

**ORDER SHEET  
IN THE HIGH COURT OF SINDH AT KARACHI  
CP No. D-3846 of 2023**

( Ghulam Murtaza Lahbar & Others v. Province of Sindh & Others )

**ALONG WITH  
CPs NO. D-615 & D-1062 OF 2023**

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**DATE: ORDER WITH SIGNATURE(s) OF JUDGE(s)**

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1. For Hearing of CMA No. 17626 / 2024 (Sec. 151 CPC App)
2. For Hearing of CMA No. 4035 / 2024 (Sec. 151 CPC App)
3. For Hearing of CMA No. 1737 / 2024 (Sec. 12(2) CPC App)
4. For Hearing of CMA No. 1738 / 2024 (Contempt App)
5. For Hearing of CMA No. 1739 / 2024 (Stay App)
6. For Hearing of CMA No. 27167 / 2023 (Sec 151 CPC App)

Mr. Aamir Aziz Khan, Advocate for Petitioners in CP No.D-3486 / 2023  
Mr. Babar Ali Shaikh, Advocate for Petitioners in CP No.D-1062 / 2023  
M/s Fayaz Ali Metlo, Ms. Adeela Ansari & Ms. Aliya Manzoor, Advocates  
for Applicants in CP No.D-3486 / 2023  
Mr. Ghous Bux, Special Prosecutor NAB  
Mr. Shahryar Qazi, AAG Sindh along with Mr. Hasnain Shah, Deputy Registrar  
(Legal & Technical)

**Date Of Hearing: 22-4-2025**

**Date of Decision: 8-5-2025**

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**ORDER**

1. **Sana Akram Minhas J:** This Order rules on the applications outlined below.

**CMA No.1737 / 2024 (by Applicants):**

2. The Applicants, claiming to be members of the *Pakistan Post Office Workers Cooperative Housing Society* ("**Society**"), have amongst others preferred this application under Section 12(2) CPC ("**12(2) Application**") impugning the order dated 7.9.2023 ("**Impugned Order**"), by which the instant Petition was disposed of in the following terms:

7-9-2023

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In order to avoid further delay and pling up disputes and litigations between the members of the society, we would dispose of these petitions in terms of Consent Order dated 08.12.2021 passed in C.P. No. D-2239 of 2017, which is reproduced hereunder.

*“We therefore, dispose of this petition with the consent of the learned counsel for the parties in the following terms:-*

- i) Mr. Abdul Jalil Zubedi (A.A.G.) is appointed as the Commissioner to hold election of the President and entire Managing Committee of the Society under his supervision.*
- ii) Respondent No. 3 shall hand over the record of the Society to the Commissioner under an inventory within ten (10) days hereof; thereafter, the Commissioner shall scrutinize the same properly as per original allotment and prepare a valid voter list of the members of the Society as per law within twenty (20) days thereof.*
- iii) The Registrar, Cooperative Societies Sindh (Respondent No. 4) shall issue a schedule for the election of the Society and publish the same in the "Daily Jang" within 30 days hereof by specifying the venue of the election.*
- iv) After holding election of the President and entire Managing Committee of the Society, the Commissioner shall hand over the record of the Society as per the inventory prepared by Respondent No. 3 to newly elected Management of the Society.*
- v) Fee of the Commissioner is tentatively fixed at Rs.100,000/= payable by the Society. The Commissioner, however, may request for further fee by filing a reference in the instant petition.*
- vi) The Respondent No. 3 is forthwith stopped from incurring any expenditure except payment of the current salaries of the employees of the Society, if any, and expenditures towards holding election of the Society.”*

However, it is further clarified that the elections of the Society will be conducted on the basis of the provisional list prepared by the Commissioner, within two months from the date of this order, whereas, the Administrator i.e. Mr. Iqbal Hussain Channa, will not act in violation of the mandate given by the Divisional Bench of this Court in Para (vi) of the order dated 08.12.2021 and shall provide his fullest assistance to the Commissioner. It is further directed that the Administrator shall not decide any dispute relating to any right, title or claim of the members of the Society, whereas, in case of any dispute of such nature, the members of the Society will be at liberty to approach the Cooperative Court for redressal of their grievance in terms of section 117 of the Sindh Cooperative Societies Act, 2020. After holding of elections of the Society, the charge and the relevant record of the Society shall be handed over to the elected management, whereafter, compliance report be submitted to this Court through MIT-II of this Court.

