

ORDER SHEET  
IN THE HIGH COURT OF SINDH AT KARACHI

**C.P No.D-1179 of 2022**  
*[Haji Yunus Dada and others v. Sindh Building Control Authority and others]*  
**C.P No.D-5670 of 2021**  
*[Abdul Aziz Essa v. The Deputy Commissioner Karachi East and others]*

DATE	ORDER WITH SIGNATURE OF JUDGE(S).
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Before:  
*Mr. Justice Yousuf Ali Sayeed;*  
*Mr. Justice Abdul Hamid Bhurgri.*  
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***Dates of hearing:- 16.09.2025, 29.09.2025, 07.10.2025, 09.10.2025 & 10.10.2025.***

***Date of Decision:- 18.12.2025***

Mr. Sarmad Hani, Advocate for Petitioners in C.P. No.D-1179/2022.  
Mr. Muhammad Umar Lakhani, Advocate for Petitioners in C.P. No.D-5670/2021.  
Mr. Muhammad Haseeb Jamali, Advocate for Respondent No.3 in C.P. No.D-5670/2021 and for Respondent No.5 in C.P. No.D-1179/2022.  
M/s. Khuram Ghayas and Anwar Khalid, Advocates for Sindh Master Plan Authority.  
Mr. Ghulam Akbar Lashari, Advocate for SBCA.  
Mr. K.A. Vaswani, Assistant Advocate General.  
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**J U D G M E N T**

***Abdul Hamid Bhurgri, J.-*** Through this common order, we intend to dispose of the above-captioned two petitions, as they involve identical questions of law and fact. In these petitions, the petitioners have impugned the revised layout plan of Andaleeb Cooperative Housing Society (hereinafter referred to as “the Society”), which has been approved by the Master Plan Department.

2.           The case of the petitioners, in brief, is that they are members of the respondent Society and were allotted 600 square yards category plots under the layout plan approved on 23.09.2008. It is alleged that subsequently, the said category of plots was abolished or scrapped through a newly revised and approved plan dated 09.12.2019, prepared by the Society and sanctioned by the concerned authorities. The petitioners further contend that an Annual General Meeting (AGM) of the Society was convened on 16.12.2018, with the sole agenda of revising the

original master plan, which according to them, was illegally called, and therefore they chose not to attend. It is stated that only about 130 members out of 600 attended that meeting. Thereafter, the Deputy Director, Master Plan Authority, issued a public notice inviting objections from the members of the Society, whereupon petitioner No. 5 submitted his objections which, however, were not considered. The petitioners also assert that the revised plan was illegally approved while the title of the Society's land was disputed, as Rufi Builders and the Society have filed Suit No. 601/2010 and Suit No. 526/2023 respectively, both of which are pending adjudication. It is alleged that in the revised plan, additional commercial plots were created contrary to the Karachi Building and Town Planning Regulations, 2002 ("KBTR 2002") and other governing laws, rendering the plan void and without legal effect. The petitioners claim that their vested rights as members of the Society were violated, and therefore, they have approached this Court seeking the following reliefs:

**Prayer in C.P. No.D-1179 of 2022**

1. *Declare the Impugned Revised Layout Plan as illegal and in violation of the Master Plan dated 23 September 2008 and the Regulations 2002.*
2. *Declare that the Impugned Revised Layout Plan violates the rights of the Petitioners as well as the original allottees/ members of the Society who have been allotted plots of 600 sq. yards in respect of Master Plan dated 23 September 2008 and the same have been omitted in the Impugned Revised Layout Plan.*
3. *Declare that once the Master Plan has been approved by the competent authority, a Revised layout Plan cannot be issued reducing the sizes of plots already allotted to the members of the Society.*
4. *Declare that amenities cannot be dislocated once the Master Plan has been approved by the competent authority.*
5. *Declare that the public auction held on 26 September 2021 and all actions/decision taken pursuant to the Publication be declared as illegal, void and of no legal effect.*
6. *Grant a Permanent Injunction restraining the Respondents from taking any adverse action against the Petitioners on the basis of the Impugned Revised Layout Plan.*

7. Grant a Permanent Injunction restraining the official and private Respondents from giving effect to the Impugned Revised Layout Plan.

8. Grant a Permanent Injunction restraining the Respondents from giving effect to the auction dated 26 September 2021 and further auction of commercial/residential plots and/or fresh allotments in respect of Impugned Revised layout Plan.

9. Further grant Permanent Injunction restraining the Respondents from creating any third party interest in respect of the auction plots.

