

THE HIGH COURT OF SINDH AT KARACHI

C.P No.D-801 of 2018

**Before: Salahuddin Panhwar &
Khadim Hussain Soomro, JJ**

Petitioner : M/s. The Kathiawar Cooperative Housing Society

Respondents : Government of Sindh and others

Date of hearing : 30.05.2024.

Date of judgment : __.08.2024.

Appearance.

Mr. Zeeshan Abdullah advocate for the Petitioner.
Mr. Obaidullah Abro advocate for SBCA.
Mr. Suresh Kumar, AAG.

J U D G M E N T

SALAHUDDIN PANHWAR, J. Through instant petition the Petitioner has prayed that:

- (i) To declare that the impugned order dated 01.01.2018 issued by the Respondent No.2, annexure P to the petition, is illegal, unlawful, excess to jurisdiction, void, ab-initio and having no legal effect in the eye of law.***
- (ii) To pass injunction order by restraining the Respondents, their officer(s), representative(s), agent(s), attorney(s), and person(s) working for and under them from issuing such type of orders.***
- (iii) To restrain the Respondents, their officer(s), representative(s), agent(s), attorney(s), and person(s) working for and under them from interfering with and disturbing the management of the affairs of the Petitioner society, being run and managed as per its bye-laws and also further restrain from taking any action(s) on the basis of impugned order, annexure 'P' to the petition.***
- (iv) Cost of the petition.***
- (v) Any other relief(s) which this court may deem fit and proper.***

2. Precisely relevant facts are that the Petitioner is a Cooperative Housing Society, registered on February 25, 1949, under the Act of 1925, with objectives including buying, selling, developing land, and conducting

social, recreational, and educational activities. The Society manages its affairs through general meetings and a committee, which includes a Chairman, President, Hon. Secretary, Treasurer, and other members. The Respondents include the Government of Sindh's Cooperation Department (Respondent No.1), the Registrar Cooperative Societies (Respondent No.2), the Assistant Registrar (Respondent No.3), and the Sindh Building Control Authority (Respondent No.5). The Society faced issues with building plan violations and, in response, imposed security deposits on plot allottees, a practice approved in their Annual General Meeting. Dispute arose when Respondent No.4 sought a waiver of this deposit, leading to complaints and correspondence with Respondents No.3 and No.2. The Society's enforcement of security deposits was challenged, and ultimately, an order was issued declaring the resolution regarding these deposits null and void and instructing the processing of Respondent No.4's building plan without delay. The Petitioner, dissatisfied with this order and lacking other remedies, has filed a petition.

3. In reply to the notices, Respondent No.4 filed affidavit, which is available at Page 439 of court file. Being relevant Para-4 is that:

"4. I say that, due to intervention of respectable people of the society dispute between me and society's managing committee has been amicably resolved, as a result, the Petitioner society redress my grievance by forwarding my proposed building plan to the competent authority to decide in accordance to laws and relevant building regulations. So there remains no grievance left against the Petitioner society. Hence, I withdraw my complaint against the Society and have no objection, if the impugned order, keeping in view of my no objection, set-aside as the same was passed on my complaint which I don't press".

4. The Petitioner has challenged order dated 01.01.2018 passed by Registrar Cooperative Society. Relevant directions of that order are that:

"Therefore, I Registrar Cooperative Societies Sindh in exercise of powers vested under Section 64-A of the Co-operative Societies Act, 1925 do hereby order as under:

- 1. The resolution passed in Annual General Body Meeting held on 26.02.2012 regarding levy of security deposit on members of the society for forwarding building plan of plots admeasuring 200 and 300 Sq. Yards be treated as null and void immediately.***
- 2. The exercise of receiving security deposit from members of the society to forward the building plan in the light of***

resolution passed in Annual General Body Meeting be stopped immediately.

3. The Building plan of Mr. Abu Bakar Siddique be forwarded to the Sindh Building Control Authority for further process as per SBCA Regulation after completing all codal required formalities immediately and without any delay”.

5. At the outset learned counsel for the Petitioner contends that Registrar Cooperative Society passed such order on application filed by Respondent No.4 who is also member and resident of society as he was aggrieved with the resolution dated 09.11.2016 unanimously approved by housing society member; however, Respondent No.4 subsequently realized and moved an application for withdrawal of this complaint and he has no grievance against the Petitioner, therefore, order passed by Registrar has no legal standing and nullity in the eyes of law. Learned counsel for Respondent No.4 also affirmed the plea of Petitioner that Abu Bakar [Respondent No.4] is not interested to pursue his application and he abides by the resolution in question.

6. Learned AAG has filed written statement on behalf of Respondent No.1, 2 & 3, containing therein that resolution of society is against the rule of Sindh Cooperative Societies Act, 2020, however, department has no objection, if the complainant wishes to withdraw his application and claiming that his grievance has been resolved, however, Petitioner society waived of such financial binding which are totally against the registered bye-law of the society as well as Sindh Cooperative Societies Act / Rules.

7. Since the aggrieved person was one of the members of the society and he has no grievance against the society itself, the other members, including Respondent No. 4, cannot be penalized solely for having a grievance against certain conditions or practices within the society. As members of the same collective, they are entitled to voice their concerns and opinions regarding the internal affairs and functioning of the society, as long as they do so within the established framework and rules of the organization. The mere expression of discontent or disagreement by members does not constitute an illegal or punishable act, as the society is meant to be a platform for the members to actively participate in the decision-making and management of the common affairs. Unless the members’ actions clearly violate the society’s constitution or bylaws, or infringe upon the rights of other members, the authorities should not impose penalties or sanctions merely for the members exercising their

right to seek redressal of their grievances. The cooperative and inclusive nature of a society necessitates that the concerns of all members be heard and addressed through appropriate channels, rather than resorting to punitive measures that could undermine the cohesion and purpose of the collective.

8. It is a well-established principle that the concept of a cooperative society rests on the voluntary association of its members, who come together to pursue common interests and objectives. Inherent to this collective framework is the understanding that members shall contribute towards the advancement of the society's interests, while also being entitled to participate in the management and decision-making processes as per the society's byelaws. Hence, the actions and decisions taken by the members, even if they lead to a degree of disagreement among some individuals, cannot be summarily deemed as illegal, provided they fall within the bounds of the society's constitutional mandate and bylaws. The authorities, in turn, are duty-bound to cooperate with the members and address their legitimate grievances, in order to uphold the principles of self-governance and member-centric administration that underpin the cooperative model.

9. For the rationale delineated hereinabove, this Court has carefully considered the facts and circumstances of the case at hand and concludes that there are no valid justifications to interfere with the internal affairs of the cooperative society. The members of such a society are empowered to manage their collective affairs and settle internal matters according to the established constitutional framework of the organization, without unwarranted interference from external authorities, as long as their actions adhere to relevant rules and regulations. Regarding the impugned order dated 01.01.2018 issued by the Registrar, Cooperative Societies, pertaining to the Resolution on the society's internal affairs, this Court finds that the order exceeds the authority's supervisory role and therefore cannot be upheld. The Constitutional Petition is thus allowed, and the Impugned Order is set aside. The parties to the Petition shall bear their own costs.

JUDGE

JUDGE