JUDGMENT SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD

WRIT PETITION NO. 2307 OF 2023

Malik Muhammad Ahsan

Versus

Federal Ombudsman for Protection Against Harassment & 7 others.

Petitioner by	**:**	**Barrister Sardar M. Usman Sami, Advocate.**
Respondents by	**:**	**Jam Khurshid, Advocate for Respondents No. 2 to 5.** **Mr. Ahmed Nawaz Bhatti, Advocate for Respondent No. 6.** **Raja Ansar Abbas, Advocate for Respondent No. 8**
Date of Hearing	**:**	**01.10.2025**

MUHAMMAD AZAM KHAN, J: The brief facts of the case are that the father of the petitioner and respondents No. 2 to 5 were co-owners in possession of the suit property, each holding one-half (½) share. The father of the petitioner passed away on 23.12.2009, whereafter the portion representing his share remained under the use and occupation of respondents No. 2 to 5. Respondent No. 6, being a co-owner to the extent of the remaining half share, has been residing in the lower portion of the house. Subsequently, respondents No. 2 to 4 instituted a suit for administration of the suite property of the deceased and rendition of accounts before the learned Civil Court, Islamabad, on 26.03.2018. During the pendency of the said suit, respondent No. 6 filed another suit for declaration, partition, and permanent injunction on 14.06.2022 before the same Civil Court in respect of the very same property. In this second suit, respondents No. 2 to 5 were impleaded as defendants and have duly joined the proceedings.

2. In the interregnum, respondent No. 2 approached the office of respondent No. 1 (Ombudsperson for Protection of Women's Property Rights) by filing a written complaint dated 16.02.2022 concerning the same property. Respondent No. 6 also joined those proceedings by moving an application for impleadment as a party. Despite specific objections being raised regarding jurisdiction, respondent

No. 1 continued to proceed with the complaint and ultimately passed the impugned order dated 21.06.2023, which is now under challenge through the instant constitutional petition.

3. Learned counsel for the petitioner *inter alia* contended that the impugned order passed by respondent No. 1 is wholly without jurisdiction, as the matter was already *sub-judice* before a competent Civil Court. He argued that *Section 4 of the Enforcement of Women's Property Rights Act, 2020* expressly bars the Ombudsperson from entertaining or deciding any complaint when proceedings regarding the same property are pending before a court of law.

4. Conversely, learned counsel for the respondents defended the impugned order, arguing that the same was passed in accordance with law and does not suffer from any legal infirmity warranting interference by this Court.

5. I have heard the learned counsel for both sides and carefully examined the record as well as the relevant provisions of the *Enforcement of Women's Property Rights Act, 2020* (the "**Act**"), which delineates the scope of the Ombudsperson's authority. For ease of reference, Section 4 of the Act is reproduced below:

> *"4. Complaint to the Ombudsman in case no proceedings in a court of law are pending. (1) Any woman deprived of ownership or possession of her property, by any means, may file a complaint to the Ombudsman, if no proceedings in a court of law are pending regarding that property:*
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> *Provided that the Ombudsman, on its own motion or on a complaint filed by any person including a non-governmental organization, may also initiate action under sub-section (1), in relation to the ownership or possession of a woman's property, if no proceedings are pending in a court in respect of that property."*

6. The above statutory provision leaves no room for ambiguity or interpretative doubt. The jurisdiction conferred upon the Ombudsperson under the *Enforcement of Women's Property Rights Act, 2020* is expressly conditional and circumscribed by the absence of any proceedings pending before a court of competent jurisdiction concerning the same property. The Legislature, in its wisdom, inserted this limitation to prevent overlapping jurisdictions, multiplicity

of proceedings, and potential conflict of decisions. Once a civil court is seized of a dispute regarding ownership or possession, the Ombudsperson is divested of authority to entertain, inquire into, or adjudicate the same matter. Jurisdiction, being creature of statute, must be exercised strictly within the parameters prescribed therein. Therefore, when the condition precedent, i.e., the absence of pending court proceedings, ceases to exist, so too does the Ombudsperson's competence to act under the Act. Any assumption of jurisdiction contrary to this statutory mandate amounts to an unlawful encroachment upon judicial domain, thereby rendering subsequent actions legally untenable.

