

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI

Constitutional Petition No. D-3858 of 2016

(Karachi University Employees Cooperative Housing Society v Province of Sindh & others)

Date	Order with signature of Judge
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Before:-

Mr. Justice Adnan-ul-Karim Memon

Mr. Justice Zulfiqar Ali Sangi

Date of hearing and order: 12.5.2026

Syed Zulfiqar Haider Shah advocate for the petitioner

Mr. M. Naqqash Siddiqui advocate for the Respondent.

Syed Ali Ahmed Zaidi, Addl. AG

ORDER

Adnan-ul-Karim Memon, J. The Petitioner, Karachi University Employees Cooperative Housing Society (KUECHS), prays that this Court set aside the impugned order dated 23.05.2016 passed by Respondent No.1 in Revision Application No. 50(T)6(16) of 2012 and the Award dated 04.06.2011 passed by Respondent No.3 in ABN No. 21/2011, being illegal, without lawful authority, and contrary to law. It is further prayed that the application under Section 54 of the Cooperative Societies Act, 1925, filed by Respondent No.4 be dismissed. The petitioner also seeks restoration and maintenance of the appellate order dated 02.08.2012 passed by Respondent No.2 in Appeals No. 19/2011 and 20/2011, as the same correctly reflects the law and facts. Costs of the proceedings are also prayed to be awarded in favour of the petitioner, Society. Any other relief deemed just and proper in the circumstances of the case is also requested to be granted.

2. Learned counsel for the petitioner submits that the petitioner is a registered Employees Cooperative Housing Society duly registered with Respondent No.2 and is functioning in accordance with law. It is contended that Respondent No.4 initiated proceedings under Section 54 of the Cooperative Societies Act, 1925, before Respondent No.2, which were subsequently referred to Respondent No.3 as ABN Suit No. 21/2011, claiming allotment of Plot No. A-40 in Karachi University Employees Cooperative Housing Society. He submitted that it is the case of Respondent No.4 that he was allotted the subject plot in 1980 and had deposited part payment; however, he was declared a defaulter and the plot was cancelled by the petitioner due to persistent non-payment of development charges despite repeated notices, reminders, and public intimations issued over several years. The petitioner submits that due process was strictly followed, including issuance of notices in 1985, 2009, and public publications in widely circulated newspapers, yet Respondent No.4 failed to clear outstanding dues. Learned counsel further submits that Respondent No.3, vide Award dated 04.06.2011, erroneously directed restoration of the plot or alternative allotment of

a commercial plot, although Respondent No.4 was a chronic defaulter. However, the said Award was challenged by both parties in appeal, and Respondent No.2 vide order dated 02.08.2012 rightly set aside the Award, observing inter alia that third-party rights had been created and the Award was incapable of execution. It is further contended that the subsequent revisional authority, i.e., Respondent No.1, upon approach by Respondent No.4, without appreciating the record and legal infirmities in the Award and proceedings, arbitrarily set aside the appellate order and directed restoration of the cancelled plot in favour of Respondent No.4 vide order dated 23.05.2016, which needs to be set aside. Learned counsel further argues that the impugned order dated 23.05.2016 is passed without lawful authority, suffers from misreading and non-reading of evidence, ignores due process followed by the petitioner, and has been passed mechanically and unjustly to extend undue benefit to Respondent No.4. It is emphasized that the cancellation of plot was lawful, preceded by repeated default, notices, and publications, and that Respondent No.4 had remained silent for decades, only resurfacing after cancellation. It is also argued that no vested right ever accrued in favour of Respondent No.4, particularly in view of his failure to comply with financial obligations. Learned counsel submits that both the Award dated 04.06.2011 and the revisional order dated 23.05.2016 are arbitrary, illegal, and contrary to law, whereas the appellate order dated 02.08.2012 correctly appreciates facts and law and ought to be restored. In view of the above, learned counsel prays that the impugned orders be set aside, the proceedings initiated by Respondent No.4 be dismissed, and the appellate order dated 02.08.2012 be restored, in the interest of justice. He prayed to allow this petition.

