

IN THE HIGH COURT OF SINDH,
CIRCUIT COURT, HYDERABAD
C.P. No.D-384 of 2016

Present

Mr. Justice Muhammad Iqbal Kalhoro
Mr. Justice Adnan-ul-Karim Memon.

Qazi Nazimuddin & others ----- Petitioners

Vs.

The Province of Sindh & others ----- Respondents

Date of Hearing: 12.03.2019

Mr. Zulfiqar Ali Sahito, advocate for petitioner No.1/applicant.
Mr. Mansoor Ali Jatoi, advocate for respondents.
Mr. Anwar Ansari, State Counsel.

ORDER

ADNAN-UL-KARIM MEMON, J. - The instant petition alongwith connected petition was disposed of vide common order dated 03.10.2017 with following observations:-

“Counsels have agreed that respondent No.4 should not act as a Secretary of the Society until and unless the appeal pending before Secretary Cooperative Society would be decided; if in case, such appeal is not pending, the parties may prefer an appeal including the clients of Mr. Muhammad Arshad S. Pathan advocate to raise questions regarding the authority to review and revisit the order by the Registrar in terms of order dated 30.06.2014. The Secretary shall decide the appeal or any other application i.e. preferred by the parties and the question as raised by the counsel as to the entitlement of being a member of the society or otherwise within four weeks, after hearing all the parties concerned. This order decides the fate of respondent No.4 as to whether he still is a member or otherwise. However he for all intent and purposes cease to be Secretary of Society. Without prejudice to above decision, two members committee consisting of Additional Registrar of this Court and Mr. Anwarul Haq son of Khan Bahadur Abdul Aziz bearing CNIC No.41304-4646382-3 is constituted who shall act upon the recommendations of the enquiry officer and shall also monitor the day to day expenses. Respondent No.4 cease to operate as secretary of the Society and that orders be sent to the concerned Bank Manager that the bank account of the Society shall not be operated by respondent No.4 and shall only be operated by two members of the committee referred above. The two members shall

resume the charge of the office of the Secretary within two days from today and if possible the charge be resumed today. The committee shall formulate the list of the members within three weeks. The entire process including election may not take more than 10 weeks in all. Periodical compliance report be filed by the Additional Registrar fortnightly. The fee of Supervisory Committee is fixed at Rs.40,000/- to be paid from Society's account.

Both these petitions in the above terms stand disposed of.”

2. On 09.02.2019, petitioner No.1 filed application (MA No.1605 of 2019) under Section 3 & 4 of Contempt of Court Ordinance 2003 r/w Article 204 of the Constitution of Islamic Republic of Pakistan, for initiating contempt proceedings against the alleged contemnors on account of their willful, intentional and deliberate act of disobeying the above mentioned order passed by this Court.

3. Mr. Zulfiqar Ali Sahito, learned counsel for petitioner No.1/applicant has argued that despite clear directions in the aforesaid Order, the contemnors have not complied with the same; that two members committee consisting of Additional Registrar of this Court and Mr. Anwarul Haq son of Khan Bahadur Abdul Aziz bearing CNIC No.41304-4646382-3 was constituted to act upon the recommendations of the enquiry officer and were bound to monitor day to day expenses but they failed to perform their duty as per bylaws of the society; that the committee was required to formulate the list of members within three weeks but they allowed outsiders, who have been shown as members of the society inspite of knowing the fact that they had no plot in the society to claim membership of the society and on that basis something fishy has been done by the alleged contemnors. The Committee Members / Contemnors inserted seven (07) members as valid members showing their plots in list No.3, who have no plot in the society and are involved in NAB Reference No. 02/2015 which is still pending in NAB court at Hyderabad; that on the basis of acts of the contemnors, outsider Shaukat Ali has been elected unopposed Secretary of the Society, who has no plot in Deh Seri as mentioned in list No.3 of valid members; that the said Committee Members/ Contemnors disregarded the recommendation No.2 in the order passed by this court and malafidely inserted seven (07) persons showing their plots in the Society, illegally and without any record, while all these seven (07) plots are already involved in NAB Reference pending in NAB Court at Hyderabad. He lastly prayed for strict action against the contemnors.

4. Mr. Mansoor Jatoy, learned counsel representing the respondents has refuted the claim of the applicant and argued that the order dated 03.10.2017

passed by this Court has been complied with in its letter and spirit. In support of his contention, he relied upon the compliance report submitted on behalf of the Additional Registrar of this Court and argued that the election of the society has taken place, new body has taken over the affairs of the society, thus the substantial compliance has been made. He lastly prayed for dismissal of the listed application.

5. Mr. Anwar H. Ansari, learned State Counsel has adopted the arguments of learned counsel representing the private respondents.

