

ORDER SHEET

THE HIGH COURT OF SINDH AT KARACHI

Suit No.168 of 2015 along with  
Suit No.2530, 2531, 2475, 2505, 2455, 2491, 2473,  
2458, 2457, 2456, 2474, 2486, 2487, 2488, 2494, 2519,  
2520, 2568, 2576, 2589, 2472 of 2014, 21, 1945 of 2015,  
1291 of 2016, & 104 of 2017

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DATE

ORDER WITH SIGNATURE OF JUDGE  
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**Suit No.168/2015.**

Rubeena Malik and another.....Plaintiffs.  
V/s.  
Province of Sindh & others.....Defendants.

**Suit No.2530/2014.**

Mrs. Naheed Japanwala & another .....Plaintiffs.  
V/s.  
Sindh Building Control Authority & others.....Defendants.

**Suit No.2505/2014.**

Mr. Zair Maqsood .....Plaintiff.  
V/s.  
Province of Sindh & others.....Defendants.

**Suit No.2457/2014.**

Sunita Achariya.....Plaintiff.  
V/s.  
Province of Sindh & others.....Defendants.

**Suit No.2458/2014.**

Obaid Sattar.....Plaintiff.  
V/s.  
Province of Sindh & others.....Defendants.

**Suit No.2487/2014.**

Shahnaz Begum & another.....Plaintiffs.  
V/s.  
Province of Sindh & others.....Defendants.

**Suit No.2456/2014.**

Mohsin Ihsan & others.....Plaintiffs.  
V/s.  
Province of Sindh & others.....Defendants.

**Suit No.2576/2014.**

M/s. Nabila Private Limited .....Plaintiff.  
V/s.  
Province of Sindh & others.....Defendants.

**Suit No.2475/2014.**

Muhammad Shahid & another.....Plaintiffs.  
V/s.  
Sindh Building Control Authority  
& others.....Defendants.

**Suit No.2494/2014.**

Mrs. Rukaiya Adamjee.....Plaintiff.  
V/s.  
Sindh Building Control Authority  
& others.....Defendants.

**Suit No.2520/2014.**

Shamaeel Ansari.....Plaintiff.  
V/s.  
Sindh Building Control Authority  
& others.....Defendants.

**Suit No.2589/2014.**

Asher Faisal Khan & another.....Plaintiffs.  
V/s.  
Sindh Building Control Authority  
& others.....Defendants.

**Suit No.2519/2014.**

Alia Burhanuddin Tipu .....Plaintiff.  
V/s.  
Sindh Building Control Authority  
& others.....Defendants.

**Suit No.2474/2014.**

Mr. Ahmed Faraz Qasirani .....Plaintiff.  
V/s.  
Sindh Building Control Authority  
& others.....Defendants.

**Suit No.2473/2014.**

Sameera Raja & others.....Plaintiffs.  
V/s.  
Sindh Building Control Authority  
& others.....Defendants.

**Suit No.2488/2014.**

Athar RAsheed Butt & Another.....Plaintiffs.  
V/s.  
Province of Sindh & others.....Defendants.

**Suit No.2486/2014.**

Dr. A.Q Khan Malik & another.....Plaintiffs.  
V/s.  
Province of Sindh & others.....Defendants.

**Suit No.2531/2014.**

Mrs. Muneezay Qayyum & others .....Plaintiffs.  
V/s.  
Sindh Building Control Authority  
& others.....Defendants.

**Suit No.2491/2014.**

Mrs. Zeba Shahzad Hussain & others .....Plaintiffs.  
V/s.  
Sindh Building Control Authority  
& others.....Defendants.

**Suit No.2568/2014.**

Maqsood Ahmed Ansari.....Plaintiff.  
V/s.  
Province of Sindh & others.....Defendants.

**Suit No.2455/2014.**

Florence Villiers.....Plaintiff.  
V/s.  
Province of Sindh & others.....Defendants.

**Suit No.2472/2014.**

Tina Mehdi.....Plaintiff.  
V/s.  
Sindh Building Control Authority  
& others.....Defendants.

**Suit No.21/2015.**

Marcia Marie Haque.....Plaintiff.  
V/s.  
Sindh Building Control Authority  
& another.....Defendants.

**Suit No.1945/2015.**

Mrs. Sidra Bilal Zia .....Plaintiff.  
V/s.  
Sindh & others. ....Defendants.

**Suit No.1291/2016.**

Shahnaz Begum & others .....Plaintiff.  
V/s.  
Province of Sindh & others. ....Defendants.

**Suit No.104/2017.**

Amir Tariq Khan .....Plaintiff.  
V/s.  
Province of Sindh & others.....Defendants.

