

IN THE HIGH COURT OF SINDH AT KARACHI

Constitutional Petition No. D-2563 of 2017  
(Rubina Kureshi & others v SBCA & others)

Date	Order with signature of Judge(s)
------	----------------------------------

Mr. Justice Muhammad Karim Khan Agha  
Mr. Justice Adnan-ul-Karim Memon

Date of hearing:- 13.08.2025  
Date of Order:- 21.8.2025

M/s. Rafiq Ahmed Kalwar and Muhammad Yasir advocates for the petitioners.  
Mr. Sohail Hanif Moosani advocate for respondent No.5(i) (ii) & (iii)  
Mr. Ahmed Masood advocate for respondent No.6.  
Mr. Khurram Ghayas advocate for KMC  
Nemo for KBCA/SBCA/MPA  
Mr. Sandeep Malani, AAG

ORDER

**Muhammad Karim Khan Agha, J.** Petitioners seek the following declarations and orders:

- I. Declare that the Respondent No.1’s act of approving the impugned building plan vide Reference No.SBCA/DD-II/ Saddar Town-II/Prop/19/2015/2017/18 dated 17.03.2017 in favor of the Respondent No.5 and three others for Plot No.C-14, Gulshan-e-Faisal Cooperative Housing Society, Karachi, measuring 454.11 sq. yards for basement + 9<sup>th</sup> Floor is illegal, unlawful, malafide, void ab initio, and contrary to the Ordinance, the act, the Regulation, the lease, and other laws;
- II. Declare that the restoration Letter dated 06.09.2018 issued by the Respondent No.1 restoring the impugned building plan dated 17.3.2017 is illegal, unlawful, and contrary to the law/lease conditions;
- III. Declare that the amalgamated subject plot No.C-1/5, Gulshan-e-Faisal Cooperative Housing Society, Karachi, measuring 871 sq. yards, belonging to the Respondent No.6, cannot be used beyond the lease conditions permitting construction of a maximum of two ground floors, pursuant to Clause 7 of the Indenture of Lease dated 09.06.1976.
- IV. Declare that the amalgamated subject Plot No.C-1/5, Gulshan-e-Faisal Cooperative Housing Society, Karachi, measuring 871 sq. ft. yards, cannot be used for any purpose other than residential bungalow(s) as per the terms and conditions/covenants provided in the Indenture of Sub-Lease, particularly Clause 5 &7;
- V. Declare that the Respondent No.6 and official Respondents cannot vary/alter/change the land use of the subject amalgamated plot No. C-1/5, measuring 871 sq. yards, other than its original use of residential bungalows on the amalgamated plots i.e. (i) Plot No.C-1/2 measuring 208.44 sq. yards (ii) C-1/3 measuring 208.44 sq. yards (iii) C-1/4 measuring 208.44 sq. yards (iv) C1-5 measuring 245.66 sq. yards;
- VI. Declare that the amalgamation of plots, i.e., (i) Plot No. C-1/2 measuring 208.44 sq. yards (ii) C1/3 measuring 208.44 sq. yards (iii) C-1/4 measuring 208.44 sq. yards (iv) C-1/5 measuring 245.66 sq. Yards into the subject amalgamated plot No. C-1/5, measuring 871 sq.

yards vide Letter/NOC dated 28.10.2020 by Sindh Master Plan Authority, is illegal, unlawful, and in violation of KBTPR 2002.

2. The caption petition has been filed by residents of Gulshan-e-Faisal Co-operative Housing Society, Bath Island, Karachi, to stop the construction of a multistory commercial/residential building on plot No.C-1/4. The dispute centers on the change of land use from residential to commercial. Initially, a developer (Respondent No.5) began constructing a B+G+9 story building on a 454.11 sq. yards plot, which the petitioners, as neighbors, challenged, stating the area is residential. The developer later acquired more land, increasing the plot size to 662.55 sq. yards, and a new plan for a B+G+14-story building was proposed. This Court issued a stay order, but construction allegedly continued, leading to a contempt application. Subsequently, a new developer (Respondent No.6) purchased four townhouses on a combined 871 sq. yards plot. The petitioners amended their petition to challenge this plot's amalgamation and the land-use change. The Society itself, under new management, has sided with the residents, confirming the land is residential, though the original lease in the year 1976 shows the area as commercial, and that the original lease limited construction to Ground + 2 floors. The petitioners' case is that while the land was originally commercial, its use was legally converted to residential in 1984, and this status has been maintained for decades. They claim all parties, including official authorities, have treated it as residential since then; as such, the initial B+G+9 building plan and its restoration are illegal, and the construction limit of Ground + 2 floors, as dictated by the original lease, and purported amalgamated plots must be used exclusively for residential bungalows in terms of public notice dated 17.03.2017, therefore, the amalgamation of the four individual plots into a single 871 sq. yard plot was/is illegal and further action on such amalgamation without sub-division of the plot was/is illegal, therefore, they filed this petition in the year 2017.

