

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI.
C.P No. D-5857 of 2021
(Nafees Ahmed Khan Vs Province of Sindh and others)

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:- 23.04.2026.

Mr. Mushtaq Ahmed Awan advocate for the petitioner
Ahmed Saeed Hyder Shah/respondent No.5 in person
Mr. Ali Safdar Deeper AAG

ORDER

Adnan-ul-Karim Memon , J . Petitioner through the instant petition prayed to set aside the impugned order dated 17.09.2020 passed by Respondent No.2, and maintain the Award dated 10.07.2017 along with the Execution Certificate dated 21.12.2017. The petitioner also seeks that Respondent No.5 be restrained from creating any third-party interest in respect of Plot No. C-150, Block-8, Architects & Engineers Employees Cooperative Housing Society, KDA Scheme 36, Gulistan-e-Johar, Karachi, pending final adjudication of the matter.

2. The petitioner, being aggrieved by the order dated 17.09.2020 passed by Respondent No.2, has invoked the constitutional jurisdiction of this Court under Article 199 of the Constitution, seeking setting aside of the said order whereby the Award dated 10.07.2017 and Execution Certificate dated 21.12.2017 both issued by Respondent No.4 under Section 54 of the Cooperative Societies Act, 1925 were set aside and the matter was remanded for re-adjudication. For convenience sake the order, dated 17.9.2020 is reproduced as under:-

“This is an Appeal under Section 64 of the Cooperative Societies Act 1925 filed by the Appellant against the Award dated 10-07-2017 passed by the learned Registrar's Nominee in ABN Case No: 27/2017 and Execution Certificate dated 21-12-2017 passed by the Registrar Cooperative Societies, Sindh. According to the contents of the Appeal, it is noticed that the Appellant stated that the Plot No C/150 measuring 602 Sq. Yds., Block 8 Architect & Engineers Employees Cooperative Housing Society Ltd.. Karachi was transferred in the name of Appellant by the Respondent No. vide Transfer Order dated 10-01-2001. He further stated that the Honorable High Court of Sindh in C.P. No D-795/1993 allowed the members of the society to raise construction on their plots. Accordingly the Appellant constructed the house on the said plot and obtained all basic facilities like electric and gas connections. The Appellant further stated that he has received a Notice of the Execution Application filed by the Respondent No. 2 and immediately approached the court and obtained the details whereby he come to know that the Respondent No: 2 filed an ABN Case against the Respondent society where the Respondent society did not appear and thus the Respondent No.1 obtained ex-parte Award from the Registrar's Nominee Subsequently also obtained the Execution Certificate from the learned Registrar, Cooperative Societies. The Appellant claimed that the Respondent No.1 intentionally did not make him as party to the arbitration proceedings knowing fully that the above said plot has been

constructed by the Appellant. The notices of the hearing of the instant Appeal was sent to the parties concerned but non of them have bothered to appear before this court, hence they have been debarred from filing their written statements. The record and proceedings of the case were perused and it is noticed that the Appellant has claimed the ownership of the suit plot and not only this he has also constructed the house on the said plot. It is also noticed that the Respondent No 1 with his malafide intention did not implead the Appellant as a party whereas the Appellant is obviously a necessary party who has constructed the house on the said plot.

Under the circumstances as stated above, I found force in the contention of the Appeal and found that the Appellant should have been heard during the proceedings of the Arbitration case which was not done and it is a settled principle of law that no one can be condemned unheard. Therefore the Award dated 10-07-2017 and Execution Certificate dated 21-12-2017 are hereby set a side and the case is remand back to the Registrar, Cooperative Societies to decide the matter after providing thin ample opportunity to the Appellant and Respondents and pass an speaking order thereof.”

(Jam Ikramullah Khan Dharejo)
Minister for Cooperatives,
Government of Sindh.

3. The case of the petitioner is that he is a bonafide purchaser of Plot No. C-150, Block-8, Architects & Engineers Employees Cooperative Housing Society, KDA Scheme 36, Gulistan-e-Johar, Karachi, having acquired valid title through registered documents, including share certificate, sale agreement, allotment orders, possession order, and site plan. It is submitted that the original allottee had duly discharged all liabilities towards the Society, and physical possession was also delivered.

4. The petitioner’s counsel submits that when the Society failed to execute sub-lease and effect transfer/mutation in his favour, he initiated proceedings under Section 54 of the Cooperative Societies Act, 1925 before the Registrar’s nominee/Respondent No.4. After due notice, the Society failed to contest the proceedings and was proceeded ex parte. Consequently, an Award dated 10.07.2017 was passed in favour of the petitioner directing transfer, mutation, execution of sub-lease, and restoration of possession. Subsequently, an Execution Certificate dated 21.12.2017 was also issued. The petitioner’s counsel further states that execution proceedings were initiated before the learned VIIth Senior Civil Judge, Karachi-East, which culminated in an order dated 13.09.2019, whereby a writ of possession was issued and directions were given for transfer and sub-lease in favour of the petitioner. However, during execution, Respondent No.5 challenged the proceedings by filing various applications and later obtained the impugned order dated 17.09.2020 from Respondent No.2 in appeal under Section 64 of the Cooperative Societies Act, 1925, whereby the award and execution certificate were set aside. The petitioner’s counsel assails the impugned order on multiple grounds, including that the appeal before Respondent No.2 was not maintainable under Section 57 of the Act, the same was time-barred under Section 64, and that no appeal was filed before the competent forum under

Section 56 of the Act within the prescribed limitation period. It is further contended that Respondent No.2 acted without jurisdiction, failed to appreciate material evidence, and decided the matter in violation of principles of natural justice as the petitioner was not afforded proper hearing. It is also argued that the impugned order suffers from misreading, non-reading, and mis-appreciation of evidence, and is based on conjectures. The petitioner's counsel further relies upon earlier comments of Respondent No.3 in related proceedings acknowledging the petitioner's ownership and alleging that Respondent No.5's claim is based on false documents. On these grounds, the petitioner seeks setting aside of the impugned order and restoration of the award and execution certificate, along with protection against third-party interests.