Accordingly, the above petitions stand disposed of in the above terms alongwith pending applications.

3. Upon being questioned how the Application falls within the ambit of Section 12(2) CPC<sup>1</sup> – under which only three grounds exist to impugn a final judgment, decree or order in the court that rendered, viz. (i) fraud; (ii) misrepresentation; and (iii) lack of jurisdiction – Counsel, while branding the present Petition as collusive, contended that the Impugned Order set

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<sup>1</sup> Section 12 CPC: Bar to further suit. (1) Where a plaintiff is precluded by rules from instituting a further suit in respect of any particular cause of action, he shall not be entitled to institute a suit in respect of such cause of action in any Court to which this Code applies.

(2) Where a person challenges the validity of a judgment, decree or order on the plea of fraud, misrepresentation or want of jurisdiction, he shall seek his remedy by making an application to the Court which passed the final judgment, decree and not by a separate suit.

aside/altered an earlier consent order dated 8.12.2021 (“**Consent Order**”) issued in CP No.D-2239/2017. The Consent Order had directed that elections be held on the basis of a voter list prepared by reference to the original allotment record. In contrast, the Impugned Order directed those elections be conducted based on a provisional voter list to be prepared by a Court-authorized Election Commissioner. Counsel argued that this change was beyond the jurisdiction of the Court and rendered the Impugned Order a nullity. Additionally, it was contended that the provisional list was defective and bogus, having excluded a substantial number of genuine members while simultaneously permitting the inclusion of ineligible or fictitious members, thus distorting the electoral process and rendering the elections a farce.

4. We find the Applicants’ argument to be misconceived and without merit. A plain reading of the Impugned Order reveals that it was passed in furtherance of the Consent Order, not in derogation of it. The Impugned Order in fact reproduces and reiterates the relevant directions contained in the Consent Order. While the Impugned Order authorized the preparation of a provisional list, it does not stipulate that such list was to be prepared on the basis of any documents or records other than those specified in the Consent Order, viz. the original allotment record. Furthermore, and even assuming, without conceding, that the Impugned Order modified or altered the Consent Order in any material respect, such a grievance would not fall within the limited grounds envisaged by Section 12(2) CPC. The appropriate remedy in such a case would have been to prefer an appeal against the Impugned Order rather than seeking to impugn it through the 12(2) Application.
5. As regards the allegation that the provisional list is flawed and fabricated, it raises disputed questions of fact requiring evidence, an exercise that cannot be undertaken in a constitutional petition and must be adjudicated before the appropriate forum.
6. Constitutional jurisdiction is not intended to serve as a substitute for appeals, revisions, or independent legal remedies which the Applicants may have failed to pursue diligently and within the prescribed timeframes. A party cannot be permitted to circumvent the proper legal process through writ petitions under Article 199 of the *Constitution of Pakistan, 1973*. Accordingly, the 12(2) Application (CMA No.1737/2024) being misconceived is **dismissed**.

