

THE HIGH COURT OF SINDH KARACHI

Before:

Mr. Justice Muhammad Saleem Jessar

Mr. Justice Nisar Ahmed Bhanbhro

C.P. No. D – 1212 of 2024

[M/s. Rukunuddin (Pvt.) Ltd. versus Province of Sindh & others]

Petitioner : M/s. Rukunuddin (Pvt.) Ltd.
through Mr. Imtiaz Ali Shah,
Advocate.

Respondents 1 &2 : Province of Sindh through Mr. Faizan
Hussain Memon, Additional Advocate
General, Sindh a/w Ghazanfar Ali
Abbasi, Deputy Secretary, Board of
Revenue.

Respondent No. 5 : Nemo.

Respondents 3 & 6 : Sindh Building Control Authority and
another through Ms. Humaira Jatoi,
Advocate.

Respondent No. 4 : Malir Development Authority through
Mr. Iqbal Khurram, Advocate.

Date of hearing : 13-05-2025

Date of decision : 13-05-2025

ORDER

Muhammad Saleem Jessar, J. - Through this petition, the Petitioner claims following relief(s):

- a. *Declare that the act of Respondent No.6 of issuing notices dated 08.6.2018 for cancelling/withdrawal of the NOCs of the Petitioner in respect of the private freehold Morosi land comprising of Survey Nos. in Green Valley i.e. 85, 117, 119, 138, 139, 510, 511, 512, 513, 514, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 543, 547, 548, 549, 550, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 569, 570, 571, 572, 573, 574, 576, 583, 584, 585, 586, 627, 628, 629, 630, 631 to 642, total admeasuring 245 Acres and 20 Ghuntas, Survey Nos. in Green Valley Phase-I i.c. 373, 377, 378, 379, 380, 381, 382, 383, 384, 404, 405 and 406 total admeasuring 162 Acres and 18 Ghuntas, Survey Nos. in Green Valley Phase-II i.c. 184, 193, 194, 196, 197, 199, 200, 201, 204/1, 205, 206, 207, 208/1, 608, 609, 610 and 611 total admeasuring 172 Acres and 04 Ghuntas and Survey Nos. in Green Valley Phase-III i.c. 43, 76, 77, 78 and 79, total admeasuring 72 Acres and 35 Ghuntas total admeasuring 652.93 Acres situated in Deh Shah Mureed, Tapo Shah Mureed, Gadap Town, District Malir Karachi.is void ab initio, illegal, unlawful and would cause irreparable loss to the Petitioner and the general public and liable to be set aside as such.*

- b. *Declare that the blocking of the entries of the Petitioner's land in Form-VII by the Board of Revenue officials is illegal, void ab-initio and liable to be set aside as such.*
- c. *Direct the Respondents especially Respondents No.3 and 6 to withdraw their cancellation notice and issue a proper letter in this regard and also direct the Board of Revenue to remove the blocking of the entries of the Petitioner's land in Form-VII in the record of the Board of Revenue /Respondent No.2 as the same is violative of the rules of natural justice as well as right to fair trial in terms of Article 10A of the Constitution and all the property rights of the Petitioner.*
- d. *Mandatory injunction, suspend the operation of the impugned notices dated 08.6.2018 issued by Respondent No.6 to the Petitioner for cancelling/withdrawal of the NOCs of three projects of the Petitioner namely "GREEN VALLEY PHASE-I, GREEN VALLEY PHASE-II AND GREEN VALLEY PHASE-III, situated in Deh Shah Mureed, Tapo Shah Mureed, Gadap Town, District Malir Karachi.*
- e. *Mandatory injunction, suspend the operation of the blocking of the entries of the Petitioner's land in Form-VII in the record of the Board of Revenue officials.*
- f. *Permanent injunction, restrain the Respondents especially Respondents No.3 and 6, their employees, subordinates, agents, representatives, attorneys, successors or any one claiming on their behalf, from cancelling / withdrawal of the NOCs as well as blocking of the entries of the Petitioner's land in Form-VII in the record of the Board of Revenue /Respondent No.2 and from taking any coercive / adverse action against the Petitioner and they shall also restrain not to interfere in the smooth development work and lawful activities i.e. carving of the plots, developing of land in question and selling to the third parties in any manner whatsoever.*
- g. *Grant any other relief (s), which this Honourable Court deems fit and proper under the circumstances of the case.*

