JUDGMENT SHEET.
IN THE ISLAMABAD HIGH COURT, ISLAMABAD.

WRIT PETITION NO. 2665 of 2025

MALIHA MALIK
Vs
THE FEDERATION OF PAKISTAN, ETC.

Petitioner by	**:**	**Sardar Shabbir Hussain and Mr. Abdullah Khalid, Advocates.**
Respondents by	**:**	**Barrister Suleman Khan, Advocate for the Respondent No.2.** **Barrister Sara Seerat, Advocate for the Respondent No.3.** **Raja Muhammad Saeed, D.A.G.** **Raja Zamir-ud-Din Ahmed, A.A.G.**
Date of hearing	**:**	**04.02.2026**

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MUHAMMAD AZAM KHAN, J. The **Petitioner**, Maliha Malik, has filed the instant writ petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, assailing the Orders dated 22.04.2025, 30.04.2025, 14.05.2025, and 04.06.2025 **("Impugned Orders")** passed by the Federal Ombudsperson **("Respondent No.2")**.

2. Brief facts of the case are that the Petitioner, Maliha Malik, is a widow, and Respondent No. 3, Syeda Sakina Bukhari, is the widow of the Petitioner's deceased elder son, Fahad Malik, who died in 2016. The legal heirs of Fahad Malik include the Petitioner, Respondent No. 3, and two minor children of the latter. The Petitioner and her late husband, expatriates settled in England, lawfully acquired multiple properties, some solely for the Petitioner's benefit. Civil disputes over family properties have been ongoing since 2012, with Respondent No. 3 and her children as parties. On 22.04.2025, the Respondent No.3 filed a complaint before the Federal Ombudsman (Respondent No. 2), claiming two properties, i.e., House No.70, F-7/2, and House No. 46, F-6/3, as exclusively belonging to her late husband. Civil suits regarding these properties are pending, and interim injunctions have been granted to maintain status quo. In this regard, the Respondent No. 2 issued notices to the Petitioner, which she has challenged through the instant petition.

3. Learned counsel for the Petitioner contended that Sections 3, 4, 5, 6, 7, 8, 9, and 11 of the **Enforcement of Women's Property Rights Act, 2020** are ultra vires Articles 8, 9, 10A, 23, 24, 175, 202, 203, and 204 of the Constitution, and thus void ab initio. Section 4 allows women to approach the Ombudsman only if no court proceedings are pending, whereas Section 6 empowers the Ombudsman to refer matters requiring evidence or detailed adjudication to the competent Civil Court, with Section 6 overriding Sections 4 and 5. The present complaint pertains to the estate of the Petitioner's late son, in which she is also a legal heir, and relates to properties already involved in multiple civil suits pending since 2012, including a pending suit before the Learned Civil Judge (West), Islamabad, where an ad-interim injunction maintains the status quo. The learned counsel further contended that the Civil Courts are the forum of ultimate jurisdiction, and the matter involves intricate issues already under adjudication, therefore, the notices issued by the Respondent No. 2 are without lawful authority.

4. Learned counsel for the Respondents No. 2 contended that the instant petition is not maintainable at the present stage since the Federal Ombudsperson Secretariat for Protection against Harassment ("FOSPAH") has not rendered its final decision on the subject matter pending before it. Furthermore, if the Petitioner is aggrieved by any order, she can file a representation to the President of Pakistan pursuant to Section 14 of the Federal Ombudsmen Institutional Reforms Act, 2013. As per the rulings of the Honourable Supreme Court, an adjudicatory body's role is confined to assisting the Court by providing necessary information and producing record, and not to act as a primary party or to defend its orders as it has no locus standi to do so. In other words, the Ombudsman is not obligated to justify or defend his decisions, rather, it is for the aggrieved party to do so. Such a forum is simply to redress complaints by exercising its powers under the law. That FOSPAH is empowered pursuant to Section 7 of the Enforcement of Women's Property Rights Act, 2020 ("Act") to take cognizance of a matter even if a suit, relating to any property mentioned in a complaint filed by a woman, is pending before any Civil Court at Islamabad.

5. Learned counsel appearing on behalf of Respondent No. 3 argued that Barrister Fahad Sohrab Malik, the late husband of Respondent No. 3, was murdered on 15.08.2016, leaving behind his widow, two minor children, and his mother, the Petitioner. Fahad Malik was a wealthy man with multiple properties and businesses in Pakistan, the UK, and the UAE. Following his death, Respondent No. 3 entrusted his estate to his younger brother, Jawad Sohrab Malik, who, aided by the Petitioner, allegedly obstructed Respondent No. 3 and her children from accessing their inheritance. The Petitioner and Jawad Malik have also instituted multiple proceedings among family members, including civil suits, to control the estate, and have allegedly evicted Respondent No. 3 and her children from the family home. The only two residential properties presently at issue are House No. 46, F-6/3, and House No. 70, F-7/2, Islamabad. Respondent No. 3 filed a complaint before Respondent No. 2 on 21.04.2025, seeking access to the properties and other assets of her late husband. At that time, no civil proceedings were pending. Subsequently, the Petitioner instituted a civil suit on 30.04.2025 regarding the same properties and filed the present petition on 03.07.2025, shortly before the Ombudsman's scheduled hearing on the maintainability of the complaint. It is alleged that the Petitioner concealed the Ombudsman's prior order of 24.06.2025, amounting to fraud and obstruction of justice. The petition is also alleged to be champertous and collusive with Jawad Malik, intended to defeat the rights of Respondent No.3 under the Enforcement of Women's Property Rights Act, 2020, particularly Sections 4 and 7, which protect the Ombudsman's jurisdiction even during pending civil proceedings. There is no dispute over the ownership of the properties, which are owned 50% by the late Fahad Malik, and the petition concerns only the petitioner's share in her deceased son's estate. The proceedings are claimed to be instituted to obstruct Respondent No.3 from accessing her lawful inheritance.

6. I have heard learned counsel for the parties at considerable length, examined the record, and perused the relevant statutory framework as well as the precedents relied upon. The core controversy in the instant petition does not merely relate to the factual entitlement of the contesting parties inter se, but,

more fundamentally, concerns the legal competence, scope of inquiry, and constitutional limits of jurisdiction exercisable by Respondent No. 2/Federal Ombudsperson under the prevalent **Enforcement of Women's Property Rights Act, 2020**. From the pleadings, submissions, and record, the following questions arise for determination: -

1. Whether adversarial adjudicatory functions relating to determination of proprietary rights, possession, and inter se claims of private parties, which ordinarily fall within the exclusive domain of courts established under Article 175 of the Constitution, could lawfully be exercised by Respondent No. 2/Ombudsperson, and whether the said forum can be regarded as part of the judicial limb of the State?
2. Whether Section 4 and Section 7 of the Act of 2020 are internally inconsistent, and if so, how such an inconsistency affects the assumption of jurisdiction by the Ombudsperson in the present case?
3. Whether Respondent No. 2 could lawfully exercise jurisdiction under the Enforcement of Women's Property Rights Act, 2020, in a dispute concerning inheritance, estate property, and inter se rights of legal heirs, particularly when civil proceedings regarding the same properties were pending or had been brought to his notice?
4. Whether the controversy raised by Respondent No. 3 was of such nature as required detailed adjudication by the civil court under section 6, rather than summary inquiry before the Ombudsman?
5. Whether the impugned proceedings and orders of Respondent No. 2 are without lawful authority and liable to be set aside?

