam Muhammad, advocate, learned counsel for Sindh Katchi Abadis Authority, appeared and submitted that the said Department was not concerned with the present petitions as the property in question belong to the Federal Government. It was submitted that the Department of the Katchi Abadis had no right whatsoever to confer or withdraw any right with respect to the property belonging to the Federal Government in general and specifically denied the contentions of the learned counsel for the Petitioner in C.P. No.D-2120 of 2011 wherein it was urged that the Department of Katchi Abadis was conferring rights upon persons in possession of land.

24. It is appropriate to record that another Divisional Bench of this Court was seized of an identical matter, being C.P. No. D-3433 of 2015, and the said petition was dismissed on 03.05.2018 while maintaining that the Petitioner had no subsisting right to the property under occupation and that the said petition

was misconceived as it was apparent that the Petitioner had approached the Court with unclean hands to perpetuate his illegal possession of the property, subject matter of the petition.

25. In each of the petitions in the first category the Petitioners have been unable to demonstrate any right whereby their continued occupation of Government owned residential accommodation was tenable. The respective allotment orders permitted occupation of the respective properties while the occupants were in service and upon terms and conditions therein contained. The present Petitioners were either retired from service or legal heirs of deceased persons retired from service.

26. In the first category of the petitions under consideration herein the Petitioners have been unable to substantiate any right by virtue whereof they remain in occupation of Government accommodation. The allotment orders and ancillary documentation referred to prima facie do not confer any rights upon the Petitioners save for those which are expressly stated therein and even those rights are no longer subsisting. Nothing has been placed on record to demonstrate that the rights allotted stood novated into any other form by any subsequent law or action, therefore, there is no justification to depart from the dictum enunciated by the earlier Divisional Bench of this Court in C.P. No.D-3433 of 2016.

27. The second category of the petitions filed herein comprises of C.P. Nos. D-1591 of 2016, 1108 of 2017, 1455 of 2017, 2341 of 2017, 2750 of 2017, 2890 of 2017, 2898 of 2017, 4865 of 2017, 7563 of 2017, 2086 of 2018, 4287 of 2018, 4333 of 2018, 4990 of 2018, 5004 of 2018, 5057 of 2018, 5107 of 2018 and 5108 of 2018.

28. It was submitted by the respective learned counsel for the Petitioners that the Petitioners therein are presently in service and also stationed in

Karachi. It is contended that the allotments issued in favour of the respective Petitioners remain valid and that the Petitioners are being coerced into vacating their premises without being given any opportunity to be heard or even being informed of the reasons for their impending ejection.

29. In order to demonstrate the ejection notice being served upon the Petitioners it may be pertinent to reproduce the notice dated 14.06.2018 served upon the Petitioner in C.P. No.D-5108 of 2018:

“SUBJECT: VACATION NOTICE IN COMPLIANCE OF CABINET
DECISION TAKEN ON 07.11.2016”

I am directed to refer to this department’s letter of even number dated 23.05.2018 wherein you were advised to hand over the physical possession of the government premises to Estate Office, SGA&CD within fifteen (15) days in pursuance of decision by Supreme Court of Pakistan in Human Rights Case No.20746 of 2018 but you have not handed over the physical possession of the premises.

The honourable Supreme Court has recently passed an order in Human Rights Case No.30588-S of 2018 dated 09.06.2018:

“Persons who are occupying the property unauthorizedly and do not have any stay order or order by the Competent Authority to retain the possession, the authorities competent are directed to obtain the possession from them within a period of six weeks from today with the help of law enforcing agencies.”

(Underline added for emphasis.)

You are, hereby, advised to hand over the physical possession of the government premises to Estate Office, SGA&CD within fifteen (15) days by clearing all dues of utility and rent of your occupancy period and furnish documentary evidences to the office as acknowledgment and record.”

30. It has been argued that orders of the honorable Supreme Court are being misused to eject the Petitioners as the same apply to unauthorized occupants and not to persons in lawful occupation of the official accommodation. These notices are common to many of the petitions in the second category.

31. Another type of ejection notice, common to many petitions in the second category, is one dated 01.02.2017 served upon the Petitioner in C.P.

