

OFFICE OF THE FEDERAL OMBUDSPERSON

FOR PROTECTION AGAINST HARASSMENT OF WOMEN

AT THE WORKPLACE, ISLAMABAD

FORM OF ORDER SHEET

Complaint No. FOH-HQR/0000298/2023

Date of Institution: 11-10-2023

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 HIRA ISHTIAQ VS MOHI UD DIN DILSHAD & OTHERS Property Description: House No.8, Street No. 25-B, Block-H, Soan Garden Housing Society Islamabad
1	2	3
17	15-04-2024	<p><u>Subject:</u> Final Order on Complaint</p> <p>1. The present complaint has been filed by Hira Ishtiaq (Complainant) against Mohi-ud-Din Dilshad (Respondent No.1) and Atif Qureshi Muhammad (Respondent No.2) who are her brothers-in-law. In her complaint the Complainant has stated that her now deceased husband, Sulman Arshad Qureshi, was the sole and absolute owner of House No.8, Street No. 25-B, Block-H, Soan Garden Housing Society Islamabad (suit house). After her husband's death the Complainant filed a suit for declaration of legal heirship which was decreed on 12.06.2023. In the decree the Complainant, her two minor children and Muhammad Arshad Qureshi (Respondent No.3), father-in-law of the Complainant, were declared the surviving legal heirs of the Complainant's deceased husband. On the basis of this decree the Complainant got the suit house transferred in the names of all the legal heirs as per their respective shari shares. A copy of the transfer letter is available on the record. However, during the Complainant's iddat period Respondent Nos.1 and 2 entered the suit house without her permission and exerted undue pressure on her to marry Respondent No.1. They also illegally started occupying the suit house. Feeling aggrieved the Complainant approached this forum under Section 4 of the Enforcement of Women's Property Rights Act, 2020 (Act) seeking recovery of the full possession of the suit house. The complaint was contested by Respondent Nos.1 and 2 who submitted that the suit house was originally purchased by the deceased mother of Respondent Nos.1 and 2, who was also the mother-in-law of the Complainant, but later on in 2018 the suit house was transferred in the name of the deceased husband of the Complainant via a fraudulent gift deed. That Respondent Nos.1 and 2 have challenged the gift deed before the civil court through a suit for 'declaration,</p>

cancellation of gift deed and transfer letters etc. & perpetual injunction.’ According to Respondent Nos.1 and 2 it is the Complainant who is attempting to deprive them of their shari share in connivance with her family members. They therefore prayed that the complaint be dismissed with special costs. Thereafter proceedings in the matter progressed with final arguments heard by me on 02.04.2024.

2. However, before I discuss the merits of the complaint it is important to mention here that during the pendency of the complaint this forum passed two status quo orders in respect of the suit house on 19.10.2023 and 22.01.2024 and directed the Respondents to not interfere with the Complainant’s possession of the suit house. Nevertheless, despite these orders the Complainant has contended that the Respondents are denying her entry to the suit house. In this regard, SHO PS Lohi Bher was directed to facilitate the Complainant in accessing the suit house. Nonetheless, instead of complying with this forum’s direction SHO PS Lohi Bher has merely stated that a civil suit is pending in respect of the suit house, the final decision of which is yet to be made. This action of the SHO not only deprived the Complainant of her right to use the suit house but also amounts to willful defiance of this forum’s clear command that the Complainant be allowed entry into the suit house. In these circumstances, office shall forward a complaint to IG Islamabad Police for proceeding against SHO PS Lohi Bher for not complying with the direction of this forum. Compliance report shall be submitted in this respect by IG Islamabad Police on **23.04.2024**.