**CMA No.1739 / 2024 (by Applicants):**

7. This is a stay application filed under Order 39 Rules 1 & 2 CPC ("**Stay Application**") by the same set of Applicants who have filed the above referred 12(2) Application. Through this Stay Application, the Applicants seek to restrain, inter alia, the Petitioners and members of the Managing Committee from holding charge of the Society, alleging that such charge has been assumed in violation of this Court's interim order dated 23.11.2023 passed in the present Petition.
8. The Applicants largely reiterate the allegations raised in their 12(2) Application, viz. that the elections conducted pursuant to the Impugned Order are defective and void on the ground that the Impugned Order unlawfully altered or set aside the Consent Order, an act which, according to the Applicants, was beyond the jurisdiction of the Court.
9. However, the record reflects that elections were duly held on 26.11.2023 pursuant to the Court's directions (i.e. the Impugned Order), and following the issuance of the Notification of results dated 18.12.2023, the newly elected Managing Committee assumed charge on 28.12.2023. In essence, therefore, the present Stay Application seeks to undo the post-election developments and restore the prior status, i.e. a status quo ante.
10. This relief cannot be granted for multiple reasons. First, the order dated 23.11.2023 does not impose any bar on the handing over of charge, and accordingly, no breach of that order has occurred. Second, in any event, once the elections have been held pursuant to judicial orders and the new Managing Committee has assumed office, any challenge to the validity of the elections must be raised through appropriate proceedings before the competent forum, and not through an interim stay application. Third, interim relief cannot be used to indirectly obtain final relief, particularly where the Applicants have failed to establish a prima facie case of fraud, misrepresentation, or lack of jurisdiction.
11. Accordingly, we find no merit in this Stay Application (CMA No.1739/2024), and **dismiss** it.

**CMA No.1738 / 2024 (by Applicants):**

12. This contempt application has been filed under Order 39 Rule 2(3) CPC by the aforementioned Applicants, accusing the alleged contemnors of

contempt for violating the order dated 23.11.2023 by assuming charge, in purported breach of the said order issued in the present Petition.

13. Having concluded above that the order of 23.11.2023 does not impose any restriction on the handing over of charge, and that no breach of the said order has occurred, it necessarily follows that no case of contempt is made out against the alleged contemnors for assuming charge. In the absence of any subsisting judicial prohibition, the assumption of office cannot be construed as contempt of court. The contempt application (CMA No.1738/2024) is without substance and is hereby **dismissed**.

**CMA No.27167 / 2023 (by Petitioners):**

14. The Petitioners have moved this application under Section 151 CPC, seeking directions from this Court to the Election Officer to, inter alia, hand over the charge of the Society to the newly elected management, who won the elections held on 26.11.2023, and to communicate the results to the Registrar, Cooperatives, for the issuance of the necessary notification.
15. The record shows that the elections were conducted on 26.11.2023 in accordance with the Court's directions (i.e. the Impugned Order), and following the Notification of results dated 18.12.2023, the newly elected Managing Committee took charge on 28.12.2023.
16. Accordingly, the application is **dismissed** as infructuous, since the actions sought by the Petitioners have already been carried out, and no directions are required.

**CMA No.17626 / 2024 (by Petitioners):**

17. By way of this application under Section 151 CPC, the Petitioners pray for restoration of the powers of the elected management of the Society to entertain transfers and leases under the supervision of the Nazir of this Court. The restraint on exercising such powers was imposed by this Court vide ad interim order dated 29.1.2024, passed on the Applicants' application under Section 12(2) CPC.
18. Since we have dismissed the said application (CMA No.1737/2024) for the reasons set out above, the order dated 29.1.2024 stands vacated as a necessary consequence. Consequently, this application is **disposed of** as having been rendered infructuous.

**CMA No.4035 / 2024 (by ex-Administrator of Society):**

19. The present application under Section 151 CPC has been filed by Iqbal Hussain Channa, former Administrator of the Society. He seeks his discharge from the proceedings, contending that he has no further role or involvement in the matter following the conduct of elections on 26.11.2023 (in compliance with the Court's directions dated 7.9.2023, i.e. the Impugned Order) and the subsequent handing over of charge to the newly elected Managing Committee on 28.12.2023.
20. As elections were held on 26.11.2023 and the new Managing Committee assumed charge on 28.12.2023, as noted in paragraphs 9 and 15 above, this application is now infructuous and stands **dismissed**.

**JUDGE**

**JUDGE**

Date: 08<sup>th</sup> May, 2025