No.D-7563 of 2017. It may be prudent to reproduce the contents of the said notice herein below:

“SUBJECT: Vacation Notice In Compliance Of Cabinet Decision Taken On 07.11.2016

I am directed to refer to the subject noted above and to state that the Competent Authority, Government of Sindh has been pleased to convey the Cabinet decision: 3.1.8(vi) dated 07.11.2016 that:

“All Government Officers, Officials and Public Representatives, who are retaining the unauthorized and non-policy government accommodation will vacate their houses immediately otherwise FIRs will be lodged against those officers of officials who refuse to obey orders.”

(Underline added for emphasis)

2. You are, therefore, advised to vacate the government accommodation which comes under non-policy allotment within fifteen days by clearing all dues.

3. You are also informed that in case of non-compliance Estate Office will be bound to comply with decision of Sindh Cabinet dated 07.11.2016 for registration of FIR against you after expiry of this vacation notices.

4. It is further apprised that Condition No.(IV) of the allotment order issued in your name provides that:

“You will not resort to litigation for retention of government residence else your allotment will not only be deemed to have been cancelled ab initio but disciplinary action under the Removal from Service Ordinance (RSO-2000) will be taken against you. Besides, you will forfeit your claim to allotment of government residence of accommodation permanently.”

32. It was demonstrated that the occupation of the Petitioners have been deemed to be unauthorized notwithstanding the fact that no proceedings have been conducted in such regard and that admittedly no orders have been passed in respect thereof. It is thus contended that this ejection notice is also baseless and unsustainable in law.

33. Mr. Muhammad Arif, learned counsel for the Petitioner in C.P. No.D-5004 of 2018 demonstrated that the property was allotted to a serving employee of the Government of Sindh vide order dated 04.08.2009. It was submitted that notwithstanding the fact that no violation of the allotment order

had taken place, the Petitioner was served an ejectment notice of the kind referred to supra. Per learned counsel, the Petitioner submitted a reply to the ejectment notice, however, without replying or advertng to the same, a fresh notice of ejectment was served thereupon.

34. The facts in the remaining petitions in the second category are similar to those embodied in C. P. No.D-5004 of 2018 and, therefore, the said case is being treated as a representative case in respect of the matters listed in the second category identified supra.

35. The Petitioner did not enter appearance in C.P. No.D-1108 of 2017 despite issuance of repeated notices notwithstanding the fact that the said notices were also pasted at the outer door of the address of the Petitioner and also at the outer door of the property, the subject matter of the present petition by orders of this Court. Mr. Noor Alam Khatri, advocate, appeared on behalf of the Petitioner in response to the Court's notices, which were also issued to the Petitioner's counsel, however, he refused to proceed with the matter despite having been intimated that the present proceedings were required to be completed expeditiously pursuant to the Orders of the honorable Supreme Court.

36. The learned A.A.G. opened the arguments on behalf of the Province of Sindh and placed before the Court the Policy Governing Allotment of Residential Accommodation (Meant for Secretariat Employees) at Karachi by Estate Office, SGA&CD dated 22.05.1999 as amended from time to time ("**Policy**"). Learned A.A.G. drew our attention to the relevant provisions of the Policy which are reproduced herein below:

"7. The Secretary (GA&C), SGA&CD, shall be the competent authority for allotment of government owned accommodation at Karachi. He may delegate powers of allotment of exchange of certain categories of houses to any other officer of the Government.

9. All Government servants seeking official residential accommodation will get themselves registered with the Estate Office through their departments. The Estate Office will maintain a list of all Government servants who get themselves registered and will issue a registration number. The list will be prepared on the basis of the date of registration. If two or more persons get themselves registered on the same date the senior amongst them on the basis of appointment to a post in the basic scale of entitlement to the particular category of residence will rank higher than the other.

13. The Provincial Government has no legal obligation to provide residential accommodation to any Government servant and no Government servant has any legal right to claim to the allotment of Government owned residential accommodation.

22. RETENTION

A) Where a Government servant to whom a residence has been allotted and is occupied by him, dies, dismissed, removed, resign or retires from service or proceeds for training abroad.

