

**JUDGMENT SHEET**  
**IN THE ISLAMABAD HIGH COURT, ISLAMABAD**  
**JUDICIAL DEPARTMENT**

W.P.No.4199/2017

S.M. Tariq Khawaja

**Versus**

Registrar Cooperative Societies, Islamabad Capital Territory  
and others

<b>Date of Hearing:</b>	17.12.2018
<b>Date of Decision:</b>	17.12.2018
<b>Petitioner by:</b>	Mr. Ghulam Fareed Chaudhary, Advocate
<b>Respondents by:</b>	Mr. Naseem Ahmad Shah, Advocate for respondents No.1 and 2 Mr. Babar Saeed Butt, Advocate for respondents No.3 and 4.

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**MIANGUL HASSAN AURANGZEB, J:-** Through the instant writ petition, the petitioner, S.M. Tariq Khawaja, prays for a direction to the respondents to handover possession of plots No.933, 934 and 936 in Sector E-11, Islamabad to the petitioner by taking steps in furtherance of the execution certificate dated 31.07.2017.

2. The facts leading to the filing of the instant petition are that in the year 2003, the petitioner purchased six plots (i.e., Plots No.931 to 936 in Sector E-11, Islamabad) from their allottees. With the purchase of these plots, the petitioner became a Member of National Police Foundation Cooperative Housing Society (respondent No.3), which is registered under the provisions of the Cooperative Societies Act, 1925 (“the 1925 Act”).

3. In the year 2007, the petitioner was handed over possession of three plots (i.e., Plots No.931, 932 and 935). Since possession of the remaining three plots was not handed over to the petitioner despite the lapse of several years, on 07.02.2014, the petitioner filed a petition under Section 54 of the 1925 Act before the Registrar, Cooperative Societies, Islamabad, so that possession of the remaining three plots could be handed over to him. Vide order dated 21.05.2014, the Registrar, Cooperative Societies’ nominee, allowed the petitioner’s abovementioned petition and directed respondent No.3 to hand over physical

possession of Plots No.933, 934 and 936 in Sector E-11, Islamabad, to him. In the said order, it was clearly mentioned that respondent No.3 was a registered Cooperative Society under the 1925 Act.

4. Aggrieved by the said order dated 21.05.2014, respondent No.3 preferred an appeal before the Deputy Registrar, Cooperative Societies, Islamabad. Vide order dated 07.11.2014, the said appeal was dismissed as time barred. Furthermore, in the said appellate order, it was clearly mentioned that the petitioner's claim for handing over physical possession of Plots No.933, 934 and 936 is lawful and genuine.

5. Prior to the passing of the said appellate order, the Circle Registrar, Cooperative Societies Department, Islamabad, (respondent No.2) directed respondent No.3 to implement the order dated 21.05.2014 passed by the nominee of the Registrar, Cooperative Societies Department (i.e. Assistant Commissioner (Saddar)/Sub-Divisional Magistrate, Islamabad). Again vide letter dated 18.07.2014, respondent No.2 called upon respondent No.3 to show compliance with the said order dated 21.05.2014.

6. On 04.12.2014, respondent No.3 filed a suit for declaration, permanent and mandatory injunction against *inter-alia* the petitioner and was able to obtain an ad-interim injunctive relief. By reason of the said ad-injunctive order, passed by the learned Civil Court, respondent No.3 was able to avoid compliance with the said order dated 21.05.2014 for a period of more than two and a half years. Vide order dated 13.06.2017, the learned Civil Court not just vacated the ad-interim injunctive order but also rejected the plaint in the said suit by invoking the provisions under Order VII, Rule 11 C.P.C.

7. Apparently, vide order dated 15.09.2015 passed by this Court in writ petition No.2852/2015 titled "*S.M. Tariq Khawaja Vs. Chairman, National Police Foundation, etc.*", this Court directed respondent No.3 to implement the said order dated 21.05.2014 as early as possible. Vide letter dated 21.09.2015, respondent No.3 was called upon to implement the said order dated 21.05.2015 in compliance with the orders passed by this Court.