POINT NO. 1:

Whether adversarial adjudicatory functions relating to the determination of proprietary rights, possession, and inter se claims of private parties, which ordinarily fall within the exclusive domain of courts established under Article 175 of the

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Constitution, could lawfully be exercised by Respondent No. 2/Ombudsperson, and whether the said forum can be regarded as part of the judicial limb of the State?

7. At the outset, it is necessary to clarify that this Court, in exercise of its constitutional jurisdiction, is not expected to finally adjudicate disputed questions of title, inheritance, partition, beneficial ownership, or rival civil rights requiring detailed evidence, unless the impugned proceedings demonstrably suffer from jurisdictional defect, patent illegality, coram non judice exercise, or transgression of statutory limits. The present matter squarely raises such jurisdictional questions because the challenge laid before this Court pertains to whether Respondent No. 2 has acted within the confines of the law, or has traversed into a domain reserved for Civil Courts of competent jurisdiction.

8. At this juncture, before delving into the legal intricacies, it would be advantageous to first advert to the historical origin, conceptual foundation, and constitutional placement of the office of Ombudsman before examining the impugned statutory scheme. The institution of the Ombudsman emerged as an instrument of administrative oversight. In its classical conception, the Ombudsman formed part of the executive architecture and was designed to examine complaints by citizens against public authorities, particularly in matters involving maladministration, abuse of authority, arbitrariness, delay, inaction, or unfair executive conduct. The office was, thus, not conceived as a court of law or as a substitute for the judicial process. Rather, it functioned as an internal corrective mechanism within the executive branch, whereby one public functionary reviewed the conduct of another and, upon finding maladministration, made appropriate recommendations for redress. The defining features of such an institution were, therefore, that it addressed grievances of citizens against the State or its agencies, operated through inquiry and recommendation rather than binding adjudication; and the implementation of its conclusions depended upon executive compliance, policy, propriety and institutional discipline, rather than coercive judicial enforcement.

9. This broad concept was substantially reflected in the very first legislative framework governing the Wafaqi Mohtasib under the **Establishment of the Office of Wafaqi Mohtasib (Ombudsman) Order, 1983**. The purpose of the establishment of the office of Wafaqi Mohtasib is evident from the preamble of the President's Order No. 1 of 1983 ("Order") to provide for the appointment of Wafaqi Mohtasib (Ombudsman), to diagnose, investigate, redress, and rectify any injustice done to a person through maladministration. Under that dispensation, matters already sub judice before a Court of law were kept outside the Ombudsman's jurisdiction. The powers conferred were essentially investigatory in nature and meant to facilitate an effective inquiry into maladministration. The result of such inquiry ordinarily culminated in a recommendation to the concerned executive authority for rectification. In other words, the office of Ombudsman did not ordinarily stand as an adjudicatory substitute for Courts of law deciding contested rights between private parties. Its role was essentially supervisory and corrective within the executive sphere. The matter qua the judicial powers of the Ombudsman under the abovementioned Mohtasib Act has a court or otherwise came before the Apex Court in the case of "*Shafaatullah Qureshi v. Federation of Pakistan*" **(PLD 2001 SC 142)** wherein it was held: -

> *"12. Suffice it to say, that from above-cited cases, it is not established that the office of Wafaqi Mohtasib is a Court nor any such finding has been recorded in these matters though it has been stated that Wafaqi Mohtasib performs quasi-judicial functions. Performance of quasi-judicial functions by itself does not convert an authority into Court, whether an act is quasi-judicial or purely executive depends on the interpretation of rules/law under which the authority exercises its jurisdiction. It is true that the administrative authority also is to act bona fide, but it is different from saying that it must act judicially. Many authorities are not Court, although they have to decide questions and have to act judicially in the sense that the proceedings shall be conducted with fairness and impartiality. In order to constitute a Court in strict sense, it shall have power to give a decision or a definitive judgment, which has finality and authoritativeness."*

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10. Likewise, within our own legal framework, various offices of Ombudsman have been established under different statutes, such as the Federal Tax Ombudsman under the **Establishment of the Office of Federal Tax Ombudsman Ordinance, 2000**, the Banking Mohtasib under Section 82-A of the **Banking Companies Ordinance, 1962**, the Insurance Ombudsman under Section 125 of the **Insurance Ordinance, 2000**, and the Provincial Ombudsman under the **Punjab Office of Ombudsman Act, 1997**. The common thread running through these statutory offices is that they were conceived to inquire into, examine, and redress complaints relating to maladministration in their respective spheres, including public agencies, banking, and insurance sectors. In order to better appreciate the true legal character of such offices, it would be advantageous to refer to paragraph No. 38 of the judgment of the Honourable Supreme Court in "*Federation of Pakistan v. Muhammad Tariq Pirzada*" **(1999 SCMR 2189)**, which reads as follows:

> *"38.* ***The legal status of the Mohtasib under the Establishment of the Office of the Wafaqi Mohtasib (Ombudsman) Order, 1983 against came under discussion before the Supreme Court in Shafaatullah Qureshi v. Federation of Pakistan (PLD 2001 SC 142) and it was held that since the Wafaqi Mohtasib was not a Court nor a judicial Tribunal*** *therefore the period consumed in proceedings before it could not be excluded under section 14 of the Limitation Act, 1908.* ***While discussing what is a court, the Supreme Court referred to Mir Rehman Khan v. Sardar Asadullah Khan (PLD 1983 Quetta 52) which had held that the determination of the question which forum is a Court and which in not, is mainly dependent on the manner and method in which proceedings are regulated before it; that forums which are not bound by any law with regard to procedure and evidence, and only settle disputes but do not administer justice according to law, are not Courts; that Courts are such organs of the State which follow legally prescribed scientific methodology as to procedure and evidence in arriving at just and fair conclusion. The Supreme Court observed that had the legislature intended for the Wafaqi Mohtasib to serve as a Court or Judicial Tribunal, it would have stated so in the Establishment of the Office of the Wafaqi Mohtasib (Ombudsman) Order, 1983; therefore the status of a Court cannot by implication be conferred on the Wafaqi Mohtasib when it cannot deliver a binding judgment; that though the office of the Mohtasib has been created for redressal of the grievance of the citizens but it is neither a Court nor a Judicial Tribunal within the***

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> ***scope of Article 175 of the Constitution***. *While approving Tariq Pirzada-II, i.e. the Wafaqi Mohtasib was a quasi-judicial authority, the Supreme Court further held that performance of quasi-judicial functions by itself does not convert an authority into a Court, and that whether an act is quasi-judicial or purely executive depends on the interpretation of rules/law under which the authority exercises its jurisdiction; that many authorities are not Court, although they have to decide questions and have to act judicially in the sense that the proceedings shall be conducted with fairness and impartiality; that in order to constitute a Court in the strict sense, it should have power to give a decision or a definitive judgment, which has finality and authoritativeness."*
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> (Empasis Supplied)

11. Furthermore, the institution of Ombudsman is not confined to Pakistan alone, but has also found recognition in other jurisdictions, including India. In this regard, when the scope and nature of the functions of an Ombudsman came up for consideration before the Supreme Court of India in "*Durga Hotel Complex v. Reserve Bank of India and others*" **(AIR 2007 SC 1467)**, the Honorable Supreme Court of India observed as follows: -