In case of death a widow has the option	(i) On the expiry of Iddat period (ii) Upon the date of retirement of her husband.
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In case of Dismissal	For maximum period of two months.
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In case of deputation of training abroad, provided he leaves his family behind	For a maximum period of two years.
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B) Except with the approval of the Committee described in para-15, no further extension would be given in any case beyond the period mentioned above. On the expiry of specified period in each case, the allotment shall stand cancelled automatically and if the occupants do not vacate honourably, they will be removed forcibly through ejection proceeding.

24. EJECTION AND RECOVERY OF POSSESSION

The following categories of occupants come within the definition of unauthorized occupants:

- (i) Government servants or their families retaining Government accommodation beyond permissible period as given in para-22.
- (ii) Occupants in possession of residence for the inhabitants of that locality.
- (iii) Occupants who create nuisance for the inhabitants of that locality.
- (iv) Allottees who themselves or their families do not physically, reside in the house allotted to them, after having taken over the possession for a continuous period exceeding three months.

- (v) Allottees who induct other persons in the allotted house and the persons inducted.
- (vi) Allottees who default in payment of rent for more than three months.
- (vii) Allottees using officially allotted accommodation for purpose of any commercial activity, trade, occupation profession of parties.
- (viii) Occupants, who refuse to provide information, related to allotment and occupation of professional of parties.
- (ix) Occupants, who refuse to provide, information related to allotment and occupation of Government accommodation to the Officers mentioned in Para-25-B.

B) An unauthorized occupant will be liable for ejection. The possession will be recovered through Deputy Commissioner concerned by other of the competent authority, Government of Sindh, SGA&CD.

In view it comes to the notice of the Estate Office that an occupant is an unauthorized occupant as defined above. The Section Officer (Estate) or any other person designated by the Secretary (GA&C), SGA&CD, shall have an enquiry conducted to determine whether or of the occupants is an unauthorized occupants, such an occupant shall be:

- (i) Called for personal hearing before Section Officer (Estate) or any other office designated by the Secretary (GA&C) for this purpose who after due inquiry, shall announce his finding.
- (ii) The person affected by findings of the enquiry may prefer an appeal before the Deputy Secretary (Cab) within 7 days of announcement of findings by the enquiry.
- (iii) If it is established that the occupant is an unauthorized occupant, a notice shall be served on him asking to vacate the residence within 7 days of the receipt of such notice. In case he fails to vacate the residence in 7 days, he shall be forcibly ejected and cost of ejection will be recovered from the occupant.
- (iv) For the purpose of ejection of unauthorized occupant the orders, will be issued by the Deputy Secretary (Cabinet) of Section Officer (Estate) after approval of the Secretary (GA&C) to the Deputy Commissioner concerned regarding vacation the possession.
- (v) To execute orders issued under Section 24-B(iv) the SDM will be assisted by the D.S.P. (concerned). He may seek further force under Section-6 of the Ordinance from the Police Station of jurisdiction where he is executing the orders.

RENT MATTERS

- (i) All Government Servants occupying residence will be bound to get house rent deduction from their salaries as payable according to the rules. Rent of an allotted and occupied residence will be the first charge on the salary of the allottee.
- (ii) All Government Servants occupying residence will be responsible for supplying information regarding deduction of rent from their salaries to the XEN, Assistant Engineer concerned to their respective Colony of GOR who will send a quarterly consolidated report regarding recovery of the rent of the SGA&CD.
- (iii) In case of Government servant who does not occupy an allotted accommodation for more than three months after it becomes available, his allotment will be cancelled.
- (iv) A Government servant occupying a house unauthorizedly and illegally will be charged penal rent @ 50% of his basic salary.
- (v) The rent of VIP Rest House listed in Annexure-I, Sr. No.5 located at Shireen Jinnah Colony Karachi will be charged at the rate of Rs.150 of - per day. All Government servants and others occupying VIP Rest House will be responsible for supplying information regarding payment of rent to the Executive Engineer of Assistant Engineer concerned of Buildings Department who will send a quarterly consolidated report regarding recovery of the rent to SGA&CD.
- (vi) The Government may from time to time make further rules of policy amendments to carry out premises of this policy.”

