

**IN THE HIGH COURT OF SINDH,
CIRCUIT COURT, HYDERABAD**

**Present:
Mr. Justice Abdul Maalik Gaddi
Mr. Justice Adnan-ul-Karim Memon**

C.P. No.D-3385 of 2017

Asadullah & others	-----	Petitioners
VERSUS		
Province of Sindh & others	-----	Respondents

Dates of hearing & decision: 08.09.2020

Mr. Muhammad Sachal R. Awan advocate for petitioners.

Mr. Muhammad Rahim Gaju advocate holding brief for Mian Taj Muhammad Keerio, Advocate for respondents 6 & 7.

Nemo for Respondent No.8

Mr. Allah Bachayo Soomro, Additional Advocate General Sindh alongwith Muhammad Hayat Shaikh XEN Drainage Division Khairpur and Ghulam Shabbir Sanjrani Superintendent D.C. Office Hyderabad.

ORDER

ADNAN-UL-KARIM MEMON, J.- Through this petition, the petitioners have prayed that official respondents be directed to take over possession of the official quarters No. E-01, F-02, and H-01 situated in Left Bank Barrage Colony Hyderabad from private respondents and hand over the same to them as it has been allotted to them vide allotment orders dated 24.1.2014 and 24.3.2014. It is stated by the petitioners that official respondents have failed to hand over possession of the subject quarters to them in spite of their repeated requests as private respondents have flatly refused to vacate the quarters. Per learned counsel the subject quarters belongs to 'Irrigation Department i.e. Respondent No.1.

2. It may be observed that this matter was called in the morning, however on account of pre-occupation of learned counsel for respondents 6 & 7, the matter was kept- aside and was subsequently taken up at 11.30 am but again he remained absent and finally the matter was taken up at 1.15 pm but even then he did not turn up. Due to the aforesaid reasons, this matter was heard in presence of learned counsel representing the petitioner and A.A.G.

3. The only substantive ground which is agitated by the petitioners in the present proceedings is that they being allottees of subject official accommodation are facing hardship and mental agony due to its illegal occupation by the private respondents ; that they made representations to respondents 1 to 3 but their all efforts went in vain; that all the citizens of Pakistan are equal and the official respondents are not treating them equally and have deprived them from their legal, legitimate and constitutional rights by not taking any serious efforts to get vacated the aforesaid official accommodation from the private respondents, who belong to another department, which is violation of Article 25 of the Constitution of Islamic Republic of Pakistan, 1973; that all the citizens are equal before the law and are entitled to equal protection of law.

4. Upon notice, respondents 1 to 4 filed para-wise comments, and asserted that the subject quarters are in illegal occupation of private respondents and needs to be vacated through Anti-Encroachment Force Hyderabad.

5. We have considered the pleadings of the parties in absence of learned counsel representing respondents 6 & 7, on the ground as discussed in the preceding paragraph, contentions of learned counsel for the petitioner as well as learned AAG and have perused the material placed on record.

6. Learned A.A.G. concedes that the order was passed by Hon'ble Supreme Court directing the relevant authorities to get all the official accommodations / quarters which are in illegal occupation. In support of his above contention, he has placed on record copies of orders dated 24.10.2018 and 08.01.2019 passed by Hon'ble Supreme Court in HRC Nos. 20746, 30827-P, 30588-S and 30001-K of 2018.

7. Prima-facie the assertion of official respondents is untenable, and we are unable to digest the way they deal with the official accommodation matters and become susceptible to the pressure being exerted upon them and accommodate their favorites and thereafter leave the parties to resort the litigation on the issue, which action on their part is not appreciated.

8. After hearing the petitioners and learned A.A.G. to evaluate and assess the contention raised, while going through the relevant record as well as the Policy Governing Allotment of Residential Accommodation at Hyderabad, as amended from time to time, it is absolutely clear that subject official accommodation is available to the employees of irrigation department only. This court has already decided the issue involved in the present proceedings, in Constitutional Petition D-2110 of 2009 and other connected petitions vide common judgment dated 16th July, 2018. The Honorable

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.”

9. It may be observed that there are so many government official accommodations owned by the Provincial Government which are under unlawful and unauthorized occupation. In our view the Courts are duty bound to uphold the constitutional mandate and to keep up the beneficial 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 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 stay out and 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. It appears from the record that respondent Department is not following the accommodation policy in case of allotment of Government Accommodations and is indulged in illegal allotments on some consideration and allots the same to the employees who are not entitled. More effective approach needs to be adopted and allot the same to the employees who are legally entitled.

10. Since the private respondents admittedly belong to another department they are liable to vacate the subject quarters and the Estate Office is liable to take over possession thereof from them if any. Accordingly, respondents 1 to 4 are jointly and severally directed to take over possession of the subject quarters strictly in accordance with law and the directions of Hon'ble Supreme Court within a period of two weeks from the date of receipt of this order.

11. The petition stands disposed of in the above terms with no order as to costs.

JUDGE

JUDGE