3. Coming now to the substance of the complaint, the Learned counsel for the Complainant has argued that the suit house belongs to the Complainant, her two minor children and Respondent No.3. In support of his stance he has provided this forum with the copy of the transfer letter wherein title of the suit house has been conferred on the Complainant, her two minor children and Respondent No.3. Respondent Nos.1 and 2 have attempted to bypass the transfer letter by asserting that they have challenged the gift deed made in favour of the deceased husband of the Complainant which has resulted in the said transfer letter thereby depriving them and other legal heirs of their shari shares. They have also argued that since a civil suit is now pending in respect of the suit house this forum should refrain from hearing the complaint as per the provisions of Section 7 of the Act.

4. Having heard the Learned counsel for the parties I find myself unable to agree with the contention advanced by Respondent Nos.1 and 2. The Complainant has through proper documentation established that she is the owner of the suit house and so entitled to relief by this forum [ref: **Mohsin Ali Khan Vs. Federal Ombudsman Secretariat for Protection against Harassment of Women at the Workplace, Islamabad** (2022 CLC 1955)]

at para 20(d)], except to the extent of 1/6th share which belongs to Respondent No.3 and which the Complainant is willing to purchase at market value. It is also relevant to note that in their reply filed before this forum Soan Garden Housing Society (**Respondent No.4**) has admitted that the suit house is in the names of the Complainant, her two minor children and Respondent No.3. Therefore, as per the available record Respondent Nos.1 and 2 have no concern whatsoever with the suit house. They are at liberty to challenge the gift deed in favour of the Complainant's deceased husband before the competent court of law and in fact they have already undertaken this course of action. However, because their civil suit was filed on 25.11.2023, after the present complaint was submitted before this forum, this forum cannot be restrained from deciding the complaint on its merits. Reliance in this regard is placed on a previous order of this forum dated 25.03.2024 passed in **Complaint No. FOH-HQR/0000132/2023** wherein it has been held:

"3. ...The two civil suits that the Respondents have referred to in support of their stance that the matter should not be heard by this forum were filed on 12.12.2023 which is nearly seven months after the Complainant approached this forum for relief. In such a situation, the Act is silent on what course is to be adopted by this forum. Be that as it may, the scheme of the Act is such, as evidenced by Section 11 *ibid* which bars the jurisdiction of courts and other authorities from questioning the validity of any action taken and order passed by this forum under the Act or from granting an injunction or stay or passing an interim order in any proceeding pending before this forum under the Act, that it is logical to assume that after a complaint is filed before this forum no other court can take cognizance of the same. It is relevant to mention here that a similar principle is also followed by the civil courts which is outlined in Section 10 of the CPC..."

(emphasis supplied)

Further, the Learned counsel for Respondent Nos.1 and 2 has informed this forum that the application for temporary injunction filed by his clients has been rejected by both the civil court as well as the appellate court. Therefore, presently the gift deed subsists. Given the above situation the continuing occupation of the suit house by Respondent Nos.1 and 2 is illegal. Accordingly, I invoke my power under Section 5(1) of the Act and direct Deputy Commissioner, Islamabad to put the Complainant into possession of the entire suit house and submit his compliance report on **23.04.2024**. SHO PS Lohi Bher is also directed to facilitate Deputy Commissioner, Islamabad in the discharge of his duties, positively. Insofar as Respondent No.3's 1/6th share is concerned since the Complainant has expressed her interest in purchasing it and the same cannot be partitioned, the share shall be put up for internal auction. File shall come up for determination of the market value of the share of Respondent No.3 on **23.04.2024**.

5. Before I part with this order I would like to address an application filed by Respondent No.1 regarding the Complainant's alleged fraudulent transfer of Honda Vehicle, registered as ICT-MR-523 in her name from that of her deceased husband's name. The Act only permits women who are deprived of the ownership and/or possession of their property to file a complaint before this forum. If any male, however, is deprived of his property he must resort to the competent forum for redressal of his grievance because this forum is not empowered to entertain his complaint. Consequently, if Respondent No.1 wishes to pursue the matter of the vehicle he must approach the appropriate authority.

FEDERAL OMBUDSPERSON