

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
C.P. No.D-6452 of 2020
(Arshad Iqbal v National Cement Employees Cooperative Housing Society)

Date	Order with signature of Judge
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Before:-

Mr. Justice Adnan-ul-Karim Memon

Mr. Justice Zulfiqar Ali Sangi

Date of hearing and order:- 04.03.2026

Petitioner present in person

Mr. Muhammad Ajmal Awan, advocate for the respondent No.1

Mr. Abdul Jalil Zubedi AAG, assisted by Ms. Humaira Jatoi.

ORDER

Adnan-ul-Karim Memon, J. – The petitioner has filed the captioned Constitutional Petitions under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, with the following prayer(s): -

- i) *To direct the Respondent Nos. 1 and 2 to restore the residential plots, which were illegally shown converted/merged into Amenity/Parks but still undeveloped, and hand over physical possession to the petitioner/old members;*
- ii) *To direct the Respondent Nos. 3 & 4 to issue the Execution certificate & NOC for physical possession as they set an example in case ABN No. 57/2017, & extra land plots illegally handed over to the owner of adjacent plots holder;*
To direct the respondent No.2 to demolish the irregular allotment to maintain equal treatment/justice.

2. The case of the petitioner is that he, being an old member and allottee of Respondent No.1 Society, submits that he was enrolled between 1974 and 1977 and was issued a provisional allotment order after land measuring 40 acres was allotted by the Government of Sindh in 1978. It is his case that subsequently the management illegally enrolled additional and bogus members between 1978 and 1979 and allotted plots to them in violation of merit and rules, thereby depriving old members of their lawful entitlement.

3. The petitioner, who is present in person, submitted that the revised layout plan approved in 1996 was based on fake demarcation and did not reflect the original allotment and membership record. It was submitted that several residential plots were unlawfully converted into amenity, commercial, hospital, school, and other plots, and in certain cases, amenity plots were merged or sold to outsiders. However, Parks were converted into residential plots, and extra land was illegally handed over to adjacent plot holders. The petitioner maintains that these actions prejudiced his vested rights. It was further submitted that in ABN Case No.08/2020, the learned

Registrar passed an Award dated 04.05.2020 in favour of the petitioner, directing implementation of the allotment. However, Respondent No.3 has failed to issue the execution certificate and NOC for physical possession, despite issuing such certificates in other cases, including ABN No.57/2017. The petitioner, therefore, seeks directions for restoration of illegally converted plots, issuance of execution certificate and NOC, and delivery of possession, or in the alternative demolition of irregular allotments to ensure equal treatment. He prayed to allow this petition.

4. Conversely, learned counsel for Respondent No.1, the Secretary of the Society, submitted that although the Society respects the Award, its immediate implementation is not possible due to non-availability of land. It was contended that at the time of original allotments, the layout plan had not been approved, and upon its approval, mandatory reservations for roads, parks, mosques, schools, and other amenities were incorporated as per Government requirements. He emphasized that 776 plots had already been allotted before such approval, and the inclusion of amenity areas resulted in a shortfall of plots, leaving some members, including the petitioner, unaccommodated. It was further argued that the allotment letters were subject to the availability of land, execution of the lease deed, and sanction of the layout plan. However, he added that the petitioner purportedly obtained the Award ex parte during the COVID-19 period when the Society's office remained closed. He argued that the Society is pursuing allotment of additional land from the Government to accommodate remaining members, which may take approximately five years. However, assurance has been given that upon allotment of further land, plots shall be allotted strictly in accordance with law and without discrimination. It was lastly submitted that issuance of an execution certificate in the absence of available land is not feasible and does not constitute a genuine grievance, and that the Registrar is competent to decline execution or set aside an ex parte Award where compliance is almost impossible. He prayed to dismiss this petition.

5. Learned AAG submitted that the stance taken by Respondent No.1 is misconceived, contradictory and contrary to the record. It was argued that the plea of "non-availability of land" is neither bona fide nor legally sustainable. The Society admittedly allotted 776 plots prior to approval of the layout plan, which itself reflects gross mismanagement and violation of statutory requirements. The consequences of such illegality cannot now be shifted upon old and lawful members, including the petitioners, who were enrolled much earlier and possess valid allotment orders. Learned AAG contended that the Respondent No.1 cannot rely upon subsequent approval of the layout plan to defeat vested and accrued rights of old members. He added that the record, including findings in earlier proceedings, demonstrates that residential plots were unlawfully merged or converted into amenity and commercial plots and in certain instances transferred to outsiders and office bearers. Thus, the

