

IN THE HIGH COURT OF SINDH, KARACHI

Constitutional Petitions No.D-1897 of 2015

PRESENT:

Mr. Justice Nadeem Akhtar.
Mr. Justice Arshad Hussain Khan.

1. For hearing of main case
2. For hearing of CMA No.8353/15

Date of hearing: 20.10.2016

M/s. Malik Naeem Iqbal and Mr. Altaf Javed,
advocates for Petitioner.

Mr. Miran Muhammad Shah Addl. A.G. Sindh.

JUDGMENT

ARSHAD HUSSAIN KHAN, J. The petitioner through the instant petition has challenged the notification bearing No.SO(C-I) (12)2013 dated 26.02.2015, whereby his appointment as an administrator of Sindhi Momin Cooperative Society was withdrawn/ cancelled and sought following relief:

- “1. *TO DECLARE that the impugned notification bearing No. SO(C-I)(12)2013 dated 26.02.2015, issued by the respondent No.2 by withdrawn/cancelled Notification for appointment of administrator to the petitioner by Notification No.SO(C-I)(12)2013 dated 2.09.2014 for the society Sindhi Memon Cooperative Housing Society Ltd Karachi, without lawful authority is against natural principal of justice and law the same is Null & Void ab-initio in the eyes of law and liable to set-aside.*
2. *TO DECLARE that the Act of the respondent No.2 to 4 are illegal and unlawful against the petitioner without given any opportunity for hearing and issue any notice, show cause notice without any complaint and allegation and not holding any inquiry as per law.*
3. *TO DECLARE the petitioner being Administrator for the Sindhi Memon Cooperative Housing Society Ltd Karachi, working honestly with the affairs and business of the society for the welfare of members of the society.*
4. *TO CANCEL the Notification bearing No. SO(C-I)(12)2013 dated 26.02.2015, AND OUTWARD No.SO(C-I)(12)2013/79 and also to be suspended the same being issued by the respondent No.2 with malafide intention and ulterior motive.*
5. *TO PROHABIT/RESTRAIN the Respondents themselves, staff, men, agent, servant, administrators, subordinates, officers, attorneys,*

labours, assignees, person or persons acting on their behalf not to interfere and disturb in the work of the Sindhi Memon Cooperative Housing Society without due course of law till the disposal of this petition.

6. *Any other relief or relief(s) which this Honourable Court, may deem fit and proper under the circumstances of the petition.*”

3. The brief facts leading to the filing of present petition as averred therein are that the petitioner was appointed as administrator of Sindhi Momin Cooperative Housing Society Ltd., Karachi, vide Notification No. SO(C-I)(12)2013 dated 2.09.2014 issued by the respondent No.2 (Cooperative Housing Society Corporation Department). After assuming the charge of administrator the petitioner through his own funds and resources got removed encroachments from the amenity plots of the society. The respondent No.2, without having received any complaint against the petitioner and further without issuing show cause notice to him petitioner and or giving him any opportunity of being heard issued the impugned notification, whereby his appointment as administrator of the Sindhi Momin Cooperative Housing Society has been withdrawn/cancelled. The petitioner spent a huge amount of Rs.25,00,000/- from his own pocket, towards removal of encroachment and to surface the lands of society, in the hope that the same will be recovered from funds of the society as and when received from its members. However, his abrupt removal from the post administrator, within a short period of six (6) without completing period of one year as prescribed under law, is unlawful and with malafide intentions, hence unsustainable in law.

4. Upon notice the respondent No.2 to 4 have filed their joint para-wise comments, wherein while denying the allegations leveled in the petition, it is stated that in the past, without adopting proper procedures, the administrators were being appointed to run the affairs of the cooperative housing societies, who through their illegal acts have done more harm to the interest of bonafide and legitimate members of the societies. The illegal acts on the part of the said administrators included illegal conversion and creation of plots in violation approved lay out plans, cancellation of plots of genuine allottees and re-allotment of plots without obtaining requisite permission from the cooperation

department. The petitioner was also appointed as administrator of Sindhi Momin Cooperative Society through the same procedure. Since the entire process for appointment of administrator was not accordance with law therefore, such appointments were also challenged before this court. And pursuant to the order passed on 30.08.2013, in one of the such case bearing C.P. No.D-1726 of 2010, a meeting was convened wherein the cases of superseded cooperative societies were examined, re-checked and re-evaluated, whereupon it was found that there were many cases of supersession of cooperative societies where the approval from the Minister Cooperation Government of Sindh were not obtained. Consequently, in the said meeting it was unanimously resolved that all private persons who were appointed as administrators in the Cooperative Housing Societies should be replaced. Thereafter, with the approval of Minister for Cooperation, Government of Sindh, the superseded managements of thirty-one (31) Cooperative Societies have been restored through notifications with the specific direction to hold the election of society within a period three months under supervision Cooperation Department. In view of the above proceedings, the superseded management committee of Sindhi Momin Cooperative Housing Society Ltd., Karachi was also restored vide Notification No. SO(C-I)(12)/2013/79 dated 26.02.2015. It is also stated that some of the administrators from 31 restored managements of Cooperative Societies, challenged the notification of restoration on the ground that they have been removed without any show cause notice. On 08.09.2014, this court after hearing the parties in C.P. No. D-393 of 2014 and C.P. No.D-3668 of 2014, wherein similar questions were raised, dismissed the petition with following observation:

“we find that only grievance of the petitioneris that their replacement is without noticehowever they have failed to pin point any legal right in holding the office of the administrator or the prejudice having been caused to them by their replacement.”

It is also stated that keeping in view of the above order the present petitioner cannot claim any relief of the nature as no fundamental rights of the petitioner has been infringed.

5. We have heard learned counsel for the parties and Addl. Advocate General Sindh and with their assistance perused the record as well as the laws on the point.

6. The learned counsel for the petitioner during his arguments, at the outset, upon query from this Court about rights and interests of the petitioner for the post of administrator, has very candidly stated that he does not press prayer clauses 1 and 4 of his petition.

7. In view of the categorical statement made by the counsel for the petitioner that he does not press his prayer clauses No.1 and 4 of the present petition, wherein the petitioner sought cancellation of the impugned notification, the petitioner is no more an “aggrieved person” within the meaning of Article 199 of the Constitution and thus, the present petition has become incompetent and not maintainable in the eyes of law.

8. Keeping in view the order passed by this court on 08.09.2014 in C.P. No. D-393 of 2014 and C.P. No.D-3668 of 2014, wherein identical questions of facts and law, as that of present petition, were involved, and further the statement of the counsel of the petitioner for not pressing the prayers clauses of petition relating the cancellation of impugned notification, we are of the opinion that the present petition is not maintainable. Consequently, the present petition is liable to be dismissed.

Foregoing are the reasons for our short order dated 19.10.2016, whereby the petition alongwith listed application was dismissed with no order as to cost.

JUDGE

JUDGE