

IN THE HIGH COURT OF SINDH AT KARACHI

C.P. No.D-4807 of 2013

Before:

**Mr. Justice Irfan Saadat Khan &
Mr. Justice Abdul Maalik Gaddi**

Date of Hearing: 07.04.2014.

Mr. Ch. A. Rasheed, Advocate for the petitioners.

Mr. Anwar Ali Shah, Advocate for the respondents No.1 & 2 /Sindh Building Control Authority (SBCA)

ORDER

IRFAN SAADAT KHAN, J:- This petition has been filed with the following prayer:

“a. Declaring that the actions and acts of the Respondents sealing the said properties No.25/1, and 25/1-A Muslimabad Cooperative Housing Society, Jamshed Town, Karachi are illegal, unlawful, improper, unjust, malafide and without lawful authority/justification, being null and void has no legal effects.

b. Directing the Respondents to de-seal the said properties immediately.

c. Cost.

d. Any other relief (s) deemed to be fit under the special circumstances of the case”.

2. Briefly stated, the facts of the case are that Iqbal Haji Sattar and Jaffar Haji Sattar were the original owners of plot No.25, Muslimabad, Street No.6, measuring 1592 square yards. Thereafter, in the year 2012 the said property was divided into three plots i.e. 1) plot No.25 measuring 592 square yards 2) plot No.25/1 measuring 500 square yards & 3) plot No.25/1-A measuring 500 square yards. The petitioners are the owners of the plots No.25/1 and 25/1-A and the third plot bearing No.25, measuring 592 square yards, was purchased by one Muhammad Zubair, who started raising construction on his plot for constructing a marriage hall, whereas the petitioners constructed a small room for the Chowkidars on their plots. However the respondents’ team came and demolished the room constructed by the petitioners on the ground that they are raising illegal

construction on the said plot and are making arrangement for constructing a marriage hall on these two plots. It is against this action that the instant petition has been filed.

3. Mr. Ch. A. Rasheed, Advocate, has appeared on behalf of the petitioners and reiterated the above facts and stated that it was never the intention of the petitioners to initiate any commercial activity on the plots owned by them and the action of the respondents by demolishing the room constructed for Chowkidars and sealing their property is illegal and hence the respondents may be directed to de-seal the property. While elaborating his viewpoint, learned counsel stated that a suit bearing No.656/2013 was filed by one Pervaiz Mansoori before this Court on the ground that the respondents in that suit are raising some illegal construction and the Court on 22.05.2013 appointed Nazir of this Court for inspection, who furnished his report dated 31.05.2013, which report, according to the learned counsel, is in favour of the petitioners. He further invited our attention to counter affidavit filed on behalf of the respondent No.1 in that suit, who is also the respondent No.1 in the present petition, wherein it has categorically been mentioned that as per the Nazir's report no commercial activity was found on the said plots. He, therefore, in view of the above facts, state that since the action of the respondents was illegal, the property sealed by them may be de-sealed. He further invited our attention to Sections 6 & 7-A of the Sindh Building Control Ordinance (the Ordinance) and states that the respondents have violated these provisions of law. In support of his above contentions, the learned counsel has also relied upon the decision in the case of Noor Muhammad and another Vs. Building Control Authority and 2 others (1992 CLC 729).

4. Mr. Anwar Ali Shah, Advocate, has appeared on behalf of the respondents/SBCA and has halfheartedly opposed the instant petition and states that since complaints were received from the neighbours and nearby residents about commercial activity being initiated by the petitioners hence action, as per Section 7-A of the Ordinance, was initiated and the said temporary room was demolished.

5. We have heard both the learned counsel at considerable length and have perused the record, the law and the decision relied upon.

6. It is evident from the file as well as the Nazir's report in Suit No.656/2013 that no commercial activity whatsoever has been initiated by the petitioners. Perusal of the file further reveals that the petitioners have given an undertaking to the respondents that they would not use the said property for marriage hall or for commercial use, which undertaking has altogether been ignored by the respondents. Perusal of the record further reveals from the comments filed by the respondent No.1 in Suit No.656/2013 that neither any commercial nor any construction activity was found on the said property by the Nazir. It is also evident from the record that the whole action has been taken on the basis of some alleged complaints made by the residents but no effort whatsoever was made by the respondents to verify whether the said complaints made were genuine /correct or not and in an arbitrary manner the temporary room of the Chowkidar was demolished on the basis of apprehension alone.

7. We specifically asked a question from the learned counsel for the respondents /SBCA that whether any effort was made by the department with regard to ascertainment of the fact that whether any commercial activity was undertaken by the petitioners to which he candidly replied that no effort was made by the respondents. We, therefore, are of the view that the action taken by the respondents is totally illegally, as they have demolished the said room on the basis of apprehension alone and without making any steps to enquire into the matter that whether any commercial activity has been initiated by the petitioners and have also totally ignored the undertaking furnished by the petitioners and the Nazir report dated 31.05.2013. During the course of the arguments the learned counsel for the respondents /SBCA has stated that he would have no objection for allowing this petition, if an undertaking is obtained from the petitioners that they would not use the said property for any commercial activity and would not construct marriage hall on the said place. We invited his attention to the undertaking already furnished by the petitioners in this behalf.

8. We, therefore, allow this petition by specifically directing the respondents to de-seal the property in question within a period of 15 days and report compliance through MIT-II of this Court. Petition stands allowed in the above terms alongwith the pending application.

Above are the reasons of our short order dated 07.04.2014.

JUDGE

JUDGE

Tahseen/PA.