

IN THE FEDERAL CONSTITUTIONAL COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

Justice Syed Hasan Azhar Rizvi
Justice Muhammad Karim Khan Agha

F.C.P.L.A. No.73-K of 2026

(Against the order dated 17.03.2026 of the High Court of Sindh, Karachi in Constitution Petition No. D-6281 of 2025)

Sindh Secretariat Cooperative Housing Society Ltd. & others
... Petitioners

Versus

Province of Sindh & others
... Respondents

For the Petitioners: Mr. Mohammad Vawda, ASC

For Respondent No.3: Mr. Zahoor Ahmed Chadhar, AHC
(with special permission)

Respondents No.1, 2 & 4-7: N.R.

Assisted by: M. Younus Shaikh, Law Clerk

Date of Hearing: 16.06.2026

ORDER

Syed Hasan Azhar Rizvi, J.- The petitioner / society seeks leave to appeal against the judgment dated 17.03.2026 passed by the learned Division Bench of the High Court of Sindh, Karachi, in constitution petition No. D-6281 of 2025 (“**the Impugned Judgment**”), whereby the elections of the petitioner / society, held on 14.12.2025, along with all consequential notifications and actions taken pursuant thereto, were set aside and directions were issued for holding fresh elections under the supervision of an Election Officer appointed by the Registrar, Cooperative Societies, Sindh.

2. Briefly stated, the facts giving rise to the present proceedings are that the petitioner had earlier instituted Constitution Petition No. D-3478 of 2025 assailing notification dated 15.07.2025 (“**Supersession Notification**”), whereby the affairs of the Sindh Secretariat Cooperative Housing Society Limited were placed under supersession. The aforesaid petition was disposed of *vide* order dated 24.07.2025 while directing the respondents to conduct elections of the petitioner

within a period of three (03) months. Pursuant thereto, the process for holding elections was initiated by the respondents.

3. In the meanwhile, certain other members of the petitioner-society instituted Civil Suit No. 5742 of 2025 before the Special Court for Cooperative Societies, Karachi, challenging the validity of the Supersession Notification. During the pendency of the said suit, an interim order dated 11.11.2025 was passed whereby the operation of the Supersession Notification was suspended, and the concerned authorities were directed to conduct elections within a period of three (03) months under the supervision of an Election Officer appointed by the Registrar, Cooperative Housing Societies. The said interim order was subsequently suspended by the High Court of Sindh *vide* order dated 12.12.2025 passed in Miscellaneous Appeal No. 181 of 2025.

4. Upon suspension of the aforesaid interim order, the election process was resumed and brought to completion in strict compliance with the directions earlier issued by the High Court. It is asserted by the petitioners that all requisite statutory and procedural formalities were duly observed. Consequently, elections were held on 14.12.2025, the successful candidates were notified on 16.12.2025, and the newly elected Managing Committee assumed charge of the affairs of the Society. Thereafter, Constitution Petition No. D-6281 of 2025 was instituted before the High Court seeking, inter alia, a declaration that the elections held on 14.12.2025 and all consequential notifications were unlawful and liable to be set aside. The said petition culminated in the Impugned Judgment whereby the entire election process was invalidated and directions were issued for holding fresh elections.

5. It is quite pertinent to note that the aforesaid constitution petition was instituted on 29.12.2025, and subsequently, in January 2026, suit No. 123 of 2026 was also instituted before the Special Court for Cooperative Societies, Karachi. A comparative scrutiny of both proceedings reveals that, save and except for the identity of certain petitioners, the pleadings in both matters are substantially identical. The factual foundation, prayers sought, array of respondents, and even the *vakalatnama* of learned counsel are verbatim the same, demonstrating complete overlap between the two proceedings.

6. The learned counsel for the petitioners contends that the Impugned Judgment suffers from serious legal infirmities and jurisdictional defects. It is submitted that the aforesaid constitution petition was not maintainable in view of the existence of an alternate statutory remedy available under the Sindh Cooperative Societies Act, 2020 (“**the Act**”). According to learned counsel, the simultaneous pursuit of parallel proceedings before two different fora constitutes classic forum shopping and amounts to an abuse of the process of law.

7. On merits, learned counsel further submits that the High Court failed to properly appreciate the material available on record and it is contended that the elections were conducted strictly in accordance with the judicial directions issued by the High Court, as well as in compliance with all applicable statutory and procedural requirements governing the elections of the Society.

8. Mr. Zahoor Ahmed Chadhar, Advocate High Court, appeared on behalf of respondent No. 3 through Miscellaneous Application No. 2683 of 2026 and was permitted to represent the said respondent, having also represented him before the High Court in Constitution Petition No. D-6281 of 2025.

