JUDGMENT SHEET.

IN THE ISLAMABAD HIGH COURT, ISLAMABAD.

WRIT PETITION NO. 2185/2025

ASLAM HAYAT
Vs
FOUZIA NAZIR ETC.

Petitioner by : Ms. Talat Rizwan Sial, Advocate.

Date of hearing : 30.05.2025

MUHAMMAD AZAM KHAN, J.

1. Through the instant Writ Petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 **("Constitution")**, Aslam Hayat ("**Petitioner**") has challenged the Order dated 10.04.2025 passed by the President of Pakistan/Respondent No. 9 **("President")**, whereby his representation against the Order dated 05.11.2024 passed by the Wafaqi Mohtasib (Federal Ombudsman for Protection against the Harassment of Women at the Workplace, Islamabad)/Respondent No. 8 **("FOSPAH")** has been dismissed. The Petitioner has also challenged the orders dated 05.05.2025, 19.05.2025, 05.11.2024 and 21.11.2024 passed by Respondent No. 8, whereby he was directed to hand over the possession of the lower portion of House No. 306, Street No. 57, Sector G-9/4, Islamabad ("**Suit House**") to the Complainants/Respondents Nos. 1 to 6.

2. Brief facts of the case, as stated in the petition, are that Respondents No. 1 to 6 filed a complaint before FOSPAH, seeking directions against the Petitioner and for vacation and sealing of the Suit House, as well as handing over of possession of the lower portion of the Suit House and their respective shares in the estate (Tarka) of their deceased mother, Khwaja Bibi. The Petitioner contested the complaint by filing a written reply and raising preliminary objections regarding the maintainability of the complaint to the extent of Respondent No. 6 and the premature filing of the complaint. After hearing arguments of both sides, FOSPAH, vide Impugned Order dated 05.11.2024, directed the Petitioner to hand over possession of the lower portion of the Suit House to Respondents No. 1 to 6. Being aggrieved by the Order dated 05.11.2024, the Petitioner filed a representation for redressal of his grievance before the President. After hearing the arguments, the President dismissed the

representation of the Petitioner vide Impugned Order dated 10.04.2025. Being aggrieved by the Impugned Orders dated 10.04.2025 passed by the President as well as the Impugned Orders dated, 19.05.2025, 05.05.2025, 21.11.2024, and 05.11.2024 passed by FOSPAH, the Petitioner has filed the instant Writ Petition.

3. The learned counsel for the Petitioner argued that FOSPAH and the President have miserably failed to appreciate the facts of the case and passed the Impugned Orders in a hasty manner, which are liable to be set aside; that the matter between the parties is purely civil in nature and relates to their inherited property, therefore, the matter falls strictly within the jurisdiction of a Civil Court by way of filing a suit for partition. However, FOSPAH and the President failed to consider this important fact in their findings, thereby passing the Impugned Orders; that the Petitioner has also spent a huge amount on maintenance of the Suit house; that FOSPAH has no authority to partition the Suit House; and that the Petitioner has also filed a civil suit for partition before the Civil Court, Islamabad.

4. It was further asserted by the learned counsel that the Petitioner has never expelled or mistreated the Respondents, who are always welcome at the premises; however, given their marital status and family obligations, cohabitation in the subject house is not feasible. It was also submitted that the transfer process of the Suit House in favour of all legal heirs remains pending before the CDA. One of the Respondents**,** Ms. Nadia Amir/Respondent No. 4, was fully compensated by the deceased during her lifetime, and this was duly acknowledged through a signed declaration. Lastly, the Impugned Orders suffer from misreading and non-reading of evidence, being contrary to the law and facts, and are thus not sustainable. The learned counsel has prayed that the instant writ petition may kindly be accepted, the Impugned Orders be set aside, and the complaint of Respondents No. 1 to 6 be dismissed as infructuous.

5. This Court has heard the learned counsel for the Petitioner and perused the available record with her able assistance.

6. Perusal of the record shows that Respondents No. 1 to 6 had approached the Federal Ombudsman under the Enforcement of Women's Property Rights Act, 2020, with a view to partitioning the Suit House of their deceased mother, namely Khwaja Bibi (deceased). It is pertinent to mention herein that the Order dated 19.05.2025

ostensibly shows that Respondents No. 6 and 7 had rendered statements in favour of their sisters/Respondents No. 1 to 5 during the proceedings before FOSPAH, confirming that they are willing to accept the claim of their sisters and would not contest the case any further. However, the Petitioner, remaining resolute in his position, challenged the Impugned Orders dated 05.11.2024, 21.11.2024, 05.05.2025, and 19.05.2025 passed by FOSPAH, wherein the former was directed to deliver possession of the Suit House to his sisters/Respondents No. 1 to 5, till the Suit House is transferred in the names of all the legal heirs.