purported “shortfall” is artificial and self-created, arising from illegal conversions and favoritism, not from lawful compliance with Government requirements. It was further submitted that the allotment in favour of the petitioner was never cancelled in accordance with the law. He added that an allotment, once validly issued, confers a substantive right which cannot be defeated by an internal administrative lapse or by subsequently pleading want of land. The condition “subject to availability of land” cannot be interpreted to nullify an allotment after decades, particularly where the Society continued to deal with the land and even regularized other similarly placed members. Regarding the allegation that the Award in ABN Case No.08/2020 was obtained ex parte during COVID-19, learned counsel submitted that such contention is an afterthought. The Award remains valid, binding, and operative unless set aside by a competent forum. Mere allegation of ex parte proceedings does not render it void, nor does it suspend its enforceability. The Respondent, having failed to challenge the Award within the limitation, cannot indirectly defeat it by refusing execution. It was emphasized that administrative inconvenience or future acquisition plans cannot override a lawful and subsisting Award. The plea that additional land may be allotted after five years is speculative and uncertain, and cannot justify indefinite deprivation of the petitioner’s rights. Learned AAG lastly submitted that the Registrar’s power to decline execution arises only where compliance is legally impossible, not where impossibility is self-created by mismanagement or illegal acts of the Society. The Respondent No.1 cannot take advantage of its own wrong to frustrate the Award. On these grounds, it is prayed that the objections raised by Respondent No.1 be rejected and appropriate directions be issued for execution of the Award and enforcement of the petitioner’s lawful allotment in accordance with law.

6. We have heard the petitioner, learned counsel for Respondent No.1, and the learned AAG, and have carefully examined the material placed on record.

7. At the outset, it is an admitted position that the petitioner is an old member of Respondent No.1 Society and was issued an allotment order pursuant to enrollment prior to the approval of the revised layout plan. It is also undisputed that in ABN Case No.08/2020, the learned Registrar Cooperative Societies passed an Award dated 04.05.2020 in favour of the petitioner, directing implementation of his allotment. The said Award has neither been set aside nor suspended by any competent forum and, therefore, holds the field.

8. Under the scheme of the Sindh Cooperative Societies Act, 2020 and the earlier cooperative laws applicable at the relevant time, an Award passed by the Registrar or his delegate is binding and executable as a decree, and the executing authority is not competent to go behind the Award except in accordance with law. It

is a settled principle that execution proceedings cannot be frustrated on grounds which were or could have been raised before the adjudicating forum.

9. The plea of Respondent No.1 regarding “non-availability of land” is, prima facie, a consequence of its own administrative acts. The record reflects that plots were allotted prior to approval of the layout plan and that subsequent adjustments were made after incorporation of amenity areas. Even if such inclusion was mandated by regulatory requirements, the burden of compliance could not lawfully be shifted to old members whose allotments were neither cancelled in accordance with law nor declared void by a competent authority.

10. It is a settled principle of law that no party can take advantage of its own wrong “*nullus commodum capere potest de injuria sua propria*”. The Supreme Court held that a vested right, once accrued under law, cannot be defeated by subsequent executive action unless expressly authorized by statute. Likewise, it has consistently been held that administrative inconvenience or financial hardship is no ground to deny enforcement of a lawful right.

11. The contention that the Award was obtained ex parte during the COVID-19 period does not, by itself, render the Award void. Unless set aside in appropriate proceedings, an ex parte order remains binding and enforceable. The executing authority cannot sit in appeal over the Award or refuse execution on speculative grounds. The principle that an executing forum cannot travel beyond the decree is well entrenched in jurisprudence.

12. Furthermore, the condition in the allotment letter stating “subject to availability of land” cannot be interpreted so broadly as to render the allotment illusory after decades, particularly when the Society continued to deal with the land, regularized other members, and issued execution certificates in comparable matters. Equality before law, as guaranteed under Article 25 of the Constitution, mandates non-discriminatory treatment among similarly placed members.

13. The plea that additional land may be allotted after five years is uncertain and contingent upon future events. A lawful Award cannot be kept in abeyance indefinitely on the basis of a speculative future contingency. If the shortfall of plots arose due to mismanagement, illegal conversions, or irregular adjustments, the Society must rectify the same in accordance with law; however, it cannot deprive the petitioner of enforcement of a subsisting Award.

14. In these circumstances, we are of the considered view that the Award dated 04.05.2020 in ABN Case No.08/2020 is still valid, subsisting and binding. The plea of non-availability of land, being a self-created or administrative constraint, cannot

defeat execution of the Award. The executing authority is obligated to proceed in accordance with law and cannot decline execution unless compliance is shown to be legally impossible, not merely inconvenient.

15. Accordingly, the objections raised by Respondent No.1 are not sustainable. The competent authority is directed to proceed with execution of the Award strictly in accordance with law after hearing all concerned and to ensure that the petitioner's lawful allotment is enforced without discrimination.

16. The petition, along with pending application(s), is disposed of in the above terms, with no order as to costs.

JUDGE

JUDGE

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