

## IN THE HIGH COURT OF SINDH AT KARACHI

Suit No.1107 of 2014

[Works Cooperative Housing Society Ltd. v. Province of Sindh & others]

Date of hearing : 11.09.2018.  
Date of order : 11.09.2018.  
Plaintiff : Works Cooperative Housing Society Ltd.  
through Ms. Sana Akram Minhas, Advocate.  
Defendants No.1-3 : Province of Sindh and 2 others through  
Ms. Leela @ Kalapna Devi, Assistant  
Advocate General Sindh along with  
Sajid Abdul Karim, Assistant Registrar  
Cooperative Societies-VI, the Defendant  
No.3.  
Defendant No.4 : Nemo.

### Case law relied upon by Plaintiff's counsel

1. P L D 1997 Supreme Court page-3  
[*Abbasia Cooperative Bank (Now Punjab Provincial Cooperative Bank Ltd.) through Manager and another v. Hakeem Hafiz Muhammad Ghaus and 5 others*] – *Abbasia case*.
2. P L D 1965 Supreme Court page-671  
[*Abdul Rauf and others v. Abdul Hamid Khan and others*] – *Abdul Rauf case*.
3. P L D 1985 Karachi page-481  
[*Muhammad Azim v. Pakistan Employees Co-operative Housing Society Ltd. Karachi and 4 others*] – *Azim case*.
4. PLD 2002 Karachi page-414  
[*M. Wahidullah Ansari through Legal Heirs v. Zubeda Sharif and another*] – *Ansari case*.
5. 2011 Y L R page-2121  
[*Delhi Mercantile Co-operative Society v. Registrar Co-operative Societies*] – *Delhi case*.

### Case Law cited by the Defendants' Counsel

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- Law under discussion:**
1. The General Clauses Act, 1897.
  2. Cooperative Societies Act, 1925 (“**the Act 1925**”)
  3. Specific Relief Act, 1877 [“**SRA**”]
  4. Civil Procedure Code, 1908 (“**CPC**”)

## J U D G M E N T

**Muhammad Faisal Kamal Alam, J:** This is a suit brought by the Plaintiff-Society against the Defendants with the following prayer clause\_

- “A) *A declaration that the Defendants action to compel the Plaintiff to withdraw legal proceedings in respect of Plot No.B-148, Block-15, Gulshan-e-Iqbal, Karachi as being arbitrary, mala fide and illegal;*
- B). *A prohibitory injunction restraining the Defendants jointly and severally or any other person(s) acting on their behalf, either directly or indirectly, from taking over / superseding and / or appointing administrator over the Plaintiff Society without permission of this Hon’ble Court;*
- C) *A prohibitory injunction restraining the Defendants jointly and severally or any other person(s) acting on their behalf, either directly or indirectly, from passing any adverse order against the Plaintiff Society on the basis of Plot No.B-148, Block 15, Gulshan-e-Iqbal, Karachi or on any other ground including but not limited to taking-over / superseding and / or appointing administrator over the plaintiff or interfering with the management of the Plaintiff in any manner whatsoever.*
- D). *Appoint an honest judicial officer to conduct inquiry against the Defendants for malafides and illegal harassing / pressurizing /threatening the plaintiff and interfering with the performance of the plaintiff’s lawful functions/duties.*
- E). *Grant any other and better relief(s) deemed just and proper in the facts and circumstances of the case.”*

2. After service of summons and notice, the matter was initially contested by Defendants but without filing Written Statement, which was eventually filed on behalf of Defendants No.1, 2 and 3 on

04.09.2018, after they were cautioned that the case will proceed exparte against the Defendants who are all government officials.

3. Since it appeared that the main controversy involved can be decided by framing legal Issues, the same were framed on 04.09.2018. Subsequently, the learned counsel for the Plaintiff and the learned Assistant Advocate General Sindh submitted their proposed Issues.

