

Pakistan Information Commission

Government of Pakistan

1st Floor, National Arcade, 4-A Plaza

F-8 Markaz, Islamabad

Website: www.rti.gov.pk

Phone: 051-9261014

Email: appeals@rti.gov.pk

  @PkInfoComm



In the Pakistan Information Commission, Islamabad

Appeal No 1002-04/21

Zafar Hafeez

(Appellant)

Vs.

Cantonment Board Multan

(Respondent)

ORDER

Date: December 07, 2021

Zahid Abdullah: Information Commissioner

A. The Appeal

1. The Appellant filed Appeal on April 09, 2021, to the Commission, stating that:

“Kindly refer to the letter / Appeal No. 1002-04/21 dated 27-07-2021 & find enclosed here with Photostat copy of reply of Show Cause Notice submitted by the appellant to the Executive Officer Cantonment Board Multan on 25-07-2021.

It is to inform you that Executive Officer Cantonment Board Multan is relishing on his authoritative power and refused to meet the appellant & disobeyed the orders of Honourable High Court, Lahore Bench Multan as ordered in W.P. No. 724/2021 & W.P. No. 6823/2021.

Hence fourth the reply of Show Cause No. 234 dated 09-02-2021 is self-explanatory. In the instant case the Cantonment Board Multan has demanded from the Appellant, through Notice No. 234 dated 09-02-2021, Rs. 200000/- as arrears of premium settled at the time of open auction since 35 years ago from the first allottee who disposed of store after obtaining NOC from the office of Cantonment Board Multan & the second allottee Mst Rhila Asghar applied for shifting of Tenancy rights of Store No. 1631/3 Quaid-e-Azam shopping Centre Azeez Shaheed Road Cantt & Mr. Zafar Hafeez third allottee received Tenancy rights letter on 03-11-2003. Mr. Zafar Hafeez is regular paying rent as per demand of Cantonment Board Multan. Moreover the Appellant is innocent third allotte & has no concern of the amount of premium.

Anyhow he is ready to pay remaining premium amount if the office of the Cantonment Board Multan supply the copy of original office file.

It is astonishing to note that Cantonment Board demand the copy of record of thirty five years of store No. 1631/3 while the appellant received Tenancy rights since 18 years ago the reason best known to the C.E.O office Multan.

Therefore it is requested to your goodself to collect the original attested photostat copy of file regarding Store No. 1631/3 from the C.E.O office Multan for the sake of Justice. The

appellant is ready to pay Government dues that lie upon store No. 1631/3 legally & oblige.”

2. The Appellant sent information request to the Cantonment Executive Officer, Cantonment Board Multan on March 02, 2021.

B. Proceedings

3. Through a notice dated July 12, 2021, sent to Cantonment Executive Officer, Cantonment Board Multan stated that “Under Section 14 of the Right of Access to Information Act 2017, each federal public body is bound to respond to a request as soon as possible and in any case within ten working days of receipt of the request. You are directed to provide reasons in writing within 7 working days of the receipt of this notice as to why the requested information has not been provided to the applicant, (copy of the information request and appeal thereon enclosed)”.

4. The Respondent, through a letter vide No. Store 110-3/1006 dated July 19, 2021, submitted its response, which is as under:

“ It is submitted that the requisite information to the applicant Mr. Zafar Hafeez have never been denied by this office, all the correspondence made between the applicant and this office is copied (scanned) and attached for your ready reference via Email: appeals@rti.gov.pk. In this regards the Lahore High Court, Multan Bench, Multan Order dated 02/07/2021 where the subject appeal was disposed of in favour of this office, is also attached.

3. The applicant has time and again requested to provide him the copies of the premium amount paid to this office by the original/ first tenant, from whom he has purchased through multiple transfers done in last 03 to 04 decades.

4. In this regard, no evidence, record, any paid voucher from the available record has ever been found on the grounds therefore, same was not provided to the applicant. For the satisfaction of the applicant, the relevant copies are also attached (scanned copies) and the original file can also be accessed through the procedures adopted during the office hours.”

5. The Response of the public body was shared with the appellant on July 27, 2021.

6. The Appellant, on July 31, 2021, submitted rejoinder to the information shared by the public body which is as under:

“Kindly refer to the letter / Appeal No. 1002-04/21 dated 27-07-2021 & find enclosed here with Photo Stat copy of reply of Show Cause Notice submitted by the appellant to the Executive Officer Cantonment Board Multan on 25-07-2021.