> *"Conceptually, an Ombudsman is only a non-adversarial adjudicator of disputes. An Ombudsman by definition is only an official appointed to receive, investigate, and report on private citizen's complaints about the government; a similar appointee in a nongovernmental organization (such as a company or university). (See Black's Law Dictionary). He serves as an alternative to the adversary system for resolving disputes especially between citizens and government agencies. He is an independent and non-partisan officer who deals with specific complaints from the public against the administrative injustice and mal-administration. (See 4 American Jurisprudence 2d). Therefore, by its very nature, an Ombudsman is an alternative to an adversary system for resolution of disputes."*

12. Over the time period, however, the legislative evolution of ombudsman-related statutes in Pakistan appears to have altered the original character of the institution. With later enactments, including the **Protection against Harassment of Women at the Workplace Act, 2010**, and thereafter the Enforcement of Women's Property Rights Act, 2020, the office is no longer confined to examining complaints of maladministration by public authorities. Instead, it came to be vested with powers affecting disputes between private

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citizens, including matters involving civil rights, liabilities, possession, title, and monetary consequences. Thus, what was historically designed as an executive mechanism of recommendation increasingly assumed the shape of a forum capable of rendering binding determinations affecting private civil rights. It is this shift that gives rise to a constitutional concern. The distinction between an Ombudsman functioning as an executive corrective authority and an Ombudsman functioning as an adjudicator of disputes between citizens is rather important. In the latter, it undertakes the determination of civil rights and obligations of private parties. Such determination necessarily entails fact-finding, legal interpretation, adjudication of rival claims, and the making of binding decisions with enforceable consequences. These are, in their true nature, judicial functions. Reliance in this regard is placed on "*Mst. Falak Shehnaz and another v. Mst. Farah Deeba and others*" (**PLD 2025 Peshawar 1)**, wherein the Honorable Peshawar High Court has observed the following: -

> *"24. The survey of laws regulating the office of Ombudsman in various jurisdictions as well as in Pakistan and the case law referred above would show that the office of Ombudsman has been established to investigate and report on private citizen complaints about the Government or its Agencies relating to its mal-administration.* ***The scope and functions of Ombudsman is a non-adversarial adjudicator and he cannot render definite findings on any issue rather he recommends to the relevant authority if he finds any mal-administration in any public sector organization to the relevant authority. Ombudsman thus falls in the regime of executive limb of the State though he performs his functions as quasi-judicial, he can record evidence; investigate a matter, and functions as a watch dog on government institutions. He receives his authority from Parliament.****"*
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> (Emphasis Supplied)

13. Turning now to the statutory framework governing the office of Ombudsman, it may be noted that, at the Federal level, the office was provided for under the Protection against Harassment of Women at the Workplace Act, 2010, wherein Section 7 contemplates the appointment of an Ombudsman at the Federal and Provincial level. The functions of the Ombudsman are enumerated under Section 8, which, inter alia, empowers the Ombudsman to receive and

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entertain complaints relating to harassment of an employee at the workplace and to inquire into such complaints. It is pertinent to mention herein that Section 10 further vests in the Ombudsman procedural powers necessary for the conduct of such inquiry, including the power to summon witnesses and receive evidence. Subsequently, through provincial legislation, namely the Enforcement of Women's Property Rights Act, 2020, the Ombudsman appointed under Section 7 of the Protection against Harassment of Women at the Workplace Act, 2010, was additionally entrusted with the authority to entertain complaints by a woman alleging deprivation from ownership or possession of her property by any person. The preamble of the Enforcement of Women's Property Rights Act, 2020, shows that the legislative object is to protect the ownership and possession rights of women in relation to their property, and that object, by itself, is both legitimate and socially imperative.

> *"An Act to protect and secure the rights of ownership of women in the property*
>
> *Whereas it is expedient to provide for the protection of the rights of ownership and possession of properties owned by women, ensuring that such rights are not violated by means of harassment, coercion, force or fraud;"*

14. There can be no cavil with the proposition that women's proprietary rights deserve real, effective and prompt legal protection, yet the constitutional validity of a statute is determined not merely by the legitimacy of its object, but also by the legality of the means adopted for its attainment. A beneficent legislative purpose cannot, by itself, immunize a statutory scheme from scrutiny where the mechanism employed cuts across the constitutional allocation of functions. Thus, perusal of the Enforcement of Women's Property Rights Act, 2020 shows that, by incorporating the powers of the Ombudsman under the Protection against Harassment of Women at the Workplace Act, 2010 and by coupling the same with the enforcement machinery available under the Federal Ombudsmen Institutional Reforms Act, 2013, the Legislature has vested in the Ombudsman with powers far exceeding than the traditional Ombudsman model. Under the scheme of the Act, 2020, the Ombudsman may entertain complaints regarding

ownership or possession of property, initiate proceedings even on his own motion, call for reports and conduct summary inquiry, pass orders for restoration of possession or conferment of title, direct the Deputy Commissioner and police authorities to implement such orders, award compensation or loss of rent, and proceed in a manner that is binding upon private individuals. In effect, the forum is enabled to enter upon matters concerning civil rights in property and to pass enforceable commands touching title, possession and monetary liability.

15. The position becomes more problematic when this statutory scheme is read with the provisions of the Federal Ombudsmen Institutional Reforms Act, 2013. Thereunder, powers are conferred to grant injunctions, implement orders, and invoke coercive consequences for non-compliance. The conferment of contempt jurisdiction is particularly significant. The power to punish for contempt is a constitutional enforcement power, intimately bound up with the authority of Courts to secure obedience to their lawful orders and to preserve the independence of the judiciary. Once such power is placed in the hands of a body which is not a Court within the contemplation of the Constitution, a serious constitutional issue arises. The power to punish for contempt may culminate in penal consequences. It is, therefore, a species of judicial power. A citizen may only be exposed to such penal consequences through a forum constitutionally competent to exercise such power and in a manner consistent with fair trial and due process guaranteed by Article 10A of the Constitution. Likewise, where a dispute pertains to ownership, possession, title, or determination of civil rights in property, the making of binding decisions thereon and their enforcement through coercive state machinery are matters ordinarily belonging to Courts of law and not to executive or quasi-judicial authorities. What emerges, therefore, is that the Act, 2020 departs materially from the classical conception of the ombudsman institution. Instead of remaining confined to the examination of complaints against executive maladministration and making recommendations for executive correction, the statute places the Ombudsman in a position where he is called upon to adjudicate disputes between private citizens, determine proprietary entitlements, issue binding commands, and trigger coercive enforcement. In

substance, the office is made to perform functions that are judicial in character, though it does not form part of the regular judicial hierarchy established and supervised under the Constitution.

16. A dispute regarding ownership and possession of property, even where the grievance is raised by a woman claiming deprivation of her lawful rights, still remains, in essence, a dispute concerning legal rights and obligations. Such disputes may involve determination of title, examination of rival documents, inquiry into possession, identification of legal heirs, ascertainment of shares, and application of settled legal principles, which require judicial method, judicial safeguards, and judicial authority. It is in this backdrop that grave constitutional reservations arise in relation to the statutory design. The law, as it presently stands, already provides remedies through the ordinary Civil Courts for declaration, possession, partition, injunction, recovery, and other reliefs pertaining to property. Likewise, special statutes also operate in their own respective fields. To carve out from the domain of the ordinary Courts an area of private property disputes and place it before a quasi-judicial executive forum, armed with binding and coercive powers, is to create a parallel adjudicatory regime. Such an arrangement raises serious questions under Articles 10A, 175, 203 and 204 of the Constitution.

