

OFFICE OF THE FEDERAL OMBUDSPERSON

FOR PROTECTION AGAINST HARASSMENT OF WOMEN

AT THE WORKPLACE, ISLAMABAD

FORM OF ORDER SHEET

Complaint No. FOH-HQR/0000192/2022

Date of Institution: 09-05-2022

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 BEENISH ZAFAR VS AZMAT MUNIR & OTHERS Property Description: Plot No. 1727, Sector I-14/2, Islamabad
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56	19-02-2024	<p><u>Subject: Final Order on Complaint</u></p> <p>1. Complainant Beenish Zafar has filed the present complaint averring that she has been deprived of the ownership and possession of the property which she inherited from her father. She claims that her father Zafar-ul-Haq had 1/3rd share in plot no.1727 measuring 60x30 sq. yard situated in sector I-14/2, Islamabad (herein after referred to as case property.) Zafar-ul-Haq died in 2011, therefore, she being his only daughter was entitled to inherit the case property but the respondents deprived her from it.</p> <p>2. According to complaint as well as record, the built up property of Mouza Jhangi Syeda Islamabad was acquired by CDA vide order dated 24-08-1999 under Section 25 of the CDA Ordinance, 1960. Subsequently in view of an agreement between CDA and the affectees, the case property was allotted to Zafar-ul-Haq and Muhammad Israfeel. Abdul Munir brother of the allottees filed a writ petition against this allotment which was allowed and as a consequence he was also given 1/3rd share in the case property. Zafar-ul-Haq died in the year 2011 and was survived by a widow and only one daughter who is the complainant in this case.</p> <p>3. The respondents were summoned but they failed to appear hence, they were proceeded against ex-parte on 24.06 2022.</p> <p>4. Report was called from CDA. Director (land and Rehabilitation) CDA Islamabad vide letter dated 08.09.2022 reported that as per record of</p>

the computer section the plot was in the name of Abdul Munir, Zafar-ul-Haq, (predecessor of the complainant) and Israfeel. They reported that the file was not available in the record room. They were asked by FOSPAH to conduct an inquiry and submit a report. On 06.10.2022, an interim report was submitted by CDA in which it was observed that the record was available in the record room and that Mr. Wajahat Ali Bhatti, Enquiry Clerk who was working as the Dealing Assistant (ASC) A&R had mis-stated before this forum that the file was missing. On the same date the Security Head CDA was directed to hold an inquiry into the case and to furnish the report on merits.

5. Inquiry report was submitted by CDA on 21.11.2022. Thereafter the matter was sent to Member Estate CDA for appropriate action and to submit a report regarding action taken before this forum. More than a year has passed but no report has been submitted by the CDA.

6. As per the detailed report submitted by CDA, the complainant who is the only daughter of Zafar-ul-Haq, has rightly claimed that she has been deprived of her share in the case property. According to this report, Qasim Munir s/o Abdul Munir falsely declared before CDA that his uncle Muhammad Israfeel and Zafar-ul-Haq, co-allottees had died even though Israfeel was alive at that time. He also claimed that they were unmarried and issueless. He removed even his sister Ume-Hadeeb from the warasat nama. Reportedly some other legal heirs were also not disclosed by him. He was issued heirship certificate by the CDA staff. On the basis of this false declaration, he got transferred the case property in the name of Chand Bibi, widow of Abdul Munir; Azmat Munir and Qasim Munir, s/o Abdul Munir. Changes were made in the CDA record on 08.08.2019. After hardly 12 days of this fraudulent transfer, the plot was transferred to Malik Ghulam Hussain s/o Malik Multan Khan on 20.12.2019 and then to Mr. Nasar Ali s/o Bukhat Biland on 04.01.2021. According to this report, Azmat Munir and Qasim Munir furnished false documents in CDA and fraudulently obtained the transfer letter.

7. Material on the record proves that Zafar-ul-Haq, father of the complainant was entitled to 1/3rd share in the case property. The property was allotted in his name in lieu of his built up property acquired by CDA. Zafar-ul-Haq was survived by a widow and a daughter (complainant). She is entitled to half the share of the property left by her father. The report furnished by CDA clearly shows that through fraud she was deprived of her right in the property. It is a well settled

principle of law that fraud vitiates even the most solemn proceeding/transaction. On the basis of fraudulent transaction, no right can be acquired or extinguished. In a case reported as **Muhammad Afzal vs Shahid Iqbal 2023 CLC 471** it was held that: - “fraud vitiates the most solemn proceedings and any edifice so raised on the basis of such fraudulent transaction stands automatically dismantled. Any ill-gotten gain achieved by committing fraud cannot be validated under any law.” In the case of **Saleem Ahmed Khan vs Mst. Zeenat 2023 CLC 1217** it was held: “fraud vitiates even the most solemn transaction and any transaction based on fraud would be void. Limitation does not run against void transaction, mere efflux of time does not extinguish right of any party”. It is thus clear from the facts of the case as well as the judgments of the Superior Courts that if any order has been obtained through fraud it has no legal value.