It is to inform you that Executive Officer Cantonment Board Multan is relishing on his authoritative power and refused to meet the appellant & disobeyed the orders of Honorable High Court Lahore Bench Multan as ordered in W.P. No. 724/2021 & W.P. No. 6823/2021.

Hence fourth the reply of Show Cause No. 234 dated 09-02-2021 is self explanatory. In the instant case the Cantonment Board Multan has demand from the appellant through Notice No. 234dated 09-02-2021 200000/- Rs as arrears of premium settled at the time of open auction since 35 years ago from the first allottee who disposed off store after obtaining NOC from the office of Cantonment Board Multan & the second allottee Mst Rhila Asghar applied for shifting of Tenancy rights of Store No. 1631/3 Quaid-e-Azam shopping Center Azeez Shaheed Road Cantt & Mr. Zafar Hafeez third allottee received Tenancy rights letter on 03-11-2003. Mr. Zafar Hafeez is regular paying rent as per demand of Cantonment Board Multan.

Moreover the appellant is innocent third allottee & has no concern of the amount of premium.

Any how he is ready to pay remaining premium amount if the office of the Cantonment Board Multan supply the copy of original office file. It is astonishing to note that Cantonment Board demand the copy of record of thirty five years of store No. 1631/3 while the appellant received Tenancy rights since 18 years ago the reason best known to the C.E.O office Multan.

Therefore it is requested to your goodself to collect the original attested photostat copy of file regarding Store No. 1631/3 from the C.E.O office Multan for the sake of Justice. The appellant is ready to pay Government dues that lie upon store No. 1631/3 legally & oblige.”.

7. Through a letter dated August 11, 2021, sent to the Respondent, the Commission sought answers to the following questions:

Whose responsibility is it to keep and maintain records, inter alia, pertaining to Store No. 1631/3 Quaid-e-Azam shopping Centre Azeez Shaheed Road Cantt?

How many documents pertaining to the subject file are missing?

Did Multan Cantonment Board conduct any enquiry to fix responsibility for the missing records?

Does the Multan Cantonment Board issue transfer of property without NOC certificate pertaining to the clearance of dues?

8. The Respondent, through a letter vide No. 3/Store/1631/3/1595 dated August 20, 2021, submitted reply to the questions of the Commission which is as under:

“Reference your letter No. Appeal No. 1002-04/21 dated 11.8.2021

The reply to your questions has kindly been stated below:

1) The office of Cantonment Board Multan was made by British Government in 1880. All the office record handed over to Cantonment Board Multan since the independence of Pakistan have been kept and maintained with great vigilant responsibility.

2) No document is missing in the file of Quaid e Azam Shopping Centre Aziz Shaheed Road Multan Cantt, kept in the store No.1631/3.

3) Since the said store has no document missing from the file of Store No. 1631/3 Quaid e Azam Shopping Centre, therefore Cantonment Board Multan has no sound basis to stand an inquiry against the cantonment employee.

4) The notices for premium and security were issued after the approval of President Cantonment Board. Many of the tenants have filed appeal to Director General Military Lands & Cantonments Department against the said notices, therefore Cantonment Board Multan is waiting for the directions of the headquarter ML&C Deptt.

Through a letter dated October 01, 2021, the Appellant stated that “the Appellant makes the request to issue the voucher after examining the original file”.

C. Discussion and Commission’s View on Relevant Issues

9. This Commission considered four key questions, as given below:

(a) In whom does authority vest, and under what law, with respect to keeping and maintaining records, pertaining specifically to Store No. 1631/3 Quaid-e-Azam Shopping Centre Azeez Shaheed Road Cantt?

(b) In the subject file, how many total documents are missing?

