

**IN THE HIGH COURT OF SINDH, KARACHI**

C.P. No. D-4882 of 2020

Muhammad Khalid Ali Khan ...Vs... The Court of Minister of  
Cooperation, Sindh & others

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DATE ORDER WITH SIGNATURE(S) OF JUDGE(S)  
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BEFORE: Justice Irfan Saadat Khan,  
Justice Muhammad Faisal Kamal Alam, JJ

Petitioner: : In person.

Respondent Nos.1,3,4, 5  
and 8 : through Advocate General Sindh.

Respondent  
Nos.2 : through Mr. Ali Azad Saleem,  
Advocate.

Respondent Nos.6 & 7 : Nemo.

Dates of hearing : 28.09.2021, 25.10.2021 & 15.11.2021

**JUDGMENT**

**Irfan Saadat Khan, J.** The instant petition has been filed impugning the order passed by the Minister for Cooperation Department, Government of Sindh dated 26.11.2019.

2. Briefly stated the facts of the case are that a dispute with regard to the ownership of the property bearing Plot No.B-17 measuring 400 sq.yds. situated at Rizwan Cooperative Housing Society, KDA Scheme No.33 Karachi arose between the petitioner and the Respondent No.2. The Respondent No.2 then filed an appeal before the Registrar's Nominee in ABN Case 72/2005 and an award thereafter was made in her favour vide order dated 05.9.2005. Being aggrieved with the said order a revision was filed by the present petitioner before the Registrar Cooperative Society bearing Appeal No.59/2005, which appeal was decided in favour of the petitioner vide order dated 27.6.2006. Being aggrieved with the said order an appeal was filed before the Minister for Cooperation

Department by the Respondent No.2, who vide order dated 26.11.2019 set aside the impugned order dated 27.6.2006 and remanded the matter to the Registrar Cooperative Society for a fresh decision. It is against this order that the present petition has been filed.

3. The petitioner is present in person and stated that the order of the learned Minister is not in accordance with law and the Respondent No.2 instead of appearing before the Registrar has got the execution proceedings initiated against him and is bent upon to take away the plot, owned by him, without any lawful and legal justification. He stated that after filing of the petition stay has been obtained by him, which is operating in his favour and the execution proceedings have been stayed. He stated that the learned Minister without looking into the facts of the case in a cursory manner has remanded the case to the Registrar without considering the documents produced before him and the order of the Registrar, which was decided in his favour, in which matter the Respondent No.2 deliberately did not appear and thereafter the order of the Nominee of the Registrar was set aside. He therefore, prays that the order of the learned Minister may be set aside and that of Registrar's Nominee may be restored.

4. Mr. Ali Azad Saleem, Advocate has appeared on behalf of the Respondent No.2 and stated that the Registrar while hearing the matter has not served notice properly upon the Respondent No.2, which has resulted in exparte order dated 27.6.2006 against the Respondent No.2 and therefore, the Minister was quite justified in remanding the case to the Registrar for hearing the matter afresh. He stated that the first order in the field is that of the Nominee of

the Registrar, who has decided the matter in favour of the Respondent No.2 dated 05.9.2005. He stated that the petitioner has approached the Court with unclean hands as he is in the habit of filing frivolous appeals and petitions and stated that previously also the petitions filed by the petitioners bearing C.P. No.D-785/2011 and C.P. No.D-321/2020 were dismissed. He therefore states that the order of the learned Minister is in accordance with law and therefore, the same may be upheld and the petitioner may be directed to appear before the Registrar so that this matter could be finally heard and disposed of. He further states that since the execution proceedings have already been stayed by this Court, hence the apprehension shown by the petitioner is also misplaced since the matter has already been stayed by this Court and an interim order in the instant petition is operating.

5. The A.A.G appearing for the Respondents No.1, 3, 4, 5 & 8 stated that the matter is between the petitioner and the Respondent No.2. He however supported the order of the Minister by stating that under the circumstances the learned Minister was justified in remanding the matter and therefore has prayed that the instant petition may be dismissed.

6. No one has appeared on behalf of Respondents No. 6 & 7.

7. We have heard the petitioner and the counsel for the Respondents at some length and have perused the record.

8. It could be seen from the facts that a dispute with regard to the ownership of the property arose between the petitioner and the Respondent No.2, thereafter, in order to prove their ownership on the property the Respondent No.2, moved a representation before

the Registrar's Nominee bearing ABN Case 72/2005, which matter was decided in favour of the Respondent No.2.