3. The petitioners' counsel robustly argues that the land's status legally changed from commercial to residential in 1984 when the competent authority of KBCA issued an NOC for the construction of residential townhouses. At that time, there was no specific law or procedure for converting commercial land to residential, so the NOC was the only required approval. He contended that even if the developers now want to "reverse" the land use back to commercial, the current regulations, Karachi Building Town Planning Regulations (KBTPR, 2002), require that public objections be invited. This procedure was/is not followed, making any such reversal illegal. He asserted that the controlling authorities i.e. KMC and SBCA are now "promissory estopped" from changing the land use. For over three decades, the townhouses have been treated as residential properties by all concerned parties, including official authorities. The petitioners and other residents bought their homes with the "legitimate expectation" that the area would

remain residential, as documented in their sale deeds and leases. He cited various case laws on the subject to support the idea that vested rights cannot be arbitrarily withdrawn without hearing them. The petitioners' counsel heavily relied on Article 4(b) of the Constitution, which states that no person shall be hindered from doing something that is not prohibited by law. Since no law prohibited the change of land use from commercial to residential in 1984, the conversion was legally valid at the relevant time. The petitioners' counsel mentions that the original lease of the land stipulated that no building should consist of more than three stories, which would be violated by the proposed B+G+9 or B+G+14 buildings as purportedly approved, if any. He emphasized that the construction of a high-rise commercial/residential building would adversely affect the civic amenities of a purely residential area and be a source of nuisance due to increased traffic. The learned counsel submitted that the petitioners are fighting to protect the residential character of their neighborhood, arguing that the land's use has been legally established as residential for decades and that the developers' attempts to revert to commercial use are illegal and violate the rights and legitimate expectations of the residents. He pointed out that the legal principle prevents a person from going back on a promise if someone else has relied on that promise to their detriment. Here, the "promise" was the decades-long official acceptance of the plots as residential, which cannot now be converted into commercial by raising high-rise buildings in the residential area. He further submitted that the doctrine in administrative law protects individuals from having their expectations (based on a public body's prior conduct or a clear statement) unfairly frustrated. He added that the petitioners had a legitimate expectation that their residential neighborhood would remain as such. On the issue of amalgamation of the subject plots, he argued that the process of combining two or more adjacent plots of land into a single larger plot. This purported amalgamation is being challenged by the petitioners, especially in light of the pre-existing residential status and lease conditions; as such amalgamation without subdivision is illegal. He pointed out that urban planning that controls how land can be used (e.g., residential, commercial, industrial), as such, the entire case of the petitioners hinges on the legal status of the land's zoning. Learned counsel submitted that while land use changes may be warranted, they cannot violate laws or building regulations. Authorities must consider public amenities like water, electricity, and roads to ensure minimum inconvenience to residents. The proposed high-rise building is on residential area, and the developer failed to prove that they sought and addressed public objections, a mandatory legal requirement under the law. He further argued that alterations to housing schemes should benefit the public, not just an individual. The conversion of residential plots to commercial use for a high-rise building would severely strain existing infrastructure, such as water, sewerage, and roads, causing suffering for all residents. He also argued that the

government's duty is to provide safe living conditions and essential amenities through proper city zoning. The petitioners' counsel added that the proposed construction disregards this principle. He highlighted that even an educational institution on a road less than 60 feet wide would cause disturbance, and by extension, a high-rise commercial building would cause even more significant nuisance. He emphasized that, according to the Sindh Environmental Protection Agency (Review of IEE and EIA) Regulations, 2014, a project like the proposed multistory building on a plot of this size requires an Initial Environmental Examination (IEE) report. The builder (Respondent No.6) failed to obtain this statutory approval, making the purported construction illegal. He next submitted that the developer's pursuit of a large-scale commercial/residential project is driven by personal gain, disregards legal precedents, violates regulations, and would cause irreparable harm and inconvenience to the long-standing residents. The petitioners request that this Court affirm the plot's residential status and limit any construction to a modest Ground+1-story structure to protect the community's rights and maintain justice. The petitioner's final request is for this Court to declare the approved building plan and its restoration illegal, affirm that construction on the 871 sq. yards plot is limited to Ground + 2 floors as per the original lease, rule that the plots must be used exclusively for residential bungalows, and invalidate the amalgamation of the four plots into one without sub-division. He also relied upon the statement dated 25.05.2023. In support of his contentions has relied upon the cases of National Saving Central Directorate Islamabad v. Muhammad Farooq Raja **PLD 2021 SC 320**, Messrs Excell Builders and others v. Ardeshir Cowasjee and others **1999 SCMR 2089**, Muhammad Siddique and another v. Federation of Pakistan & others **2013 SCMR 1665**, Shamsul Arfin and others v. KBCA & others **PLD 2007 Karachi 498**, Hussain Bux Memon v. Karachi Building Control Authority **2015 YLR 2448**, Nighat Jamal v. Province of Sindh and others **2010 YLR 2624** and one unreported order of Civil Petition No.55 of 2020 dated 02.02.2023. He prayed for allowing the instant petition.

