

**IN THE HIGH COURT OF SINDH, KARACHI**  
C.P.Nos.D- 2025/2008, 3787/2012  
& 3964/2012

**PRESENT:**

**MR. JUSTICE HASAN AZHAR RIZVI**  
**MR. JUSTICE ARSHAD HUSSAIN KHAN**

**C.P. No.D-2025 of 2008**

Syed Jarrar Ahmed & others V/s. Province of Sindh & others

**C.P. No.D- 3787 OF 2012**

Works Cooperative Housing Society V/s. Province of Sindh & others

**C.P.NO.D-3964 OF 2012**

Syed Jarrar Ahmed & others V/s. Province of Sindh & others

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Mr. Salahuddin Ahmed advocate for petitioners in  
C.P.No.D-2025/2008 and for respondent in C.P.No.D-3964/2012

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for respondent No.3 in C.P.No.D-2025/2008.

M/s. Arshad Tayabally and M. Shahzad Ashraf advocate for respondent No.2  
in C.P.No.D-2025/2008.

Mr. Anwar Mansoor Khan advocate for respondent No.4 in C.P.Nos.D-3787  
& 3964 of 2012

Mr. Miran Muhammad Shah Addl.A.G. & Mr.Saifullah AAG

Date of hearing: 05.04. 2018, 19.04.2018, 08.05.2018, 17.05.2018,  
30.05.2018 and 01.06.2018

**JUDGMENT**

**ARSHAD HUSSAIN KHAN, J.** We intend to decide the captioned constitutional petitions through this consolidated judgment having similar facts and law. The brief facts out which the above constitutional petitions arise are as follows :-

2. **C.P. No.D-2025 of 2008:** (*Syed Jarrar Ahmed & others V/s. Province of Sindh & others*) As per the averments in the petition, the petitioners are oldest members of respondent No.3 (Works Cooperative Housing Society) and as such have vital interest in fair management of the Society and its properties in accordance with the decisions and mandates of the General Body as set out in the registered Bye-laws of the Society. Among others, there existed an amenity Plot No.ST-2, Block 8, measuring approx. 3 acres, on the main University road, Gulshan-e-Iqbal, Karachi [**Plot ST-2**] which, according to the approved lay-out plan, was earmarked and reserved for construction of a primary

school for the welfare and benefit of the members of the Society which include the petitioners. Considering the best interest and welfare of the members of the Society, the then management of the Society in the year 1986, formed a policy in the matter of allotment of amenity plots including the plots reserved for schools. In the said policy, it was decided that the school plots shall be utilized and constructed by the Society itself according to its own requirements and resources available and by raising donations. The above policy was placed before the General Body in the form of a report which was considered in the meeting of the General Body held on 24<sup>th</sup> January 1986 and was duly approved. The Plot ST-2 being on the main University road, other institutions including the respondent No.2 (M/s. City School [Pvt.] Ltd.), for purely commercial benefit, had an eye on it and had been using various tactics for acquiring the said plot, which could, otherwise, not be allotted to anybody or institution, in view of mandate of the General Body. However, in the year 1987-88, respondent No.2, acquired the allotment of the plot ST-2, through the departmental pressure, in complete disregard of the mandate of the General Body and in contravention of the bye-laws of the Society. The plot ST-2 was allotted to respondent No.2, on nominal rate and also illegally without authority enrolled respondent No.2 as member, who otherwise was not eligible for such membership. Representations were made by the residents including the petitioners to cancel the said allotment, but the then management did not respond. The petitioners filed arbitration proceedings bearing ABN: Case No.33 of 1988 under Section 54 of the Cooperative Societies Act, 1925 against the Society, respondent No.2 and others challenging the said allotment. The said arbitration proceedings were contested and the Board of Arbitrators, by a Majority Award passed on 15.1.1989, allowed the application and held that the allotment of the plot ST-2 in favour of respondent No.2 was illegal and ultra-vires of the powers of the then management of the Society and was ordered to be cancelled forthwith. Respondent No.2 filed an application under Section 54-A of the Cooperative Societies Act, 1925 before the Deputy Registrar, Cooperative Societies, Karachi, which were heard along with other such applications and after hearing all the contesting parties, the Deputy Registrar Cooperative Societies, dismissed all the applications/appeals by a common order passed on

15.03.1990 and upheld the award dated 15.1.1989. Respondent No.2 against the said order of Deputy Registrar Cooperative Societies preferred a revision under Section 64-A of the Cooperative Societies Act, 1925. The Secretary Cooperation department heard the said revision and the revision filed by one M/s. Pakistan Model Foundation Ltd., who under the identical circumstances was also allotted another school plot bearing No.ST-4 Block 8, Gulshan-e-Iqbal, Karachi [**Plot ST-4**] by the same management of respondent No.3, and by a common order dated 12.5.1994 accepted the revision of respondent No.2 (City School), set aside the concurrent findings of the lower forum and dismissed the revision of Model Foundation and held its allotment as illegal and void. Against the said orders two constitutional petitions were filed, one by the present petitioner (members of Society) being CP No.1680/1994 and the other by the Pakistan Model Foundation being CP No.1709/1994. Both the above petitions were finally heard and disposed of by a Division Bench of this Court vide order dated 13.11.2001, whereby the orders impugned in the said proceedings were set aside and case was remanded for re-hearing the appeal under Section 56 of the Cooperative Societies Act 1925. In the meantime, Respondent No.2 (City School) filed another constitutional petition bearing No.1568/1994 against an order/resolution dated 14.5.1994 of Respondent No.3, canceling the allotment of respondent no.2 in respect of plot ST-2 which order was withdrawn by the Society and consequently C.P.No.1568/1994 was withdrawn by the learned counsel for the petitioner in the said petition. The C.P.No.1568/1994 was disposed of by order dated 24.1.1995 as having become infructuous. Against the order dated 24.1.1995 an application under Section 12(2) C.P.C. was filed, inter alia, on the ground that the learned advocate had no authority to withdraw the petition. The said application came up for hearing on 13.11.2007 along with C.P.Nos.1680 and 1709 of 1994, when the learned counsel for M/s. City School withdrew the application under Section 12(2) in C.P.No.1568/1994 and only proceeded with the other C.P.Nos.1680/1994 and 1907/1994 wherein the remand order was passed as stated above. Against the order of withdrawal of application under Section 12(2) in C.P. No.1568/1994, the government of Sindh filed CPLA bearing No.319/2002 before the Hon'ble Supreme Court and the City School was made respondent No.5 therein. However,

