

OFFICE OF THE FEDERAL OMBUDSPERSON

FOR PROTECTION AGAINST HARASSMENT OF WOMEN

AT THE WORKPLACE, ISLAMABAD

FORM OF ORDER SHEET

Complaint No. FOH-HQR/0000200/2023

Date of Institution: 20-07-2023

Serial No. of Order of Proceedings	Date of order of Proceedings	THE ENFORCEMENT OF WOMEN'S PROPERTY RIGHTS ACT, 2020 Order of other proceedings with Signature of Federal Ombudsperson TITLE: Fakhra Sultana & others Vs Obaid Akhtar & others
1	2	3
09	27-11-2023	<p><u>Subject: Order on Rejection of Complaint</u></p> <p>1. The facts of the case are that on 20.07.2023 Fakhra Sultana and Samina Akhtar (Complainants) filed a complaint before this forum under Sections 4 and 5 of the Enforcement of Women's Property Rights Act, 2020 (Act) against Obaid Akhtar (Respondent No.1). They alleged that after the death of one Akhtar Khan, who was the husband of Complainant No.1 and the father of Complainant No.2, Respondent No.1, who is the son of Complainant No.1 and the brother of Complainant No.2, took charge of all succession matters. However, instead of distributing the various properties amongst the legal heirs as per the family settlement, Respondent No.1 became greedy and resiled from the same. Although in the complaint the Complainants have listed three properties, their grievance is only to the extent of Plot No.74, St No.8, Block E, Gulberg Green, Islamabad (suit property). The Complainants have stated in the complaint that under false pretenses Respondent No.1 got the suit property transferred in his name and in the name of Bilal Akhtar (Respondent No.2) who is also the son and brother of Complainant Nos.1 and 2 respectively. This transfer was carried out via a Surrender Deed dated 11.10.2021 (Annex-B at pgs.9-12). Through this Surrender Deed the Complainants along with Sabina Akhtar (Respondent No.3), who is the daughter and sister of Complainant Nos.1 and 2 respectively, surrendered their 'entire shares, right and ownership' in the suit property to Respondent Nos.1 and 2. The Surrender Deed contains the signatures of the Complainants and Respondent No.3 which signs are not denied by them. They have also admitted that at the time of signing the Surrender Deed they were aware of its contents. The Surrender Deed has even been registered with the sub-Registrar, Islamabad on 12.10.2021.</p>

2. In response to the complaint Respondent No.1 filed his written reply wherein he challenged the locus standi of the Complainants to file the complaint in the presence of the registered Surrender Deed. He prayed that in the circumstances the instant complaint ought to be rejected by this forum.

3. I have heard the arguments of the parties and have also perused the record.

4. Under the provisions of the Act, this forum can only take cognizance of a complaint filed by a woman if two conditions are satisfied by her, namely, that:

- i. The property is situated in Islamabad Capital Territory (refer Section 1(2) of the Act); and
- ii. The woman is deprived of either the ownership and/or the possession of her property by any means (refer Section 4(1) of the Act).

It is not denied by either side that the suit property is located within the boundaries of Islamabad therefore the Complainants have fulfilled the first condition of maintainability. However, it is the second condition which is not satisfied in the present case. The Complainants after having signed the Surrender Deed do not have any title or interest left in the suit property. As a result, they cannot claim to have been deprived of its ownership and/or possession. I am fortified in my stance by the recent judgment of the Islamabad High Court delivered in **Mohsin Ali Khan Vs. Federal Ombudsman Secretariat for Protection against Harassment of Women at the Workplace, Islamabad** (2022 CLC 1955) wherein the Court held that:

“20. ...(d) Any woman can file a complaint under Enforcement of Women's Property Rights Act, 2020 who owns any property in Islamabad Capital Territory by way of registered sale deed, mutation, allotment letter, provisional allotment letter or through any other legal instrument, through which a property rights are conveyed to her with specific details and description...”

(emphasis supplied)

Since, as mentioned above, the Complainants have relinquished their share in the suit property in favour of Respondent Nos.1 and 2 this forum is barred from taking notice of their complaint because they do not own the suit property anymore.

5. In such a situation the appropriate course of action for the Complainants would be to first have the Surrender Deed cancelled by the competent court of law. Since the Complainants allege that they signed the Surrender Deed because of the assurances given by

Respondent No.1 from which he has reneged, the matter now requires in-depth investigation, detailed recording of evidence and intricate adjudication. I therefore deem it proper to invoke my power under Section 6 of the Act to direct the office to forward the following reference to the concerned civil court for determination:

“Was the Surrender Deed dated 11.10.2021 procured by Respondent No.1 through fraudulent means?”

6. Copies of the complaint and Respondent No.1’s reply shall be attached with the reference. The reference and its connected material shall be sent to the concerned civil court within 7 days of this order.

7. The instant complaint is disposed of in the above terms.

FEDERAL OMBUDSPERSON