

**THE HIGH COURT OF SINDH,
CIRCUIT COURT, HYDERABAD.**

C.P No.D-791 of 2012

DATE	ORDER WITH SIGNATURE OF JUDGE
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Present:

Mr. Justice Aqeel Ahmed Abbasi,
Mr. Justice Habib-Ur-Rahman Shaikh,

Mr. Noor Ahmed Memon, Advocate for the Petitioners.

Mr. Mukhtar Ahmed Khanzada, State Counsel along with
Ghulam Muhammad Mallah, Assistant Registrar (Technical) on
behalf of Respondents No.3 & 4.

Mr. S. Jawaid I. Bukhari, Advocate for Respondent No.5.

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ORDER

AQEEL AHMED ABBASI, J:- Through instant petition the Petitioners have sought direction to the effect that the Assistant Registrar (Technical)/Election Officer, Cooperative Housing Society Hyderabad, Respondent No.4 and other Respondents shall declare that Respondent No.5 namely Anis Ahmed son of Hafeez Ahmed is not a valid candidate hence not entitled to contest the election of Hyderabad Railway Employees Cooperative Housing Society.

2. Brief facts as stated in the petition are that the Petitioners are members of Hyderabad Railway Employees Cooperative Housing Society Ltd. Hyderabad, which is a registered body having its bye-laws duly approved by the competent authority. It has been further stated that the elected body of the above said society misappropriated the funds of the society, whereafter, action was taken U/s 14(1) of the Sindh Cooperative Housing Authority Ordinance, 1982 and the charge and management of the society was taken over by the Respondents. Against such action members of the Society filed a Constitutional Petition No.D-1571/2010 wherein an order dated 01.12.2010 was passed and the Administrator of the society was directed to conduct an inquiry and submit report. It has been stated that the Respondent

No.5 filed C.P No.D-1366/2011 whereby taking over of the charge management of the society by the Government in terms of Section 14(1) of the Sindh Cooperative Housing Authority Ordinance, 1982 was challenged. Said petition was disposed of vide order dated 16.02.2012 wherein the Division Bench of this Court was pleased to observe that entitlement of Respondent No.5 to contest the elections will be decided by the Respondent No.4 in the aforesaid petition when the Petitioner may file application U/s 14-A of the Sindh Cooperative Housing Authority Ordinance, 1982. It has been stated that the official Respondents without deciding the entitlement of the Petitioner with regard to his eligibility to contest the election, have erred in law to allow Respondent No.5 to contest the elections of the society. Whereas, the notification declaring the Respondent No.5 as successful candidate is also illegal hence liable to be set aside.

3. Learned Counsel for the Petitioners has argued that in view of hereinabove stated facts, the act of the official Respondents, whereby they have allowed the Respondent No.5 to contest the elections of the society, without seeking approval of the Government in terms of Section 14-A of the Sindh Cooperative Housing Authority Ordinance, 1982, is illegal hence liable to be set aside. It has been contended by the learned Counsel that since there were serious allegations against the previous Managing Committee of the society, including Respondent No.5, whereafter management of the society was taken over by the administrator, the Respondent No.5 was not entitled to contest the elections unless seeking permission from the Government in terms of Section 14-A of the Sindh Cooperative Housing Authority Ordinance, 1982, which aspect of the matter has been ignored by the official Respondents, who have not only allowed the Respondent No.5 to contest the elections but the Respondent No.5 has also been declared as a successful candidate through impugned notification. It

has been contended that the election of Respondent No.5 may be declared as invalid.

4. Conversely, learned Counsel for the Respondent No.5 has raised an objection as to maintainability of the instant petition and has also vehemently opposed the arguments advanced by learned Counsel for the Petitioners. It has been stated that instant petition, besides being false and frivolous, has been filed with mala fide intention by the Petitioners, who could not succeed in the elections of the society which were held pursuant to directions of this Court in C. P No.D-448/2012, which was filed by the Members of the Society. It has been contended that the elections were held under the supervision of Additional Registrar of this Court whereafter the Respondent No.5 alongwith other members of the society was declared as successful candidate and the management was handed over to the newly elected members of the society. Per learned Counsel, the objection of the Counsel for the petitioners whereby they have challenged the entitlement of Respondent No.5 to contest the elections without seeking permission of the Government in terms of Section 14-A of the Sindh Cooperative Housing Authority Ordinance 1982, is incorrect and contrary to the facts as, according to learned Counsel, pursuant to order dated 16.02.2012 passed in C.P No.D-1366/2011, permission was granted to the Respondent No.5 by the Government of Sindh, Cooperation Department Government of Sindh vide their letter dated 12.3.2012 whereby the respondent No.5 was conditionally allowed to contest the elections. It has been further stated that conditional permission allowed to Respondent No.5 was subsequently approved by the Government vide letter dated 27.09.2012 hence, the contention of the Counsel for the Petitioners in this regard is misconceived and contrary to the facts. Learned Counsel for the Respondent has also referred to the order dated 14. 03.2012 passed in C.P No.1366/2011 to show that the aforesaid petition was dismissed as not pressed in view