2. When confronted with the question regarding the maintainability of instant petition, learned counsel for Petitioner submitted that the impugned action of the Sindh Building Control Authority (SBCA) in withdrawing the NOC, as well as the act of blocking the revenue entries by the officials of the Board of Revenue Sindh, are *ex facie* illegal, arbitrary, without lawful authority, and in violation of the settled principles of natural justice. He contended that no notice or opportunity of hearing was afforded to the Petitioner prior to passing of the impugned actions, thereby rendering the same liable to be set aside. Learned counsel further submitted that Petitioner is a reputed and well-established construction company and is the lawful owner in possession of the

private freehold Morosi land more fully described in prayer clause (a) of the petition. He maintained that impugned actions of the Respondents unlawfully interfere with vested proprietary and legal rights of the Petitioner. In view of foregoing submissions, learned counsel prayed that instant petition may be allowed in terms of the prayers made therein.

3. Learned Additional Advocate General, Sindh, assisted by learned counsel for SBCA, contended that the impugned orders passed by the SBCA are appealable under Section 16 of the Sindh Building Control Ordinance, 1979 (**SBCO, 1979**), and therefore, the Petitioner has got an adequate and efficacious alternate remedy available under the statute, which has not been exhausted. He further submitted that, insofar as the orders/actions of the Board of Revenue Sindh are concerned, in view of the express bar contained under Section 172 of the Land Revenue Act 1967 (**Act, 1967**), the jurisdiction of this Court is barred to the said extent. Consequently, he prayed that instant petition, being devoid of merit is not maintainable hence may be dismissed.

4. Heard learned counsel and perused the material made available before us on record.

5. A tentative examination of the material available on record reflects that principal grievance of the Petitioner pertains to order passed by the SBCA whereby the NOC granted in favour of the Petitioner has been withdrawn. *Prima facie*, such order is appealable under Section 16 of the SBCO, 1979, which provides a specific and efficacious statutory remedy to an aggrieved person. It is a settled principle of law that where a statute provides an adequate alternate remedy, the constitutional jurisdiction of this Court ordinarily ought not to be invoked unless exceptional circumstances are demonstrated. As regards the grievance relating to blocking of revenue entries, the record further indicates that an appropriate remedy is also available to the Petitioner under Section 164 of the Sindh Land Revenue Act before the competent Revenue Authorities,

who are fully empowered under the law to examine and adjudicate upon such matters in accordance with the prescribed procedure. Furthermore, a careful perusal of the prayers sought in instant petition reveals that the Petitioner is, in substance, seeking declaratory relief with respect to its rights, title, and interest in the subject property, which relief squarely falls within the ambit of Section 39 of the Specific Relief Act, 1877. Such declaratory relief necessarily involves determination of disputed questions of fact, title, possession, and entitlement, which cannot appropriately be adjudicated upon in constitutional jurisdiction under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, without recording evidence. The resolution of such controversies requires a full-fledged trial before a competent forum, where the parties may lead oral and documentary evidence in support of their respective claims.

6. For foregoing reasons, this Court is of the tentative view that instant petition is not maintainable in its present form, particularly in view of the availability of adequate and efficacious alternate statutory remedies available to the Petitioner under the relevant laws. Consequently, instant petition is hereby dismissed, along with all pending applications, if any.

JUDGE
HEAD OF THE CONST. BENCH

JUDGE

**PS/SADAM*

APPROVED FOR REPORTING