

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
C. P. NO. D-729 / 2017
(M/s Latifi Cooperative Housing Society v. Province of Sindh & others)

Date	Order with signature of Judge
	Before:- Mr. Justice Riazat Ali Sahar Mr. Justice Ali Haider ‘Ada’

Date of hearing & order: 13.10.2026

Mr. Muhammad Aqil, Advocate for Petitioner.
Mr. Zohaib Zulfiqar Sarki, Additional Advocate General Sindh.
Nemo for respondent No.3

ORDER

Riazat Ali Sahar, J. Petitioner has filed this Constitutional Petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, with the following prayer: -

- a. *To declare that the Investigation by the ombudsman Sindh U/s 10 of the establishment of the office of the ombudsman for the Province of controlled by the elected jurisdiction unlawful, Sindh Act 1991 against the Private Society managing committee is without unconstitutional, void, abinitio and of no legal effect and may further be pleased to quash the same.*
- b. *To direct the Respondent No. 3 to apply for the refund of deposited amount of Rs. 40,000/= deposited by him to become eligible for allotment of Plot by balloting.*
- c. *To refrain the Respondents from taking any action contrary or adverse to the interest of Petitioner Society directly or indirectly in any manner whatsoever pending disposal of this Petition.*
- d. *To grant cost of the Proceedings.*
- e. *To grant any other or further relief as may be considered appropriate by this Honourable Court.*

2. Mr Muhammad Aqil, learned counsel for the petitioner, submits that the petitioner is a private cooperative housing society and does not answer the statutory description of an “Agency” for the purposes of the Act of 1991. The dispute, in his submission, concerns asserted private allotment rights, to be resolved, if at all, before the forum provided under the Cooperative Societies Act, 1925, or another competent Court, and not before the Provincial Ombudsman. He emphasizes that the last relevant events took place in 1988 and 1992, that the proceedings were instituted after extraordinary delay, and that all plots have already been allotted in accordance with the approved layout plan. He accordingly seeks the quashing of the proceedings.

3. Respondent No.3 has opposed the petition through comments submitted by his attorney. It is asserted therein that the payment was an instalment towards the price of a plot rather than a refundable entry fee for balloting; that the Society failed to honour its assurance despite repeated approaches; and that the non-allotment warrants investigation. Reliance has been placed upon Sections 10 and 10(3) of the

Act of 1991 and upon the provision for a representation to the Governor under Section 32 thereof. Respondent No.3 maintains that the petitioner should face the inquiry rather than prevent scrutiny of its record. There is, however, no appearance on his behalf at the hearing of this petition.

4. Mr Zohaib Zulfiqar Sarki, learned Additional Advocate General, Sindh, opposes the petition. He submits that the Provincial Ombudsman is competent to investigate maladministration, that the Society did not furnish the requisite material despite notices, and that the alleged infringement of Bye-law 8-A calls for examination of its records. Reliance is placed upon an order dated 12-02-2009 said to have been passed by this Court in C.P. No. D-221 of 2009, which, according to learned counsel, recognizes the Ombudsman's power to examine complaints involving cooperative housing societies notwithstanding the availability of remedies under the Cooperative Societies Act, 1925. He submits that the delay may be considered under Section 10(3), and that no final decision has yet been rendered by the Ombudsman. Sections 29, 30 and 32 of the Act have also been invoked. He seeks dismissal of the petition.

5. Heard. Perused. The controversy raises the following interrelated points for determination: whether the petitioner Society falls within the expression "Agency" as defined by Section 2(1) of the Act of 1991; whether respondent No.3's complaint discloses maladministration within Sections 2(2) and 9, as distinct from an ordinary dispute about entitlement to allotment of immovable property; whether the complaint satisfies the limitation provision in Section 10(3), or the statutory exception is properly attracted; and whether the Court should intervene under Article 199 while the Ombudsman's inquiry remains incomplete.

6. The Ombudsman is a creature of statute, and his authority cannot be presumed from the general desirability of investigating grievances. Section 2(1) of the Act defines an "Agency" to include a department, commission or office of the Provincial Government, a statutory corporation, or another institution established or controlled by the Provincial Government, excluding the High Court. Section 9 authorises investigation of allegations of maladministration on the part of an Agency or its officers or employees. The definition of maladministration in Section 2(2), though broad, does not independently enlarge the class of persons or bodies subject to the Ombudsman's control. Accordingly, the status of the proposed respondent to an inquiry and the character of the complaint are distinct jurisdictional requirements; both must be fulfilled.

