

OFFICE OF THE FEDERAL OMBUDSPERSON
FOR PROTECTION AGAINST HARASSMENT OF WOMEN
AT THE WORKPLACE, ISLAMABAD

FORM OF ORDER SHEET
Complaint No. FOH-HQR/0000223/2023

Date of Institution: 11-08-2023

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 Liaqat Bibi & Other VS Nadeem Khan & Others
1	2	3
05	27-10-2023	<p><u>Subject:</u> Maintainability of the titled Complaint filed under the Enforcement of Women's Property Rights Act, 2020</p> <p><u>Factual Background</u></p> <p>1. The facts giving rise to this complaint are that Liaqat Bibi, Farah Bibi and Fouzia Bibi ("Complainants") are the daughters of the late Khayal Zaman Orakzai ("deceased") while Nadeem Khan, Imran Khan, Muhammad Tufail and Fahad Khial Zaman ("Respondents") are the sons of the deceased. Through the present complaint the Complainants seek their shari share in two properties belonging to the deceased which are situated in Islamabad Capital Territory ("ICT"). The details of the properties are as follows:</p> <ol style="list-style-type: none">i. House No.58, Street No.5, Executive Lodges Phase 3, Bahria Town, Islamabad; andii. House No.19, Street No.02, Block C, Gulberg Greens, Islamabad. <p>2. In response to the notice issued to them, Respondent Nos.1-2 and 4 filed their written reply in which the former, <i>inter alia</i>, questioned the maintainability of the complaint. Respondent Nos.1-2 have firstly alleged that the present proceedings before this forum are <i>coram non judice</i> in view of the decision passed by the Hon'ble Islamabad High Court in Writ Petition No. 529/2021 wherein the Enforcement of Women's Property Rights Act, 2020 ("Act") has been declared <i>ultra vires</i> the Constitution of the Islamic Republic of Pakistan, 1973; secondly that the properties owned by the deceased are undivided and also that the liabilities/debts/equities of the deceased have not yet been determined</p>

and paid; and thirdly that civil litigation is pending between the parties on this very matter.

Determination by Ombudsperson

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

4. It is clear from the provisions of the Act that in order for this forum to take action on the complaint of a woman who is aggrieved by the deprivation of her property, whether movable or immovable, she must satisfy two conditions, namely, that:

- i. The property is situated in ICT (refer Section 1(2) of the Act); and
- ii. She is deprived of the ownership and/or the possession of her property by any means (refer Sections 4(1) and 7(1) of the Act).

In the present case there is no cavil that both the properties in which the Complainants are seeking a share are situated within the local limits of ICT. Accordingly, condition (i) is satisfied. Further, the Respondents in their reply admit that the Complainants are their lawful sisters and are entitled to a share in the legacy of the deceased albeit after certain formalities and processes are completed. Moreover, the Respondents have also acknowledged that as of now the Complainants have not received their shari share. Being so, it is abundantly clear that on the date of filing this complaint and even today the Complainants are deprived of the ownership and possession of their share in the deceased's property situated in ICT. Consequently, condition (ii) is also fulfilled.

5. Insofar as the specific objections of Respondent Nos.1-2 are concerned suffice to say that since the operation of the judgment passed by the Hon'ble Islamabad High Court in Writ Petition No. 529/2021 has been suspended by a Division Bench of that Court in ICA No. 85/2023 on 16.03.2023, this forum can take cognizance of the present complaint under the provisions of the Act. Coming next to the contention that the properties are undivided, it should be noted that the present case is a simple matter of inheritance between real siblings and as such the shari share of each brother and sister is easily calculable. Therefore, the fact that partition has not yet taken place is inconsequential because if the Complainants are entitled to a share in the two properties the said properties can ultimately be partitioned proportionally. Even the objection that the liabilities/debts/equities of the deceased are undetermined and unpaid has no force and so the Respondents cannot be allowed to withhold the Complainants rights attached to the two properties on this score. In any event, it is a settled principle of law that unpaid liabilities/debts/equities can be recovered from the legal heirs to ensure

that all of them contribute to the payment of the liabilities/debts/equities in proportion to their respective shares. Reliance in this regard is placed on **Muhammad Yousaf Vs. Ghayyur Hussain Shah** (1993 SCMR 1185). Regarding the pendency of civil litigation between the parties, Section 7 of the Act permits this forum to take cognizance of complaints filed by women deprived of the ownership or possession of their properties even if the matter is sub-judice before a court of law. Therefore, the plea raised by Respondent Nos.1-2 is without merit. More so, when no evidence has been provided by them to show that the case before the civil court is progressing or near conclusion.

Conclusion

6. In light of the above discussion, the objections raised by Respondent Nos.1-2 are dismissed. The complaint filed by the Complainants is therefore declared to be maintainable.

7. To come up for written reply on behalf of Respondent No.3 on **14-11-2023**.

FEDERAL OMBUDSPERSON