

ORDER SHEET

IN THE HIGH COURT OF SINDH, KARACHI.

SUIT NO.846 OF 2010

Dated	Order with signatures of Judge
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Plaintiff No.1	:	Mrs. Parveen Akhtar
Plaintiff No.2	:	Abdul Karim Khan Through Mr. Imtiaz Hussain Gondal, Advocate.
Defendant No.1	:	Lucknow Cooperative Housing Society Limited through Ch. Khalid Rahim Arain, Advocate.
Defendant No.2	:	The Registrar Cooperative Societies Sindh, Thandi Sarak, Hyderabad.
Date of hearing	:	24.10.2013

ORDER

NAZAR AKBAR, J., By this order I intend to dispose of application under Order VII, Rule 11, CPC, (CMA No.12158/2010) filed by the defendants with the prayer to reject the instant plaint. The plaintiff has filed counter affidavit to this application. I have heard the learned counsel and perused the record.

2. In brief, the facts of the case, as mentioned in the Plaint, are that the Plaintiff No.1 is allottee of two plots, one residential Plot No.A/639, measuring 112 square yards and one commercial plot bearing No.LS-151, measuring 98 square yards, in Lucknow Cooperative Housing Society, Korangi, Karachi. And the Plaintiff

No.2 is also allottee of a residential Plot No.337, measuring 112 square yards and also allottee of commercial Plot No.LS-08, measuring 98 square yards, in Lucknow Cooperative Housing Society, Korangi, Karachi. The Defendant No.1 by three separate letters all dated 04.5.2010 cancelled three plots on the basis of provision of 2(iii)(c) of Notification dated 22.6.1971, issued by Government of Sindh. Therefore, Plaintiffs have challenged cancellation of allotments of their plots through the instant suit.

3. The plaintiffs have sought the following reliefs:-

- (i) To declare that the Plaintiff No.1 is the bonafide owner of the Residential Plot bearing No.A/639, measuring 112 Square yards, and she is also a bonafide Allottee/owner of a Commercial Plot No.151, measuring 98 Square yards, vide Allotment Order No.1129, dated 17th August, 1994, both situated in Lukhnow Cooperative Housing Society Limited, Korangi, Karachi.
- (ii) To declare that the Plaintiff No.2 is a bonafide allottee/owner of a Commercial Plot No.LS-08, measuring 98 Square yards, situated in Lukhnow Cooperative Housing Society Limited, Korangi, Karachi.
- (iii) To declare that the letters/orders dated 04th May, 2010, issued by the Defendant No.1 for Cancellation of Allotments of Residential Plot No.A/639 and Commercial Plot No.LS-151, and LS-08 situated in Lukhnow Cooperative Housing Society Limited, Korangi, Karachi are illegal without jurisdiction, arbitrary based on malafide act and without any show cause notice are against the Principles of Natural Justice and, therefore, have no legal effect and are null and void.
- (iv) To restore the Residential Plot No.A/639 and Commercial Plot No.LS-151, and LS-08 situated in Lukhnow Cooperative Housing Society Limited, Korangi, Karachi in favour of the Plaintiffs No.1 and 2 and cancel the said letters/orders dated 04th May

2010, issued by the Defendant No.1 for cancellation and allotments of the said Plots.

- (v) To declare that the Notification dated 22nd June, 1971, issued by the Government of Sindh, is not applicable in respect of Residential and Commercial Plots of the Plaintiffs allotted by the Defendant No.1.
- (vi) Permanently restrain the Defendant No.1, from disposing/transferring/re-allotting the said Residential and Commercial Plots of the Plaintiffs to any other person and to create any third party interest in respect of the said Plots.
- (vii) To grant cost of the suit.
- (viii) To grant any other/further relief which this Honourable Court may deem fit and proper under the circumstances of the case.