7. The record further shows that the representation filed before the President was dismissed on two grounds: (a) the Impugned Order being interim in nature; and (b) the Impugned Order being just and fair, to which no exception can be taken at this stage. It is essential to mention herein that FOSPAH exercised powers under Sections 4 and 5 of the Enforcement of Women's Property Rights Act, 2020. The aforementioned provisions, read with Section 11 of the said Act, clearly illustrate that no court of law is empowered to grant an injunction against the orders passed by FOSPAH. For ready reference, Section 11 of the Enforcement of Women's Property Rights Act, 2020, is reproduced hereunder:

> *"**11. Bar of jurisdiction**. — No court or other authority shall have jurisdiction-*
>
> *(a) to question the validity of any action taken, or intended to be taken, or order made, or anything or purporting to have been taken, made or done under this Act; or*
>
> *(b) **to grant an injunction or stay or to make any interim order in relation to any proceeding before, or anything done or intended to be done or purporting to have been done by, or under the orders or at the instance of the Ombudsman.**" (Emphasis added)*

8. A bare reading of the above provision makes it crystal clear that there is an express bar, as envisaged under the law, on the grant of an injunction or stay against the proceedings undertaken by the FOSPAH. Therefore, as the matter *inter se* the parties remains pending adjudication before the relevant forum, this Court is satisfied with the findings of the President mentioned above. No illegality, misreading, or non-reading of evidence is apparent from perusal of the record; hence, this Court hereby declines to interfere with the findings of FOSPAH and the President. In this regard, reliance is placed upon *Rais Munir Ahmed versus Women Ombudsperson Punjab, Lahore and others* **(2024 MLD 822)**, wherein the Lahore

High Court, relying upon Section 11 of the Punjab Enforcement of Women's Property Rights Act, 2021, observed as under: -

> *"Needless to say that the procedure to deal with the complaint is provided under Section 4 of the Act of 2021, whereby the Ombudsperson on its own motion or on a complaint can initiate action in relation to the ownership or possession of a woman's property provided no proceedings are pending in a Court of law in respect of that property. The Ombudsperson shall make a preliminary assessment of the complaint and if it comes to the conclusion to further probe or investigation is required, the matter be referred to Deputy Commissioner concerned who after calling the record and issuing notice to the complainant or adversaries, shall conduct a summary inquiry and submit a report to the Ombudsperson, whereafter the Ombudsperson shall proceed with the matter and pass the order after conclusion of proceedings (Section 5). However, in-depth inquiry, investigation, detailed recording of evidence or intricate adjudication is out of the domain of Ombudsperson and matter is required to be referred to Civil Court (Section 6). Section 7 provides concurrent jurisdiction to the Ombudsperson where proceedings in a Court of law are pending in relation to ownership or possession of any property claimed to be owned by a woman.* ***Section 11 further extends the jurisdiction to the Ombudsperson by restricting the jurisdiction of Court or other authority to question the validity of any action taken, order made, or anything purported to have been done under the Act of 2021. Section 4 provides a different regime than Section 7 where a suit is pending. The term 'pending' means that the proceedings have already been initiated/commenced prior to the filing of complaint under Section 4 of the Act. Once Section 4 is triggered, the bar under Section 11 becomes effective. Reference is made to Fajar Ali and others v. Mst Jamila and others (PLD 1969 Lahore 545), wherein it has been held that pending means 'any action, in law, considered pending from time of its commencement.' In the instant case, regarding the properties which were subject matter of the complaint, no proceedings before any Court of law were pending, therefore, the Ombudsperson accurately exercised jurisdiction.*** *" (Emphasis added)*

9. The provisions contained in the Punjab Enforcement of Women's Property Rights Act, 2021, are identical to the Enforcement of Women's Property Rights Act, 2020. The civil suit was filed by the Petitioner after the complaint filed by Respondents No. 1 to 6 before FOSPAH, therefore, as rightly propounded by the Lahore High Court in the judgment *supra*, once Section 4 of the Enforcement of Women's Property Rights Act, 2020, is triggered, the bar under Section 11 becomes effective.

10. This Court finds it necessary to apply the doctrine of "Limine Control" as developed by the Lahore High Court in *Asif Saleem v. Chairman BOG University of Lahore and others* (PLD 2019 Lahore 407), wherein it has been held that: -

> *"It is a general practice of Courts that in such like petitions, the Courts, instead of dismissing the petition at limine stage, issue notices to the respondents who not only face inconvenience but also suffer monetary loss. Thus, for early and expeditious disposal of such like petitions and other cases pending in the Courts all over the country and in order to strengthen the perception of general public about the rule of law; there is urgent need to adopt 'Limine Control Doctrine.'..."*

Further, in *Muhammad Mustafa's case* **(PLD 1992 SC 62)**, the Supreme Court observed as follows:-

> *"At a limine hearing the High Court is not only competent but also bound to make preliminary enquiry for reaching a preliminary satisfaction about the factual basis of a writ petition. Ignoring this part in the writ petitions sometimes leads to unnecessary admission of writ petitions which ultimately, after considerable time and expense, are dismissed."*

11. Even otherwise, FOSPAH has rightly ordered the Capital Development Authority to transfer the Suit House among all the legal heirs of Mst. Khwaja Bibi (deceased). In view of the above circumstances, and by applying the doctrine of 'Limine Control', this Petition, being devoid of merits, is hereby **dismissed *in limine***.

(MUHAMMAD AZAM KHAN)
JUDGE

Sajid/--