4. After hearing both the learned counsel today, it is necessary to recast the Issues; following are the Issues\_

1. *Whether the suit is barred under Section 70 and 70-A of the Cooperative Society Act, 1925?*
2. *Whether acts complained of constitute interference by the official Defendants in lawful business affairs of the Plaintiff Society and / or in any pending litigation, tantamount to abuse and / or colourable exercise of powers by the Defendants?*
3. *Can Defendant No.2, Registrar Cooperative Societies, initiate any action against the Plaintiff on some verbal request or the action can only be initiated in terms of the Governing Law, viz. Cooperative Societies Act, 1925?*
4. *Is the Plaintiff entitled for any relief?*
5. *What should the decree be?*

5. The Issue-wise finding is mentioned herein under:

- |            |       |                         |
|------------|-------|-------------------------|
| Issue No.1 | _____ | Negative.               |
| Issue No.2 | _____ | Affirmative.            |
| Issue No.3 | _____ | As under.               |
| Issue No.4 | _____ | As under.               |
| Issue No.5 | _____ | Suit partially decreed. |

**Discussion / Reasons of the Issues;**

**ISSUE NO.1:**

6. Since, the maintainability of the suit is involved, therefore, this pivotal issue should be decided first.

7. Ms. Kalpana Devi, the learned Assistant Advocate General has placed reliance on Sections 70 and 70-A of the Societies Act, that the present suit is barred and the Plaintiff cannot bring an action of the nature. It is submitted that no prior notice was given to the official Defendants No.1 and 2. It is further argued that official Defendants have merely addressed two letters to the Plaintiff in respect of Plot No. B-148, Block-15, situated in the Plaintiff-Society. These two letters are appended with the plaint at pages-27 and 29. It is further argued that being the government functionaries, it is the duty of the official Defendants to ensure that affairs of the Society, including that of Plaintiff, are run in a lawful and transparent manner.

8. Arguing on the point of maintainability, Ms. Sana Akram Minhas, learned counsel for the Plaintiff, has cited number of judgments, which are mentioned in the opening part of this judgment. It is contended that Section 70 of the Societies Act is not applicable in the present case as it bars any action against a Co-operative Society; *whereas*, Plaintiff itself is a Co-operative Housing Society, thus the above provision does not prohibit the Plaintiff from instituting the present case. With regard to the statutory bar under Section 70-A of the Societies Act, she argued that the said provision is to be read with Section 54 of the Societies Act. To augment her arguments, she has relied upon the reported Judgment of *Ansari case (supra)* given by the learned Division Bench of this Court. It is further contended that the celebrated decision of the Honourable Supreme Court handed down in *Abbasia Cooperative Society (ibid)*, has clearly resolved the controversy, in which it is mentioned that statutory

bar will not be applicable if the action of a government functionary is tainted with *mala fide* and is without jurisdiction. Reliance is also placed upon the reported decision of Delhi Society (*ibid*).

9. The cited decisions are perused. Crux of the dicta is that jurisdiction of civil courts is barred under Section 70-A, only when the statutory authorities, in the present case, the Defendants, have jurisdiction to adjudicate upon the matters enumerated in the governing statute itself, that is, the Societies Act, the Rules and the Bye-laws framed thereunder. The barring statutory provision is to be strictly interpreted as a civil court is a court of ultimate jurisdiction.

Secondly, the said barring Section 70-A will not be attracted when the action complained of is without jurisdiction or tainted with *mala fide*. The Defendants when in response to their afore-referred letters dated 19-3-2014 and 20-3-2014 (Annexures P/1 and P/2), admittedly received the correspondence dated 24-3-2014 (Annexure-P/3) from Plaintiff, informing them (the Defendants) that in respect of the above plot a court proceeding is pending, then moving forward in the matter without becoming a party in the court proceeding (IInd Appeal No. 61 of 2012, *sub judice* in this Court, at that relevant time) was in fact a *mala fide* act on the part of Defendants. Subsequently, the aforementioned Appeal was decided in favour of present Plaintiff and the case was remanded. Copy of the Judgment has been produced by the Plaintiff counsel under her Statement dated 5-9-2018.

