

ORDER SHEET  
IN THE HIGH COURT OF SINDH, KARACHI

**C.P No.D-5149 of 2013**

Date	Order with Signature of Judge
<b>Present: Mr. Justice Irfan Saadat Khan Mr. Justice Nazar Akbar</b>	
Petitioner :	Shamsi Cooperative Housing Society Ltd. Through Mr. Anwar Tariq, Advocate
Respondent No.1 :	Registrar, Cooperative Societies, Sindh Through Mr. Ahmed Ali Ghumro, Advocate
Respondent No.2 :	Deputy District Officer Cooperative-IV
Respondent No.3 :	Province of Sindh Through Mr. Miran Muhammad Shah, A.A.G
Respondent No.4 :	Ch: Muhammad Ashraf Through Mr. Muhammad Shahid Qadeer, Advocate.
Dates of hearing :	04.10.2017.
Dater of Decision :	10.10.2017

**JUDGMENT**

**NAZAR AKBAR, J:-** Through this petition the petitioner has impugned the Notification issued by the Government of Sindh dated 07.1.2012 whereby enquiry officer has been appointed for enquiry into the constitution, working and financial condition of M/S Shamsi Cooperative Housing Society Limited, Karachi.

2. The perusal of the record shows that on **25.3.2014** the petitioner was directed to explain the laches involved in this petition, as the impugned notification was issued on **07.01.2012** whereas the petition was filed on **04.12.2013**. Learned counsel for the petitioner never addressed the Court on the point of laches.

3. On **31.5.2016** learned counsel for respondent No.1 pointed out that the impugned notification dated 07.1.2012 has already

been subject matter of constitution petition No.D-233/2013 which has been disposed of by a comprehensive order dated 10.4.2013. Therefore, this impugned notification cannot be again subject matter of this constitution petition. He has placed on record several documents including judgment passed in C.P No.D-233/2013 whereby the impugned notification had been struck down.

4. This Court has drawn attention of learned counsel towards the prayer clause "A" in C.P No.D-233/2013 reads as follows:-

*A) It be declared that the order No.RCS/KYC/09/2012 dated 7.1.2012 passed by respondent No.2 has been passed without observing the criteria laid down under section 43 of the Cooperative Societies Act, 1925, and thus the same is liable to be set aside and the actions taken in consequence thereof are nullity in the eye of law.*

The prayer clause "A" in the instant constitution petition No.D-5149/2013 reads as follows:-

*A) It be declared that the order/notification No.RCS/KYC/09/2012 dated 7.1.2012 passed by respondent No.1 to hold enquiry in purported exercise of powers under section 43 of the Cooperative Societies Act, 1925, in view of the special provisions existing under the Sindh Cooperative Societies Act, 1982 r/w rules framed thereunder on the same subject is ultravires, without jurisdiction and corrum-non-judice and thus redundant in law and the same is to be ignored and declared to have been passed illegally.*

5. Both the prayer clauses are identical. However, learned counsel for the petitioner has attempted to argue the illegality in the impugned notification dated 07.1.2012 by referring to the provisions of Sindh Cooperative Societies Act, 1982 to get fresh declaration that the notification is illegal and void ab-initio. However, at the same time learned counsel for the petitioner himself has referred to the order dated **10.4.2013** passed in C.P

No.D-233/2013 and read relevant portion, which is reproduced as follows:-

*Therefore, the impugned notification is without authority and/or jurisdiction. We are thus constrained to vacate the same. We would, however, direct the Secretary Cooperation Department, Govt. of Sindh to, if there is sufficient material against the deposed management, proceed against them in accordance with Law and in the meanwhile the deposed management, as a consequence of the above, stands restored. They may function in accordance with Law till such time an appropriate order is passed by the competent authority in accordance with Law, however, subject to the condition that the restored management shall neither sale and/or allot any land of the society nor shall it effect any mutation in favour of any party and shall make only such expense which is inevitable to run the day to day affairs of the society. This embargo shall remain till 45 days from today or till such time an appropriate order is passed by the competent authority.*

*The petition alongwith the pending applications stands disposed of in the foregoing terms.*

6. In view of above facts, we hold that this petition was misconceived and hit by the provisions of Section 11 of Civil Procedure Code, 1908, since issue raised in this petition has already been decided by this Court in the earlier petition filed by the petitioner herein.

7. Consequently, this petition is dismissed with all pending applications.

JUDGE

JUDGE

Karachi,  
Dated: 10-10-2017