37. It was submitted that pursuant to Rule 13 of the Policy, the Province is under no obligation to provide residential accommodation to its employees and it's clear that the residential accommodation is meant solely for Provincial Government employees working in Sindh Civil Secretariat who are posted at Karachi. Learned counsel submitted that a dispute resolution mechanism is provided under Rule 24 of the Policy and in view of the same present petitions are not maintainable. It was further submitted that Secretary, Services General Administration and Coordination Department is the competent authority for allotment of Government owned accommodation at Karachi and that his findings with regard to the legality of occupation of any premises belonging to the Provincial Government are final and binding.

38. Learned A.A.G. submitted that the allotment made in favour of the serving employees other than those working in the Sindh Civil Secretariat, are illegal and hence void ab initio. A specific query was put to the learned A.A.G. that if the said allotment orders were illegally issued then whether any action was taken against the persons responsible for issuance of the said orders or against the beneficiaries of the same; the learned A.A.G. was also queried as to whether any proceedings were initiated or conducted against any of the Petitioners to determine whether their occupation of the premises was legal or otherwise, learned A.A.G. replied to both the questions in negative.

39. Learned A.A.G. next referred to the minutes of the Provincial Cabinet's meeting held on 07.11.2016 and placed reliance upon Item No.3.1.8(vi), which his reproduced herein below:

“3.1.8 Decisions:

(vi) All Government Officers, Officials and Public Representatives, who are retaining the unauthorized and non-policy government accommodation will vacate their houses immediately otherwise FIRs will be lodged against those officers of officials who refuse to obey orders.”

(Underline added for emphasis.)

40. It was submitted that the ejectment notices issued by the Provincial Government in 2017 were issued in pursuance of the aforesaid decision of the Provincial Cabinet. A specific query was put to the learned A.A.G. as to whether any determination was initiated or conducted to determine whether the Petitioners were in unauthorized occupation of the government accommodation and the learned A.A.G. replied to the said question in the negative.

41. In response to a question put forth by the Court, the learned A.A.G. unequivocally stated that no proceedings or determination had been rendered by the concerned secretary, as required pursuant to Rule 7 of the Policy, in

respect of the entitlement, or lack thereof, of any Petitioner with respect to the respective properties.

42. In rebuttal of the arguments of the learned A.A.G., Mr. Kashif Nazir, learned counsel for the Petitioner in C.P. No.D-2750 of 2017 submitted that the Policy is not a statutory instrument and a bare perusal of the same states that it is meant to apply in respect of Civil Secretariat employees of the Government of Sindh. It was further submitted that the application of the said Policy to others cannot be deemed to have the sanction of law.

43. Per learned counsel the Petitioners' status remained identical to that which was prevalent when the respective allotment orders were conferred thereupon and that no grounds existed to unilaterally initiate unmerited proceedings for the eviction of the Petitioners.

44. Learned counsel submitted that even if the Policy was held to be applicable to the Petitioners even then ejection could only take place within the parameters prescribed therein. Learned counsel referred to Rule 26 of the Policy, added by virtue of the amendment dated 08.12.2009, and submitted that the ejection and recovery of possession could be undertaken under the considerations prescribed therein. It may be pertinent to reproduce the relevant provision herein below:

“26. EJECTION AND RECOVERY OF POSSESSION

A) The following categories of occupants come within the definition of unauthorized occupants:

- (i) Government servants or their families retaining Government accommodation beyond permissible period as given in para-22.
- (ii) Occupants in possession of Government residence without proper allotment order.”

(Underline added for emphasis.)

45. It was contended by the learned counsel that the Petitioners were in possession of the government accommodation with a proper allotment orders

and hence could not be ejected therefrom in the manner adopted by the Provincial Government, seeking unwarranted shelter beneath a Cabinet decision or pursuant to an unmerited application of the orders of the honorable Supreme Court.

46. We have duly considered the pleas raised before us in the second category of the petitions and have observed that even if the position taken by the learned A.A.G. is to be accepted then pursuant to Rule 7 of the Policy, it is Secretary, Services General Administration and Coordination Department, who would be required to issue a determination upon whether the Petitioners were in lawful occupation of the government premises or otherwise. Admittedly, the same has not been done. It is also within our contemplation that no such findings could be rendered by the concerned Secretary or any other person for that matter without following due process of law which in the present circumstances would at least entail issuance of notice and providing the Petitioners an opportunity to be heard in such regard. It is an admitted fact that these primary precepts of the law have not been followed and the ejectment of the Petitioners has been sought by the Provincial Government in pursuance of a Cabinet decision or the orders of the honourable Supreme Court of Pakistan without determining whether the said Petitioners fall within the category of unauthorized occupants or otherwise.