4. The arguments of Respondent No.6's counsel are that he is the current owner of the property in question, in a legal dispute over the construction of a multistory building. The respondent No.6's counsel argued that the project is entirely legal and within the parameters of law. They have obtained all necessary approvals and No Objection Certificates (NOCs) from the Sindh Building Control Authority (SBCA) and the Karachi Metropolitan Corporation (KMC) for the construction of a Ground + 14 floors building on the amalgamated 871 sq. yard plot. He states that the original lease deed, while initially restricting construction to three stories, allowed for this condition to be amended with KMC's permission, which was granted as per law. The respondent No.6 refutes the petitioners' claims

with the narration that the claim that the land use was "converted" to residential is false. The property was and remains a commercial plot; that the amalgamation of the four plots was done legally and in accordance with building regulations; that the petitioners' submissions about the road being 50 feet wide, and, therefore, too narrow for a high-rise, is factually incorrect; that the argument about insufficient civic amenities is misguided, as vertical development is necessary for a growing city like Karachi. Updating infrastructure, not halting development, is the proper solution. The respondent No.6's counsel accuses the petitioners of bad faith and abuse of the legal process. He alleges that the petitioners used "false, forged and fabricated" documents to obtain a restraining order and have employed delaying tactics and baseless arguments to harass the owners and extort them. The respondent counsel points out that the petitioners' core submissions are contradictory and unsubstantiated by law or evidence. He emphasized that the KMC and SBCA have both filed affidavits supporting the respondent's stance, confirming that all required approvals and permissions are valid and subsisting. The respondent counsel asks this Court to dismiss the petition, highlighting the petitioners' malicious conduct and lack of legal grounds. He argued that the petition is a classic case of abusing the legal process to halt a legitimate development project. This Court is urged to dismiss the petition being not maintainable under Article 199 of the Constitution to prevent similar tactics being used in the future.

5. The counsel for Respondent No.5, despite initially filing a different affidavit, ultimately supported Respondent No.6's position. He argued that the petitioners came to Court "with unclean hands" and had no valid cause for their legal action. He contended that the original lease agreement was superseded by later approvals from the authorities. He also pointed out that Clause 7 of the lease, which addresses construction, gives the petitioners the option to seek remedies from the relevant authorities instead from this Court. For these reasons, he requested the dismissal of the petition.

6. The Assistant Advocate General (AAG) and KMC's counsel supported the private respondents' position. They cited a report from the Deputy Director of the Sindh Master Plan Authority, asserting that the amalgamation of plots is a land-use issue that falls under its specific jurisdiction, as it impacts zoning and the Master Plan. They also submitted that the petitioners have a legal right to appeal the authority's decision. Based on these points, they requested that the petition may be dismissed.

7. The Karachi Building Control Authority (KBCA) has submitted a counter-affidavit to deny the petitioners' allegations. The KBCA stated that the owners had submitted a proposed building plan, which was then forwarded to the Town

Planning Section of the Sindh Building Control Authority (SBCA) for its NOC. The SBCA subsequently granted its approval for the construction through a series of NOCs dated December 6, 2016, December 14, 2016, March 13, 2017, March 17, 2017, and May 22, 2017. The KBCA maintained that the petitioners have not been able to prove any violations on its part.

8. In his rebuttal, the petitioners' counsel argued that since there were no NOCs for commercialization, subdivision, or amalgamation of the plots, any related activity is unlawful. This stance again refuted by the respondents.

9. We have heard the learned counsel for the parties at considerable length and have also perused the record and the decisions relied upon by the learned counsel for the parties.

10. The core question raised is whether the petition is maintainable under Article 199 of the Constitution. The petitioners' counsel argued for a writ of certiorari to review and quash the KMC, SBCA, and Sindh Master Plan Authority letters, approvals, claiming they are illegal. The opposing argument is that Article 199 jurisdiction is for straightforward cases of illegal government action, not complex, fact-heavy disputes like this one, which should be resolved through alternative legal remedies, as the petitioners have obtained all NOCs for amalgamation/subdivision of commercial plots and final amalgamated plot No.C-1/5, vide letter dated 28.10.2020.