subsequently M/s. City School was transposed as petitioner along with the government of Sindh in C.P.No.319-K/2002 which ultimately was also withdrawn. However, after the withdrawal of Civil Petition No.319-K/2002 two separate Civil Review Petitions (CRP) were filed one by M/s. City School and the other by government of Sindh, against the said withdrawal order, which were numbered as CRP No.119/2005 and No.120/2005 respectively. These petitions came up for hearing before the Hon'ble Supreme Court on 8.2.2007 and were disposed of by consent of the parties with a direction that the revision petition under Section 64-A filed by M/s. City School shall be deemed to be pending before the Sindh Minister for Food and Cooperation who shall call for the record of the cases from subordinate officers and re-hear and re-decide the same within a period of six weeks after providing reasonable opportunity of hearing to the parties concerned. In compliance of said orders the matter was re-heard by Minister Food & Cooperation and disposed of by order dated 25.08.2008, setting aside the award and the order in appeal and accepting the revision application. However, the occupancy value of the plot ST-2 was raised to Rs.100/- per sq. yds. over and above price already paid. The petitioners challenged the said order in petition.

3. **C.P. No. D-3787 OF 2012** (Works Cooperative Housing Society V/s. Province of Sindh & others). Facts as averred in this petition are that the petitioner is Co-operative Housing Society registered on 26.05.1964. The petitioner held its General Body meeting on 24.1.1986 wherein it was, inter alia, approved that plots reserved for schools will not be allotted to any organization but shall be constructed, run and managed by the petitioner-Society from its own funds and donation. Exerting political influence, respondent No.4 (Pakistan Model Foundation Ltd.) directed an application dated 12.11.1987 to the office of the then Prime Minister of Pakistan for allotment of three amenity plots situated in the petitioner Society. Pursuant thereto, the then management of the petitioner Society allotted two separate amenity plots, bearing ST-4 and ST-2, both situated on the main University Road, Karachi, [**subject amenity plots**] earmarked for schools, to two different entities namely, M/s. Pakistan Model Foundation Ltd. and M/s. City School respectively. Both the above allotments were

challenged before the Registrar Co-operative Societies being Arbitration Case No.33 of 1988. The said case was allowed in favour of the petitioner Society, against which both M/s. City School and Pakistan Model Foundation challenged the said order separately before the Registrar Co-operative Societies. This petition is only confined to plot of Pakistan Model Foundation [PMF]. The appeal preferred by PMF was also dismissed against which PMF preferred revision before the secretary food and cooperation Government of Sindh, after hearing revisions preferred by both the allottees, city school and PMF, set aside the award in favour of the city school whereas the allotment in favour of PMF was declared illegal and void. During the pendency of revision application of PMF the allotment in favour PMF was cancelled and an amount Rs.229818/- deposited by PMF to the Petitioner Society at the time of allotment of plot, was returned to PMF. The PMF challenged the order passed in the revision in constitutional Petition before this court which was heard and decided whereby order impugned in the said proceedings was set aside and the case was remanded to Registrar Co-operative Societies to decide the same afresh. The Registrar re-heard the matter and allowed application of PMF. Being dissatisfied by the order of the Registrar Co-operative Societies, the members of the petitioner challenged the said order in revision before the Co-operation department, which was decided on 18.10.2012 whereby the revision application was dismissed. The petitioner challenged the said order in this constitutional petition.

4. **C.P.NO.D-3964 OF 2012** (Syed Jarrar Ahmed & others V/s. Province of Sindh & others). This petition is filed by the members (Syed Jaraar Ahmed and others) of the Works Co-operative Housing Society on the same facts and grounds as that of Constitutional petition bearing C.P. No.D-3787 of 2012 and have challenged the orders dated 06.10.2008 and 18.10.2012 whereby the award passed in the Arbitration Proceedings were set aside.

5. Learned counsel appearing for the petitioners (Works Society and its members), during the course of their arguments contended that orders impugned in the present proceedings passed by the worthy Ministers are unlawful and in excess of the authority vested in them

under the provision of Section 64-A of the Cooperative Societies Act 1925. Further argued that worthy Minister while deciding the case has failed to take into consideration the fact that very allotment of subject amenity plots to M/s. City School and M/s. Pakistan Model Foundation Ltd. [PMF] were not a voluntary act of the then Committee of the Society, but the same were acquired by exerting official pressure and rather direction from the Deputy Registrar Cooperative Societies vide letter dated 21.12.1987. Further argued that the worthy Ministers while passing the orders have completely misunderstood the authority and powers of the General Body of a Cooperative Society viz-a-viz the powers of the Committee in running the affairs of the Society. The General Body is the Supreme Body and its decisions are binding on the Committee and any decision or act of the Committee contrary to the mandate of the General Body in any manner and form is unauthorized and unsustainable ab initio. Further argued that the worthy Ministers have also failed to take into consideration Annual Report for the year ending 30<sup>th</sup> June 1985 wherein it was clearly stated that the plots reserved for schools, playground and library should not be allotted to any organization with the sole object that the Society should construct the buildings on these plots and run institutions itself. It is also argued that the worthy Ministers while passing the orders impugned have also failed to consider the fact that even the management of the City School had no funds for construction of school and were contemplating to seek financial assistance from banks, pressuring and forcing the facing parents of anticipated students seeking admission to pay Rs.3000/- to Rs.5000/- as building fund which was widely protested and agitated by the Parents. Some of the parents were even physically manhandled by the hired persons of City School owners upon which an FIR was lodged by some parents against the proprietor of City School. Whereas the PMF had not even been established when the plot allotted to it. It is also argued that the Society always endeavors to provide all socio, religious and other activities to the members of the Society and for that purpose it had completed many projects like community centers, a complete library containing large number of Books on all important subjects with well-equipped reading room, *Jama Masjid* (Mosques) *Baitul Mukarram* and parks etc. from its own and generated funds ranging from 1998 to 2007 and are parts of annual reports of the

relevant years. Construction of schools on the specified plots was also one of such projects for which large number of members, business, community, educational and philanthropists have widely assured of financial assistance. The worthy Ministers have also erred in holding that the management of the Society has not disputed the allotment of subject amenity plots. It is also argued that worthy Ministers have also failed to consider the fact that subject amenity plots were acquired by exerting pressure and directives from higher departmental functionaries and the whole process was completed in few days under such pressure and the Society was virtually left with no choice but to succumb to the pressure. It is also argued that the price of the plot intended to be used for commercial purposes and profitable intention have to be fixed in the context of the commercial value of the plot. It is also argued that doctrine of indoor management will not apply to the present case, as it is well settled that the act must *intra vires* and must be permitted by the constitution/bye law of the company/Society whereas suspicion of irregularity renders the doctrine inapplicable. Lastly argued that the allotment of subject amenity Plots in favour of the allottees cannot be sustained and liable to be held illegal and void / cancelled and to be reverted to the Society for utilization as per mandate of the General Body. Learned counsel in support of their stance relied upon the following case law:

- (i) AIR 1917 PC (56) *Pacific Coast Coal Mines Limited and others V. Arbuthnot and others*
- (ii) AIR 1957 KERALA 97 *Varkey Souiar V. Keraleeya Banking Co. Ltd., Thiruvalla*
- (iii) AIR 1957 ALLAHABAD 311 *Lakshmi Ratan Cotton Mills Co. Ltd. Kanpur V. J.K. Jute Mills Co., Ltd Kanpur*
- (iv) (2010) 11 Supreme Court Cases 373 *MRF LIMITED V. MANOHAR PARRIKAR AND OTHERS.*
- (v) 2005 YLR 2423 *BAHADUR YAR JANG COOPERATIVE SOCIETY LTD. V. Malik MUHAMMAD SALIM and others.*
- (vi) 2006 CLC 342 *Dr. AFTAB SHAH v. PAKISTAN EMPLOYEES COOPERATIVE HOUSING SOCIETY LIMITED and 5 others*
- (vii) 2008 CLC 573 *IQBAL HUSSAIN v. PROVINCE OF SINDH and others.*
- (viii) 2008 SCMR 105 *IQBAL HUSSAIN v. PROVINCE OF SINDH through Secretary, Housing and Town Planning, Karachi and others*

- (ix) 1994 CLC 2214 *TAJ MUHAMMAD v. TOWN COMMITTEE, FATEHJANG through Chairman and 3 others*
- (x) 2015 SCMR 456 *ALI AZHAR KHAN BALOCH and others v. PROVINCE OF SINDH and others*

6. Conversely, learned counsel for the City School during the course of his arguments has contended that the order passed by the worthy Minister is well reasoned and in accordance with law and as such the same does not warrant any interference by this court in constitutional jurisdiction. It is also contended that the Works Co-operative Housing Society has not preferred any petition against the order dated 25.08.2008 passed by the worthy Minister therefore, the same cannot be challenged by the members of the Society. Further contended that the petition involves controversial and disputed questions of facts which cannot be resolved in a constitution petition. It is also contended that the M/s. City School enjoys the esteem reputation with respect to Education Institution which is providing high standard education and having 100s of branches in cities across Pakistan and caters to over 50,000 students approximately and also affiliated with the foreign institutions which proves the standard of education of City School. Further contended that on 08.02.1988, the Society allotted to M/s. City School an amenity Plot bearing No.ST-2, Block 8, Gulshan-e-Iqbal, Karachi (plot in question) which was reserved by the Society for school purposes. The City School made all the requisite payments as per rate fixed by the Society and as per their prescribed rate for the plot in question and in pursuance thereof the possession of the plot in question was handed over along with site plan of the plot with additional terms and conditions as imposed by the Society to protect the interest of the members of the Society. It is also contended that prior to the allotment of the plot in question, several meetings were held between the management of City School and the Society where different terms and conditions were negotiated and it was agreed that the City School, besides to include three (3) members of the Society in the management of the proposed school, will grant 50% concession to the Children of the members of the Society/local residents on 10% reserved seats to be allocated for members of Society/local residents of the Society. The construction feasibility



report was also submitted to the Society. It is further contended that prior to the allotment of plot in question, the same was lying vacant for more than 19 years (since 1969) for obvious reasons that the Society had neither the resources to construct a school nor had the desired expertise to run the same since it is highly skillful job. That even otherwise it is not the general practice of the cooperative societies all over the country to construct schools by themselves and it is established practice that school plots are being allotted to various educational institutions for construction and management of schools. It is also contended that nowhere in the bye-laws it is mentioned that Society shall be run with the decisions and mandates of the General Body, however it is the elected Board of the Directors who enjoy the supreme power and work accordingly in the best interest and welfare of the Society. The general body has no authority to cancel any allotment, which was validly made by the Managing/Executive Committee. It is contended that under Clause 45 of the Bye Laws of the Society the Board of Directors of the Society is exclusively entitled to deal with issues such as allotment of land. Further contended that clause 45 of Bye laws makes it clear that the Board of Directors has the power to allot the plot in question to the City School notwithstanding the restrictions, if any, placed by the purported resolution dated 24.1.1986 of the general meeting. It is contended that the allotment of plot in favour of City School cannot be questioned on the grounds that the directors of the Board had outlived their term as under the bye laws No.51 of the Society any act done by the Board of Directors shall be valid notwithstanding that it is subsequently discovered that any of the directors were disqualified. It is also contended that the allotment of the plot in question in favour of City School is protected by the indoor management as the same was in accordance with the bye-laws of the Society. It is also argued that the order impugned in the present petition was passed by the worthy Minister for Food and Cooperation pursuant to directions of the Hon'ble Supreme Court in its order dated 08.02.2007 whereby case was remanded with the direction to the worthy Minister to re-hear and re-decide the revision petitions of the petitioners within a period. Consequently, the Minister Cooperation heard the revision application of the city school and allowed the same with the direction to deposit further amount of Rs.100/- per sq. yds.,

over and above the amount already paid by it to the Society. In compliance with the order of the Minister Cooperation the City School vide its letter dated 29.08.2008 deposited an amount of Rs.1,404,400/- vide Pay Order No.POSFK0066913 dated 29.08.2008. Lastly, argued that in view of the above petition is not sustainable and as such the same is liable to be dismissed. Learned counsel in support of his arguments has placed reliance on the following case law:

- (i) 2000 SCMR 506 Messrs *CANAL BREEZE COOPERATIVE HOUSING SOCIETY LIMITED* v. *AGRICULTURAL AND TRANSPORT DEVELOPMENT CORPORATION (PVT.) LIMITED*
- (ii) 2006 SCMR 178 PAKISTAN DEFENCE OFFICERS' HOUSING AUTHORITY, KARACHI v. MUNIR AHMED GHULAM MUSTAFA AKHTAR.
- (iii) PLD 1990 SC 504 Syed ALI SHAH v. ABDUL ASGHAR KHAN SHERWANI and others.

