

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
CP No.D-1788 of 2024

Date	Order with signature of the Judge
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Priority.

1. For hearing of Misc. No.8038 of 2024.
2. For hearing of main case.

16.04.2024

Mr. Khalil Ahmed Siddiqui, Advocate
Mr. Zulfiqar Ali, Advocate for the Petitioner.
Mr. Muhammad Murad, Section Officer, Cooperative Department.
Mr. Athar Hussain Mirani, Secretary, Cooperative Department,
Government of Sindh.
Mr. Sandeep Malani, Assistant Advocate General.

Syed Ali Ahmed Zaidi, Advocate undertakes to file Vakalatnama on behalf of Respondent No.5, who is Incharge of the Committee, notified under the impugned Notification (at page-259).

Written Statement / Comments is filed on behalf of the official Respondents No.1 and 2, which is taken on record.

The Written Statement has been perused.

On a specific query, Mr. Muhammad Murad, the Section Officer, Cooperative Department states that prerequisite of Section 6(1) (2), Read With Section-7 of the Sindh Cooperative Housing Authority Ordinance, 1982 (**'the Society Ordinance'**), in particular, relating to the inquiry, was not fulfilled; but, the action is taken on the basis of the Audit Report.

The Secretary and the Section Officer attempted to justify their action by referring to the Notice dated 02.04.2024, issued to Petitioner Society, under Section 4(2) of the Sindh Co-operative Societies Act, 2020 (**'the Act, 2020'**); Annexure 'C' of their Written Statement.

After hearing the Parties, one thing is clear, that no inquiry has been done under Section 6 of the above Statute. A Notice under Section 4(2) of the Act, 2020, was issued and it is stated that Respondents have taken the

action under this Notice and the Audit Report. Section 4(2) of the Act, 2020, provides that reasonable time will be given to the persons to produce the documents. The above Notice under Section 4(2) of the Act, 2020, is of 02.04.2024 and the impugned Notification is of 08.04.2024, that is, after six days the supersession Notification was issued, which is illegal.

Adverting to the Audit Report, which is at page-45 of the Court File; Paragraph-23 whereof is reproduced herein under _

“In view of our observations, the Society is placed in “B” Class of audit classification for the year under audit with hope that the management of the Society will make all efforts to improve the working and remove the all audit objections / observations as pointed out in this Audit Report by implementing all the audit advices in letter and spirit.”

From the above, it appears that there were some Audit Objections and the Respondents only have asked the Petitioner Society to improve their working and functioning. No gross irregularity or illegality has been pointed out in the Audit Report, which can justify such a harsh action under the above Statute; thus, this defence of Respondents, in particular, Section Officer-Mr. Muhammad Murad, that the action was initiated on the basis of the Audit Report, also is misconceived in nature and false.

The other crucial aspect of the case is that the Notice under Section 4(2) (*ibid*) was addressed under the above Act, 2020, but the impugned Notification dated 08.04.2024 is issued, by invoking the provision of the Society Ordinance, 1982. This is not permissible; because, if an action is initiated in terms of a special Statute then the other proceeding in pursuance thereto should also be done under the same Statute and not by invoking the provision of the other Statute, just because it suits the Government functionaries; rather their ulterior motives. In the present case, the above act is violative of Section 24(A) of the General Clauses Act, 1897, which states

that “**24-A. Exercise of power under enactments.-(1) Where, by or under any enactment, a power to make any order or give any direction is conferred on any authority, office or person such power shall be exercised reasonably, fairly, justly and for the advancement of the purposes of the enactment.**”; besides, shows dishonesty on the part of the Respondents.

It is noted with concern that there is surge in filing similar nature of Petitions due to the abuse of the authority by the Officials; in many cases, it is observed that in haste, a Notification is issued ‘**to take over / look after the affairs of a Society**’, depriving the Societies to present their Cases before the Department, thus, strangulating the due process of Law.

Both the above Statutes have empowered the Regulators to oversee the functioning of the Societies, with the object to serve and protect the legitimate interest of Members and not of the Officials. In this regard, we must also refer the well-known Judgments of the Supreme Court of Pakistan handed down in the Case of **Independent Newspapers Corporation (Pvt.) Ltd and another vs. Chairman Fourth Wage Board and Implementation Tribunal for Newspaper Employees, Government of Pakistan, Islamabad and 2 others** 1993 SCMR 1533 and **State Life Insurance Corporation and others vs. Jaffar Hussain and others** 2009 CLD 610, holding, that the excessive use of lawful power is also unlawful.

In view of the above discussion, it is clear that the impugned Notification is issued illegally, in colourable exercise of authority vested in the Respondents and, hence, the same is set-aside. The Petition is accepted, subject to the rider that the future Elections of the Society will be held strictly in accordance with the provisions of the Sindh Cooperative Societies Act, 2020 and the Rules within the shortest possible time.

It is necessary to observe at this juncture that the Act, 2020, is a comprehensive Code regulating the affairs of the Society and the provisions of the Ordinance, 1982, are causing overlapping of jurisdiction. In this regard, Provincial Legislature can make the suitable amendments.

This Order be communicated to the Worthy Chief Secretary, who will hold the inquiry into the conduct of the officials and specially Section Officer. Report be submitted of the above inquiry within four weeks through the learned MIT-II, of this Court.

JUDGE

JUDGE