

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
C.P. No.D-272 of 2023
(Yasir Hayat & others versus Province of Sindh & others)

Date	Order with signature of Judge
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Mr. Justice Adnan-ul-Karim Memon
Mr. Justice Abdul Mobeen Lakho

Date of hearing and order:- 19.01.2026

Mr. Ali Tahir advocate for the petitioners
Mr. Khurran Ghayasuddin advocate for the Sindh Master Plan Authority
Mr. Dhani Bux Lashari advocate for SBCA
Mr. Imran Ahmed Khan Abro, AAG
Mr. Khursheed Jawed advocate for KDA

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

(A) To declare that the subject plot of the instant Constitutional petition, Plot No. D-14, Block-A, Area 1000 Sq. Yards, Scheme No.2, North Nazimabad, Karachi as a commercial plot in light of the Supreme Court of Pakistan's dictum as laid down in Civil Appeals Nos. 3219 to 323/2006 and 86-K and 87-K/2011.

(B) Direct the respondent No.2 to immediately issue the challan for commercialization charges of the subject plot of the instant petition and thereafter process the petitioner's case in accordance with law and;

(C) Award costs of the petition and

(D) Grant any other relief deemed just and proper in the circumstances.

2. The case of the Petitioners is that they are the lawful owners of Plot No. D-14, Block-A, Scheme-2, North Nazimabad, Karachi, measuring 1000 square yards, having purchased the same for valuable consideration. Mutation in their favour was duly effected on 09-04-2018. The subject plot is situated on Sher Shah Suri Road, which is declared as a commercial road under City District Council Resolution No.383 dated 06-01-2004. It is submitted that pursuant to the said declaration, the Petitioners submitted an application on the prescribed "Z" Form to the Master Plan Department, KMC, for a change of land use from residential to commercial. All statutory requirements were fulfilled, including publication of a public notice dated 25-10-2018 inviting objections. No objections were received despite the lapse of considerable time. It is further asserted that almost all adjoining and surrounding plots have already been converted to commercial use and are being utilized for commercial activities.

3. The Petitioners' counsel contends that once a road is declared commercial, all plots abutting it automatically attain commercial status, and no individual NOC or permission is required except payment of the applicable commercialization fee. This position is supported by consistent judicial pronouncements of the Hon'ble Superior Courts, including **PLD 2010 Karachi 374** (*Zainab Garments v. Federation of Pakistan, through Secretary, Ministry of Housing and Works, Islamabad and another*) and other reported judgments on the subject issue. It is further pleaded that the Respondent-Master Plan Authority is under a legal obligation to issue the challan for commercialization charges, which remains the only pending formality. The continued failure to issue such challan amounts to mala fide inaction, discriminatory treatment, and violation of the Petitioners' constitutional rights under Articles 4, 23, and 24 of the Constitution, as well as Section 24-A of the General Clauses Act, 1897. He argued that despite the issuance of a legal notice dated 07-12-2022, the Respondents failed to act in accordance with the law. Hence, the Petitioners seek a declaration of the subject plot as commercial and directions to the Respondents to issue the challan and process their case in accordance with the law. He, however, added that that the present decision of the Supreme Court earlier to the judgment rendered by the Supreme Court in 2019 is attracted in the present case as such the ratio of that decision be applied in the present case. He prayed to allow this petition.

4. Learned counsel for Respondent No.2 submits that, according to the approved Master Plan, the subject plot was originally earmarked as residential. However, it is acknowledged that the owner of the plot submitted an application for change of land use through Z-Form No. 2574 dated 08-01-2019 under the relevant provisions of law. However, he admitted that the subject plot is located on Sher Shah Suri Road, a declared commercial road, and that most plots along this road have already been converted to commercial use. He submitted that the departmental record further reflects that the Petitioners duly complied with all procedural and codal requirements, including submission of application, site plan approval, newspaper publication, and processing at all relevant departmental levels. He argued that the application had reached an advanced stage, and no objection or deficiency remained pending before issuance of the challan for commercialization charges. It is, however, stated that after 22-01-2019, no formal approvals for change of land use were granted by the Authority. However, the counsel argued that the Petitioners' application had substantially matured before the said date, whereby the same was having fulfilled all statutory requirements except the issuance of the challan. He added that comments are submitted strictly based on the official record and without prejudice to the rights of the petitioners. However, he emphasized that the Petitioners' request for commercialization is impeded only by the order of the Supreme Court of Pakistan dated January 22,

