

JUDGMENT SHEET
IN THE LAHORE HIGH COURT,
RAWALPINDI BENCH, RAWALPINDI
JUDICIAL DEPARTMENT

Writ Petition No.74 of 2024

Golden Jubilee Cooperation Society V/S *Secretary Cooperative etc.*

JUDGMENT

Date of hearing	29.04.2024
Petitioner(s) by	M/s Ahmed Wasim Chaudhry and Malik Muhammad Jahanzeb, Advocates.
Respondent(s) by	Mr. Abid Aziz Rajori, Assistant Advocate General. Mr. Tahir Jameel Butt, Advocate.

JAWAD HASSAN, J. Golden Jubilee Co-operative Housing Society (the “*Petitioner*”) is aggrieved of order dated 13.11.2023 passed by the Respondent No.1/Secretary to the Government of Punjab, Cooperative Department, Lahore, whereby appeal filed by the “*Petitioner*” under Section 64 of The Cooperative Societies Act, 1925 (the “*Act*”) was dismissed maintaining the order dated 27.04.2023 passed by Respondent No.2/Circle Registrar, Cooperative Society, Rawalpindi.

2. Briefly stated facts of the case are that petition filed under Section 54 of the “*Act*” by the Respondent No.3, qua non-transfer of Plot No.G-18 (the “*subject plot*”), was allowed vide order dated 27.04.2023 by the Respondent No.2 directing the “*Petitioner*” to transfer the “*subject plot*” in his favour. Being dissatisfied from the above said order, the “*Petitioner*” filed appeal before the Respondent No.1 which was dismissed vide impugned order dated 03.11.2023, hence this petition.

3. Learned counsel for the “*Petitioner*” *inter alia* contends that the forums below have failed to consider the crucial aspect of the matter that the Respondent No.3 is a defaulter of the “*Petitioner*” and he failed to comply with its rules, regulations and by-laws; that pursuant to aforesaid, his membership has already been cancelled and matter in this regard is subjudice before the Registrar Cooperative, Lahore and till its final decision, further allotment/transfer cannot be made; that while passing the impugned orders, the forums below have not taken into consideration that the Respondent No.3 violated the terms of agreement dated 10.07.2020; that the “*Petitioner*” is authorized to refuse the transfer of the “*subject plot*” in favour of the Respondent No.3 under Section 17 of the “*Act*”, but the said provision of law has been ignored.

4. Conversely, learned law officer filed report and parawise comments controverting the stance of the “*Petitioner*” by supporting the impugned orders with the submissions that impugned orders have been passed by the lower forums pursuant to proper appreciation of the facts and having jurisdiction to decide the lis.

5. Arguments heard. Record perused.

6. It is the case of the “*Petitioner*” that the Respondent No.3 is a defaulter and he has violated the agreement executed between the “*Petitioner*” and the Respondent No.3. While the stance of the Respondents No.1 and 2 is that mere pendency of cancellation of membership before the competent forum is not a bar for transfer of the “*subject plot*” in favour of the Respondent No.3. As such, the case in hand revolves around the issue as to whether the “*Petitioner*” can refuse transfer of the “*subject plot*” in favour of the Respondent No.3 on the touchstone of Section 17 of the “*Act*” or not?

7. It shall not be out of context to mention here that the term ‘member’ stands defined under Section 3(c) of the “*Act*” as that “*a person joining in the application for registration of a society or a person admitted to membership after registration in accordance with the rules and by-laws applicable to such society*”. Though said

definition does not envisage a "member" to be an absolute or an un-qualified member with full rights and privileges, yet it makes the said membership not only subject to the rules but also subject to bye-laws of the concerned society. Section 7-A of the "Act" prescribes the eligibility for member, while rights and liabilities of the members are defined under Chapter III, Section 17 of the "Act" which reads as under:

"17. No rights of membership to be exercised till due payment are made.---*No person shall exercise the rights of a member of a society unless or until he has made such payment to the society in respect of membership, or acquired such interest in the society as may be prescribed by the rules or the by-laws of such society"*