17. For these reasons, the historical evolution of the ombudsman institution itself demonstrates the difficulty in sustaining a scheme that transforms an executive complaint-redress mechanism into a forum effectively exercising judicial power in disputes between private citizens. The constitutional concern, therefore, is not with the objective of protecting women's property rights, which remains wholly legitimate and indeed compelling, but with the legislative method employed for that purpose, which appears to invest the Ombudsman with powers that are judicial in substance, though not judicial in constitutional placement.

18. Be that as it may, it bears emphasis that the Constitution is established upon a functional division among three coordinate organs, namely the

Legislature, the Executive and the Judiciary. The purpose of such division is designed to prevent concentration of power, to secure checks and balances, and to preserve fundamental rights through an independent adjudicatory system. In the context of our constitutional scheme, the judiciary, under the Constitution, is completely independent of the executive as propounded by A.K. Brohi in "*The Fundamental Law of Pakistan*". It is in this regard that the doctrine of separation of power finds its textual expression in **Article 175**, which creates the judicial hierarchy and ordains the progressive separation of judiciary from executive.

> *"**175. Establishment and jurisdiction of courts**. – (1) There shall be a Federal Constitutional Court of Pakistan, hereinafter referred to as the Federal Constitutional Court, a Supreme Court of Pakistan hereinafter referred to as the Supreme Court, a High Court for each Province and a High Court for the Islamabad Capital Territory and such other courts as may be established by law.*
>
> *(2) No court shall have any jurisdiction save as is or may be conferred on it by the Constitution or by or under any law.*
>
> *(3) The Judiciary shall be separated progressively from the Executive within fourteen years from the commencing day."*

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19. Article 175(1) envisages superior courts and such other courts as may be established by law, while Article 175(2) mandates that no court shall have jurisdiction except as conferred by the Constitution or by or under law, and Article 175(3) commands progressive separation of judiciary from the executive. These provisions, read together with Article 203 and 204 of the Constitution, evidence a deliberate constitutional choice that the adjudication of civil rights and obligations is to be undertaken within a judicial hierarchy that is independent, method-bound, and judicially supervised. The jurisprudence developed by the Superior Courts in Pakistan has repeatedly reinforced that the Constitution does not permit the executive limb to assume quintessential judicial functions. Reliance in this regard is placed on "*Government of Balochistan v. Aziz Ullah Memon*" **(PLD 1993 SC 341)**, "*Government of Sindh v. Sharaf Faridi*" **(PLD 1994 SC 105)**, "*Mehram Ali v. Federation of Pakistan*" **(PLD 1998 SC 1445)**, wherein the Honorable Supreme Court of Pakistan had held that Constitution recognizes only such specific Tribunals to share judicial powers

with the Courts, established under Article 175 of the Constitution, which have been specifically provided by the Constitution itself, namely, Federal Shariat Court under Chapter 3A, Tribunals under Article 212, Election Tribunals under Article 255 of the Constitution. The Honorable Supreme Court had further observed that the Constitution does not envisage conferring judicial power upon a forum that does not fall within the supervisory control of the High Courts under Article 203, thereby treating judicial oversight as a constitutional necessity for any executive functionary exercising judicial functions.

20. Similarly, this view was reiterated in "*Sheikh Liaqat Hussain v. Federation of Pakistan*" **(PLD 1999 SC 504)**, wherein the then Justice Saeeduzzaman Siddiqui had observed that the "creation of courts outside the control and supervision of the Supreme Court or the High Courts, therefore, not only militates against independence of judiciary but it also negates the principle of trichotomy of power which is the basic feature of the Constitution". Therefore, it would be apt to mention herein that where the Executive or the Legislature trespasses beyond the limits of authority delineated by the Constitution, the judicial department is duty-bound to come into play through the exercise of judicial review, so as to restore the constitutional balance and keep each organ within its prescribed sphere. Reliance in this regard is placed on the judgement titled "*Shahid Nabi Malik v. Chief Election Commissioner*" **(PLD 1997 SC 32)**, wherein the august Supreme Court of Pakistan reaffirmed that although the Parliament is competent to legislate, it remains the duty of the judiciary to examine legislative instruments at the touchstone of the Constitution. Further guidance can be drawn from "*Chenab Cement Products v. Banking Tribunal*" **(PLD 1996 Lahore 672)**, where a Full Bench declared the provisions of the Banking Tribunals Ordinance unconstitutional because they eroded the independence of judiciary and offended Article 175 read with Articles 2A, 4, 8 and 25, and even quashed notifications appointing presiding officers of such tribunals. The underlying principle is that where a forum is vested with adjudicatory authority affecting civil rights, it must be constitutionally designed, judicially insulated, and amenable to judicial

supervision in the manner contemplated by Article 175 read with Article 203. Furthermore, the Honorable Supreme Court of Pakistan in "*Sheikh Riaz-ul-Haq v. Federation of Pakistan*" **(PLD 2013 SC 501)** has observed the following qua the nature of powers envisaged by the Constitution in a judicial body: -

> *"40. The perusal of above case-law makes it abundantly clear that a tribunal is not always function as a 'Court', nor its action is always judicial; however, the determining factor is the nature of the dispute to be resolved by the Tribunal. If the Tribunal has to determine a dispute relating to a right or liability, recognised by the Constitution or law and is under an obligation to discover the relevant facts, in the presence of the parties, in the light of the evidence produced by them, it acts judicially. Besides, whenever judicial power is vested in a forum, be it called a Court or Tribunal, for all legal intents and purposes it is a Court. Further, such Tribunals have to be manned, controlled and regulated in accordance with the established judicial principles.*
>
> *41. It is pertinent to mention here that as the service Tribunals are not only deemed to be a civil Court but also exercise judicial powers, therefore, they are included in the term 'Court' mentioned in Article 175 of the Constitution. As such, these Tribunals are to be manned, controlled and regulated in accordance with the law relating to management, regulation and control of Courts in Pakistan.*
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> *42. It is to be noted that independence of judiciary has been recognized as a universal human right. In terms of Article 10 of the Universal Declaration of Human Rights, G.A, 1948, everyone is entitled to full equality to a fair and public hearing by an independent and impartial Tribunal. In Pakistan, the independence of judiciary is a basic principle of the constitutional system of governance. The Preamble and Article 2A state that "the independence of judiciary shall be fully secured". This Court while interpreting Article 175 has further strengthened the principle of the independence of judiciary, by emphasizing the separation of Judiciary from the Executive. The Constitution makes it the exclusive power/responsibility of the Judiciary to ensure the sustenance of the system of "separation of powers" based on checks and balances. This is a legal obligation assigned to the Judiciary. It is called upon to enforce the Constitution and safeguard the Fundamental Rights and freedom of individuals. To do so, the Judiciary has to be properly organized and effective and efficient enough to quickly address and resolve public claims*

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> *and grievances; and also has to be strong and independent enough to dispense justice fairly and impartially. [see Zafar Ali Shah v. Pervez Musharraf (PLD 2000 SC 869)]. Our Constitution is based on separation of powers whereby Parliament makes the laws and the judiciary interprets them. However, it remains the duty of the Judiciary to examine vires of legislation at the touchstone of the Constitution. Reference may be made to the case of Shahid Nabi Malik v. Chief Election Commissioner (PLD 1997 SC 32)."*

21. Adverting the attention towards the office of Ombudsman, which historically was conceived for redressal of grievances against maladministration, it has been held by the apex courts that the status of a court cannot be conferred upon the Mohtasib by implication. Reliance in placed on the judgement titled "*Federation of Pakistan v. Muhammad Tariq Pirzada*" **(1999 SCMR 2189)** and "*Shafaatullah Qureshi v. Federation of Pakistan*" **(PLD 2001 SC 142)**, wherein the Honorable Supreme Court of Pakistan has explained that though the Ombudsman may perform quasi-judicial functions, that does not transform the office into a court in the strict constitutional sense, particularly where it lacks the essential attributes of a court's binding and authoritative judgment within the judicial hierarchy.

