

# IN THE HIGH COURT OF SINDH AT KARACHI

**Suit No. 1022 of 2005**

[Abid and others v. Karachi (Sindh) Building Control Authority]

Date of hearing : 25.01.2019  
Date of Decision : 25.01.2019.  
Plaintiffs : Nemo.  
Defendant : Sindh Building Control Authority, through Ms. Nasreen Sahto, Advocate.

## **JUDGMENT**

**Muhammad Faisal Kamal Alam, J:-** 3. The Plaintiffs have filed this suit against the Sindh Building Control Authority {SBCA}, the erstwhile Karachi Building Control Authority. The plaint contains following prayer clause(s)\_

- a) *To declare that the Plaintiff had constructed the building situated on Plot Survey No. 2, Survey Sheet No. KG-5, measuring 478 Square Yards at Ghulam Hussain Qasim Quarters, Karachi, as per approved building plan and approved letters issued by the Defendant upto 4<sup>th</sup> floor.*
- b) *To declare that as per No. 24.7.1 of the Karachi Building & Town Planning Regulation, 2002 the Car Parking is exempted and the Plaintiff is entitled for exemption as the shape of the plot is Odd Dimension and there is no physical possibility of designing Car Parking Space within the suit premises.*
- c) *To restrain the Defendants, employees, sub-ordinates and/or any other person/persons working under it and/on its behalf not to cause interference in the Building of the Plaintiff in any manner of whatsoever nature till issue of Completion Certificate till final disposal of this suit in the interest of justice.*
- d) *To restrain the Defendant its employees, sub-ordinates and/or any other person/persons working under it and/or on its behalf*

*not to cause/extent threats to the Plaintiff for not allow the exemption certificate of car parking space area which is required to be exempted according to law.*

*e) Any other relief / reliefs, which this Honourable Court may deem fit and proper under the circumstances of the case in favour of the Plaintiff.*

*f) Cost of the Suit may also be awarded.*

2. The controversy in the present case is with regard to a multistoried building constructed on a plot bearing survey No.2, Survey Sheet No.KG-5, measuring 478 Square Yards, Ghulam Hussain Qasim Quarters, Karachi – **Subject Property.**

3. Primarily, it appears that the dispute revolves around the fact that no parking space was provided in the subject building because of area of the plot and the said building is surrounded by narrow streets. It has been further averred that the plot itself has odd dimensions. Plaintiffs are seeking exemption from providing car parking in view of Regulation No.24.7.1 of the Karachi Building and Town Planning Regulations, 2002 (the “**Regulations**”).

4. In this regard, it has been pleaded in the plaint that various representations were made to the Defendant / Sindh Building Control Authority but they never responded to the same.

5. On the other hand, main stance of Defendant in its Written Statement is that when the car parking space was mentioned in the Approved Building Plan then the same should have been provided. It is further stated in paragraph-5 of the Written Statement that the Plaintiffs illegally converted the car parking space on the ground floor by constructing the godown / shop. The Defendant Authority has also stated that a demolition action was also taken against the subject building. Perhaps

due to above reasons, the Plaintiffs lost interest to proceed further and thus is not appearing in the matter. This is unfortunate and unacceptable, because when a party invokes jurisdiction of the Court, it is his obligation to pursue the matter diligently and if in the intervening period either the controversy is resolved or cause of action ceases to subsist, Court should be apprised of the latest development, instead of making oneself absent from the proceeding. This conduct not only consumes the valuable time of the Court but also that of genuine litigants.

6. Even today no one is in attendance on behalf of the Plaintiffs. On 13.01.2017, the matter was adjourned with a caution note of last chance as on that day too only the defendant was present. On 23.01.2016, Mr. Raza Muhammad Raza, Advocate was present but did not proceed with the matter as he was not feeling well. On 14.03.2017 and 27.11.2018, Plaintiffs' side again remained absent. The record further reveals that on 03.09.2012, this Court framed additional issues while observing that since all the issues framed on that day and earlier on 17.10.2006 are legal in nature, therefore, no evidence is required and therefore the matter was set down for final arguments. Following are the Issues framed by this Court on the above two dates:-

#### 17.10.2006

1. Whether the construction of the building is in accordance with the approved building plan and Karachi Town Planning Regulations, 2002?
2. Whether the Car Parking/amenity could be allowed to be converted for any other purpose or otherwise?
3. What should the judgment/decree be?