6. We have heard learned counsel for the parties on the listed application and perused the material available on record.

7. We are cognizant of the fact that this Court disposed of the instant petitions by consent of the parties vide order dated 03.10.2017 which is very clear in terms that a two members committee consisting of Additional Registrar of this Court and Mr. Anwarul Haq son of Khan Bahadur Abdul Aziz bearing CNIC No.41304-46463 82-3 was constituted to act upon the recommendations of the enquiry officer and to monitor the day to day expenses of the society. The aforesaid 2 members had to resume the charge of the office of Secretary and to formulate the list of members. The compliance report has been submitted which is available on record. An excerpt of the report is as under:-

REPORT

In continuation of reports earlier submitted in compliance of the order dated 03.10.2017 passed in above mentioned Constitutional Petitions. It is respectfully submitted that after preparing an updated membership list of the Hyderabad Railways Employees Co-operative Housing Society Limited, Hyderabad, a letter bearing No.1705/2018 dated 12.02.2018 (Flag-A) was issued to the Registrar, Co-operative Societies, Government of Sindh, Shahbaz Building Hyderabad for conducting the election of the society, who in response, appointed to Mr. Sajid Ali Soomro, Assistant Registrar, Co-operative Societies, Hyderabad as an Election Officer to conduct the election vide his order bearing No.RCS/KUC/101/2018 dated 22.02.2018 (Flag-B). Accordingly, Assistant Registrar, Co-operative Societies, Hyderabad got published an election programme for Hyderabad Railways Employees Co-operative Housing Society, Hyderabad in daily newspapers Kawish and Jura'at dated 25.02.2018 & 26.02.2018 respectively for the election to be held on 17.03.2018. The Assistant Registrar Co-operative Societies, pointed out some typographical mistakes in the voter list, which were corrected and such updated list was displayed (flag-C). As per Election Officer, total ten (10) members / voters filled up their nomination forms for the posts of Chairman, Vice Chairman, Secretary and members of Managing Committee to contest the election but out of them, three candidates withdrawn themselves from election process, hence, there remained total seven (07) candidates for the respective seats to be filled through election process. Therefore, the Election Officer, declared the following candidates as un-opposed vide his letter bearing No. ARCS/HYD/42/2018 dated 12.03.2018 (Flag-D).

S.No.	Name of Candidate	For the Post
01	Mr. Qurban Ali	Chairman
02	Mr. Abdul Waheed	Vice Chairman
03	Mr. Shoqat Ali	Secretary
04	Mr. Yaseen Ali	Member of Managing Committee
05	Mr. Faiz Muhammad	Member of Managing Committee

06	Mr. Mazhar Akram	Member of Managing Committee
07	Mr. Aslam Khan	Member of Managing Committee

2. The supervisory committee according to mandate given in the referred order by this Hon'ble Court fulfilled the same and maintained / monitored the day to day expenses vide statement as (Flag-E). Since the above candidates have been declared as un-opposed, therefore, the mandate of the Supervisory Committee is fulfilled upto election. Accordingly, the charge of the office of Secretary, Hyderabad Railway Employees Cooperative Housing Society Limited, Hyderabad has been handed over to the newly elected Secretary namely Mr. Shoqat Ali son of Mehmood Ali bearing CNIC No. 41303-4280208-5 ON 14.03.2018, the presence of newly elected Chairman and Vice Chairman of the Society vide (Flag-F).

3. It is further submitted that the wrongdoings in the Hyderabad Railway Employees Co-operative Housing Society Limited, Hyderabad have already been pointed out by the supervisory committee in its report submitted on 02.02.2018, which may be dealt with by the newly elected body in accordance with the orders passed by this Hon'ble Court as well as recommendations submitted by Enquiry Officer / Deputy Secretary of the cooperative Housing Society and bye-laws of the Society.

4. Furthermore, since the old members who are railway employees mentioned in List No.1, but are not mentioned in the voter list / list No.3 by the supervisory committee in accordance with bye-laws 8.a of the Society as they are not holding any plot, as suggested to be allotted the plots by the Hyderabad Railway Employees Co-operative Housing Society Limited, Hyderabad on top priority basis / seniority-wise of their membership.

The requisite report is accordingly submitted.

Sd/-
(Syed Sabit Ali Shah)
Additional Registrar
High Court of Sindh,
Circuit Court @ Hyderabad /
Member Supervisory Committee.

Sd/-
(Anwarul Haq Arain)
Member Supervisory committee.

Perusal of record reflects that the applicant has not assailed the aforesaid report, therefore, we are not convinced with the arguments of learned counsel for the applicant that no substantial compliance of the order passed by this Court has been made.

8. In view of the facts and circumstances of the case and for the reasons referred to above, we are satisfied with the compliance report submitted by the Additional Registrar of this Court that is a substantial compliance of the order dated 03.10.2017 passed by this Court, therefore, at this juncture no case for issuance of notice as well as initiating contempt proceedings is made out. Thus, we are not inclined to proceed on the listed application bearing MA No. 1605 of 2019, having no merits, is accordingly dismissed.

JUDGE

JUDGE