22. Once these principles are applied to the present moot question, the answer becomes clear. Adjudication of proprietary rights, possession, and inter se claims between private parties is not a matter of executive administration, it is rather the adjudication of civil rights and obligations, which is an inherently judicial function. Such adversarial adjudication demands adoption of judicial method, such as pleadings, evidence, cross-examination where required, reasoned determination, appealable remedies, and above all, a forum situated within the judicial hierarchy that is independent of the executive and subject to supervisory control of the High Court under Article 203. Accordingly, the office of Ombudsman created under the Enforcement of Women's Property Right Act, 2020 is neither established as a Court under Article 175 of the Constitution, nor falling within the limited categories of tribunals constitutionally recognized to undertake adversarial adjudication of proprietary disputes between private

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persons, which effectively, therefore, creates a parallel adjudicatory forum within the executive branch. Such an arrangement offends the trichotomy of powers and the constitutional mandate of Article 175, which requires that judicial power must be exercised only by Courts, thereby keeping the judiciary separate from the executive functioning.

23. Keeping in view the above rationale and on a principled reading of Article 175, read with Articles 203 and 204 of the Constitution, the Ombudsman under the Enforcement of Women's Property Right Act, 2020 cannot be regarded as part of the judicial limb of the State merely because certain quasi-judicial powers are conferred upon the office by statute. Performance of quasi-judicial functions does not elevate an executive forum to a Court of law under Article 175, and where the functions conferred involve determination of civil rights of private parties in an adversarial setting, such powers, unless constitutionally structured and judicially supervised, are constitutionally incongruent.

24. Accordingly, the moot question is answered in the sense that adversarial adjudicatory functions relating to proprietary rights and inter se private disputes ordinarily lie within the exclusive domain of the Courts of law established under Article 175, and Respondent No. 2/Ombudsperson cannot lawfully be treated as part of the judicial limb nor vested with such judicial power in derogation of the constitutional scheme.

POINT NO. II:

> Whether Section 4 and Section 7 of the Act of 2020 are internally inconsistent, and if so, how such inconsistency affects the assumption of jurisdiction by the Ombudsperson in the present case?

25. Under the Enforcement of Women's Property Right Act, 2020, the substantive powers of the Ombudsman are set out in Section 3, while the procedure for instituting and processing such complaints is provided in Section 4. The provisions of the said Act, to the extent relevant for the present controversy, are reproduced below: -

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*"**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**:*

*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**.*

(2) The Ombudsman shall make a preliminary assessment of the complaint filed under sub-section (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 Ombudsman.

(3) If the matter does not require any detailed probe, investigation or recording of evidence, the Ombudsman may, after calling any record, if deemed necessary, pass orders under section 5.

(4) The Ombudsman upon receiving the report under sub-section (2), may further conduct such summary enquiry and call for such record as he may deem fit.

(5) The Ombudsman after confronting the report of the concerned Deputy Commissioner and the conclusion and findings of his own enquiry, shall call upon the complainant and her adversaries to submit objections, whereafter he may conduct a hearing, and pass orders under section 5, preferably within sixty days of receipt of the complaint under sub-section (1)."

***5. Delivery of possession and transfer of ownership of property to women etc**. — (1) On conclusion of the proceedings under Section 4, if the Ombudsperson finds that the complainant has been illegally deprived of ownership or possession of her property, he shall direct the Deputy Commissioner or a state functionary or any private person to take steps so as to restore or confer possession or title of the property to the complainant, including measures to perfect such title.*

(2) The Ombudsperson may, where deemed fit, direct the officer-in-charge of a police station for such assistance as may be required for the purposes of implementing the orders passed under subsection (1).

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(3) The concerned Deputy Commissioner shall submit a compliance report within seven days to the Ombudsperson in respect of implementation of his orders.

6. Reference to the Court. *— (1) Notwithstanding anything contained in Sections 4 and 5, if upon preliminary assessment, or upon receiving the report of the Deputy Commissioner or upon conducing further summary enquiries by the Ombudsperson himself, he comes to the conclusion that the matter requires in-depth enquiry, investigation or detailed recording of evidence or intricate adjudication, he shall formulate a reference along with all the reports and material collected and submit the same to the Civil Court of competent jurisdiction preferably within sixty days of receipt of the complaint under subsection (1) of Section 4.*

(2) Notwithstanding anything contained in any other law, the Civil Court shall entertain the reference under subsection (1) as a civil suit and proceed further in terms of the Code of Civil Procedure, 1908 (Act V of 1908) and the relevant rules.

7. 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 and 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, may 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

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subject to any Court order 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 complaint and her adversaries to submit objections, and conduct a hearing and pass order, preferably within thirty days of the hearing as to whether the Ombudsperson may or may 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 terminate the complaint.

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

(Emphasis supplied)

26. This question concerns the internal architecture of the Act itself. Section 4 provides that a woman deprived of ownership or possession of her property may file a complaint to the Ombudsperson if no proceedings in a court of law are pending regarding that property. It reflects legislative recognition that the special forum under the Act of 2020 operates, at least at the threshold, only in the absence of judicial proceedings. Section 7, however, departs from that premise. It permits a complaint to be entertained even where proceedings are already pending in a court of law, and further authorizes the Ombudsman, after preliminary assessment and summary inquiry, to file a report in the Court of law recommending that the proceedings pending in the Court may be terminated or put in abeyance, and that the Ombudsman be permitted to take further proceedings under the Act.

