

2012 C L C 662

[Islamabad]

Before Shaukat Aziz Siddiqui, J

PAKISTAN MEDICAL COOPERATIVE HOUSING SOCIETY

versus

AZRA LATIF and others

Writ Petition No.2354 of 2011, decided on 16th December, 2011.

Cooperative Societies Act (VII of 1925)---

---Ss. 54 & 56---Constitution of Pakistan, Art. 199---Constitutional petition---Dispute pertaining to business of Society---Petitioner-Society assailed orders of Registrar's nominee and Appellate Authority whereby respondent's petition against cancellation of the respondent's membership of the Society and allotment of plot by the Society, was accepted and appeal and revision filed by Society against said order were dismissed by the Appellate Authority---Contention of the Society was that the respondent's membership and provisional allotment of plot were cancelled since she failed to clear dues and same was done with the approval obtained in the Annual General Meeting of the Society---Validity---Held, there was a clash and an issue of ego between the management committee of the Society and the husband/ counsel of the respondent which led the Society to act with ulterior motives---Such observation could be substantiated from part of the letter, on record, written by the Society to the respondent with the return of her cheque, that proved the venom the management committee of the Society had against the respondent and which prompted the Society to cancel the respondent's membership---Dispute between the parties did not merely relate to the payment of instalments for the plot---Order of Registrar's nominee revealed that the respondent had paid an amount to the Society and valuable right created in favour of respondent had been taken away on feeble grounds---Authorities passed the impugned orders with lawful authority by adopting proper procedure and after affording fair opportunity of hearing to both sides that did not call for interference of High Court in its constitutional jurisdiction---Society, throughout, demonstrated a cryptic approach, dubious conduct and an enigmatic stance instead of showing

grace and respect to the respondent ---Management of any cooperative society was considered as custodian of the rights of its members---Society took the ultimate step without affording an opportunity of hearing to the respondent, which was an act against the golden principle of *audi alteram partem*---High Court observed, with concern, that most societies established for the betterment and welfare of their members, were found napping in doing so and members of management committees of such societies were involved in activities synonymous to those of property dealers and real-estate agents---High Court could not harbour persons ,who for their own benefit, endangered the interests and rights of others, and took undue advantage and demonstrated polluted mannerisms for the advancement of personal vendetta---Constitutional petition was dismissed with the direction to the Society to implement the impugned orders of the Authorities concerned.

Sardar Arshad Mehmood Khan for Petitioner.

ORDER

SHAUKAT AZIZ SIDDIQUI, J.--- Pakistan Medical Co-operative Housing Society, registered under the Co-operative Societies Act, 1925 (hereinafter called as society) invoked the constitutional jurisdiction of this court by way of challenging order dated 10-9-2009 passed by the Registrar's nominee on petition filed by respondent No.1 under section 54 of the Act, *ibid*, order dated 5-1-2011 passed by the Deputy Registrar Co-operative Societies I.C.T, on appeal preferred by the society and order dated 18-5-2011 of Chief Commissioner by exercising powers of Secretary Co-operative Societies on appeal/revision filed by the society.

2. The learned counsel for petitioner society submits that respondent No.1 being professional doctor, obtained membership of the society, who was placed at Serial No.358. He further submits that provisional allotment was made, but since she failed to clear the outstanding amount due against her, therefore, the society with the approval of AGM (Annual General Meeting) cancelled her membership and plot. The learned counsel also contends that impugned orders are illegal, lacking application of judicial mind which have resulted into grave miscarriage of justice, therefore, same may be set aside.

3. Since, body of the writ petition was not containing any reference with regard to plot allotted to respondent No.1, therefore, court asked from the learned counsel, as to which of the plots was allotted to her? The learned counsel informed that no plot was allotted as management of the society was waiting for clearance of outstanding dues by her. He further added that society gave membership to more than 400 persons, but only 300 have been accommodated, which further, complexed the scenario.

4. Operative parts of all three impugned orders are reproduced hereinbelow:---

(i) Registrar's nominee order dated:10-9-2009:---

"After hearing the parties and scrutiny of the record, have come to the conclusion that payment of some instalments by the petitioner was delayed but legally it was incumbent upon the management of the Society to send a notice of cancellation of the plot of the petitioner prior to its cancellation and thereafter should have afforded an opportunity of hearing to the petitioner. It is appropriate that the managing committee of the Society is directed to hear the petitioner or her attorney and reconsidered her case within a period of one week after the receipt of this order, and in case the Society declines to do so cancellation of the said plot shall stand revoked subject to the condition that the petitioner shall deposit all the legitimate dues outstanding against her in respect of the plot in question within a period of one month after which she shall be entitled to get revocation of her plot with possession."

