

IN THE HIGH COURT OF SINDH, KARACHI

C.P No.D-1535 of 2019

[Khaliq Ur Rehman vs. Syed Arshad Ali and others]

Present:

Mr. Justice Zafar Ahmed Rajput and

Mr. Justice Muhammad Faisal Kamal Alam

Date of hearing : 15.12.2021

Petitioners

*[Khaliq Ur Rehman
and others]*

: Represented by Mr. Khalil
Ahmed Siddiqui, Advocate.

Respondents No.1 and 2

*[Province of Sindh and the
Registrar Cooperative Societies
Sindh]*

: Represented by Mr. Miran
Muhammad Shah, Additional
Advocate General Sindh along
with Mr. Ahmed Hussain,
Inspector, Cooperative Housing
Societies, Election Officer,
Madras Cooperative Housing
Society.

Respondent No.3

*[Honourary Secretary Madras
Cooperative Housing Society
Limited]*

: Represented by Mr. Shamshad Ali
Qureshi, Advocate

Applicants/Interveners

[Muhammad Jamil and others]

: Represented by Mr. Zubair
Ahmed Rajput, Advocate

ORDER

Muhammad Faisal Kamal Alam, J: This Petition was disposed of on 21.02.2020, that is, almost 20 (*twenty*) months back, on which date, learned AAG informed the Court that the National Accountability Bureau (“NAB”) has conducted an Enquiry against the Sitting Management of

Madras Cooperative Housing Society Limited (the “said Society”) and the Reference is filed in the Accountability Court. This Court allowed the Prayer Clause-**b** as well with regard to holding of Elections of the said Society in accordance with the Bye-Laws under the supervision of the learned Nazir of this Court within a period of 90 (*ninety*) days. Elections, however, could not be held, due to non-availability of record, which allegedly were in the custody of the NAB.

On 27.08.2021, Respondent No.3 (*Haji Imam Bux-Secretary of the Madras Cooperative Housing Society*) was directed to be in attendance on 16.09.2021. Relevant portion of the Order passed on 27.08.2021 is reproduced herein under_

“Learned counsel for the petitioners states that record of Madras Cooperative Housing Society was requisitioned from its Secretary. The said Secretary informed that the record is lying with the NAB Authorities. When the NAB Authorities were approached they informed that the record is not with them. As per the learned counsel, record of the Society appears to have been manipulated and illegally withheld by its Secretary. Let, the Secretary, namely, Haji Imam Bux be in attendance on 16.09.2021 along with his explanation. Nazir is also directed to be in attendance on the said date.”

On 16.09.2021, it was observed that since record was available with the Secretary, hence, the Registrar, Cooperative Housing Society- Respondent No.2 should conduct the Elections of the said Society, as already directed on 21.02.2020, under the supervision of the learned Nazir of this Court within a period of 30 (*thirty*) days’ time positively; while authorizing the Registrar / Nazir to take any criminal / legal action against

any person, who attempts to obstruct in conducting fair and transparent Elections of the said Society.

2. On 26.11.2021, another issue was cropped up with regard to the voting rights of the Members and in this regard a CMA No. 26160 of 2021 was preferred by the Petitioners and after hearing all the contesting parties, the same was decided, *inter alia*, clarifying that only those Members shall cast votes, who are genuine Plots owners. It was reiterated that official Respondent No.2 and the learned Nazir shall conduct and supervise the Elections.

However, the said Elections could not be held and the matter was again listed on 15.12.2021, for consideration of Nazir's Reference dated 08.12.2021 besides the following_

1. For order on Nazir's Report dated 08.12.2021.
2. For order on CMA No.31356 of 2021 (151).
3. For order on Nazir's Report dated 11.12.2021.
4. For order on CMA No.31945 of 2021 (Exp).
5. For order on CMA No.31946 of 2021 (I Rule 10).

