



**In The Pakistan Information Commission, Islamabad**

**Appeal No E001-10/20**

**Umair Ismail**

(Appellant)

Vs.

**Cantonment Board Malir**

(Respondent)

Through its Chief Executive Officer

**ORDER**

**Date:** January 21, 2021

**Zahid Abdullah:** Information Commissioner

**A. The Appeal**

1. The Appellant filed an appeal, dated 16-10-2020, to the Commission, stating that *“Please refer to my attached applications to CEO, Cantonment Board Malir, Karachi. In my application dated 24th August 2020, I had requested information from the CEO relevant to a complaint that I had lodged with the cantonment board. The CBM has so far failed to provide the information or any intimation related to my request. My basic right to information, as a citizen has been denied, despite the stipulated 10 days in the ‘Right of Access to information Act 2017’. A further reminder was sent to the CEO on the 16th of September 2020. There is no response to this letter as well. Relevant paragraphs of the applications are highlighted for your easy reference. You are kindly requested to direct the CEO, Cantonment Board Malir to provide the requested information as per the provisions of the federal Act.”*
2. The information sought by the Appellant is as follows:

*“Reference: your letter to the builder M/s ‘Ukaha associates’ No. MLR/BP/Com-2/15/Sec-40/2019/5711, dated 10 June 2020 & the builder's response vide your letter No. MLR/BP/Com-2/15/Sec-40/2019/566, dated 13" August 2020 & my letter to you dated 24" August 2020.*

***The matter is MOST URGENT.** In its letter received by you on 8 July 2020, the builder has quoted para 29 of the 'general terms and conditions' for the illegal and unjustified 'escalation charges. The para 29 states the allottee shall pay the escalation in price due to delay or irregular payments to the company. It may be made very clear that the builder illegally sold the project without NOC FOR SALE from CBM in march 2016. No further payments were made after booking, as the builder failed to produce its NOC FOR SALE. Same was highlighted in a copy of letter received by you dated 27th April 2018, when the builder illegally demanded instalment amounts, whereas he did not possess NOC FOR SALE. It was clearly warned to the builder in the letter that any payments would be made after the due course of obtaining NOC FOR SALE from CBM. Finally when the builder duly obtained NOC FOR SALE in July 2018, ALL PAYMENTS were made (even backdated ones) regularly and without delay till this date.*

*Now, not only the builder violated CBM laws, but also has illegally demanded 'escalation charges' under the garb of para 29. It was time and on reminded to you of these violations vide my letters to you dated 20h April, email dated 27 April, letter dated 2 may, 9 may,*

email dated 9 may, letters dated 15h may, 9th July, 27th July and 24 July 2020. And CBCARE complaint ID-123402 & 115265.

*These are SEVEN letters, TWO emails & TWO CBCARE complaints.*

*You have clearly written to the builder in your letter No. MLR/BP/Com-2/15/Sec-40/2019/5711, dated 10 June 2020: you are required not to cancel any allotment of your project till redressal of grievances of the complainants through settlement under intimation to this office, otherwise building plan of your project would be cancelled and action for sealing of your project would be initiated'*

*Unfortunately, the builder has not only illegally cancelled my allotment, but also has clearly challenged your authority. The helplessness of a government authority over a builder who is supposed to follow state rules is indeed very, very concerning. My previous letter to you dated 24th august is also still unanswered.*

*I, once again request you to:*

- 1. exercise your writ and full authority in this regard and as per your letter to the builder dated 10 june 2020, immediately\_ cancel the building plan and initiate action for sealing of this project, until the illegal allotment cancellation action is reversed and redressal of grievance is done strictly as per agreed upon terms & conditions.*
- 2. Initiate an inquiry into the builder's sale of apartments for 2.5 years, without NOC FOR SALE through its booking office under broad daylight, just 4 kilometers away from the CBM office. and deal the builder in accordance with the law, so that no other builder can dare to defy authorities so conveniently and cheat public at large.*
- 3. Initiate an inquiry into the practice of demanding unexplained documentation charges, as this seems to be a convenient method of looting public. Builder's association ABAD should also be contacted to identify all those culprit builders who are extorting money by such exaggerated 'document charges', within the jurisdiction of CBM.*
- 4. To have access to the building plan, conditions for NOC and all permissions to this builder (ref: CBM building bye laws clause 9), as per 'RIGHT OF ACCESS TO INFORMATION ACT 2017 clause 3, 5E & 11. (it has been more than 10 working days, since my request dated 24h August, 2020)*
- 5. To meet you and provide all relevant proofs Within 03 days, as the matter is most urgent now. Please intimate the date for this meeting.*