8. On 31.07.2017, an execution certificate was issued by the Deputy Registrar, Cooperative Societies Department, I.C.T. under Section 59(1)(a) of the 1925 Act certifying that the order dated 21.05.2014 in the petitioner's favour directing respondent No.3 to hand over possession of Plots No.933, 934 and 936 to him, had not been satisfied. Furthermore, it was ordered that the said order be executed through the competent Court at Islamabad.

9. Thereafter, the petitioner filed a petition under Order XXI, Rule 1 C.P.C. for the execution of the said certificate dated 31.07.2017 before the Registrar Cooperative Societies, I.C.T. On the said application, the Registrar, Cooperative Societies, on 28.11.2017, endorsed *"Why the execution is pending since July, 2017? Pls summon the MC and ensure that the law is adhered to. Need compliance within three days"*. Ever since then the Executing Court (i.e., the Circle Registrar, Cooperative Societies, ICT) has been procrastinated and delaying the matter on one or the other pretext. Since no effective steps were taken to execute the order dated 21.05.2014, the petitioner was constrained to file the instant writ petition praying for *inter-alia* a direction to respondent No.2 to execute the said order dated 21.05.2014 and the execution certificate dated 31.07.2017 by handing over possession of Plots No.933, 934 and 936 to him.

10. Learned counsel for the petitioner, after narrating the facts leading to the filing of the instant petition, submitted that the petitioner had purchased six plots from allottees in the National Police Foundation Cooperative Housing Society (respondent No.3); that possession of three plots was delivered to the petitioner whereas possession of the three remaining plots was not handed over to him; that the petitioner initiated proceedings under Section 54 of the 1925 Act against respondent No.3; that the said proceedings culminated in the order dated 21.05.2014 whereby respondent No.3 was directed to handover physical possession of the said three plots to the petitioner; that respondent No.3's appeal against the said order was dismissed, vide order dated 07.11.2014, passed by the Deputy Registrar

Cooperative Societies, I.C.T.; that since possession of the said three plots was not given to the petitioner, he filed an execution petition; that vide order dated 17.03.2015, respondent No.3 was directed by the Assistant Commissioner (Saddar)/Sub-Divisional Magistrate (Registrar's nominee, I.C.T.) to handover possession of the said plots to the petitioner within seven days; that vide letter dated 21.03.2016, respondent No.3 informed the petitioner that the learned Civil Court had granted a status quo order against the said order dated 21.05.2014; that after the said status quo order was vacated, an execution certificate was issued in the petitioner's favour; that thereafter, the petitioner filed an execution petition before the Registrar, Cooperative Societies, I.C.T., who has noted as to why the execution is pending since July, 2017, and ordered that compliance should be shown with the orders in the petitioner's favour within three days; that ever since then the Circle Registrar Cooperative Societies, I.C.T. (respondent No.2) has been procrastinating on one pretext or the other and is not showing compliance with the lawful orders in the petitioner's favour.

11. On the other hand, learned counsel for respondents No.1 and 2 submitted that the said respondents shall comply with the directions of this Court. He further submitted that he had rendered a legal opinion on 02.10.2017 in which he had opined that the order dated 21.05.2014 passed by the Registrar's nominee could be executed by the Registrar Cooperative Societies Department, I.C.T. under Section 59 of the 1925 Act.

12. Learned counsel for respondents No.3 and 4 submitted that although National Police Foundation was registered under the 1925 Act but the same was only for its projects at Rawat (Rawalpindi), Lahore, Gujranwala and Sargodha; that the National Police Foundation, being respondent No.3 in the instant petition, has been established under the Endowments Act, 1890; that the petitioner had inadvertently submitted an application under Section 54 of the 1925 Act before the Registrar Cooperative Societies, I.C.T.; that the petitioner's plots are located in Sector E-11 which is managed by the National Police

Foundation, not registered under the 1925 Act but established under the Endowments Act, 1890; that the proceedings before the Registrar Cooperative Societies, I.C.T., were without jurisdiction; and that respondent No.2 committed no illegality by refusing to execute the order dated 21.05.2014. Learned counsel for respondents No.3 and 4 prayed for the writ petition to be dismissed.

13. I have heard the contentions of the learned counsel for the contesting parties and perused the record with their able assistance.

14. The facts leading to the filing of the instant petition have been set out in sufficient detail in paragraphs 2 to 9 and need not be recapitulated.

