

THE HIGH COURT OF SINDH AT KARACHI

C.P. No.D-7107 of 2017

Present:

Mr. Justice Irfan Saadat Khan
Mr. Justice Azizur Rehman .

Date of hearing: 15.11.2017.

Petitioner: M/s. Sindhi Jamaat Cooperative Housing society
through Mr. Sikandar Ali Shar, Advocate .

Res. No.1 to 3: The Secretary, Cooperative Housing Societies and
2 others through Mr. Meeran Muhammad Shah,
Addl. Advocate General Sindh .

Res. No.4: Ghulam Muhammad Samoo through Mr. Aftab
Ahmed G. Nabi, Advocate .

ORDER

IRFAN SAADAT KHAN, J. :- The instant petition has been filed with the
following prayers:-

- "i. To suspend, cancel, rescind and quash the so-called orders dated 01.08.2017 and 25.08.2017 passed by the respondents No.2 &3 respectively, being illegal, ab-initio, unconstitutional and without promulgating any rules and regulations as provided in section 43 of Cooperative Housing Societies Act, 1925.*
- ii. Declaration to the effect that both the above said orders are cursive to the law.*
- iii. To direct the respondents No.2 & 3 to conduct the transparent, impartial and good Election of New/fresh Five Committeemen Election against the retirement of 05 Committeemen.*

- iv. *To direct the respondent No.4 not to interfere, indulge, work, act, introduce, shown himself to be President and/or working/controlling/holding/having the society office and further he may be restrained from moving any type of false applications in respect of the said society, because due to his illegal and frivolous applications the society and inhabitants have already suffered to a huge tune.*
- v. *To grant such relief that may be deemed fit and proper in circumstances of the case."*

Briefly stated the facts of the case are that the petitioner claims himself to be a honorary Secretary of the Sindhi Jamaat Cooperative Housing Society situated at near Jogi Moure, Main National Highway Bin Qasim Town, Malir, Karachi. That the petitioner was elected as Secretary of the above society in the annual election held last year. That it is the claim of the petitioner that after assuming the charge of the Secretary, various developments were made for betterment of the society. As per the petitioner, respondent No.4 moved an application dated 23.06.2017 to the members of the society with a copy to the Registrar, Cooperative Housing Society, Government of Sindh alleging therein that the members of the society are involved in illegal activities and therefore the said committee may be dissolved. On the said application, the respondent No.3 passed an order dated 18.07.2017 annexure 'B' directing the respondent No.4 to seek legal remedy by filing application under Section 54 of the Cooperative Societies Act, 1925 (Act). On 01.08.2017 the respondent No.2 passed an order by exercising his powers calling for special general body meeting of the society on 03-09.2017 to transact the business of No confidence against entire 15 committeemen of the society after completing all codal formalities. Due to Ashura the said exercise could not transacted, however another order dated 25.08.2017 was passed by the Assistant Registrar, Cooperative Societies by directing the respondent No.4 and committeemen to hold general body meeting after completing legal and codal formalities. It is against the above referred orders that the present petition has been filed with the prayer as mentioned above.

Mr. Sikandar Ali Shar, advocate has appeared on behalf of the petitioner and stated that orders dated 01.08.2017 and 25.08.2017 were

passed without providing an opportunity of hearing to the petitioner. According to him, the respondent No.4 with mala fide intention has approached the respondents No.2 and 3 upon which the respondent No.2 has passed an order by ignoring the provisions of the Act. He therefore prayed that the action of the respondents is tainted with malice, hence both the orders dated 01.8.2017 and 25.08.2017 may be vacated. Counsel further states that though the respondent No.2 has vast powers under Section 43 Act but that the authority has to be exercised in a judicious manner since opportunity of hearing was not provided by the Registrar hence the order is without jurisdiction, therefore the instant petition is maintainable. He further submitted that the matter could not be agitated in application since in his view the matter does not fall under Section 54 of the Act, hence appeal could not be filed by the petitioner under Section 56 of the Act. He further stated that since previously election of the society was not being held, therefore a petition bearing C.P. No.D-1304/2015 was filed, thereafter an amicable settlement took place between the parties and the petition was not pressed on 11.11.2015, which was disposed of by the Court accordingly. He stated that thereafter election was held by the society in which the present petitioner was elected as General Secretary. He finally submitted that the actions of the respondents No.2&3 are illegal and the same may be declared as null and void. In support of his above contentions the learned counsel for the petitioner has placed reliance on the following judgments:

1. *Col. Shah Sadiq Vs. Muhammad Ashiq (2006 SCMR 276)*
2. *Faiz Bakhsh and others Vs. Deputy Commissioner/Land Acquisition Officer Bahawalpur and others (2006 SCMR 219)*
3. *Government of Sindh Vs. Raeesa Farooq and 5 others (1994 SCMR 1283)*
4. *Karachi administration Employee Cooperative Housing Society Ltd. Vs. Government of Sindh and others (2004 YLR 1070)*
5. *Muzaffar Ali Shah and others Vs. Registrar Co-Operative societies, Karachi and another (PLD 1968 Karachi 422)*
6. *Television Employees Cooperative Housing Society Vs. Muhammad Usman & others (C.P. No.D-289/2011 disposed of on 17.12.2013).*

Mr. Meeran Muhammad Shah, Additional Advocate General Sindh has appeared for respondents No.1 to 3 and Mr. Aftab Ahmed G. Nabi advocate has filed vakalatnama on behalf of respondent No.4 which is taken on record. They at the very outset stated that this petition is not maintainable and is misconceived firstly the petitioner has approached this Court with unclean hands and secondly against the orders in respect of which remedy is available to the petitioner under the Act. Hence according to them the petitioner may be asked/directed to avail the remedy provided to him under the Act and this petition may be dismissed with cost, being misconceived and non-maintainable.

We have heard the learned counsel for the parties and have perused the record, the law as well as the gist of arguments filed by the counsel for the petitioner.

It is an admitted position that the matter under dispute is between the petitioner and the respondent No.4. It is also an admitted position that the respondent No.4 has approached the respondents No.2 & 3 by filing certain applications wherein he was advised to adopt the legal proceedings as provided under the Act i.e. Section 54 of the Act and proceedings in this behalf have already been initiated by the respondent No.2. The decisions relied upon by the learned counsel for the petitioner are found to be distinguishable from the facts obtaining in the instant petition. In the decisions given by the Hon'ble Supreme Court of Pakistan the powers of the High Court has been discussed about the jurisdiction vested in the Court under Article 199 of the Constitution of Islamic Republic of Pakistan. The decision given in the case of Karachi Administration Employees Cooperative Housing Society is also found to be distinguishable since in this decision it was observed by the Division Bench of this Court that exercise of powers in terms of section 43 in absence of any material would be an action in excess of the authority and liable to be struck down, which surely is not the situation prevailing in the instant case. In the instant case it was the President of the Society, who has approached the Registrar, by filing applications with regard to the dispute touching the business of the society, upon which the respondent No.3/Assistant Registrar has simply advised the respondent No.4 to seek

remedy by filing Arbitration case for redressal of his grievance; and the only order passed by the Registrar, impugned was with regard to call special general meeting to transact the business of no confidence against entire 15 committeemen of the society after completing all codal formalities as required under Registered Bylaws Cooperative Societies Act/Rules in presence of the representative of Cooperation Department. It is however not understandable that how the petitioner could be termed as aggrieved person and that how the order impugned could be termed as without the jurisdiction, since, in our view the only directions given by the respondent No.2 was to transact the business of the society after completing the codal formalities. In our view, the matter is wide open and if the petitioner still finds himself to be aggrieved he can avail the remedy under Sections 56 and 64 of the Act, as the case may be. Hence in our view the present petition filed by the petitioner appears to be quite premature and not maintainable since when the matter is wide open, no interference in this behalf at present is warranted by this Court. Petition, therefore stands dismissed along with the listed application. However, if any adverse order is passed against the petitioner, he would be at liberty to agitate the same in accordance with law, if so advised.

JUDGE

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