

**ORDER SHEET
IN THE LAHORE HIGH COURT, LAHORE
(JUDICIAL DEPARTMENT)**

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Examiner
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Lahore High Court, Lahore

21/1/21

W.P. No.63956 of 2021

Ali Ahmad, etc.

v.

Office of the Ombudsperson (Mohtasib) Punjab, etc.

S.No.of order/ Proceeding	Date of order/ Proceeding	Order with signature of Judge, and that of parties or counsel, where necessary
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19.01.2022 Mr. Abbas Ali Chadhar, Advocate assisted by Ch. Saifullah Shafiq, and Ch. Zeshan Afzaal Hashmi, Advocates, for the petitioners.
Mr. Zafar Rahim Sukhera, Assistant Advocate-General.
M/s Mushtaq Ahmad Mohal and Irfan Ullah Tarar, Advocates for the respondents No.2 to 5.

ASIM HAFEEZ, J. This constitutional petition throws challenge to the legality of decision dated 06.10.2021, by respondent No.1 – Ms. Nabila Khan, Ombudsperson Punjab – in exercise of jurisdiction extended under the Punjab Enforcement of Women's Property Rights Act, 2021 ("Act, 2021"), while invoking section 7 of the Act, 2021. Notices were issued to the Advocate General, Punjab under Order XXVII-A of the Civil Procedure Code 1908, on the plea that adjudication perhaps involves determination of the constitutionality / vires of some provisions of the Act, 2021. Private respondents were also put to notice and are represented - Respondents No.2 to 5 have filed written statement / reply.

2. It is appropriate to sum-up the extent and scope of instant decision. In the light of the submissions by the

counsels, appraisal of the facts and examination of relevant provisions of the enactment – facts of the case attract section 7 of Act, 2021 – it is decided that no question of vires or unconstitutionality of section 7 of the Act, 2021 arises. And the lis at hand, exclusively, calls for determination of the legality or otherwise of the order assailed, in the context of the jurisdiction extended unto learned Ombudsperson and purportedly exercised.

3. Facts, essential for adjudication, are that Respondent No.2, widow of Ali Nawaz, filed complaint, alleging denial share of inheritance, to her and daughters of the deceased – respondents No.3 to 5 – regarding estate of her deceased husband, comprising of landed property. It was alleged that their shares were fraudulently transferred in the guise of alleged gift, allegedly extended by the ladies of the family to the sons of the deceased – petitioners No.1 to 4. The most critical fact is that before the filing of complaint, respondents No.2 to 5 have had filed civil suit, seeking declaration of invalidity against alleged transaction of gift, which suit was pending when cognizance upon complaint was taken. The merits of the complaint, potentiality of the claim and alleged defence thereto is not subject matter of adjudication, hence, no comments required. The

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context of the controversy-in-issue is whether the authority / powers, exercised by the respondent No.1 in view of present facts, are in accordance with and scope of mandate extended under section 7 of Act, 2021-dealing, with the complaint(s), where case proceedings are otherwise pending in a court of law.

Respective submissions.

4. Learned counsel for the petitioners contends that respondent No.1 lacked jurisdiction to take cognizance of the complaint, filed even before the promulgation of the Act, 2021. Adds that civil suit, filed by the respondents was sub-judice and without adhering to the mandate and requirements prescribed in section 7 of Act, 2021, respondent No.1 proceeded to decide the competing rights claimed qua the property in question, which is claimed to have been gifted in accordance with the law. Further submits that allegations of fraud and deception, qua purported gift, were accepted and endorsed summarily - merely upon believing contents of the affidavit of one Muhammad Ashraf, son of respondent No.2 and brother of the petitioners and respondents 3 to 5 -, and without calling for evidence and affording opportunity to cross-examine said Muhammad Ashraf. Lastly submits that jurisdiction was allegedly exercised under section 7 of the Act, 2021, but

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without adhering to the requirements of sub-section (3) of section 7 of the Act, 2021. Adds that implementation of the order impugned was subjected to the condition of withdrawal of civil suits by the complainant and her daughters – respondents No.2 to 5, which alone manifests erroneous exercise of jurisdiction – which part of the order draws no support from section 7 of Act, 2021.

