

2023 M L D 810

[Lahore]

Before Asim Hafeez, J

AZMAT KAMAL KYANI and others---Petitioners

versus

REGISTRAR, CO-OPERATIVES SOCIETIES
PUNJAB and others---Respondents

W.P. No. 62282 of 2021, decided on 4th March, 2022.

Co-operative Societies Act (VII of 1925)---

---Ss. 4 & 18-A---Constitution of Pakistan, Art. 199---Constitutional petition---Maintainability---Scope---Petitioner sought direction to the respondents to convene a general meeting by calling all members of society in full house meeting so that discriminatory by-laws and amendments be placed before the full house society and further sought a direction restraining the respondents from holding elections of the society on the basis of discriminatory by-laws---Petitioner in connected petition backed the amendments and sought direction to the Registrar, Cooperatives Societies, to issue notification of the petitioners being unopposed members of Managing Committee of the Society---Validity---It was not for the High Court to embark upon an exercise and conduct inquiry qua the validity of the meeting, which was determinable by the Registrar Cooperatives Societies---High Court directed the Registrar Cooperatives Societies to determine and decide qua the validity of the General Meeting wherein the amendments were made. [pp. 811, 812] A, B & C

Khalid Ishaq, Wajahat Ali, Abid Sial, **Usman Awan**, Faizan Ahmad and Daniyal Akbar for Petitioners.

Zafar Rahim Sukhera, A.A.G.

Ahsan Boon, Azmat Kamal Kiyani, Javed Iqbal Qureshi and Shahid Iqbal Qureshi for Respondents.

ORDER

ASIM HAFEEZ, J.---This petition along other connected constitutional petitions were fixed for hearing on 28.02.2022, which are W.P No. 9234 of 2022, W.P No. 74601 of 2021 and W.P No.51767 of 2021.

2. Learned counsel, Ahsan Bhoon, representing petitioners in last of the two petitions sought permission to withdraw said petitions, having lost efficacy due to changed circumstances.

3. On 28.02.2022 cases were heard and kept for orders. Upon perusal of petitions and record it transpired that further assistance was required, whereafter cases were fixed for hearing on 04.03.2022 and heard.

4. Learned counsel for the petitioner in titled petition was confronted with the relief sought in W.P No.52282 of 2021, which is reproduced hereunder for quick understanding:-

"It is very humbly and respectfully prayed that by accepting instant petition, the respondents may very kindly be directed to convene a general meeting by calling all members of society in full house meeting so that discriminatory by-laws and amendments be placed before the full house society, in the best interest of justice, equity and fair play.

It is further prayed that the operation of impugned letter dated 13.08.2021 may kindly be suspended by declaring the same as illegal, unlawful, void ab initio and based on mala fide and malice.

It is further prayed that respondents may kindly be restrained from holding elections of respondent society on the basis of discriminatory By-Laws, till the final decision of the instant writ petition."

5. Learned counsel was asked to explain the utility of the petition, at this stage, when General Meetings of the WAPDA Cooperatives Housing Society Ltd Faisalabad was held on 09.01.2022 - and convening of the meeting was one of the fundamental requests made in the petition. Learned counsel explained that meeting conducted was contrary to the directions by this Court in judgment dated 22.05.2017 in W.P. No.1502 of 2016, affirmed by the Hon'ble Supreme Court of Pakistan vide decision dated 20.01.2020 passed in C.Ps. Nos. 2236/17 and 3005/17. It is the grievance of the petitioners that full house meeting was required to be convened for voting on controversial amendments in the Byelaws, relating to the qualification of the members, besides varying the numerical strength of the Management Committee and prescribing special criterion for the members of the Committee.

