

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI

Constitutional Petition No. D-5248 of 2025
(Moiz Shahzad v Federation of Pakistan & others)
Constitutional Petition No. D-986 of 2025
(Muhammad Kaleem Khan v Moiz Shahzad & others)

Date	Order with signature of Judge
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Mr. Justice Adnan-ul-Karim Memon
Mr. Justice Zulfiqar Ali Sangi

Date of hearing and order: 16.2.2026

Mr. Muhammad Hassan Arif advocate for the petitioner in CP No. D-5248/2025
Ms. Tania Alam advocate for the petitioner in CP No. D-986/2025
Mr. Abdul Jalil Zubedi, Assistant AG
Ms. Wajiha Mehdi, Assistant Attorney General
Ms. Bushra Salahuddin advocate for the respondent / DHA
Mr. Muhammad Naeem advocate holds brief for Mr. Zain A. Soomro advocate for the respondent / CBC

ORDER

Adnan-ul-Karim Memon, J. – Petitioner Moiz Shahzad in CP No. D-5248/2025 has filed the Constitutional Petition No. D-5248 of 2025 under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, with the following prayer: -

- A) Declare that the Respondent No.2's act of sealing the Subject Property and depriving the Petitioner's access to the same is contrary to the law and the Constitution;*
- B) Declare that the Respondent No.2 does not have any powers under the Order to seal any premises;*
- C) Direct the Respondent No.2 and its officials to de-seal the Subject Property;*
- D) Permanently restrain the Respondent No.2, its agents, assigns and anyone else acting under or for it from interfering with the Petitioner's lawful occupation and access to the Subject Property.*

Petitioner Muhammad Kaleem Khan has filed Constitutional Petition No. D-986 of 2025 under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, with the following prayer: -

- 1. Grant temporary injunction restraining the Respondent No.1, his agents, representatives or any other persons claiming through him,*

from using the subject property (Plot No. 183, 42nd Street, Khayaban-e-Ittehad, Phase VI, DHA Karachi) as a Masjid or for any other non-residential purpose, which violates the DHA Karachi Town Planning & Building Control Bye Laws 2020 and Clifton Cantonment Board Bylaws, pending disposal of this Petition;

2. *Grant permanent injunction prohibiting/restraining the Respondent No.1 from continuing construction or using the illegally built structure as a masjid and subject property for any purpose other than residential, as approved in the original building plan;*
3. *Issue directions for the demolition of the illegal structure and restoration of the plot to its approved residential use;*
4. *Direct Respondents No.2 and 3 to take immediate action to enforce their respective bylaws and regulations regarding unauthorized construction and land use conversion;*
5. *Direct the law enforcement agencies, including Respondent No.4, to provide necessary support to implement the Court's orders and prevent any attempts to obstruct demolition on religious grounds to avoid any law and order situation;*
6. *Issue a declaration that the conversion of the residential property into a mosque is illegal and in violation of applicable laws and regulations;*
7. *Direct Respondents No.2 and 3 to conduct a thorough investigation into how this unauthorized conversion was allowed to occur and submit a report to the Court;*
8. *Direct Respondent No.1 to pay compensation for any damage caused to public property or inconvenience caused to the residents of the area;*

2. The case of the petitioner is that he is the lawful owner and occupant of House No. 183, Street No. 42, Phase-VI, DHA, Karachi ("Subject Property"), which is a residential premises duly transferred in his name. It is contended that after the purchase of the property, the Petitioner and his family members occasionally offered prayers within the premises and, without the use of any loudspeaker or megaphone, made Azaan. Subsequently, some neighbours voluntarily joined in congregational prayers within the house without any complaint of nuisance, obstruction or disturbance, and with due care taken to maintain peace in the neighborhood. It is further submitted that an unrelated third party filed Constitutional Petition No. 986 of 2025 before this Court, alleging conversion of the premises into a mosque. However, before the Petitioner could respond to the said allegations, officials of Respondent No.2 arrived at the Subject Property and sealed the same on the ground that the matter was sub judice, despite

there being no specific order passed by this Court authorizing such action. Learned counsel argues that the sealing of the property was undertaken without lawful authority and without affording the Petitioner an opportunity of hearing, thereby violating the principles of due process and the doctrine of *audi alteram partem*, as well as Articles 10-A, 23, and 24 of the Constitution. It is also submitted that the Petitioner has already clarified that he does not intend to use the premises as a mosque, yet the property remains sealed unlawfully. He prayed to allow the CP No. D-5248/2025.