- (c) Has any enquiry been conducted by the Multan Cantonment Board to affix responsibility for the missing records?
- (d) Are property transfers issued by the Multan Cantonment Board without an NOC certificate with respect to clearance of dues?
10. In addressing the first question, it is clear under the Cantonments Ordinance 2002, Section 16(1)(l)(xiii), that the functions of the Cantonment Administration include maintenance of a comprehensive database and information system for Cantonment Administration. Accordingly, copies of all original office files for any property within the control of the Cantonment Administration are the responsibility of the Administration itself. The functions of the Cantonment Board are provided in Section 26 of the 2002 Ordinance, in which the Board has the responsibility to approve taxes, cess, rates, rents, fees, user-charges, tolls, levies and duties proposed by the Cantonment Administration as specified in the First Schedule.
11. Under Section 16(1)(xv), it is the responsibility/obligation of the Cantonment Administration to collect approved taxes, cess, user fees, rates, rents, tolls, charges, duties, fines and penalties. In addition, under Section 16(1)(xviii), the Cantonment Administration is responsible for regulating markets and services, issuing licenses, permits, granting permissions and imposing penalties for violation thereof as and where applicable. Moreover, as per Section 16(1)(xix), it is also to manage properties, assets and funds vested in it. Under Section 16(1)(xxiv), the Cantonment Administration is authorized to maintain municipal records and archives, whereas under Section 16(1)(xxv), the Administration is to prepare financial statements and present them for internal and external audit in the manner prescribed.
12. Under Rule 3 of the Cantonment Property Rules 1925, “registers of immovable property, which vest in and belong to the Cantonment Board shall be, maintained by the Cantonment Board in the forms prescribed by Rules 70 and 71 of the Cantonment Account Code, 1924 and all additions to or alterations in the holdings of the Cantonment Board shall be recorded therein”. That further under Rule 7 of the 1925 Rules, immovable property, which vests in and belongs to the Cantonment Board, cannot be transferred to any person by the Cantonment Board (by sale, mortgage or exchange or otherwise than by lease without a premium) in such a manner and on such terms and conditions as the Government may approve.
13. In light of the aforementioned, it would appear that there are elements of shared responsibility between the Cantonment Board and Cantonment Administration vis-à-vis taxes. However, the primary responsibility for record keeping vests in the Cantonment Administration.
14. Coming now to the second question before this Commission regarding the number of total documents missing from the subject file, the response submitted by the Respondent is grossly inadequate. If a copy of the original file cannot be retrieved, the understanding of this Commission is that there are three possibilities with respect to the record, i.e., that the record has been destroyed/tampered with; that the record is lost; or that the record has been misplaced due to negligence. Accordingly, it is the responsibility of the Respondent to provide information transparently regarding the missing record. In fact, this is reflected in Section 25 of the 2002 Ordinance, which provides for the liability of members of the Cantonment Board in the following terms: “Every member of the Board shall be liable for the loss, waste or misapplication of any money or other property belonging to the Board. If such a loss, waste or misapplication is a direct consequence of his neglect or misconduct while such member and a suit for compensation for the same may be instituted against him either by the Board or by the Government.”

15. The third question has been answered by the Respondent denying that any document is missing from the record of file of Store No. 1641/3 Quaid e Azam Shopping Centre. This is the basis on which the Respondent has stated that there is no “sound basis” to stand an inquiry against the cantonment employee.
16. In its response to the fourth question posed by this Commission, the Respondent has not provided any information regarding the process for sales and transfers, specifically with respect to issuance of NOCs and clearance of dues. In *2012 SCMR 169 (Federation of Pakistan v. Muhammad Jamal Rizvi and others)*, the Honourable Supreme Court of Pakistan addressed a case of import and transfer of a vehicle. At paragraph 4, the Apex Court held: “It appears that vehicle in question was imported by Consulate General of France at Karachi which was subsequently sold to Messrs Jardin Fleming Pakistan Broking (Pvt.) Ltd. The permission of the said vehicle was accorded by the Government of Pakistan, Ministry of Foreign Affairs... in pursuance whereof a sale certificate was also issued by the Consulate General of France in favour of the Company. The Deputy Collector of Customs, Appraisement Group-VII also issued No Objection Certificate for sale of the same vehicle. The purchaser company, deposited in the year 1998 all the taxes, etc. with the Excise and Taxation department. In the coming years, the company sold the said vehicle which having changed different names finally came to the lot of the Respondent No. 8 who got it transferred in his name. In the NOC issued by the Deputy Collector Customs, Appraisement, it was stated that the vehicle in question was used in Pakistan for over five years as no such customs duty, sales tax and other surcharge were leviable in respect thereof”. Reference to the judgment of the Honourable Supreme Court is made not vis-à-vis applicable law (as the law applicable in the instant matter is distinct), but with respect to the underlying principle on clearance of dues for issuance of an NOC when transfer of property (movable and immovable) is concerned.

D. Order

17. The Appeal is allowed and the Respondent is directed to provide a copy of the original file to the Appellant.
18. The Respondent is directed to conduct an inquiry on issuance of notices for premium and security, and submit a report on the same before this Commission within one month of the receipt of this Order.
19. Copies of this Order be sent to Executive Officer, Cantonment Bord, Multan, Secretary, Ministry of Defence, Director General, Military Lands and Cantonments and the Appellant for information and necessary action.

Mohammad Azam

Chief Information Commissioner

Zahid Abdullah

Information Commissioner

Announced on: December 08, 2021

This order consists of 5 (five) pages, each page has been read and signed.