

*ORDER SHEET*  
**IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD**

**Present:**

Mr. Justice Abdul Maalik Gaddi  
Mr. Justice Khadim Hussain Tunio

C.P. No.D- 2500 of 2018

1. For orders on office objection.
2. For orders on M.A-11256 f 2018 (151 C.P.C.)
3. For hearing of M.A-9898 of 2018 (stay application)
4. For hearing of main case.

13.02.2020

Mr. Mangal Meghwar, Advocate for Petitioner.

Mr. Muhammad Ismail Bhutto, Additional Advocate General, Sindh.

Mr. Jangu Khan, Special Prosecutor NAB.

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**ORDER**

**ABDUL MAALIK GADDI, J.**-Through this petition, the Petitioner has prayed

for the following prayer(s):-

- a) Declare that the said letter dated 24.04.2018 ex-facie shows bias and malafide conduct of the Respondent No.4 for the simple reason that the elections were held by the committee appointed by this Hon'able Court vide order dated 03.17.2017 (**Annexure "P/18"**) and result was declared by the Respondent No.4 himself vide letter dated 12.03.2018. Accordingly, the said letter dated 24.04.2018 is ab-initio malafide, illegal, unlawful, based upon ulterior motive, null and void having no legal effect whatsoever."
- b) Declare that instead of taking legal action against the Ex-Administrator and Ex-Managing Committee, the respondent No.3 at the behest and in collusion with the Ex-Administrator and Ex-Managing Committee issued Order dated 25.05.2018 and constituted a committee comprising of the respondents Nos. 4 to 6 to hold inquiry against the present Managing Committee of the petitioner, which was followed by notice of appearance vide letter dated 10.07.2018. Accordingly, the said Order dated 25.05.2018 is ab-initio, malafide, illegal, unlawful, based upon ulterior motive, null and void having no legal effect whatsoever;
- b) Declare that the respondents Nos.1 to 6 in collusion with each other and at the behest of Ex-Management of the petitioner are harassing the present Managing Committee of

the petitioner by illegally and unlawfully interfering in their working with malafide intention to usurp the charge of the petitioner and appoint an Administrator of their own choice to give protection to the Ex-Management. Accordingly, this act of respondents Nos.1 to 6 is ex-facie malafide, illegal, unlawful, based upon ulterior motive, null and void having no legal effect whatsoever;

- d) Directed the respondents Nos.8 and 9 to take legal action against the Ex-Management of the petitioner regarding corruption and corrupt practices in transfer of valuable plots (Commercial & Residential) and also against the respondents Nos.1 to 6, who in collusion with each other and at the behest of Ex-Management of the petitioner are harassing the present Managing Committee of the petitioner by illegally and unlawfully interfering in their working with malafide intention to usurp the charge of the petitioner and appoint an Administrator of their own choice to give protection to the Ex-Management;
- e) Direct the respondents Nos.8 and 9 to take legal action against the Ex-Management of the petitioner regarding misplacement of entire record namely the bank accounts and conversion of amenity plots into commercial, illegal sale of commercial and residential plots and to issue directions to the respondents Nos.10 to 14 to provide details of all bank accounts and to get the same audited;
- f) Direct the respondents Nos.10 to 12 to furnish details of bank accounts in all banks opened in the name of the petitioner;
- g) Direct the respondents Nos.13 and 14 to furnish details of the names of persons who opened the said bank account and who operated this account upto the last date;
- h) Restrain the respondents Nos.1 to 6, their servants, officers, employees, factors, agents and all persons claiming through or under them from harassing the present Managing Committee of the petitioner by illegally and unlawfully interfering in their working with malafide intention to usurp the charge of the petitioner and appoint an Administrator of their own choice to give protection to the Ex-Management;
- i) Costs of the petition;
- j) Any other relief which this Honourable Court may deem fit and proper in the circumstances of the case.

2. Learned counsel for Petitioner contends that that the petitioner is a registered Cooperative Society having its own bye-laws duly approved by the competent authority and as per Clause-46 of the Bye-laws, the business of the petitioner is carried out through the "Managing Committee". He further contends that there were serious complaints against the previous Managing Committee and administrator and number of petitions were filed before this Court against them wherein this Court passed various orders, however, the tenure of previous Managing Committee expired on 11.04.2016 but they failed to announce any election of the Society in derogation of its bye-laws, hence the members of the

