

ORDER SHEET

IN THE HIGH COURT OF SINDH, KARACHI

C.P. No.D-5488 of 2016

(M. Rais Azam Khan v Eng. Syed Abdul Ahad Rashid & others)

Date

Order with signature of Judge

Justice Adnan-ul-Karim Memon

Justice Abdul Mobeen Lakho

Date of hearing and order:- 20.01.2026

Mr. Naseer Hussain advocate for the petitioners.

M/s. Khalil Ahmed Siddiqui & Zulfiqar Ali advocate for Respondent No.1

Mr. Imran Ahmed Khan Abro AAG

ORDER

Adnan-ul-Karim Memon, J. – The petitioner has filed the captioned Constitutional Petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, with the following prayer: -

- a. *That this Court may be pleased to set aside the order dated 25.07.2016 passed by the Minister for Environment and Coastal Development, Government of Sindh, Karachi, and restore the order dated 16.02.2008 passed by the learned Registrar of the Cooperative Society Karachi.*
- b. *Grant any other relief deemed just and proper in the circumstances.*

2. The petitioner is aggrieved by the order dated 25.07.2016, passed by the Provincial Minister for Environment & Coastal Development, Government of Sindh, and as per the petitioner, the same is illegal, arbitrary, and contrary to the record and liable to be set aside. He submits that the learned Registrar, Cooperative Societies, Sindh, had lawfully passed an order dated 16.02.2008 after due appreciation of facts and evidence, which merits restoration.

3. On the factual position of the case, the petitioner has averred that subject Plot No. C-17 was lawfully allotted to him on 16.07.2002, along with possession, after cancellation of the previous allotment on account of default of payment, strictly in accordance with the Government Notification dated 22.06.1971 and the Bye-laws of the Society. He submits that the revision application filed by Respondent No.1 was instituted after a lapse of more than four years, thus attracting the bar of limitation, which was completely overlooked by the learned Provincial Minister. It is further averred that Respondent No.1, in connivance with his father, a former Secretary/Chairman of the Society, indulged in fraudulent practices by converting applications from 200 square yards to 600 square yards, mis-declaring his wife as his “cousin,” concealing the marital relationship, and submitting false affidavits denying allotment of plots to himself and his wife, thereby unlawfully securing multiple plots for family members in violation of the law and the Society’s Bye-laws. The

petitioner further submits that the wife of Respondent No.1 had already been allotted Plot No. C-18 measuring 600 square yards, rendering Respondent No.1 legally ineligible for any further allotment under the Government Notification and Bye-laws. He also submits that Respondent No.1 was a defaulter, against whom due notices were issued and published in newspapers, and that he attended General Body Meetings where decisions regarding cancellation of defaulted plots were taken with his consent. It is submitted that Respondent No.1 and his father produced manipulated and fabricated documents to conceal defaults and mislead the authorities, amounting to fraud and forgery. The petitioner submits that while exercising revisional jurisdiction under the cooperative society's law, the learned Minister failed to consider the statutory bar of limitation and did not properly appreciate the documentary evidence available on record in favour of the petitioner. The learned Minister further failed to examine the fraudulent conduct and false affidavits submitted by the respondents, misapplied the relevant Government Notification and the applicable Bye-laws, and did not adjudicate the matter strictly on its merits. In view of the foregoing, the petitioner prays that this Court set aside the impugned order dated 25.07.2016 passed by the Minister for Environment & Coastal Development, Government of Sindh, and restore the order dated 16.02.2008 passed by the learned Registrar, Cooperative Societies, Sindh, which was set aside by Respondent No.2 through the impugned order dated 25.07.2016 (page 41) without lawful justification.

4. Learned AAG assisted by the counsel for the private respondent supported the impugned order passed by the Minister for Environment & Coastal Development, Government of Sindh, and argued that the Registrar ignored material evidence, exceeded his jurisdiction, and recorded findings beyond the pleadings. It was argued that since the alleged cancellation of the subject plot was based on non-payment of dues, the Registrar ought to have confined himself to the issue of default alone. It was further submitted that no show-cause notice or opportunity of hearing was afforded before cancellation, and that the plot was re-allotted and sub-leased to the petitioner in undue haste, rendering the proceedings illegal and void. He lastly prayed for dismissal of the petition.

