

**IN THE HIGH COURT OF SINDH AT KARACHI**

Present:  
Mr. Justice Muhammad Shafi Siddiqui  
Mr. Justice Jawad Akbar Sarwana

High Court Appeal No. 196 of 2021

Muhammad Shafiq & others  
Versus  
Abdul Salam Mandhro & others

Date of Hearing: 14.11.2023

Appellants: Through Mr. Mujtaba Sohail Raja Advocate.

Respondent No.1: Through Mr. S. Ahsan Imam Rizvi Advocate.

Applicant/intervener: Through Mr. Ayaz Ali Chandio Advocate.

**J U D G M E N T**

**Muhammad Shafi Siddiqui, J.**- In a suit involving dispute of membership and election of a housing society was brought to an end by way of an order passed on 09.08.2018 in the following terms:-

*“Syed Javed Ali, Assistant Registrar, Cooperative Societies, Sindh files independent Report, which is taken on record.*

*After hearing counsel at length and some of the representatives of both sides following consent order is passed, which to dispose of the instant suit alongwith listed application:*

1. *Nazir of this Court is directed to prepare a true list of members of the Pakistan Navy (CNGE) Cooperative Housing Society Ltd. (“the Society”) after consideration of both the lists. First as provided in the year 2012-2013 (which is available at page 481-495) and the other provided by the defendant in the year 2016-2017, which is attached with the compliance report available at page 1249-1305, after considering the original documents pertaining to each and every plot and chasing trail of any subsequent sale/transfer of plots. The records now available with the defendant No.15 Abdul Salam Mandhro shall be handed over to Nazir immediately. This exercise of authenticating members of the Society is to be completed within two months. Cost of authentication of property documents and preparing the list of legit members would be charged by the Nazir at Rs.2,500/- per*

*record/file. Both sides agree to provide all assistance to the Nazir and in case unnecessary delays are caused in this exercise and adjournments are sought from either side, Nazir would be competent to impose cost. Nazir will also be at liberty to seek assistance or to call record available with the concerned Registrar of the Cooperative Societies.*

*2. Having prepared a final, authentic member's list after conducting the exercise in the time stipulated above and in the manner aforementioned, election would be called for the Society in which the members authenticated by the Nazir as per list produced by him only would be entitled to cast vote. Nazir to ensure personal supervision of the election process and to submit its report for consideration of this Court. Procedure laid down by applicable law/rules to be strictly followed.*

*3. Immediately from the date of this order all record as well as possession of the lands of the Society would be handed over to the Nazir of this Court. Nazir shall post his guards to safeguard the land. The cost of these guards will be borne by both the parties equally."*

This order was complied with on 08.08.2019 by the Nazir through his report presented on 19.08.2019, which is available at page 699. Via impugned order the objections to this report were considered by the executing Court in Execution Application wherein performance of above decree/consent order was sought. Objections were raised that the later compliance of Nazir is not in consonance with decree.

We have heard the learned counsel and perused material available on record.

While considering the objections of the judgment debtor No.5, an attempt has been made to bring the Nazir's report in line with the decree/consent order passed on 09.08.2018. The Nazir was directed to prepare a true list of members of Pakistan Navy (CNGE) Cooperative Housing Society Limited after considering two available lists i.e. for the year 2012-2013, which was available on record of the original suit at page 481 and 495 and the other list of 2016-2017, which is attached with the compliance report in original suit available at page 1249-1305. It is only in order to reconcile these two lists the record provided by

defendant No.15 in the suit i.e. Abdul Salam Mandhro, which was only ordered to be handed over. The order decreeing the suit in no way suggests that independently said record of defendant No.15 in the suit, is to be seen as a third list; for all intent and purposes it was but to reconcile record of the first two lists. Out of first list, 175 files of the allottees have been received, original of which were seen and returned, out of 367 files whereas for the second set of members photocopies of 230 files of the allottees for the later years have been received, original of which were seen and returned, out of 453, which makes total of 405.

This perhaps was the intent and spirit of the order when the suit was decreed/disposed of in terms of order dated 09.08.2018. If only the order, which decreed the suit is to be complied, then perhaps the learned Single Judge brought the statistics in line with the decree as the executing Court cannot proceed beyond the mandate of the decree and could not consider any extraneous material, which was attempted by the Nazir when apart from two additional lists in his report dated 08.08.2019, additional record was considered for adding the members, which is not the demand of the decree.

In view of above we do not find any reason to interfere in the order impugned herein and in consequence whereof this High Court Appeal is dismissed along with pending applications.

Above are reasons of our short order dated 14.11.2023.

Dated:

**J U D G E**

**J U D G E**