**Mr. Abdur Rehman Advocate for Plaintiff in Suits No.2472, 2473, 2474, 2475, 2494, 2519, 2520, 2589 of 2014.**

**Mr. Usman A. Hadi, Advocate for the Plaintiff in Suit No.2491/2014.**

**Mr. Daanish Nayyer, Advocate for the Plaintiff in Suit Nos.2455, 2456, 2457, 2458, 2486, 2487 & 2488/2014.**

**Mr. Abdul Moiz Jaferi, Advocate for Plaintiff in Suit No.104/2017.**

**Mr. Muhammad Vawda, Advocate for the Plaintiff in Suit No.2568/2014,**

**Mr. Jam Zeeshan Advocate for Plaintiff in Suit No.1945/2015.**

**Mr. Ali Asghar Khan, Advocate for the Plaintiff in Suits No.2530 & 2531 of 2014.**

**Mr. Khawaja Naveed Ahmed, Advocate for the Plaintiffs in Suits No.168/2015, 2505/2014 & 2576/2014.**

**Mr. Mehmood Sultan Khan Yousufi, Advocate for KDA.**

**Ms. Saba Siddiqui, Advocate for SBCA.**

**Ms. Mehmooda Suleman, AAG.**

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**Dates of Hearing: 10.04.2018, 02.05.2018, 09.05.2018, 22.05.2018, 31.05.2018, 26.09.2018, 18.10.2018 & 31.10.2018.**

**Date of Order: 00.12.2018**

**Muhammad Junaid Ghaffar, J:** All these Suits involve a Common question that is as to whether the Sindh Building Control Authority (“**SBCA**”) has any lawful authority and jurisdiction to issue impugned Notices against the usage of residential premises for commercial purposes by the Plaintiffs hereinabove.

2. It is a matter of admitted fact that all Plaintiffs in the above Suits are either owners, or tenants or otherwise occupants of the respective premises, which according to their lease documents are for residential purposes; but admittedly, in one manner or the other, are being using for commercial purposes, including but not limited to Restaurants, Beauty Salons, Offices, Clinics etc. All these properties are situated in Block-4, Kehkashan Clifton, Karachi and almost all of them have been issued Notices by SBCA to stop using their premises for any commercial purposes. These notices have been impugned in these Suits and primarily, as well as the foremost argument is only in respect of the jurisdictional authority of SBCA to do so.

3. Mr. Abdul Rehman, learned Counsel for the Plaintiffs in Suit Nos.2472, 2473, 2474, 2475, 2494, 2519, 2520, 2589 of 2014 has contended that in 2010, Sindh High Density Development Board 2010 was promulgated, which conferred Powers on the Board to declare various areas as High Density Zone, which allows the conversion of land as commercial and also permitted a special floor area ratio (“FAR”) in these Zones from ratio of 1:1 to 1:12. He has further submitted that the entire are of Block-4, is in the commercial vicinity, and there are various high-rise buildings, and therefore, in view of the Judgment in the case of **Muhammad Aslam V/S. KBCA (2005 CLC 759)** in a developed commercial area, there is no necessity for the owner to take

any further steps for conversions of the same. According to him SBCA lacks jurisdiction in this matter as the lease of the property in question has been issued either by KMC or KDA, and it is not for SBCA to monitor the usage of the property. Per learned Counsel the law permits conversion of land use and the Plaintiff has already approached the competent authority for such conversion, therefore, even otherwise, till such time the said application is decided, no adverse action can be taken. He has contended that post 2016, all such powers which were earlier with SBCA, vests in Karachi Development Authority (“KDA”), hence, the impugned notices are without jurisdiction. Learned Counsel has also referred to Regulation 18-4.6 of the Karachi Building & Town Planning Regulations, 2002 (“**KBTPR-2002**”) and has contended that the law provides that in case of plots facing road less than 100 feet wide, i.e. 80 feet, a setback of 20 feet shall be mandatory, thus maintaining the minimum requirement of 100 feet wide road and therefore any plot could be declared commercial by allowing this setback as it would fulfill the requirement of 100 Ft wide road; hence in Law conversion of the land in question as well as the area from residential to commercial is permissible. Learned Counsel has then referred to Section 6(1) of the Sindh Building Control Ordinance, 1979 (“**Ordinance 1979**”) and has contended that if the said provision is read with Section 7-A of the Ordinance, 1979, it only confers authority upon SBCA to order for sealing for a premises, if Subsection (1) of Section 6 *ibid* is violated, which only relates to the approval of Building Plan and grant of No Objection Certificate, whereas, insofar as the Plaintiffs being represented by him are concerned, there is no issue of any building raised or constructed in violation of the Approved Plan; hence the matter does not fall within the jurisdiction of SBCA. He has further contended that the Ordinance 1979 only relates to construction of Building and the authority to manage and approve the Building Plan, but does not confer any power on the authority for any Town Planning under which the usage of a property for commercial and/or any other purposes could be determined. He has further contended that under the Sindh Local Government Ordinance, 2001 for certain period certain powers were conferred upon SBCA as a separate authority, and Nazim of City District Government was supposed to act and to regulate the Town Planning. He has relied upon the case of **Zaheer Ahmed Chaudhry v City District Government Karachi, (2006 YLR 2537)** **Ummatullah v Province of Sindh (PLD 2010 Karachi 236)** to support

