

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI

C.P.No.D-488 of 2016

Date

Order with signature of Judge

Present:

Mr. Justice Muhammad Ali Mazhar
Mr. Justice Abdul Maalik Gaddi

Aurangzeb.....Petitioner

V E R S U S

National Cement Employees
Cooperative Housing Society Ltd & others.....Respondents

08.02.2017

Petitioner Aurangzeb present in person.

Mr. Ahmed Ali Ghumro, Advocate for Respondent No.3.

Ms. Nasreen Sehto, State Counsel.

Mr. Altaf Hussain Solangi, Inspector/Chairman,
Cooperative Housing Committee.

Muhammad Ali Mazhar, J: The petitioner is son of deceased Abdul Hameed who became member of the respondent No.1 Society and was allotted membership No.620 in the year 1977. It is further stated that he made full payment against the Plot No.R-587 admeasuring 120 sq. yards but the possession of the plot was not handed over to him, therefore, he filed Arbitration Case No.212/1999 and vide Award dated 24.01.2000, the learned Nominee of the Registrar declared the father of the petitioner bonafide allottee and he was found entitled to the possession therefore the respondent No.1 was directed to hand over the alternate plot of identical measurement in preference to those allottees of plots who became member later on. All the relevant documents were placed before the learned Nominee

of the Registrar, however, in the award he further observed that such allotment certificate was conditional to the post-allotment compliance by the Society according to the rules and regulations which includes the execution of lease deed and sanction of the lay-out plan by the government.

2. The Award announced in favour of the petitioner's father was challenged by the respondent No.1 before the Registrar by means of an appeal under Section 56 of the Cooperative Societies Act, 1925 but their appeal was dismissed with the findings that the appellant Society admitted the very fact that the respondent Abdul Hameed became member of the Society and was allotted membership No.620 in the year 1977 and he made full payment thereafter he was allotted the aforesaid plot. The Registrar in his appellate order further observed that new and bogus members were allotted plots after allowing membership to the petitioner's father by the society and possession was also handed over to them but the allottee Abdul Hameed was deprived. The Registrar affirmed the award and directed the respondent No.1 to allot the plot of the same size and description and hand over the physical possession of the plot to the allottee within thirty days or the society shall compensate the member for such delay and pay the amount equal to the plot No.R-587 at prevalent market rate.

3. Against the concurrent findings, the respondent No.1 filed Revision Application under Section 64-A of the Cooperative Societies Act, 1925 before the Minister for Cooperation Department, Government of Sindh, Karachi which was allowed with the observation that the Nominee and the Registrar both did not apply their judicial mind and decided the matter in favour of the allottee without any cogent

reason. The revisional authority further directed the respondent No.1 to refund the deposited amount with interest from the date of payment. The Minister held that the allottee got the allotment on 30.01.1980 for plot No.R-587 while he preferred the arbitration case in the year 1999. The main reason of upsetting the concurrent findings recorded by the Authorities below that the Society was not in possession of the land nor government allotted land to them. The plot of Abdul Hameed did not reflect in the approved lay-out plan of the society. He further held that the allotment was made conditional subject to availability of land and whereas at the time of allotment there was no approved lay-out plan.

4. The powers conferred under Section 64-A of the Co-operative Societies Act 1925 can be exercised by the Provincial Government and the Registrar to call for and examine the record of any inquiry or the proceedings of any officer subordinate to them for the purpose of satisfying as to any legality or propriety of any decision or order passed and if in any case it appears to the Provincial Government or the Registrar that any decision or order or proceedings should be modified, annulled or reversed, the Provincial Government or the Registrar may pass such order. The impugned order passed by the Minister Cooperation does not show any proper application of mind while deciding the revision application against the concurrent findings. The sole reason that Abdul Hameed became member when the society was not in possession of land is no reason to decline the relief. Admittedly many other members who were made members subsequently were allotted plots with possession. If the allotment certificate was conditional of acquiring land by the society nothing reflects adverse against the member

as it is clear from the award and appellate order that not only society acquired the land, make more members but also allotted plots to them. The power of revision can be exercised to cure the irregularity and examine the propriety of the order passed by the authority below but such powers cannot be exercised in a slipshod manner without adverting to the relevant facts and record. It is an admitted position that the Society allotted 776 plots excluding amenity plots to its various members.

5. On 18.01.2017, Mr. Muhammad Ajmal Awan, Advocate appeared for the respondent No.1 and disclosed that earlier office-bearers of the management are no more in the administration of the Society and on the same date Inspector Manzoor Ahmed from the Cooperative Department, Government of Sindh appeared and produced before us a copy of order dated 13.01.2017 issued by Secretary to Government of Sindh/Chairman, Sindh Cooperative Housing Authority to show that a committee has been constituted to deal with the affairs of M/s. National Cement Employees Cooperative Housing Society Limited, Karachi with further mandate to hold the Election of the Society within (03) three months in the supervision of Cooperative Department; to get accounts of the Society be Audited by the Chartered Accountant and Cooperative Department; to follow the Provisions of Registered Byelaws, Cooperative Societies Act & Rules strictly in future and to abide by the Department's Circular dated 09.04.2015. In the same letter, the Deputy Commissioner concerned has been requested to monitor the performance of the above committee till the elections be held and affairs be transferred to the elected management.

6. On 24.01.2017, Mr. Altaf Hussain Solangi, Inspector of Committee requested for some time to see the possibility of arranging alternate plot for the petitioner in terms of the orders passed by the Registrar's Nominee and the Registrar in appeal. He informed us today that he has checked and verified the record which shows that the father of the petitioner Abdul Hameed was member of the Society and he was allocated the plot admeasuring 120 sq. yards. However while creating and or carving the amenity plots, the portion of land allocated to him was merged in amenity plots, therefore, he could not be allotted the plot in question at the relevant time. However he submits that the alternate piece of plot admeasuring 120 sq. yards may be allotted in accordance with law after verifying the record of cancelled plots.

7. The learned State Counsel as well as the learned counsel for respondent No.3 did not support the impugned order and according to them the learned Nominee of the Registrar as well as the Registrar both had passed the orders keeping in view the relevant record produced before them and thereafter they passed the orders with proper application of mind.

8. In our considerate view both the Authorities below after going through the relevant record passed the orders with proper application of mind, therefore, the revisional order is set aside and award passed by the Nominee of Registrar and the appellate order passed by the Registrar Cooperative Societies both are restored. The petitioner himself attached few documents to show that for the satisfaction of award and appellate order, he filed Execution Application No.5/2013 which is pending in the court of IIIrd Senior Civil

Judge, Karachi, East. Since we have set aside the order passed in the revision, therefore, the learned executing court is directed to expedite the proceedings and dispose of execution application preferably within three months so that the award merged in the appellate order may be satisfied and implemented.

9. At this juncture, we would like to point out that the original allottee was Abdul Hameed, deceased father of the petitioner in the Society's record but his son Aurangzeb has filed this petition, therefore, at the time of execution of award, the petitioner is also directed to submit the names of all legal heirs of deceased Abdul Hameed and also submit the heirship certificate to the Society for further proceedings. The petitioner submits that other legal heirs have relinquished/released their shares in his favour for that also he may file all relevant documents in the Society. The petition is allowed in the above terms.

Judge

Judge

Asif