

IN THE HIGH COURT OF SINDH, KARACHI
CP No.D-979 of 2022

DATE ORDER WITH SIGNATURE(S) OF JUDGE(S)

BEFORE: Irfan Saadat Khan, ACJ
& Zulfiqar Ahmad Khan, J

Saeed Ahmed Qazi,
Petitioner : through Malik Khushal Khan, Advocate
assisted by Mr. Fahad Akbar, Advocate.

..Vs..

1. Governor Secretariat (Public)
Governor House, Karachi.
Respondent No.1
 2. Provincial Ombudsman Sindh
Respondent No.2 : Mr. Miran Muhammad Shah,
Addl. Advocate General
Sindh for Respondents No.1 & 2.
 3. Project Director
Lines Area RE-Development
Project, Respondent No.3. : Nemo.
 4. Sohail Abdul Sattar
Respondent No.4 : through Mr. Abdul Moiz
Jaffery, Advocate.
- Date of hearing : 24.10.2023
- Date of decision : 27.10.2023

JUDGEMENT

Irfan Saadat Khan, ACJ. This petition has been filed impugning the order passed by the Governor of Sindh (GOS) bearing No.GS/7-439/2021 (SO-VI/Ombs)/2270 dated 26th January, 2022.

2. Briefly stated the facts of the case are that a plot bearing No.C-10/2-6 Sector 8-A, Scheme No.35 Lines Area Re-Development Project Karachi (hereinafter referred to as LARP) measuring 800 sq.yds (hereinafter referred to as old plot) was

allotted to one Anwar Hussain by the Respondent No.3 on 10.1.2014. It was explained that since the said old plot belonging to Anwar Hussain, was encroached upon, he filed a complaint with the Provincial Ombudsman (hereinafter referred to as PO) on the ground that since his above referred property was being encroached upon, his this plot may be changed with the Plot No.C-2/2-1 Sector-1 LARP (hereinafter referred to as new plot). It was averred in the said complaint, bearing No.POS/3173/2013/DG-I, that since no action had been taken by the LARP or other authorities on the request made by him, his complaint for change of plot may be accepted. The PO upon his complaint intervened in the matter and after hearing the LARP and other authorities allowed the complaint by directing LARP to allot new plot to him vide order dated 06.1.2014, with further directions to furnish compliance report within 45 days. It was averred that the said Anwar Hussain then sold out the new plot to one Sharafat Ali, who subsequently sold it to the present petitioner.

3. It was the claim of the Respondent No.4 that he had purchased the new plot in the year 2014 by way of an auction and is the real owner of the said new plot. The said Respondent No.4, however, when started making construction in the year 2021 was stopped by the LARP and other authorities and was apprised that by virtue of the order of the PO the said new plot has been allotted to the present petitioner some six years back. It would not be out of place to mention here that the subject matter of new plot was already a matter of dispute in Suit No.652/2004 (J.M No.76/2016) between the present Respondent No.4 and M/s.Wheel Automobiles

wherein the present petitioner is not a party. When the Respondent No.4 came to know about the situation, he filed a representation, under Section 32 of the Establishment of the Office of Ombudsman for the Province of Sindh Act, 1991 (the Act), against the order of the PO dated 06.1.2014. The said representation thereafter was heard by issuing notices to all the concerned parties and thereafter the GOS vide order dated 26.1.2022 (impugned order), allowed the same by setting aside the order of the PO and directing the affectee(s) to seek their remedy from the Court of competent jurisdiction i.e. the High Court of Sindh, where the matter is already subjudice. It is against this order of the GOS that the present petition has been filed.

4. Malik Khushal Khan, Advocate has appeared on behalf of the petitioner and stated that the original allottee of old plot was one Anwar Hussain but when his property was encroached, he filed a representation before the PO for shifting of his old plot to new plot, which was accepted by the PO and as per his instructions new plot was transferred in his name after fulfilling the legal & codal formalities. He stated that after a lapse of six years, the Respondent No.4 moved a representation, which was illegally allowed by the GOS which according to him firstly is miserably and hopelessly time barred, secondly while deciding the above matter proper opportunity of hearing was not provided to the petitioner. He stated that without indulging into factual aspects of the matter as to who is the owner of the property, which admittedly is a matter of dispute in Suit No.2469/2015, Suit No.646/2021, Suit No.652/2004 & J.M No.76/2016, in which suits the petitioner is

either a defendant or has filed applications under Order 1 Rule 10 CPC for becoming a party. He, therefore, stated that the matter may be remanded to the GOS for fresh decision in accordance with the law, after providing opportunity of hearing to the petitioner. He, in this regard, invited our attention to the following decisions;-

- i. Mst. Zamrad Begum and another ..Vs.. Muhammad Rafiq Choudhary and 2 others (**2017 CLC 1571**)
- ii. Ch. Ghulam Nabi and 2 others ..Vs.. Government of Sindh through Chief Secretary and 3 others (**2004 YLR 252**)
- iii. Federation of Pakistan through Secretary Education, Islamabad ...Vs... Profession Dr. Anwar and 2 others (**2006 SCMR 382**)
- iv. Vakil Ahmed Siddiqui ...Vs... State Life Insurance Corporation of Pakistan and another (**2011 CLC 2002**)