3. Learned counsel for the Petitioner in CP No. D-986/2025 submits that the Petitioner is the lawful owner and resident of House No. 183, 42nd Street, Khayaban-e-Ittehad, Phase-VI, DHA, Karachi, enjoying fundamental rights under the Constitution. Respondent No. 1/petitioner in CP No. D-5248/2025 has unlawfully converted the residential property into Masjid Tariq Bin Ziyad without prior approval, causing large gatherings, traffic obstruction, and nuisance in a purely residential area. The property falls under DHA (Respondent No. 2) and Clifton Cantonment Board/ Respondent No. 3, who have failed to enforce building and planning bylaws. The conversion violates DHA Bylaws 2020, CBC regulations, the Cantonment Act 2020, and KDA Zoning Regulations, including requirements for designated amenity plots, minimum mosque distance, NOCs, and parking. She submits that Prior complaints were ignored. However, the Supreme Court in the case of *Kidney Hill Park Land*, 2022 SCMR 238 support removal of unauthorized religious structures. The Petitioner's fundamental rights and public interest are being affected, causing irreparable harm. The Petitioner prays that the petition be allowed.

4. Learned counsel for Respondent No.2 and Respondent No.3/ Cantonment Board Clifton in CP No. D-5248/2025 submit that the Subject Property was approved strictly as a residential bungalow under the sanctioned building plan dated 19.10.2020. It is contended that the use of the premises for congregational prayers effectively converted the residential plot into a place of public worship, constituting an impermissible change of land use in violation of the DHA Karachi Building Control & Town Planning Regulations, 2020, and the terms of the Sub-Lease. Counsel submits that a notice under the applicable regulations was duly issued to the Petitioner on 18.02.2025, which he failed to comply with, leaving the Respondents with no option but to seal the premises as a preventive administrative measure under Regulation 17.2 of the DHA Regulations. It is

further argued that zoning laws and lease covenants impose reasonable restrictions on the use of property and that the Petitioner cannot claim an absolute constitutional right to utilize a residential premises as a mosque in violation thereof. The Respondents maintain that the impugned action was taken strictly in accordance with law after due process and does not amount to deprivation or acquisition of property within the meaning of Articles 23 and 24 of the Constitution. Accordingly, the Petition No. D-5248/2025 is stated to be misconceived, an attempt to bypass statutory remedies, and liable to be dismissed with costs.

5. We have heard the learned counsel for the parties and perused the record with their assistance.

6. It is a well-settled principle of constitutional law that no person shall be deprived of property or liberty except by due process of law which includes notice, an opportunity to be heard, and adherence to statutory procedure. This doctrine of *audi alteram partem* is ingrained in Article 10-A of the Constitution of Pakistan and is an essential element of the rule of law. A sealing order without prior notice and hearing violates this fundamental requirement.

7. It is also settled that the sealing/penalty orders on grounds of lack of evidence and violation of due process, emphasizing that fairness and natural justice are indispensable in enforcement actions affecting property rights of lawful owners. The Constitution guarantees the right to acquire, hold and dispose of property subject to law and protects against arbitrary deprivation of such property. These protections extend not only to physical possession but also to the lawful purpose for which the property was acquired, especially where the use is consistent with a *sanctioned building plan* and approved lease conditions. The depriving a citizen of the *purpose* of property, for which it was purchased in accordance with the sanctioned plan, amounts to a partial deprivation of property and an arbitrary exercise of power.

8. While zoning and land-use controls are valid exercises of regulatory authority, they must be applied through clear statutory procedure, including notices and opportunity for public objection where required. Conversion of land use, particularly from residential to any other category, including public worship, ordinarily requires express permission under the applicable town planning and lease regulations. However, authorities cannot preemptively enforce such

controls by sealing a property without first completing the statutory compliance process. Commercialization and change of land use in a residential area without proper authority/approval were restrained, recognizing the right of neighbors and owners to challenge unauthorized usage.

9. Unauthorized use or construction, even for religious purposes, cannot justify encroachment upon residential zoning or public amenity land. In the *Madina Masjid* matter, the Supreme Court ordered the demolition of a mosque built on parkland, underscoring that religious sentiment or purpose cannot validate unlawful user deviation. The Supreme Court emphasized that unauthorized construction, even of a mosque in a park or residential area, cannot be condoned merely on religious grounds but must follow lawful allotment and zoning procedures.

10. The regulatory power to prevent change of land use or enforce bylaws must be exercised in accordance with law and cannot be used to bypass constitutional safeguards. Zoning restrictions are valid restrictions on use, but enforcement must itself be lawful, non-arbitrary and procedurally fair...

11. At this stage, the petitioner in Petition No. D-5248/2025 has undertaken all necessary remedial measures to restore the Subject Property to its original residential use, without altering the usage, within three (3) weeks from the date of the order. Upon completion of these measures, the property shall be de-sealed.

12. In view of the above, it is concluded that the Petitioner in CP No. D-5248/2025 has undertaken all necessary remedial measures to restore the Subject Property to its original residential use in accordance with the sanctioned building plan and prevailing law, without altering the lawful structure or usage. The undertaking includes completing these measures within three (3) weeks from the date of the order, after which the property shall be de-sealed.

13. Accordingly, in light of the Petitioner's statement in CP No. D-5248/2025 and compliance in time, both the Petitions along with pending application(s) are disposed of. However, it is made clear that in case of breach the undertaking the law will take its own course

JUDGE

JUDGE