7. The plea of M/s. Pakistan Model Foundation Ltd. [PMF] in the cases and the submissions of learned counsel appearing in its behalf are that the petitions are based on factual controversies and are in the nature of appeal and as such, not maintainable and are liable to be dismissed. Further stated that the Award dated 15.01.1989 passed by Registrar Nominee in favour of the members of the Society was rightly set aside by the appellate forums as the same was passed without considering the basic merits of the case. Further stated that amenity plot viz. ST-4, Block-8, Gulshan-e-Iqbal, Karachi [**Plot ST-4**] was allotted by the then management of the petitioner Society to PMF after adopting all requisite formalities and this fact was not considered while passing the Award dated 15.01.1989, however, the same facts were considered in the orders subsequently passed under Section 56 and 64-A Cooperative Societies Act, 1925. Further stated that the Works Co-operative Society prior to the filing of present petition (CP No. 3787 of 2012) has never agitated the issue of allotment in favour of PMF as the ABN case was also filed and proceeded by the members of the Society (petitioners in CP No. 3964 of 2012), wherein Society favoured the stance of the PMF, however, in the present petitions the Society have taken contradictory stand from that of its earlier stand and are denying what had been stated on oath earlier. Further stated that the plot ST-4 was allotted to PMF for establishing a school on the basis of the

approval from the Managing Committee of the Society vide Minutes dated 26.12.1987 and allotment order dated 9.1.1988 and possession was also delivered to PMF on payment of cost of land and Masjid Fund plus Est. Charges, Admission Fees and the First and Second Installment of share money. Further stated that a cooperative Society is a body corporate under Section 23 of the Cooperative Societies Act, 1925 and being a continuing body the present management should honour the decisions of the previous management or should take appropriate legal action at the appropriate time against its own management rather to blame the allottee [PMF] that too after elapse of considerable period. No such legal action was ever initiated against the said previous management and therefore through a legal process the allotment was made to PMF. Further stated that the Society cannot deny the title of PMF in respect of plot ST-4 as the same person who signed the report and the minutes dated 24.1.1986, that is, Muhammad Usman Khan, Secretary, issued allotment order, site plan and possession letter in favour of PMF. The Society has also issued permission to grant lease in favour of PMF and therefore there is no reason at this stage to challenge the veracity of the title of PMF, more particularly in view of the fact that Society has never challenged the allotment or initiated any case against the PMF earlier. Even otherwise the allotment is final and cannot be cancelled or withdrawn even if any disqualification is suffered by any director of the Society, the resolution passed will remain in force and effective and cannot be annulled as it is protected under Bye-law No.51 of the Society. It is also stated that the permission of the lessor is obtained particularly when an amenity plot is allotted therefore the application was routed through the concerned authority. Furthermore, the directives and approval from the Deputy Registrar Cooperative is an essential requirement of the Bye-law No.46(i) of the registered bye-laws of the Society and only after such approval allotment and possession should be given. Further stated that the management of the Society after allotment of the plot ST-4 cannot be allowed to revoke its own decision for malicious purpose. It is also stated that plot ST-4 allotted to PMF shall only be used for educational purposes. Furthermore, while allotting the plot for school the rights and interests of the members have been duly secured through the terms and conditions of the allotment order. The allotment in favour of PMF was

made by the Board of Directors, who unanimously agreed in the meeting held on 26.12.1987. In the circumstances, Society therefore cannot approbate and reprobate in the same breath, once the duly elected directors had agreed to act, allot the plots to PMF. It is also stated that under Clause Nos.45 & 46 of Bye-laws of the Society the management of business of Society vests in the Board of Directors who are empowered to allot plots in the ordinary course of business of Society. Furthermore, the said allotment is also saved by the doctrine of indoor management which does not require the allottee/lessee to inquire whether the act of the Board had same issues. It is also stated that for the last 19 years the plot in question is lying vacant on account of protracted litigations by a handful of the residents in connivance with the present management of the Society who is trying to undo the decision of its own previous management. It is also stated that in the first round of litigation the matter was challenged in C.P.No.1907 of 1994 and the matter was remanded back to the Registrar for deciding the case afresh after giving full opportunity of hearing which was decided by the Registrar and subsequently the Government of Sindh in favour of the PMF as the Society itself conceded and approved the allotment of plot in question. Furthermore, facts admitted need no proof as in the written statement and affidavit in evidence filed in ABN Case No.33 of 1988, the then Secretary of the Society has clarified that the allotment in favour of PMF was made strictly in accordance with law and the bye-laws of the Society and therefore once the procedure is endorsed by the Secretary itself, in the absence of any other proof there is no reason to disbelieve it. It is also stated that in case Society was aggrieved by any directive from the Prime Minister Secretariat or the Deputy Registrar Cooperative Societies the appropriate forums would have been exhausted which has never been resorted to by the Society till today and therefore it appears that the Society has accepted allotment of plot ST-4 in favour of PMF. Even in the affidavit in evidence filed by the then Secretary of the Society accepted the allotment of the PMF as valid, legal, lawful and in accordance with the registered bye-laws of the Society. Furthermore, the Society has itself admitted in the affidavit in evidence, filed before the Registrar's Nominee in Arbitration Case No.33 of 1988, that due to the shortage of funds it is not possible for the Society to raise construction as the funds

are needed for other development work of the Society. Therefore, the amenity plot ST-4 was allotted to the petitioner so that construction could be raised for the welfare and benefit of the members of the Society. In support of the above stance following case law have been relied upon:

- i. 2001 SCMR 683 *GHULAM NABI v. ADDITIONAL DISTRICT JUDGE, JHELMUM and 47 others*
- ii. 2011 SCMR 279 *ANJUMAN FRUIT ARTHIAN and others v. DEPUTY COMMISSIONER, FAISLABAD and others*
- iii. 2010 SCMR 1925 *SHAKEEL AHMED and another v. MUHAMMAD TARIQ FAROUGH and others*
- iv. 2015 PLC (C.S) 719 *Mrs. ZEENAT AHMED v. FEDERATION OF PAKISTAN through Secretary Ministry of Defence and others*
- v. 2014 CLC 965 *MUHAMMAD ASIF and another v. Haji FAZAL AHMED and 2 others*
- vi. 2007 SCMR 287 *MUHAMMAD RAFIQUE v. NAZIR AHMED and others*

8. The learned Addl. Advocate General Sindh, while adopting the arguments of learned counsel appearing for the allottees (the City School & PMF) supported the orders impugned in the present proceedings. It is also argued that there was no departmental pressure in the allotment of subject amenity plots in favour of the allottees. Moreover, he submits that the plots in question were allotted by the Board of Directors of the Society in exercise of powers vested in them under the registered bye-laws of the Society, therefore the petitions are liable to be dismissed.