his contention that SBCA have no powers of Town Planning Regulations and according to him due to conflicting views in these two Judgments, matter is now pending before a Larger Bench. He has further contended that in 2014, Section 7-B has been inserted in the Ordinance, 1979, which provides and confers certain powers on SBCA in respect of Town Planning and Master Plan for all Districts of Province; however, the said provision has never been acted upon by SBCA in its Letter and Spirit. He has also replied upon **1992 CLC 729 (Noor Muhammad and another Vs. Building Control Authority and 2 others)**, **SBLR 2014 Sindh 808 (Fakhurl Arfin & others Vs. Federation of Pakistan & others)**, **2015 SCMR 1739 (Lahore Development Authority through D.-G. and others Vs. Ms. Imrana Tiwana and others)**.

4. Mr. Jam Zeeshan learned Counsel for Plaintiff in Suit No.1945/2015 has contended that Notice under Section 7-A of the Ordinance, 1979, does not cater to any illegal use; whereas, straightaway a sealing order has been passed without any Show Cause Notice and enquiry, therefore, the impugned Notice is without any lawful authority and jurisdiction. He has further contended that the entire complexion of the area has presently changed from residential to commercial as there are numerous Restaurants, Show Rooms etc; whereas, KMC has also issued permission for such usage in various cases. He has further referred to Regulations 18-4.2 and 18-5 of KBTPR-2002, and has contended that the Plaintiff in accordance with these Regulations has already approached the concerned authority and they may be directed to consider the Plaintiffs' request and pass appropriate orders regarding conversion. According to him, the Electricity Bills are also for commercial category and are accordingly paid under the commercial category.

5. Mr. Daanish Nayyer, Learned Counsel for the Plaintiffs in Suit No.2455/2014 and other connected cases has contended that the Plaintiff is owner of Property bearing No.D-82/1, Block-4, Clifton, Karachi, and is operating a Restaurant at the same premises under the name and style of Café Flo. Per learned Counsel, Plaintiff holds a Trade License which is under renewal issued by the Town Municipal Administration, Saddar Town, Karachi, permitting the Plaintiff to operate a Restaurant outlet at the premises; whereas, the Plaintiff also holds a License for Restaurant issued by the Department of Tourism Services, Government of Pakistan and the Electricity and Gas

connections are also for commercial purposes; hence the impugned notice is illegal and without lawful authority.

6. Mr. Khawaja Naveed Ahmed, Advocate for Plaintiffs in Suits No.168/2015, 2505/2014 and 2576/2014 has adopted the arguments of all other learned Counsel appearing for Plaintiffs.

7. Similarly, Mr. Ali Asghar Khan, Advocate for Plaintiffs in Suits No.2530 & 2531 of 2014 has also adopted the arguments of other Counsel for Plaintiffs.

8. Mr. Osman A. Hadi, Advocate appearing for Plaintiff in Suit No.2491/2014 & 2458/2014 has contended that the notice dated 04.12.2014 issued by **SBCA** to the Plaintiff claiming misuse of a residential plot for commercial purposes, does not pertain to any form of illegal construction and/or nuisance, and the property in question is located along a large double road and is not causing any form of disturbance; hence it is without any lawful authority and jurisdiction in terms of Section 6 and 7-A of the Ordinance, 1979. He has next contended that since revival of the Karachi Development Authority ("**KDA**") Order, 1957, vide Sindh Revival of KDA Order Act, 2016, it is without any doubt that KDA independently has the authority to deal with issues pertaining to conversion / use of property. According to him the Suit property is a small house owned & used by the Plaintiff No. 1, and is facing a main wide double road known as 'E-Street', and in the house a very exclusive and selective boutique etc. is displayed, whereas, the Plaintiff No. 2 operates a small bistro café and has all requisite trade licenses etc. provided by the Government; and both the Plaintiffs are lawful taxpayers. Per learned Counsel the lessor of the property is admittedly KDA. He has further submitted that tax / fine for use as commercial has been paid by the Plaintiff to the local government KMC and the Plaintiff is pursuing the process of converting the Premises from residential to commercial through the local government (i.e. now KDA). He has contended that the only power available to SBCA relates to construction / wrongful-construction (which is not the case at hand), whereas, SBCA has no power for change of use of land. According to him the issue in the instant Suit does not pertain to the question of commercialization of property; but simply challenges SBCA's power to issue notices regarding the commercial use of property. As to the brief history of legislation

