

# OFFICE OF THE FEDERAL OMBUDSPERSON

## FOR PROTECTION AGAINST HARASSMENT OF WOMEN AT THE WORKPLACE, ISLAMABAD

### FORM OF ORDER SHEET

Complaint No. FOH-HQR/0000335/2023

Date of Institution: 24-11-2023

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  SHAHEEN AKHTAR VS TARIQ MEHMOOD & OTHERS
1	2	3
12	27-03-2024	<p><b><u>Subject:</u> Order on Complaint</b></p> <p>1. Mst. Shaheen Akhtar along with her two sisters Mst. Naseem Akhtar and Mst. Jameela Begum (<b>hereinafter referred to as the "Complainants"</b>) are claiming delivery of their share in inherited property measuring 06K-06M, bearing Khasra Nos. 927 to 930, Khewat No. 224, Khatoon Nos. 464 to 467, situated at Revenue Estate of Pind Baigwal, Tehsil &amp; District Islamabad (<b>hereinafter referred to as the "Suit Property"</b>) from Tariq Mehmood (<b>hereinafter referred to as "Respondent No.1"</b>) who is the real brother of the Complainants. The Complainants have also requested that Respondent No.1 be restrained from alienating the suit property to anyone else, raising construction over the better portion of the suit property, changing its nature in any manner whatsoever or doing any other act which constitutes an invasion over the rights of the Complainants. Finally, they have sought the recovery of rent from Respondent No.1 from the date of death of their father, Muhammad Sadiq, who was originally the owner of the suit property.</p> <p>2. The complaint was contested by Respondent No.1 on the ground that a suit for 'separate possession through partition and permanent injunction' was filed by the Complainants in respect of the suit property, however, the same was dismissed by the Civil Court on 23.04.2021 and an appeal against the said order was also dismissed by the Hon'ble Islamabad High Court vide judgment dated 14.12.2022. Further, that the suit property actually measures 75K-13M and there are multiple co-owners in it, therefore, the Complainants cannot be</p>

given their share unless all co-owners are made a party in the complaint.

3. A report regarding the suit property was called from Deputy Commissioner, Islamabad under Section 4(2) of the Enforcement of Women's Property Rights Act, 2020 (**Act**). As per the report the Complainants are the owners of the suit property along with Respondent No.1, Muhammad Ishaq and Muhammad Yasin (the other brothers of the Complainants) and Zarda Begum (mother of the Complainants who is also now deceased). It is also admitted by Respondent No.1 that the Complainants are his real sisters. Additionally, it is on record that Respondent No.1 after the death of his father filed a suit for 'declaration and mandatory injunction' which was decreed on 17.01.2011 in which the Civil Court declared the Complainants, Respondent No.1, Muhammad Ishaq, Muhammad Yasin and Zarda Begum as the legal heirs of Muhammad Sadiq (who was the father of the Complainants, Respondent No.1, Muhammad Ishaq, Muhammad Yasin and was the husband of Zarda Begum). In these circumstances there can be no cavil that the Complainants, being the legal heirs of Muhammad Sadiq, are entitled to their shari share in the properties/assets left behind by him. Nevertheless, Respondent No.1 has challenged the jurisdiction of this forum to entertain the complaint of the Complainants on the ground that the previous suit of the Complainants filed in respect of the suit property has been dismissed by the Civil Court, which dismissal has been maintained by the Hon'ble Islamabad High Court.

4. I have heard the arguments of the parties on the maintainability and merits of the complaint and have also perused the record.

5. Since the only contention of Respondent No.1 is that the prayer of the Complainants has already been rejected by the courts therefore this forum cannot decide the complaint, I shall confine my discussion only to this extent. As per the order of the Civil Court dated 23.04.2021 the suit of the Complainants for 'separate possession through partition and permanent injunction' was dismissed under Order XVII, Rule 3 of the CPC for the reason that the Complainants, despite being given multiple opportunities, failed to implead all the necessary parties. However, no decision was given on the merits. Even the Hon'ble Islamabad High Court gave its decision on 14.12.2022 on the question of whether the Civil Court was correct in dismissing the suit of the Complainants outright instead of proceeding with the same. In the judgment reported as **Aakif Ali Shah Vs. Muhammad Ijaz** (PLD 2021

Lah 688) the Hon'ble Lahore High Court has recommended that civil suits should be decided on merits rather than on the basis of technicalities. Nonetheless, as matters stand the claim of the Complainants has never once been adjudicated on the merits by a court of law. It is settled law that each denial of right in inherited property gives rise to a fresh cause of action [ref: **Khan Muhammad Vs. Khatoon Bibi** (2017 SCMR 1476) at para 11]. Resultantly the complaint of the Complainants before this forum seeking their shari share in the suit property, which is a recurring cause of action, is not barred merely because previously the Civil Court and the Hon'ble Islamabad High Court have refused them relief on technical grounds. More so, when the present dispute only revolves around the legal heirs of Muhammad Sadiq and not the other co-owners of the suit property. The Complainants are thus entitled to not only the possession of the suit property by way of division but also to the mesne profit for the period for which they have been denied the right to use the said property.

6. Accordingly, in light of the foregoing I direct Deputy Commissioner, Islamabad to separate the share of the Complainants in the suit property by way of division and to also confer on them the possession of their share. File to come up for compliance report on behalf of Deputy Commissioner, Islamabad in this regard on **08.04.2024**. On the said date the issue of mesne profit will also be considered.

**FEDERAL OMBUDSPERSON**