47. The honourable Supreme Court has dealt with similar issues in the case of *Dr. Syed Ashraf Ali Shah and 2 others vs. Province of Sindh and others* reported as *2009 SCMR 249* and illumined as follows:

“8. The argument advanced by learned Additional Advocate-General that by a change of allotment policy, the Petitioners became unauthorized occupants or the allotment in their favour became liable to cancellation hardly merits any serious consideration. It is too well-settled that any executive dispensation or change of policy could never have retrospective effect or impair vested rights. Indeed, the Government may be well within its rights to change its allotment policy. Nevertheless, such change could only apply to allotments made after its enforcement.

It would never affect the rights of the old allottees which could only be taken away through legislative dispensation given retrospective effect.

8-A. We are surprised, however, the learned Judges of the High Court construed clause (vi) of the allotment order to presume that the allotment in favour of the Petitioners could be cancelled at whim. It is well-settled that no public power could be exercised arbitrarily at the whims of those bestowed with it. In our opinion a careful reading of the allotment order clearly demonstrates that the allotment was liable to be cancelled only upon the failure of the Petitioner to abide by the conditions set out in clauses (iii) and (vii) i.e. non-payment of rent or utility charges within the stipulated time or sub-letting. Similarly, the use of the word "provisionally" could only be relatable to clause (2) i.e. in the event of the allottee's failure to occupy the house within four days of the allotment could certainly not mean that the Petitioner could be arbitrarily ejected after decades of occupation. Indeed, it is nobody's case that the Petitioner did not qualify for allotment at the time the orders in their favour were made or ever violated any terms of the orders.

9. The assumption that allotment of Government accommodation was merely a matter of license revocable at any time is equally unsustainable. In this context it needs to be seen that when the right of exclusive possession of immovable property was conferred upon the Petitioners in terms of the allotment order, it is extremely doubtful if the order could be described as a license simpliciter under section 52 of the Easements Act, 1882 in terms of the well-known pronouncement of this Court in *Abdullah Bhai and others v. Ahmad Din* reported in PLD 1964 SC 106. Even otherwise, a Government, unlike, a private party, even in matters of contract, must act reasonably and fairly and the concept of unfettered arbitrary discretion does not exist in public law. In any event, certain rights had been created in favour of the Petitioners through allotment orders issued by the Government and it is well-settled that such rights, even if in the nature of privileges, cannot be taken away by the subsequent executive action or change in policy. They could only be impaired through legislative dispensation expressly given retrospective operation as held by this Court, inter alia, in the cases of (i) *Collector of Central Excise and Land Customs and 3 others v. Azizuddin Industries Ltd. Chittagong* PLD 1970 SC 439 and (ii) *Al-Samrez Enterprise v. Federation of Pakistan* 1986 SCMR 1917. It is regrettable that the learned Judges of the High Court overlooked some elementary principles of public law.

10. We are equally surprised at the manner in which some earlier precedents of the same Court and an order passed by this Court were considered by their Lordships. In the precedent cited admittedly the accommodation allotted to the allottees was beyond their entitlement and yet their Lordships had taken the view that if such allotments were made through relaxation of rules of policy or if the policy had not been consistently followed, the allottees could still not be disturbed. Indeed, in the instant petitions, the cases of the Petitioners were on a far better footing as it was nobody's case that the Petitioner did not qualify for allotment when the allotment orders were passed. Nevertheless, despite citing precedents, their Lordships clearly ignored them in the process of reaching their conclusion. Even if their Lordships were minded to take a

different view, the least they could have done to request the Honourable Chief Justice to constitute a larger Bench. It needs to be emphasized that a Division Bench of the High Court does not have the liberty of taking a view different from an earlier Bench and must act in accordance with the principles laid down in the case *Multiline Associates (supra)*. At the same time, we may add that when the case of an allotment made in 2005 in favour of Ms. Naheed Rana was brought to the attention of the Court, there was no justification to accept the plea of "oversight". Ex facie there was not the case of a simple omission to take notice but the passing of a specific allotment order through a conscious application of mind.

