

IN THE HIGH COURT OF SINDH,
Bench at Sukkur

C. P. No. D – 1028 of 2020

Ali Muhammad Mahar.....Petitioner
Versus
Province of Sindh and others.....Respondents

Before:

Mr. Justice Muhammad Junaid Ghaffar
Mr. Justice Zulfiqar Ali Sangi

Date of Hearing: **07-12-2021**

Date of Decision: **07-12-2021**

Mr. Bakhshan Khan Mahar, Advocate for the Petitioner.
Mr. Mukesh Kumar G. Karara, Advocate for the Respondent No.8.
Mr. Asfandyar Kharal, Assistant Advocate General-Sindh.

ORDER

Muhammad Junaid Ghaffar, J. –Through this Petition, the Petitioner has sought the following prayer:

“a. That, this Honorable Court may graciously be pleased to declare the letter No. ARCS/366/2020 Sukkur dated: 04-08-2020 issued by the Respondent No.4 is illegal, unlawful, without jurisdiction; hence, same may be cancelled/withdrawn, being issued in excess of powers.

b. That, this Honorable Court may graciously be pleased to declare the action of Respondent No.4 for conducting elections in Mehran Co-operative Society Ltd, Pano Aqil, to be held on 11-10-2020 through his letter No.139/2020 Sukkur dated: 22-09-2020, is illegal, unlawful and same has been issued malafidely in excess of authority and mandate.

c. That, this Honorable Court may be pleased to declare all the actions taken by the petitioner being Chairman Mehran Educational Co-operative Society Ltd: Pano Aqil, on the recommendations of the general body are in accordance with law.

d. That, this Honorable Court may be pleased to suspend the operation of impugned notification Dated: 27-09-2020 No. E.O/11-2020 (ANXX Q) till the final deposition of this petition.

e. To award the costs.

f. To grant any other equitable relief, which this Honorable Court deems fit and proper under the circumstances of the case, in favor of the petitioner”.

2. Learned Counsel for the Petitioner submits that the Respondents No.7 & 8 being Secretary and Chairman of the Society in question had embezzled various funds of the Society and thereafter general body of the society elected the Petitioner as Chairman. According to him some inquiry is now pending regarding such embezzlement, whereas, through impugned orders and Notifications without finalizing the enquiry against the alleged embezzlement, fresh elections are being conducted, which is against the law and the Articles and Memorandum of the society. He further submits that until the enquiry is completed, the Petitioner remains Chairman as he has the mandate of the general body; whereas directions be issued to the official Respondents to conduct and complete the enquiry.

3. On the other hand, counsel for the Respondent No.7 & 8 has objected to the very maintainability of this petition on the ground that it has not been filed by the society, but by the petitioner in his individual capacity, who is holding the position of Chairman unlawfully and is not an authorized person. According to him, even otherwise there is no post of Chairman in the byelaws of the Society, whereas, elections were scheduled and through this petition and ad-interim orders, they have been withheld and no case is made out. According to him it is also disputed that the petitioner has been elected by the general body. In support of his contention, he has relied upon case of *Citizen Cooperative Housing Society Ltd through Chairman v. Agha Taj Muhammad Academy through present Secretary and two others* **(2011 YLR 246)**.

4. Learned AAG has argued that as to removal of certain members is concerned, the same is in violation of the Societies Act and Rules, whereas, the Registrar was never approached nor informed. As to elections he has argued they were required to be conducted in accordance with the Societies Act, read with Bylaws of the society and therefore the Election Officer had issued the impugned notice.

5. We have heard the learned Counsel for the Petitioner and Respondent No.7 & 8 as well as learned AAG and perused the record.

6. As stated in the memo of petition, the general body of the society in its meeting held on 16.2.2020 after resignation from the elected President elected the Petitioner as its Chairman. How the general body did so is not clear as the byelaws do not provide for any such appointment. It has been provided in clause 24 of the Byelaws that in absence of President, Vice President shall act for the chairman and exercise all the powers of the President. This means that the notwithstanding the resignation of the President, the managing committee had to complete its elected tenure as per the byelaws and no one can be inducted in this manner. It is a matter of record that prior to purported removal of Respondent No.7 & 8, they had been elected, and even if it is true that the after their removal Petitioner was nominated as Chairman by the general body, it cannot be continued for an unlimited period without fresh elections. At the most and without commenting upon such decision of the general body, it could have only been done for a limited period to conduct fresh elections as an adhoc measure; or in the alternative, for the remaining tenure, the already elected managing committee of the society, including office bearers had to run the affairs of the society. No other short cut method could have been adopted as has been done in this case, even by the general body as it is also subject to the byelaws of the society. Though the general body is supreme for managing the society; however, it has to act in terms of the byelaws of the society read with the Societies Act, and the Rules framed thereunder. Even the byelaws are subservient to the Act and the Rules. It is not only surprising but so also shocking to note that the petitioner has continued in his office even beyond the mandate which ordinarily vests in an elected managing committee.

7. As already observed that in terms of clause 24 of the byelaws as well as per settled principles, if for some reasons the elected Chairman / President is incapacitated due to some reason or has expired, the next available person i.e. Vice Chairman or Vice President has to act as Acting Chairman or President either for the remaining period of the tenure; or till such time fresh elections are held. It is unheard of that that the general body without following law can elect any person as a Chairman for an unlimited period as it would be beyond the scope and mandate of the Byelaws itself. While confronted, we have not been assisted by the Petitioner's Counsel in any manner and as to how present Petitioner had

continued for so many years claiming to be elected Chairman/President of the Society.

8. As to conducting enquiry and the pending proceedings, if any, it may be observed that it has no nexus or relation with the conduct of fresh elections; whereas, under the garb of pendency of any such enquiry, the present Petitioner cannot continue as Chairman forever; demanding an enquiry. Moreover, the crux of the present petition is withholding of timely elections, whereas, both proceedings can go separately and independently.

9. It is needles to observe that insofar as conduct of the election of the society is concerned, the Courts have always been reluctant to interfere barring exceptional situations, which in the present case appears to be lacking. Nonetheless, per settled law, interim arrangement, like the one in the present case, whereby, the petitioner is continuing in the office without conduct of elections cannot continue for an indefinite period.

10. In view of hereinabove facts and circumstances of this case, the Petitioner has failed to make out a case for any indulgence or to exercise discretion in this matter and therefore by means of a short order dated 07.12.2021, instant Petition was dismissed and these are the reasons thereof.

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Ahmad