11. Prima facie, the KMC, SBCA, and Sindh Master Plan Authorities have the power to decide if the plots can be used for commercial purposes and amalgamated. This would be based on rules from the KBTPR 2002, including things like zoning and environmental impact assessments. However, the parties are in a heated dispute, with conflicting claims about the building plan, plot subdivisions, and amalgamation. Both parties are heavily relying on documents to support their arguments. It appears that the authorities, the SBCA, KMC, and Sindh Master Plan Authorities are not siding with the petitioners. Given this, it is difficult to determine the correct stance without a full review of all the evidence.

12. The petitioners, who are neighbors, assert that constructing a high-rise building on Plot No.C-1/5 is illegal. They claim that the land was legally converted from commercial to residential many years ago, and this change is final. They also assert that merging the plots and obtaining approvals from the Sindh Building Control Authority (SBCA) and the Karachi Metropolitan Corporation (KMC) were unlawful. They highlight that the original lease deed from 1976 still restricts construction to a ground floor plus two stories. The respondents (the current owners) oppose this claim and maintain that the plot has always been commercial. They present documents showing that the KMC legally

amended the original lease deed to allow high-rise development. Additionally, they attempted to demonstrate that the petitioners submitted a forged letter from the KMC to obtain an initial restraining order from this Court. They further state that the forgery was eventually discovered, and the building plan for a Ground + 14-floor structure was re-approved by the authorities. The respondents accuse the petitioners of using delay tactics to prolong the case. Regardless, these are disputed facts; nothing definitive can be said at this stage. These issues must be addressed before the appropriate Civil Court.

13. Primarily, land use planning ensures that land is used responsibly. Land use conversion involves changing the designated use of land, such as from residential to commercial. This requires permission from the relevant authority to ensure compliance with regulations set forth by the KMC, SBCA, and the Sindh Master Plan, as well as to protect the environment. Therefore, without touching on the merits of the case, this Court sitting in its constitutional jurisdiction is not ordinarily to adjudicate questions of fact, especially when the disputed issues cannot be resolved with the help of admitted documents. This petition would require a determination of the disputed documents and controversial questions of fact, which, according to settled law, would need evidence. The controversy, particularly the legality and correctness of the documents showing the disputed plots as commercial, along with subdivision and amalgamation, constitutes a contested factual issue requiring evidence to reach a conclusive finding. This cannot be decided within the writ jurisdiction of this Court.

14. Article 199 of the Constitution allows this Court intervention only when: All other legal remedies have been exhausted, or no alternative legal remedies exist. To invoke the jurisdiction of this Court, the petitioner must demonstrate a vested/legal right or interest that has been violated, which the petitioners failed to demonstrate by producing cogent undisputed material on record, merely saying that there was/is no approval of the subject plots for commercial use and subsequent amalgamation was/is not sufficient until and unless it is proved in evidence that it is illegal as the KMC, SBCA and Sindh Master Plan Authority has no power and authority to do so under the relevant regulations, which involve zoning approvals and environmental impact assessments, depending on the proposed commercial use of the subject plots.

15. Prima facie, there are conflicting positions among the parties. The KMC's counsel states that the property remains officially classified as commercial, and the NOCs were issued in accordance with the rules. This is supported by the stance of KBCA and the letter from the Sindh Master Plan Authority dated 28.10.2020, which has been placed on record. These are disputed/ contested facts before this court, and the court cannot decide the subject matter under Article 199

of the Constitution, which is well-settled is beyond the jurisdiction of this Court. The Supreme Court of Pakistan, in the case of Pakistan WAPDA Employees Pegham Union v. Member National Industrial Relations Commission, **2014 SCMR 1676**, held that factual disputes cannot be resolved by the High Court. Additionally, in the case of Lahore Cantonment Cooperative Housing Society Limited, **PLD 2002 SC 1068**, the Supreme Court stated that "disputed questions of fact could not be dealt with by the High Court in its Constitutional jurisdiction under Article 199 of the Constitution when other remedies are unavailable." The Supreme Court's judgment in Dr. Abdul Nabi's case (**2023 SCMR 1267**) supports this view.

16. In these circumstances, this Court cannot decide on the factual disputes regarding the residential status of the subject plot or the legality of its amalgamation, as these issues concern factual disputes, which as mentioned earlier is not within the domain of this Court under its constitutional jurisdiction.

17. In view of the aforesaid discussion, this petition, along with all application(s), is dismissed as being not maintainable.

HEAD OF CONST. BENCHES

JUDGE

Shafi

>>