11. For the foregoing reasons finding the impugned judgment to be entirely unsustainable, we decided to convert these petitions into appeals and allowed the same. Accordingly, the impugned notices of respondent No.1 are set aside and it is ordered that the Petitioners would be liable to vacate the premises only upon transfer from Karachi, retirement from Government service or cancellation of the allotment in accordance with the terms thereof."

(Underline added for emphasis.)

48. In an order passed by the honourable Supreme Court declining leave to appeal, upon matters similar to those before us in the second category of petitions, in *CPLAs Nos.395-K of 1999 (Government of Sindh vs. Aftab Hussain Shah Jillani)* and *418-K of 1999 (Government of Sindh vs. Naweed Ahmad Awan & Another)* it was maintained as follows:

“5. We have heard the learned Additional A.G. and minutely perused the material available on record with his assistance. No doubt, as per policy, the flats in question were to be allotted to the Deputy Secretaries, but, in our view, the said policy was never strictly followed and the flats of same categories were also allotted to the Government Officers of BPS-17. The flats in question were allotted to the respondent by the then competent authorities keeping in view their seniority on the merit list, and when the competent authorities exercised their discretion in favour of the respondents nobody raised any objection for sufficient time.

6. For the foregoing reasons, in our considered view there is no illegality or irregularity or misconstruction of law in the impugned orders, which are based on the principles laid down by this Court. Moreover, no question of public importance, as envisaged under Article 185(3) of the Constitution of Islamic Republic of Pakistan, 1973, is involved in these matters.

7. Consequently, the impugned orders of the learned High Court are maintained, the instant petitions are dismissed and leave to appeal is declined.”

49. A Division Bench of this Court was seized of a similar matter, in *C.P. D-491 of 1999*, and the said petition was decided vide Order dated 26.06.2000, wherein it was held as follows:

“7. Admittedly, the Petitioner was accommodated by allotting the aforementioned flat in relaxation of the rules of policy, which remained in vogue at the time of allotment so made by competent authority in his favour and it was so done ostensibly looking to the requirements of the Petitioners and without any objection being raised at that time. The discretion so exercised in favour of the Petitioner was cannot be said to be arbitrary and capricious. The Petitioner is residing in the said flat along with his family members and he cannot be asked to vacate the said flat without first providing him an alternate and suitable accommodation. Accordingly, we hold that the Petitioner is entitled to retain the said flat.”

50. The learned A.A.G. has admitted that the Petitioners in the second category remain in service, posted at Karachi and their status is at no variance to that which it was when the respective properties were allotted thereto. The first set of ejectment notices cited a Cabinet decision as the basis for the same but the same applied to unauthorized retention of Government accommodation. The Petitioners, to whom the said type of notice was served, are admittedly residing in the accommodation pursuant to valid allotment orders, which have not been rescinded till date. It is also apparent that no competent authority has initiated or conducted any proceedings to determine the occupation of the said Petitioners as unauthorized.

51. The second type of ejectment notice is entirely predicated upon proceedings pending before the honorable Supreme Court. Orders were passed in the said proceedings requiring the Province of Sindh to submit information pertaining to illegal occupation of Government residential accommodation within the categories prescribed in the said order. The honorable Supreme Court was further pleased to direct the eviction of persons who are occupying properties without authorization and do not have any stay order or order by the Competent Authority to retain such possession. It is

admitted that no determination has been conducted by the Province of Sindh to infer or conclude that the Petitioners fall into any of the categories delineated by the aforesaid Orders of the honorable Supreme Court.

52. In view of the categorical admission of the learned A.A.G. that no determination has ever taken place, even in the manner considered applicable by the learned A.A.G., to declare the Petitioners' occupation of the respective properties as unlawful any notice served thereupon, in the manner delineated supra, for ejection would appear to be premature at best.