9. We have heard the learned counsel for the petitioners (Works Co-operative Housing Society and its members), respondents (M/s. City School and M/s. Pakistan Model Foundation), learned Addl. Advocate General Sindh and have also perused their submissions in writing, the documents available on record as well as the case law cited at the bar.

10. From the perusal of record, it appears that the members of Society namely, Syed Jarrar Ahmad and others had filed ABN Case No. 33 of 1988 under Section 54 of the Co-operative Society Act, 1925, before the Registrar Co-operative Societies, Karachi, inter alia, against the Works Co-operative Housing Societies, the City School (defendant No.6 in that case) and Pakistan Model Foundation Ltd. (defendant No.7

in that case) seeking therein cancellation of allotments of plots in favour of City School and PMF. The Registrar nominee while accepting the findings of arbitrator of applicant/members of the Society on 15.01.1989 passed the Award in favour of the applicant and cancelled the allotments of plots in favour of City School and PMF. The said decision was subsequently challenged by all the opponents including, Works Society, City School and PMF before the Deputy Registrar Cooperative Society, under Section 54-A, of Cooperative Societies Act, 1925. However, the Deputy Registrar, vide its order dated 15.03.1990 upheld the decision of nominee of Registrar and dismissed the said appeals. The decision of Deputy Registrar was subsequently challenged by the City School and Pakistan Model Foundation Ltd. through their separate Revision applications under Section 64-A of the Cooperative Societies Act, 1925, before Secretary Food and Cooperation, Government of Sindh, Karachi. The said revision applications were heard by the Secretary and through its consolidated order dated 26.05.1994 allowed the revision application of the City School whereas the revision application of PMF was dismissed. The said order was subsequently challenged by the works Society through CP No. D-1680/1994 and PMF through CP No. D-1907/1994 before this Court. On 13.11.2011 this Court by a short order disposed both the aforementioned petitions whereby the matter was remanded back to the Registrar Cooperative Societies, with the directions to decide the matter afresh after providing full opportunity of being heard to all parties. The said short order was subsequently followed by the reasoning dated 12.02.2002. In the meantime, upon the change of the management of works Society, the allotments of subject plots (ST-2 and ST-4) were cancelled through a board resolution dated 14.05.1994. The said cancellation order was challenged by the City School in CP. No.1568 of 1994. On 24.01.1995 upon a statement of the learned counsel appearing on behalf of the works Society the said petition was disposed of as infructuous. The said order was subsequently challenged by the Society under Section 12 (2) of CPC, however, later on, the said application was withdrawn, thereafter, restoration application was filed which was dismissed. Nevertheless, Government of Sindh challenged the said order along with order dated 13.11.2000 passed in CP No. D-1680 of 1994 before

the Hon'ble Supreme Court in CP. No. 319-K/2002. Though the said order case was disposed of and the same was remanded back to the Registrar Co-operative Society for a decision a fresh, however, said order was call in question in two Review petitions bearing CRP No. 119 of 2005 and CRP No. 120 of 2005 before the Hon'ble Supreme Court, which review petitions on 08.02.2007 were allowed by consent of the parties whereby the matter was remanded back to the Revisional authority, i.e. Sindh Minister for food and Cooperation for a decision a fresh. Relevant portion of the said order for the sake of ready reference is reproduced as under:

“By consent of learned for the parties, both these Review petitions are disposed of with the direction that the Revision Petitions of the petitioner under section 64-A of the Cooperative Societies Act, 1925 shall be deemed to be pending before the Sindh Minister for Food and Cooperation who shall call the record of the cases from the subordinate Offices, so as to re-hear and re-decide the same within a period of six weeks, after providing reasonable opportunity of hearing to the parties concerned.”

In pursuance of the above said direction of the Hon'ble Supreme Court, the worthy Minister Cooperation Government of Sindh, vide its order dated 25.08.2008 decided the revision whereby set aside the Award passed by the nominee of the registrar in ABN Case No.33 of 1988 and allotment of plot ST-2 in favour City School was restored with the directions to the City School to pay to the Society additional price @ Rs.100 per sq. yard over and above the price already paid by the City School in respect of allotment of plot ST-2. The record also shows that City School, pursuant to the directions contained in the order also paid the additional amount. However, the Society did not deposit the said amount, its account and has placed the original through statement dated 21.05.2018. The members of the Society challenged the said order of worthy Minister in the present CP- No.D-2025 of 2008.

11. Whereas on the other hand, pursuant to the remand order passed by this Court in CP No. 1680 and 1907 of 1994, the Registrar Cooperative Societies 06.10.2008 while allowing the Appeal No.16 of 1989 filed by Pakistan Model Foundation Limited, set aside the Award passed by the nominee of Registrar in ABN Case No. 33 of 1988. The Registrar Cooperative Societies keeping in view the order passed by the Minster Cooperation in the case City School also directed the PMF to

pay additional amount in consideration of the allotment of plot to the Society @ Rs. 100/- per Sq. Yard. There is nothing available on record which could show that PMF paid the said amount. The said order of Registrar was subsequently challenged by the members of the Society (Syed Jarar Ahmed and other) under Section 64-A of the Cooperative Societies Act, 1925, before the worthy Minister for law & Parliamentary affairs Government of Sindh, who after hearing the parties on 18.10.2012, dismissed the said case. The Society and its members challenged the said order in CP No. D- 3787 of 2012 and 3964 of 2012.