27. When the above provisions are seen in juxtaposition, Section 4 states that the Ombudsman may act where no court proceedings are pending, while Section 7 states that the Ombudsman may yet enter the field even where court proceedings are pending and may thereafter seek room to proceed further. These two provisions are in direct conflict with one another. It is pertinent to mention herein that Section 7 dilutes and destabilizes the statutory premise on which Section 4 rests upon. Reliance in this regard is placed on the judgement cited as

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Mst. Falak Shehnaz Case (Supra), wherein the learned Peshawar High Court observed the following: -

> *"27. There is an apparent disparity between Section 4 and Section 7 of the Act. Section 4 envisages that a woman who is deprived of her ownership or possession of the property may file a complaint to the Ombudsman if no proceedings in a court of law are pending regarding the property whereas in Section 7 she has been given authority to entertain a complaint in respect of any dispute relating to the property right of woman despite the pendency of claim before the competent court of law. She is authorized to conduct enquiry, investigation and probe through Deputy Commissioner and can conduct a summary enquiry and after the conclusion of such enquiry, she may file a report in the court of law in which the case is already pending, recommending that the proceedings in the court may be terminated or put in abeyance unconditionally or subject to any court order the Ombudsman be permitted by the court to take further proceedings under the Act.*
>
> *28.* ***The scheme of the law under the Enforcement of Women's Property Right Act, 2019 is aimed to allow the executive limb of the State to conduct a parallel judicial proceeding. This in my humble view is an excessive delegation and would offend the principle of trichotomy of power which is one of fundamental value of our Constitution where under all the three organs of State namely the legislature, the executive and the judiciary are required to perform their functions and exercise their powers within the allotted sphere****. It is basis of decisions in some of the leading constitutional cases e.g. State v. Zia-ur -Rehman (PLD 1973 SC 49), Registrar v. Wali Muhammad (1997 SCMR 141) Sharaf Faridi v. The Federation of Pakistan (PLD 1989 Kar. 404), Government v. Aziz Ullah Memon (PLD 1993 SC 341), Al-Jehad Trust v. Federation of Pakistan PLD 1996 SC 324, Liaqat Hussain v. Federation of Pakistan (PLD 1999 SC 504) and Mehram Ali v. Federation of Pakistan (PLD 1998 SC 1445)."*
>
> (Emphasis supplied)

28. Thus, if the legislature had itself considered absence of pending judicial proceedings to be of sufficient importance to make it a condition under Section 4, the same enactment cannot, without creating manifest inconsistency, empower the Ombudsman under Section 7 to superimpose a parallel process over pending judicial proceedings. In this context, the mischief inherent in

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Section 7 lies in the institutional consequence that the provision inevitably produces. A Civil Court, exercising plenary jurisdiction in civil matters under Section 9 of the Code of Civil Procedure, 1908, and adjudicating rights through the judicial method, i.e., pleadings, evidence, and reasoned determination, is a forum constitutionally accommodated within the judicial hierarchy. Section 7 of the Act, 2020, however, contemplates that even where such judicial proceedings are already pending, the Ombudsman may nonetheless assume cognizance of the matter, conduct a parallel summary process, and then submit a report to the very Civil Court recommending that its proceedings be terminated or put in abeyance, so that the Ombudsman may proceed further. This statutory design, by its very nature, places a quasi-judicial executive forum in a position that overbears the functioning of the Civil Court, inviting the latter to suspend its constitutionally backed adjudicatory role in favour of an executive inquiry that is neither structured by the CPC nor conducted within the discipline of the judicial hierarchy as envisaged under Article 175 of the Constitution. Such a mechanism is legally anomalous because the Ombudsman is not a court established under Article 175. Consequently, the same cannot be positioned, directly or indirectly, as a forum capable of initiating a process that effectively displaces, or seeks displacement of, pending civil proceedings. Put differently, the Civil Procedure Code governs the conduct and control of civil adjudication, including continuance, stay, abeyance, and termination of proceedings, and those matters are to be decided by the Civil Court itself on judicially recognized principles, therefore, a quasi-judicial body cannot be permitted to trespass into that domain by recommending that a Court of law lay down its hands in favour of a parallel forum. Reliance in this regard is placed on ***Mst. Falak Shehnaz Case*** (Supra), wherein the learned Peshawar Court whilst interpreting the provisions under the Enforcement of Women's Property Right Act, 2019 has stated the following: -

> *"36. There is yet an inherent defect in the Act of 2019 as it does not provide the procedure for share of woman when it is jointly held/owned by her along with other members of her family. Subsection (2) only envisages that the Ombudsman shall make a preliminary assessment of the complaint filed under subsection (1) where after he may, if the matter requires further probe or investigation refer the*

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> *matter to the concerned Deputy Commissioner who shall conduct an inquiry and submit the report. What would be the scope of his inquiry; the law is silent about the same."*

29. Similarly, in "*Yasir Yaqoob and another Versus Government of the Punjab through Secretary Provincial Assembly of the Punjab and 4 others*" **(2024 CLC 1108)**, the Honorable Lahore High Court while interpreting the provisions of the Punjab Enforcement or Women's Property Rights Act, 2021, which is in pari materia with the Federal enactment, observed the following: -

> *"Thus, various courts are on common ground that laws conferring judicial power on quasi-judicial bodies offend the Constitution and cannot stand."*

The observation, though brief, captures the principle with precision. Once a statute allows a quasi-judicial executive authority to intrude into the adjudicatory space of ordinary courts and seek displacement of pending judicial proceedings, the line between administrative redress and judicial power stands impermissibly blurred. The constitutional scheme, therefore, does not contemplate that a forum outside the judicial hierarchy may subject pending judicial proceedings to its own preliminary filter and then propose that the court recede in its favour. Even if the ultimate discretion formally remains with the Civil Court, the very statutory arrangement is institutionally incompatible with the constitutional position of courts of law. A quasi-judicial forum may, at the highest, defer to courts, aid executive implementation of lawful orders, or operate in a domain not occupied by judicial adjudication. It cannot, however, be placed in a position where it may seek displacement of a court already seized of the matter.

30. Furthermore, where a woman complains of deprivation of her right in respect of property, and her title is clear and undisputed, while the person alleged to have deprived her is not a co-owner or claimant in that property, the Ombudsperson, upon a preliminary assessment and such summary inquiry as may be warranted, may, in an appropriate case, proceed to pass restorative directions under Section 5 of the Act of 2020 for restoration of possession or conferment of title. The difficulty, however, squarely arises where the property

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is not held exclusively by the complainant but is jointly owned, or where the claim is rooted in inheritance and the competing parties are co-heirs or co-sharers asserting inter se rights. In such situations, the controversy is not capable of being resolved merely by a summary inquiry, because it necessarily involves determination of shares, identification of estate property, separation of interests, and partition, matters for which the ordinary law provides specific judicial mechanisms. Where the property is agricultural land assessed to land revenue, the partition mechanism is provided in the relevant revenue framework, and where the property is immovable property falling outside such revenue regime, recourse lies to the Civil Court under Section 9 of the Code of Civil Procedure, 1908, for separation of share/partition. The manner of adjudication and decree in partition matters is governed by the Code, including the passing of a preliminary decree declaring the rights of parties in the joint property, followed by final decree proceedings culminating in division by metes and bounds, with resort to commission where required and, where partition is impracticable, such other lawful course as the court may adopt. Crucially, the Act of 2020 does not itself provide any comprehensive machinery for the determination of the respective shares of co-owners in joint property, nor does it lay down a procedure akin to civil adjudication for partition, separation of shares, and implementation of such division. Therefore, when the dispute is of such nature, particularly where rival co-ownership or inheritance-based claims are raised, the proper course is for the parties to pursue their remedies before the competent civil forum seized of, or competent to determine, such questions.

31. Corollary to the above is that where the subject matter concerning ownership, possession, shares or partition is already pending before a competent Civil Court, the Ombudsman ought, at the earliest stage, to satisfy himself as to such pendency and, once found, to refrain from proceeding further in a manner that would create conflict with the constitutional and statutory domain of the Civil Courts. In partition-related disputes, interim protection may indeed be necessary, however, such interim measures must remain within the limits recognized by the civil procedure regime, typically to preserve the property,

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restrain alienation, and prevent alteration of its nature or character, rather than to impose harsh restrictions that effectively deprive any party of use or enjoyment of the property, particularly where the property is under tenancy or is a running business concern.