Thirdly, in the last cited case-the Delhi Society, the suit was decreed by this Court, *inter alia*, by setting aside the Order of Inquiry in respect of the above Delhi Society, issued by the officials under Section 43 of the Societies Act. It is held, that though the Registrar (present Defendant No.2) even vested with **suo moto** power under Section 43 of

the said Act, to order for holding an inquiry against a co-operative society, but, still that discretion is not an unfettered one and is controlled by Section 24-A of the General Clauses Act and the principle of natural justice-*audi alteram partem*. Even in the inquiry order, the officials are required to give gist of allegations.

10. The conclusion of the above discussion is that the present suit is maintainable and bar of Section 70 and 70-A of the Societies Act do not apply. Issue No.1 is answered in negative and in favour of Plaintiff. In terms of Sections 42 read with 52 and 53 of the SPR a *lis* of the nature can be instituted.

**ISSUES NO.2 AND 3:**

11. The Plaintiff side argued that they have been compelled in all these years for withdrawal of the above proceeding – IInd Appeal No.61 of 2012, which was initiated by the Plaintiff-Society as the afore-referred plot was wrongly allotted to an individual and was illegally converted from residential to commercial. It is contended by the learned counsel that the main grievance of the Plaintiff is that even though Plaintiff-Society itself was pursuing a legal remedy against a wrong done by some members of its Managing Committee, the Defendants instead of helping the Plaintiff-Society in achieving its object, has started harassment by misusing their official position. In this regard, it has been specifically pleaded in paragraph-5, that the Plaintiff's Honorary Secretary was verbally directed by Defendant No3, to attend a meeting on 3.4.2014 in the office of Defendant No.4 {Ali Ahmed Lund} and subsequently, Chairman of Plaintiff Society was directed to appear on 7.4.2014 at 12 noon. In the meeting the Plaintiff-Society was directed to withdraw the above mentioned IIND Appeal in respect of the suit plot. The Plaintiff's Secretary vide his correspondence of 07.04.2014, which

has been placed on record as Annexure **'P/11'** (of the plaint) available at page-127 of the Court's file, mentioned the proceeding of the above meeting. It is submitted that there is a pattern of harassment on the part of the Defendants against the Plaintiff-Society, which is mentioned in the pleadings and particularly, paragraph 8 of the plaint. Learned counsel, while concluding her arguments, has prayed that the suit may be decreed with costs.

12. Learned A.A.G., assisted by Defendant No.3- (Sajid Abdul Karim), while reiterating the stance mentioned in their written statement, has controverted the arguments of Plaintiff's side and has stated that at present neither any inquiry is pending nor has been initiated against the Plaintiff. On the contrary the Learned AAG requests for dismissal of the suit.

13. Arguments heard and record perused.

14. It is a matter of record that Written Statement has been filed after almost four years and in the Written Statement, the paragraphs 5 and 8 (in particular) of the plaint have not been denied as such, in which the background facts and reasons for instituting present *lis* and earlier litigation are mentioned. The said paragraph-8 of the plaint has been controverted by the Defendants by pleading that since Defendants No.1 and 2 were appointed in July 2014, therefore, they have not acted in a manner which is outside their authority and jurisdiction, while denying that Defendants have no concern with the earlier court cases.