7. In *Sindh Industrial Trading Estate Ltd v Provincial Ombudsman and others* 1993 SCMR 15, the Supreme Court examined this very definition of "Agency". It upheld the assumption of jurisdiction over Sindh Industrial Trading Estate Ltd because, notwithstanding its incorporation, that entity was found to

perform governmental functions for and on behalf of the Province and was in substance operating as a government department. The decision establishes that corporate form is not conclusive; the decisive inquiry is the institution's statutory origin, actual control and governmental character. It does not lay down that every body registered, regulated or supervised under provincial legislation is necessarily an Agency. In the present matter, the mere registration of the petitioner under the Cooperative Societies Act, 1925, cannot, without more, resolve whether it was established or is controlled by the Provincial Government. The constitutive documents, bye-laws and material demonstrating the nature, if any, of such governmental control require examination before the statutory condition can be treated as satisfied.

8. The order dated 12-02-2009 in C.P. No. D-221 of 2009, relied upon by the learned Additional Advocate General, has been referred to as supporting the Ombudsman's jurisdiction over cooperative societies. Even assuming the proposition attributed to that order, it cannot dispense with the express statutory inquiry under Section 2(1), nor can the existence of an alternative remedy be confused with the existence of jurisdiction. No separate finding as to the petitioner's establishment or control by the Government, or as to the legal nature of the grievance, can be substituted by a general reference to a class of societies. The order relied upon must be applied, if relevant, with reference to its actual facts and ratio and consistently with the binding decisions of the Supreme Court.

09. Of particular relevance is **Messrs Kanpur Old Boys Association v Messrs Karachi Metropolitan Corporation and another 2024 SCMR 1361**. In that case, the Supreme Court examined the Provincial Ombudsman's assumption of jurisdiction concerning the allotment of an amenity plot by the Karachi Development Authority. It held that an asserted failure to perform contractual obligations relating to the plot was not, merely by reason of its description as maladministration, a matter which the Ombudsman could adjudicate. The proper remedy for enforcement of those disputed rights was a civil suit, and the Ombudsman could not exercise the powers of a civil Court under Section 9, C.P.C. The Court further attached significance to Section 10(3) of the Act and the very considerable delay in approaching the Ombudsman. The Ombudsman's decision, already made in favour of the complainant in that case, was held to be without jurisdiction. The distinction in the instant matter is procedural: no final direction for allotment has yet been made. Nevertheless, the substantive rule declared by the Supreme Court is binding and must be applied at the threshold before any adjudication of rights is undertaken.

10. It follows that the use of expressions such as injustice, discrimination, delay or maladministration is not decisive by itself. The Ombudsman must first identify an Agency and then determine whether the impugned conduct is maladministration

by that Agency, or whether the complainant actually seeks enforcement of a private agreement, a disputed membership entitlement or a claimed right to a particular plot. The present pleadings disclose controversy about the nature of Rs.40,000/- deposited, the terms of admission to the balloting, Bye-law 8-A, the effect of the balloting, the letter dated 08-07-1992 and the alleged exhaustion of plots. Such questions cannot be resolved by treating payment alone as proof of a concluded allotment. Nor does the society's failure, if established, to furnish records confer jurisdiction where the Act itself does not.

11. The question of limitation requires equally careful consideration. Under Section 10(3) of the Act of 1991, a complaint is ordinarily required to be made within three months from the day on which the aggrieved person first had notice of the matter complained of. The same provision permits investigation of a complaint presented beyond that period where the Ombudsman considers that special circumstances make it proper to do so. The exception thus involves an affirmative exercise of statutory discretion founded upon identified circumstances; it is not an automatic extension of time merely because the complainant continues to feel aggrieved. The balloting dated 22-12-1988 and the communication dated 08-07-1992 make the date of first notice a material issue. The date on which the complaint was actually lodged, the subsequent communications, if any, and the explanation advanced for the intervening period must therefore be scrutinised and recorded.

12. The Supreme Court in **Messrs Kanpur Old Boys Association 2024 SCMR 1361** expressly adverted to the three-month prescription in Section 10(3) and disapproved the assumption of jurisdiction over a plot-related claim pursued after prolonged lapse of time. Likewise, in **Special Secretary-II (Law and Order), Home and Tribal Affairs Department, Government of Khyber Pakhtunkhwa v Fayyaz Dawar 2023 SCMR 1442**, the Supreme Court explained, in the context of constitutional remedies, the importance of prompt assertion of rights and the legal consequences of unexplained delay. The latter decision does not replace the particular discretion conferred by Section 10(3); it reinforces the need for a principled explanation of delay. Repeated representations do not, by their mere submission, necessarily renew an accrued cause of action. The Ombudsman must distinguish any truly continuing statutory wrong from the continued effects of a concluded balloting or refusal and, if he invokes the exceptional power under Section 10(3), give specific reasons for doing so.

