

ORDER SHEET

HIGH COURT OF SINDH AT KARACHI

C.P No.D-5511 of 2015

Date	Order with signature of Judge
1.	For order on Misc. No.29315/15 (U/A)
2.	For order on Misc. No.22820/2015 (Exp/App)
3.	For Katcha Peshi.
4.	For order on Misc. No.22821/2015 (Stay/App)

16.09.2015.

Mr. Tariq Mehmood Khan, advocate for the petitioner.

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1. Urgency granted.
2. Exemption is granted subject to all just exceptions.

3. The petitioner claims to be the legal and lawful owner of Flat No.A-01, Ground Floor, Clifton Garden-1, Plot No.FL-1, Block-3, K.D.A. Scheme No.5, Kehkashan, Clifton, Karachi measuring 2000. Sq. ft. Mr. Tariq Mehmood Khan learned counsel states that quite recently the petitioner has received a notice from the respondent No.4 with regard to illegal construction of a boundary wall on the open space which belongs to the Council/DMC (South). It is against the said notice that the petitioner has approached this Court. As per the learned counsel it has further been informed to the petitioner in the said notice that since she has made an illegal boundary wall on the open space, hence legal action would be taken for demolition of the said boundary wall. He further states that in the garb of the said notice the respondent No.4 is bent upon to demolish the said boundary wall which has legally been constructed by the petitioner. Hence he prays that the respondent No.4 may be directed to withdraw the notice issued to the petitioner.

Learned counsel has been heard at length and record has been perused.

We specifically asked a question from the counsel that how this petition is maintainable? Since the petitioner has approached this Court

against issuance of a notice only instead of appearing before the concerned authority along with the relevant documents to prove her case that no illegality has been committed by him. No plausible explanation is available with him in this regard. We again asked another question whether the petitioner has approached the respondent No.4 to prove her averment that no illegality has been committed by her and the boundary wall has been constructed in accordance with law, to which he replied in negative.

In view of the admitted facts we are of the opinion that this petition is premature and is not maintainable since a mere show cause notice has been issued to the petitioner to prove that no illegal construction has been made by him and a time also has been given to him to appear before the said authority within seven days so that the matter could be threshed out and facts could be ascertained, which admittedly has not been done by the petitioner rather the petitioner has filed the instant petition. It is a settled principle of law that petitions are not maintainable against show cause notices until and unless the same are proved to be without jurisdiction, which is not the case of the petitioner. Reference in this regard may be made to the decision given in the case of Niaz Ali & others Vs. Federation of Pakistan and other as (2004 MLD 460) which decision is based on the decision given by the Hon'ble Supreme Court of Pakistan in the case of Shagufta Begum Vs. Income Tax Officer (PLD 1989 SC 360). In view of the aforesaid facts, we are of the view that this petition is not maintainable being premature, the petitioner should appear before the respondent No.4 along with the relevant documents to prove that no illegal construction has been made by him. This petition, therefore, is dismissed in limine along with the listed application.

JUDGE

JUDGE