12. The case of the petitioners precisely is that the subject amenity plots allotted to the City School and Pakistan Model Foundation Ltd for their commercial endeavors, were not a voluntary act of the then Committee of the Society, but the same were acquired by exerting official pressure and rather direction from the Deputy Registrar Cooperative Societies. Furthermore, the said allotments were made in violation of the policy in respect of amenity plots of the Society approved in the Annual General Meeting of the Society much before subject allotments. Whereas the worthy Ministers while passing the orders have completely failed to understand the authority and powers of the General Body of a Cooperative Society viz-a-viz the powers of the Committee in running the affairs of the Society.

13. Since the orders impugned in the present proceedings have set aside the concurrent findings of the fact arrived at by the forums bellows, therefore, in order to ascertain the actual fact in respect of allotment of subject amenity plots, we have looked into the records and from perusal thereof it transpires that an application dated 12.11.1987 was submitted by Pakistan Model Foundation addressed to the then Prime Minister of Pakistan for allotment of Amenity plots in the Works Cooperative Housing Society Ltd., which was forwarded by the Prime Minister's Secretariat under letter No.403/GC-III/JS(U)87 dated 25.11.1987 addressed to the Deputy Registrar, Societies, Karachi as well as the Society for consideration where upon the learned Deputy Registrar, Cooperative Societies Karachi had issued directives vide his letter No.DRCS(50)3163/1987 dated 1.12.1987 to the Society for



allotment. Relevant portion of the said letter for the sake of ready reference is reproduced as under:-

“ Enclosed please find herewith a letter number 4030/GL-III/JS(U)/87 dated 25.11.1987 received from Prime Minister’s Secretariat addressed to this office and copy endorsed to you on the above subject.

The Pakistan Model Foundation intends to establish educational institution in Block-8 of the Works Cooperative Housing Society Limited, Karachi which is lying vacant unallotted and un-utilized since 1969.

Now you are therefore directed to allot this vacant plot to the Foundation for the establishment of educational institution under intimation to this office and report compliance Prime Minister’s Secretariat.”

[Emphasis supplied]

Similarly on the application dated 20.12.1987 of the City School addressed to the Deputy Registrar, Cooperative Societies, Karachi, the then Deputy Registrar had issued similar directives, vide his letter No.DRCS(50)3353-A/87 dated 21.12.1987 to the Works Cooperative Housing Society Ltd. Karachi. Relevant portion of the said letter is reproduced as under:

“I am forwarding herewith a letter from the managing Director of Fazana Feroze of City School dated 20.12.1987, copy of which endorsed to you also.

The aforesaid letter will go to show that management at present running a number of educational institution in Sindh, Baluchistan and Punjab.

At present out of the total educational institution running by the City School is spread out in ten in rented residential Building which is not suited for school purpose. As such the management has requested for allotment of a school amenity plot to establish educational institution on plot No.ST-2 Block-8 of the Works Cooperative Housing Society Limited, Karachi which is lying vacant un-allotted un-utilized since 1969.

You are therefore, directed to allot this vacant plot to the City School and report compliance to this office immediately.”

[Emphasis supplied]

The Society upon receiving the above letters called a meeting of the Board of Directors on 26.12. 1987 and passed a resolution therein to allot the aforesaid subject plots to the City School and PMF. The Society also enrolled the said allottees as their members on the same date. Thereafter, the Secretary of the Society issued allotment orders in favour of PMF and City School on 9.1.1988 and 8.2.1988 respectively.

14. In the above circumstances, the undue haste and the manner in disposal of the most valuable amenity plots create serious doubts and reflects that the said allotments have been acquired through undue influence upon the then Deputy Registrar, Cooperative Societies, Karachi and the Management of the Society.

The above said fact is also substantiated from the enquiry reports dated 15.08.1991 and 2.03.1992 submitted by Mr. Zahid Ali, Assistant Registrar, Cooperative Societies, who was appointed as enquiry officer through a notification No. SO(C-I) 16 (37)/86 dated 12.03.1991 issued by Government of Sindh Food and Co-operation Department. From the record, it also reflects that prior to the appointment of the enquiry officer a show cause notice dated 27.01.1991 was issued to the then secretary and Managing Committee of Works Cooperative Housing Society whereby the Society was asked to reply in respect of irregularities and illegalities allegedly committed by the Society in the affairs of its management which include allotment of subject amenity plots. Relevant portion of the said show cause notice for the sake of ready reference is reproduced as under:

“(d) Further-more the management of the Society has illegally allotted two valuable amenity plots bearing No. ST-2 and ST-4 to M/s. City School (Pvt.) Ltd. and Pakistan Model Foundation (Pvt.) limited totally in contravention of the decision taken by the General Body of the Society in its meeting held on 24.01.1986.”

The then Secretary of the Society namely Mr. Pervaiz Ashraf, in its reply dated 09.02.1991 to the show cause notice in respect of above said allegation has stated as under:

“As regard allegation in para 2(d) of the letter under reference, the allegation is not true in any respect and some has dishonestly tried to mislead the government. The then Deputy Registrar, vide his letter of 1.12.1987, ordered for this allotment we enclose the photo-stat of the letter with enclosure (2 sheets). And as regards the allotment of the city School, we enclose a letter of the same deputy Registrar, dated 21.12.87, ordering us to allot the plot and report its compliance. We enclose a photo-stat of the said order with enclosures (3 sheets). It will thus be seen that we were forced to part with these two plots and the responsibility, if any, is of the then Deputy Registrar of the Co-operative Societies. There is no such decision of General body of 24.1.1986 as is alleged.”

[Emphasis supplied]

Before going into further discussion, for the sake of ready reference, it would be appropriate to reproduce the relevant portions of the enquiry report as under:

“ 1. (iv) HOLDING OFFICE BY DIRECTORS:

According to Bye law No.43(b) the chairman and members of the board of Directors shall hold office for a period of 3 years and thereafter one third Directors shall retire at every three years interval. The beginning part of the Bye law provides the period of holding of office by a Director for 3 years while the later part signifies the term of 9 years of each Director after his first election on board. The Directors of the Society have taken advantage of the later interpretation of the Bye law in question and thus continued on Board for abnormal period. In fact the bye-law does not clearly provides maximum period a Director can hold office on the Board of the Society. Taking advantage of such silence of Bye law some Directors namely M/s. Abdul Razzak, A.I. Hyderi, M. Usman Khan, Q.M. Fahim and Sajjad Mirza remained on Board beyond the maximum period of nine years. M/s. Abdul Razzak, A.I. Hyderi and Q.M. Fahim were found clinging with the management since the very formation of the Board in 1964.