5. Learned counsel for the respondents No.2 to 5 submits that instant Constitutional petition is not maintainable in law due to non-joinder of Muhammad Ashraf as party, who had submitted affidavit before the respondent No.1. Adds that petition is not otherwise maintainable, when alternate remedy is available and availed, reference is made to the civil suit filed by petitioners. Adds that order dated 06.10.2021 was also challenged through said suit – wherein application for injunctive relief was disallowed and petitioners had filed appeal, which is pending adjudication. Further submits that this Court had earlier dismissed instant petition on the ground of pendency of civil suit, hence, matter cannot be re-adjudged or reviewed. Adds that various petitions are pending before this Court, wherein vires of the law, i.e., Punjab Enforcement of Women's Property Rights Act, 2021, is questioned and same are sub-judice,

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wherein notices under Order XXVII-A of Code of Civil Procedure, 1908 were issued, hence, it is appropriate to hear Advocate-General in person or attach this petition with the pending ones. While discussing the purpose of the law, states that sons have deprived the mother and sisters of their shares in the estate of deceased husband / father; which illegal and unjustified action calls for interference and exercising jurisdiction under Act, 2021, and respondent No.1 committed no illegality while exercising jurisdiction under section 7 of the Act, 2021.

6. Learned law officer supported the constitutionality of the law, who has also produced record of the proceedings before the respondent No.1.

Determination.

7. Submissions on behalf of the respondents No.2 to 3 are misconceived and repelled, reasoning hereunder follows.

8. Petitioners, through this petition, have questioned the legality of the order dated 06.10.2021 substantially, and only a ceremonial challenge was thrown to the vires of the law. No question of vires or unconstitutionality was pleaded. While hearing the matter on 02.12.2021, it was announced that petition was disposed of in lieu of the civil suit filed by the petitioners, and after examining the record matter was re-fixed for hearing. This court

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finds no clog or encumbrance to re-hear and decide the matter. Order of 02.12.2021 is reproduced, for facility of reference, which reads as;

"Order was announced in Court and petition was disposed of in wake of pendency of civil suit – documents provided by counsel for petitioner, in terms of order dated 01.12.2021. Petition was disposed of under the impression that proceedings before respondent No.1 are still pending, however, perusal of order dated 06.10.2021 reveals that order has been finally passed, only subjected to the condition of withdrawal of civil suit by the complainant. While dictating detailed order, it transpired that some issues require further assistance of the counsels, for instance, status, enforceability and the scope of order dated 06.10.2021 in the wake of filing of civil suit by the petitioner, post instant petition. This Court believes that unless the fate of order dated 06.10.2021 is not decided, it certainly would have prejudicial implications. Matter needs adjudication.

2. Let this matter be fixed for hearing on 06.12.2021, after notice Pervi to the counsels"

9. Assertion that order dated 06.10.2021 was also assailed through civil suit is misplaced. It is evident that petitioners have filed civil suit, during the pendency of instant proceedings, perusal whereof manifests that order dated 06.10.2021 was not challenged therein or subjected to adjudication by civil court – though respondent No.1 is a party thereto and declaration was sought against the Mutation No.2811 dated 25.10.2021, recorded based on order of 06.10.2021. The objection that proceedings be enjoined with pending petitions, wherein vires of the law is challenged, is misconceived. This Court is not convinced that any ground is available

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to proceed to adjudge the question of constitutionality or otherwise of the law, hence, tagging petition with other cases is un-necessary.

10. Now issue of legality or otherwise of the order impugned - dated 06.10.2021 - is examined. It is expedient to reproduce relevant portions of the order impugned, which read as;

"The respondents' contention that since the case of the suit property is already subjudice in Civil Court therefore, the complaint is liable to be dismissed is not maintainable in light of the provisions of the section 7(1) of the Punjab Enforcement of Women's Property Rights Act, 2021, which provides as follow;

"Where proceedings in a court of law are pending in relation to the ownership or possession of any property claimed to be owned by a woman, she may file a complaint under this subsection to the Ombudsperson:

Provided that the Ombudsperson, on its own motion or on a complaint filed by any person including a non-governmental organization may also initiate action under subsection (1) in relation to the ownership or possession of a woman's property, even if proceedings are pending in a court in respect of that property".

Facts and evidence available on record are suffice to note here that the instant case does not require in depth inquiry therefore Ombudsperson has clear and wide jurisdiction of adjudication on the instant case.