8. The question now arises whether the subsequent transferee has the benefit of Section 41 of the Transfer of Property Act, 1882. The answer also lies in the above judgments i.e., when the transaction is based on fraud, any subsequent transfer automatically stands dismantled. The transfer of property which was obtained through fraud and concealment of facts to deprive the legal heirs of their valuable rights cannot be validated or ignored by this forum. The legal heirs of one of the allottees, Abdul Munir, were co-sharers in the case property. They had no right or authority to transfer land in excess of their entitlement which was less than 1/3rd as one of their real sister Ume Hadeeb was also deprived of her share by them. Even otherwise, where the vendor has no title, the purchaser cannot claim the benefit of being bona fide purchaser without notice. I am fortified in my view by the case reported as **Amina Bi vs Bivi 1993 MLD 1207** wherein the Lahore High Court, whilst relying on a judgment of the Supreme Court, held:- “Benefits under S.41 Transfer of Property Act 1882, would not be available to such purchaser where vendor himself has no title. Plaintiff having inherited her father was the owner of the property sold to the extent of her share and to that extent vendor did not possess transferrable title. Sale by other co heirs to the extent of plaintiff’s share in land in question was thus void and inoperative against ownership and possessory rights of plaintiff.”

9. In view of above factual as well as the legal aspects of the case it is evident that to the extent of the share of the complainant, the transfer of the property in the name of the legal heirs of Abdul Munir and

subsequent transferees have no legal effect. She is admittedly the legal heir of the deceased Zafar-ul-Haq, and being the only daughter she is entitled to ½ share in the property left by the deceased. It is also proved on the record that she has been illegally deprived of her share in the case property. She is therefore entitled to ownership and possession of the said property.

10. CDA is accordingly directed to transfer the half share of the property left by Zafar-ul-Haq in the name of the complainant, and if the property is divisible to hand over the actual possession of her share in the property to her.

11. Before parting with this order it is pertinent to mention here that CDA being a statutory body is expected to deal with citizens fairly and honestly and to conduct all its actions transparently (**Capital Development Authority vs Muhammad Hanif 2003 CLC 1684**). The manner in which the present case has been dealt with by the Authority speaks otherwise. Firstly, wrong information was furnished before this forum by Mr. Wajahat Ali Bhatti, Enquiry Clerk regarding non availability of record in the record room. Secondly, the final enquiry report submitted by the CDA is indicative of the fact that the matter relating to transfer of property to the respondents Qasim Munir and Azmat Munir, sons of Abdul Munir was dealt with callously by the concerned staff. As a result of this transfer three women, including the present complainant were deprived of their rights in the case property. Thirdly, after submission of the final enquiry report the matter was referred by this forum to the Member Estate CDA for appropriate action and to submit a report before this forum, but it is evident that no action has been taken in the matter by the concerned Member Estate. Reminders were sent repeatedly but even after passage of fifteen months, CDA has not bothered to furnish any report in this forum.

12. The purpose of enacting the Enforcement of Women's Property Rights Act, 2020 is to protect and secure the rights of ownership and possession of property owned by women, ensuring that such rights are not violated by means of harassment, coercion, force or fraud. The purpose of this Act is frustrated if the forum fails to provide relief to the women deprived of their rights in any of the above said manner within the shortest possible time. The fraud committed in this case has been discovered by the CDA in its own inquiry yet they not only failed to

provide relief to the aggrieved party but also ignored the directions issued by this forum. The Chairman CDA is therefore directed to:

- i. Initiate disciplinary proceedings against Wajahat Ali Bhatti, Enquiry Clerk for furnishing wrong information before this forum and submit report in this respect.
- ii. Initiate a formal inquiry against the officials involved in issuing heirship certificate in favour of the respondents under intimation to this forum.
- iii. Initiate disciplinary proceedings against the officers/officials involved in causing delay in implementation of the direction issued by this forum on 21.11.2022.
- iv. To transfer the half share of the case property left by Zafar-ul-Haq in the name of the complainant, and if the property is divisible to hand over the actual possession of her share in the property to her and submit a report within fifteen days.
- v. Initiate criminal proceedings against the respondents and their accomplices, if any, who committed fraud, furnished false affidavits and submitted forged documents for obtaining heirship certificate from CDA.

13. The Chairman CDA shall submit his report in respect of all the above said directions within 30 days of this order (except the one mentioned at Sr.no 4 for which report is to be submitted within 15 days). A copy of this order be sent to the Chairman CDA as well as complainant. To come up for report on **01.03.2024**.

FEDERAL OMBUDSPERSON