

**ORDER SHEET**  
**THE HIGH COURT OF SINDH, KARACHI**  
C.P. No.D-2764 of 2023

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Dated: Order with signature of Judge(s)

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- 1.For orders on CMA No.13358/2023.
- 2.For orders on office objections No.20 & 32.
- 3.For orders on CMA No.13359/2023.
- 4.For hearing of Main Case.

Yousuf Ali Sayeed, J  
Mohammad Abdur Rahman, J

Date of hearing : 05.06.2023:-

Petitioner : Rashid Ahmed through Mr. Abu Bakar Memon, Advocate.

Respondents : Province of Sindh & Others.

**ORDER**

**Mohammad Abdur Rahman, J.** This Petition has been maintained by the Petitioner under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 seeking directions as against the Respondents to better secure his right, title and interest to Plot No. L-3024/A, Block 2, Metroville III, KDA Scheme No. 33, Karachi admeasuring 89.70 square yards (hereinafter referred to as the "Said Property").

2. The Petitioner contends that in or around the year 2000 he was allotted the Said Property by the Karachi Development Authority and thereafter applied for and obtained approvals from the Sindh Building Control Authority to construct thereon. After he had obtained the requisite approval, he commenced construction but was thereafter restrained by the Karachi Development Authority on the ground that the title documents that he had obtained were obtained through practicing fraud.

3. Being aggrieved by such actions of the Karachi Development Authority, the Petitioner preferred a complaint before the Ombudsman Sindh and which was granted on 29 November 2019 by making the following recommendations:

“ ... 12. In view of the above and in exercise of powers vested in me under Section 11 of the Establishment of the Office of Ombudsman for Province of Sindh Act, 1991 the Chairman, Anti-Corruption Establishment Department, Government of Sindh is directed to initiate inquiry against the Assistant Director (New Scheme) Land Management Department KDA who has illegally issued allotment order 20.08.1989 without verification and existence of plot NO. L-3C24, Block 2, Metroville-III, in master plan and process the case against the said officer according to law & regulation of Anti Corruption Department.

13. The Director General, KDA is also directed to allot and provide an alternative plot of the same size and value in Scheme- 33 to the complainant or refund him the cost of plot at present market value because complainant could not be made to suffer due to gross mal-administration of the agency.”

4. A representation was preferred by the Karachi Development Authority under Section 33 of the Establishment of the Office of Ombudsman for Province of Sindh Act, 1991 before the Governor, Sindh against the Recommendations of the Ombudsman Sindh dated 29 November 2019 and which were dismissed on 12 August 2021.

5. It seems that despite the efforts of the Petitioner the Recommendations made by the Ombudsman Sindh on 29 November 2019 are not being implemented and hence this Petition has been preferred seeking the following relief:

“a) To issue a writ of mandamus by directing the Respondent No. 7 to comply with the order dated 29.11.2019 which is as under:

“12. The Chairman, Anti-Corruption Establishment Department Government of Sindh is directed to initiate

inquiry against the Assistant Director (New Scheme) Land Management Department KDA who issued allotment order dated 20.08.1989 without verification and existence of Plot No.L-3024-A, Block-2, Metroville-III, in master plan and process the case against the said officer according to law & regulation of Anti-Corruption Department

b) To issue a writ of mandamus by directing the Respondent No. 6, to comply with the para No.13 of the decision dated 29.11.2019, which is as under:

“13. The Director General, KDA is also directed to allot and provide an alternate plot of the same size and value in scheme-33 to the complainant or refund him the costs of plot at present market value because complainant could not be made to suffer due to gross mal-administration of the agency.”

c) Cost of the Petition.

d) To pass any other or suitable order which under the circumstances this Hon'ble Court deems fit and proper.”

6. The counsel for the Petitioner appeared before this Court and stated that despite his best efforts, the recommendations made by the Ombudsman Sindh are not being implemented and he is as such seeking that directions be given by this Court to implement the order passed by the Ombudsman Sindh. He did not forward and legal citations in support of his contentions.

7. We have heard the Counsel for the Petitioner and have perused the record. The jurisdiction that is available to this court under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 in respect of the functioning of the office of the Ombudsman has been considered by the Supreme Court of Pakistan in the decision reported as **Pakistan International Airlines Corporation Karachi vs. Wafaqi Mohtasib**<sup>1</sup> wherein it was held that:<sup>2</sup>

“ ... 11. As to the question, whether the Constitutional petition filed by the appellant before the High Court was

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<sup>1</sup> 1998 PLC 212

<sup>2</sup> *Ibid* at pg.220

competent, it may be pointed out that the learned Judges of the High Court have first referred to Article 32 of P.O. 1 of 1983 which provides for a representation to the President in respect of an order passed by the Mohtasib. Reference was also made to Article 29 in the said Order, which bars the jurisdiction of the Courts in this regard. They then went on to hold that since the petition filed by the respondent No.2 before the Mohtasib was competent, no interference with the same in the exercise of the Constitutional jurisdiction was warranted. It may however, be pointed out that, now it is well established that any order passed by the Mohtasib can be interfered with under Article 199 of the Constitution if it suffers from lack of jurisdiction. In fact, the learned Judges of the High Court have themselves referred to the case of International Cargo Handling, Company (Pvt.) Ltd. v. Port Bin Qasim Authority (PLD 1992 Kar. 65) wherein it was held:

"No doubt, the jurisdiction of Courts is barred, inter alia, in respect of any decision or order made including order of injunction or stay, by the Mohtasib but where the order from the face of it is repugnant to law under which it was made or suffers from want of jurisdiction, a Court may invoke its inherent jurisdiction vested in it under law so as to prevent injustice done to an aggrieved person."

