

ISLAMABAD HIGH COURT, ISLAMABAD,
JUDICIAL DEPARTMENT.

**Malik Zafar Iqbal Vs. Election Commission, Federation of
Employees Co-operative Housing
Societies etc.**

Respondents No.1 & 2 by: Mr.Naseem Ahmed Shah, Advocate.

MOHSIN AKHTAR KAYANI, J:- Through the instant writ petition, the petitioner has assailed the order dated 23.01.2020, passed by Assistant Commissioner, Election Commission, Federation of ECHS, Islamabad/respondent No.1, whereby his nomination papers of the petitioner for the post of General Secretary of Employees Cooperative Housing Society, Islamabad, have been rejected. The order dated 07.02.2020, passed by Deputy Registrar, Cooperative Societies, ICT, Islamabad/respondent No.2, whereby his appeal against the rejection of his nomination has been dismissed.

2. Learned counsel for the petitioner contends that the petitioner is aggrieved with rejection of his nomination papers for the post of General Secretary of Federation of Employees Cooperative Housing Society, Islamabad by the election commission/respondent No.1 mainly on the ground that his membership ceased to exist as the petitioner sold out and transferred his property at the time of filing of nomination papers; that rejection of nomination papers of the petitioner is contrary to record as he transferred his house in sector E-11 on 09.08.2019 on the basis of his membership No.15/90-E-11 and he purchased plot in sector O-9 of the society as such he holds share in the society as membership remained in field but this aspect was not appreciated by election commission as well as by the appellate authority; that the petitioner remained General Secretary of the society in the previous tenure and the respondents authorities have not appreciated the legal question that by transfer of the property, the membership

does not cease to exist rather the same holds the field as membership fee has not yet been refunded; that election commission as well as appellate authority have rejected the nomination papers on the basis of hyper-technical ground although it is to the extent of change of property only and no bar comes into play where petitioner's right to participate in the election can be curtailed.

3. Conversely, learned counsel for respondents No.1 & 2 contends that model bye-laws have provided concept of membership, which ceases to exist if plot or building in the name of the member has been transferred or sold; that as per constitution and bye laws of the society, the petitioner has purchased second plot in the society and as such his new membership comes into play, which can be considered after expiry of one year time subject to approval from annual general meeting, where-after the petitioner can participate in the election process; that both the forums below have appreciated the factual aspect in proper manner and no illegality has surfaced from the record, which needs rectification as the petitioner did not qualify to become General Secretary under the bye laws of the society.

4. I have heard the arguments and perused the record.

5. Perusal of the record reveals that the petitioner is mainly aggrieved with rejection of his nomination papers against the post of General Secretary in upcoming election of executive committee of the society/respondent No.3, however, his nomination papers have been rejected by respondent No.1 vide order dated 23.01.2020 on the objection of respondent No.4 in the following manner:-

S. No.	Name of contesting candidate who submitted objection against their opponent candidates	Designation	To whom objected	Detail of objections	Remark/Decision of Election Commission
8.	Liaqat Ali / MS#134/90/E-11	Secretary	Zafar Iqbal / MS# 155/89/LB, a candidate for the post of Secretary	i) He has sold his house in E-11 on 09-08-2019 hence his membership No.15/90-E-11 has been ceased. ii) He purchased a plot in O-9 and Society has issued allotment	Objection accepted and nomination papers of Mr. Zafar Iqbal are rejected.

				<p>letter on 19.08.2019.</p> <p>iii) Since he was no more member of the Society, therefore he has paid membership fee again.</p> <p>iv) His membership has not been approved from the AGM as of today which is mandatory to become a regular members of the Society.</p>	
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6. The above mentioned rejection has been assailed in appeal in terms of The Islamabad Capital Territory Cooperative Societies (Managing Committees Election) Rules, 2014 before Deputy Registrar, Cooperative Societies, ICT, Islamabad, which has also been dismissed vide impugned order dated 07.02.2020 in the following manner:-