4. Learned counsel for Defendant No.1 has contended that the Defendant No.1 is registered under the Cooperative Housing Societies Act, 1925 (hereinafter referred to as “**Act, 1925**”) and it is controlled and managed by Registrar, Sindh Cooperative Housing Societies, the Defendant No.2. The suit is barred under Section 54 of Act, 1925 as the dispute has been raised by members of the Society against the defendant Society and it has arisen in the course of routine business of the Defendant No.1. He has further contended that the plaintiff has not served the Defendant No.1 with a notice as required under Section 70 of Act, 1925 prior to filing of the instant suit and lastly he has argued that the instant suit may be dismissed as the same has been filed by the plaintiffs with mala fide intention. Learned counsel for the defendants has also referred to byelaws and particularly the application of the members for allotment of plots wherein applicants/proposed

allottees have to state on oath in terms of the Byelaws-7, as under:-

“In terms of By-Laws 7 of the Society I declare that:

(a) I am a resident of Karachi.

(b) I do not hold any plot in any other Cooperative Housing Society in the Federal Area nor any land has been allotted to me otherwise then by lease by the Government for residential purpose.

I further undertake to abide by the by-laws of the society which are enforce at present or may come enforce in future.”

The Defendant’s counsel after referring to the application has also drawn attention of the Court towards impugn notice of cancellation and emphasized that the action complained of by the Plaintiffs is actually an action taken in a routine discharge of official responsibility of the Society. Perusal of the notice/letter of cancellation of allotments sought to be declared illegal shows that the Society has come to such conclusion on the ground that the notification of the Government of Sindh has been violated by the plaintiffs, particularly the following bylaw:-

“That no person shall be allotted a plot by the Society, if he or his wife/husband, minor child or any dependent, owns or has at any time owned, a plot, a house or a flat in the Metropolitan area of Karachi.”

He contends that it is the business of the Society to deal with its member according to the byelaws read with the Act, 1925 and the action taken by the Society was during the course of its business. Therefore the dispute touches the business of the Society as envisaged under Section 54 of the Act, 1925 that renders the plaint

liable to be rejected. Learned counsel in support of his contentions has relied upon the following case law:-

- (i) QADRI BEGUM v. PROVINCE OF SINDH (1999 CLC 2023);
- (ii) DARUL AMAN COOPERATIVE HOUSING SOCIETY LTD., v. SECRETARY, GOVT. OF PAKISTAN (1995 MLD 1553);
- (iii) ATIA KHANUM v. SAADADABAD C.H.S. LTD. (2002 MLD 209);
- (iv) MEHAR ALI MEMON v. FEDERATION OF PAKISTAN (PLD 2012 Sindh 425).

5. In reply, learned counsel for the plaintiff contends that defendant No.1 cannot cancel the suit plots on the basis of Notification as it is not applicable in his case and the General Body of defendant No.1 has not given such mandate nor authorized its Secretary to cancel the allotments of the plots on the basis of the said Notification. The further case of the plaintiffs is that transfer of residential plots and allotment of commercial plots in their names in the years 1982 and 1994 are past and closed transactions and moreover the suit plots have changed hands. The cancellation of allotments of residential and commercial plots is without any lawful authority, based on mala fide and without issuing any show-cause notice to the plaintiffs. Learned counsel for plaintiffs has further contended that the defendants have misused their authority and cancelled the allotments of the suit plots with ulterior motives. Several other members of the Lucknow Cooperative Housing Society have also been allotted commercial

plots in addition to the residential plots but the plaintiffs have been victimized only on account of personal grudge of the management. He claimed that the provisions of Section 54 of Act, 1925 are not applicable in the instant case and that the notice under Section 70 of Act, 1925 for institution of instant suit against the defendant Society is not prerequisite and therefore, application is liable to be dismissed as the same has been filed with mala fide intention. Learned counsel for plaintiffs has placed reliance on the following case law:-

- (i) DEFENCE HOUSING AUTHORITY v. PUNJAB CO-OPERATIVE HOUSING SOCIETY LIMITED (2011 CLC 520);
- (ii) MAHBOOB v. NAFEESSULLAH (NLR 1990 UC 256);
- (iii) NIZAR ALI v. NOORABAD C.H.S. LTD. (PLD 1987 Karachi 676);
- (iv) DELHI MERCANTILE COOP. SOCIETY LTD. v. REGISTRAR, COOP. SOCIETIES (2011 YLR 2121);
- (v) ATTAULLAH v. SANAULLAH (PLD 2009 Karachi 38).