Society formed an Association in the name and style "Residents Welfare Association of Hyderabad Railways Employees Co-operative Housing Society" which Association filed C.P No.D-848 of 2016 before this Court wherein the respondent No.1 filed an enquiry report and the said petition was disposed of by this Court vide order dated 03.10.2017 by constituting a two Member Committee consisting of Additional Registrar of this Court and one Anwarul Haq inter alia, to resume the charge of the office of the Secretary; formulating the list of Members and to conduct the elections of the Society which order was implemented by the Committee by its report, dated 02.02.2018, and subsequently the result of election of the Petitioner / Society was declared by the respondent No.4, vide letter dated 12.03.2018 and in consequence thereof charge was handed over to newly elected Managing Committee of the Society under intimation to this Court which is evident from the order dated 15.03.2018. He further contends that since there were serious allegations regarding misuse of powers of the previous Managing Committees and Administrators, who were running the business of the Society and the NAB was conducting enquiry and the present Management of the Petitioner / Society also sent complaints regarding corruption and corrupt practices in transferring of valuable plots by its previous Administrators / Managing Committees on that respondents No.3 to 6 being annoyed started harassing them by passing orders and conducting so-called inquiries as enunciated in their order dated 25.05.2018 and letter dated 10.07.2018; hence the Petitioner / Society finding no other efficacious remedy has filed this petition. Learned counsel further states that in case ad-interim injunctive order is not passed, the Petitioner / Society shall suffer irreparable loss as the present Managing Committee has been elected few months back in the election held under the supervision of a Committee constituted by this Court and now the respondents No.3 to 6 are bent upon to appoint an Administrator of their own choice to give protection to the misdeeds of ex-management of the society.

3. Learned Special Prosecutor NAB while opposing this petition, submits that it is not maintainable for the reasons that NAB authorities have already initiated inquiry in the matter. He further submits that as certain disputed questions of fact have been leveled which require detailed deliberation after recording of evidence, hence the matter cannot be resolved by this Court while exercising constitutional jurisdiction under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973.

4. Learned AAG while referring the comments filed by respondents No.1 to 6 contends that the allegations leveled against the respondents, are fabricated and baseless. He further contends that In order to reject such allegations, a Committee was constituted which has submitted its report under letter No.RCS/E-I-278/2018 dated 19.07.2018 which is available on record as

annexure-C. He while referring the said report contends that said report has proved the allegations of Petitioner to be fabricated. In the report, it is clearly recommended that strict action may be taken against those delinquents either they belong to the Ex management or Ex-Administrators, then how the present management / Petitioner is leveling illegal blames on the veracity and truthfulness of the facts which are being exposed by the members of the Enquiry Committee in their said report. He further contends that the present management of the Railway Employees Cooperative Housing Society Ltd Hyderabad (Petitioner) prepared a cyclone of illegal, unlawful and baseless allegations against the respondents No.1 to 6 and instead of giving the requisite record to the Enquiry Committee (Respondents No.4, 5 & 6), they have been confusing the matter by leveling repeated allegations with exaggerations against the respondents whereas the recommendations made by Enquiry committee against the illegal and unlawful acts of previous managements and administrators of the society vide letter No.RCS/E-I-278/2018 dated 19.07.2018, may be considered, wherein it is prayed that in accordance with the orders dated 03.10.2017 passed by this Court in C.P No.D-384 of 2016, all the delinquents either they belong to ex-management or ex-administrator may be awarded exemplary punishments who are being responsible for perpetrating these malpractices and gross irregularities besides huge manipulation in the record of the land of the society, therefore, keeping in view above facts present petition may be dismissed.

5. It is noted that Assistant Registrar Cooperative Housing Societies (Technical) Hyderabad has issued notice to the Petitioner under letter dated 24.04.2018 with regard to violation made in the election 2018 of Hyderabad Railway employees Cooperative Housing Society Hyderabad, which was responded by the Petitioner through his reply dated 26.04.2018; however, this petition was filed on 30.07.2018 after about three months arraying the Respondent No.4 who had issued said notice to him, just to frustrate and create confusion in the matter, which is pending inquiry before the concerned authorities. Be that as it may, this Court cannot sit over the function(s) of Government Functionary(ies). Here in this matter, efficacious remedy is already available to the Petitioner for redressal of his grievance, if any, by approaching / making complaint before the high ups / concerned quarter and since Petitioner has approached this Court without availing / exhausting such remedy, therefore, on this ground instant petition is not maintainable. During course of arguments, we have specifically asked the question from learned counsel for the Petitioner whether any inquiry with regard to subject matter is pending before competent forum / NAB authorities, he replied in affirmative.

6. Since all the aforementioned facts fall in the category of disputed question of law and facts and for proving the same, it is necessary to record the evidence

and examination of record of the Petitioner (Hyderabad Railways Employees Cooperative Housing Society). It is settled law that disputed question of law and facts requiring evidence and examination of record cannot be gone into by this Court in exercise of its writ jurisdiction. The Honourable Supreme Court of Pakistan in a number of pronouncements has observed that when a disputed question of law and fact appears in the matter, the High Court cannot exercise its writ jurisdiction under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973.

7. In view of above, it is observed that Petitioner could not seek his remedy as prayed in prayer clause through the extraordinary constitutional jurisdiction of this Court. Accordingly, the petition stands dismissed alongwith listed applications. However, the Petitioner may knock the door of competent forum and seek redressal of his grievance, if so desires, in accordance with law.

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