9. Being aggrieved with the said order the petitioner filed an appeal bearing No.59/2005 before the Registrar Cooperative Society and the Registrar while disposing of the matter categorically noted that since the Respondent remained absent on all the dates of hearing, therefore, set aside the award dated 05.9.2005 vide order dated 27.6.2006. However, it may be noted from the order that neither the facts of the matter were discussed by the Registrar nor the grounds on the basis of which the Registrar's Nominee decided the matter in favour of the Respondent No.2 were thrashed out. The Registrar while allowing the appeal of the petitioner simply observed that since the Respondent No.2 has failed to appear before him "thus there is no cogent reason to proceed with the case further" and thereafter set aside the award. The Minister however while considering the matter of the petitioner and the Respondent No.2 has categorically observed that since both the parties possessed documents, which require detailed deliberation as not only the Respondent No.2 possessed registered sale deed in his favour duly authenticated by Sr. Civil Judge (Malir) Karachi in civil suit and the petitioner also has some documents to prove his ownership, the matter requires detailed deliberation on the part of the Registrar. It is also seen that the petitioner previously approached this Court, through CP No.D-3759/2019 on the ground that his appeal before the Minister is not being decided by the said Minister and the bench then directed the Minister to decide the same and thereafter the matter was decided by the Minister.

10. The record also clearly reveal that both the petitioner and the Respondent No.2 claim ownership of the above referred property by having in their possession certain documents which could only be thrashed out by a competent authority after examining the parties, recording evidence and authenticating those documents. The Minister has categorically observed that it appears that the Registrar penalized the Respondent No.2 merely on the ground that nobody appeared on her behalf and has categorically observed that the order of the Registrar was not a speaking order. We have also noted that the order of the Registrar, by simply observing that since nobody has appeared before the Registrar “there seems to be no cogent reason to proceed with the case further”, appears to be an observation which cannot be held to be in accordance with law. It is settled proposition of law that any authority vested with the power to decide a matter should decide the same in accordance with law. Reference in this regard may be made to clause 24-A of the General Clauses Act, 1897. The Minister while deciding the matter has categorically observed that since the order is not a speaking order, therefore, the Registrar should get the notices served upon all the parties before he comes to a conclusion and thereafter decide the matter by providing fair opportunity to all the parties.

11. The above observation made in the impugned order by Respondent No.1, is based on record, as the Order passed in Appeal No.59/2005, by the Appellate Authority – Respondent No.3 is part of present proceeding; but even then the impugned Order passed by Respondent No.1 cannot be sustained, in view of the reported judgments of this Court in the case of **Abdul Haq versus**

**Thakumal and 4 others**, reported in **2017 YLR 1816 (Sindh)**, and that of the Hon'ble Supreme Court in the case of **Defence Housing Authority (DHA) Lahore versus Secretary Cooperative Department Government of Punjab and others**, reported in **2017 S C M R 1131**, which has been followed by this Division Bench while handing down the judgment in Constitutional Petition No. D – 1317 of 2014, gist of which is, that revisional power conferred upon the Minister of the Provincial Government, is not meant to interfere in the decisions made in respect of dispute of the nature, but such revisional power is to correct and rectify the administrative acts of subordinate officials of the Department, hence, above proceeding before the Minister / Respondent No.1 was **coram non judice**.

12. Now the question is, then what would be the fate of the present petition? The answer is, that since the Order of the Appellate Authority dated 27.06.2006 is also part of the present proceeding, then the same can be examined for passing an appropriate order.

13. The above Appellate Order at page-85 has been considered. Through this Order, the Respondent No.3 while exercising his appellate jurisdiction has *ex parte* set aside the Award dated 05.09.2005, in a slipshod manner and without giving any reason in support of his Decision. The Award passed in Case No.72/2005 is also part of present Court record; perusal whereof concludes that the same was passed after considering the rival pleadings and evidence adduced by the present Petitioner and the Respondent No.2. Considering a settled rule that an appellate authority is a court of ultimate facts, Respondent No.3 while exercising his

powers as an Appellate Authority should not have decided the Appeal through a single line order by which the Award has been set-aside. Thus by any standard the order passed by the Respondent No.3 cannot be sustained. The Appellate Order does not fulfill at all the requirements of due process of law and that of fair trial, as no reason whatsoever is given that on what basis the Award (*ibid*) was set aside.

14. Consequently, the Appellate Order dated 27.06.2006 is set aside and the case is remanded to the Respondent No.3-Registrar Cooperative Societies for passing a decision afresh after carefully examining the record and applying the law. The parties are directed to appear before the Registrar alongwith their relevant documents to prove ownership of the property. The Registrar is directed to decide the matter in accordance with law after granting ample opportunity of hearing to both the parties preferably within a period of 2 months' time from the date of receipt of this order. Petition alongwith all the pending and listed applications therefore stands disposed of accordingly.

JUDGE

JUDGE