6. The learned counsel for the plaintiff has not denied that the plaintiffs are the members of the Society and byelaws of the Society are binding on them. It is also admitted position that cancellation of the plots as per Annexures P/5, P/6 and P/7 is on the basis of the scrutiny of the file by the Society. The perusal of the impugned notices and the byelaws quoted on the application for allotment clearly indicates that the Plaintiffs are at issue with the Society and the dispute by all means is of a dispute of civil nature. The plain reading of plaint and the prayer clause shows that the

dispute between the parties is touching the business of the Society. The Society has allotted the subject plots to the plaintiffs and the Society has cancelled the same. In both cases, the Society has acted on the basis of byelaws of the Society and relevant notification of the Government of Sindh read with all the provision of the Act, 1925 enabling the Society to run its business. If allotment of plots to its members in accordance with bylaws is the business of the Society then the cancellation the allotment on scrutiny of files of its member on finding that the allotments in violation of bylaws or any other relevant rules and regulations is also business of the Society. If not then what else can be treated as the business of the Society. In the given facts of the case when admittedly the plaintiffs are members of the Society and dispute that the Society has wrongly or unlawfully cancelled allotment of their plots, then obviously their case is covered by Clause (c) of Section 54 of the Act, 1925 and for resolution such dispute “shall” be referred to the Registrar as mandatory requirement of Section 54 of the Act, 1925 which reads as under:-

“54. Arbitration. --- If any dispute touching the business of a society other than a dispute regarding disciplinary action taken by the society or its committee against a paid servant of the society arises.

- (a) -----
- (b) -----
- (c) between the society or its committee and past
 or present member of the society, or
- (d) -----

(e) -----

It shall be referred to the Registrar for decision by himself or his nominee, or if either of the parties so desired, to arbitration of three arbitrators who shall be the Registrar or his nominee and two persons of whom one shall be nominated by each of the parties concerned.

Provided that if the question at issue between a society and a claimant or between different claimants, is or involving complicated questions of law and fact, the Registrar may, if he thinks fit, suspend proceedings in the matter until the question has been tried by a regular suit instituted by one of the partners or by the society. If no such suit is instituted within six months of the Registrar's order suspending proceedings the Registrar shall take action as laid down in paragraph I of this section."

7. In section 54 of the Act, 1925, the requirement of law is that if disputes touches the business of a Society and it is between the Society and its member, it shall be referred to the Registrar and proviso to the section provides only one condition for instituting the suit against the Society that the Registrar himself has suspended the proceedings in the matter on the ground that the question at issue is one involving complicated questions of law and facts. Even this condition is limited to the period of six months from the date of Registrar's order of suspending the proceedings and in case the suit is not filed within six months, the Registrar is empowered to decide even complicated question of law and the facts. In the instant suit, the plaintiffs, in the first place, should have taken their dispute with the Society to the Registrar. Therefore, if at all the plaintiffs were not willing to avail arbitration

in terms of Section 54 of the Act, 1925 to redress their grievance on the alleged illegal cancellation of their plots and wanted to file suit against the Society, they were under legal obligation to send notice to the Registrar before filing the suit against the Society. The requirement of section 70 of the Act, 1925 was yet another obstacle in the way of the plaintiffs.

“70. Notice necessary in suits.”--- No suit shall be instituted against a society or any of its officers in respect of any act touching the business of the society until the expiration of two months next after notice in writing has been delivered to the Registrar, or left at his office, stating the cause of action, the name, description and place of residence of the plaintiff and the relief which he claims; and the plaint shall contain a statement that such notice has been so delivered or left.”