regarding land conversion laws/statutes he has submitted that Land conversion was first given to the KDA vide the **KDA Order 1957** (“**the KDA Order**”) which was promulgated under powers conferred vide article 211 (2) of the 1956 Constitution. Subsequently, construction of building duties were given to the SBCA under the Ordinance, 1979; however, the land allotment and conversion remained with KDA. According to him thereafter KDA was eventually merged into the City District Government vide the Sindh Local Governments Ordinance, 2001 (“SLGO 2001”) and SBCA never held powers of conversion or conversion related matters. According to him SLGO 2001 was repealed by a repealing Act of the Sindh Assembly in 2011. Subsequently no permanent law remained in place until promulgation of the Sindh Local Government Act, 2013 (“SLGA 2013”) which remains in the field to-date. He has contended that it has been settled in the case of **Ummatullah v Province of Sindh (PLD 2010 Karachi 236)** that SBCA does not hold any powers of land conversion and provisions of Land Conversion granted to the SBCA under Regulation 18 of KBTPr-2002, were held *ultra vires* the SBCA’s powers, and SBCA does not have requisite authority and powers of conversion which rests with the local government under (the then) applicable SLGO, 2001 (which excludes the SBCA). He has next contended that The Sindh Revival of KDA Order Act, 2016, was passed by the Sindh Assembly which restored the powers of conversion to KDA; hence it is KDA independently which now holds powers relating to issues arising from conversion / use of property. According to him the Master Plan Department referred to on behalf of SBCA was originally under the control of the then City District Government, and through them Bye-Laws Regarding Change of Land Use, 2003 were introduced; but this has now become irrelevant since post 2016 when the KDA Order was revived, now all powers relating to conversion have been resumed by the KDA. Whereas, at the time of filing instant Suit, KDA through KMC maintained power of conversion (as per introduction of SLGO 2001), and since 2016, the KDA now holds powers of conversion independently and according to him SBCA never held any such powers relating to conversion of property or non-construction related use; hence the impugned Notice sent by them is *ultra vires* and void. Finally he has argued without prejudice that Plaintiffs are in the process of dealing with KDA for complete commercialization of the premises, and hence till such date it is decided no coercive action is to be carried out against the Plaintiffs as much of the

area has already been commercialized. In view of these submissions he has contended that the injunction application be allowed permanently restraining SBCA from acting upon the impugned notice(s) in any manner. In support of his contention he has relied upon the cases reported as *Muhammad Hanif v Sameena Sibtain* (2007 YLR 3113) *Naseer Ahmed v Hafiz Muhammad Ahmed* (1984 CLC 340) *Ummatullah v Province of Sindh* (PLD 2010), *Zaheer Ahmed Chaudhry v City District Government Karachi* (2006 YLR 2537), *Mrs. Farida v New Allied Electronics Industries (Pvt) Limited* (2009 YLR 1896), *Nighat Jamal v Province of Sindh* (2010 YLR 2624), *Abbasia Co-operative Bank v Hakeem Muhammad Ghaus* (PLD 1997 SC 3) and *Syed Muhammad Shah v Federal Investigation Agency* (2017 SCMR 1218).

9. Mr. Muhammad Vawda, learned Counsel appearing for Plaintiff in Suit No.2568/2014 has contended that the Plaintiff is the owner of Property No.C-11/1, Block No.4, K.D.A. Scheme No.5, Clifton, Karachi, and received Notice dated: 5.12.2014 issued by the SBCA threatening sealing of the Subject Property. He has contended that immediately Plaintiff filed an application with the Master Plan Department, SBCA, for change of land use of the Subject Property through Application dated: 16.12.2014 which is currently pending. According to him this property is located in Block 4, Clifton, Karachi, and the nature and complexion of the aforementioned area i.e. Block 4, Clifton, has transformed into a flourishing commercial area with all kinds of commercial enterprises including offices, schools, restaurants, shops, multistoried buildings etc. And for this reason Sindh High Density Development Act, 2010, has been passed which envisages areas which are already in the nature of commercialized areas to be formally converted into commercial areas and areas around the Subject Property such as where the Bahria Town Icon Tower is situated have already been declared as 'high density' areas. Therefore, according to him a vested right has accrued in favor of the Plaintiff to have his Application for change of land use pertaining to the Subject Property be processed and allowed by the SBCA. He has further submitted that the entire neighborhood is being used for commercial purposes, whereas, this is corner Property facing main roads and other adjoining properties are also being used for same purposes, whereas, KMC has issued NOCs for change of land use to properties located in the area surrounding the Subject Property. According to him through impugned notice SBCA has

