THE HIGH COURT OF SINDH, KARACHI

C.P No. D-7307 of 2017
[Nadeem Waqar Khan v. Sindh Building Control Authority and another]

Before:
Mr. Justice Riazat Ali Sahar
Mr. Justice Ali Haider 'Ada'

Petitioner:	Nadeem Waqar Khan through Mr. Shah Khan and Ms. Nighat, Advocates.
Respondent:	Sindh Building Control Authority through Mr.Dhani Bux Lashari, Advocate.
Respondent No.2:	Javed Masood Ahmed Khan through M/s. K.A. Wahab, Fahad Khilji Arif and Bilal A.Khilji, Advocates.
	Mr. Khursheed Javed, Advocate for KDA along with Sr. Legal Advisor Qazi Amanullah for KDA.
	Mr. Abdul Jalil Zubedi, A.A.G. Sindh.
Date of hearing:	13.10.2026
Date of decision:	05.11.2026

JUDGMENT

RIAZAT ALI SAHAR. J.— Through the instant petition, filed under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, the petitioner has sought directions against respondent No.1, Sindh Building Control Authority (SBCA), for demolition of the allegedly illegal and unauthorized construction raised by respondent No.2 over Plot No.D-5, Block "D", measuring 1000 square yards, situated on Main Haidry Road, North Nazimabad, Karachi, in violation of the sanctioned building plan and applicable building laws. The petitioner has further prayed for restraining respondent No.2 from raising any additional construction contrary to the approved plan

2. Briefly, the case of the petitioner is that respondent No.2, being the owner of the aforesaid property, has raised unauthorized construction thereon and is undertaking further construction of two showrooms on the ground and first floors without obtaining the requisite approval from the competent

authority. The petitioner claims to be the owner of adjoining Plot No.D-27 and asserts that the locality is already densely populated and facing deficiencies in civic amenities, including water, electricity and sewerage facilities, which are likely to be aggravated by the impugned construction. It is averred that upon approaching respondent No.1, the petitioner was informed that the construction was in violation of the approved building plan. The petitioner further alleges that the construction is contrary to the master plan of North Nazimabad and the provisions of the Sindh Building Control Ordinance, 1979. According to him, written complaints dated 02.09.2017 and 16.10.2017 were submitted to respondent No.1, but no effective action was taken. The petitioner, therefore, invoked the constitutional jurisdiction of this Court, seeking the following reliefs: reliefs:

a) *To direct the Respondent No.1 to demolish illegal and unlawful construction over the plot of land bearing PLOT NO.D-5, BLOCK "D", MEASURING 1000 SQUARE YARDS, SITUATED ON MAIN HAIDRY ROAD, NORTH NAZIMABAD, KARACHI, which have been constructed against the rules and regulation of Sindh Building Control Authority and approved plan as well.*
b) *To restrain the respondent No.2 not to raise further illegal construction on the said plot of land against the rules and regulation of the Sindh Building Control Authority and approved plan.*
c) *Any other relief may be granted which this Honourable Court may deem fit and proper on the circumstances of the present case by this Hon'ble Court.*

3. Upon notice, respondent No.1 filed its counter-affidavit through the Deputy Director, North Nazimabad Town, stating that the building plan for the subject property was originally approved for a ground-plus-one-floor residential bungalow vide letter dated 03.06.1974. Subsequently, permission for running a restaurant was granted vide letter dated 03.06.1998 issued by Karachi Building Control Authority, whereas an NOC for commercialization/change of land use was issued by the City District Government Karachi (CDGK) on 28.07.2006. It was further stated that certain additions and alterations were commenced in the existing structure in 2017,

whereupon a show-cause notice dated 22.06.2017 was issued to the owner, who submitted his reply on 25.10.2017. The stance of respondent No.1 is that the property had already been permitted to be used for commercial purposes and, therefore, its commercial use could not be termed wholly unauthorized.

4. Respondent No.2 also filed his counter-affidavit, controverting the allegations and questioning the maintainability of the petition. He asserted that the petitioner is his younger brother and that the parties had been involved in disputes concerning the restaurant business conducted at the subject premises. According to respondent No.2, the property had been used for commercial purposes since 1995, and the petitioner had previously been associated with the business. He denied having raised illegal construction and maintained that the existing structure was old and duly regularized. In support of his stance, he relied upon the NOC for change of land use, correspondence issued by the concerned authorities and payment of conversion charges, including amounts of Rs.60,00,000/- and Rs.1,00,000/-. Respondent No.2 further disclosed that the petitioner had instituted Suit No.1443 of 2016 concerning the business, wherein the plaint was rejected by the learned Senior Civil Judge, Karachi Central, vide order dated 26.07.2017. Reference was also made to Suit No.937 of 2017 instituted by respondent No.2 against the petitioner concerning ownership, accounts and other business-related claims. It was thus maintained that the instant petition was motivated by personal grievances and liable to be dismissed.