10. Grant any other relief which is deemed appropriate under in the circumstances of this case.

### **Prayer in C.P. No.D-5670 of 2021**

a. Issue a writ under Article 199 (1)(a) (ii) declaring that the grant of revision for /of layout plan by the Respondents No. 1& No. 2 in respect of Respondent No. 3/Society's land i.e. 40.00 acres of land situated at /on Sector No. 48-A, Scheme No. 33, Karachi, is illegal, unconstitutional, contrary to the Petitioners proprietary rights and set aside the same;

b. As a consequence of the above, declare that the order/instructions/letter/approval dated 10.03.2021 issued by the Respondent No. 1/ Deputy Commissioner East Karachi is illegal & without jurisdiction & in violation of the Petitioners constitutional rights, and set aside the same;

c. In furtherance if (of) the above, declare that the order/instruction / letter/approval dated 09.12.2019 issued by the Respondent No. 2/ Deputy Director (UD-11) Master Plan Department is illegal & without jurisdiction & in violation of the Petitioners constitutional rights;

d. Grant a permanent injunction restraining the Respondent No. 3/ Society from carrying out any auction of any nature whatsoever in respect of any plots/properties situated in the confines of the Society including but not limited to auction called for on 26.09.2021 and/or from creating any third party interest in any other manner whatsoever;

e. Grant any other relief which is deemed appropriate under / in the circumstances of this case;

f. Costs of the proceedings.

3. The respondents, in their comments, have categorically denied the allegations. It is contended that no vested or enforceable rights have accrued in favour of the petitioners as no final allotment exists in their names. It is further stated that the petitioners belong to one family, and being members of the former managing committee, they manipulated internal records for their benefit. The respondents assert that due notices of the AGM were issued to all members, including the

petitioners, but they chose not to attend. Having abstained from the process, they are now estopped from challenging its outcome. It is further maintained that these petitions are not maintainable, as the petitioners have an alternate and efficacious remedy under the Sindh Cooperative Societies Act, 2020. Under Section 73 of the said Act, all disputes other than disciplinary actions are triable by the Cooperative Court established under that provision. It is also contended that the petitions raise disputed questions of fact requiring evidence, which cannot be adjudicated in constitutional jurisdiction. The petitions are further hit by laches, having been filed after 27 months from the approval of the revised layout plan. It is also argued that the Special Power of Attorney on record is defective. The respondents thus contend that as no vested rights exist in favour of the petitioners, the petitions are liable to be dismissed.

4. Mr. Sarmad Hani, learned counsel for the petitioners, submitted that the petitioners are bona fide members of the Society and lawful allottees of 600 square yards plots under the original layout plan of 23.09.2008. He argued that through the revised plan dated 09.12.2019, that category was abolished, infringing their vested and constitutional rights. He further submitted that the revised plan was issued contrary to the KBTR 2002, and petitioner No. 5 had in fact filed objections before the Deputy Director, Master Plan Authority. Though the Master Plan Department had referred the matter to the Deputy Commissioner (East) for further inquiry, a collusive Suit No. 760/2020 was later filed by the Society after the Deputy Commissioner had directed withdrawal of the impugned plan through his letters dated 17.01.2020 and 22.06.2020. That suit was subsequently withdrawn unconditionally after those directions were rescinded. It is further submitted that thereafter the Society published an auction notice in Daily Jasarat for 11 commercial plots pursuant to the impugned revised layout plan, leading

to C.P. No. D-5670 of 2021 filed by a founding member of the Society. This Court, on 24.09.2021, directed that any auction be conducted strictly under the relevant laws, rules, and bye-laws. He argued that since civil suits regarding the Society's title were pending, the Master Plan Department could not have approved a revised plan during pendency of such disputes. He referred to Regulation 2-110 of KBTR 2002, which provides as follows:

***"2-110. "Revised/Amended Plan" in terms of building plan means previously approved drawings/plans re-submitted for approval in accordance with the provisions of these regulations. And in terms of town planning, the Revised Amended Plans means previously approved Layout plan/Part layout Plan re-submitted for approval in accordance with the provisions of these regulations, warranted due to change in populations, income level, living standards, modern technology and physical constraints at site for a City/Town/project/scheme/ Society or part of it".***

Learned counsel argued that none of the pre-conditions envisaged in the above regulation exist in the present case and prayed that the impugned revised layout plan be declared illegal, void, and contrary to the Master Plan dated 23.09.2008 and the Regulations 2002.

5. Mr. Muhammad Umar Lakhani, learned counsel for the petitioners in C.P. No. D-5670 of 2021, adopted the submissions of Mr. Sarmad Hani and added that once allocation of plots is made, rights are created which cannot be withdrawn arbitrarily. He therefore prayed that both petitions be allowed in accordance with law.