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

6. From the material placed before this Court, the questions for our determination as involved are as follows:

1. Whether the impugned order dated 25.07.2016, passed by the Minister for Environment & Coastal Development, Government of Sindh, while

- exercising revisional jurisdiction under the Cooperative Societies law, is illegal, arbitrary, and without lawful authority?
2. Whether the revision petition filed by Respondent No.1 before the Provincial Minister was barred by limitation, and if so, whether the failure to consider the bar of limitation vitiates the impugned order?
 3. Whether the learned Minister failed to properly appreciate and consider the documentary evidence available on record, including the allotment, possession, and cancellation proceedings, thereby rendering the impugned order perverse and unsustainable in law?
 4. Whether the impugned order was passed in disregard of the applicable Government Notification dated 22.06.1971 and the Bye-laws of the Society governing eligibility, allotment, and cancellation of plots?
 5. Whether the learned Minister failed to examine and adjudicate upon the allegations of fraud, misrepresentation, concealment of material facts, and submission of false affidavits by Respondent No.1 and his father, and whether such failure has materially affected the legality of the impugned order?
 6. Whether Respondent No.1 was legally ineligible for allotment of an additional plot in view of the prior allotment in favour of his wife, and whether such ineligibility renders the claim of Respondent No.1 void ab initio?
 7. Whether the order dated 16.02.2008 passed by the learned Registrar, Cooperative Societies, Sindh, was lawful, reasoned, and based on correct appreciation of facts and law, and therefore liable to be restored?
 8. Whether the impugned order dated 25.07.2016 suffers from jurisdictional error, non-application of mind, and misreading of evidence, warranting interference by this Court under Article 199 of the Constitution?

7. Perusal of the record reveals that the learned Provincial Minister, while exercising revisional jurisdiction under the Cooperative Societies Act, considered the revision application filed against the order dated 16.02.2008 passed by the Registrar, Cooperative Societies, Sindh, whereby the Award dated 18.11.2006 was set aside. For convenience sake, an excerpt of the order dated 25.07.2016 passed by the Minister for Environment & Coastal Development Department, Government of Sindh, and the order dated 16.02.2028 passed by the Registrar Cooperative Societies Sindh, are reproduced as under respectively:-

Order dated 25.07.2016

“From the perusal of record and after hearing the parties I have reached at this conclusion that it is an admitted position before cancellation of subject plot from the name of applicant no notice was served upon him nor was any letter of cancellation ever issued by the Respondent Society and the society was also failed to produce any record of the Resolution passed by the Managing Committee, which shows that the subject plot has been cancelled on account of non-payment of dues. It is also important to note that the applicant was enrolled as member of the Society in 1994 whereas his wife Mrs. Saima Ahad became member in the year, 1998 and learned Registrar, failed to consider the point in the case which is cancellation without notice and the Registrar should have confined his authority up to that extent that whether any default was committed by the applicant or not. It is also a point of consideration that the Respondent No.2 was allotted two plots, which is also an illegality entitled for one plot and under what circumstances, the plots of Respondent No.2 were cancelled and he got allotment and sub-lease of the subject plot which is in no manner justifiable action of the Society. From the perusal of the impugned order it appears that the Registrar, Cooperative Societies had given undue favour and advantage to the Respondent No.2 without any valid reason and justification, whereas from the perusal of the Award dated 18.11.2006, I found it just and appropriate rightly been passed in favour of the applicant with valid reasons.

In view of above, I have left with no other option but to allow this revision application as prayed and the impugned order has been set aside with the specific directions to the Respondent Society to implement the Award without any further loss of time.”

Order dated 16.02.2028

“ So far the fairness and the legality of the Majority Award dated 18.11.2006 passed by the Registrar’s Nominee and Arbitrator of Respondent No.2 is concerned, it has been observed that it was very much in the knowledge of the Respondent Syed Abdul Ahad Rasheed that it was decided in the Annual General meetings of the Respondent Society that the plots of the defaulting allottees be cancelled and that he himself had admitted his default, even then the order for restoration of the leased plot to the Respondent Syed Abdul Ahad Rasheed within 15 days from the payment of the dues before the expiry period of 30 days provided for the appeal, and cancellation for the leased plot in favour of the Appellant, the Award was malafide ipso-facto illegal, void and ultra-virus, as the lease of the plot could only be cancelled by the Civil Court/ High Court as the case may be, being the competent authority only and that Respondent No.2 Syed Abdul Ahad Ahad Rasheed was not entitled for allotment of any plot in violation of Bye-laws No.8 of the Society, as his wife Mrs. Saima was already allotted Plot No. C-18 in the Respondent Society.