of the statement filed by the official Respondents whereby they extended their no objection if the Respondent No.5 in the instant petition, who was Petitioner in the aforesaid petition, may contest upcoming elections. Learned Counsel for the Respondent No.5 has argued that all the aforesaid facts and the orders passed by this Court in the above mentioned Constitutional petitions were very much in the knowledge of the Petitioners. However, per learned Counsel after having failed to get any relief from this Court in the aforesaid petitions they have filed instant petition malafidely, with an aim to frustrate the outcome of the elections of the society which were conducted pursuant to the orders of this Court in the aforementioned Constitutional Petition under the supervision of Additional Registrar of this Court. It has been prayed that instant petition may be dismissed with costs.

5. Learned State Counsel has also vehemently opposed the maintainability of instant petition and stated that the Petitioners, who could not succeed in the election of the society which was held pursuant to directions of this Court under the supervision of the Officer of this Court, have filed instant petition by stating incorrect facts, and on misconceived grounds. He has also relied upon two letters dated 12.03.2012 and 27.09.2012 respectively issued by Cooperation Department Government of Sindh and submitted that the legal compliance was made by the official Respondents in terms of Section 14-A of the Sindh Cooperative Housing Authority Ordinance, 1982 in respect of Respondent No.5 hence instant petition is liable to be dismissed in limine.

6. We have heard the learned Counsel for the parties and perused the record. The Petitioners through instant petition have challenged the notification whereby the Respondent No.5 along with other members of the Society was declared as successful candidate in the elections of the office bearers of Hyderabad Railway Employees

Cooperative Housing Society Limited on the ground that no permission in terms of Section 14-A of the Sindh Cooperative Housing Authority Ordinance 1982 was obtained by Respondent No.5 who, according to Petitioners, was not a valid candidate to contest the elections. It has been contended that since the Respondent No.5 and the other office bearers of the Hyderabad Railway Employees Cooperative Housing Society Ltd. were not performing their duties in accordance with the law and there were allegations of misappropriation of funds, the management of the Society was taken over by the official Respondents in terms of Section 14(1) of the Sindh Cooperative Housing Authority Ordinance, 1982, therefore, the Respondent No.5 was not a valid candidate to contest the elections. However, after perusal of the comments filed on behalf of the Respondents along with annexures and the orders passed by this Court in the aforesaid Constitution Petitions, it has come on record that the allegations of the Petitioners in the instant petition are contrary to the facts and the record. The elections of the Hyderabad Railway Employees Cooperative Housing Society Ltd. were held under the supervision of Additional Registrar of this Court pursuant to order passed by this Court in C.P. No.D-448/2012 whereas the entitlement of the Respondent No.5 to contest the elections was directed to be decided by the official Respondents in terms of Section 14-A of the Sindh Cooperative Housing Authority Ordinance, 1982 by order dated 16.02.2012 passed by a Division Bench in C.P No.D-1366/2011. The Respondents have placed on record two letters dated 12th March, 2012 and 27th September, 2012 issued by the Cooperation Department, Government of Sindh, in respect of Respondent No.5 namely Anis Ahmed, whereby the Respondent No.5 was initially allowed conditionally to contest the elections vide letter dated 12th March, 2012 whereafter such conditional approval was duly confirmed vide letter dated 27th September, 2012, which reflects that the

compliance of provisions of Section 14-A of the Sindh Cooperative Housing Authority Ordinance 1982 has duly been made.

7. In view of hereinabove, we do not find any substance in the instant petition, which was dismissed vide our short order dated 18.04.2013 and these are the reasons for such short order.

April 24, 2013.

JUDGE

JUDGE