6. Learned counsel for the respondent Society, Mr. Muhammad Haseeb Jamali, submitted that no final allotment orders were ever issued in favour of the petitioners; hence, no vested rights exist. He contended that the petitioners, all belonging to one extended family, filed these petitions for collateral purposes. He further submitted that the petitioners had complete knowledge of the revision process and abolition of the 600-square yards category but chose not to object or attend the AGM convened for that purpose. The plan, according to him, was revised

in accordance with law, after publication of notices in English and Sindhi newspapers and after consideration of public objections. Learned counsel argued that the doctrine of estoppel under Articles 113 and 114 of the Qanun-e-Shahadat Order, 1984 bars the petitioners from challenging the revised plan. He reiterated that the petitioners have an alternative statutory remedy under Section 73 read with Rule 53 of the Sindh Cooperative Societies Act & Rules 2020, while Section 116 thereof bars this Court's jurisdiction to grant injunctions in such matters. He further argued that the petitions are barred by laches, having been filed after 27 months, during which the revised plan has been acted upon and third-party rights created. The petitioners, having no locus standi or enforceable rights, are thus not aggrieved persons within the meaning of Article 199 of the Constitution. He therefore prayed that both petitions be dismissed with costs.

7. We have heard the learned counsel for the respective parties at considerable length and perused the record and documents available before us.

8. At the very outset, it may be observed that the petitioners, in both petitions, have challenged the revised layout plan of Andaleeb Cooperative Housing Society mainly on the grounds that it allegedly abolishes the 600 square yards category of plots and adversely affects their vested rights as members. However, a close examination of the record reveals that no final allotment letters have ever been issued in favour of the petitioners. The documents relied upon by them only indicate provisional or proposed allocations without description of plot numbers, which cannot be construed as conferring any enforceable proprietary or vested rights.

9. It further appears from the record that the AGM was convened after due notice to all members, including the petitioners, who admittedly chose not to attend. Having abstained from participating in

the proceedings of the Society's competent forum, the petitioners are now estopped from challenging the decisions taken therein. The principle of estoppel, embodied under Articles 113 and 114 of the Qanun-e-Shahadat Order, 1984, squarely applies to the facts of the present case. Reliance is placed on the case of **Sardar Ali Khan v. State Bank of Pakistan and others, 2022 SCMR 1454**. Reliance is also placed on the case of **Dr. Muhammad Javed Shafi v. Syed Rashid Arshad and others, PLD 2015 SC 212**, wherein the Honourable Court has held as under:-

*"8. According to Article 114 of the Qanun-e-Shahadat, 1984 which reads as "114. Estoppel: When one person has by his declaration, act or omission, intentionally caused or permitted another person to believe a thing to be true and to act upon such belief neither he nor his representative shall be allowed, in any suit or proceeding between him and such person or his representative to deny the truth of that thing", a person is estopped by his own conduct, if he though was aware of certain fact(s), which is likely to cause harm to his rights and adversely affect him and is prejudicial against him, avowedly or through some conspicuous act or by omission, intentionally permits and allows another person to believe a thing to be true and act on such belief without taking any steps to controvert or nullify such adverse fact and instead he sleeps over the matter. In other words, where a person who is aggrieved of a fact, he has a right, rather a duty to object thereto for the safeguard of his right, and if such a person does not object, he shall be held to have waived his right to object and subsequently shall be estopped from raising such objection at a later stage. Such waiver or estoppel may arise from mere silence or inaction or even inconsistent conduct of a person."*

10. Moreover, the petitioners have an alternative and efficacious remedy available under Section 73 read with Rule 53 of the Sindh Cooperative Societies Act & Rules, 2020, whereby any dispute between a Society and its members is to be adjudicated by the Cooperative Court constituted under the said Act. Further, Section 116 of the Act explicitly bars the jurisdiction of this Court or any other authority to pass any order or grant injunction in relation to proceedings under the said law. In view of this statutory framework, the instant petitions are not maintainable in constitutional jurisdiction under Article 199 of the Constitution.