(ii) Deputy Registrar, Co-operative Societies, order dated 5-1-2011 passed in appeal:--

"After hearing both the parties and perusal of record, it has revealed that the Pakistan Medical Cooperative Society did not serve any notice to Mst. Azra Arif, member of the Society therefore, the claim of Society that plot of Mst. Azra Arif was cancelled after adopting proper procedure has not been proved. Therefore, the appeal of the Society is dismissed and the decision of the Registrar Nominee in the matter is upheld with the direction to the Society to restore the plot of Mst. Azra Arif subject to the condition that Mst. Azra Arif shall deposit all legitimate dues to Society outstanding against her plot in dispute within period of one month. If there is no plot available, then the Society shall make payment of plot to Mst. Azra Arif at current market price of the plot."

Order of Chief Commissioner/Secretary Co-operative Societies, dated 18-5-2011 passed in revision:--

"I have heard the arguments advanced by the counsel of both the parties, perused the record of the lower Courts, I am of the opinion that there is no cogent reason to interfere into the decision of Additional Deputy Commissioner (Revenue)/Deputy Registrar, Cooperative Societies, Islamabad dated 5-1-2011. Hence, the appeal/revision is disposed of as rejected."

5. Impugned order dated 10-9-2009 passed by nominee of the Registrar, also contains contention of respondent No.1, that her attorney namely Squadron Leader (Retd.) Muhammad Arif, who is also her husband was manhandled by management committee and doctor Innayat, virtually slapped on his face and forcibly thrown him out from hotel, where AGM summoned by the Society was going to be held, in the year 2005.

6. It appears that there is a clash and an issue of ego between management committee of the Society and husband of respondent No.1 which lead the former to act with mala fide intention, ulterior motives and to achieve nefarious designs of defeating the rights of respondent No.1. The petitioner has placed on file, copy of cheque No.AB-4991297, dated 2-7-2007 amounting to Rs.6,99,133/- which was sent to respondent No.1, vide Letter Reference No.PMCHS/MS/158/07, dated 2-7-2007. This Court's observation is being substantiated from a part of this letter which is reproduced hereinbelow:---

"As per By-Laws and decision of Executive Committee, all the money deposited with the Society including your share money Rs.150/-, is being refunded to you vide Cheque No.ABL4991297, dated 2-7-2007, amounting Rs.6,99,133/- (Six Lac Ninety Nine Thousand One Hundred Thirty Three Rupees Only) because of your default in payment of outstanding dues and the unsoundbehaviour of your husband (Your Attorney) and therefore your membership stand cancelled. The Cheque No.ABL-4991297, dated 2-7-2007, amounting Rs.6,99,133/- (Six Lac Ninety Nine thousand One Hundred thirty three Rupees Only) is enclosed hereby."

Plain reading of above, clearly suggests that the remarks "**unsound behaviour of your husband**" (emphasis supplied) prove venom that management committee was full of and which prompted the Society to cancel the membership of respondent No.1 and it was not merely a dispute of the payment of instalments. Order dated 10-9-2009 also reveals this fact that respondent No.1 had paid an amount of Rs.700,253/- to the Society and return of amount mentioned hereinbefore correspond the same. By no stretch of imagination it can be termed as a meagre amount, but it appears that the Society estimated it as negligible, while passing adverse order against respondent No.1. A valuable right was created in favour of respondent No.1 which has been taken away on feeble grounds, and one can appreciate cause of the neigh of respondent No. 1.

7.

Careful perusal of impugned orders leads to one conclusion that authorities passed the same with lawful authority, by adopting proper procedure and after affording fair opportunity of hearing to both sides, which does not call for any interference in the exercise of constitutional jurisdiction and that too, on disputed questions. Perusal of record also shows that respondent No.1 was allotted Plot No.34, Sector E-11, Islamabad but, court failed to understand as to why in the petition its reference had not been provided? And why the learned counsel for the society showed ignorance about the same? This further leads to conclusion

that petitioner-Society throughout demonstrated cryptic approach, dubious conduct and enigmatic stance, instead of showing grace and respect to a lady colleague in the profession.

8. Management of any co-operative society is considered custodian of the rights of its members. Petitioner-Society took ultimate step, without affording an opportunity of hearing, which is an act against the golden principle of law i.e. "**Audi Alteram Partem**". It is observed with concern, that most of the societies, established for betterment and welfare of its members are found napping in doing so. Members of the management committees are involved in activities synonymous to property dealers and real estate agents. With the exception of few, most of co-operative societies keep their members in an arena of uncertainty for decades and persons on the helm of affairs keep on enjoying out of contributions made by the members, through their hard-earned money and life time savings. The High Court cannot harbor those person(s) who for their own benefit, endanger the interest and rights of others. For the advancement of personal vendetta they take undue advantage and demonstrate polluted mannerism. Acts of the management committee of the Society, (petitioner) formed for the betterment of the professional doctors, is not syntonetic.

In these circumstances, instant writ petition is dismissed in limine and petitioner is directed to implement orders passed by the authorities concerned.

K.M.Z./21/IsI.

Petition dismissed.