*This matter is not only regarding my tremendous financial loss at the hands of an extorting builder, but also an open defiance of the rules, laws and government authority by the builder. Let me please remind you of the grave discrepancies involved which not only affects me, but also general public at large within the jurisdiction of CBM. You are requested to please take up this issue now with utmost seriousness and promptness."*

## **B. Proceedings**

- 3. Through a notice dated October 27, 2020 sent to Chief Executive Officer, Cantonment Board Malir the Commission called upon the Respondent to submit reasons for not providing the requested information.*
- 4. The Respondent through a letter vide No MLR/BP/Com-2/15/Sec40/20/2486 dated 16 Nov, 2020 submitted response with the appellant and the commission stating that "Reference: Your complaint received through PMDU on 17/10/2020 and Information Commission under Appeal No.E001-10/20 dated27/10/2019.*
  - 2. Your complaint have thoroughly been examined and found that Is Complaint submitted by you & other six allottees received in this office on 27/04/2020 regarding escalation d& documeniation charges Refusal for receiving monthly installments and denying receipts The same received again through E-Mail received on 27/04/2020. The same was forwarded to the Builder vide CBM letter dated 30/04/2020 for comments. One Dr. Naveed Muhammad Juman submitted similar nature complaint received on*

04/05/2020. The same was also forwarded to the Builder vide CBM letter dated 06/06/2020 for comments. Builder replied that 3 allottees out of 6 allottees have already accepted and paid the documentation and escalation amount and also informed that we reserve the right to cancel the booking in case of non-payment of total dues vide his letter dated 05/05/2020. The same reply was forwarded to all 07 complainant including you vide this office letter dated 12/05/2020. You have submitted another complaint through E-Mail received on 11/05/2020. You have gain submitted complaint on 11/05/2020. In response thereof this office again forwarded reply of Builder vide letter dated 18/05/2020. You have submitted complaint again on the same issue on 20/05/2020. This office asked to the builder regarding change of Logo of Letter Head and also informed that not to cancel any allotment of your project till redressal of grievances vide letter dated 10/06/2020. Builder replied through his counsel received on 08/07/2020 and mentioned that in consequence to his non-serious attitude we have cancelled his fat on May, 2020 and also published in the newspaper on 15/05/2020. You have submitted again complaint on the same issue without mentioning that your apartment had already been cancelled by the Builder on 10/07/2020. Reply of Builder through his Counsel datcdro2020 was forwarded to you vide this office letter dated 15/08/2020. You have again submitted complaint on the same issue on 31/08/2020 and reminder dated 0209/2020 and also forwarded through Email on 16/09/2020 and Reminder-I on 17/09/2020. You have submitted complaint on 12/10/2020 addressed to worthy Additional DG ML&C. The same reminder-I received through Pakistan Information Commission vide Appeal No.-e001-10/20 dated 27/10/2020 and through PMDU.

3. You had booked Apartment in the subject project without getting prior information regarding approval of project OR NOC for Sale from this office. Builder have redressed the complaints of 06 others complainant because of clearance of their installment and dues as per instructions issued from this office that not to cancel any allotment of your project till redressal of grievances vide letter dated 10/06/2020 but your apartment had already been cancelled and published in the Newspaper on 15/05/2020 before issuance of this instructions. Since both the parties (Builder and You) have already agreed upon the terms and conditions by signing agreement at the time of booking said apartment as such the matter is purely of private nature.

4. The Cantonment Board Malir is a municipal authority and deal with municipal functions and other issues like escalation charges etc. does not pertain to this office.

5. Now being the matter is subjudiced in the Court of Law as you have filed Civil Suit No.561/2020 for specific performance (Capt Omair Ismail Brohi VS M/s. Ukasha Associates and CBM) in the District and Session Court Malir, therefore, you are advised for waiting till decision of the Court.”