6. Contentions were controverted by the counsel representing petitioners in W.P. No.9234 of 2022, whose stance is that there was no requirement of full house of members and only the members, eligible to

MLD

vote, were put to notice and voting qua amendments was in Byelaws carried out, wherein majority of the members present had voted in favour of the amendments. It is further stated that petitioners in W.P. No.9234 of 2022 were elected unopposed. Petitioners in W.P No.9234 of 2022 have sought relief in following terms,

"It is most respectfully prayed that the instant Writ Petition may graciously be accepted and act of the Respondents qua non-issuing Unopposed Result Notification as per Rule 17 of the Model Election Rules introduced by the Cooperatives Department regarding the petitioners as Members of Management Committee for their unopposed Election as Members of Managing Committee of the Society may be declared illegal and unlawful by directing the Respondent No.1 to issue Notification of the petitioners being Unopposed Members of Managing Committee of the Society enabling the petitioners to continue the democratic process by running the affairs of the Society."

7. This Court in exercise of constitutional jurisdiction cannot adjudge and determine the validity or otherwise of the acts and omissions of the respondents — breach whereof was alleged in the W.P. No.9234 of 2022 by complaining that respondents are not issuing the Notification of the petitioners, being the unopposed members of the Management Committee — when objections are raised qua the conduct of General Meeting of 09.01.2022, on the premise that meeting was conducted in breach of the orders of this court and august Supreme Court of Pakistan [judgment dated 22.05.2017 in W.P. 1502/2016, which was upheld by the Hon'ble Supreme Court of Pakistan vide decision dated 20.01.2020 in C.Ps. Nos. 2236/17 and 3005/17]. The factum of legality of the meeting must be determined and settled first, before adverting to the grievance of the unopposed elected members of the Management Committee — when while entertaining Review Petition No.63909/2021 this court vide order dated 22.11.2021 recalled the judgment dated 29.09.2021 in W.P. No.52282 of 2021 and suspended the election schedule.

8. Petitioners in W.P. No.9234 of 2022 seek issuance of Notification with respect to elections held before the meeting dated 09.01.2022, wherein proposed amendments were put to vote. It is not for this Court to embark upon an exercise and conduct inquiry qua the validity of the meeting dated 09.01.2022, in the context of the orders dated 22.05.2017 and 20.01.2020, which is determinable by the Registrar Cooperatives Societies, Punjab.

9. Be that as it may, this court is inclined to dispose of petitions

with direction to the Registrar Cooperatives Societies Punjab - impleaded as respondent No.1 in both the petitions - to determine and decide qua the validity of the General Meeting, in the context of the judgment dated 22.05.2017 passed in W.P. 1502/2016 and decision by Hon'ble Supreme Court of Pakistan dated 20.01.2020 passed in C.Ps. Nos. 2236/17 and 3005/17. It is expected that matter would be decided within a period of two weeks from the receipt of certified copy of this order. Office is directed to deliver copy of the order to respondent No. 1 - Registrar cooperatives Societies Punjab, Lahore.

SA/A-4/L

Order accordingly.

2023 M L D 813

[Sindh]

Before Khadim Hussain M. Shaikh, J

ZAHID SAEED KHAN---Appellant

versus

ADNAN and 3 others---Respondents

Criminal, Acquittal Appeal No. S-46 of 2020, decided on 22nd September, 2020.

(a) Penal Code (XLV of 1860)---

---Ss. 457, 380 & 34---Theft in dwelling house, lurking house-trespass or house-breaking by night in order to commit offence punishable with imprisonment, common intention---Appreciation of evidence---Appeal against acquittal---Delay of about twelve days in lodging the FIR---Accused were charged under Ss. 457, 380 & 34, P.P.C.---Record showed that FIR lodged after 12 days with no explanation---Said fact being significant could not be lost sight of, as the possibility of false implication of the accused persons after deliberations and consultations could not be ruled out---More particularly in view of the fact that the complainant and the alleged witnesses were admittedly, not eye-witnesses of the alleged occurrence and per prosecution nobody had seen the actual occurrence and the names of the accused were shown in the FIR on the basis of suspicion---Appeal against acquittal was dismissed, in circumstances. [p. 815] A