5. The petitioner filed rejoinders to the respective counter-affidavits, denying the assertions made therein and reiterating that the NOC for change of land use was conditional and did not authorize construction contrary to the sanctioned building plan. He alleged that respondent No.2 had failed to maintain the prescribed open spaces and setbacks, had encroached upon the front and side open spaces and had not provided proper parking and sewerage arrangements. The petitioner further referred to a subsequent show-cause notice dated 26.02.2019, allegedly issued by respondent No.1, and maintained that notwithstanding such proceedings, the unauthorized construction had substantially progressed. He also

disputed the relevance of the earlier civil litigation to the question of legality of the construction.

6. During the pendency of the proceedings, this Court, vide order dated 28.11.2017, appointed the Nazir as Commissioner to inspect the subject property and report upon the nature and extent of construction. Pursuant thereto, the Nazir submitted his report dated 09.01.2018, recording that the property had been divided into three portions. The first portion comprised a ground-plus-one-storey structure, which was under construction, with shops on the ground floor. The second portion comprised a ground-plus-one-storey structure wherein a business under the name of Zubaidas was being conducted, whereas the third portion, known as Largess Restaurant, was found non-functional and in a dilapidated condition. The Nazir further reported that the concerned SBCA official produced a proposed layout plan showing a residential bungalow over 1000 square yards but did not produce any approved layout plan authorizing commercial use or division of the property into shops. This aspect of the report assumes significance in the context of the controversy involved.

7. Learned counsel for the petitioner maintained that the construction raised by respondent No.2 was contrary to the sanctioned building plan and applicable building regulations. They submitted that permission for change of land use could not be construed as permission to raise construction or make structural alterations without approval from the competent authority. Reliance was placed upon the Nazir's report and the show-cause notices issued by SBCA by contending that violations had been brought to the notice of respondent No.1, yet no effective action was taken.

8. Conversely, learned counsel for respondent No.1 relied upon the permission for commercial use and the regulatory proceedings initiated by the Authority. Learned counsel for respondent No.2 opposed the petition on the grounds of concealment of material facts, previous civil litigation and the longstanding commercial use of the premises, maintaining that the petitioner had invoked constitutional jurisdiction to settle personal disputes. Learned counsel for KDA and the learned A.A.G., Sindh, also appeared in the proceedings.

9. We have considered the respective positions of the parties and examined the material available on record.

10. The controversy essentially revolves around the legality of the construction existing on the subject property and the obligation of respondent No.1 to ensure compliance with the sanctioned building plan and applicable building laws. Before examining the factual aspects, it would be appropriate to advert to the relevant statutory provisions and the law laid down by the Supreme Court.

11. Section 6(1) of the Sindh Building Control Ordinance, 1979, as applicable at the relevant time, requires approval of the building plan and issuance of the requisite no-objection certificate before construction. The statutory expression "construct" also encompasses reconstruction, additions and alterations. Section 7-A of the Ordinance empowers the competent authority to order demolition of construction raised in violation of Section 6(1), besides taking other action permissible under the law. Thus, the scheme of the Ordinance makes a distinction between lawful use of land and lawful construction thereon. Permission for change of land use does not, by itself, dispense with the requirement of obtaining approval for construction, additions or alterations.

12. In the case of *ARDESHIR COWASJEE and 10 others v. KARACHI BUILDING CONTROL AUTHORITY (KMC), KARACHI and 4 others* (1999 SCMR 2883), the Supreme Court examined the scope of the powers of building-control authorities and the consequences of construction in violation of the applicable regulations. It was held, in substance, that the power to regularize deviations is not unfettered and cannot be exercised to validate violations which materially alter the character of the proposed construction or adversely affect the rights and interests of others. The Supreme Court also emphasized the importance of civic amenities, including water, electricity, sewerage and other infrastructure, while considering conversion of residential properties and approval of construction. The principle emerging from the judgment is that building regulations are intended to protect the public interest and

cannot be disregarded merely to accommodate an individual property owner.