13. As to the objection that the petitioner should have awaited an order and then availed the statutory representation to the Governor under Section 32, the governing legal position is qualified. In **Khalid Mehmood v Collector of Customs, Customs House, Lahore 1999 SCMR 1881 and Farzand Raza Naqvi and others v Muhammad Din through legal heirs and others 2004 SCMR 400**, the Supreme Court explained that the availability of an adequate alternative remedy ordinarily

calls for judicial restraint under Article 199, but does not amount to an inflexible prohibition where the impugned action is patently void or without jurisdiction. In **Mian Azam Waheed v Collector of Customs 2023 SCMR 1247**, the Supreme Court reiterated that litigants cannot ordinarily bypass the statutory remedial scheme by turning constitutional jurisdiction into an appellate substitute. These authorities are to be read together: a genuine jurisdictional objection is cognisable, yet an incomplete statutory process need not automatically be stopped where the foundational facts remain to be examined and the authority can be directed to determine competence first.

14. Sections 29 and 30 of the Act, relied upon on behalf of the Province, concern the statutory bar of jurisdiction and immunity, respectively. Neither provision can be understood as giving the Ombudsman authority to entertain a matter which does not fall within Sections 2 and 9. Likewise, Section 32 affords recourse to the Governor against a decision or order of the Ombudsman, but does not validate a decision taken in excess of statutory power. The jurisdiction of this Court under Article 199, therefore, is not extinguished in the face of a demonstrated nullity. At the same time, this Court is not required to decide contested questions of corporate control, membership, allotment and the circumstances of delay on an incomplete record in order to pre-empt a determination which has not yet been made by the statutory authority.

15. In the present case, the Ombudsman has not finally determined whether the petitioner Society is an Agency, whether the grievance is statutory maladministration rather than a private allotment controversy, or whether the complaint is entertainable under Section 10(3). The assertions that all plots stand allotted, that respondent No.3 never became entitled to a plot, and that the Society omitted to supply its records are also contested. A finding at this stage that the Ombudsman undoubtedly possesses jurisdiction would be as unwarranted as a final finding on the merits of the allotment claim. The appropriate course is to require the Ombudsman to decide the foundational objections in the first instance, on the relevant material and in the light of the binding pronouncement in **Messrs Kanpur Old Boys Association 2024 SCMR 1361**, without embarking upon a final adjudication of respondent No.3's claim before deciding those objections.

16. Consequently, the relief seeking immediate quashing of the proceedings is declined, and the constitutional petition is dismissed to that extent, subject to the following directions. The Provincial Ombudsman, Sindh, shall afford the petitioner and respondent No.3 an adequate opportunity of hearing and shall first pass a separate, speaking order on

- (i) whether the petitioner Society falls within Section 2(1) of the Act by reason of governmental establishment or control;

(ii) whether the complaint, properly characterized, alleges maladministration by an Agency within Sections 2(2) and 9, or enforcement of disputed private allotment rights; and

(iii) whether the complaint is within the period prescribed by Section 10(3) and, if not, whether identified special circumstances justify entertaining it despite delay.

The relevant registration documents, constitution and bye-laws of the Society, balloting record, proof and purpose of payment, correspondence and the date of presentation of the complaint shall be considered so far as relevant to those preliminary questions.

17. Until the foregoing preliminary questions are determined, no final direction compelling allotment of any plot or deciding the rival proprietary or contractual claims shall be made. Should the Ombudsman conclude by a reasoned order that any indispensable jurisdictional condition is absent, he shall decline to entertain the complaint and pass the consequential order in accordance with law. Only if the requisite statutory conditions are found to be fulfilled may he proceed further, within the limits of the powers conferred by the Act. Any aggrieved party shall remain at liberty to pursue such remedy against the resulting order as is available under law. No observation made herein shall be construed as an adjudication upon the entitlement of respondent No.3 to allotment, refund or any other substantive relief.

18. The petition stands disposed of in the above terms, together with pending applications, if any. There shall be no order as to costs.

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Shahzad Soomro