

IN THE HIGH COURT OF SINDH AT KARACHI

Present: Mr. Justice Salahuddin Panhwar
Mr. Justice Khadim Hussain Soomro

CP.No.D-5256 of 2023

Petitioners: Saleh Muhammad & others

Respondents: Province of Sindh & others

CP.No.D-7449 of 2022

Petitioner: Muhammad Moosa Lalwani

Respondents: Province of Sindh & others

Date of hearing: 24th April 2024

Date of Judgment: 06th May 2024

APPEARANCE:

Mr. Muhammad Vawda, advocate for petitioner Nos.1 to 4 in CP.No.D-5256/2023

Mr. Muhammad Rafi, advocate for petitioner in CP.No.D-7449/2022

M/s. Syed Ahsan Imam Rizvi/Asadullah Shah, advocates for respondent No.4 in CP.No.D-7449/2022

M/s. M. Saad Siddiqui/Sahibzada M. Mubeen, advocate for respondents No.5 & 7

Mr. Salahuddin Ahmed, advocate for alleged contemnor

Mr. Ubedullah, advocate for SBCA

Ms. Naushaba Haq Solangi, AAG Sindh

JUDGEMENT

SALAHUDDIN PANHWAR, J:- Through dint of this common judgment, we intend to decide the aforesaid petitions as common question of fact and law is involved.

2. In C.P.No.D-5256/2023, the petitioners, members of Respondent No.5/Fishermen's Cooperative Society, have filed this petition. It is stated that Respondent No. 4 was appointed as Administrator of Respondent No. 5

by Order dated 25.08.2021, issued by Respondent No. 2 under Rule 54(3) of the Sindh Cooperative Societies Rules, 2020; that according to Rule 54(4) of the same Rules, an appointee under Rule 54(3) holds office for two years; that since Respondent No. 4 failed to achieve objectives within this timeframe, therefore, Respondent No. 2, by Order dated 24.10.2023, removed Respondent No. 4 as Administrator and instead constituted a committee comprising Mr. Sajid Abdul Kareem Surhiyo and Mr. Abid Khan to manage the affairs of Respondent No. 5, however, the next day, Respondent No. 3 issued a letter dated 25.10.2023 to Respondent No. 2, requesting the withdrawal of the order dated 24.10.2023 on the grounds that Rule 54(3) of the Cooperative Societies Rules, 2020, is not applicable to housing societies and that the Secretariat Office is the competent authority to change the administrator; that despite the said position, Respondent No.4 continues to attempt to occupy the office of Respondent No. 5, on the basis of impugned letter.. As such the petitioners have prayed for the following reliefs:

- A. Declare that the Impugned Letter bearing No.SO(SA)II(36) 2010 (Pt-111)/455 dated: 25 10.2023 [Annex "D"] issued by the Respondent No. 3 is illegal unconstitutional, mala fide, without jurisdiction, and is liable to be set aside;
 - B. Direct the Respondents to enforce Order bearing No. RCS/KYC/190/2023 dated: 24.10.2023 and hold elections of the Respondent No. 5 in accordance with law within a time frame as stipulated by this Honourable Court;
 - C. Suspend the Impugned Letter bearing No. SO(SA)II(36) 2010 (Pt-III)/455 dated 25.10.2023 [Annex "D") and permanently restrain the Respondent No 4 from acting as the administrator of the Respondent No. 5;
 - D. Grant such further and or other relief as this Honourable Court may deem just and equitable;
3. In CP.No.D-7449/2022, the petitioner stated that the last Society Elections were held on 24.02.2017, and the next elections were due on 23.03.2020 as per Bye Law No. 38; that despite a meeting on 29.05.2021, Elections were announced on 18th June, 2021 based on an old Membership List, as a result of notification dated 25.08.2021 Mr. Zahid Ibrahim Bhatti was appointed as Administrator without justification; that elections for the Board of Directors (FCS) were postponed due to a stay order in Suit No. 1422 of 2021; that Respondent No.6, a government employee, served as a Director

and later as an Advisor of Fishermen Cooperative Societies Limited, despite being unauthorized to file nomination papers; that notwithstanding complaints and legal actions, he (respondent No.6) continued to withdraw salary and welfare funds, neglecting the welfare of poor fishermen. Therefore, the petitioner has prayed for the following reliefs:

- a. To suspend the aforementioned order bearing No.RCS/KYC-36/2021 deed 23.09.2021. issued by Registrar Cooperative Societies, Government of Sindh, Karachi, as illegal unlawful and the same may kindly be suspended forthwith.
 - b. The Nazir of this Court may be appointed as an Administrator to take the charge of Fishermen Cooperative Society Limited and announce the Date of Election of the Society (FCS). The Nazir of this Honorable Court may also be directed to scrutinize the accounts of the Societies from the respectable firm of Chartered Accountants.
 - c. The suit was pending since last one and half year and neither the plaintiffs nor the defendant and/or intervener are interested to pursue the Suit bearing No.1422/2021, therefore, for the sake of brevity the suit may be consolidated along with this petition in order to ascertain the true facts, and interim stay in the above suit may be vacated with the prayer to announce the fresh date of election of the society to save the society from the heavy financial lenses in the best interest of justice, under the supervision of the Nazir of this Honourable Court.
 - d. Any other relief which this Honorable Court may deems fit and proper may be awarded in the matter.
4. We have heard the submissions of the learned counsel for the parties and have meticulously examined the material available on record.
5. Upon a thorough examination of the record and after due deliberation, it is acknowledged that Civil Suit No.1422 of 2021 is currently *sub judice* on the original side of this Court, where an ad-interim injunction is operating. Similarly, Civil Suit No. 647/2024 is also pending before V-Senior Civil Judge of Karachi West/Special Court for Cooperative Societies, Karachi Division. In latter suit, certain Orders have been passed, whereby enforcement of subsequent decisions rendered by the Registrar of Cooperative Societies have been stayed. Furthermore, this Court vide order dated 04.12.2023, after hearing counsel for the parties, appointed Nazir of

this Court as receiver to conduct all financial matters of the Respondent No.5 in the following terms:

“Para wise Comments of the Respondent: No. 1 and the Respondent No. 2 and 3 are both taken on record.

The Petitioners in CP No.D-5256/2023 have sought to restrain the Respondent No. 4 who was the previous Administrator from interfering with the management of the Respondent No 5 as his tenure as an Administrator had expired and he has as per the orders of the Registrar/Respondent No.2 been substituted by two new persons.

The Registrar/Respondent No 2 has supported the contentions of the Petitioners and stated that as per the mandate under the provisions of the Sindh Cooperative Societies Act, 2020, the term of the Respondent No 4 had lapsed and he was bound to be replaced and which has been done vide an order dated 24 October 2023 (pages 99-101 of CP No D-5256/2023) passed by him. He submits that the mandate of the administrators appointed is inter alia to constitute the members lists which he says will take a further period of two months and to thereafter hold elections of the Respondent No 5.

Mr. Ahsan Imam Rizvi Advocate, holding brief for Syed Haider Imam Rizvi Advocate for the Respondent No. 4, confirms that the Respondent No 4 would have no objection if the Nazir of this Court is appointed to conduct all financial matters of the Respondent No.5 until the elections of the Society can be held.

In the circumstances, we hereby direct that:

- (i) that the Nazir of this Court is appointed as a receiver of the Respondent No. 5 to the limited extent of managing all the financial affairs of the Respondent No. 5 including, but not limited to, dealing with day to day expenditures and distribution of salaries of the employees of the Respondent No. 5 until the new management of the Respondent No. 5 is elected.*
- (ii) the Respondent No. 4 will within a period of ten days from the date of this order hand over all the requisite documentation and fulfill all the procedural requirements as may be required to allow the Nazir of the High Court to administer all the financial matters of the Respondent No. 5.*
- (iii) In addition to his responsibilities as the receiver of the Respondent No. 5 in respect of all financial matters pertaining to the Respondent No. 5 as clarified in paragraph above, the Nazir shall maintain an oversight of the workings of the two new administrators appointed to compile the list of members of the Respondent No. 5 and which exercise should be completed within a period of two months as indicated by the*

Registrar Respondent No.2. In the event that the Nazir feels that the compilation of the list of members is being unnecessarily delayed he may move a Reference to this Court.

(iv) Once the list of members has been finalized, the Nazir of this Court should move a reference to the Court for further orders as to the conduct of the election.

6. At this juncture, counsel for the petitioners challenged the notification which re-notifies Zahid Ibrahim Bhatti as an Administrator. In contra, learned counsel for the respondents argued that pursuant to Rule 54(5) of the Sindh Cooperative Societies Rules, 2020, issuance of such re-notification is not permissible beyond the two-year term, as such any extension is illegal.