5. On the other hand, counsel for the respondent No.5 has raised preliminary objections regarding maintainability of the petition, contending that the constitutional petition has been filed after an inordinate delay without sufficient justification. It is argued that no compelling circumstances have been shown for the delay, and therefore the petition is liable to be dismissed on this ground alone. On merits, Respondent No.5's counsel contends that the execution proceedings had already culminated in dismissal on 11.02.2021, which has attained finality as the petitioner did not challenge the same. It is further argued that there is a discrepancy in the identity and area of the plot, as the petitioner claims Plot No. C-150 measuring 600 sq. yards whereas earlier documents refer to different measurements (596 sq. yards), creating doubt over title. It is further submitted that the petitioner's entire case is based on disputed and concealed facts, whereas Respondent No.5 asserts that he is the lawful owner in possession of the subject plot, having obtained NOC, mutation, and possession acknowledgment dated 2001, and has remained in continuous possession since then. Respondent No.5's counsel also contends that the proper statutory remedies were not exhausted by the petitioner, and that the constitutional petition is not maintainable in view of alternate remedy and disputed questions of fact requiring trial. Reliance is also placed on the principle that constitutional jurisdiction cannot be invoked to re-appreciate evidence or resolve factual disputes. In conclusion, Respondent No.5 's counsel submits that the petition is time-barred, misconceived, and based on concealment of material facts, and therefore liable to be dismissed with costs.

6. Learned AAG supported the impugned order passed by the competent authority and prayed for dismissal of the petition.

7. We have heard the learned counsel for the parties and perused the record with their assistance.

8. The core controversy revolves around the legality and maintainability of the impugned order dated 17.09.2020, whereby the appellate authority set aside

the Award dated 10.07.2017 and Execution Certificate dated 21.12.2017, and remanded the matter for re-adjudication on the ground of non-joinder of a necessary party and violation of the principle of audi alteram partem.

9. From the statutory perspective, the dispute arises under the Cooperative Societies Act, 1925, particularly Sections 54, 56, 57, and 64. Section 54 empowers adjudication by the Registrar or his nominee; Section 56 provides for an appeal against such award within one month; Section 64 confers a further appellate remedy before the Provincial Government; while Section 57 attaches finality to awards subject to statutory appeals.

10. It is an admitted position that the award was passed ex parte against the Society and the execution certificate was subsequently issued. However, the appellate authority, while exercising jurisdiction under Section 64, found that a person in actual possession and claiming ownership of the subject property (Respondent No.5) was neither impleaded nor heard in the original proceedings, despite being a necessary and affected party. On this basis, the appellate authority invoked a fundamental principle of law that no person can be condemned unheard, which is an integral component of due process under Article 10A of the Constitution of the Islamic Republic of Pakistan, 1973.

11. The contention of the petitioner that the appeal was barred by limitation or not maintainable under Section 57 does not assist his case for the reason that questions of limitation and maintainability are ordinarily mixed questions of law and fact, and once the appellate authority has exercised jurisdiction and recorded findings on non-joinder of necessary party, the same cannot be lightly interfered with in constitutional jurisdiction unless shown to be without jurisdiction, coram non iudice, or suffering from patent illegality.

12. Furthermore, it is a settled principle that execution proceedings cannot confer better title than what exists in the decree/award itself, and any defect in the foundational adjudication, particularly regarding necessary parties and disputed title and possession, renders the entire execution proceedings vulnerable.

13. The petitioner's reliance on the award and execution certificate also loses force in view of the appellate finding that the dispute involves competing claims of ownership and possession over immovable property, which cannot be conclusively determined without affording full opportunity to all stakeholders. The existence of prior transactions, possession documents of Respondent No.5, and alleged discrepancies in plot identification and area further demonstrate that the matter is not a simple execution dispute but a seriously contested question of title and possession, which requires proper adjudication rather than summary enforcement.

14. Equally important is the principle laid down in consistent jurisprudence that constitutional jurisdiction under Article 199 is not meant for reappraisal of evidence or substitution of appellate findings unless the order is perverse, arbitrary, or without lawful authority. In the present case, the impugned order is a speaking order which is based on the ground of violation of natural justice and non-joinder of necessary party both of which go to the root of the matter.

15. The plea of delay raised by Respondent No.5 also carries weight, as constitutional relief is discretionary in nature, and unexplained laches can defeat equitable relief, particularly where third party rights and long-standing possession are asserted.

16. In view of the above statutory framework, settled principles of law, and factual matrix, it is evident that the impugned order dated 17.09.2020 does not suffer from any jurisdictional defect or illegality warranting interference under Article 199 of the Constitution. Rather, it reflects a correct exercise of appellate jurisdiction aimed at ensuring compliance with the fundamental principle of fair hearing and due process of law under the Cooperative Societies Act, 1925 and the Constitution.

17. Accordingly, the petitioner has failed to establish any illegality, material irregularity, or jurisdictional error in the impugned order. The petition, therefore, appears to be misconceived, lacking merit, and is dismissed, leaving the parties to pursue their remedies before the competent forum for proper adjudication of title and possession issues, if so advised.

JUDGE

JUDGE