

Order Sheet
IN THE HIGH COURT OF SINDH KARACHI
Constitutional Petition No. D –4932 of 2020

Before:

Mr. Justice Nadeem Akhtar

Mr. Justice Adnan-ul-Karim Memon

Zakia Naz

Versus

Province of Sindh and 02 others

Date of hearing & order : 02.12.2020

Mr. Shahnawaz M. Sahito, advocate for the petitioner.

ORDER

ADNAN-UL-KARIM MEMON, J. Through the instant petition, petitioner has impugned the Notice dated 04.09.2020 issued by the respondents for vacating the official accommodation i.e. Flat No. B-18, situated in Government Official Residence (GOR-II) Sindhi Muslim Co-operative Housing Society (SMCHS), Karachi, which was/is in pursuance of the order passed by the Hon'ble Supreme Court of Pakistan in HRC No.20746, 30827-P, 30588-S and 30001-K / 2018 dated 21.08.2020 and common Judgment dated 16.07.2018 passed by this Court in C.P No. D-2110 / 2019 and other connected petitions. Petitioner also seeks declaration to the effect that the decision of the Provincial Cabinet dated 22.07.2020 to revoke the one-time waiver granted vide decision of the Provincial Cabinet Meeting dated 07.01.2019 as null and void and of no legal effect.

2. At the outset, learned counsel for the petitioner concedes that the subject issue involved in these proceedings has already been set at rest by this Court vide common Judgment dated 12.10.2020 passed in C.P. No. D-4129 of 2020 and other connected petitions. For sake of convenience, an excerpt of the order dated 12.10.2020 is reproduced as under:

“15. It also appears from the record that the petitioners are attempting to convince this Court about their entitlement to official accommodation as discussed supra, whereas the record explicitly shows that the aforesaid accommodation is only available to the employees of the Government of Sindh, secretariat side only. *Prima-facie* the petitioners are unable to demonstrate any vested/fundamental right, whereby their claim for occupation/allotment of official accommodation meant for the secretariat side cadre of the Government of Sindh. The documents relied upon by them do not confer any right thereupon permitting them to ask for the continuation of the allotment of subject premises till the age of their superannuation.

16. Adverting to the point raised about a one-time waiver, suffice it to say that there is no waiver or estoppel against the law. The Provincial cabinet decided in its meeting held on 22.07.2020, which complies with the judgment passed by the Hon'ble Supreme Court as discussed supra.

17. Reverting to the second point that the petitioners are not unauthorized residents of official accommodation, suffice it to say that the basic purported permission/allotment in their favour was illegal as admittedly they are not Secretariat employees. Therefore, the superstructure of one-time waiver built thereon is also illegal.

18. Before parting with this order, 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 maintain the salutary principles of rule of law. To uphold such principles, it has been stated time and again by the superior Courts that all acts should be transparently done by the public functionaries 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 under the 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 of the Government of Sindh not only implemented the illegal orders but acted thereupon for their personal benefits/gain.

19. It appears from the record that the respondent-department is not following the decisions of the Honorable Supreme Court on the subject issue in its letter and spirit as well as accommodation policy in case of allotment of Government accommodations and is indulged in illegal allotments, extensions, and waivers in favour of employees who are not entitled. In our view, a more effective approach needs to be adopted and allotment must be made strictly in accordance with law. It may be observed that because of such arbitrary and illegal exercise of discretion by the respondents, official accommodation remains occupied by such employees who are not entitled thereto, and the employees who are legally entitled to official accommodation are deprived of such right/facility.

20. In light of the above facts and circumstances, these petitions are dismissed along with the pending application(s) with no order as to costs."

3. Since the issue involved in this petition is akin as decided by this Court in C.P. No. D-4129 of 2020 and other connected petitions vide common Judgment dated 12.10.2020, therefore, the instant petition is not maintainable under Article 199 of the Constitution is dismissed accordingly, leaving the petitioner to avail and exhaust her remedy, if any, as provided under the law.

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