7. Prior to addressing the arguments advanced by the learned counsel for both parties, it is imperative to scrutinize the stipulations of Rule 54 of the Sindh Cooperative Societies Rules, 2020, to ascertain its precise legal import, which reads:

“54. Supersession of committee.- (1) Notwithstanding anything contained in the bye-laws of a society other than a housing society, the Registrar may, by order published with reasons thereof in the Official Gazette, supersede the committee of a society for a period to be specified in such order.

(2) The period of suspension specified in an order under sub-rule (1) may from time to time be extended by the Registrar.

(3) All powers and duties of the committee shall, during the period of supersession, be exercised and performed by such person or persons not exceeding nine as the Registrar may from time to time appoint in this behalf.

(4) The person or persons appointed under sub-rule (3) shall hold office for a period of two years.

(5) On the expiry of every two years period, if the order of supersession is still in force, fresh appointment of person or persons shall be made by the Registrar for a period of two years, or for the period during which the order of supersession is in force, whichever is less,

(6) Before making an order under sub-rule (1) or sub-rule (2), the Registrar shall-

(a) give the society an opportunity to show cause why such an order should not be made; provided that if as an emergent measure, taking of immediate action is necessary, such opportunity may be dispensed

with, but such opportunity shall be afforded to the society as soon, thereafter, as is possible;

(b) if the society affiliated to a financing bank, consult such bank regarding such action and the provision to be made for management of the affairs of the society.

(7) Nothing in this rule shall affect the bye-laws of the society relating to the meetings of the committee.

(8) Nothing in this rule shall be deemed to affect the powers of Registrar to cancel the registration of a society under section 66”.

8. A careful examination of the aforementioned legal provision reveals that Rule 54 of the Sindh Cooperative Societies Rules, 2020, prescribes the procedural framework and requisite conditions empowering the Registrar to supersede the committee of a cooperative society, with the exclusion of housing societies. An expounded interpretation of the pertinent sub-rules, 1 to 6, is as follows:

1. **Supersession Authority:** The Registrar has the authority to supersede the committee of a society by issuing **an order with stated reasons in the Official Gazette**. This action can be taken regardless of the society’s bye-laws, **except for housing societies**.
2. **Extension of Suspension:** The Registrar may extend the suspension period specified in the supersession order as deemed necessary.
3. **Appointment during Supersession:** During the supersession period, the Registrar can appoint up to nine individuals to exercise the powers and perform the duties of the committee.
4. **Tenure of Appointees:** The individuals appointed by the Registrar under the supersession will hold office for a fixed term of two years.
5. **Renewal of Appointment:** If the supersession order remains in effect after two years, the Registrar must make new appointments for another two-year term or for the remaining duration of the supersession order, whichever is shorter.
6. **Procedural Safeguards:**
 - (a) **Opportunity to Show Cause:** The society must be given a chance to explain why the supersession order should not be issued. In urgent situations, this requirement may be temporarily waived, but the society should be given the opportunity as soon as possible thereafter.
 - (b) **Consultation with Financing Bank:** If the society is affiliated with a financing bank, the Registrar must consult the bank about the proposed supersession and the management of the society’s affairs.

This mandate empowers the Registrar to intervene in the management of cooperative societies when deems necessary, while concurrently ensuring procedural safeguards to uphold fairness and due process.

9. The aforesaid legal provision explicitly excludes the application of this rule to “Housing Societies”. Consequently, the Sindh Cooperative Housing Authority Ordinance of 1982 and the Sindh Cooperative Housing Authority Rules of 1986 do not apply to the present entity i.e. the Fishermen’s Cooperative Society Limited, Karachi, since it does not fall under the category of a “Housing Society”. In contra-distinction to Rule 11 of the Sindh Cooperative Housing Authority Rules (1986), which provides a remedy to aggrieved parties to seek redress by way of appeal to the Government of Sindh (Cooperation Department), the Sindh Cooperative Societies Act, 2020 and its corresponding Rules 2020 are devoid of a similar appellate mechanism to challenge Orders issued by the Registrar of Cooperative Societies. Notably, the implementation of such decisions is effectuated through the potent tool of supersession, as defined under Rule 54 of the Sindh Cooperative Societies Rules (2020).

