

IN THE HIGH COURT OF SINDH AT KARACHI

C.P. No.D-2975 of 2013

PRESENT: Mr. Justice Irfan Saadat Khan &
Mr. Justice Zafar Ahmed RajputPetitioner : Syed Javed Hussain through Mr. Munawwar
Ali, Advocate.Respondent No. 1 : The Registrar, Cooperative Housing
Society, Sindh camp at Karachi through
Mr. Meeran Muhammad Shah, Addl.
Advocate General, Sindh.Respondent No. 2 : The Saadabad Cooperative Housing Society
Ltd., Karachi through Mr. Muhammad
Ajmal Awan, Advocate.Respondents No. 3 & 4 : Called absent.Date of hearing : 28.10.2015.

Date of announcement : _____

JUDGMENT

ZAFAR AHMED RAJPUT, J :- Brief facts of the case, as narrated in the memo of petition, are that a residential plot bearing No.80-A/1, measuring 180 sq.yds., Block-4, Saadabad Cooperative Housing Society Ltd., Karachi (“the subject plot”)

was originally allotted to one Malik Muhammad Bashir, vide Provisional Allotment Order dated 6.10.1986 by the respondent No. 2 (Saadabad Cooperative Housing Society Ltd.). The respondent No. 2 also issued certificate of allotment of the subject plot to the said original allottee vide letter dated 23.2.1987, Share Certificate, Possession Order, Site Plan and Certificate of Allotment, and thereafter the respondent No. 2 transferred the subject plot firstly in favour of one Mst. Zareena Begum on 9.2.1992 and then secondly in favour of Mrs. Yasmeen on 17.12.1995. Subsequently, the subject plot was purchased by the petitioner from Mst. Yasmeen, vide Sale Agreement dated 17.12.1995 for a total sale consideration of Rs.3,25,000/- and such transfer was effected in favour of petitioner on 3.2.1999 in the record of respondent No. 2 vis-à-vis Provisional Allotment Order, Certificate of Allotment of Plot, Possession Order, Site Plan, Share Certificate and Passbook. It is further alleged that after payment of the dues by the petitioner the respondent No. 2 vide letter dated 3.2.1999, informed the petitioner that by virtue of transfer, he has been accepted as a member of the society. Afterwards, on 24.9.2001 the petitioner submitted an application along with proposed building plan, to be constructed on the subject plot to respondent No. 1 (Registrar Cooperative Housing Society, Sindh), who forwarded the same

to the respondent No. 2 for the submission of the detail report on that the later confirmed the ownership of the subject plot with petitioner vide its letter dated 17.5.2001, so also the fact that neither any dispute under section 54 of the Cooperative Housing Societies Act, 1925 ("The Act of 1925") nor any litigation in any Court of law is pending in respect of the subject plot. On that, upon no objection certificate issued by the respondent No. 1, the Deputy Controller, Karachi Building Control Department approved the proposed building plan for the subject plot vide letter dated 30.5.2001 and now the petitioner having completed the construction of residential house is enjoying the possession of the same peacefully, undisputedly and without any objection from any person or authority whatsoever. It is case of the petitioner that in September, 2012, he came to know that respondent No. 2 after obtaining an Award under the Act of 1925 from the Registrar's Nominee and execution certificate from the respondent No. 1 has filed Execution Application No. 11 of 2011 before the Court of learned VIth Senior Civil Judge, Karachi East. However, upon an application filed by the petitioner under Order 21 Rule 58 C.P.C., the execution application was dismissed by the said Court vide Order dated 21.1.2013. Thereafter, the petitioner immediately filed an application under section 12 (2) C.P.C. read with section 151

C.P.C. with the respondent No.1, which was dismissed by the respondent No. 1 vide order dated 5.7.2013 holding the same not maintainable. It is thereafter the instant petition has been filed by the petitioner with the following prayers:-