5. Mr. Abdul Moiz Jaffery, Advocate has appeared on behalf of the Respondent No.4 and stated that the instant petition is not maintainable on two grounds; firstly it involves controverted and disputed question of facts, which are already subjudice in a number of suits, in which admittedly the petitioner is either a defendant or has filed applications under Order 1 Rule 10 CPC for becoming a party. Secondly opportunity of hearing was duly provided to the petitioner by the GOS, which is evident from para-5 of the order, hence according to him the contention of the learned counsel for the petitioner that opportunity of hearing was not provided to him is misconceived and incorrect. He stated that all the decisions relied upon by the learned counsel for the petitioner, are, thus, not applicable because in the instant matter opportunity of hearing, coupled with fair trial, was duly provided to the

petitioner, who chooses not to appear before the GOS and therefore, the impugned order is in accordance with the law, which may be upheld and this petition may be dismissed by imposing heavy cost.

6. Mr. Miran Muhammad Shah, Addl. Advocate General Sindh appearing for Respondents No.1 & 2 has adopted the arguments of Mr. Abdul Moiz Jaffery, and stated that since opportunity of hearing was provided to the petitioner, therefore, the instant petition is not maintainable and secondly since the matter involves disputed and controverted question of facts on which the matter is already subjudice in the suits, hence, on this count also this petition is not maintainable and the parties were rightly directed to agitate their matter in the above referred suits.

7. Nobody has appeared on behalf of the Respondent No.3 despite proper service of notice.

8. We have heard all the learned counsel at considerable length and have also perused the record and the decisions cited by them at the bar.

9. Malik Khushal Khan, Advocate while arguing the matter has categorically stated that he will confine his argument only to the extent that since opportunity of hearing was not provided to the petitioner by the GOS, therefore the matter may be remanded. We, therefore, under the circumstances, would restrict our judgment on this aspect only, without indulging into the aspect that as to who is the owner of the new plot as the matter is subjudice in the suits referred above, wherein the petitioner and the Respondent

No.4 would be at liberty to agitate the same and get the matter decided and disposed of in accordance with the law.

10. Apropos, the aspect of opportunity of hearing is concerned perusal of the order of GOS reveals that in para-5 it is stated that “Besides opportunity of hearing was also provided to the parties concerned” which clearly denotes that the GOS while passing the order has provided opportunity of hearing to the parties concerned. The order of the GOS clearly denotes that he has not touched upon the merits of the case on the ground that the matter is subjudice before the High Court of Sindh. Moreover, as per Section 32 of the Act, wherein an aggrieved party has to be provided opportunity of hearing is concerned, it is not incumbent upon the GOS or the President, as the case may be, to provide a personal hearing as under such circumstances a notice to the concerned parties, in our view, is sufficient compliance of the said provision of the law. In the present matter opportunity of hearing, as could be seen from para-5 of the order, was provided to the concerned parties. Under somewhat similar circumstances in the case of *Raza Fecto Tractors (Pvt) Ltd., ..Vs.. Federation of Pakistan and others (2015 PTD 438)*

a Division Bench of this Court observed as under:-

“We are not in agreement with such contention as raised on behalf of the petitioner for a number of reasons, discussed hereinafter. Firstly, it is not the requirement of law that a person is to be given a personal hearing by the President in such matters while deciding a representation filed by the Revenue Division in terms of section 32 of the FTO Ordinance, 2000. However, keeping in view the principles of natural justice i.e. "no one shall be condemned unheard", which is to be applied in judicial, quasi judicial and even in Administrative proceedings, an opportunity of filing comments or objections before the President under section 32 of the FTO Ordinance,

2000, would meet the requirements of sufficient opportunity.”

11. In the cases where no opportunity of hearing was provided and the order has been passed without adhering to this requirement of law then in such cases it could be argued that the order of the Competent Authority be it the GOS or President does not fulfill the norms and parameters of laws however in the present matter, we are of the view, that opportunity of hearing was provided by the GOS to the parties. Moreover, the GOS has also rightly refrained himself from passing any order on the ground of ownership of the new plot, since the matter is subjudice before the High Court.

12. Hence, in our view, it would be in the interest of both the respective parties to appear in the pending suits, let the issues get framed, witness and the evidences recorded and the matter decided in accordance with the law. Thus in our view no interference in the present matter, with regard to veracity or otherwise of the order passed by the GOS, thus is warranted. We therefore, under the circumstances, dispose of this petition, alongwith the listed and pending applications, by directing the parties to appear in the suits and make their submissions in accordance with the law. There shall however be no order as to costs.

ACTING CHIEF JUSTICE

JUDGE

Karachi
Dated: 27.10.2023

SM