Keeping in view the above discussion, affidavit submitted by the one of the respondents Mr. Muhammad Ashraf, element of dominancy and

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influence of respondents, judgments of the honorable higher courts, fact of illiteracy of complainant and her daughters and most crucial fact of gift mutation in favour of complainant's daughters and then in favour of their mother on the same day, it stands established without any iota of doubt that the respondents has disinherited complainant and her daughters by way of fraud and pressure and thus the same is liable to be cancelled. Therefore, the case in hand is decided in favour of the complainant Ms. Basheeran Bibi and her daughters Anwari Bibi, Asghari Bibi and Sarwari Bibi and the gift mutation assailed by them whereby they were left disinherited is hereby declared illegal and void, against the law and Shariah.

It directed that the complainant and her daughters be given due share of legacy inherited by them after death of Mr. Ali Nawaz.

The Deputy Commissioner Sheikhpura with assistance of concerned SHO shall ensure implementation of this decision and restoration of possession to the complainant and her daughters within the period of 7 days of receipt of this decision. Compliance report should reach this office within 7 days as provided under section 5(1)&(3) of the Punjab Enforcement of Women's Property Rights Act, 2021. However, it is clarified that this decision shall be implemented in a condition when the complainant and her daughters withdraw all suits pending in Civil Court".

[Emphasis supplied]

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11. It is evident that in wake of pending civil suit of the respondents No.2 to 5, at the time of the cognizance of the complaint by respondent No.1, section 7 of Act, 2021 is applicable and attracted, which for expedience is reproduced hereunder.

Section 7 of the Act, 2021.

Complaint to the Ombudsperson in case proceedings in a court of law are pending.-(1)

Where proceedings in a court of law are pending in relation to the ownership or possession of any property claimed to be owned by a woman, she may file a complaint under this subsection to the Ombudsperson:

Provided that the Ombudsperson, on its own motion or on a complaint filed by any person including a non-governmental organization may also initiate action under subsection (1) in relation to the ownership or possession of a woman's property, even if proceedings are pending in a court in respect of that property.

- (2) The Ombudsperson shall make a preliminary assessment of the complaint under subsection (1), whereafter he may, if the matter requires further probe or investigation, refer the matter to the concerned Deputy Commissioner, who, after calling the record, if necessary, and issuing notices to the complainant or her adversaries, conduct a summary enquiry and submit a report within fifteen days to the Ombudsperson.
- (3) If the matter does not require any detailed probe, investigation or recording of evidence, the Ombudsperson may, after calling any record, if deemed necessary, file a report in the court of law, in which the case is pending, recommending that the proceedings in the court may be terminated or put in abeyance unconditionally or subject to any order of the court, and the Ombudsperson be permitted by the court to take further proceedings under this Act.
- (4) Before filing of the report under subsection (3), the Ombudsperson shall call upon the complainant and her adversaries to submit objections, and conduct a hearing and pass orders, preferably within thirty days of the hearing, as to whether the Ombudsperson shall or shall not file a report under subsection (3).
- (5) In case the Ombudsperson passes an order of not filing a report under subsection (3), he may advise the complainant to pursue the proceedings in the court of law and

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terminate the complaint.

(6) *The Ombudsperson upon receiving the report under subsection (2), may further conduct such summary inquiry and call for such record as he may deem fit".*

[Emphasis supplied]

12. It is apparent from perusal of order impugned, that simultaneously with the issuance of notices to the respondents, report was sought from the revenue authorities - submitted on 17.03.2021 - which perhaps was the only evidence available, in addition to the affidavit of one of the sons of deceased Ali Nawaz, Muhammad Ashraf, contents whereof were erroneously treated as admission qua alleged fraud and deception - fraudulent transfer of property in guise of gift. It is apparent that no opportunity was afforded to rebut the affidavit or to allow cross-examination upon Muhammad Ashraf, in the absence whereof bare contents of the affidavit cannot be treated or construed as admission of fraud, attributable to the petitioners. This assumption qua admission is contrary to the settled principles of evidence qua admissions in civil matters. Further comments are reserved as review of the contents of affidavit is not intended, nor subject matter of adjudication. 

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13. In terms of sub-section (1) of section 7 of Act, 2021, pendency of civil suit would not restrict or bar initiation of proceedings or cognizance by respondent No.1 – either on its own motion or complaint. Hence, initiation of proceedings on complaint manifests no illegality.