“4. Arguments heard, record perused. As per record, it reveals that the appellant bearing membership No.15/90-E-11 has sold his house in E-11 on 09-08-2019. The same membership number was allotted to the new buyer, who purchased the above said house. The appellant purchased another plot in Sector O-9 of the Society vide membership No. 155-89-LB on 19-08-2019. As per Byelaw No.8(1) of the Society, the Member shall be admitted after selection by the Managing Committee subject to confirmation at a General Meeting. Confirmation of new member must be put up in the next General Meeting. In case failure to put up, the membership will stand automatically confirmed after one year. Record also reveals that after purchase of new plot no AGM was convened by the Society nor one year has been completed. Therefore, the membership of the appellant has not been admitted till today. The admission of membership is mandatory to contest the election of the Society but the nomination papers of the appellant lacks this mandatory provision of law. This court is on the considered view that membership of the appellant has not been admitted by the AGM nor the requirement of one year has been completed after obtaining the membership, therefore, the appellant is not eligible to contest the election of the Society and the appeal of the appellant is hereby dismissed. The order of Election Commission is upheld.”

7. The above referred order in detail has been confronted to learned counsel for the petitioner, who conceded that the petitioner sold out his house in sector E-11 under membership No.15/90-E-11 on 09.08.2019 and at the same time he purchased another plot in sector O-9 of the society on 19.08.2019 and as such the petitioner has only

changed the property and his membership remained intact, whereas the record reflects otherwise i.e. when the petitioner purchased new plot in sector O-9, he has been given new membership No.155-89-LB and in terms of Rule 8(1) of Bye-laws of the society, the membership shall be admitted after one year subject to confirmation by the committee in Annual General Meeting and as such the minimum requirement of time frame has not been completed in favour of the petitioner.

8. I have also gone through clause 9 of the Model Bye-Laws of The Cooperative Housing Society Limited, which deals with expulsion/termination of the membership on the following grounds:-

- (1) On death.*
- (2) Ceasing to hold at least one full share.*
- (3) Withdrawal after six months notice to the Secretary provided that the member in question is not indebted to the society and is not surety for an unpaid debt.*
- (4) Gravely misusing any dwelling occupied by him in the colony or habitually acting in a disgraceful manner or in a manner which causes serious offence to his neighbours or unnecessarily involving the society in the litigation or making negative propaganda against the society.*
- (5) Being found of permanent unsound mind.*
- (6) Becoming persistent defaulter or intentionally doing, any act detrimental to the interest of the society or willfully disobeying any by-law or decision of the society (of Managing Committee or General Meeting) or of any properly appointed officer of the society or doing any business activity in the society premises without permission of the society.*
- (7) Ceasing to hold the plot or a building or any part thereof in the colony of the society.*
- (8) In case of failure to pay in time, the installments for the cost of land, development charges or other dues, due from him to the society, the Managing Committee will have the authority to terminate the membership of such members after serving a notice in this respect. However, approval of General Meeting will be required which can decide such issues by simple majority.*
- (9) Conviction for a criminal offence involving dishonestly or moral turpitude resulting in imprisonment for six months or more.*
- (10) Insolvency or application for insolvency.*
- (11) Any such act which the committee or society declare as dishonestly.*
- (12) On expulsion by the Registrar, under the Rules.*

9. The petitioner sold out his house on the basis of previous membership on 09.08.2019 and after 10 days, he purchased another plot and he was given new membership No.155-89-LB, which clearly spells out that previous membership ceased to exist as interest in the society has been transferred. I have confronted learned counsel for the petitioner to justify that by change of the property in the society the previous membership holds the field but he failed to satisfy this Court on this question as such procedure laid down in the bye-laws justifies the concept that when property of the society is transferred, the share in the society ceases to exist and such person cannot claim membership right. Wisdom has been drawn from 2010 YLR 783 [Karachi] (Haji Asghar Ali and others vs. Muhammad Nawaz Nerejo and others). All aspects of the case have rightly been appreciated by the forums below.

10. In view of above discussion, the instant writ petition bears no merits, therefore, the same is hereby dismissed.

(MOHSIN AKHTAR KAYANI)
JUDGE