53. It is our considered view, bolstered by the authorities cited supra, that the competent authority (Province of Sindh) ought to have initiated and concluded proceedings, in accordance with the law, to determine the occupation rights of the Petitioners, in the second category herein, prior to serving them with eviction notices.

54. In view of the foregoing it is just and proper that certain instructions and orders be rendered in reference to the second category of petitions under consideration herein, consistent with the prescriptions of the Division Bench judgment of this Court dated 26.02.2018 in the case of *Pakistan Tibbi Pharmaceutical Manufacturers vs. Federation of Pakistan & Others (CP D 4387 of 2014)*. It is therefore directed as follows:

- i. Immediately upon the announcement of this judgment, the competent authority (Province of Sindh) shall issue notice to each of the Petitioners in the Constitutional Petitions listed in the second category of petitions under consideration herein.
- ii. The said notice shall delineate the grounds upon which the competent authority seeks to determine the occupancy rights of the Petitioners.

- iii. Each of the said Petitioners shall be provided an opportunity of a personal hearing and the Petitioners shall also have the right to submit their replies in writing, provided that the written submissions are received by the competent authority on or before the designated time / date upon which the hearing has been scheduled in respect thereof.
- iv. The Petitioners shall be entitled to rely upon such material, record and / or evidence as may be relevant, inclusive of without limitation the material pleaded / relied upon in their respective petitions under consideration herein.
- v. The competent authority shall then, by way of a reasoned order, issue a determination in accordance with the law with respect to each Petitioner.
- vi. It is observed that such proceedings shall be conducted, uninfluenced by any observations contained herein, and concluded preferably within a period of two weeks from the date of announcement of this judgment.
- vii. Any person aggrieved by any such determination, in whole or in part, may be entitled to seek such relief before such forum and in such proceedings as may be appropriate.

55. The third category consists of a Constitutional Petition being C.P. No.D-5154 of 2015, which was decided vide order dated 06.09.2016. It may be pertinent to reproduce the contents of the relevant order herein below:

“Joint Estate Officer has filed a statement dated 26.07.2016 stating that the Estate Office is ready to allot Government quarter No.F-116, Jail Road, Karachi, in the name of the present Petitioner in place of his deceased father Khawaja Shamsul Hassan, who was a Federal Government servant. Mr. Muhammad Usman Chhipa, Joint Estate Officer, is present in person on behalf of the Estate Office. He undertakes to hand over the vacant peaceful physical possession of the aforementioned quarter to the Petitioner within seven (07) days from

today. It has been clarified to him that any breach of this undertaking shall expose him as well as all concerned to contempt of Court proceedings. Petitioner Khawaja Rauf ul Hasan is present in person. He is satisfied with the undertaking given by the above named officer. Accordingly, the present petition and listed applications are disposed of in terms of the undertaking given by Mr. Muhammad Usman Chhippa, Joint Estate Officer.”

56. Mr. Waqas Ahmad Khan, learned counsel for the Petitioner submitted that the Petitioner remains an employee of the Federal Government and despite the order referred to supra the possession of the property has not been handed over to him and, therefore, a contempt application was preferred in such regard.

57. In response thereto, it was submitted by the alleged contemnors that a subsequent petition was filed by the brother of the Petitioner, being C.P. No.D-4997 of 2016, and pursuant to interim orders passed therein the Respondents / alleged contemnors remain unable to have the property vacated and delivered to the Petitioner, as is required pursuant to the orders dated 06.09.2016 passed in this petition.

58. Since right of the Petitioner to the property in question already stands determined by a Divisional Bench of this Court, therefore, the role before us is restricted to that of passing orders upon the contempt application. It is apparent from the record that the petition, being C.P. No.D-4997 of 2016, falls in the first category identified herein above, and, therefore, the fate of the present contempt application is inextricably linked to the determination of this Court to be rendered herein in respect of the said petition.

59. The fourth category herein comprises of C.P. No.D-5005 of 2015, which is a petition filed by a serving employee of the Federal Government who seeks implementation of an allotment order whereby an official residence was allotted thereto pursuant to the Rules. The comments filed on behalf of the respondents supports the position taken by the Petitioner and it is admitted

that notwithstanding the allotment of the property to the Petitioner the possession thereof has not been given thereto on account of the same property remaining under the unauthorized occupation of a retired employee of the Federation.