8. The plaintiffs have not sent any notice to the Registrar, Cooperative Societies that they are aggrieved by action of the Society and they propose to take the Society to the Court of law for redressal of their grievance. Learned counsel for the plaintiffs has no answer to the question that why the provisions of sections 54 and 70 of the Cooperative Societies Act, 1925 be ignored by this Court to entertain his plaint. The Courts are not supposed to assume the jurisdiction of competent forum available within the statute governing the issues and relations between the parties. In this case, the members of the Society when pitched against the Society on account of the action of cancellation of their plots by the Society and the Society claims to have done it during the course of its business, they have to follow the law governing the parties in

such like situation. In the case in hand the parties are governed by the Cooperative Societies Act, 1925 and Sections 54 and 70 provide first a statutory remedy of arbitration to the aggrieved party and then takes away jurisdiction of Civil Court to try such dispute of a civil nature. Both in section 54 and section 70 of the Act, 1925 the expressions used is the “dispute touching the business of the Society” is employed to oust the jurisdiction of Civil Court on the ground that cognizance of such civil dispute is to be taken by the arbitration panel of three arbitrators. Therefore, Civil Court cannot try and adjudicate the “dispute touching the business of a Society” as it falls within the exception in terms of the exception referred to in section 9 of the Civil Procedure Code, 1809 and it reads as under:-

“9. Court to try all civil suits unless barred. The Courts shall (subject to the provisions herein contained) have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred.”

Since there is a statutory forum to take cognizance of such dispute of civil nature this Court cannot usurp the power of such statutory forum.

9. I have examined the authorities cited by the parties. Learned counsel for the defendants has relied upon the case of Darulaman Cooperative Housing Society Limited, Karachi vs. The Secretary, Government of Pakistan, Ministry of Works and Rehabilitation Division **(1995 MLD 1553)**. In this case Mr. Justice Rana

Bhagwandas (as he then was), while dismissing the suit as not maintainable for want of statutory notice, examined other case laws namely Muhammad Ali Memorial Cooperative Housing Society Limited Karachi vs. Syed Sibtey Hasan Kazmi (**PLD 1975 Karachi 428**), Sajjad Hussain Khan and 126 others vs. Muhammad Hanif Siddiqui and 3 others (**1989 MLD 4250**) and rejected the plaint under Order VII Rule 11 CPC for want of statutory notice and laid down as follows:-

“12. In the present suit, Plaintiff Society was conscious of this legal position and fully aware of the legal consequences emanating from non-service of statutory notice. In fact it had served notice dated 27th July, 1976 on all the defendants intimating them that the proposed suit shall be filed in Court of law for the reliefs claimed in the suit after the expiry of statutory period. It is however, strange to note that no care was taken to see that notice was given to the Registrar, Cooperative Societies, which was absolutely necessary within the meaning of the provision of law referred to above. It is admitted that the plaintiff Society as well as Defendant Nos.2 and 3 are Societies registered under the provisions of the Act and the plaintiff Society is seeking to enforce its claim not only against Defendant No.4 but also against both the Societies in relation to an act of Defendant Nos.2 and 3. This act certainly touches the business of the Society and no suit can be filed until the expiration of two months after the delivery of notice to the Registrar stating the cause of action, the name, description and place of residence of the plaintiff and the relief which he claims. The language of law not only insists upon the mandatory service of statutory notice on Registrar but also envisages that the plaint shall contain a statement that such notice has been so delivered or left at the office of Registrar. There is no dispute as regards the status of plaintiff Society and the Defendant Nos.2 and 3 although Defendant No.4 is not a member of the plaintiff Society. In these circumstances it was imperative on the plaintiffs to serve the statutory notice on the Registrar which was not actually served, therefore, the suit cannot be maintained. Had this point been raised at initial stage of suit, proper course for the Court would have been to reject the plaint under Order

VII Rule 11 CPC but after the conclusion of evidence and hearing arguments on all issues only course open to this Court would be to dismiss suit for want of statutory notice and I hold accordingly.”

10. The other case law relied upon by the learned counsel for the defendants is Qadri Begum vs. Province of Sindh **(1999 CLC 2023)**. In this case, the Court while rejecting the plaint, in terms of Order VII Rule 11 CPC has again relied upon the case of Darulaman Cooperative Housing Society Limited, Karachi vs. The Secretary, Government of Pakistan, Ministry of Works and Rehabilitation Division **(1995 MLD 1553)** and five other cases, relevant portion from this citation is as follows:-