14. In terms of sub-section (2) of section 7, respondent No.1 is required to make preliminary assessment of the complaint for determining that whether matter at hand requires further probe or investigation, and if it does require further probe or investigation, reference can be made to the concerned Deputy Commissioner for soliciting report within 15 days. It appears that matter was not referred to the concerned Deputy Commissioner, suggesting an inference that no further probe or investigation was required.

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15. Sub-section (3) of section 7 of Act, 2021 is critical. Respondent No.1 observed that matter does not require in-depth inquiry. It is evident that respondent No.1, without adhering to the requirement(s) of filing report in the court, in which case is pending, making recommendations accordingly and waiting for the permission of the court to take further proceedings, summarily proceeded to decide

the matter, which significant lapses, in the context of sub-section (3) of section 7 *ibid*, manifest failure to adopt and adhere to the prescribed statutory requirements, indicating erroneous exercise of jurisdiction. Respondent No.1 erroneously ignored factum of proceedings pending in the court, and upon deciding the matter linked its implementation with the condition of withdrawal of pending suit. Evidently, legislative command unequivocally - manifests in terms of sub-section (3) of section 7, *ibid* - conferment of the discretion unto respondent No.1, only to determine that whether the matter requires detailed probe, investigation or recording of evidence, for which determination respondent No.1 may call for the record, if deemed necessary, before the filing of the report. The expression 'if deemed necessary' must be read in the company of the expression 'after calling any record' and not be construed as extending an elective / optional choice or discretion unto respondent No.1 in the matter of filling report with the court. Yes, there is no requirement of filing report if complaint is terminated, upon following the mandate of sub-section (5) of section 7 of the Act, 2021. And if respondent No.1 intends to proceed to decide complainant, submission of report in the court

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awaiting further orders are imperative and mandatory requirements. Any construction, contrary to this apparent and obvious legislative intent of filling report in the court of law, in which case is pending, would offend the mandate of section 7 of Act, 2021, undermines the authority and jurisdiction of the court – evidently protected in terms of section (3) of section 7 of the Act, 2021, and renders section 7 of Act, 2021 redundant and superfluous in the context of sections 4 and 6 of the Act, 2021. Perusal of sub-sections (4) and (5) of section 7, *ibid*, reiterate the necessity of submitting report, unless complaint is terminated, upon reaching conclusion that no report is required to be submitted. In terms of sub-section (5) of section 7 of Act, 2021, act of non-filling of report – after affording opportunity of filling objections and conducting of hearing in terms of sub-section (4) of section 7 of Act, 2021 – suggests termination of complaint and renunciation of jurisdiction.

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16. Harmonious and wholesome reading of section 7 of Act, 2021 is required to protect it, instead of disjunctive and disconnected reading, which line of interpretation would impart incompatibility, contradiction, and redundancy. Legislature had not intended to oust the jurisdiction of the Civil Court and

ensured that report is essentially filed in the court, where matter is pending. The intent is to reconcile the jurisdiction of the court, where matter is pending, and jurisdiction extended to the respondent No.1, to avoid apparent collusion or conflict. In brief, perusal of section 7 of Act, 2021, indicates the jurisdiction(s) conferred are not mutually exclusive but structured to avoid conflict, confusion and disarray. The act of non-submission of report with the Court is illegal and requires interference by invoking Constitutional jurisdiction.

17. In view of the above, it is concluded that respondent No.1, before passing the order of allowing complaint, failed to adhere to the prescribed statutory requirements, envisaged under section 7 of Act, 2021, which suggests that assumption and exercise of jurisdiction is misplaced, erroneous and illegal. Reliance on the judicial pronouncements in the order impugned is otherwise misplaced, wherein critical fact was ignored that in all the cases referred full trial was conducted, upon calling of evidence, before determining alleged influence of the donee over the donor, element of dominancy and allegations of fraud.

18. This petition is allowed, order dated 06.10.2021 is set aside. Complaint filed by respondent No.2 shall

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be deemed pending before respondent No.1, which shall decide the complaint afresh, upon hearing the parties, in the light of the facts and circumstances existing, at the time of cognizance of the complaint. [there is no information that whether suit of the respondents No.2 to 5 is still sub-judice or withdrawn under the order of 06.10.2021]. Any observation made herein is for the purposes of deciding the lis and not intended to prejudice or affect the rights claimed and determination of the complaint on merits.

(Asim Hafeez)
Judge.

Approved for Reporting.

A.D. Khan

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