5. The Appellant through an email dated 20-11-2020 shared his objection with the respondent and with copy of this commission. The appellant in his email stated that

“Reference: your letter MLR/BP/COM-2/15/sec40/20/2486, received on 16th November 2020, which was the first response from your office in 3 months, despite 'urgent' letters and 'reminders' dated 24th august & 16th September.

Unfortunately, due to inept and late responses from your office, the matter had to be referred in the court of law. Despite direct relevance of Cantonment board due to the fact that the whole issue stems out of the subject builder (M/s Ukasha associates) selling his project without any NOC FOR SALE from your office for almost 03 years. There was inaction even when the Cantonment board was informed about this practice of the builder on 30th April 2018. The builder has illegally cited the reason for escalation charges', on non-payment of dues in the same period that he had NO NOC & remained unchecked or unstopped by the CBM from sale & demanded dues, during that entire period. your stated 'mission' of providing 'quality public services in an open, efficient and responsive manner' (on your website) does not seem to be visible.

Be advised that as per your letter, the builder 'rederessed grievanves of 06 complainants', which is not true. those complainants actually and unfortunately compromised and paid

*the illegally demanded amount under pressure and with no hopes of justice from the relevant authorities. the 06 wrongs cannot make one right. CBM is indeed a municipal authority, but one of its authorities is also to issue an NOC FOR SALE and stop any builder that engages in sale without such NOC, within its jurisdiction.*

*Irrespective of the court of law proceedings, you are reminded to fulfil your official obligation to provide the required information (all approvals of building/municipal plans granted to M/s ukasha associates, related to the project 'shanzil exclusive', including CBR No. 14 08/06/2018 as reminded earlier twice to you as per clause 3, 5E & 11 of 'RIGHT OF ACCESS TO INFORMATION ACT, 2017'. clause 3(1) of the act being 'subject to the provisions of this act, no applicant shall be denied access to information or record held by a public body'. My complain recieved by you through pakistan information comission, also remains unattended."*

6. The commission through a notice dated December 02, 2020 was directed to submit written reply and arguments to Pakistan Information Commission within fifteen days of the receipt of the notices. The notice sent to Respondent states that if the written arguments are not submitted within 15 days, the appeal will be decided Ex Parte in the light of the record available on file and the Right of Access to Information Act 2017.

7. The Respondent through a letter vide No. ALA/520/12/2020 dated 23-12-2020 submit response stating that *"The summon referred to above along with documents of appeal has been placed in our hands with instructions to reply you as under:*

*As per the law of Cantonment and specifically Building Bye-laws, Sale purchase and booking of any unit by any individual in the project is individual mater of the person and there is no role of the Cantonment at all. Moreover the matter is now subjudiced before Civil Court, which is ultimate to decide the issue.*

*In view of above, it is requested to dispose of present appeal for the reasons that this is individual matter and in the law of Cantonment, the Cantonment cannot help out the appelland and moreover the matter is pending before civil court which has ultimate jurisdiction. The Malir Cantonment has already replied in detail to the appelland."*

8. The response of the Respondent was shared with the appelland through email dated 7th January 2021.

9. The Appelland submitted rejoinder to the response of the Respondent stating that

*"It is indeed both surprising and disappointing as how the CEO, CBM is completely oblivious of the provisions of RIGHT OF ACCESS TO INFORMATION ACT 2017.*

*as per the act, irrespective of what role CBM has or not in any particular matter, or whether any matter in any court or not, it is very much supposed to provide the information required.*

*I am not at all satisfied with the response of the Cantonment board and request you to please secure my right of access to information. It should be also investigated as why the CBM is so keen to conceal an information which is my basic right? Under what law or provision of the act is the CEO, CBM denying the information? Is it any lack of professional knowledge OR some vested interest to defend any corrupt party? The Cantonment board is lingering on with its usual inefficient and delaying tactics. It is hoped and requested that the access to information is provided without any undue delay now."*