threatened, inter alia, to seal the Subject Property, whereas, under Section 7A of the Ordinance, 1979, SBCA is only empowered to seal and/or demolish a property for violation of Section 6(1) of the Ordinance, 1979, which only applies to buildings constructed in violation or in the absence of an approved building plan; hence, this provision does not confer any such jurisdiction on SBCA to seal the Subject Property for alleged use other than residential use. He next argued that SBCA under Section 6(3) of the Ordinance, 1979, is empowered to grant permission for change of land use and a mechanism is provided under Regulations 18-4 of the KBTPR, 2002, whereas, Section 2 *ibid* contains a non-obstante clause, and in view of the judgment of the Hon'ble Supreme Court in the case reported as **1999 SCMR 2089** (*Messrs Excell Builders and Others versus Ardeshir Cowasjee*), these provisions have an overriding effect over the Karachi Development Authority Order, 1957, and in case of inconsistency or conflict, the Ordinance, 1979 and KBTPR will prevail. In support of this argument he has also referred to the Written Statement of KDA wherein they have stated that permission for change of land use of the Subject Property is the prerogative of the Master Plan Department of SBCA. Hence, according to him it is only the Master Plan Department of SBCA which can allow conversion and or change of land use. According to him Subject Plot is being used as a business office since 2005, for an Advertising Agency and is also being used as the registered office of the "The Cancer Foundation", a not-for-profit organization that is setting up charity based cancer hospitals in Karachi and till date no complaints have been lodged in relation to the Subject Property being used as an office; nor it is a case of suffering any loss and/or inconvenience and in fact, the neighbors are themselves carrying out commercial activities on their properties, whereas, in case the injunction is not granted it will cause irreparable loss to the Plaintiff. He also argued that that Section 20 of the Ordinance, 1979, is inapplicable to the present case because the deliberate inaction of the SBCA to process and decide the Plaintiff's Application for change of land use is illegal, mala fide and is in bad faith, whereas, the Impugned Notices are completely illegal and mala fide.

10. Mr. Abdul Moiz Jaferi, Learned Counsel for Plaintiff in Suit No.104/2017 has contended that the case of SBCA is not about use (or 'misuse') of the property for commercial activity; but is that for this

commercial use approval has not been adequately sought from the relevant authorities, and that relevant penalties have not been paid. He has contended that Landlord of the property has already applied for regularization of commercial use, whereas, the entire area is being used for commercial purposes; hence such request ought to have been allowed forthwith, as Plaintiff has shown his intention to comply with all the Rules and Regulations for the purposes of such land use and also shown his intention to pay the requisite commercialization fee along-with any fines for mis-use of land use. According to him non-processing of this Application is violation of Regulation 18-5 of KBTPR-2002, as they stood at the time [i.e.18-5.1.1] but since repealed. He has next submitted that once the Plaintiff's adjacent property had been converted to commercial use, Plaintiff has acquired a vested right for commercialization policy to be uniformly implemented as was allowed through the laws as they stood at the time. His next argument was that if the defendants argue that this change of complexion has occurred without their consent, then this amounts to a consent by way of failure to act, whereas, by allowing commercial use to others including high rise buildings, the entire surrounding area of Plaintiff's premises is being used for commercial purposes without any objection, which contains a Private Hospital, several hair salons, clothing boutiques, furniture and construction stores, as well as several restaurants. According to him the entire area now falls within the High Density Zone and therefore, SBCA is bound to allow conversion of the land for commercial use, and it is this approval the Plaintiff seeks, which cannot be unfairly withheld due to a change of regulations or policy.

11. On the other hand, learned Counsel appearing on behalf of KDA has contended that admittedly the lease, which has been issued is for residential purposes till date, whereas, in most of the cases it is the tenants and not the owners who have come before this Court, and have no locus-standi or a better title than its owner; hence not entitled for any relief. Per learned Counsel KDA has never been approached by them nor any NOC has been given to use these properties for commercial purposes, therefore, according to him no case for any injunction is made out. He has next contended that even otherwise, law does not permit any such conversion of change of land use, as pleaded.

12. Learned Counsel for SBCA has contended that all these Plaintiffs as well as others in the said area deliberately and without permission

and lawful authority have violated Law as well as Policy and directions of KDA, KMC as well as SBCA by using these properties for commercial purposes without any permission. She has contended that the Master Plan Department of KDA is now working under SBCA and is authorized and empowered for conversion of the property into commercial; however, subject to Town Planning Regulations; whereas, none of the Plaintiffs (barring few) have yet approached in a proper manner for any such conversion, whereas, even otherwise, the properties do not qualify for such change of land use in terms of KBTPR-2002. In support of her contention she has relied upon the Sindh Building Control (Amendment) Act, 2014 by virtue of which now the Master Plan Department is under SBCA. She has next contended that the conversion, if any, is governed under Regulation 18-4 of KBTPR-2002, which provides that no residential plot can be converted into any other use except with the approval of Master Plan Department and after recommendation of the concerned authority, as provided in Law. She has submitted that proper notice was issued by SBCA calling relevant documents and in case of failure to stop usage of the property for commercial purposes, sealing notices were issued and Plaintiffs have immediately impugned these Notices and have obtained restraining orders, which are still continuing and under the garb of these orders they are still using the properties for commercial purposes without any lawful authority. She has also relied upon Section 6 of the Ordinance, 1979 as well as Master Plan Bye-Laws 2003 and Resolution No.383 passed by the then the City District Government Karachi on 06.01.2004. She has further contended that the Plaintiffs have also violated Section 20(A) of the Ordinance 1979, which is mandatory in Law. She has also contended that Suits are barred under Sections 42 & 56 of the Specific Relief Act as well as under Section 16 and 20-A of the Ordinance, 1979, therefore, all listed applications be dismissed.