3. Learned counsel for the private respondent No.4 submits that the respondent was/is a bona fide and lawful allottee of Plot No. A-40 in the Karachi University Employees Cooperative Housing Society, having been validly allotted the said plot in 1980 and having made payments towards the cost thereof, including installments and development charges. It is further submitted that he has, in good faith, paid substantial amounts, including Rs. 4,000/- through cheques in 1980 and additional payments amounting in aggregate to Rs. 15,000/-, whereas the actual government assessed cost was substantially lower, resulting in excess payment rather than default. On this basis, it is asserted that he cannot be termed a willful defaulter. Learned counsel contends that no valid notices, reminders, or publications regarding alleged default or cancellation were ever served upon or brought to the knowledge of the respondent No.4. He added that the alleged cancellation of the subject plot, proceedings were therefore illegal, void, and conducted behind the back of the respondent No.4 in violation of due process. It is further argued that the petitioner, with mala fide intent and ulterior motives, had sought to deprive him of his lawful property despite full or substantial payment and despite his continued willingness to clear any genuinely

outstanding lawful dues, if any are lawfully determined. It is also submitted that the respondent No.4 has a vested and bona fide right in the subject plot, which cannot be taken away arbitrarily, and the impugned actions of the petitioner amount to illegal deprivation of property without lawful justification. In view of the above, learned counsel submits that the case of the petitioner is baseless, the averments are liable to be discarded, and the respondent No.4 was/is entitled to restoration of his original plot and the same was rightly decided by the Revisional Authority vide order dated 23.5.2016. He supports the order dated 23.5.2016 and prayed for dismissal of the petition.

4. Learned Additional Advocate General supported the impugned revisional order dated 23.05.2016, contending that the same was passed lawfully and after proper appreciation of the record. He submitted that the revisional authority rightly exercised jurisdiction under the Cooperative Societies Act, 1925, to correct the illegality committed by the appellate authority while setting aside the Award passed by the learned Arbitrator. He argued that Respondent No.4 was admittedly the original allottee of Plot No. A-40 and had acquired vested rights, which could not be cancelled arbitrarily without strict observance of due process. According to the learned AAG, the petitioner-Society failed to produce cogent material showing proper personal notice before cancellation of the plot, and mere public notices were insufficient to deprive Respondent No.4 of his rights. He further submitted that the cancellation was violative of principles of natural justice and rightly interfered with by the revisional authority. Learned AAG also contended that the appellate authority failed to examine the legality of cancellation and wrongly relied upon alleged third-party interests without conclusive evidence. He maintained that the revisional authority lawfully corrected the misreading and non-reading of evidence committed by the appellate forum. He further argued that the constitutional jurisdiction of this Court is limited and does not permit reappraisal of factual controversies in the absence of a jurisdictional defect or patent illegality. He therefore prayed that the petition be dismissed and the revisional order dated 23.05.2016 be maintained.

5. We have heard the learned counsel for the parties and perused the record with their assistance.

6. The learned Revisional Authority heard the Revision Application under Section 64 of the Cooperative Societies Act, 1925, filed by the respondent/appellant against the order dated 02.08.2012 and Award dated 04.06.2011 concerning the cancellation of Plot No. A-40 in Karachi University Employees Cooperative Housing Society. It was the case of the respondent/appellant that the subject plot was illegally cancelled without due process of law, without proper notice, and in violation of principles of natural justice. It was further contended that the respondent/ appellant had already paid

substantial amounts towards the cost of land and development charges and, being a bona fide member and senior academician, his rights could not be defeated through arbitrary action. Reliance was also placed on judicial precedents asserting that cancellation of plots without lawful procedure is void. On the other hand, the petitioner/respondents defended the cancellation on the ground of alleged default and supported the subsequent allotment to another member. Upon examination of the record and hearing the parties, the Revisional Authority observed that despite payment of development charges in 1980, the petitioner/respondent Society proceeded to cancel the plot after an inordinate delay of nearly 29 years, without proper and satisfactory determination of the core issue of cancellation. It was further noted that the orders passed by the lower forums suffered from vagueness, non-application of judicial mind, and failed to properly adjudicate the actual controversy. In view of the above findings, the Revisional Authority set aside the orders passed by the lower fora and directed the petitioner/respondent Society to restore the allotment of the appellant, subject to completion of codal formalities. The respondent/appellant was also directed to clear any lawful outstanding dues within 30 days.

7. Learned counsel for the petitioner heavily relied upon the order dated 02.08.2012 passed by the Registrar, Cooperative Department, whereby Appeals No.19/2011 and 20/2011, arising out of the Award dated 04.06.2011 passed in Arbitration Case No.21/2011, were decided. The appellate authority observed that although respondent No.4/Saleemuddin Chishti was the original allottee of Plot No.A-40, the said plot had subsequently been cancelled on account of default in payment of dues and re-allotted to another person, thereby creating third-party rights. It was further observed that the subsequent allottee had not been impleaded in the proceedings by either party; therefore, such rights could not be disturbed at that stage. The appellate authority also held that the Award passed by the Registrar's Nominee was ambiguous and incapable of execution, and accordingly, the same was set aside, and both appeals were disposed of accordingly.

8. We are of the considered view that the controversy essentially revolves around the legality of the cancellation of Plot No.A-40 originally allotted to respondent No.4/Saleemuddin Chishti and the legality of the subsequent proceedings undertaken by the petitioner-Society.