32. Therefore, the divergence between Sections 4 and 7 reveals a deeper uncertainty in the legislative design. Section 4 is premised upon judicial abstinence in order to enable resort to the Ombudsman. Section 7, by contrast, contemplates executive entry into a field already occupied by the court. More importantly, the inconsistency is magnified when Section 6 is examined. Section 6 contemplates that if the matter requires in-depth enquiry, investigation or detailed recording of evidence or intricate adjudication, the Ombudsman shall formulate a reference to the Civil Court. That statutory acknowledgment of Civil Court primacy in complex matters sits uneasily with Section 7, which allows the Ombudsman to enter even where the court is already seized of the matter and then seek space to proceed further. Such provisions cannot be read in a manner that permits the special forum to compete with, overlap, or undermine the ordinary judicial forum. The only construction that preserves coherence is one that treats Section 4 as reflective of the basic legislative policy, Section 6 as the acknowledgment of Civil Court primacy in complex matters, and Section 7 as incapable of being read so broadly as to authorize a parallel adjudicatory regime over pending judicial proceedings in disputes of the kind now before this Court. Accordingly, **Point No. II is answered in the affirmative**, inasmuch as Sections 4 and 7 disclose an internal inconsistency, and such inconsistency militates against an expansive assumption of jurisdiction by Respondent No. 2 in the present case.

POINT NO. III:

> Whether Respondent No. 2 could lawfully exercise jurisdiction under the Enforcement of Women's Property Rights Act, 2020, in a dispute concerning inheritance, estate property, and inter se rights of legal heirs, particularly when civil proceedings regarding the same properties were pending or had been brought to his notice?

FOR READING ONLY

33. The present controversy is not one in which a woman, having an admitted and exclusive title, complains of being deprived of possession by a stranger or trespasser. Nor is it a case of a simple, undisputed proprietary right requiring only a ministerial or restorative intervention. The dispute, rather, pertains to estate property allegedly forming part of the legacy of the deceased Fahad Malik and, in turn, involves the claims of his widow, his minor children, and his mother. The Petitioner, on the one hand, asserts title and exclusive beneficial ownership in respect of certain properties, and disputes that the same wholly form part of the estate. Respondent No. 3, on the other hand, seeks to assert rights flowing from inheritance in the estate of her deceased husband. Such a controversy necessarily entails the determination of what property constituted the estate of the deceased, what, if any, portion stood in the exclusive ownership of the Petitioner, what rights accrued to different legal heirs, and what consequences flow therefrom. These are not collateral or incidental questions, they lie at the very heart of the matter.

34. It is pertinent to mention herein that even on the record of Respondent No. 2 himself, the proceedings were not confined to a bare notice. On 30.04.2025, Respondent No. 2 recorded that a *prima facie* case of deprivation had been made out, subject to proof, and called for a report from CDA regarding ownership and possession of the two houses in dispute. On 14.05.2025, despite being informed that a civil suit may have been filed in respect of House No. 46, the Ombudsman observed that the matter was "presently entertainable" before the forum under Section 4 of the Act. On 04.06.2025, the written reply of the Petitioner along with copies of pending litigations before the Civil Court and High Court was taken on record, and it was also noted that the CDA focal person had submitted a copy of the stay order issued by the Civil Court. Thus, by that stage, Respondent No. 2 was in cognizance of material clearly demonstrating that the controversy was not a simple one, but part of a larger civil and inheritance dispute.

35. In the judgement titled "*Mst. Falak Shehnaz and another v. Mst. Farah Deeba and others*" (**PLD 2025 Peshawar 1)**, the learned Peshawar High Court,

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while examining an analogous statutory framework, held that where the property is jointly held or the matter concerns the separation of share in legacy among co-owners, such a dispute falls within the domain of civil adjudication. Therefore, when a competent Civil Court is already seized of the matter, the Ombudsman ought to lay off hands. The same principle squarely applies here. The relevant portion is reproduced herein: -

> *"In the cases when the woman is deprived of her right relating to a property, when her title is clear and the person depriving her of her rights is not co-owner in the suit property then the Ombudsman after a preliminary inquiry can pass an order under Section 5 of the Act of 2019 by putting her in possession of the property. However, the issue would arise when the women as well as other members of her family are joint owner in the disputed property… under Section 9 of the Code of Civil Procedure, 1908 the claimant can approach the civil court for separation of the share/partition of the disputed property… In the Act of 2019, no such mechanism has been provided for the determination of the share of each co-owner in the joint property."*

36. The above exposition is of direct assistance. It recognizes a distinction of great significance: one class of cases where the woman's title is clear and the adversary is not a co-owner, and another class where the dispute concerns co-ownership, family estate, inheritance and separation of shares. In the latter class, the proper forum remains the civil court. The instant controversy plainly belongs to that latter class. The same judgment further observed: -

> *"Provided when the Worthy Ombudsman at the very initial stage shall confirm as to whether the subject matter of dispute is pending before any competent civil court then in such circumstances, the Ombudsman shall lay off his hands from the proceedings as the same would be in conflict with Article 175(2) of the Constitution."*

37. This principle, in my view, is fully attracted here. Even the order sheets placed before this Court indicate that Respondent No. 2 did not remain confined to a mere issuance of notice. Rather, a prima facie view was formed, a report was called for regarding ownership and possession, and despite being apprised of pending litigation and the existence of a civil court stay order, the matter continued to be treated as entertainable before the forum. Once the controversy

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was seen, even prima facie, to be bound up with pending civil proceedings and intricate claims of inheritance and title, the lawful course was not to proceed further in a parallel forum.

38. I am, therefore, of the considered view that the present dispute, being one involving inheritance, estate property, rival assertions of title, possession and inter se rights of legal heirs, was not the kind of controversy that could lawfully be assumed or continued by Respondent No. 2 through summary proceedings under the Act of 2020, particularly once the pendency of civil proceedings and judicial orders had been brought to his notice. Accordingly, Point No. III is answered in the negative.

POINT NO. IV:

> Whether the controversy raised by Respondent No. 3 was of such nature as required detailed adjudication by the civil court under section 6, rather than summary inquiry before the Ombudsman?

39. Section 6 of the Act, 2020 furnishes an important internal indicator of legislative intent. It provides that if, upon preliminary assessment, receipt of report of the Deputy Commissioner, or further inquiry, the Ombudsman concludes that the matter requires in-depth inquiry, investigation, detailed recording of evidence or intricate adjudication, he shall formulate a reference to the concerned Civil Court, which shall entertain the same as a civil suit and proceed under the Code of Civil Procedure, 1908. This provision, in effect, recognizes the limits of summary adjudication under the Act and preserves the Civil Court as the proper forum where the controversy is factually or legally complex. The present case, on any fair reading of the pleadings and material, falls squarely within that category.