2019, passed in Civil Petition No.815-K/2016, pursuant to which no application or request for commercialization has been entertained by the Authority thereafter. He lastly submitted that the issue needs to be decided by the respondent authority within reasonable time.

5. He, however, submitted that this issue related to Master Plan authority, therefore, they have nothing to offer further on the subject issue.

6. Learned AAG is of the same view.

7. We have heard the learned counsel for the parties and perused the record with their assistance and case law on the subject issue.

8. It appears from the record that the Director General, SBCA, appeared before the Supreme Court in the aforesaid petition and admitted that, in violation of the approved Master Plan, amenity plots meant for parks, playgrounds, and public use have been unlawfully converted into commercial use, including marriage halls, markets, shopping malls, apartments, petrol pumps, and CNG stations. A prominent example noticed by the Supreme Court is Jam Sadiq Ali Park, where extensive illegal commercial construction has taken place. However, on the subject issue as agitated in the present petition, the Supreme Court reiterated earlier directions that all illegal constructions on Jam Sadiq Ali Park must be removed, demolished, and the land restored to its original status as a public park. The DG, SBCA also undertook to restore the park and sought four weeks' time, which was allowed, subject to submission of a compliance report. However, the Supreme Court further observed that numerous amenity and residential plots across Karachi, including cantonment areas, have been illegally converted to commercial use. Accordingly, the Supreme Court ordered, a complete and immediate ban on change of land use throughout Karachi, including cantonment areas. However, no authority, including SBCA or any government department, shall permit or approve any change of use whether pending or future of residential or amenity plots for commercial purposes. All past approvals permitting such conversions shall be reviewed, and land shall be restored to its original use as per the Master Plan. However, SBCA shall not approve multi-storey or commercial buildings on residential or amenity plots, and all illegal constructions shall be identified and proceeded against. SBCA was further directed to review all illegal and unlawful constructions within one month and submit a report recommending demolition, restoration of land, and a mechanism for compensation or alternative accommodation where required, using SBCA's own resources. The Supreme Court also directed that the Environmental Department and all relevant government departments ensure strict enforcement of the Master Plan. The aforesaid directions of the Supreme Court must be complied

in letter and spirit without fail. Failure on the part of delinquents shall entail penal consequences.

9. The Petitioners' Plot No.D-14, Block-A, Scheme-2, North Nazimabad, lies on Sher Shah Suri Road, a declared commercial road. It is their case that they submitted all required applications and documentation for commercialization, with no objections, and the only pending step was the issuance of the challan for commercialization charges. However, we confronted the parties with the Supreme Court's order dated 22-01-2019, passed in Civil Petition No. 815-K/2016, which prohibits changing residential or amenity plots to commercial use. However, it is urged by the parties that this ban targets illegal or post-2019 approvals, and the Petitioners' plot, being on a declared commercial road and having completed all requirements before the cut-off date i.e. 22-01-2019, falls within the exception; as such, the Respondents are legally obliged to issue the challan and process the change of land use. This issue needs to be examined by the Master Plan Authority by examining the decision of the Supreme Court.

10. Without touching the merits of the case, the competent authority is directed to comply with the Supreme Court's order by issuing a speaking order on the subject issue after hearing all concerned within two months. If the case of the petitioners falls within the ratio of commercialization, the decision shall be made strictly in accordance with law.

11. The petition stands disposed of along with pending application(s).

A copy of this order shall be communicated to all concerned for immediate compliance.

JUDGE

JUDGE