9. Learned counsel for respondent No. 3, while supporting the Impugned Judgment, contends that the election process was fundamentally flawed and lacked transparency. It is submitted that no valid voters’ list was prepared, no lawful election process was undertaken, and the entire exercise was conducted without access to or verification of the original record, which at the relevant time remained in the custody of the Nazir appointed by the Cooperative Court. The learned counsel further submits that the High Court rightly exercised its constitutional jurisdiction to prevent the perpetuation of an unlawful electoral process and correctly set aside the resulting notifications. When confronted as to maintainability and the pendency of Suit No. 123 of 2026, learned counsel submitted that he had neither instituted nor authorized the filing of the said suit, and alleged misuse of his *vakalatnama*. He, therefore, denied the allegation of forum shopping. However, no substantive response was offered to the contention that an alternate statutory remedy existed and that the

constitutional petition ought not to have been entertained in the presence of such remedy.

10. We have heard learned counsel for the parties at some length and have also gone through the record with their able assistance. The following points arise for determination:

- a) *What was the proper statutory remedy available for challenging the elections of the Society held on 14.12.2025, and whether the constitution petition was maintainable without availing such remedy;*
- b) *Whether the controversy raised before the High Court involved disputed questions of facts relating to conduct and process of elections, which could properly be decided in constitutional jurisdiction; and*
- c) *Whether the Impugned Judgment suffers from jurisdictional error, misreading or non-reading of record.*

Findings on Point (a)

11. In order to answer this question, it is necessary, at the outset, to examine the statutory framework governing cooperative societies in the Province of Sindh. The Sindh Cooperative Societies Act, 2020 is a special statute enacted to regulate the registration, management, supervision, control and dispute resolution mechanism of cooperative societies. The Act does not merely create rights and obligations in relation to cooperative societies; it also creates a special adjudicatory structure for resolution of disputes arising out of the constitution, management, business, working and affairs of such societies. Therefore, where the controversy falls within the field occupied by the Act and the Rules framed thereunder, the forum created by the statute has to be approached in the first instance.

12. Section 73 of the Act is the controlling provision for resolution of disputes. For ease of convenience the same is reproduced herein;

“73. All disputes (other than a dispute regarding disciplinary action taken by the society or its committee against a paid servant of the society and liquidation disputes) shall be tried by the Cooperative Court established under section 116.”

The language of section 73 is mandatory. The expression “shall be tried” indicates that disputes falling within the statutory field are to be tried by the Cooperative Court and not by any other forum as a matter of first instance, subject only to the exclusions expressly mentioned therein.

13. The said provision, however, is not to be read in isolation. It has to be read with sections 116 and 117 of the Act. Section 116 provides for constitution of the Special Court/Cooperative Court for adjudication of matters under the Act. Whereas, Section 117 then vests jurisdiction in the Special Court/Cooperative Court in respect of matters arising under the Act and the rules framed thereunder. Thus, section 73 identifies the nature of disputes, section 116 creates the forum, and section 117 vests jurisdiction in that forum.

14. Rule 53 of the Sindh Cooperative Societies Rules, 2020 (“**the Rules**”) further explains the nature and categories of disputes triable under the statutory framework. The relevant part of Rule 53 reads as follows:

“53. Disputes:— (1) If any dispute touching the business of a society other than a dispute regarding disciplinary action taken by the society or its committee against a paid servant of the society arises—

- (a) between members or past members of the society or persons claiming through a member or past member; or*
- (b) between members or past members or persons so claiming and any past or present officer, agent or servant of the society; or*
- (c) between the society or its committee and past or present member of the society; or*
- (d) between the society or its committee and any past or present officer, agent or servant of the society, or a surety of such officer, agent or servant, whether such surety is or is not a member of the society;*
- (e) between a society authorized under sub-section (1) of section 45 and a person who is not a member of a society.”*

The above rule uses the expression “dispute touching the business of a society”. The expression is of wide import. It includes disputes relating to membership rights, internal governance, functioning of the committee, affairs of the society, rights and obligations of members,

and matters arising from the statutory management structure of a cooperative society.

15. The legal position emerging from sections 73, 116 and 117 of the Act read with Rule 53 of the Rules is that the Act creates a complete jurisdictional route. Section 73 delineates the class of disputes cognizable under the Act; section 116 provides for constitution/designation of the Special Court; section 117 vests jurisdiction in that Court over matters arising under the Act and the Rules; and Rule 53 defines the contours of disputes touching the business of a society and the persons between whom such disputes may arise.