13. Similarly, in the case of *MULTILINE ASSOCIATES v. ARDESHIR COWASJEE and others* (1995 SCMR 362), the Supreme Court considered the question of *locus standi* in matters concerning building regulations and recognized that constitutional proceedings involving public interest may be maintained by persons affected by construction in their locality. At the same time, the Court emphasized that relief under Article 199 is discretionary and must be granted upon consideration of the facts and circumstances of each case. In the case of *SHEHLA ZIA and others v. WAPDA* (PLD 1994 SC 693), the Supreme Court further recognized that the right to life guaranteed under Article 9 of the Constitution is not confined to mere existence but extends to the amenities and conditions necessary for living with dignity, including a healthy environment. These principles underscore the obligation of public authorities to enforce the law where unauthorized development adversely affects civic and environmental rights.

14. Applying the aforesaid principles to the present case, it is evident that the subject property was originally approved as a residential bungalow and that permission for commercial use was subsequently granted by the concerned authority. However, the material question is not merely whether commercial activity was permitted, but whether the construction, additions, alterations and division of the premises into shops were undertaken in accordance with the sanctioned building plan and the conditions attached to the relevant permissions. The NOC for change of land use relied upon by respondent No.2 cannot, without examination of its terms and the relevant building approvals, be treated as blanket authorization for every structural alteration carried out at the premises.

15. It is also significant that respondent No.1, in its own counter-affidavit, acknowledged that additions and alterations had been undertaken in 2017 and that a show-cause notice was issued in that regard. The Nazir's report further records the existence of shops and commercial activities at the premises and the non-production of an approved commercial layout plan during

inspection. These circumstances certainly raise a question requiring examination by the competent authority. Nevertheless, non-production of an approved plan before the Nazir cannot, by itself, conclusively establish that no such approval ever existed. Likewise, the Nazir's report, being essentially an account of the physical condition and use of the premises, cannot substitute a technical comparison of the existing construction with the sanctioned building plan.

16. As regards the objection concerning previous civil litigation between the parties, the same does not appear sufficient to absolve respondent No.1 of its statutory obligations. The rejection of the plaint in Suit No.1443 of 2016 was on procedural and jurisdictional grounds and did not constitute a determination of the legality of construction over the subject property. The dispute concerning the parties' respective interests in the restaurant business is distinguishable from the question whether construction has been raised in accordance with law. Even otherwise, the existence of personal differences between the parties cannot confer legality upon an otherwise unauthorized structure. At the same time, the disputed questions of ownership, partnership and business arrangements do not call for adjudication in the present proceedings and may be agitated before the competent forum.

17. The petitioner, claiming ownership of an adjoining property and alleging infringement of civic amenities and building regulations, cannot be held disentitled from bringing the alleged violations to the notice of the competent authority merely because of the previous litigation. However, the relief of demolition cannot follow automatically from the allegations made in the petition. Such relief carries serious consequences and must rest upon a proper determination of the precise nature and extent of the violations, after examination of the relevant sanctioned plans and permissions and observance of the procedure prescribed by law. The Court, while exercising constitutional jurisdiction, is not ordinarily required to undertake the technical exercise entrusted by statute to the building-control authority.

18. In the circumstances, we are of the view that the controversy can appropriately be resolved by directing respondent

No.1 to perform its statutory functions and determine the legality of the construction on the basis of the relevant record. Such course would safeguard the petitioner's right to lawful enforcement of building regulations while preserving the right of respondent No.2 to have the permissions relied upon by him considered in accordance with law. It would also ensure that any coercive action is founded upon an identified statutory violation rather than upon disputed assertions of the parties.

19. For the foregoing reasons, the instant petition is **dismissed** with directions to respondent No.1, Sindh Building Control Authority, to examine the complete record relating to Plot No.D-5, Block "D", measuring 1000 square yards, situated on Main Haidry Road, North Nazimabad, Karachi, including the original sanctioned building plan, subsequent approvals, NOC for change of land use and any revised or amended plans. Respondent No.1 shall conduct a fresh inspection of the premises, compare the existing construction with the legally sanctioned plans and permissions, and determine whether any construction, addition, alteration or subdivision has been carried out in violation of the applicable building laws and regulations or within the sphere of law and regulations. Before passing any adverse order, if any, respondent No.2 and other persons likely to be affected shall be afforded an opportunity of hearing. The competent authority shall thereafter pass a reasoned order and, if any unauthorized construction is established, take appropriate action strictly in accordance with law. The aforesaid exercise shall preferably be completed within sixty (60) days from receipt of a certified copy of this judgment.

20. It is clarified that this Court has not expressed any final opinion regarding the legality of any particular portion of the construction or the competing private claims of the parties. The competent authority shall determine the matter independently, on the basis of the relevant record and applicable law.

21. The petition stands **dismissed** in the above terms, along with pending application with no order as to costs.

JUDGE

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