10. The Sindh Cooperative Societies Act, 2020, along with its accompanying Rules, 2020, provides the framework for appeals to the Government of Sindh. Specifically, Section 18(3) stipulates the right to appeal against the Registrar’s orders concerning amendments to the society’s bylaws. Section 59(4) addresses the right to contest the Registrar’s decision to remove any society officer under Section 59(1). Furthermore, Section 105 endows members with the right to appeal against any order or decision endorsed by the Registrar under Sections 10, 17, 62, 64, 68, and 69 of the Act. However, the Proviso to Rule 50(1) provides a recourse for appeal against the Registrar’s order regarding the expulsion of a society member. However, there is no provision in the Sindh Act, 2020 or Rules of 2020 that offers an appellate remedy against orders issued by the Registrar under the authority conferred by Rule 54. In such instances, an aggrieved party may challenge the Registrar’s order through writ jurisdiction, particularly if the order is deemed illegal, null, *void ab initio*, or issued without adherence to the requisite rule parameters.

11. The Superior Courts' jurisdiction to enforce fundamental rights, as enshrined in Article 199(1)(c), of the Constitution of the Islamic Republic of Pakistan, 1973, transcends the confines of federal, provincial, or local administrative bodies. This jurisdiction is all-encompassing, extending its protective reach to any individual or authority, inclusive of the government itself. Fundamental rights, the bedrock of societal liberties, may find themselves vulnerable to encroachments by private entities. In such instances, the High Court has an unbridled authority to promulgate directives essential for the preservation of these inalienable rights. The presence of alternative legal remedies does not impede the High Court's prerogative for judicial review. This is particularly pertinent when such alternatives lack efficacy or promptness. This doctrine is deeply entrenched in the authoritative ruling of the Apex Court of Pakistan in Case of *Dr. Akhtar Hassan Khan and others v. Federation Of Pakistan and others* (2012 SCMR 455).

12. The jurisdiction of the Special Court for Cooperative Societies is circumscribed by the provisions of Sections 73 and 117, of the Sindh Cooperative Societies Act, 2020, and Rule 53 of the 2020 Rules. The Government of Sindh has issued two notifications in this context. Given that lawsuits pertaining to subsequent Orders/Notifications are currently under the Special Court's review, it would be imprudent to comment on these cases, as such observations could influence their outcomes. Considering the complexities inherent in the factual disputes related to the Notifications in question matters pending adjudication for the Special Court's determination, it becomes manifest that such disputes are beyond the scope of writ jurisdiction and thus necessitate adjudication by a Special Court as statutorily mandated. The controversial nature of the factual disputes necessitates a comprehensive evidentiary examination, an endeavor that lies outside the confines of the current judicial review. It is the prerogative and duty of the Special Court, endowed with the appropriate jurisdiction, to meticulously dissect and evaluate the disputed facts, thereby resolving and delineating the rights of the parties predicated on the evidence tendered. This approach is in consonance with the proposition established by the Apex Court of Pakistan in the case of *Government Of Khyber Pakhtunkhwa*

*through Chief Secretary, Peshawar and others v. Intizar Ali and others (2022 SCMR 472), which affirmed that: "So far as the argument of Hafiz S.A. Rehman, learned Sr. ASC that as factual controversy is involved, these appeals are liable to be dismissed is concerned, even on this point alone the impugned judgments are liable to be set aside because it is settled law that superior courts could not engage in factual controversies as the matters pertaining to factual controversy can only be resolved after thorough inquiry and recording of evidence in a civil court. Reliance is placed on *Fateh Yarn Pvt Ltd. v. Commissioner Inland Revenue (2021 SCMR 1133)*. Admittedly, the learned High Court while passing the impugned judgments had went into the domain of factual controversy, which was not permissible under the law". The underlining is supplied.*

13. This Court, vide Order dated 04.12.2023 appointed the Nazir as receiver to supervise over all the Society's financial obligations. Furthermore, elections for the Society's management shall be conducted expeditiously, within a two-month time-frame and shall transpire under the direct supervision of the Court's Nazir. To safeguard the electoral process, the Registrar of Cooperative Societies is directed to refrain from issuing any Order that could potentially impede the smooth conduct of the elections. The recent notification issued by the Registrar of Cooperative Societies, Sindh, re-appointing Mr. Zahid Bhatti as an administrator of the Society, is hereby suspended. This suspension shall persist until a subsequent Order is passed, contingent upon the Nazir's conclusive report regarding the Society's electoral culmination by the special Court under Societies Act 2020.

14. For the foregoing reasons, both the Petitions are hereby disposed of. The Special Court for Cooperative Societies, Karachi-Division, is directed to adjudicate upon the contentious matters and ascertain the rights of the parties involved, in accordance with the legal mandates governing the Suits presently before it.

JUDGE

JUDGE