2. WORKING SIDE:

.....Regarding the allotments of plots it is noted that when the value of land in Gulshan-e-Iqbal went up the nepotism, favoritism and the pressure of influential persons/Govt. Officials became rampant so it won't be justified to blame the Directors alone. Some instances that have yet been noted are reported below:-

(i) SECONDARY SCHOOL/ PLOT NO.ST-4/8.

The plot of 30,722.22 square yards/6.34 acres in block 8 of Gulshan-e-Iqbal Scheme No.24 belongs to the Works Co-op: Housing Society Limited and is meant for a Secondary School. Being on main university road the plot is of high commercial value which undoubtedly runs into millions. The plot for quite a long time remained un-utilized by the Society which provided opportunity to others to run after it. The Pakistan Model Foundation Ltd., seemingly of influential persons managed to get it for school. The foundation was not a registered company when its organisers came up with a letter dated 12.11.1987 duly recommended by Prime Minister's Secretariat for allotment of the plot. Any how they got the Model Foundation School registered as a company on 03.12.1987 i.e. a few days after the said recommendation. It was also strongly supported by the concerned officers of Cooperative department Karachi and directed the Society vide letter No.DRCS(50)-3163/87, dated 1.12.1987 to allot the plot to the foundation. Consequently the Board of Directors of the Society in its meeting dated 26.12.1987 vide resolution No.2(a) allotted the plot to the said company at Rs.4.50 per square yard for a total cost of Rs.1,38,250/- against the estimated market value of not less than Rs.8 Crores. This scenario irritated the members of the Society and some dared to invoke the provisions of the Co-operative Act, 1925, thus the allotment of the plot in question was held unlawful and against the interest of the Society/members.

Behind the whole show is looked a group of persons with vested interest. They managed recommendation of the Prime Minister' s Secretariat, direction of the Cooperation Department and then got allotted the prized plot without approval of the General Body of the Society. As such the possibility cannot be denied that the Directors of the Society and the then Departments concerns were under duress to provide the said plot to the Foundation at a negligible cost or they collusively did it for personal gain. According to the minutes recorded in the meeting dated 26.12.1987 the Directors who approved the allotment were M/s (i) A.I. Hyderi (ii) Muhammad Usman Khan (iii) Khursheed Ahmed (iv) Hanifur Rehman (v) Afsar Zeeshan (vi) Pervaz Ashraf (vii) Ghazanfar Ali Khan (viii) Qazi Muhammad Fahim.

[Emphasis supplied]

(ii) **PLOT NO.ST-2/8 (PRIMARY SCHOOL).**

The plot measuring 14044.44 square yards/2.90 acres is earmarked for a primary school in Block-8 of Gulshan-e-Iqbal Karachi and supposed to be utilized by the Society itself, but having remained vacant for a long time, the interested parties tried for it; consequently the management of the City School (Pvt) Limited succeeded to get it in the name of School at a nominal cost of Rs.4.50 square yards for a total price of Rs.63,198/- whereas market value would not be less than 4 crores because the plot is on main University Road and despite being categorized as amenity is so commercially located that it can be converted into non-amenity plot by the allottee or at least part of it can be used for profitable purpose other than School.

The plot was allotted under the approval of the same directors of the Society who allotted plot No.ST-4/8 vide resolution 2 (b) of the Board dated 26.12.1987 on the strong recommendation of Department' s concerns vide letter No.DRCS(50)3353-A, dt. 12-12-1987. As such there is similarity in both the cases of allotment viz plot ST-4/8 and ST-2/8. In both the cases approval of General Body was not sought for.

[Emphasis supplied]

3. **FINANCIAL SIDE:**

(a) .....

The overall financial position of the Society is that after meeting expenses under different heads it has as yet Rs.2,46,80,611.60 in its account in Government saving schemes and Banks."

[Emphasis supplied]

**IRREGULARITIES NOTED:**

- (a) Plot No.ST-4/8 was allotted to Pakistan Model Foundation @ Rs.4.50 per square yard for a total cost of Rs.1,38,250/- whereas estimated market value will be not less than Rs.9 Crores. Hence there looks vested interest of the Directors and recommending officers of they did it under pressure.
- (b) Plot ST-2/8 has been allotted to City School (Pvt) Limited @ Rs.4.50 per square yard for Rs.63,198/- where-as estimated

market value would be about Rs.4 lacs. Hence the Directors and the recommending officers seem to have their personal gain in the transaction or they did it under compulsion.

ACTIONS PROPOSED ON IRREGULARITIES FOUND OUT AS YET

1. The allotments of school plots bearing Nos: ST-2/8 and ST-4/8 may be cancelled. These may be utilized by the Society itself or must be disposed of by auction. In case the Society loses the plots, the responsible ones may be assessed with damages for the loss caused to the Society and/or the Authority must proceed against them as deems justified.

2. The matters of plots bearing Nos:9/E/8, B-110/15, ST/9/C/8 may be placed before General Body for suitable decision/action by the House.

3. As regards the matters of allotments of plots to the kins of Directors, the complete action shall be proposed as some more cases are expected to be ascertained.”

[Emphasis supplied]

15. It is also an admitted position that a printed report on the Working and Accounts up to the period ending 30<sup>th</sup> June 1985 of the Society was presented in the General Body meeting held on 24.1.1986 which was adopted however, it is denied by the allottees that any resolution was passed or decision taken regarding utilization of amenity plots. From the perusal of the said report, it appears that under the heading of Amenity plot it has been stated as under:

“Amenity plots reserved for Schools, and play grounds and library have not been allotted to any organization with the sole object that the Society should construct the buildings on these plots and run the institutions itself. Initial spade work for construction of a boundary wall on play ground is in progress. Some Philanthropist has also been approached to help the Society in Construction of a School building. This school would naturally be for the benefit of our members” .

[Emphasis supplied]

Moreover, the Report presented in the General Body meeting and circulated to the members by the Secretary of the Society in consonance with bye-law No.35(3) of the Bye-laws which provides for presentation of Annual Report from the Board of Directors, sufficiently demonstrates that the said report was presented by the Secretary of the Society before the General Body meeting with the approval of the Board of Directors. Furthermore, the above is to be read with the relevant portion of the Minutes of the General Body meeting held on

24.1.1986 as recorded by the Secretary of the Society, which reads as under:-

“There-after the Secretary read and presented the report and accounts to the General Body. The report and accounts were approved and accepted by the General Body.”