7. The record placed before this Court unmistakably demonstrates that respondent No. 1 was fully cognizant of the ongoing civil litigation between the parties concerning the very same property. Both the pleadings and the formal objections categorically apprised the Ombudsperson of the pendency of civil suits for administration, declaration, and partition before the Civil Court at Islamabad. Yet, despite such explicit notice, respondent No. 1 persisted in proceeding with the complaint, culminating in the passing of the impugned order. This insistence on continuing the proceedings, in defiance of an express statutory prohibition, constitutes a manifest act of jurisdictional overreach**.**

8. Where Parliament has spoken in unequivocal and mandatory language, administrative or quasi-judicial authorities are bound to act within those limits. Jurisdiction cannot be expanded by implication, inference, or administrative convenience. The assumption of *seisin* over a dispute already *sub-judice* before a civil forum does not merely duplicate judicial effort, it undermines the sanctity of legal process, creates the risk of contradictory findings, and ultimately erodes the discipline of judicial hierarchy. Such disregard for statutory restraint is not a mere procedural irregularity; it strikes at the root of lawful authority and renders the entire proceedings *coram non judice,* a nullity in the eyes of law, incapable of producing any legal consequences.

9. It is now a well-entrenched principle of jurisprudence that jurisdiction emanates solely from statute. It cannot be assumed by equitable interpretation,

nor conferred through waiver, acquiescence, consent, or even the silence of the parties. The law recognizes no estoppel against jurisdiction. When the Legislature conditions the exercise of power upon the fulfillment of a specific precondition, as it has done through Section 4 of the Act of 2020, the satisfaction of that condition becomes jurisdictional in nature, not procedural. The omission to ascertain or comply with such a condition is fatal and vitiates the proceedings ab initio. An order rendered in disregard of a jurisdictional bar is void, not voidable, it has no legal existence, cannot be cured by subsequent ratification, and remains unenforceable regardless of the passage of time or acquiescence by any party.

10. The superior courts of Pakistan have consistently held that where jurisdiction is statutorily excluded, its exercise constitutes a usurpation of authority and any resultant decision is *ultra vires*, void ab initio, and devoid of legal sanctity. The Court is therefore duty-bound to intervene and strike down such orders, even if the issue is raised belatedly, because lack of jurisdiction vitiates all that follows.

11. It must also be emphasized that jurisdictional scrutiny is not a mere technical formality but a substantive obligation resting upon every judicial, quasi-judicial, or administrative forum. Before delving into the merits of any matter or even granting interim relief, the forum must first determine whether it is lawfully empowered to entertain the cause. This duty is fundamental to the rule of law, for it ensures that authority is exercised within the contours of the legal framework designed to regulate it.

12. Failure to make such determination not only vitiates the entire proceedings but also invites judicial censure. A decision made without jurisdiction, no matter how well-intentioned or equitable in outcome, remains legally unsustainable. Courts have repeatedly reiterated that equity follows the law, not the other way around; fairness cannot override jurisdictional command. Justice, to retain its moral and institutional legitimacy, must be dispensed strictly in accordance with law, for the rule of law loses its meaning when statutory limitations are transgressed under the guise of expediency or compassion.

13. In the present case, the jurisdictional bar under *Section 4 of the Enforcement of Women's Property Rights Act, 2020,* is both explicit and absolute. The provision leaves no scope for administrative discretion or interpretive elasticity. Once it was established, indeed admitted, that civil suits regarding the same property were already pending before the Civil Court, respondent No. 1 was statutorily precluded from assuming cognizance. Yet, the Ombudsperson failed to apply this threshold test, proceeded to exercise powers, and issued directions in clear contravention of the law. This lapse reveals not only a lack of application of mind but also a misunderstanding of statutory limits. By proceeding in disregard of Section 4, respondent No. 1 effectively displaced the lawful jurisdiction of the Civil Court, thereby encroaching upon a field constitutionally reserved for judicial determination. Such conduct defeats the legislative intent, disturbs judicial comity, and subverts the orderly administration of justice.

14. On this singular ground alone, the impugned order is without lawful authority, void ab initio, and *non-est,* having no existence in the eyes of law. The entire proceedings conducted pursuant thereto stand vitiated and are liable to be struck down. The Court cannot, under any principle of law, allow an order passed without jurisdiction to remain operative even for a moment longer.

15. In view of the foregoing discussion, this Court is constrained to hold that the impugned order dated 21.06.2023 has been passed without jurisdiction, in violation of statutory mandate, and in excess of lawful authority. It is therefore declared void ab initio, illegal, and *non-est* in the eyes of law. Consequently, all proceedings initiated and conducted by respondent No. 1 in respect of the subject property are declared to be without legal effect and are hereby **SET ASIDE**. The instant writ petition is accordingly ***ALLOWED***, and the impugned order is quashed. The parties are, however, left to bear their own costs.

16. This judgment should serve as a reminder that jurisdiction is the foundation upon which the edifice of justice stands; once that foundation is absent, the structure collapses under its own weight. Every authority must, therefore, should stay its hands by refusing to proceed in matters where its jurisdiction is either

doubtful or statutorily barred, for to do otherwise is to imperil the very integrity of the legal system.

(MUHAMMAD AZAM KHAN)
JUDGE

Announced in Open Court on _____.

JUDGE

Sajid

Approved for Reporting
Blue slip added.