

OFFICE OF THE OMBUDSMAN

Islamabad

FORM OF ORDER SHEET

Complaint No. FOH-HQR/00000068/2021

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 Ombudsman TITLE: NAHEED AMIN VS MUHAMMAD SAFEER & OTHERS
1	2	3
	31-08-2021	<p>Complaint No. <u>FOH-HQR/00000068/2021</u></p> <p>The background, giving rise to the present complaint, is given below:</p> <p>Malik Muhammad Ameen Awan (late) was co-owner in the land comprised in Khewat No. 235 Khasra No. 458 situated in the limits of Mouza Sara-e-Madu tehsil and district Islamabad. The area of this khasra No. was 19 kanal 19 marla. Malik Muhammad Amin was owner of 9 kanal 19 marla, whereas the remaining area measuring 10 kanal was recorded in the name of Ehsan-ul-Haq S/o Iqbal.</p> <p>The above facts are clearly established on the available revenue record having never been denied by any person. Since the above mentioned property was a joint land, after the demise of Malik Muhammad Amin Awan, his legal heirs namely Ms. Nahid Amin and others approached the revenue authority seeking the official partition of khasra No. 458. The concerned revenue officials followed the required legal process and partitioned khasra No. 458 into two parts i.e. khasra No. 458/1 and khasra No. 458/2. Khasra No. 458/1 measuring 9 kanal 19 marlas was allotted to Ms. Nahid Amin etc</p>

while khasra No. 458/2 measuring 9 kanal 19 marla was given to Ehsan-ul-Haq.

Record in this respect is fully available on the file with all details, maps and measurements. Partition above mentioned was given effect to by attestation of mutation No. 3390 dated on 07-08-2020. The owners of khasra No. 458/1 approached the revenue authority for possession of their share measuring 9 kanal 9 marlas. Revenue official (patwari halqa) visited the site in presence of all the stakeholders including the present accused-respondents Muhamamd Safeer Awan etc. During the spot inspection by the revenue official it was noted that some construction also existed in the said khasra No. which fall partially in khasra 458/1 and partially khasra No.458/2.

As some portion of the subject property had been constructed upon by the accused-respondents Muhammad Safeer & others, they became hurdle in the way of delivery of possession of the entire area measuring 9 kanal 19 marla to the legal heirs of Malik Muhammad Amin Awan. Due to their resistance, the owners i.e. Ms. Nahid Amin etc approached the civil court Islamabad in a suit for declaration and permanent injunction. They took the plea that after the partition of the suit property, illegal constructions were found on 3 to 4 kanals for which they applied to the revenue authorities, but were directed to approach the Civil Court for redressal of their grievances.

Meanwhile the Complainant Ms. Nahid Amin and others also approached this forum, filing the instant complaint under section 7 of the Women's Property Rights Act 2020 for recovery and restoration of the area illegally occupied by the accused-respondent. Narrating all the relevant facts of the case it was submitted by the Complainants that the accused-respondents had been illegally

occupying and possessing their 3 to 4 kanals of land out of khasra No. 458/1 and as such its possession be restored to the rightful owners. It was further alleged by the Complainants that their adversaries belonged to "qabza mafia" and took over their land illegally and unlawfully. The Complainants prayed for invoking the provisions of section 7 of the Women's property Rights Act 2020, recommending the learned Civil Court to put the case in abeyance or to terminate the proceedings there.

In view of the above complaint at this forum, the matter was referred to Deputy Commissioner Islamabad for inquiry and report within the meanings of sub section 2 of section 4 of the Enforcement of Women's Property Rights Act 2020. The required inquiry was conducted by Assistant Commissioner, Islamabad Dr. Sania Hameed Pasha who furnished the report to this forum to the effect that the Complainants were physically possessing about 7 kanals of land out of their due legal share of 9 kanal and 19 marlas while the remaining land was in the possession of accused-respondents 1 to 12. It was also pointed out that there were number of constructed houses on that part of land. According to the said report the accused-respondents who were in the possession of that land could not produce legal documents to substantiate their right of possession on the said land.