13. Learned AAG has adopted the arguments of Counsel for KDA and SBCA.

14. I have heard all the learned Counsel and perused the record with their assistance. The facts in all these matters appear to be somewhat similar as well as admitted (barring a few exceptions which are not relevant or material in deciding these applications) to the effect that that all Plaintiffs are either tenants and or landlords of residential premises according to their lease documents situated in Block No.4 Clifton, Karachi and these

Suit premises are being used for commercial purposes including but not limited to as Restaurants, Cafes, Beauty Salons, Schools Parlors, and offices etc. To this effect there is no dispute at least for the present purposes. The precise case of the Plaintiffs as argued by their respective Counsel is to the effect that notwithstanding the commercial use of a residential premises without approval, permission or conversion, at least SBCA in law has no authority and jurisdiction to issue them the impugned notices and to take any further action including demolition and sealing of their premises. According to them it may be that KDA or KMC or any other Governmental authority may have such jurisdiction; but not SBCA at least. This is premised by them on the interpretation of Section 6(1) and Section 7-A of the Ordinance, 1979 which reads as under-

**“6. Approval of plan.-(1) No building shall be constructed before the Authority has, in the prescribed manner, approved the plan of such building and granted No Objection Certificate for the construction thereof on payment of such fee as may be prescribed.**

Provided that in case of a building the construction whereof has commenced before coming into force of this Ordinance, the Authority's approval of the plan and No Objection Certificate shall be obtained not later than six months after the enforcement of the Ordinance.

5[Explanation.- The word "construct" with all its variations used in this section and hereafter shall include 'reconstruct' with all its variations and, additions or alterations,]

(2) No building mentioned in sub-section (1) shall be occupied by any person or shall be allowed by the builder to be occupied, before the Authority has, on application of the occupant or owner, issued occupancy certificate, in such manner as may be prescribed,

**(3) No building mentioned in sub-section (1) shall, except with the permission of the Authority, be used for the purpose other than that for which its plans were approved.**

(4) Where the Authority is satisfied that the purpose for which the building is desired to be used is consistent with the approved plans of the building, it may grant the permission under sub-section (3) on such conditions and on payment of such fees as it may fix.

'(5) At any time after No Objection Certificate has been issued under sub-section (1) but before the completion of building Government may, if it is satisfied that the construction of any type of building or buildings in any area is not in the public interest or is otherwise in expedient notwithstanding, anything contained in this Ordinance, rules or regulations made there under and without notice suspend or cancel the certificate.

Explanation.-The expression "completion of building" used in this sub-section means the completion of building in all respects according to approved plan and in respect whereof occupancy certificate has been issued.

(6) Where any order is passed under sub-section (5), the matter shall be reprocessed by the Authority in accordance with such directions as may be given by Government.]

**'[7-A. Violation of certain provisions.- Where the provisions of sub-section (1) of Section 6 are violated the building may without prejudice to any other action including sealing of the building or ejection of the occupants be ordered by the Authority or any officer of the Authority authorized in this behalf to be demolished, at the cost of the builder in the case of public buildings and the owner in other cases.]'**

15. Perusal of sub-section (1) of Section 6 as above reflects that no building shall be constructed before the Authority (SBCA) has, in the prescribed manner, approved the plan of such building and granted No Objection Certificate for the construction thereof, whereas, Section 7-A provides that where the provisions of sub-section (1) of Section 6 are violated, the building may without prejudice to any other action, including sealing of the building or ejection of the occupants be ordered by the Authority or any officer of the Authority authorized in this behalf to be demolished, at the cost of the builder in the case of public buildings and the owner in other cases. Now the case which has been pleaded on behalf of the Plaintiff's is to the effect that Section 7-A can only be invoked by SBCA when there is a violation of Section 6(1) *ibid*, and according to them Section 6(1) only applies when there is a violation in construction as against the approved building plan. According to them in their cases, there is no such allegation as to any violation of the approved building plan; hence, the impugned action initiated by SBCA under Section 7-A thereof is unlawful and without any jurisdiction. In fact this is the whole gist of their case; however, in my view it is not only Section 6(1) which is to be read, as at the same time sub-Section (3) of Section 6 is also relevant and important which provides that no building mentioned in sub-Section (1) shall, except with the permission of the Authority, be used for the purpose other than that for which its plans were approved. So in all fairness sub-Section (1) has to be read with sub-Section (3) at all times for the reason that subsection (1) applies when the construction is about to be raised or is being raised and for that there has to be an approved building plan as well as no objection certificate. On the other hand, sub-Section (3) applies when the building has been constructed / occupied and is being used for the purpose other than that for which its