“10. In view of the judgment of Division Bench, as mentioned above, I am not inclined to follow the rule laid down by a learned Single Judge of this Court in Syed Akhtar Ali (supra). Mr. Ghulam Ali Khokhar has relied upon the case of Muhammad Ali Memorial Cooperative Housing Society Ltd., Karachi **PLD 1975 Kar. 428** which still holds the field and was followed by me in the case of Metro Cooperative Housing Society Limited **1996 MLD 593** where plaint was rejected for non-compliance of the provisions of section 70 of the Act, 1925. For further reference see Zafar Hussain and another v. Yousuf and 4 others **PLD 1976 Kar. 1107**, Farida v. Prince Apartment Cooperative Housing Society Limited and 2 others **1984 CLC 2914**, Zia Rahman Alvi v. Messrs. Allahabad Cooperative Housing Society Limited and 2 others **PLD 1996 Kar. 399**, Faqir Muhammad Dadu Muhammad v. Mercantile Cooperative Bank Limited **AIR 1940 Sindh 143** and Darul Aman Cooperative Housing Society Limited v. The Secretary, Government of Pakistan and others **1995 MLD 1553**. In these cases, where suits were filed without prior issuance of notices under section 70, either the suits were dismissed or plaints were rejected. It is not denied by the plaintiff that she has not disclosed in the plaint whether any notice under section 70 of Act, 1925, was issued and delivered at the office of the Registrar. The plaint is also silent on the point whether in such

notice any cause of action and the relief intended to be prayed for in this suit were disclosed. Besides Defendant No.4, which is a Cooperative Society, the remaining defendants, except Defendant No.5, are Provincial Government or its functionaries connected with the affairs of the Cooperative Societies.”

11. In the case in hand, the defendants are Cooperative Society and the Registrar, Cooperative Societies and, therefore, the case law cited by the learned counsel for the defendants fully applicable to facts of this case for the purpose of rejection of the plaint. Learned counsel for the plaintiff in fact has not been able to show from the facts of the case that the suit is maintainable in view of the provisions of section 54 and 70 of the Cooperative Societies Act, 1925. However, he has relied upon the following case:-

- (i) DEFENCE HOUSING AUTHORITY v. PUNJAB CO-OPERATIVE HOUSING SOCIETY LIMITED (2011 CLC 520);
- (ii) MAHBOOB v. NAFEESSULLAH (NLR 1990 UC 256);
- (iii) NIZAR ALI v. NOORABAD C.H.S. LTD. (PLD 1987 Karachi 676);
- (iv) DELHI MERCANTILE COOP. SOCIETY LTD. v. REGISTRAR, COOP. SOCIETIES (2011 YLR 2121);
- (v) ATTAULLAH v. SANAULLAH (PLD 2009 Karachi 38).

12. I have examined the case law cited by the Plaintiff's counsel. None of the citations is relevant in the facts and circumstances of the case. The case mentioned at Sr. No.1 was filed by the Defence Housing Authority against the Punjab Cooperative Housing Societies Limited and the very fact that the plaintiffs were a

Housing Authority, they were not and cannot be member of the Punjab Cooperative Housing Societies Limited. It was held by the Court that both are independent entities and have no link or concerned whatsoever with the affairs of each other, therefore, neither provisions of section 54 nor section 70 and 70-A of the Cooperative Societies Act are attracted. The case law mentioned at Sr. No.2 is not relevant as observed by the Court that amongst the many questions of law and fact, which cannot be determined by the Registrar, Cooperative Societies because some of the questions are not “disputes touching the business of a society”, for purposes of section 54 of the Cooperative Societies Act.”

The third case law cited by the learned counsel for the plaintiffs is not also relevant since it was only suit for permanent injunction and no relief was claimed against the Society. The plaintiffs have challenged the gift of the suit plot. In the case law at Sr. No.4, above the provisions of sections 54 and 70-A were not attracted on the ground that the suit was filed for partition and the accounts of the properties of the deceased parents as well as cancellation of the oral gift, therefore the dispute was not within the ambit of business of Society. The last citation was also not relevant, since the issue in this case was notice of enquiry from the Registrar, Cooperative Housing Societies against financial affairs of the Cooperative Society.

13. In view of the above discussion and the case law cited, the
plaint is rejected and all the pending applications are also
dismissed.

JUDGE

Approved for reporting.

JUDGE

Karachi:-
Dated 10.03.2014