3. Two applications were considered; one is CMA No.31356 of 20221 filed by the Petitioners, stating, *inter alia*, that the Election Officers, namely, Ahmed Hussain, appointed by the Respondent No.1, who is a Government Cooperative Inspector has disqualified the Petitioners from voting vide his correspondence dated 24.11.2021 addressed to the learned Nazir of this Court, which is appended as Annexure "C" with the listed application. The second listed application is under Order I Rule 10 of CPC bearing CMA No.31946 of 2021 preferred by 222 persons claiming to be the holders of share certificates in the said Society and is represented by Mr. Zubair Ahmed Rajput, Advocate. The third listed application is the

CMA No.31945 of 2021, which is a formal application for seeking exemption from filing original documents.

4. The Nazir's Reference dated 08.12.2021, which is a Report available at page -675 of the File, has mentioned that the Election Programme has been announced and Elections were scheduled to be held on **12.12.2021**, however, Respondent No.3-Haji Imam Bux, Secretary of the Society submitted the list of 342 Members divided in three categories of "A", "B" and "R" and as per such list only 132 Members cleared the dues of the Society and defaulting Members are not eligible to cast their votes nor contest the Elections in view of Section 19 of the Sindh Cooperative Housing Societies Act, 2020. This contention was rebutted by the Petitioners' counsel but the same apparently was not accepted and the matter was referred to the Court for further orders. The other Nazir's Report is of 11.12.2021, wherein, it is stated that Elections Officer is unable to conduct the Elections of the said Society as per the schedule due to the afore-referred objections and the said Election Officer requested for the postponement of the Elections.

5. During the hearing, learned Additional Advocate General Sindh has placed on record the Notice dated 22.10.2021, primarily for holding the Elections of the said Society, which was to be held by **Secret Ballot on 12.12.2021**.

6. Mr. Zubair Ahmed Rajput, Advocate, appearing for the Interveners has argued that the Interveners / Applicants cannot be prevented from taking part in the Elections of the said Society, because their voting rights are guaranteed under the Law and Bye-Laws of the Society; in his Application under consideration, he has specifically referred to Bye-Laws 12 and 17, which according to him, is fully supplemented by Sections 16, 18, 25 to 27, 28 and 30 of the erstwhile Cooperative Societies Act, 1925

and Section 17 and 21 of the present Governing Statute, viz. the Sindh Corporative Societies Act, 2020. He cited the Judgment reported in **2010 YLR-2497 [Lahore] in the case of Mst. Haleema Rasheed vs. Registrar Cooperative Housing Society and 32 others.**

7. We have taken into account the arguments of all learned Advocates and perused the record. The learned Advocates for Respondent No.3 and Interveners have laid much emphasis on the Rule-57 of the Sindh Cooperative Societies Rules, 2020 (“**the Rules**”), particularly its Sub Rule (i); it is argued that since Petitioners have not paid up the entire value of their shares, therefore, they are neither eligible to contest the Election nor vote; whereas, the Interveners qualify to contest the Election and vote because they possess fully paid up shares of the said Society, and the cited case law supports the stance of the Interveners.

8. The Election Programme as contained in the above Notice of 22.10.2021, also appears to be tainted with *mala fide* as under the heading ‘INSTRUCTIONS’, **it is mentioned as condition No.1 that those Members holding paid up Share Value of Qualifying Shares of Rs.500/- under Rule 57(i) of the Cooperative Societies Rules 2020 should file Nomination Papers for the Post of President and Committeemen.** It means those persons / purported Members, many of them are the present Interveners in the above referred CMA No.31946 of 2021, can contest the Election but not the Petitioners and other Members, who are admittedly plot owners. It is also noteworthy to mention that in the Order dated 26.11.2021 it has been decided that only those 331 Members, who are genuine Plots owners can exercise the right of votes in the forthcoming Elections. That finding was based on the record available; Respondent No.3 in the Counter-Affidavit to the CMA No.26160 of 2021 (*ibid*) had not disputed that **331 Plots exist in the said Society and remaining persons have been made**

Members, who are waiting for allotment of Plots. On that day and even before that no issue of un paid dues and other trivial matters were raised by the Respondents in the present Petition in respect of Petitioners and the eligibility to contesting the Election.