15. Record of the past litigation is examined, which is filed by the Plaintiff along with the plaint to substantiate its plea. C. P. No. D-2106 of 2010 was filed by present Plaintiff against the present Defendants and its Officials, which was disposed of by directing the Defendant No.2

(Registrar Cooperative Societies) to withdraw the order under Section 43(1) of the Societies Act, 1925. Similarly, a subsequent C.P. No. D-4187 of 2011 was also instituted against the present Defendants, impugning their acts. Another C.P. No. D-3787 of 2012 was also instituted against the present Defendants, besides some other private parties. Thus, the stance of present Defendants is contrary to record, as in all these court cases the officials of present Defendants No.1 and 2 were/are the parties/respondents and the present Defendants cannot take a defence that they have no concern with earlier litigation. Officials are cautioned that while filing a Written Statement they should exercise utmost care and diligence because pleadings are filed on oath and such type of reckless statement can expose the officials to criminal prosecution.

16. Defendant No.3 (Sajid Abdul Karim) who is present today in Court, has been specifically asked about the general affairs of the Plaintiff Society and he has stated that no complaint has been received against the Plaintiff from any quarter. Defendant No.3 is appearing in the matter since 27.08.2018 and till date he has not come up with any adverse report against the Plaintiff-Society. In their Written Statement, the Defendants have not denied the factum of correspondence dated 07.04.2014, from the side of Plaintiff addressed to the Secretary Government of Sindh Cooperation Department-Defendant No1. It is a crucial document which is accompanied with a courier receipt and the Defendants got four years and more than ample opportunity to throw some light on this document and about its existence or authenticity, because in this correspondence {of 7-4-2014} it is stated that how the representatives of Plaintiff Society were harassed at the Meeting held in the Office of Defendant No.1.

17. Rules 3, 4 and 5 of the Order VIII of C.P.C., are quite specific that denial in a written statement to any allegation should be specific and must be a substantive answer to the allegation and if it is not specific, denial shall be taken as an admission. The above provisions apply to the present pleadings / Written Statement of the Defendants. It does not require any further proof that Plaintiff Society was dictated to withdraw the above proceeding of 2<sup>nd</sup> Appeal.

18. As far as the correspondences of the Defendants are concerned, which have been referred to by the learned A.A.G., the same do fall within the authority and jurisdiction of the Defendants, but once it has been replied to by the Plaintiff-Society then on the account of some 'extraneous factors', the Plaintiff should not have been *verbally directed* or called upon to attend the meetings. If the Defendants required any further information to be furnished by the Plaintiff-Society, then it could have been sought through a proper notice. Therefore, Issue No.2 is answered in affirmative and against the Defendants. As far as pending litigation is concerned, the official Defendants have no power or authority to interfere or to call upon the Plaintiff-Society to withdraw any *sub judice* proceeding; as it amounts to impeding the course of justice and entails consequences both in civil and criminal jurisdiction.

Issue No.3 is also replied accordingly; that the Defendants can only initiate an action in terms of Societies Act, inter alia, as discussed herein above and already explained in number of judicial pronouncements, including the cited case law (*supra*), particularly, the Delhi Society case.

#### ISSUE NO.4:

19. The other allegations as averred against the Defendants require evidence and since the present matter has been decided on the legal

issues, therefore, it is not appropriate to give a finding on any alleged conduct of the Defendants, although Defendant No.4, despite service of notice, never came forward to contest the matter. Similarly, Prayer (D) cannot be granted about holding of an inquiry by a judicial officer.

20. In view of the above discussion and the undisputed facts, which are brought on record, this Suit is decreed to the extent of prayer clauses 'A' and 'C'.

21. With regard to the prayer D, the Chief Secretary Sindh is directed to take appropriate measures. An inquiry be held into the conduct of Defendants No.2, 3, 4 and Defendant No.1 who was the Secretary at the relevant time, in accordance with law; and if the findings are positive and against the officers, then a strict action be taken against them. The compliance report in this regard should be furnished to M.I.T.-II of this Court within six weeks from today.

22. Office to forward a copy of this Judgment to the MIT-II for further action.

**ISSUE NO.5:**

23. In view of what has been discussed hereinabove, the suit stands partially decreed with no order as to costs.

**Judge**

Karachi,  
Dated: 11.09.2018.

Riaz/P.S.\*