60. This matter is directly connected to C.P. No.D-889 of 2016 wherein the retired official of the Government of Pakistan has obtained interim orders to sustain his occupation of the said property despite having retired from service more than a decade ago. The said petition is the constituent of the first category referred to supra, therefore, the order to be passed herein shall be predicated upon the determination reached by this Court in respect of C.P D-889 of 2016.

61. The fifth category herein comprises of C.P. No.D-7118 of 2017. Mr. Abdul Majeed Khoso, the learned counsel for the Petitioner, submitted that the Petitioner was allotted the said property on 29.10.2016 and thereafter on 04.06.2017 a notice alleging unauthorized encroachment was served upon the Petitioner by the Respondent. It may be pertinent to reproduce the relevant content of the said notice:

“In continuation to this office previous letter No.EE.KCCD-IX of 1243 dated 27.09.2017, it is once again to inform you that as reported by the Assistant Executive Engineer and Sub-Engineer concerned (Incharge of the subject Area), the unauthorized person of subjected quarter of shop have encroaching of encroached upon Federal Government Land of Public property without legal title of allotment and have thus committed offence under provision of Central Govt. Land & Building Recovery and Possession Ordinance, 1965.

So, you are therefore intimated through this letter to make efforts for removal as well as cancellation of allotment (if found involve in encroachment) of said unauthorized and illegal occupation of encroachment of Federal Govt. Land of Property at the above noted address, as the said land is under the custody of Estate Office, Karachi and the matter of allotment of cancellation of ejection comes under the jurisdiction of Estate Office, Karachi.”

62. It was demonstrated that instead of replying to the said notice, the Petitioner preferred the subject petition and obtained status quo orders which continue to operate till this date.

63. The issue of illegal encroachment is a very serious matter and the same is compounded when such a grave allegation is leveled against a serving Government employee. It is apparent that no reply to the said show cause notice has been given till date and on the contrary the present petition was filed and interim orders obtained to prevent the Respondents from proceeding further with the aforesaid notices.

64. The issue of whether or not unauthorized encroachment has taken place or not is not to be determined by this Court and also it is not for this Court to determine the culpability for any encroachment, if the same has occurred. It is the considered view of this Court that the issuance of the notice in respect of the encroachment was a correct step taken by the Respondents and that it is just and proper for the said notice to be replied to and the matter proceeded with by the appropriate authority in due compliance with the law.

65. In view of the discussion and reasoning delineated supra, the petitions under review are determined in seriatim as follows:

- i. C.P. Nos. D-2110 of 2009, 2120 of 2011, 1479 of 2012, 889 of 2016, 4997 of 2016, 733 of 2017, 1171 of 2017, 1248 of 2017, 1664 of 2017, 1699 of 2018, 48 of 2018 are hereby dismissed, along with all interim applications therein, with no order as to costs.
- ii. C.P. Nos.D-1591 of 2016, 1108 of 2017, 1455 of 2017, 2341 of 2017, 2750 of 2017, 2890 of 2017, 2898 of 2017, 4865 of 2017, 7563 of 2017, 2086 of 2018, 4287 of 2018, 4333 of 2018, 4990 of 2018, 5004 of 2018, 5057 of 2018, 5107 of 2018 and 5108 of 2018 are hereby disposed of in terms of paragraph 54 supra.
- iii. In C.P. No.D-5154 of 2015, C.M.A No. 26104 of 2016 is hereby disposed of with the direction to the Respondents / alleged contemnors to implement the Orders passed by the Court in

accordance with the law, as C.P. D-4997 of 2016 stands dismissed along with all interim applications therein.

- iv. C.P. No.D-5005 of 2015 is hereby disposed of with the direction to the Respondents to deal with the property in accordance with the law, as C.P. D-889 of 2016 stands dismissed along with all interim applications therein.
- v. C.P. No.D-7118 of 2017 is hereby dismissed, along with all interim applications therein, with no order as to costs.

66. The petitions under consideration stand determined in the above terms. The office is directed to immediately send copies hereof to the relevant respondents for implementation in accordance with the law.

J U D G E

J U D G E

Karachi.

Dated 16th July, 2018.