40. The controversy is rooted in inheritance. It concerns the estate of a deceased person. It involves the widow, minor children and mother of the deceased. It also intersects with assertions by the Petitioner that the two properties in dispute were acquired for her exclusive benefit and do not wholly

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form part of the estate. The suits inter se the parties disclose claims for declaration, partition through separate possession, permanent injunction and mandatory injunction, all of which are classical civil remedies. Such questions cannot be answered through a summary report of the Deputy Commissioner or a truncated inquiry before the Ombudsman. They require evidence, scrutiny of title documents, possibly examination of witnesses, determination of the character of the properties, identification of estate assets and adjudication of the respective shares and rights of parties.

41. It is also significant that Section 5 authorizes restoration or conferment of "possession or title" and even measures to "perfect such title", while Section 8 authorizes award of loss of rent. These are serious civil consequences. Yet the Act of 2020 provides no workable mechanism for determination of shares in joint or inherited property, no process for partition by metes and bounds, no machinery for resolution of rival heirship-based claims, and no procedural architecture comparable to a civil suit. This omission becomes especially glaring in a matter such as the present one.

42. Therefore, even if one were to assume that the Act of 2020 may have some operation in cases of admitted title and straightforward deprivation, the controversy now before this Court could not, by any stretch, be treated as such. It was, and remains, a matter requiring detailed adjudication by a competent Civil Court. Accordingly, **Point No. IV is answered in the affirmative**.

POINT NO. V:

Whether the impugned proceedings and orders of Respondent No. 2 are without lawful authority and liable to be set aside?

43. The cumulative effect of the above discussion is that Respondent No. 2 assumed and continued jurisdiction in respect of a controversy which, by its very nature, lay within the ordinary and exclusive domain of civil adjudication. The Impugned Orders reveal that, even after information regarding civil litigation and judicial orders was brought before the Ombudsman, the latter continued to treat the matter as entertainable and proceeded with the complaint.

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In doing so, the Respondent No. 2 acted on a legally unsustainable understanding of his statutory remit.

44. I am mindful of the objection that no final order has yet been passed. However, where the foundation of jurisdiction itself is under challenge, and where the forum in question has already embarked upon the adjudicatory course by forming a prima facie view, treating the matter as entertainable and proceeding despite notice of pending civil litigation, the writ jurisdiction of this Court is not ousted merely because the matter has not yet culminated in a final order. Jurisdictional overreach, if allowed to continue unchecked, does not become immune merely because it remains in motion rather than already completed. The challenge here goes to the root of jurisdiction and to the legality of the process itself. A representation to the President is not an efficacious answer where the Complaint is that the forum has embarked upon a course which, on the facts and law, it could not lawfully undertake.

45. As regards the vires challenge laid to Sections 3, 4, 5, 6, 7, 8, 9 and 11 of the Act, I am of the view that the present petition can be disposed of on grounds flowing from the nature of the dispute, the internal disparity within the statute, the constitutionally incongruent mechanism under Section 7, and the manifest necessity of civil adjudication under Section 6. It is a well-settled rule of constitutional adjudication that where a case can be decided on narrower grounds, a court ought not travel farther than necessity demands. Suffice it to observe that the constitutional objections urged by the Petitioner are by no means insubstantial; indeed, the statutory scheme does present grave concerns touching Articles 10A and 175 of the Constitution. However, for purposes of the instant petition, it is sufficient to hold that Respondent No. 2 lacked lawful authority to proceed with the impugned complaint in the manner she did, having regard to the nature of the controversy and the pending civil proceedings inter se the parties. Consequently, **Point No. v is answered in the affirmative**.

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CONCLUSION:

46. Having examined the Enforcement of Women's Property Rights Act, 2020 in its pith and substance, particularly Sections 3, 4, 5, 6, 7, 8, 9 and 11, this Court is persuaded that the impugned scheme cannot be reconciled with the constitutional architecture governing adjudication of civil rights. Conceptually, an Ombudsman is an oversight mechanism within the executive, historically meant to inquire into maladministration and to facilitate corrective action by recommendation. It is not a Court established under Article 175, nor a tribunal constitutionally accommodated within the limited exceptions recognized by the Constitution to exercise judicial power. Yet, the Act of 2020, read as a whole, authorizes the Ombudsperson to enter upon adversarial disputes between private persons relating to ownership, possession, and consequential monetary liability, to render binding directions affecting proprietary rights protected under Articles 23 and 24, and to have such directions executed through coercive state machinery. The internal disparity between Section 4 and Section 7 underscores the constitutional defect, while Section 4 itself recognizes the primacy of Courts by conditioning recourse to the Ombudsperson upon absence of pending judicial proceedings, Section 7 simultaneously permits the Ombudsperson to intrude into a matter already sub judice and to recommend that the Civil Court terminate or hold its proceedings in abeyance so that the Ombudsperson may proceed further. This mechanism is legally anomalous and constitutionally impermissible, for it places a quasi-judicial executive forum in a posture of overbearing the functioning of courts governed by the Code of Civil Procedure, 1908, and invites displacement of a constitutionally backed adjudicatory process by a parallel summary process not structured by judicial safeguards. Further, Sections 5, 8 and 9 entail serious civil consequences, restoration or conferment of possession/title, determination of loss of rent, and executive execution, without a procedure commensurate with the requirements of fair trial and due process under Article 10A, particularly in disputes involving title, inheritance, co-ownership, or intricate adjudication. The ouster clause in Section 11, seeking to bar court interference and interim protection, compounds the infirmity by

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attempting to insulate the parallel mechanism from judicial oversight, notwithstanding that the Constitution vests supervisory control in the High Courts under Article 203 and vests contempt power in courts under Article 204. In consequence, to the extent the Sections 3, 4, 5, 6, 7, 8, 9 and 11 of Act of 2020 authorize Respondent No. 2/Ombudsperson to exercise judicial power in adversarial proprietary disputes between private parties, to displace or overbear pending civil proceedings, and to enforce such determinations through executive coercion while restricting judicial supervision, the said provisions are inconsistent with, and therefore ultra vires, Articles 8, 9, 10A, 23, 24, 175, 202, 203 and 204 of the Constitution, and are declared to be of no legal effect.

47. The existing legal framework already furnishes adequate remedies for the enforcement of property and possessory rights, inter alia, through proceedings under the Specific Relief Act, 1877, the Illegal Dispossession Act, 2005, the Islamabad Rent Restriction Ordinance, 2001, and by way of declaratory and other civil suits maintainable under the Code of Civil Procedure, 1908. To create an additional forum before an Ombudsman for adjudicating such disputes is, in effect, to remove a class of civil controversies from the judicial domain and relocate it within the executive sphere. Such a course impermissibly vests a quasi-judicial authority with powers of adjudication over private civil rights, through a process that is not structured to ensure the guarantees of fair trial and due process mandated by Article 10A of the Constitution. Consequently, the jurisdiction purportedly assumed by Respondent No. 2 under the said provisions is rendered coram non judice. Therefore, the instant writ petition is ***allowed*** and the Impugned Orders dated 22.04.2025, 30.04.2025, 14.05.2025, and 04.06.2025, having been passed without lawful authority, are void ab initio and are hereby set aside. It is clarified, however, that nothing stated herein shall be construed as an opinion on the merits of the parties' rival claims regarding title, inheritance, possession, or shares, which shall remain to be determined, if so pursued, by the competent civil forum in accordance with law.

(MUHAMMAD AZAM KHAN)
JUDGE

Announced in the open Court on this _____ day of March, 2026.

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JUDGE

Approved for Reporting||Blue slip added

Sajid/--

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