plan was approved. To my understanding, sub-Section (1) and sub-Section (3) are to be read together and if there is a violation of sub-Section (1) it squarely applies to a violation of sub-Section (3) and an action can be taken or initiated under Section 7-A *ibid*, notwithstanding the fact that the Section 7A relates to violation of sub-Section (1) of Section 6 only. And this is for the reason that sub-Section (3) of Section 6 deals with and speaks for the building mentioned in sub-Section (1). They cannot be read in isolation, as they are interconnected with each other, and a harmonious interpretation of both these sub-sections is to be achieved, otherwise, it sounds absurd and illogical that violation of raising construction without an approved plan and No objection Certificate, could entail consequences of demolition, sealing, etc., but for violation of its use does not?. Section 6(1) *ibid* deals with building as defined in Section 3(d), and if it is constructed without approved plan, and at the same time it is being used for a purpose other than for which its plan was approved, would also entail the same offence, and SBCA will have the same jurisdiction to take corrective measures. It has got nothing to do presently, with its conversion and it is only its usage in violation of the Ordinance, 1979, more specifically Section 6(1) & (3) *ibid* which matters. There is another reason for this conclusion. Section 7-A, though deals with Section 6(1) as contended; but it also confers SBCA the authority to eject the occupants. Now if it only relates to Section 6(1) and construction of a building without approved plan as contended on behalf of the Plaintiffs, then why is it that it also empowers SBCA to have the occupants ejected? Ejectment would only arise when the building is occupied and, either it could be that occupants are there without an approved plan; or the building is used in violation of sub-section (3), i.e. for any other purpose. It is not in dispute that presently the Plaintiffs are using the premises for a purpose for which the building plan has not been approved. Admittedly, the building plan was or has been approved for residential purposes and not for commercial purposes. An argument was also raised by one of the Counsel that since there is no violation of approved building plan, therefore, SBCA has no jurisdiction in the matter; however, it is not conceivable that as to how a premises constructed for a residential purposes could be used for a commercial purposes like a restaurant, a beauty parlor or salon or for that matter for an office without making at least minimum changes within the construction already raised. Therefore, without going into any deeper appreciation, it could be said

that there is also a violation of the building plan already approved. In these circumstances, the first ground of attack that SBCA has no jurisdiction to issue any notice or to initiate any further action in terms of Section 7-A of the Ordinance, 1979 is misconceived and is hereby repelled.

16. The question before the Court at the present stage is not that who in law after various changes brought out through the Local Government Ordinance, or thereafter, is authorized to allow conversion of a residential premises to commercial. None of the learned Counsel for Plaintiffs has either argued or have made out a case to the effect that even otherwise, in law they are entitled for any such conversion. Be it KBTPR-2002 or the Building Bye Laws-2003. Their only stance is that almost the entire area and vicinity is being used for commercial purposes, therefore, they are also entitled in law to use the same for commercial purpose. The question of conversion by an appropriate authority would only arise when the Plaintiffs would otherwise, be entitled in law for seeking conversion after qualifying the requirements as contemplated in law. The first and foremost requirement as provided in Regulation 18-4.6 of KBTPR-2002 is that the road facing such property should at least have width of 100 feet. Regulation 18-4.2.2 deals with Residential Plots within a residential area which could be used for education purposes provided the plot faces minimum width of 60 feet road. Though some of the Plaintiffs are running schools on their premises, but no assistance has been provided on their behalf, that as to whether they fall within this exception and have followed the required procedure for conversion as provided in the KBTPR-2002. Similar restrictions and conditions are stipulated in the Building Bye-Laws, 2003. It is not the case of any of the Plaintiffs that the road(s) facing their properties fall within or qualify this condition. Mr. Abdur Rehman appearing for one of the Plaintiffs did made an attempt to argue that there is a provision of setback in KBTPR-2002, and if a setback of 20 feet is permitted, the Plaintiff premises would otherwise qualify and would be entitled for conversion. To this there is a complete answer in the case reported as ***Fakhurl Arfin and 2 others V. Federation Of Pakistan through Secretary, Ministry of Works and 9 others (2015 CLC 318)*** wherein, the Defendants / Respondents had allowed conversion of a residential plot into commercial which was on a road of 80 feet width and the same was allowed by a setback of 20 feet space

and in that case, by coincidence, the learned Counsel for the Plaintiff who has argued this proposition was on the other side and had raised an objection on this setback. The learned Division Bench was pleased to hold as under:-

“It appears that the Society forwarded the said letter and request of conversion with its reservation as stated above to MPO/respondent No.2, who placed such request before the Commercialization Committee which through above reproduced resolution allowed the conversion. Perusal of Resolution reflects that it appears to worse case of colourable exercise of powers, as the Commercialization Committee without any declared policy commercialized a plot in a pure residential area in gross violation of Item No.5(1) of Bye-Laws 2003 prohibiting conversion of land use on roads having less than 100' feet width. The purpose of prohibiting commercialization on road having less than 100' feet of width appears to be that such roads would not be able to take load/influx of the traffic, which would flow upon such commercialization and such intent of course could not be defeated by asking the builders to raise construction leaving 20' feet space for the simple reason that such area of 20' feet would still remain the property of the builders and could be used for his own purposes and would not become a part of thoroughfare. The approach of Commercialization Committee of course was totally unprofessional and could not sustain legal scrutiny and, therefore, in our opinion such permission was rightly withdrawn.”