There can be no cavil with the above observations. Having already held that the said order of the Mohtasib is without jurisdiction, the same could, therefore, be interfered with by the High Court. The learned Judges, therefore, erroneously declined to set aside the said order."

8. Clearly, while this Court has jurisdiction under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 to interfere with a decision passed by the Ombudsman Sindh in the event that the Ombudsman takes cognizance of a complaint filed in excess of its jurisdiction under the Establishment of the Office of Ombudsman for the Province of Sindh 1991; this Court's jurisdiction under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 does not extend to implementing or executing the orders passed by the Ombudsman Sindh. It has been considered by the Supreme Court of Pakistan in in **Faraz Ahmed vs. Federation of Pakistan**<sup>3</sup> wherein it has been held that:<sup>4</sup>

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<sup>3</sup> 2022 PLC 198

<sup>4</sup> *Ibid* at pg. 203

“ ... It is quite astounding that the petitioner had filed petition for implementation of the Judgment of the Labour Court in the High Court when no such provision is available under Article 199 of the Constitution of 1973 whereby the execution or implementation of Judgment passed by the subordinate Courts may be implemented by the High Court. It was not the case within the premise or confines of Sub-Article (2) of Article 187 of the Constitution in which any decision, order or decree passed by the Supreme Court may be executed by a High Court as if it had been issued by the High Court.”

Similarly, this Court in **Umer Gul vs. Government of Sindh**<sup>5</sup>2007 YLR 3191 has held that:<sup>6</sup>

“ ... 3. Even otherwise, from the perusal of the prayer clause, it transpires that the petitioner has approached this court for implementation/execution of the order of the Chairman Provincial Transport Authority Sindh and the Ombudsman. This Court does not act as an executing Court of any authority/Court or Tribunal except the Supreme Court in view of the provisions of Article 187 of the Constitution of the Islamic Republic of Pakistan.”

9. This proposition is clearly correct as an entire mechanism has been provided in Section 12 read with Sub-Section (5) of Section 11 of the Establishment of the Office of Ombudsman for the Province of Sindh 1991 whereby the Ombudsman Sindh has been given certain powers to implement its recommendations. Sub-Section (5) of Section 11 of the Establishment of the Office of Ombudsman for the Province of Sindh 1991 clarifies that:

“ ... (5) If the Agency concerned does not comply with the recommendations of the Ombudsman or does not give reasons to the satisfaction of the Ombudsman for non-compliance, it shall be treated as "Defiance of Recommendations" and shall be dealt with as hereinafter provided.

10. As such, in the event that the “Agency” concerned does not comply with the recommendations of the Ombudsman Sindh, the Complainant can invoke the jurisdiction of the Ombudsman under Section 12 of the

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<sup>5</sup> 2007 YLR 3191

<sup>6</sup> *Ibid* at pg.3192

## Establishment of the Office of Ombudsman for the Province of Sindh 1991

which states as under:

- “ ... 12. (1) If there is a "Defiance of Recommendations" by any public servant in any Agency with regard to the implementation of a recommendation given by the Ombudsman, the Ombudsman may refer the matter to the Governor who may, in his discretion, direct the Agency to implement the recommendation and inform the Ombudsman accordingly.
- (2) In each instance of "Defiance of Recommendations" a report by the Ombudsman shall become a part of the personal file or Character Roll of the public servant primarily responsible for the defiance:

Provided that the public servant concerned had been granted an opportunity to be heard in the matter.”

11. Clearly an alternative and efficacious remedy available to the petitioner exists under Section 12 read with Sub-Section (5) of Section 11 of the Establishment of the Office of Ombudsman for the Province of Sindh 1991 to implement the order passed by the Ombudsman Sindh and which he is free to avail if he deems fit. In addition and purely from a constitutional perspective this Court does not have jurisdiction under Article 199 of the Constitution to act as an implementing or executing court for recommendations made by the Ombudsman Sindh under the Establishment of the Office of Ombudsman for the Province of Sindh 1991, as under the Constitution of the Islamic Republic of Pakistan, 1973 the only provision that exists conferring such implementing or executing jurisdiction on this Court of any other Court of quasi-judicial forum is, as has been held in **Umer Gul vs. Government of Sindh**<sup>7</sup>, to be found in Sub- Article (2) of Article 187 of the Constitution of the Islamic Republic of Pakistan, 1973 and which is to implement or execute orders passed by the Supreme Court of Pakistan.

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<sup>7</sup> 2007 YLR 3191

12. For the reasons stated as above, we are therefore clear that this petition for implementing or executing the recommendations of the Ombudsman Sindh is not maintainable and which is therefore dismissed along with all pending applications with no order as to costs.

JUDGE

Nasir PS.

JUDGE