By adopting and accepting the said Report by the General Body containing the policy decision already taken by the Society in respect of amenity plots for Schools, play-grounds and library, the Board of Directors of the Society had no authority to make any allotment of the amenity plots to any person or organization.

16. It is also the plea of the respondent allottees that General Body of the Society cannot override the power of Board of Directors in the matter of allotment of Amenity plots and as such the decision of the General Body, if any, has no bearing upon the allotments of the amenity plots in question made by the Board of the Directors. This plea carries no force; as the Board of Directors has/had to act under the Control of the General Body, which is the superior authority of the Society. The afore mentioned decision dated 24.02.1986 taken in the duly convened General Body has to be implemented by the Board of Directors under Bye-law No.45 of the Society, which reads as under:

“45. The management of the business of the Society shall be vested in the Board who in addition to the powers and authorities by the rules and these bye-laws or otherwise expressly conferred upon them may exercise all such powers and do all such acts things as may be exercised or done by the Society and are not hereby or by statue expressly directed or required to be done by the Society in General Meeting, but subject nevertheless to the provisions of the Act, the Rules, the bye-laws and to any Regulation from time to time made by the Society in General Meeting, provided that no regulation so made shall invalidate any prior act of the Board which would have been valid if such regulation had not been made.”

Furthermore, the record also transpires that all the Directors of the Board who resolved on 26.12.1987 to allot the amenity plots in question to the respondent allottees had also participated in the General Body meeting held on 24.1.1986. They, being party to the said policy decisions of the General Body, were estopped under the law to pass any resolution for allotment of the subject amenity plots to the contrary. Moreover, the General Body is the Supreme Body and its decisions are

binding on the Board of Directors and any decision and act of the Board contrary to the mandate of the General Body in any manner and form is unauthorized and unsustainable in law.

17. It is also the claim of the respondent / allottees that the act of allotments of the subject plots were saved by the Doctrine of Indoor Management, and the interest of the members of the Society have been protected by virtue of the condition of the allotments whereby the allottees have to include three (3) members of the Society in the management of the proposed school and further to grant 50% concession to the Children of the members of the Society/local residents on 10% reserved seats to be allocated for members of Society/local residents of the Society.

Firstly, it may be observed that the doctrine of indoor management is essentially a rule of protection provided to the outsider who had acted in good faith and entered into a contract with a company. This doctrine emphasizes on the concept that an outsider whose actions are in good faith and has entered into a valid transaction/contract with a company can have a presumption that there are no irregularities existing internally and all the procedural requirements have been complied with by the company. However, the protection of the rule is not available where the circumstances surrounding the contract/transaction are so suspicious as to invite inquiry. Keeping in view the facts of the present case as mentioned in the preceding paras, we are afraid that the protection under the doctrine of indoor management is not available to the respondent allottees. More so, allotment of subject plots cannot be termed as a 'contract' as the same was done under the directions and influence of the Deputy Registrar, Cooperative Societies, whereas a valid contract also requires the parties' consent, which must be free, mutual and communicated to each other. Consent is not free when obtained through duress and undue influence. The concept of undue influence has been expounded by the Honourable Supreme Court in its various judgments wherein the Honourable court have viewed transactions between the parties enjoying unequal bargaining position with suspicion and have held that undue influence can also be inferred from circumstances. In Hamida

Begum v. Murad Begum (PLD 1975 SC 624) their Lordships have held undue influence may be inferred when the benefit is such as the taker has no right to demand either in law or equity and the grantor has no rational motive to give. In Rasheed Ahmed Khan v. President of Pakistan (PLD 1994 SC 36), their Lordships proceeded to hold that undue influence can be inferred on the basis of the capacity of a person to influence the decision of another and not his presence or absence at the time of decision. In the present case, as discussed above, it is apparent from the record that the subject amenity plots were allotted under the undue influence exerted by the deputy Registrar who took undue advantage of his official position and authority, hence the subject allotment is not sustainable in law.

Secondly, by merely inducting three members of the Society in the management of the proposed schools and providing 50% concession only to the 10% Children of the Members of the Society/local residents, it cannot be said that the interest of all the Members of the Society have been protected. Conversely, the said condition is also violative to the very object and establishment of the Society, which exists for the benefit to all the members of the Society and not certain percentage of the members of Society. Furthermore, three members in the management of the proposed school, the total strength whereof is not yet ascertained, would have no significant role to play for the betterment and interest of members Society.

18. From the perusal of the orders impugned in the present proceedings viz. (i) order dated 06.10.2008 passed by the Registrar Cooperative Societies, (ii) Order dated 25.08.2008 passed by Minister for Cooperation Government of Sindh, and (iii) Order dated 18.10.2012 passed by Ministers for law and Parliamentary affairs Sindh, it transpires that worthy Ministers did not at all apply their mind to the facts and circumstances of the case and passed orders without giving due weight to the allegations of undue influence and contravention of the Bye-laws as well as the policy decision in respect of amenity plots approved in the Annual General Meeting while allotting the subject amenity plots to the respondent allottees. The orders indicating that they had not been made on consideration of the merits and the law



applicable. On the other hand, from the perusal of the award dated 15.01.1989 passed by the Registrar's Nominee cancelling the allotment of subject amenity plots and Order dated 15.03.1990 passed by Deputy Registrar, Cooperative Societies, upholding the award, it transpires that the same have based on justice, good conscience, apt to the facts and circumstances of the case and in the larger interest of the Society and its constituents.

19. For the foregoing reasons and discussion, these constitutional petitions are found to have merit. Consequently, the impugned orders viz. (i) order dated 06.10.2008, passed by the Registrar Cooperative Societies, (ii) Order dated 25.08.2008, passed by the Minister for Cooperation Government of Sindh, and (iii) Order dated 18.10.2012, passed by the Minsters for law and Parliamentary affairs Sindh are hereby set aside and the Award dated 15.01.1989, passed by the Registrar's Nominee cancelling the allotment of subject amenity plots and Order dated 15.03.1990, passed by Deputy Registrar (Cooperative Societies) Karachi, upholding the said Award, are restored.

JUDGE

JUDGE

Karachi  
Dated:04.09.2018

*Jamil\*\*\**