9. It is an admitted position that respondent No.4 was the original allottee of the subject plot and had admittedly made payments towards the price and development charges of the plot. The petitioner-Society justified cancellation on the ground of persistent default in payment of dues; however, from the record, it appears that no cogent material has been produced to conclusively establish that any effective personal notice or meaningful opportunity of hearing was afforded to respondent No.4 before cancellation of the allotment. Mere reliance upon

alleged public notices or internal correspondence, particularly after a considerable lapse of time, cannot by itself constitute sufficient compliance with due process where valuable civil and proprietary rights are involved. It is a settled principle of law that no person can be deprived of his vested rights except in accordance with law and after observance of principles of natural justice.

10. The learned Registrar's Nominee, while deciding Arbitration Case No.21/2011, rightly appreciated that respondent No.4 could not be arbitrarily deprived of his allotment; however, the direction regarding allotment of an alternative commercial plot was rightly found by the Appellate Authority to be legally unsustainable, since commercial plots are governed by a separate mode of allotment and cannot ordinarily be allotted in such manner. At the same time, the Appellate Authority failed to properly determine the legality of the original cancellation itself and instead proceeded mainly on the premise that third-party rights had been created. Such observation, without adjudicating whether the cancellation was lawful in the first place, could not have conclusively resolved the controversy. Mere creation of subsequent interests based on a disputed cancellation would not automatically validate an otherwise unlawful action.

11. We have also noted that the subsequent allottee was admittedly not impleaded before the forums below. Nevertheless, the absence of such impleadment by itself could not cure the apparent defects in the process adopted by the petitioner-Society while cancelling the original allotment of respondent No.4. The revisional authority, therefore, rightly examined the foundational legality of the cancellation proceedings and found that the matter had not been adjudicated by the appellate forum in its true perspective.

12. The learned Revisional Authority, while exercising powers under Section 64 of the Cooperative Societies Act, 1925, reappraised the record and recorded findings that the cancellation was effected after an inordinate delay and without proper observance of lawful procedure. The Revisional Authority further balanced equities by directing respondent No.4 to clear any lawful outstanding dues before restoration of allotment. Such direction demonstrates that the revisional order neither conferred any undue benefit upon respondent No.4 nor absolved him of lawful liabilities, but rather sought to protect accrued rights while ensuring compliance with the Society's lawful financial requirements.

13. We are conscious that constitutional jurisdiction under Article 199 of the Constitution is supervisory in nature and interference with concurrent or well-reasoned findings of competent statutory forums is warranted only where the impugned order is shown to suffer from patent illegality, jurisdictional defect, mala fide, or material irregularity.

14. In the present case, the petitioner has not been able to demonstrate that the revisional order dated 23.05.2016 suffers from any such jurisdictional infirmity or illegality warranting interference by this Court. On the contrary, the revisional authority appears to have addressed the real controversy between the parties, corrected the non-reading and misreading of material evidence committed by the appellate authority, and passed a reasoned order in accordance with law and principles of equity and fair play.

15. The contentions raised by the learned counsel for the petitioner are not persuasive. The petitioner, Society, failed to establish that any effective personal notice or proper opportunity of hearing was provided to Respondent No.4 before cancellation of the plot. Mere newspaper publications and internal correspondence could not satisfy the requirement of due process where valuable rights were involved. The long gap between the alleged notices of 1985 and 2009 further weakens the petitioner's case. Moreover, the record reflects that Respondent No.4 had made substantial payments towards the plot and had expressed willingness to clear any lawful outstanding dues; therefore, outright cancellation without proper adjudication was unjustified. The appellate authority also failed to determine the core issue regarding the legality of cancellation and mainly relied upon alleged third-party rights, which remained unsubstantiated as no subsequent allottee was impleaded in the proceedings. The learned Revisional Authority rightly exercised jurisdiction under Section 64 of the Cooperative Societies Act, 1925, to correct the misreading and non-reading of evidence committed by the appellate forum. The revisional order is a reasoned and lawful exercise of jurisdiction, balancing equities by directing Respondent No.4 to clear any lawful dues before restoration of allotment. Thus, no patent illegality or jurisdictional defect has been shown in the impugned revisional order dated 23.05.2016, warranting interference by this Court.

16. For the foregoing reasons, we are not persuaded to interfere with the impugned revisional order dated 23.05.2016 passed by Respondent No.1. Consequently, this petition, being devoid of merit, is dismissed, along with pending applications, if any. The petitioner-Society shall comply with the directions issued by the Revisional Authority forthwith strictly in accordance with law. However, no order as to costs.

JUDGE

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