*Order Sheet*

# IN THE HIGH COURT OF SINDH AT KARACHI

**CP No.D-4556 of 2014**

*(Aijaz Ahmed v. Nasir Baloch and 03 others)*

| Date | Order with signature of Judge |
|---|---|

Before:

***Mr. Justice Riazat Ali Sahar***
***Mr. Justice Ali Haider 'Ada'***

1. For hearing of CMA No.22276/2014
2. For hearing of CMA No.22275/2014
3. For hearing of CMA No.6401/2015
4. For hearing of main case

**Date of hearing & order: 02.11.2026**

None present for the petitioner
Mr. Dhani Bux Lashari, advocate for SBCA

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**ORDER**

**RIAZAT ALI SAHAR, J.** This petition was called for hearing today. Nobody has appeared on behalf of the petitioner, and no request for adjournment or intimation has been received. The case has been called more than once, and the matter is old. The petition could be dismissed for non-prosecution alone. However, the petition has been examined with the available record so that it can be decided on merits as well.

The petitioner's case is that he and his brother, Sajjad Ahmed Qadir, bought Shop No. UG-5, Upper Ground Floor, in the building known as "Al-Khaleej Barra Market", on Survey No. 322-B, Garden West Quarters, near Lasbela Chowk, Main Nishter Road, Karachi, under a registered sale deed from Shehzad Mustafa. He says the project was built by Respondent No. 1, with Respondents No. 2 and 3 as its caretakers or managers. He alleges that they built shops on the compulsory open space and on the space reserved for the mosque, parking and lifts, in violation of the Building Rules and the approved plan, using sub-standard material and without a qualified engineer or architect. He says he sent a legal notice dated 15.8.2014 to Respondent No. 4, the controlling authority, with copies to the others, and that no action was taken. He therefore asks for a declaration that the construction is illegal, for its removal or demolition, for a permanent injunction against Respondents No. 1 to 3, and for directions to Respondent No. 4 to inspect the project, prepare a report, take action and prosecute.

The petition has been read with its annexures. It does not make out a case for relief for the following reasons:

1. The petition is built on disputed questions of fact. It is not clear whether the project was built with an approved plan or without one. Paragraph 6 says the construction violates the approved plan, while paragraphs 8 and 9 and prayer (b) say it was made without an approved plan. The petitioner has not placed on record the sanctioned plan, the layout, any completion or occupancy certificate, or any Building Rule or plan provision showing that the spaces in question were reserved for a mosque, parking, lifts or open space. The photographs attached with memo of petition do not by themselves show what was sanctioned, what was built, or what deviation was made.

2. The petitioner has not shown that any right of his has been violated. He bought a shop in an already built project. He does not say what part of his own shop or his enjoyment of it is affected by the alleged violations. His references to "inconveniences, complications and losses" are general and unspecific. It is also not shown that the lifts are unavailable, or that the sub-lessees in possession, who hold registered sub-lease deeds and are carrying on business in their own right, are doing anything unlawful. A person who asks the Court to enforce building laws must at least show that he is aggrieved in a legal sense. The petitioner has not shown that.

3. Respondents No. 1 to 3 are the private builder, owner and managers of the project. A writ cannot be issued against private persons who are not performing functions in connection with the affairs of the Federation or a Province. Prayers (a) and (b), a declaration of illegality, demolition and a permanent injunction against private parties, are the usual reliefs in a civil suit. They are not reliefs a writ court can grant on a bare allegation.

4. As to Respondent No. 4, the petitioner alleges only that the authority did nothing after receiving his notice dated 15.8.2014. He has also not shown that he pursued the remedies available under the Sindh Building Control Ordinance, 1979, and the Rules made under it, which provide for inspection, notices, and action against unauthorized construction. Prayer (c) asks this Court to direct an inspection, have a report prepared, and then order demolition and prosecution. This would make the Court the inspecting authority. The Court cannot do that, and cannot order demolition of structures owned or occupied by persons who are not before it without hearing them. The sub-lessees and shopkeepers who would be affected have not been made parties.

5. An adequate and efficient alternative remedy was available to the petitioner. He could have approached the competent building control authority by way of a proper complaint and pursued it to a decision, and he could have filed a civil suit for declaration and injunction. Constitutional jurisdiction is discretionary and cannot be used as a substitute for those remedies, especially where facts are disputed. The petitioner's absence today also shows a lack of interest in pursuing the matter.

In view of the above, the instant petition is without merit and is ***dismissed*** along with all pending applications, with no order as to costs.

**JUDGE**

**JUDGE**

Nadir*