11. In addition, the record reflects that the revised layout plan was approved on 09.12.2019, whereas these petitions were filed after more than two years. The delay remains unexplained. Such inordinate delay attracts the doctrine of laches, which is fatal once third-party rights have been created pursuant to the revised layout plan. Reliance is placed on **State Bank of Pakistan through Governor and another v. Imtiaz Ali Khan and others (PLJ 2012 SC 289)**, wherein the Honourable apex Court has held as follows:-

*“---Laches was a doctrine whereunder a party which may have a right, which was otherwise enforceable, loses such right to the extent of its endorsement, if it was found by the Court of law that its case was hit by the doctrine of laches/limitation---Right remains with the party, but he cannot enforce it-Limitation is examined by the Limitation Act, 1908 or by special laws which have inbuilt provisions for seeking relief against any grievance within the time specified under the law and if party aggrieved does not approach the appropriate forum within the stipulated period/time, the grievance though remains, but it cannot be redressed because if on the one hand there was a right with a party which he could have enforced against the other, but because of principle of Limitation/laches, same right then vests/accrues in favour of the opposite party.”*

The Honourable Supreme Court in the case of **Jawad Mir Muhammad and others v. Haroon Mirza and others reported in PLD 2007 SC 472**, has held as under:-

*“Article 199. Constitution petition. Laches. Principles. Laches per se is not a bar to the constitutional jurisdiction and question of delay in filing would have to be examined with reference to the facts of each case. Question of delay/laches in filing constitutional petition has to be given serious consideration and unless a satisfactory and plausible explanation is forthcoming for delay in filing constitutional petition, the same cannot be overlooked or ignored subject to facts and circumstances of each case”.*

Likewise, in the case of **Asghar Khan and 5 others v. Province of Sindh through Home Secretary Government of Sindh and 4 others (2014 PLC (C.S) 1292)**, it was held as under:-

*“We feel no hesitation in our mind to hold that the petition is hit by laches. The consideration upon which the court refuses to exercise its discretion where the petition is delayed is not limitation but matters relating to the conduct of parties and change in the situation. Laches in simplest form mean failure of a person to do something which should have been done by him within a reasonable time if remedy of constitutional*



*petition is not availed within reasonable time the interference can be refused on the ground of laches. Even otherwise, grant of relief in writ jurisdiction is discretionary, which is required to be exercised judiciously. No hard and fast rule can be laid down for the exercise of discretion by the Court for grant of refusal for the relief in the exercise of extraordinary jurisdiction”.*

12. The petitioners’ assertion that they are “aggrieved persons” is also misplaced, as they have failed to establish any subsisting or legally enforceable right that has been infringed. Mere membership of a cooperative society, without an allotment or proprietary title, does not by itself create any enforceable interest in land.

13. It is well-settled that this Court, in its constitutional jurisdiction, does not embark upon determining disputed questions of fact, especially those involving private rights, contractual relationships, or internal affairs of cooperative societies, for which a complete statutory mechanism already exists. The petitioners’ grievances, if any, are thus purely factual and contractual in nature, requiring evidence and examination of records, which cannot be undertaken under Article 199 of the Constitution. Reliance is placed upon the case of **Mst. Kaniz Fatima through legal heirs v. Muhammad Salim and 27 others (2001 SCMR 1493)**, wherein the Honourable Supreme Court has held as under:-

*“Even otherwise such controversial questions could not be decided by High Court in exercise of powers as conferred upon it under Article 199 of the Constitution of Islamic Republic of Pakistan”.*

Similarly, in **Anjuman Fruit Arhtian and others v. Deputy Commissioner, Faisalabad and others (2011 SCMR 279)**, following observations were made:

*“The upshot of the above discussion is that learned single judge in chambers has rightly declined to exercise his constitutional jurisdiction in view of various controversial questions of law and facts which can only be resolved on the basis of evidence which cannot be recorded in exercise of constitutional jurisdiction. The petition being devoid of merit is dismissed and leave refused”.*

14. Since the petitioners have failed to establish any vested rights in their favour, this Court would refrain from entering into questions or rendering findings regarding the legality or validity of the revised plan of the Society, which could only be adjudicated after the petitioners had successfully crossed the threshold of entitlement.

15. The petitions also suffer from a fundamental defect, as no description of the alleged plots has been provided. In the absence of identifiable plot numbers or specific property particulars, no enforceable right can be protected. This omission also renders the petitions not maintainable.

16. For the foregoing reasons, we are of the considered view that the petitioners have failed to establish any vested or enforceable right in the subject property; the petitions suffer from laches and non-maintainability due to the availability of an alternative statutory remedy; and the matter involves disputed questions of fact which cannot be determined in constitutional jurisdiction without recording of evidence. Further, the petitions fail for want of any description of the plots.

17. In view of the above, the Court does not express any opinion or make any observation regarding the validity, legality, or correctness of the revised layout plan of the Society, as petitioners fails to establish vested rights. Accordingly, both the petitions being not maintainable are dismissed.

JUDGE

JUDGE

Ayaz Gul