

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI

Constitutional Petition No. D-2942 of 2026
(Muhammad Akbar versus Sindh Building Control Authority and others)

Date	Order with signature of Judge
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Before:-

Mr. Justice Adnan-ul-Karim Memon

Mr. Justice Muhammad Jaffer Raza

Date of hearing & order: 13.8.2026

Mr. Imran Khan Malik, advocate for the petitioner.

Mr. Ahmed Masood, advocate for respondent No.8.

Mr. Zulfiqar Ali Mirjut, advocate for K-E.

M/s Dhani Bux Lashari & Qazi Amanullah, advocates for SBCA.

Mr. Ali Safdar Depar, AAG.

Mr. Tariq Ali, advocate for SSGC.

ORDER

Adnan-ul-Karim Memon, J. Petitioners have filed this Constitutional Petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, with the following prayer: -

- a) To declare the illegal construction at Plot No.394, Dhoraji Colony, Karachi as unlawful and without legal authority;-
- b) To direct Respondent No.1 (SBCA) to immediately seal and demolish the illegal construction;
- c) To restrain Respondent Nos.6 & 7 from raising any further construction;
- d) To direct Respondent Nos.3, 4 & 5 to disconnect utility connections;
- e) Grant interim relief by stopping ongoing construction during pendency of this petition;
- f) Grant any other relief deemed just and proper.
- d). Any other or further order which this Honourable Court may be pleased to deem fit and proper under the circumstances of the case

2. The Petitioner had earlier filed Suit No. 3341/2026 before the learned Vth Senior Civil Judge, Karachi (South), seeking declaration and injunction against the illegal and unauthorized construction being raised by Respondent Nos.6 and 7 at Plot No.394, Block 7/8, Dhoraji Colony, Karachi. Along with the suit, the Petitioner filed an application under Order XXXIX Rules 1 & 2 CPC, which was dismissed vide order dated 20.04.2026. Despite pendency of the suit, Respondent Nos.6 and 7 continued raising construction and were converting the residential plot into a commercial multi-storey building comprising shops and upper floors, without any approved plan or NOC. The Petitioner's counsel contended that Respondent No.1/SBCA itself acknowledged in its written statement that the applicable building laws and regulations had been violated, yet no effective action was taken. The Petitioner further alleged that Respondent Nos.6 and 7 had encroached upon a 20-feet public street and merged it with their plot, and had threatened residents who objected to such encroachment. It was asserted that the continued construction was causing nuisance and serious risk to life, safety,

property and the environment, besides infringing the Petitioner's fundamental rights under Articles 9, 14, 21 and 24 of the Constitution. According to the Petitioner, SBCA and the other concerned statutory authorities were legally bound to stop and demolish the unauthorized construction and to prevent provision of utility connections to such illegal premises, but had failed to perform their mandatory duties despite repeated complaints. The Petitioner therefore invoked the constitutional jurisdiction of this Court, seeking declaration that the construction was unlawful, directions for its sealing and demolition, restraint against further construction, disconnection of utility services, and interim relief for stopping the ongoing construction during pendency of the petition.

3. Learned counsel for the respondent No.8 submits that the subject property was lawfully allotted, subsequently devolved upon the legal heirs, and thereafter transferred through registered instruments in favour of the predecessors-in-interest of respondent No.8. It is contended that the competent authority initially sanctioned construction of Ground + First Floor and subsequently approved the revised building plan vide construction permit dated 16.12.2025 for Ground + Two Floors. It is submitted that respondent No.8, having acquired the property through a registered Sale Deed dated 01.07.2025, claims to be undertaking construction strictly in accordance with the approved building plan. He submitted that the petitioner has repeatedly invoked different forums in respect of the same subject matter. Earlier, Constitution Petition No. D-6305 of 2025 was dismissed on 01.01.2026. Thereafter, the petitioner instituted Suit No.334 of 2026, wherein his application under Order XXXIX Rules 1 & 2 CPC for restraint against construction was dismissed on 20.04.2026. The said order has further been challenged by the petitioner in Civil Revision Application No.122 of 2026, which, according to learned counsel, renders the present constitutional petition involving substantially the same grievance and relief not maintainable and an abuse of process. Learned counsel further submits that the concerned building-control authority has, in its written statement before the civil Court, supported the legality of the construction. It is also pointed out that the petitioner has instituted another Suit No.933 of 2026 claiming damages in respect of the alleged consequences of the construction, without producing documentary evidence establishing his title or lawful interest in the adjoining property. Thus, his locus standi to maintain the present petition is disputed. He lastly contended that the respondents possess all requisite approvals for construction and that the allegations of nuisance and infringement of easement rights involve disputed questions of fact, which cannot appropriately be adjudicated in constitutional jurisdiction without recording evidence and are matters for the competent civil forum. Learned counsel seeks dismissal of the petition as not maintainable, particularly in view of the

availability and invocation of the alternate civil/revisional remedies and the pendency of proceedings concerning the same subject matter.

4. We have heard learned counsel for the parties and examined the record. The admitted position is that the petitioner has already instituted Suit No.3341/2026 before the learned Vth Senior Civil Judge, Karachi (South), wherein substantially the same grievance regarding the construction in question was raised and an application under Order XXXIX Rules 1 & 2 CPC seeking restraint against further construction was dismissed vide order dated 20.04.2026.