In view of the above discussion I find no hesitation in allowing the appeal. The Majority Award dated 18.11.2006 passed by the Board of Arbitrators is set aside with no orders as to cost.”

8. Upon careful examination of the pleadings of the parties, the material available on record, and the impugned orders dated 16.02.2008 passed by the learned Registrar, Cooperative Societies, Sindh, and 25.07.2016 passed by the learned Provincial Minister for Environment & Coastal Development, it emerges that the core controversy revolves around the legality of cancellation of the subject plot, the eligibility of the contesting parties under the applicable Government Notification dated 22.06.1971 and the Society’s Bye-laws, and the scope and limits of revisional jurisdiction.

9. The learned Registrar, while setting aside the Award dated 18.11.2006, recorded specific findings that Respondent No.1 had admitted his default, was fully aware of the General Body decisions regarding cancellation of plots of defaulters, and was otherwise legally ineligible for allotment of any further plot in view of the prior allotment in favour of his wife, prima facie in clear violation of Bye-law No.8 and the Government Notification. The Registrar further held that the Award restoring the plot was mala fide, void, and without lawful authority. These findings prima facie were based on documentary evidence and contemporaneous records, directly addressing the issues of eligibility, default, and the legality of allotment. However this observation is subject to final say by the competent Court if approached.

10. Conversely, the learned Provincial Minister, while exercising revisional jurisdiction, primarily set aside the Registrar’s order on the ground of alleged absence of notice and opportunity of hearing before cancellation and by questioning the allotment in favour of the petitioner. However, the Minister failed to address the statutory bar of limitation applicable to the revision petition, did not adequately examine the admitted default, the eligibility criteria under the Bye-laws and Government Notification, or the findings regarding conduct and misrepresentation attributed to Respondent No.1 and his father. It is well settled that revisional authority cannot substitute its own discretion in place of concurrent or reasoned findings of fact unless the same are shown to be perverse, without jurisdiction, or based on misreading or non-reading of evidence.

11. The superior Courts have consistently held that fraud vitiates all proceedings that no right can accrue from an illegality and that allotments made in violation of statutory rules and bye-laws are void ab initio and confer no vested rights. Likewise, it is a settled principle that a person who is otherwise ineligible under the governing law cannot seek equitable relief merely on procedural grounds. Furthermore, revisional jurisdiction is limited in scope and does not permit reappraisal of evidence or interference with lawful orders passed within jurisdiction, particularly where delay and limitation are apparent on the face of the record.

12. In the present case, the learned Provincial Minister exceeded the settled parameters of revisional jurisdiction by ignoring material evidence, overlooking limitation, and failing to properly apply the relevant Bye-laws and Government Notification, thereby rendering the impugned order dated 25.07.2016 legally unsustainable. The order passed by the learned Registrar, dated 16.02.2008, on the other hand, reflects a proper appreciation of the facts, law, and eligibility criteria and does not suffer from a jurisdictional defect or perversity, however this observation is subject to final say by the competent civil court, if approached.

13. Accordingly, this Court holds that the impugned order dated 25.07.2016 passed by the Minister for Environment & Coastal Development, Government of Sindh, is without lawful justification and is hereby set aside. Consequently, the order dated 16.02.2008 passed by the learned Registrar, Cooperative Societies, Sindh, whereby the Award dated 18.11.2006 was set aside, is restored. However, the aggrieved party shall remain at liberty to challenge the legality of the Registrar's decision before the Court of competent jurisdiction, which shall adjudicate the matter strictly on its own merits and in accordance with law, without being influenced by any observations made hereinabove, as the same are tentative and confined to the present proceedings only.

14. The petition is allowed in the above terms, with no order as to costs.

JUDGE

JUDGE