Accused-respondents, when summoned by this forum, they submitted their reply (written defense) taking the plea that this matter was already subjudice before Civil Court Islamabad and hence could not be entertained at this forum. They also questioned the validity of the partition proceedings of khasra No. 458 before the revenue authority on the ground that the revenue authority was not competent to conduct partition process. Several other objections were also raised by the accused particularly accused No. 4 to 7 & 9.

They took the plea that in fact they had purchased the land, under their houses, from predecessor in interest of the Complainants paying him handsome amount in this connection. According to the said accused the transaction with the previous owner was made orally in presence of three witnesses.

In the above backdrop I heard the arguments of the learned counsel for the parties and with their assistance gone through the record available on the file.

It is evident from the available record that the Complainants being legal heirs of Malik Muhammad Ameen Awan (late) are owners Khewat No. 235 Khasra No. 458/1 situated in the limits of Mouza Sara-e-Madu tehsil and district Islamabad. This land has been fallen into the lot of the Complainants by way of official partition carried out by the competent revenue authority. Ownership and entitlement of the Complainants has not denied even by the accused-respondents.

The objections of the accused-respondents that revenue authority was not competent to carry out the partition proceedings is quite irrelevant at this forum because, firstly they participated in the partition proceedings and secondly they did not challenge the proceedings before any higher competent forum. At this time the respondents have no right or saying to challenge the jurisdiction of the revenue authority. The other plea of the respondents that they entered into verbal transaction with the predecessor in interest of the Complainants and paid him huge amount as a sale consideration of that land is highly incredible, unfounded and untrustworthy. They could not be believed or expected to have paid the alleged amount to the owner without executing any written document. They could not prove why they did not make the alleged transaction through any, written document particularly sale mutation or registered deed, when

there was no legal hurdle in this regard. Such a fabricated and self made story cannot be acceptable to a prudent mind. Unfortunately, different mafias particularly land mafia is fully operative in all parts of the country. This mafia has greedy eyes on those properties which are apparently owned by less important or weak persons. Activities of qabza group and land mafia are oftenly highlighted by the media but could not be curbed so far. There could be no reason or justification for the accused-respondents to raise construction on the land which had not been legally transferred in their names. So non transfer of the land in favor of the accused-respondents through legal way, ostensibly, prove them as trespassers and land grabbers like the fashion in vogue.

In case if it is admitted for arguments sake that they had purchased the land verbally, what could be the reason or justification for not giving this transaction a legal cover through execution of any sale deed, agreement to sell, mutation or registration. Needless to explain it is the vendee (purchaser) to be always vigilant. Doctrine of caveat emptor (Mushtari Hushiar Bash) is known to every deck & Harry. Non compliance of the above doctrine by the accused-respondents speaks volumes against them.

Hence the accused-respondents could not be benefited from their so called stance that they purchased the land in their possession from the ex-owner through verbal transaction.

As the present complaint has been filed in terms of section 7 of the Enforcement of Women's Property Rights Act 2020, this forum can initiate action under sub section 1 of section 7 ibid, even if the proceedings are pending in a court in respect of subject property. After scrutiny of the case in hand, I found that sufficient authentic evidence and material is already available on the file which does not

require any further probe, investigation or recording of evidence. I, therefore, deem it just and appropriate to invoke the provisions of sub section 3 of section 7 of the Act 2020, recommending that the proceedings in the civil court Islamabad may be terminated or put in abeyance unconditionally and this forum (Ombudsman) be permitted by the court to take further proceedings under this Act. It may be mentioned here that this forum has already fulfilled the requirements of sub-section 4 of section 7 ibid.

Office is directed to send this order/reference to Civil Court Islamabad for doing the needful.

OMBUDSMAN

