

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

Present:  
Mr. Justice Muhammad Shafi Siddiqui  
Mr. Justice Omar Sial

High Court Appeal No. 465 of 2018

Murtaza Baig & others  
Versus  
Province of Sindh & others

Date of Hearing: 22.02.2024

Appellants: Through M/s. Shehanshah Hussain,  
Muhammad Ali Jan and Arshad Ali Advocates

Respondents No.1 to 4: Through Mr. Abdul Jaleel Zubedi, Assistant  
Advocate General.

Respondent No.5: Through Mr. Asadullah Shar Advocate.

Respondent No.6: Through Mr. Farhan Zia Abrar Advocate.

Interveners: Through Mr. Abdul Jaleel Zubedi, Assistant  
Advocate General.

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

Muhammad Shafi Siddiqui, J.- This appeal has challenged an order dated 10.11.2018 passed on an interlocutory application filed by the respondents being applicants in J.M. No.61 of 2018 under section 12(2) CPC seeking suspension of order dated 12.07.2018 passed in Suit No.482 of 2015 in terms whereof elections of the society were ordered in their absence. The interim application was allowed and the elections were suspended, perhaps until hearing of main application under section 12(2) CPC.

2. A suit bearing No.482 of 2015 was filed for declaration, permanent and mandatory injunction etc. by the PIDC Employees Multipurpose Cooperative Housing Society. The application under section 12(2) CPC challenged an order/judgment dated 12.07.2018 passed in the

referred suit whereby the plaintiffs and defendants of the suit claimed to have been acting in collusion with each other and by playing fraud and misrepresentation by moving an application bearing CMA No.16113/2017 obtained an order to conduct elections of President/Management Committee of the Society, excluding the respondents [applicants of 12(2)], to participate in the election and to cast their votes.

3. It is claimed that the Society i.e. PIDC Employees Society restricts the sale of plots and membership to the extent of employees of PIDC i.e. original members. Other members could only be admitted by the committee provided they are employees/ex-employees or relatives of the employees of PIDC and/or of any government, semi-government, local bodies, State-owned corporations, State enterprises, financial institutions or state privatized units. It is claimed by Mr. Shehanshah Hussain that in their application under section 12(2) CPC as well as in an interim application on which impugned order was passed applicants have not disclosed at all that they belong to a class as required to be a member or to be a transferee of the plot. It is claimed that all this happened i.e. they being given membership when the control and power of the Society was with the Administrator and in defiance of such restricted covenants/bylaw the membership to these 83 individual bestowed, who have moved application under section 12(2) CPC.

4. Learned counsel for the appellants has relied upon case of Bahadur Yar Jang Society<sup>1</sup> wherein vires of same kind of the restrictions were challenged. In the relied case the restrictive covenant, as challenged, had restricted the membership and transfer of plot only to the extent of those who have migrated to Pakistan from Hyderabad Deccan leaving their homes and hearths in India. The Supreme Court

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<sup>1</sup> PLD 2010 SC 1058 (Bahadur Yar Jang Cooperative Housing Society Ltd. v. Feroze Shamsi)

while allowing appeal observed that the provisions of Section 17-B and those of Section 3(c) of the Act 1925 had themselves made grant of membership of a cooperative society subject to the rules framed under the said Act and also to bylaws framed by the concerned society which had envisaged conferment of restricted membership therefore the relevant rules could not be said to be ultra vires to the Act. Mr. Shehanshah Hussain submitted that similar restriction to the extent of employees of identified employer is provided in the bylaws.

5. However, Mr. Farhan Zia Abrar has taken us to the amendment as carried out in the restrictive bylaws which has added the persons who have purchased the plots of the society i.e. apart from those being employees of a particular employer, any private individual is also included, since above amendment.

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

7. Mr. Shehanshah Hussain never took us to the amendment referred above. In the case of Bahadur Yar Jang (Supra) the rules/bylaws, as framed, restricted the membership only to the individuals identified therein i.e. immigrants of Hyderabad Deccan and their relatives etc. etc. The case in hand however is distinguishable as the said restrictive bylaws was opened by virtue of memorandum dated 27.12.2002, which by the aforesaid date extended to those individuals who have purchased the plots of the Society, notwithstanding the fact whether they were members of the society or were employees of referred employers or were/are in relation with them. Thus, the buyer could maintain his/her membership with the Society independently on being acquiring the plot and hence is entitled, as being a member of the Society, to cast vote in the elections of Society.

8. Learned Assistant Advocate General has also confirmed the said memorandum of 27.12.2002 and that such amendment was carried out and all the applicants of the application under section 12(2) CPC, which are 83 in numbers, have acquired the subject plots respectively after 27.12.2002 hence would qualify to be member as being transferee of the plot of the Society by virtue of the said amendment and entitled to cast vote.

9. The impugned order is only an interlocutory order and the main application under section 12(2) CPC is pending. The elections of the society pending since last more than six years i.e. ever since this appeal is filed and pending. It is therefore in the interest of the Society itself that the elections be held at the earliest with the inclusion of these applicants of application under section 12(2) CPC, identified as respondents in the instant appeal.

10. Upshot of the above discussion is that the impugned order 10.11.2018 is modified to the effect that the elections of the Society be held with the inclusion of the applicants of application under section 12(2) CPC and/or whosoever is eligible in line with the findings/ observations as made hereinabove.

11. In view of the above High Court Appeal was disposed of vide short order dated 22.02.2024 of which above are the reasons.

Dated:

**J U D G E**

**J U D G E**