#### 03.09.2012

1. Whether, exemption from the provisioning of parking space can be granted in case of plots having area less than 720 sq.

yards in view of the Karachi Building and Town Planning Regulations 2002?

2. Whether, in view of the Karachi Building and Town Planning Regulations 2002 the exemption from the provisioning of parking space can be granted in case of plots having Odd shapes and dimensions where there is no physical possibility of designing car parking space?

7. In order to avoid any confusion and for the sake of clarity, the aforementioned Issues are reproduced in the following sequence\_

1. *Whether the construction of the building is in accordance with the approved building plan and Karachi Town Planning Regulations, 2002?*
2. *Whether the Car Parking / amenity could be allowed to be converted for any other purpose or otherwise?*
3. *Whether, exemption from the provisioning of parking space can be granted in case of plots having area less than 720 sq. yards in view of the Karachi Building and Town Planning Regulations 2002?*
4. *Whether, in view of the Karachi Building and Town Planning Regulations 2002 the exemption from the provisioning of parking space can be granted in case of plots having Odd shapes and dimensions where there is no physical possibility of designing car parking space?*
5. *What should the judgment / decree be?*

8. Ms. Nasreen Sahto, learned counsel representing the Defendant – SBCA has submitted that the aforementioned Regulation is not applicable to the case of the Plaintiff as the building plan, which is annexed with the plaint as Annexure ‘P/2’, was approved in the year 2001, whereas, the Regulations were promulgated in the year 2002.

9. Arguments heard and record perused.

**ISSUE NO.1:**

10. The claim of the Plaintiffs that the subject building was constructed after approval of building plan has neither been disputed by the Defendant in its Written Statement nor the authenticity of the approved building plan appended with the plaint as Annexure 'P/2' has been questioned. Learned counsel for the Defendant has referred to the last Report submitted by Defendant on 24.09.2006, particularly, paragraphs-7 and 8 thereof, that the Defendant Authority has taken action under the law and demolished the partition walls/unauthorized construction and the Department Appeal filed by the Plaintiff was dismissed. It means that the building was restored to its original position at least to the extent of structure. Thus, Issue No.1 is answered in Affirmative that the building in question was constructed in accordance with the approved building plan.

**ISSUES NO.2, 3 AND 4:**

11. These Issues are intertwined and can be decided together. It is stated in paragraph 15 of the afore-referred Report that Defendant Authority could have processed the regularization plan if the Plaintiffs have paid the requisite fees / charges. The issue of regularization of the subject building should have been decided by the Defendant long time back, in the light of the Regulations (of the relevant time) instead of dragging the matter unnecessarily. As far as applicability of the Regulations is concerned, the defence taken by the Defendant's counsel, has hardly any force, because, a benefit or exemption provided under a statute or rules / regulations framed under the statute can be extended to a person retrospectively, but the same (a benefit or a concession) already being enjoyed by a person under some legal instrument, law or rules holding the filed at the relevant time, cannot be taken away by an Executive Authority through, *inter alia*, by

retrospectively amending rules, bye laws, regulations and / or any other delegated legislation.

12. In view of the above, the Issues No.2, 3 and 4 are decided accordingly; by directing the Defendant to consider the Regulation plan of the Plaintiffs, by strictly adhering to the parent statute viz. the Sindh Building Control Ordinance, 1979 as well as the present Regulations. If the Plaintiff fulfills the requisite formalities, then Defendant should decide the matter within six (06) weeks from today.

**ISSUE NO.5:**

13. It is an established rule that Court can mould the relief(s), particularly, when a case is decided on the basis of legal Issues. The present suit is disposed of / decreed in terms of the directions contained hereinabove.

Zulfiqar/ PA\*

**Judge**