5. The petitioner has admittedly challenged the said order through Civil Revision Application No.122/2026, which is stated to be pending. The petitioner had also earlier invoked the constitutional jurisdiction of this Court through Constitution Petition No.D-6305/2025, which was dismissed. Thus, the petitioner has already availed the ordinary civil and revisional remedies in relation to the very controversy which he seeks to reagitate through the present petition.

6. The extraordinary jurisdiction under Article 199 of the Constitution is discretionary and is not intended to substitute or circumvent an effective remedy available before a competent civil forum. Where the controversy substantially depends upon disputed questions of fact requiring determination of title, ownership, validity of registered instruments, extent of construction, alleged encroachment upon the street, easementary rights, nuisance and compliance with the sanctioned building plan, such questions ordinarily require evidence and adjudication by the competent civil Court as well as by SBCA in accordance with law. Constitutional jurisdiction cannot appropriately be invoked as a substitute for a civil trial, particularly when the petitioner has already chosen that forum and the matter remains sub judice therein.

7. The contention of the petitioner that the construction is wholly unauthorized also cannot, at this stage, be conclusively accepted in constitutional jurisdiction. Respondent No.8 has placed reliance upon the registered Sale Deed dated 01.07.2025 and the construction permit dated 16.12.2025 whereby, according to him, construction up to Ground + Two Floors was sanctioned. The petitioner disputes the legality and extent of such construction, whereas the respondents rely upon the approvals issued by the competent authority. These rival assertions necessarily require examination of the relevant record, sanctioned plans, permissions and other evidence by the SBCA if approached upon the petitioner through its SCRM. It is particularly significant that the question whether the construction conforms to the approved plan is a matter capable of verification by the competent building-control authority and, where disputed factual consequences arise, by the competent civil forum.

8. The allegation that Respondent Nos.6 & 7 have encroached upon a 20-foot public street and thereby infringed the petitioner's rights also involves factual controversy. Likewise, the allegations of threats, nuisance, easementary rights, damage to property and environmental or safety consequences cannot, merely on the basis of assertions in the petition, be treated as conclusively established. The constitutional jurisdiction of this Court is not ordinarily exercised for resolving such disputed factual matters where an efficacious civil / SCRM remedy has already been invoked and/or remains pending.

9. Equally important is the principle that a litigant cannot pursue successive proceedings before different forums seeking substantially the same relief merely because the relief sought in a subsequent proceeding is couched in different language. The petitioner's earlier constitutional petition, the pending civil suit, the pending civil revision and the subsequent suit for damages demonstrate that the petitioner has already invoked multiple remedies concerning the same construction. Permitting another constitutional petition to proceed simultaneously would expose the respondents to parallel proceedings and create the possibility of conflicting determinations. Such repeated invocation of jurisdiction is contrary to the orderly administration of justice and amounts to an abuse of the process of the Court.

10. The petitioner's reliance upon the alleged violation of Articles 9, 14, 21 and 24 of the Constitution does not, by itself, confer an unrestricted right to bypass the ordinary remedy. Constitutional rights undoubtedly receive the highest protection; however, the invocation of fundamental rights cannot convert a disputed private construction and property controversy into a constitutional cause where the underlying facts themselves remain contested and are already the subject of civil proceedings. The constitutional jurisdiction may be exercised where there is clear illegality, lack of lawful authority or failure of a public functionary to discharge a statutory obligation, but such jurisdiction cannot be used to determine disputed private rights in the absence of established foundational facts.

11. As regards the relief sought against SBCA and other statutory authorities, the petitioner has not demonstrated, on the material presently available, such patent illegality or jurisdictional defect as would justify this Court overriding the pending civil/revisional proceedings. The mere allegation that the authorities have failed to take action does not dispense with the requirement of establishing the factual and legal basis for the drastic relief of sealing and demolition. Where the respondents assert the existence of a sanctioned building plan and the validity of the construction permit, the legality and conformity of the construction must first

be determined on the basis of the relevant official record and applicable building regulations by the SBCA through its SCRM within reasonable time.

12. In these circumstances, we are of the considered view that the present petition is not an appropriate proceeding for determination of the disputed questions raised by the parties. The petitioner has an efficacious remedy before the competent civil Court / SCRM, which he has already invoked, and his challenge to the interim order is also pending before the revisional Court. The present petition, if entertained, would result in parallel adjudication of substantially the same controversy and would amount to allowing the petitioner to circumvent the remedies already availed by him.

13. Consequently, without expressing any opinion on the ultimate merits of the rival claims regarding the legality of the construction, title, encroachment or validity of the sanctioned plan, this Constitutional Petition is dismissed as not maintainable, with the observation that the parties shall be at liberty to pursue their respective remedies before the competent civil/revisional forum / SCRM in accordance with law. However, nothing contained in this order shall prejudice the determination of the pending civil proceedings and / or SCRM be construed as an adjudication upon the legality of the construction or the rights of either party.

14. The pending applications, if any, stand disposed of accordingly.

JUDGE

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