15. Vide notification dated 17.02.2014, the Assistant Commissioner (Saddar, I.C.T.) was appointed as the Registrar's nominee with the mandate to decide the petitioner's application under Section 54 of the 1925 Act. The said notification was issued in exercise of the powers conferred by Section 54 of the 1925 Act read with Rule 33 of the Cooperative Societies Rules, 1927.

16. The petitioner had filed an application under Section 54 of the 1925 Act on 07.02.2014. It has now been almost five years that the petitioner has been striving for his right to gain possession of the plots owned by him. Respondent No.3 instead of facilitating the petitioner in gaining possession of his owned plots is creating hurdles in his way. The petitioner's endeavors were crowned with success when the Registrar's nominee, on 21.05.2014, allowed the petitioner's application under Section 54 of the 1925 Act and directed respondent No.3 to handover possession of his plots No.933, 934 and 936 in Sector E-11, Islamabad. Respondent No.3's appeal against the said order was dismissed, vide order dated 07.11.2014. With the dismissal of respondent No.3's appeal, the original order dated 21.05.2014 attained finality for all intents and purposes.

17. Respondent No.3's argument that the housing scheme at Sector E-11, Islamabad had not been established/registered

under the 1925 Act but under the Endowments Act, 1890, was spurned by the learned appellate forum, whose order dated 07.11.2014 was upheld by this Court. By resisting the execution of the abovementioned orders dated 21.05.2014 and 07.11.2014 on the same very ground which had earlier been spurned, bespeaks of a sorry state of affairs. It is well settled that an executing forum/Court cannot go behind the decree/order which is to be executed.

18. It may also be mentioned that this Court vide order dated 15.09.2015 passed in writ petition No.2852/2015 gave a direction to decide the petitioner's petition for the execution of the order dated 21.05.2014 to be decided as early as possible. Respondent No.3, by not deciding the petitioner's execution petition in compliance with the abovementioned directions of this Court, has clearly flouted this Court's order.

19. There is nothing on the record to show that in the proceedings under Section 54 of the 1925 Act before the Registrar's nominee did respondent No.3 take a position that proceedings under the provisions of the 1925 Act could not have been instituted against respondent No.3 or that such proceedings instituted by the petitioner were without jurisdiction. Having been unsuccessful in the said proceedings, respondent No.3 now wants to deprive the petitioner of his right of possession of the plots owned by him by taking belated jurisdictional objections which already stand spurned in the appellate order dated 07.11.2014.

20. The conduct of respondents No.1 and 2 during the pendency of this petition has also been deplorable. On 27.02.2018, respondent No.2 tendered appearance before this Court and took a position that he is under no obligation to execute the order dated 17.03.2015 since the matter did not fall within his jurisdiction. Vide order dated 17.03.2015, the Assistant Commissioner (Saddar), in her capacity as the Registrar's nominee, had issued directions for the issuance of possession letters of plots No.933, 934 and 936 to the petitioner. Respondent No.2's stance before this Court, is indicative of his scant regard

for not just the original order dated 21.05.2014, appellate order dated 07.11.2014, this Court's order dated 15.09.2015, and the execution certificate dated 31.07.2017.

21. For the reasons mentioned above, the instant petition is allowed with costs throughout. For respondent No.2's conduct for not deciding the execution petition in accordance with the directions of this Court contained in the order dated 15.09.2015, passed in writ petition No.2852/2015, and the original order dated 21.05.2014 and appellate order dated 07.11.2014, costs to the tune of Rs.50,000/- are being imposed on respondent No.2. As regards respondent No.3, for depriving the petitioner from the possession of his own three plots for several years, costs to the tune of Rs.2,00,000/- are being imposed on respondent No.3. Costs on respondents No.2 and 3 have been imposed under Section 35 (1) (iii) of the Civil Procedure Code, 1908, as amended by Costs of Litigation Act, 2017. Respondent No.2 is directed to execute the original order dated 21.05.2014 within a period of one month and submit a report in this regard through the Registrar of this Court for perusal in Chambers.

**(MIANGUL HASSAN AURANGZEB)**  
**JUDGE**

*Qamar Khan\**

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