

**IN THE HIGH COURT OF SINDH,
CIRCUIT COURT, HYDERABAD**

C.P. No. D- 2083 of 2018

Present

Mr. Justice Muhammad Iqbal Kalhoro

Mr. Justice Adnan-ul-Karim Memon.

Mst. Farhana Mansoor Petitioner

Vs.

Province of Sindh & others Respondents

Date of Hearing: 28.01.2019

Mr. Tahir Nisar Rajput, advocate for the petitioner

Respondent No.6 present in person.

Mr. Zaheeruddin Sehto, for SBCA.

Mr. Allah Bachayo Soomro, Addl.A.G.

O R D E R

ADNAN-UL-KARIM MEMON, J.- Through the captioned petition, the petitioner is seeking direction to Sindh Building Control Authority to demolish the illegal and unlawful construction of 3rd floor raised by respondent No.6 over Plot No. A/27, Block `D` Unit No.6, Latifabad Hyderabad on the premise that her easement rights have been seriously jeopardized.

2. Mr. Tahir Nisar Rajput learned counsel for the Petitioner has submitted that she is owner of Plot No.4 (a) Block-D, Unit No.6, Latifabad, Hyderabad and respondent No.6 who is neighbor of the petitioner and is raising multistoried (3 storied) construction over his plot without approval of the competent authority i.e. Sindh Building Control Authority; that petitioner raised hue and cry by making various applications to the competent authority to restrain respondent No.6 not to raise illegal construction over his plot but he turned his deaf ears; that by raising multistoried building the easement rights of the petitioner i.e. fresh air and light

etc have been seriously infringed; that respondent No.6 has filed CP No. D- 2773 of 2017 before this Court and the same is pending adjudication. He prayed for allowing the instant petition.

3. Conversely, respondent No.6 who is present in person has referred to his counter affidavit to the memo of petition and argued that he purchased Bungalow No.A/27, Block 'D', Unit No.6, Latifabad Hyderabad in the year 1993 in the name of his wife Zahida Tasneem, who expired on 7-12-2014 and he being her husband is one of the co-sharer of the said bungalow and is residing in the same; that the instant petition is not maintainable on the premise that no easement rights of the petitioner has been infringed; that he filed CP No. D- 2773 of 2017 against the petitioner on account of his raising illegal and unauthorized construction on the back side of the bungalow of petitioner and she filed false and fabricated case being the counter case; that an early action has been taken by him in accordance with law and nothing is against the approved building plan; that he has not raised any illegal construction; that on his application, Deputy Director, Building Control Department issued notice dated 21.11.2016 directing the petitioner to demolish the construction raised in violation of the approved building construction plan. He added regarding his alleged construction as pointed out by the petitioner, he has voluntarily consented to carry out the inspection of his premises by the Sindh Building Control Authority Hyderabad

4. The Respondent-SBCA has filed comments in which they controverted the allegations leveled by the petitioner; that the petitioner is not an aggrieved person and no easement right of the petitioner has been affected with the raised construction of the house of wife of respondent No.6; that building plan of ground + first floor residential occupancy over Plot No. A/27, Block 'D' Unit No.6 Latifabad was approved vide permission No.5 dated 14.6.1997 by the then Building Control Department, H.D.A. Above first floor two rooms were

constructed in the past for which the petitioner never filed objection except the instant petition, therefore, the petition is liable to be dismissed.

5. We have heard the learned counsel for the parties and perused the material available on the record.

6. We may observe here that an illegal construction of building materially affects the right to or enjoyment of the property by persons residing in the residential area. The SBCA owe a duty and obligation under the statute to see that the residential area is not spoilt by unauthorized construction. The scheme is for the benefit of the residents of the locality. The rights of the residents in the area are invaded by an illegal construction of building. It has to be remembered that a scheme in a residential area means planned organization in accordance with the requirements of the residents. If the scheme is nullified by arbitrary acts in excess and derogation of the powers of the SBCA the courts will quash orders passed by SBCA in such cases.

7. We have noted that the Respondent No.6 has agreed for carrying out the inspection of the premises by the Sindh Building Control Authority Hyderabad, regarding alleged violation of building plan. Deputy Director SBCA Hyderabad is in attendance, whereas, para-wise comments have been filed on behalf of respondent No.1 to 5. Counsel for SBCA submits that if there are violations in construction raised by the respondent No.6 SBCA will act strictly in accordance with law.

8. In the light of above facts and circumstances of the case, this petition is disposed of with direction to SBCA to carry out the inspection of the subject premises as pointed out by the petitioner and take photographs and submit report within 15 days. SBCA is further directed to appraise this court as to whether illegal construction, if any can be regularized under the law or not.

9. Captioned petition stands disposed of in the above terms, along with listed application(s).

JUDGE

JUDGE

Karar_hussaini/PS*