16. This statutory construction has also been adopted by the High Court of Sindh in *Syed Muhammad Kazim and another v. Rub Razi Cooperative Housing Society Limited and another*¹, wherein it was held that disputes arising out of the affairs of a cooperative society and falling within Rule 53 are triable by the Special/Cooperative Court under sections 116 and 117 of the Act. This position is further fortified by the judgment of the Supreme Court of Pakistan in *Muhammad Dawood v. Mst. Sakeena Farooque and others*², wherein it was held that disputes touching the business of a cooperative society, particularly those involving society record and factual determination, fall within the exclusive jurisdiction of the Special Court under section 117 of the Act read with Rule 53 of the Rules.

17. Direct guidance on election disputes is available from *Qureshi Cooperative Society Ltd. v. Province of Sindh*³, which held, while considering section 73 of the Act, that the Cooperative Court has exclusive jurisdiction to try disputes including elections of the society. This authority directly applies to the present case, as the dispute before the High Court was not collateral or administrative in nature, but a challenge to the validity of a concluded election of a cooperative society.

¹ 2024 YLR 1668 (affirmed *vide* order dated 03.04.2024 in HCA No. 96 of 2024 by the High Court of Sindh)

² 2025 SCMR 1229

³ Order dated 29.04.2026 in CP No.D - 1618 of 2025 before the High Court of Sindh

18. Applying the aforesaid statutory scheme and authorities to the present controversy, we are of the view that the challenge to elections held on 14.12.2025 was, in substance, a dispute touching the affairs, business and management of the society. Such dispute squarely fell within the jurisdiction of the Cooperative Court and we, therefore, answer point (a) by holding that the proper remedy lay before the statutory forum and that the constitution petition was not maintainable as a first remedy.

Findings on Point (b)

19. The controversy raised before the High Court involved factual disputes regarding preparation of voters' list, custody and availability of original record, transparency of the election process, and legality of the conduct of elections. These matters were disputed by both the parties and could not have been finally determined merely on the basis of pleadings and affidavits. In the case of *Special Secretary-II (Law & Order), Home and Tribal Affairs Department, Government of Khyber Pakhtunkhwa v. Fayyaz Dawar*⁴, the Supreme Court reiterated that disputed questions of fact are not ordinarily to be adjudicated in constitutional jurisdiction.

20. The principle applies with greater force to election disputes. In *Jameel Qadir and others v. Government of Balochistan*⁵, the Supreme Court held that where a special election forum exists, the High Court must first address the question of jurisdiction and should not assume the role of a fact-finding election forum. In the present case also, the High Court proceeded to set aside the election without the factual controversy being tried by the competent statutory forum. We, therefore, answer point (b) by holding that disputed questions could not properly be decided in constitutional jurisdiction as a court of first instance.

Findings on Point (c)

21. In view of our findings on points (a) and (b) the Impugned Judgment cannot be sustained. The High Court set aside a concluded election despite the availability of a special statutory forum, despite

⁴ 2023 SCMR 1442

⁵ 2023 SCMR 1919

the controversy involving disputed questions of fact, and despite the existence of substantially overlapping proceedings before the competent statutory forum.

22. The Impugned Judgment also does not identify any admitted or patent violation of a mandatory statutory provision which could justify bypassing the statutory remedy. The allegations raised by the respondents may or may not ultimately succeed, but their determination required examination of record and evidence by the forum created under the Act. We are conscious that constitutional jurisdiction may be exercised despite availability of an alternate remedy in exceptional cases, such as where the impugned action is *coram non judice*, without jurisdiction, mala fide, or violative of natural justice on admitted facts. However, the present case did not fall within such exceptional category. The alleged defects were disputed and required factual determination.

23. We, therefore, answer point (c) by holding that the Impugned Judgment suffers from jurisdictional error and legal infirmity warranting interference. The High Court ought to have declined to entertain the constitution petition and relegated the parties to the remedy available before the Cooperative Court.

24. In view of above, the instant petition is converted into appeal and allowed; and the Impugned Judgment dated 17.03.2026 is set aside with the direction to the Cooperative Court to decide the issue regarding the legality and authenticity of the elections of the society expeditiously, preferably within a period of thirty (30) working days. However, further exercise of conducting elections, if any, shall be carried out in accordance with law. Copy of this order be sent to the concerned District Judge for its onward transmission to the relevant special judge for the Cooperative Societies, Karachi.

Judge

Judge

Karachi

16.06.2026

APPROVED FOR REPORTING

(Muhammad Ahmad)