- a) *Declare that the petitioner being bonafide owner of the House constructed on the Plot No.80-A/1, measuring 180 sq.yds., Block-4, Saadabad Cooperative Housing Society Ltd., Karachi cannot be dispossessed, deprived of his ownership right without due process of law as guaranteed under Article 10-A of the Constitution of Islamic Republic of Pakistan, 1973 and as envisaged under the time honored golden principle of law that no person can be condemned unheard.*
- b) *Set-aside the order of the respondent No. 1 dated 5.7.2013 whereby the said respondent refused to entertain the application of the petitioner under section 12(2) CPC and Award dated 4.8.2008 and direct the said respondent to decide the matter strictly in accordance with law on merits after framing of issues and affording opportunity of adducing evidence to all parties including the petitioner.*
- c) *Restrain the respondents, their agents, attorneys, employees, persons acting on their or under their authority from dispossessing the petitioner or creating third party interest on the basis of Award dated 4.8.2008 or any other order pursuant to that Award, till the decision of the matter on merits.*

We have heard the learned counsel for the petitioner, respondent No. 2, Additional Advocate General, Sindh for respondent No. 1 and perused the material available on record.

Mr. Munawwar Ali, the learned counsel for the petitioner, has contended that the petitioner is a lawful owner of the subject property and knowingly that he is residing in the subject property, the respondent No. 3 did not make him party in the arbitration proceedings deliberately with malafide intention to obtain Award on his back by playing fraud and misrepresentation. He has further contended that the factual controversy before the Registrar's nominee was in respect of the Plot No.99/A-1, which has no concern with the subject plot bearing No. 80-A/1, hence the Award passed by the Registrar's Nominee is illegal and liable to be setting aside.

Mr. Muhammad Ajmal Awan, the learned counsel for respondent No. 2, has conceded to the arguments advanced by the learned counsel for the petitioner.

Mr. Meeran Muhammad Shah, the learned AAG has contended that from the documents produced by the petitioner it appears that he was necessary party but the impugned Award has been passed on his back without

impleading him in the arbitration case, therefore, he does not support the impugned Award.

It appears from the perusal of impugned Award that the respondent No. 3 (Shafique Ghulam Yasin) had filed ABN Case No. 30/2008 before the Deputy District Officer, Cooperative, Karachi, claiming therein that the respondent No. 2 lawfully transferred the membership of its member, namely, Muhammad Iqbal Javaid bearing membership No.458 to him and issued Share Certificate, Provisional Allotment Order and Pass Book, thereafter he repeatedly contacted the management of respondent No. 2 for issuance of Site Plan, Possession Order and for execution of Sub-Lease Deeds but in vain. Thereafter, he moved an application to respondent No. 2 on 26.12.2006, whereupon it was first time confirmed that he was the transferee of the Plot bearing No. 99/A-1 but since he was defaulter of dues his plot was cancelled by the management vide letter dated 10.1.2007. He then filed the arbitration case with the prayer to declare him the lawful transferee/ owner of the plot. The respondent No.2 contested the said ABN case by filing written statement, stating therein that there were two files of Plot No.99/A-1, Block-4, Scheme No. 36 i.e. Membership No. 455 was in the name of Shafique Ghulam Yasin (respondent No. 3), while Membership No. 1082 was in the name of Syed Nooruddin Ahmed (respondent No.

4). The Registrar's Nominee adjudicated the dispute and passed the impugned Award in favour of respondent No. 1.

The petitioner, prima facie, appears transferee of the subject plot and such fact is recorded in the documents produced by him i.e. Provisional Allotment Order, Certificate of Allotment of Plot, Share Certificate, Site Plan, Share Certificate, Passbook of Membership, Transfer Letter, letters of respondent No. 2 dated 16.5.2001 and 17.5.2001, NOC of respondent No. 2 dated 22.5.2001, building plan approved by Karachi Building Control Department, KDA. It may also be observed that the claim raised by the respondent No. 3, was in respect of a Plot bearing No.99/A-1, while the petitioner having it claim and possession over Plot No. 80-A/1, and the name of the petitioner neither appears in the ABN Case nor in the written statement filed by the respondent No. 2/ society, which seems to have been concealed by them. At present, a house is constructed over the subject plot and it is unbelievable that the respondent No. 3 while filing ABN case was not having knowledge about the possession of the petitioner over the subject plot, therefore, the impugned Award appears to be a result of collusion between the respondents No. 2 and 3.

In view of the above facts and discussions, the instant petition is allowed by setting aside the impugned Award passed by the Registrar's Nominee.

JUDGE

JUDGE

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