Above provision of law restricts exercise of rights of a member by a person in connection with the membership or acquired interest in the society as prescribed by the rules or by-laws of such society until or unless he made payment to the society. In the instant petition, it is an admitted position that the Respondent No.3 is the member of the "Petitioner" against whom the matter with regard to cancellation of his membership is pending before the Registrar Cooperative, Lahore as is evident from ground (b) of the petition. Pertinently, Section 17-B of the "Act" deals with expulsion of a member which reads as under:

[17-B. Expulsion of a member....(1) A Society may recommend to the Registrar to expel from its membership a member who is a persistent defaulter of the dues of the society or who commits any act prejudicial to the interests of the Society.

Provided that the managing committee of the society shall after affording the member an opportunity of hearing, place the matter before the general body of the society and approval there shall be communicated to the Registrar.

(2) The Registrar may expel such a member from the society after affording him an opportunity of hearing.

8.. A minute reading of the Section 17-B ibid guides that the Registrar may expel a member from the society who is a persistent

defaulter of the dues or commits any act prejudicial to the interest of the society subject to providing an opportunity of hearing. Whilst interpreting Section 17-B ibid, it has been held in case “FEROZE SHAMSI and 2 others versus PROVINCE OF SINDH, MINISTRY OF COOPERATION, THROUGH SECRETARY COOPERATION and 2 others” (**2008 YLR 2763**) that:

“Keeping in view the wordings of section 17-B, there is nothing about Associate Members etc. as contended by the learned counsel appearing for the societies and notwithstanding the fact that all modes of transfer including sale, inheritance, gift or otherwise have been mentioned in that section but the transferee has been termed as a member only in the first proviso of that section with no order definition. ... Section 17-B of the Act is the only section which is legalizing the transfer from a member to another person without any restrictions and immediately after the transfer, the transferee becomes entitled to the membership of the Society as under the said very section the transferor ceased to be a member after the transfer of his interest in the immovable property, therefore, his share in the Society, which are also an interest of the transferor and are attached to the plot and/or prerequisite for acquiring the plot is naturally to be transferred to the member acquiring the property through transfer from a past members.”

9. The observation that “since a member of Society seized to be a member after transfer of his right/title in respect to plot etc. in a society, therefore, the person acquiring the same interest is entitled to membership of the society and its denial is illegal” has been reiterated in case “Haji Asghar Ali and others Vs. Muhammad Nawaz Nerejo and others” (**2010 YLR 783**).

10. The ground as taken by the “Petitioner” for declaring the Respondent No.3 as defaulter on the basis of agreement dated 10.07.2020 is not correct as this agreement relates to some other plots No.F-56 and F-57, whereas the “subject plot” was admittedly purchased by the Respondent No.3 from Hazrat Jan after payment of full consideration and taking possession thereof and same is not under

any litigation as is evident from the impugned orders. No default against the “*subject plot*” is agitated by the “*Petitioner*” and the fact has not been denied that the Respondent No.3 has purchased the “*subject plot*” from a member of society and has taken over its possession at spot. At this juncture, needless to add that the “*Petitioner*” cannot refuse to transfer the “*subject plot*” in favour of the Respondent No.3 as the provision of Section 17 of the “Act” are not attracted to the case in hand as well as keeping in consideration that Article 23 of the “*Constitution*” guarantees that “*Every citizen shall have the right to acquire, hold and dispose of property in any part of Pakistan, subject to the Constitution and any reasonable restrictions imposed by law in the public interest.*” Further, Article 24 of the “*Constitution*” guaranteed protection of property rights. However, the “*Petitioner*” may pursue cancellation of membership of the Respondent No.3 as alleged, if pending.

11. Both the impugned orders are well-reasoned and well-argued having been passed after taking into consideration every aspect of the case.

12. In view of above, this petition holds no merit hence the same is hereby **dismissed**.

(JAWAD HASSAN)
JUDGE

*Usman**