### **C. Discussion and Commission's View on Relevant Issues**

10. The plea of the Respondent to dismiss the appeal on the ground of lis alibi pendens does not hold water as the instant appeal pertains to information which the public body should have proactively disclosed under Section 5 (1) (b), (e) and (i) of the Right of Access to Information Act 2017 which are reproduced as under:

*“(b) Statutes, statutory rules, regulations, bye-laws, orders and notifications, etc. applicable to the public body disclosing the date of their respective commencement or effect;*

*(d) Relevant facts and background information relating to important policies and decisions which have been adopted, along with a statement of policies adopted by the public body and the criteria, standards or guidelines upon which discretionary powers are exercised by it;*

*(e) The condition upon which members of the public body can acquire any license, permit, consent, approval, grant, allotment or other benefits of whatsoever nature from any public body or upon which transactions, agreements and contracts, including, contracts of employment which can be entered into with the public body, along with particulars about the recipients of any concession, permit, license or authorization granted by the public body*

*(i) Reports including performance reports, audit reports, evaluation reports, inquiry or investigative reports and other reports that have been finalized”.*

11. Irrespective of the merit of the plea to dismiss the entire request for information on the ground of *lis alibi pendens*, the Respondent was expected to juxtapose the requested information with Section 5 of the Right of Access to Information Act 2017 to ensure compliance with the provisions of this Act which came into force in October 2017.
12. It is rightly said that while secrecy breeds corruption, transparency serves as an antidote to corrupt practises. This commission is of the view that if concerned federal public bodies proactively disclose building plans, permissions, notices, permits, agreements and finalised enquiry reports, as required under the Section 5 of the Act, it will lead to reduction of corruption and help bridge trust gap between citizens and public bodies.
13. This commission has held through its different detailed judgements that federal public bodies are not giving primacy to proactive disclosure of information through their web sites and that proactive disclosure of information is not given serious consideration it deserves.
14. This commission has also established through its different Orders that not only information is to be made available to citizens as required under Section 5 of the Act but it has to be made available on the web sites in a manner that it is accessible for all citizens, including those with different disabilities by incorporating web accessibility standards in the design and development of web site.

#### **D. Order**

15. The appeal is allowed. The Chief Executive Officer, Cantonment Board Malir is directed to provide the Appellant following requested information:

*“all approvals of building/municipal plans granted to M/s ukasha associates, related to the project 'shanzil exclusive', including CBR No. 14 08/06/2018, along with all building plans, conditions for NOC and all permissions to this builder (ref: CBM building bye laws clause 9).”*

*Any enquiry report against the builder that has been finalised.*

This information be provided, with intimation to this office, at the earliest, but in any case, not later than 10 working days of the receipt of this Order.

16. The Respondent is directed to put the notification of the designation of PIO under Section 9 of the Act on its web site as required under Section 5 (1) (b) of the Act, put name, designation and contact details of the PIO on its web site as required under Section 5 (1) (h) of the Act and submit compliance report to the commission within 10 working days of the receipt of this order.

17. The Respondent is directed to take immediate steps to proactively share through the web site all categories of information mentioned in Section 5 of the Right of Access to Information Act 2017 and submit the compliance report to the commission in the Template for the Compliance Report-Proactive Disclosure of Information under Section 5 of the Right of Access to Information Act 2017'. This template is available under 'Information Desk' category at the web site of the commission [www.rti.gov.pk](http://www.rti.gov.pk). The compliance report be submitted to this commission by 22/02/2021.
18. The Respondent is directed to ensure accessibility of the information proactively published on its web site under Section 5 of the Right of Access to Information Act 2017 for all citizens, including the blind, low-vision, physically disabled, speech and hearing impaired and people with other disabilities and submit compliance report to this effect using 'Web accessibility checklist'. This checklist is available under 'Information Desk' category at the web site of the commission [www.rti.gov.pk](http://www.rti.gov.pk). The compliance report be submitted to this commission by 22/02/2021.
19. Copies of this order be sent to The Chief Executive Officer, Cantonment Board Malir and the Appellant for information and necessary action.

Mohammad Azam  
Chief Information Commissioner

Fawad Malik  
Information Commissioner

Zahid Abdullah  
Information Commissioner

Announced on:  
January 21, 2021

This order consists of 06 (six) pages, each page has been read and signed.