17. Notwithstanding the above observations, it may also be of importance to observe that insofar as usage of a property for any purpose other than for what it has been leased out is always looked into by the Courts by keeping in mind the overall effect of such usage and the inconvenience being caused to the residents nearby specially, and the public at large, using the vicinity, generally. It is noted with concern that a mushroom growth of these conversions and usage has taken place without due approval in accordance with law and after starting this usage and illegal conversion, Courts are approached, and Ex-parte interim orders are obtained on one pretext or the other, on the question of jurisdiction and otherwise. I am of the view that these facts as well as attempts are to be looked into, after taking a holistic view of the entire situation, facts, as well as law and the repercussions of such usage as well. This mess of non-conforming use of residential properties for commercial purposes has already disrupted the entire civic fiber of the city, especially Clifton, Karachi, and is an increasing threat to the quiet and comfortable living of residents of the vicinity as a whole and must not be left out at the cost of expediency or expectations of the Plaintiffs and their business interests. It is not that if SBCA, supposedly, for the sake of arguments, is not the lawful authority to issue any such notice,

that such usage for commercial premises would impliedly be permitted. It is not the plaintiff's case, nor pleaded, that they otherwise qualify for such conversion or usage, except that in the vicinity some other properties have been commercialized. Firstly, these assertions are not only vague; but so also without any logic or supporting material. The properties of Plaintiffs are not on the same road(s) or on the road(s) which have been commercialized, or could be commercialized in law; hence no such case could be made out. Moreover, it is also settled law that two wrongs do not make a right. This does not amounts to any discrimination per-se. Reliance in this regard may be placed on the case of ***Ardeshir Cowasjee and 9 Others v Muhammad Naqi Nawab & 5 others*** (PLD 1999 Karachi 631) and ***Arif & Others v Jaffer Public School*** (2002 MLD 1410). The Hon'ble Supreme Court in the case reported as ***Excell Builders v Ardeshir Cowasjee*** (1999 SCMR 2089), while repelling this argument has been pleased to hold that, "Even otherwise, if the above contention is assumed to be correct, the factum that earlier the above Regulation was overlooked or breached would not justify the repetition of the violation of the same." Therefore, if it is not SBCA, then KDA or for that matter KMC or any other authority of the Government who would still have the jurisdiction to act in accordance with law. But the law nor the regulations support the case of the plaintiff in any manner, insofar as grant of such conversion or permission is concerned. Merely for the fact that a question of jurisdiction of SBCA is raised and even if a case is made out to this effect, (which is not), it does not, ipso facto, permits a person to commit a wrong and violate the law. This is the moot question which is to be kept in mind while dealing with this situation. It is also a matter of fact that Plaintiffs have filed a Civil Suit along with an application under Order 39 Rule 1 & 2 CPC and are required to make out a case by fulfilling all three ingredients required for grant of an injunctive relief i.e. a prima facie case, balance of convenience and causing of irreparable loss. It is settled law that injunction is a form of equitable relief and it is to be granted in aid of equity and justice, but not in aid of injustice. For grant of such relief, it is mandatory not only to establish a prima facie case, but so also that balance of convenience is also in favor, and refusal will cause irreparable loss (See-*Puri Terminal Limited v Government of Pakistan & Others-2004 SCMR 1092*). I am afraid none of these ingredients are present in these matters. There is no question of a prima facie case as apparently the Plaintiffs have started using the premises in question for commercial purposes without first seeking any

conversion and permission in accordance with law. Even if SBCA has no jurisdiction to issue the impugned notices or to take any action this does not give rise to making out a prima facie case as even otherwise, in law, the premises in question presently cannot be converted for commercial purposes in any manner whatsoever. As to balance of convenience again no case is made out by the Plaintiffs. Regarding irreparable loss once again no case is made out as prima facie an illegal act has been committed and not only that, the Plaintiffs also want a discretionary relief from the Court without having any cause or substance in their stance and arguments.

18. In view of hereinabove facts and circumstances of the case, I am of the view that the Plaintiffs before this Court have miserably failed to make out a prima facie case, whereas, neither balance of convenience lies in their favor, nor any irreparable loss would be caused to them, as they are presently involve in an activity which is against the law, and must not be permitted to be continued on the basis of an injunctive relief. Accordingly, all listed applications for injunction are dismissed. The plaintiffs shall stop using their premises for commercial purposes within 30 days from today, and in case of their failure, the concerned Governmental authorities shall act accordingly.

Dated: 24.12.2018

**J U D G E**

Avaz