9. The stance of Interveners is belied by the record produced with the above listed application under Order I Rule 10 of CPC; the appended Audit Memo at page-1197 mentions the fact that no List of 1366 Members was provided

10. From the above, it appears that Respondent No.3 in league with officials of Respondents No.1 and 2 have till date successfully attempted to sabotage the Election Process, even after passing of specific directions by this Court.

11. A specific averment in the Petition that since 2009 Respondent No.3 is acting as Secretary without holding the Elections and the Annual General Body Meeting has not been disputed. *Secondly*, the right to contest the Elections and Vote as determined in the last Order of 26.11.2021 is still in the field as no review of the same has been sought. Even if there is an issue of unpaid dues, the same can be very well decided and implemented by the newly and duly formed Management Committee, which would come into the existence after holding a fair and transparent Election. In addition to the above, Bye-Laws 23 to 28 of the Society take care of this issue of unpaid dues, *inter alia*, authorizing the Society to have a charge upon the interest of a Member in the Society in respect of any unpaid debt or dues.

12. Undisputed proprietary rights, which are guaranteed as one of the fundamental rights, cannot be curtailed on the misinterpretation of any statutory provisions, Rules and Bye-Laws. If the eligibility criteria as mentioned in the above referred Notice dated 22.10.2021, is strictly

followed, it would result in depriving those Members of the Society, who are undisputed owners / holders of their respective Plots in the said Society and their right and interest would be superseded by those, who only hold their shares certificates of certain value and according to the above referred Counter-Affidavit of Respondent No.3, they are waiting for allotment of plots. This would be an absurd interpretation of the Rules so also the Bye Laws [*supra*] and cannot be allowed as it tantamount to making mockery of the entire scheme of the Cooperative Societies Law. Conversely, it is logical to conclude that the real stake holders who are plot owners would run the affairs of the Society in a prudent manner.

13. Interesting aspect of the case is, which again can be deduced from the Counter Affidavit [*ibid*] of Respondent No.3 is, that in the year 2010 number of members increased from 513 to 1366 [having no plots]; an attempt to deprive the real stake holders of the Society from their rights and interest.

It is held in the cited Decision, that the petitioners (*of the reported case*), who were members of the Society (*of the reported case*), had a right to vote in the Elections and actions on the part of Government Officials to curtail such right was set-aside. The cited case law is distinguishable and does not apply to the peculiar facts of the present Petition, because in the reported case, there was a decision of the Registrar Cooperative Societies, for making amendments in the Bye-Laws of the Society, which was not implemented and the Elections were held in violation thereof; *secondly*, there was no issue of those Members, who are merely waiting for allotment of some plots and the ones who undisputedly are Plots holders / owners, as in the case of present Petition/Petitioners.

The learned Nazir, in view of the specific directions, should have insisted on holding of Elections, rather than entertaining afterthought

objections, which were aimed at to sabotage the Election Process. Consequently, both the Nazir's Reports / Reference are disposed of by directing the learned Nazir to strictly comply with the earlier directions of this Court and supervise the holding of Elections of the said Society, forthwith. Registrar, his Officials and Respondent No.3 are also put on notice to exercise their authority fairly or would face proceeding(s), including contempt of Court.

14. Similarly both listed applications, viz. CMA Nos.31356 and 31946 of 2021 are disposed of by directing the Respondents that only those Members of the said Society are entitled to contest the Elections and Vote, who are genuine Plots owners. However, the Management Committee, which is formed after the Elections, may consider the amendment in the Bye-Laws. Similarly, official Respondents may give necessary directions to the newly elected Managing Committee in accordance with the statutory provisions.

JUDGE

JUDGE

Karachi

Dated : .01.2022

M. Javid.P.A